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August 21, 2002

VIA U.S. MAIL AND FACSIMILE TRANSMISSION TO (916) 653-2134

Diane McKenna, Chair
California Transportation Commission
1120 N Street
Room 2221 (Ms-52)
Sacramento, CA 95814

Re: CTC August 22, 2002 Meeting, Agenda Item 2.2b.(1) (Tab No. 77)

Dear Ms. McKenna:

The above-named item is agendized as an opportunity for public comment on a combined Draft EIR/EA prepared for a proposed interchange on U.S. Highway 50 near Cameron Park, California. The interchange would exclusively serve a proposed casino/hotel development on the Shingle Springs Rancheria.

Although this project and its environmental documentation are vitally important to El Dorado County and its citizens, we are unlikely to be able to have a representative personally attend tomorrow's meeting, because of its location in Los Angeles. We greatly regret that your Commission and staff denied our request, made months ago, to delay this hearing until your November meeting in Modesto. We question how a hearing in Los Angeles can be appropriate for obtaining public comment on the environmental documentation of a project located 500 miles away, particularly in light of the emphasis both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) place on active and informed public participation.

The purpose of our letter today is three-fold: First, we wish to alert you to the existence and substance of written comments we have previously submitted on the Draft EIR/EA. Second, we wish to inform you of two quasi-judicial administrative appeals and one federal lawsuit currently filed and pending, each challenging the adequacy of the environmental review for this project. Third, we wish to urge your Commission to direct its staff and consultants to suspend their extraordinary

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efforts to finalize this fatally flawed Draft EIR/EA, and instead chart a new analytical course that heeds the warning signs raised by these pending legal actions.

The County submitted written comments on the Draft EIR/EA on June 20, 2002. We hereby incorporate those comments by reference and request that your staff make them available to your Commission for your review. The gist of the County's comments can be found in a nine-page document attached to this letter. As you will see, that attachment is the County's administrative appeal to the federal Bureau of Indian Affairs, the NEPA lead agency for this document, protesting the BIA's hasty and legally flawed adoption of a Finding of No Significant Impact for the project.

For your information, besides the \$18 million dollar interchange currently before you, the project features a 381,250 square-foot facility, a 250-room high-rise hotel, a 3,000-car high-rise parking structure, 1,500 employees, 227,000 cubic yards of grading in asbestos-laden soils, more than 4 tons per day of garbage generated, and at least 100,000 gallons per day demand for drinking water and wastewater disposal. The casino/hotel cannot and will not be built without the automobile access the interchange would furnish.

A mere four business days after receiving hundreds of pages of public comments on the Draft EIR/EA and without awaiting the Final EIR, the BIA issued a ruling purporting to find that no significant environmental impacts would result from either the interchange or the casino/hotel complex. The County's administrative appeal followed in due course, as did a separate appeal by a group of County citizens. If these appeals are successful, they will discredit the Draft EIR/EA. If they are unsuccessful, further litigation will no doubt ensue.

A major component of the Draft EIR/EA's flawed analysis is its improvident reliance upon an earlier Environmental Assessment that purported to analyze the impacts of the casino/hotel alone. As your staff can explain, virtually every respondent to CalTrans' Notice of Preparation for this EIR warned that the prior EA was fundamentally flawed and must not be "tiered off of" or incorporated by reference in this EIR/EA. Your staff and consultants chose to disregard this advice. The results are a Draft EIR/EA that improperly "piecemeals" the project by insisting that the interchange can be viewed separately from the development it will make possible and exclusively serve (and will fund the interchange), and a Draft EIR/EA that fails to conduct an independent analysis of the casino/hotel's significant environmental impacts to correct the profound deficiencies of the prior EA.

In addition to the two administrative appeals referenced above, we wish to advise your Commission that the County has this day filed a NEPA lawsuit in federal court, in the Eastern District of California, to invalidate that flawed prior EA. We fully expect similar lawsuits from other plaintiffs. If any of them prevail, the analytical underpinnings of the present EIR/EA will be eliminated, the EIR/EA will be invalid, and any interchange construction work already undertaken will have to be removed – at whose expense, we know not. Even if NEPA litigation fails, it will not preclude additional lawsuits to test whether the EIR/EA complies with CEQA.

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Despite these uncertainties, CalTrans staff and consultants are engaged in extraordinary efforts to stay the present course and finalize the EIR/EA as quickly as possible, to accommodate the project proponents' urgent desire that interchange construction begin in a matter of months. We respectfully submit that this approach is both poor public policy and fraught with legal jeopardy.

