



January 13, 2012

SENT VIA U.S. MAIL AND EMAIL TO CHAD.BROUSSARD@BIA.GOV

Chad Broussard
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Re: City of San Jacinto Comments on the Preliminary Final Environmental Impact Statement ("FEIS") for the Soboba Band of Luiseño Indians' ("Tribe") Horseshoe Grande Fee-to-Trust Application

Dear Mr. Broussard:

Thank you for the opportunity to review and comment on the Preliminary FEIS for the Soboba Horseshoe Grande Fee-to-Trust Application ("Project"). The City of San Jacinto ("City") fully respects, supports, and encourages tribal sovereignty and self-reliance, and recognizes there are potential positive effects on the Tribe and the City from a well designed casino/destination resort project. However, the City has a number of concerns about the current design and environmental review of the Project and, as cooperating agency, provides the following comments.

I. Summary of Comments

First, the City appreciates that several of the comments the City submitted during previous rounds of commentary have been acknowledged and addressed. However, some of these responses unfortunately fail to alleviate the City's essential concerns, some of the changes have raised new problems, and several of the issues previously raised remain unaddressed. As reflected in its earlier letters on previous rounds of environmental review, the City continues to be concerned that serious, substantive problems with the EIS remain and that its citizens will bear the brunt of many of the Project's impacts.

NEPA requires an EIS to disclose the impacts of a proposed action and to provide a sufficient degree of analysis and technical information to allow full assessment of a project's impacts by reviewing agencies and the public. *See, e.g., Silva v. Lynn*, 482 F.2d 1282, 1287 (1st Cir. 1973); *Sierra Club v. Morton*, 510 F.2d 813, 817 (5th Cir. 1975). Unfortunately, the FEIS continues to fall short of this legal standard by failing to characterize the Project's impacts

accurately or to identify properly that several of the Project's impacts that are characterized as less than significant are really significant. These omissions are particularly evident for aesthetics, greenhouse gases, and traffic. In other places, the FEIS ensures that impacts to others, including the County of Riverside, are fully mitigated, but ignores remaining impacts that affect the City and its citizens. The City is particularly concerned about impacts to law enforcement, fire protection services, schools, land use, and noise, and also has continuing concerns about the Project's socioeconomic impacts on the City's residents. All of the aforementioned impacts will be significant, whether the EIS acknowledges this or not, and the proposed mitigation is inadequate. In addition, there are a number of other remaining problematic areas including agriculture, water, the Project's purpose and need, alternatives, and cumulative impacts, among others.

Finally, one of the most glaring, but presumably easily fixed, problems with the Preliminary FEIS is the fact that portions of it have been updated to include current information, but other portions remain unchanged and continue to, for example, refer to events in 2008 or 2010 in the future tense. *E.g.*, FEIS at 1-12¹ (second full paragraph internally contradictory); 3-136 (special assessment district balance will be paid in full in September 2008), 4-418 (inconsistent within the same page), 4-578 to 581 (out-of-date discussion of unemployment and housing); 4-401 & 402 (information on the two pages conflicts). This is confusing and misleading, and leads to many contradictory statements and discrepancies. Efforts must be made to correct this deficiency in order to create a legally adequate document.

II. Failure to Properly Identify Remaining Significant Impacts

The Preliminary FEIS comes to the conclusion that certain impacts will be less than significant, including aesthetics, greenhouse gases, and traffic. However, the conclusions that these specified impacts will be less than significant are simply untenable and unsupported by the FEIS or its appendices.