It is poor public policy because it appears to allow private special interests to dictate CalTrans' priorities and actions, and it promotes those private interests at the expense of the affected public's interests. It is fraught with legal jeopardy because it weds your Commission to an environmental analysis that has received nearly universal condemnation, that has already prompted three legal actions that may well invalidate it, and that will likely draw further legal fire.

There is a clear alternative. Rather than needlessly embroiling your Commission and CalTrans in the ongoing legal battles over a flawed environmental analysis, it is not too late to make a fresh start. The County of El Dorado earnestly urges that work to finalize this flawed Draft EIR/EA be suspended immediately, and that your staff and consultants be directed instead to begin work on a revised Draft EIR/EA that properly analyzes the whole of the project, and that independently assesses the profound environmental impacts associated with the casino/hotel aspect of the project.

We appreciate your consideration of El Dorado County's views, and we appreciate this opportunity to apprise your Commission of the complexities and ramifications of this important, controversial issue.

Sincerely,

LOUIS B. GREEN
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By: _____


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TDC:dp

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7

8 DEPARTMENT OF THE INTERIOR
9 BUREAU OF INDIAN AFFAIRS
10 BOARD OF INDIAN APPEALS

11 In re Finding of No Significant Impact) Docket No.: To Be Assigned
for the Proposed Shingle Springs)
12 Rancharia Interchange Project) NOTICE OF APPEAL; STATEMENT
13) OF REASONS
14)

15 STATEMENT OF APPEAL; DECISION BEING APPEALED

16 TO THE BOARD OF INDIAN APPEALS AND ALL INTERESTED PARTIES:

17 PLEASE TAKE NOTICE that Appellants EL DORADO COUNTY and EL DORADO
18 COUNTY BOARD OF SUPERVISORS hereby appeal a "Finding of No Significant Impact for the
19 Proposed Shingle Springs Rancharia Interchange Project," executed on June 26, 2002 by the
20 Regional Director of the Pacific Region, Bureau of Indian Affairs (hereinafter, "FONSI"). A copy
21 of the FONSI is annexed hereto as Exhibit "A." Appellants received the FONSI on June 28, 2002.

22 FACTUAL BACKGROUND

23 The Shingle Springs Band of Miwok Indians (hereinafter, "Tribe") submitted the following
24 requests to the Bureau of Indian Affairs: 1) to enter into a cooperative agreement with California's
25 State Department of Transportation (hereinafter, "CalTrans") for the evaluation, design, construction,
26 operation, and/or maintenance of a highway interchange to connect existing Indian Reservation
27 Roads located within the Shingle Springs Rancharia with U.S. Highway 50 in El Dorado County,
28 California; 2) to take title of a 5.6-acre parcel adjoining the Rancharia and Highway 50, upon which

1 certain interchange and/or road improvements would be constructed, into the name of the United
2 States; and 3) to designate the interchange as part of the Indian Reservation Road system.

3 An Environmental Assessment for this project (hereinafter "EA"), which doubled as a Draft
4 Environmental Impact Report under the California Environmental Quality Act, was prepared in
5 purported compliance with the National Environmental Policy Act (hereinafter "NEPA") and
6 released to the public on May 6, 2002. Appellants, however, were not afforded adequate copies of
7 the EA for review until June 4, 2002, just 16 days before the public comment period was terminated
8 on June 20.

9 The purpose of the proposed federal actions is to enhance existing automobile access to the
10 Rancheria, so that the Tribe can carry out its proposal to construct and operate a gambling casino and
11 hotel complex. The proposed development would be the largest single commercial development in
12 the 150-year history of El Dorado County. The proposed casino alone would provide gambling
13 capacity equal to about one-quarter of the entire existing gambling industry in South Lake Tahoe,
14 Nevada, immediately adjacent to El Dorado County. The casino/hotel development could not occur
15 without the vehicular access the interchange affords; conversely, the Tribe could not fund the cost
16 of constructing the interchange without the casino/hotel development.