A. Aesthetics/Visual Resources

The City appreciates that the FEIS has required more mitigation measures to address the Project's significant light and glare impacts. However, the Project is still turning what the FEIS itself recognizes is a currently vacant, rural site surrounded by farming, grazing, and sporadic low-density residential uses, into an urban development. FEIS at 3-181, 4-112. It is residents of the City who will be primarily impacted by the substantial visual degradation resulting from the Project. FEIS at 3-181. The FEIS recognizes that City residents can see the Project site from a number of locations, although its selection of sites to review seriously underestimates the number of locations that will be impacted by the visual changes that would result from the Project. FEIS at 3-184. Despite this, it is unclear if the FEIS comes to any conclusion of significance as to the visual impacts of the Project, page 5-39 suggests that the FEIS comes to a conclusion of less than significant, while page 4-447 suggests otherwise. The FEIS needs to be amended to come to a clear conclusion. In addition, many residents of the City, especially those of Soboba Springs Mobile Estates, will be highly and negatively impacted by the change from peaceful rural

¹ While the citations to the FEIS may sometimes be only to one alternative, to the extent the analysis is the same for the other alternatives, the same comments apply.

scenery to brightly lit, multi-story parking garage, casino, arena, and other urbanized development. Therefore, it is imperative that this significant negative environmental impact be recognized and that substantial additional mitigation measures be added in order to ameliorate this impact as much as possible, and not merely leave the people of San Jacinto to suffer.

B. Greenhouse Gases (“GHGs”)

The City appreciates that the FEIS has attempted to comply with NEPA by adding information regarding the Project’s GHG emissions. The FEIS now recognizes that the Project will result in the emission of enormous amount of GHGs—*more than 72,000 tons* of CO₂ equivalents per year. The FEIS comes to the conclusion that, presumably only at a Project-specific level (although this is not entirely clear), this is not significant with identified mitigation. FEIS at 4-51. The FEIS’s “analysis” in this section merely calculates the percentage that the Project’s GHGs are of the State of California’s entire GHG emissions. This is legally insufficient analysis. It is hard to conceive of any project, including a large coal-burning power plant, that would not be able to come to such a conclusion, making the entire analysis a farce. Other types of air quality or other types of impacts cannot simply be trivialized in this manner, and GHGs should be treated no differently.

Even if a bare disclosure of the Project’s percentage of the entire state’s emissions supported a conclusion that Project-specific GHGs are less than significant, the cumulative GHG section is woefully inadequate, particularly in that it fails to even come to a significance conclusion. GHGs are, by their very nature, cumulative and properly analyzed as part of the cumulative impacts analysis. However, instead of evaluating the significance of the Project’s cumulative impacts, the FEIS merely states that “it is not possible to draw conclusions about the overall magnitude of significance of [the Project] on global climate change in the absence of established quantitative greenhouse gas thresholds.” FEIS at 4-412; *see also* FEIS 4-455 & related pages re: other alternatives. The FEIS also incorrectly states that there are no guidance mechanisms for evaluating GHGs. Both assertions are false. While there admittedly are no thresholds of significance for GHGs that must legally be applied to this Project, there are a number of guidance documents, and various thresholds of significance have been adopted by assorted agencies. All of them recognize a significant impact from GHGs at far, far lower levels than the enormous amounts that will be emitted by the Project. *See, e.g.*, SCAQMD interim threshold of 10,000 metric tons CO₂ equivalent for industrial projects and California Air Resources Board’s interim thresholds of 7,000 metric tons CO₂ equivalent <http://www.aqmd.gov/hb/2008/December/081231a.htm>; BAAQMD thresholds of 1,100 metric tons CO₂ equivalent for Projects other than stationary sources or 10,000 for stationary sources http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_May%202011_5_3_11.ashx etc. The FEIS uses SCAQMD thresholds for other air quality impacts; there is no reason why it does not address its guidance and interim threshold for CO₂ equivalents. Indeed, in determining whether an environmental effect is significant, 40 C.F.R. § 1508.27 requires the analysis of “[w]hether the action threatens a violation of . . . State, or local law or requirements imposed for the protection of the environment.” Therefore, the above, relevant local laws should be acknowledged and addressed. Further, the FEIS must qualitatively analyze its cumulative GHG impacts. It does not, in violation of NEPA.

The FEIS's discussion of mitigation for its GHG emissions is also insufficient. While the FEIS claims that the mitigation identified to increase energy efficiency will adequately "ensure the proposed developments will be consistent with efforts to reduce the emissions of greenhouse gases" (FEIS at 4-413), the referenced Appendix discloses that CO₂ will barely be affected by the supposed energy efficiency measures, affirmatively proving that these measures are inadequate. *See* FEIS Appx. Y. The identified mitigation measures are illusory in any case, since they merely say the measures "should be incorporated"; they are not required to be. FEIS at 5-6. Other identified mitigation measures are equally insufficient, including "[f]acilitate public transit system use," which is useless, since how it will be facilitated is not discussed, either is what public transit exists that will serve the area or how many people will use it. *Id.* The inclusion of the "requirement" for solar panels is so vague it appears disingenuous. FEIS at 5-6. If the EIS is claiming these measures are required and will be enforceable, please disclose how many solar panels will be included, where they will be, and how much they will reduce impacts. In addition to making the existing mitigation measures enforceable and analyzing their impacts and efficacy, the Project should incorporate the mitigation measures proposed by the State Attorney General. *See* http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf. The enormous amount of GHGs that will be emitted by this Project are cumulatively significant, and the FEIS must be revised accordingly, with substantial additional mitigation measures adopted.

C. Traffic

The City was pleased to learn that the Project expressly does not include Lake Park Dr. in the fee-to-trust transfer. FEIS at 2-21. However, the Soboba Springs Mobile Home Estates residents will still have to share their single access road with a large number of additional cars due to the Project, especially during arena events. The FEIS discloses that arena events are expected to attract thousands of additional cars. FEIS at 4-105. However, it is not possible to determine in the FEIS how often arena events will be held, whether they will be held near evening rush hour and therefore contribute to the existing traffic problems at that time, what the level of service of affected intersections will be during such events, how this will affect emergency and other access to the Soboba Springs Mobile Homes Estates or other nearby residences, or such similar considerations. For these reasons, the FEIS's bald conclusion that there will be no traffic impacts appears to be mere wishful thinking. In addition, the mitigation measures in the transportation management plan (Appx. AB) are insufficient, consisting only of such actions as putting out cones, sometimes using officers to direct traffic, and alerting nearby residents when the events will occur. Unless the residents every time stay trapped in their homes and do not leave or return during any of the arena events, they will be caught in the traffic snarl of thousands of cars, particularly the Soboba Springs Mobile Homes Estates residents, who will be sharing a single, small road with every car utilizing the parking garage near the arena. The identified mitigation measures are woefully insufficient to reduce the traffic impacts at all, much less to a level of less than significant.

General traffic impacts are also substantial. The FEIS acknowledges that Project will add 20,000 vehicle trips per day, FEIS at 4-419, in a town of only 35,000 people. Thus, the Project will enormously increase the number of cars on City roads, particularly those roads in the

immediate vicinity of the Project. Despite this, there is no mitigation proposed to reduce the substantially increased maintenance costs for the additional wear-and-tear on these roads due to the Project. This is just one of many types of impacts that the City will suffer disproportionately, with no recompense. Because, contrary to the FEIS's incorrect conclusions, there will be significant impacts to traffic, NEPA demands that more mitigation measures be proposed, analyzed, and required in order to reduce the significant impacts being suffered by the City. In addition, the 2006 baseline for traffic is now years out of date, with no discussion of whether it in any way reflects current conditions. FEIS at 3-132.

The City also requests that the identified mitigation measures for transportation impacts be clarified, preferably with diagrams; it is difficult or impossible to understand exactly how far certain proposed improvements will extend, or exactly where they will be located.

III. Remaining Impacts That Will Disproportionately Impact the City

A. Law Enforcement and Fire Protection

While the FEIS states that an MOU is currently under negotiation (FEIS at 3-155), the City has learned that the Tribe and RCSD have already signed an MOU providing funding for RCSD's provision of law enforcement services for the Project. The signing of this agreement suggests that the Project has a predetermined outcome as to what will be approved, which is forbidden under NEPA. *Wyoming v. USDA*, 661 F.3d 1209, 1263-66 (10th Cir. 2011). In addition, it is not clear how such an agreement would provide for the Project's needs or actually reduce Project impacts to law enforcement, since the last time the two groups signed such an agreement, the Tribe found the service unacceptable and unilaterally cancelled the agreement. FEIS at 3-153. Notably, the current MOU can also be unilaterally terminated by the Tribe. This renders the MOU inadequate to mitigate the impacts that it was intended to address.