17 The EA, however, attempted no independent analysis of the environmental impacts of the
18 casino/hotel development, insisting that the interchange and casino/hotel were two separate projects.
19 Instead, the EA relied upon an environmental analysis previously prepared by the National Indian
20 Gaming Commission (hereinafter "NIGC"). That prior analysis (of the casino's development and
21 management contract) had found that no significant environmental impacts whatsoever would result
22 from the 381,250 square-foot facility, its 250-room high-rise hotel and 3,000-car parking structures,
23 its 1,500 employees, its 227,000 cubic yards of grading, and its 100,000 gallons-per-day demands
24 for water supply and wastewater disposal. The EA took this approach despite being warned in
25 advance by virtually every commentor, including Appellants, that the approach was legally and
26 analytically flawed. The EA further concluded that the construction and use of the proposed
27 interchange would have no significant adverse environmental impacts.

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1 Appellants submitted extensive written comments on these and other points, annexed hereto
2 as Exhibit B. Numerous other government agencies, private organizations, and individual citizens
3 also submitted oral and written comments, including but not limited to written comments from El
4 Dorado Irrigation District (annexed hereto as Exhibit C), Voices for Rural Living and Shingle
5 Springs Neighbors for Quality Living (annexed hereto as Exhibit D), Grassy Run Homeowners'
6 Association (annexed hereto as Exhibit E), Ronald E. Dosh (annexed hereto as Exhibit F), and Jan
7 McKinsey (annexed hereto as Exhibit G). All of the written comments specified above were
8 submitted on June 19 or 20, 2002.

9 Four business days after the close of public comment, the Regional Director signed the
10 FONSI, purporting to have reviewed, considered, responded to, and rejected each and every
11 comment submitted by Appellants and the rest of the interested public. Neither the FONSI nor a
12 separately issued "Notice of Availability" of the FONSI advised interested parties of their right to
13 appeal or the procedures therefor, in plain violation of 25 C.F.R. section 2.7(c). To date, Appellants
14 are aware of no public document relating to the EA or the FONSI that provides this required
15 information.

16 STATEMENT OF REASONS FOR APPEAL

17 Appellants hereby appeal the FONSI because it is contrary to law and based upon an
18 inadequate EA. Specifically, the EA, the FONSI and the process of adopting the latter are violative
19 of the National Environmental Policy Act, the Administrative Procedure Act, and the Bureau of
20 Indian Affairs' own regulations as follows:

21 1. The EA's reliance upon a prior environmental study for numerous impact analyses
22 improperly "piecemeals" the environmental review required by NEPA and also causes the analyses
23 to understate project impacts. NEPA requires analysis of the whole of an action; projects are
24 required to be defined broadly so as to maximize protection of the environment. It is legal error to
25 split a project into pieces, because the effect is to submerge environmental considerations, losing
26 sight of the project's overall, long-term impacts.

27 2. The hotel and casino impacts are improperly separated out from the interchange
28 portion of the project. They are relegated to the status of indirect or growth-inducing secondary

1 impacts. The impacts are discussed in only two chapters of the EA, in passages totaling about 14
2 pages. Even if these scant discussions had provided new information and analysis, their adequacy
3 would be dubious. But in fact, these passages merely incorporate by reference the inadequate
4 discussions of the NIGC's environmental analysis.

5 3. This "piecemealing" approach also renders the project description incomplete and
6 inadequate. It infects the traffic and air quality impact analyses by importing the defects of the
7 NIGC's work into this document. It renders the analyses of noise, biology, visual resources,
8 socioeconomics, cultural resources, hazardous materials, water quality, and drainage incomplete,
9 because the EA does not properly aggregate and analyze the combined impacts of the interchange
10 and casino/hotel on these resources. It invalidates the consideration of alternatives to the project,
11 because the crabbed definition of the project at hand results in the consideration merely of
12 interchange alternatives, rather than alternatives to the project as a whole.

13 4. The EA's traffic studies are marred by numerous inaccuracies, inconsistencies,
14 unsubstantiated assumptions, errors, and omissions, most of them carried forward from the NIGC's
15 flawed prior environmental study. For further explanation of this point, see Exhibit B and the
16 attachment thereto authored by Appellants' expert traffic engineer, Craig McKibbin.

17 5. There is insufficient analysis of traffic impacts both to roads other than Highway 50,
18 and to Highway 50 itself beyond an arbitrary line drawn in close proximity to the project.

19 6. To the extent that the EA provides an analysis of impacts to County roads, it clearly
20 shows that the project will be a major contributor to traffic on several segments, yet no mitigation
21 is proposed. The assumption seems to be that Appellants will simply bear the capital expense of
22 needed road improvements, as well as the increased maintenance costs attributable to larger facilities
23 and increased traffic. The same is true of segments of U.S. Highway 50 and California State
24 Highway 49 – though the project will substantially increase traffic, no mitigation is proposed. This
25 is inequitable and inconsistent with NEPA.