In addition to impacts to RCSD, City law enforcement will also be impacted by the Project and the additional service calls and traffic problems that will be created. Despite this, only RCSD is receiving recompense for the impacts to it, the City receives nothing. FEIS at 5-32. There are simple calculations that allow for the evaluation of how much the City's law enforcement will be impacted and what fair mitigation is, and the City would be happy to provide this information. Mitigation according to these calculations will allow for adequate and reasonable mitigation of the impacts that the City will experience due to the Project.

The same is true for fire protection, especially since the City fire department has a contractual relationship with CDF/Riverside County Fire and is part of an existing mutual aid agreement. See FEIS at 3-155 to 3-156. However, fire protection apparently warrants no mitigation for (post-construction) Project operations at all (FEIS at 5-32). This must be remedied and adequate mitigation added to alleviate the additional strains that would result from the Project.

B. Schools

Like many of the other mitigation measures, there is no assurance that the mitigation measures for schools will fully mitigate the Project's impacts, leaving the City unfairly paying many of the impact costs of the Project, while the Tribe receives the benefits. As the FEIS

recognizes, the majority of the schools within the District are already at capacity, necessitating the construction of new schools. The Project includes jobs that will attract new residents to the area, including people with children, and therefore will impact the already-overtaxed school system. Not only will the Project increase the burden on schools, it is doing so while decreasing property tax and education funding by hundreds of thousands of dollars per year, in a recession where property taxes and education funding have already taken a big hit. FEIS at 4-86, 443. As mitigation, the Project includes adoption of an undisclosed amount of in-lieu development fees. FEIS at 5-33. It is impossible to know if undisclosed mitigation can be adequate. In addition, it should be noted that the amount of in-lieu fees that would be required under the California Environmental Quality Act to mitigate for impacts to schools would be insufficient for the Project, since those amounts were calculated for properties that would continue to produce property taxes, and use of the same formulas would result in this Project significantly undermitigating for its impacts to schools. A substantially increased amount of in-lieu fees above what would normally be required would be necessary to adequately mitigate for permanently ending the land's production of property taxes and education funding.

While the sales taxes that will supposedly be generated by the Project will allegedly be greater than the property tax losses, sales taxes go to the state government, not the local governments, leaving the City once again holding the bag for a benefit to the Tribe. The City is not generally opposed to the Tribe benefiting through the creation of new business opportunities in a destination resort-type project, but the City objects to being left to suffer the drawbacks and many of the costs of the new development, while receiving little if any benefits.

C. Land Use

The FEIS recognizes that there will be significant land use impacts from the Project (FEIS at 4-431), which will significantly impact City residents. These negative impacts will be felt most harshly by the residents of Soboba Springs Mobile Homes Estates and other nearby residents, who will be thrust from a peaceful, bucolic setting to an urban environment, with bright lighting, noise, traffic, and incompatible uses. While the FEIS purports to analyze land use impacts in these individual sections, it does very little, and by relegating what discussion there is to separate sections, significantly discounts the overall impacts that will be felt. A separate section honestly and completely disclosing and analyzing the land use impacts that nearby residents will experience is necessary for a full and legally adequate EIS. In addition, the mitigation measures for land use impacts pertain only to lighting. FEIS at 5-27 to 5-29. Substantial additional mitigation measures must be added to reduce other land use impacts to the extent feasible. Again, the City would be happy to discuss measures that might help address these impacts, once they have been fully disclosed and analyzed.