26 7. The EA refers several times to discussions regarding future widening of U.S.
27 Highway 50 in the project area. While the accuracy of certain specifics in those discussion is
28 questionable, it is reasonably foreseeable that more lanes may someday be added to the highway.

1 By adding an offramp and an auxiliary lane for eastbound travel, this project is using up limited
2 surplus right of way, which may complicate or preclude later lane additions. The EA should, but
3 does not, analyze the impacts of this project on future potential highway improvements.

4 8. The analyses of cumulative and indirect traffic impacts are incomplete, because they
5 fail to acknowledge the growth-inducing effects of the casino/hotel. The Tribe claims that 1,500
6 employees will be traveling to and from the facility; the facility will also require a host of ancillary
7 commercial services. The presence of a commercial enterprise of this scale and character will
8 increase development pressures in the nearby community and will foreseeably alter the present rural
9 residential character of the surrounding lands. The EA does not acknowledge the traffic impacts or
10 any other impacts of this growth-inducement. NEPA requires that it do so.

11 9. The EA's cumulative traffic impact analysis is based upon a projected roadway
12 network that El Dorado County has never approved or adopted. Further, the cumulative baseline
13 Rancheria traffic is assumed to increase at 1% per year, whereas El Dorado County's historical rate
14 is approximately three times that, and reported growth on the Rancheria in the last five years has
15 been higher still. This assumed 1% growth rate is at odds with the best available information. The
16 wilful use of outdated methodology and inaccurate data, when better are available, does not meet
17 NEPA's standards.

18 10. The traffic-based air quality analysis employed erroneous thresholds for
19 characterizing air pollution impacts as significant or insignificant. Appellants had previously
20 advised that the appropriate thresholds for this project are those of the El Dorado County Air
21 Pollution Control District, yet the error was not corrected. Instead, the EA simply adopted a prior
22 air quality analysis that was conducted for purposes other than NEPA compliance. Not only do the
23 thresholds of significance differ, but a proper NEPA analysis would find greater emissions from the
24 same number of vehicle trips. If the proper thresholds and emission rates had been used, the project
25 would show significant impacts from ROG and NOx. The information provided in the EA is
26 insufficient to determine whether the project would also show significant impacts from CO and
27 PM10 under the proper thresholds.

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1 11. Similarly, the analysis of construction emission impacts fails to comply with the
2 proper methodology, which was developed by the Sacramento Metropolitan Air Quality
3 Management District and is being adopted and used region-wide. In contrast, the EA employs the
4 outmoded approach that the new methodology has replaced, and thereby underestimates ROG and
5 NOx emissions. Also, the EA claims credit for large reductions in PM10 emissions from fugitive
6 dust, without documenting how those reductions are achieved. There is no consideration of the
7 combined emissions resulting from overlapping interchange and casino/hotel construction, or total
8 emissions from the two activities, whether overlapping or sequential.

9 12. The analysis of toxic air pollution emissions is faulty. El Dorado County is notorious
10 for the presence of naturally-occurring asbestos deposits, which cause releases of airborne asbestos
11 fibers in connection with construction, grading, and other development activities. It is undisputed
12 that asbestos deposits occur and will be disturbed within the project area. Yet the EA fails to provide
13 a health risk assessment for asbestos. Similarly, no health risk assessment has been performed for
14 diesel engine particulate emissions during construction. Both of these health risk assessments are
15 necessary under NEPA.

16 13. An appendix to the EA includes a traffic-based air quality analysis whose trip
17 generation assumptions contradict the assumptions of the traffic analyses. Although the effect is to
18 further reduce even the traffic analyses' questionable trip rates, thereby falsely understating the
19 resulting air pollution, the outputs still show that, even with mitigation, pollution from ROG, NOx,
20 CO, and PM10 all greatly exceed not only the proper thresholds, but even the inappropriate, more
21 lenient thresholds utilized in the EA. These results in the appendix flatly contradict the conclusion
22 that air pollution from traffic is an insignificant effect, yet they are ignored in the body of the EA.

23 14. Other air pollution data are missing or unsupported. The estimates of construction
24 activity for the construction emissions analysis are undocumented. The emissions of employee
25 commute travel are said to be included, but the relevant appendix does not substantiate this
26 statement, and the numbers contradict it. The claimed reductions in NOx from mitigation measures
27 are not documented.