D. Noise

Noise is another area of concern because the impacts will once again be felt almost solely by City residents. However, the noise section of the FEIS is deficient under NEPA. First, the section utilizes an eight-year-old baseline (FEIS at 3-170), without ever addressing whether existing noise levels have increased in the interim. This is concerning because so many of the disclosed noise levels are so close to the levels of significance. *See, e.g.*, FEIS at 4-269.

The information in the FEIS indicates that there will be a significant impact due to noise during the construction phase of the Project, but improperly comes to a conclusion of less than significant. FEIS at 4-264. The reason given for the conclusion is that, while construction noise impacts would exceed levels of significance, it is unlikely that all of the equipment would be operated simultaneously, and construction is “temporary.” *Id.* This is insufficient to support a conclusion of no significant impact because there are no mitigation measures or other requirements preventing most or all of the identified equipment from running at once, and no disclosure or analysis of how many machines can be operating simultaneously before the noise thresholds are exceeded, and the EIS elsewhere talks about two years of construction, which is definitely long enough to result in impacts to nearby residents. In addition, certain recently added portions of the noise analysis state that if added noise is a lower dBA than existing noise, a less-than-significant impact will automatically result. *See, e.g.*, FEIS at 4-300, 327, 351. This is not true; noise is additive, as is recognized elsewhere in the EIS, including Appendix X. Adequate analysis of how the additional noise will impact existing noise levels needs to be performed.

Also, please amend the Noise mitigation measures to clarify that construction will not be performed on holidays. FEIS at 5-35.

IV. Other Concerns

Agriculture: The Agriculture section is self-contradictory, at once saying the Project site does not contain locally important farmland, but that the City has pointed out that two parcels on the Project site are farmland of local importance. FEIS at 3-145. There is no difference between “locally important farmland” and “farmland of local importance,” and any such attempt at a distinction is false. The FEIS must be amended to discuss the existing farmland of local importance and analyze what impact the permanent elimination of that farmland of local importance will have on agriculture.

Water: While the Tribe may have sufficient water rights to cover the water needed to serve the Project (FEIS at 4-406, 434), that assertion alone does not analyze whether exercising a larger portion of those water rights for the first time will have a significant environmental impact. Others are apparently currently using the water that the Tribe plans to use, and the potential resulting overpumping of groundwater under the admitted “current overdraft” (*id.* at 4-406) could likely result in foreseeable significant environmental impacts. Simply because the Tribe has the legal right to do something does not mean that doing so will lack any environmental impacts. Alternatively, eliminating the uses currently utilizing the water could also potentially have a significant environmental impact, depending on what those uses are. This needs to be disclosed and discussed.

Drainage: The FEIS recognizes that the Project may have drainage impacts on downstream properties (FEIS at 4-11). While the FEIS later recognizes that proposed facilities will “prevent flooding of the Development Site and result in a less than significant effect” (*id.* at 4-15, emphasis added), it needs to ensure there will also be no resulting impacts offsite as well.

Cumulative Impacts: The typical way for cumulative impacts to be analyzed is for other potential or proposed projects in the vicinity to be listed and their impacts quantified and

described qualitatively. The impacts of the Project are then added to the other projects' anticipated impacts to evaluate whether cumulative impacts will result. Here, however, it is difficult to know exactly what other projects are being considered, and there is little or no disclosure of the other projects' impacts, and no disclosure of those impacts plus project impacts. For this reason, much of the cumulative impacts analysis is insufficient under NEPA.

Mitigation Measures: A number of legal deficiencies in the mitigation measures are identified above. In addition to these, there are many other problems as well. For example, many of the mitigation measures are illusory, such as "[t]he Tribe should voluntarily comply with applicable South Coast Air Quality Management District rule and regulations," and that the specified measures "should be incorporated." FEIS at 5-6. Because of the use of the word "should" instead of "will" or "must," these mitigation measures are meaningless, since they can, on their face, be completely ignored if the Tribe decides it would rather not do what it "should." See also FEIS at 5-12 ("Traffic signals shall be installed *when warranted*," emphasis added, no discussion of how to know when, if ever, they would be warranted), 5-27 (new lighting will have motion-sensor activation "where feasible," no discussion of what is required to be considered "feasible"); 5-28 and 5-37 (vegetative screening will minimize offsite light and glare and to screen aesthetic impacts, but it will take years to grow, no discussion of what the changes in the level of impacts will be before it is mature).