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1 15. As discussed above, the traffic and air quality analyses purport to be integrated, but
2 in fact they are inconsistent in their trip generation assumptions. Moreover, the traffic analysis
3 shows impacts on roads other than the segments of Highway 50 immediately adjoining the
4 interchange, but the territorial scope of the air quality impact analysis does not extend to this larger
5 area. Similarly, the noise analysis is focused only on the proposed interchange area, using four noise
6 measurement sites and a total of ten sites modeled for noise impacts. Because the traffic analysis
7 shows increased traffic elsewhere, the noise analysis should have determined if these changes in
8 traffic volumes have corresponding noise impacts, but it did not. In short, the fundamental
9 assumptions and territorial scope of the impact analyses are not properly integrated or consistent.

10 16. The EA's analyses of drainage and runoff are flawed in numerous respects. For
11 further explanation of this point, see Exhibit B and the attachment thereto authored by Appellants'
12 expert engineer, Dave Spiegelberg.

13 17. Because of the piecemealing problem previously discussed, the consideration of
14 alternatives is improperly limited to "no project" and a single alternative interchange design. Even
15 if it was correct to limit the project description to the interchange, providing only a single alternative
16 to the preferred design (along with the no-project alternative) does not provide the reasonable range
17 of alternatives that NEPA requires. The EA improperly excluded a frontage road alternative.

18 18. The EA's cumulative impact analysis fails to take into account foreseeable expansions
19 of the casino/hotel project, such as the addition of a convention/event center.

20 19. Many ancillary, support, and technical documents should have been, but were not,
21 made available for public review. This failure to make information available stunted meaningful
22 public input and thwarted NEPA's public disclosure function.

23 20. The EA falsely characterizes the state of the Rancheria's land title, asserting that "the
24 land is held in trust for the Sacramento Verona Band of Homeless Indians." This is a serious and
25 material factual misrepresentation: the true language of the deed vests title in the "United States of
26 America, for the use and occupancy of the Sacramento Verona-Band [sic] of Homeless Indians."
27 This is no minor quibble. To be eligible to host a casino under federal law, the Rancheria must be
28 held in trust by the United States for the Shingle Springs Band of Miwok Indians. Obviously, the

1 deed refers to another band of Indians, not the Shingle Springs Band. Further, the phrase “for the
2 use and occupancy” is more appropriate to an easement or license for use; it is not trust language.
3 Thus, a substantial legal issue exists as to whether federal law allows the development of a casino
4 on the Rancheria in any event. The EA improperly failed to disclose and analyze the consequences
5 of this cloud on the title.

6 21. Appellants hereby incorporate by reference all other EA inadequacies and violations
7 of applicable law identified in Exhibit B and the attachments thereto, in Exhibits C through G,
8 inclusive, and in all other oral and written comments submitted on the EA.

9 22. The proposed FONSI was not circulated for public review and comment prior to
10 adoption, which NEPA requires in the case of novel and controversial projects such as this. Neither
11 the FONSI nor any other document advised the public of its administrative appeal rights, as required
12 by the Bureau’s own regulations. In light of the substantial evidence of profound environmental
13 impacts and the public controversy surrounding the project, it was arbitrary, capricious, and an abuse
14 of discretion to adopt a FONSI rather than preparing a full Environmental Impact Statement as
15 required by NEPA. All violations of law identified or referenced herein are correspondingly
16 violative of the Administrative Procedure Act.

17 **RELIEF SOUGHT**

18 Appellant seeks the following relief: rescission of the FONSI; rescission of any actions to
19 approve or implement the Tribe’s requests; and preparation of a full Environmental Impact
20 Statement that adequately describes the entire project and analyzes all of its impacts and those of
21 a reasonable range of alternatives, and proposes appropriate mitigation measures to offset significant
22 impacts identified.

23 **NAMES AND ADDRESSES OF ADDITIONAL INTERESTED PARTIES**

24 The names and addresses of additional interested parties known to Appellants are as listed
25 in the Certificate of Service filed and served herewith. As the Certificate of Service authenticates,

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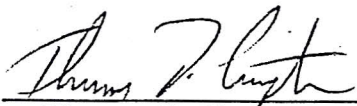
1 copies of this Notice of Appeal have been served concurrently with filing on all known interested
2 parties, the Assistant Secretary – Indian Affairs, and the Regional Director.

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Dated: July 29, 2002

Respectfully Submitted,

LOUIS B. GREEN
County Counsel

By: 
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Principal Ass't. County Counsel
Attorneys for County of El Dorado