In past objections to the adequacy of mitigation measures, the City has been told that the Tribal Alliance of Sovereign Indian Nations ("TASIN") grant process will adequately mitigate any impacts to the City. This is simply not true. Mitigation must be certain, enforceable, and tied to the impacts it is seeking to reduce. Grants received from TASIN are not tied to specific impacts and are not certain of being received in any amount, much less an amount commensurate with the impacts requiring mitigation.

Alternatives and Purpose and Need: NEPA emphasizes the importance of evaluating alternative sites. See, e.g., *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815-16 (9th Cir. 1987). While the City understands that the BIA and the Tribe prefer the proposed location for the Project, almost any relocation would lessen or eliminate the majority of the impacts to the City and its citizens. For this reason, full consideration of an alternative location is imperative. While the EIS briefly acknowledges the possibility of having the casino located on existing tribal property, it rejects this without analysis, merely stating that it would not meet the Project's purpose and need of being located by the golf course. However, this reason for rejecting it is improper, especially since having the casino located next to the golf course is not identified as a purpose or need of the Project in the EIS. See FEIS 1-5 to 1-6.

While the EIS has a number of changes to the purpose and need, presumably in response to the City's previous letter pointing out the deficiencies in this section of the Draft EIS, the changes do not solve any of the problems the City had identified. Moreover, additional problems have arisen because of these changes. For example, one of the reasons given for the fee-to-trust property acquisition is to provide a homeland that "is subject to Tribal management, protection and conservation of the land base, and cultural and natural resources through the Tribe's exercise of governmental powers" and to "increas[e] the conservation of natural and cultural resources under tribal jurisdiction and sovereignty." FEIS at 1-5. However, all of that is possible by the Tribe's owning the land in fee, as it does now, and no reasons are identified as to how

transferring it into trust meet these goals. This is especially relevant regarding the goal to help conserve cultural resources, since the FEIS concludes there are none on the property, or natural resources, which will be destroyed by the conversion of rural land to an urbanized casino/hotel, not conserved. The only other goals identified that may result from transferring the property from fee to trust are: "allow[ing] the Tribe to avail itself of the benefits of Federal laws that apply in trust status" (but no such laws are identified) or "restrict[ing the land] against future alienation and [making it] immune from state and local taxation and regulation." However, merely freeing the land from the environmental protection of California laws and harming the City by removing a property tax source are negative environmental and economic impacts, not worthy or permissible goals, especially for a Project that, in its current form with the inadequate mitigation discussed above, is so environmentally damaging.

V. Conclusion

The City, as cooperating agency, believes that the FEIS continues to be legally inadequate in a number of respects. For this reason, the City urges BIA and the Tribe to address these inadequacies fully before taking any action on the fee-to-trust application.

The City's residents and others have also expressed many of the above concerns about the previous environmental review that was prepared on the Project. Please see and consider the attached letter from Save Our Communities, a group of concerned citizens from the five residential communities in the immediate vicinity of the Project, who will suffer the brunt of the Project's significant environmental impacts.

Despite the above criticisms on the referenced document, it is the City's desire to continue to have cooperative relations with the Tribe. If the Tribe similarly wishes to maintain cooperative relations with neighboring governmental entities, then the City would appreciate it if its concerns on the Project could be addressed, as the City continues to believe that it is possible to address all of its concerns in a manner that is satisfactory to all parties. The City would be happy to discuss any of the above, and ways to ameliorate the identified problems in more detail, or other issues that may arise, and hopes to have the opportunity to do so.

Very truly yours,



Tim Hults
City Manager
City of San Jacinto

cc: The Honorable Mayor and San Jacinto City Council
Jeff Ballinger, City Attorney
Karl Johnson, Legal Counsel, Soboba Band of Lusieño Indians

Attachment

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