



December 26, 2013

SENT VIA OVERNIGHT MAIL

Amy Dutschke, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Re: City of San Jacinto FEIS Comments, Soboba Horseshoe Grande Fee-to-Trust Project

Dear Ms. Dutschke:

Thank you for the opportunity to review and comment on the Final Environmental Impact Statement (“FEIS”) for the Soboba Band of Luiseño Indians’ (“Tribe”) Horseshoe Grande Fee-to-Trust Application (“Project”). As the City of San Jacinto (“City”) has previously stated, it fully respects and supports tribal sovereignty and self-reliance, and recognizes the potential for positive effects to both the City and the Tribe from a project such as the one proposed. In addition, the City appreciates that certain of its concerns have been addressed in the most recent version of the FEIS.¹ However, the City is disappointed that the majority of its concerns were not addressed. While, as demonstrated below, the City has a number of concerns regarding the legal adequacy of the FEIS and mitigation, the City is most troubled about three types of impacts that the City and its residents will bear the brunt of, which have not been adequately mitigated. Because of the importance of these issues, in addition to this letter, City councilmembers have reached out to the Tribe and to the Bureau of Indian Affairs in Washington, D.C., to make sure decision-makers understand the import of these three items and to attempt to come to a resolution before the approval of the Project.

As a cooperating agency and a concerned neighbor that—along with its residents—will experience the majority of the impacts of the Project, the City provides the following comments.

I. Remaining Issues of Particular Concern to the City

The City appreciates the additional mitigation that has been added in the 2013 FEIS in response to previous requests by the City because those measures will help address some of the impacts that will be experienced by City (and Riverside County [“the County”]) residents. These additional measures appear to include: compliance with California Building Code standards;

¹ As to the concerns that were not addressed, or that were not addressed in their entirety, the City hereby incorporates by reference its previous comments.

block walls along Lake Park Drive; vegetative green roofing systems; prohibitions on deliveries, loading dock operations, noise-making machinery use, and maintenance activities during the hours of 7:00 p.m. to 7:00 a.m.; all roads remaining under the jurisdiction of the City and/or the County; parking lot and parking structures' landscaping; and landscaped setback on Lake Park Drive and Soboba Road. To the extent the City has misunderstood and any of these measures will *not* be required as mitigation, or included as part of the Project and included in the ROD, or will be voluntary, please let the City know immediately, because these measures are integral in reducing impacts to City residents.

While the City is pleased about the above additions, the City has identified three issues of particular concern that do not appear to have been addressed or adequately mitigated in the 2013 FEIS, relating to areas in which the City and/or its residents will experience the brunt of remaining significant environmental effects due to the Project. These three concerns of primary importance consist of: (1) the undercounting and lack of mitigation for the decrease in the revenue stream to the City from the properties the Tribe is taking into trust as part of the Project; (2) concerns about direct impacts to nearby residents, including the Soboba Springs Mobile Estates, Soboba Springs Golf Course Area Communities, and Calicinto Ranch; and (3) the delivery of safety and emergency services during arena events, particularly for area residents of the Soboba Springs Mobile Estates, Soboba Springs Golf Course Area Communities and Calicinto Ranch. These effects are of enormous concern to the City.

A. Inadequate Review of and Mitigation for the City's Lost Revenue Stream

First, the FEIS seriously undercounts and/or fails to analyze certain types of impacts to the City. Part of this inadequacy is based on the fact that the numbers that the FEIS uses relating to the City are out of date and, thus, woefully inaccurate. For example, the FEIS bases its estimations for impacts to the City in 2025 on a population level of 40,000 for that year. (FEIS at 4-388.) However, in reality, the City already passed that population level years ago; the 2010 census recognized that the City's population had already grown to 44,000 by 2010, and the City currently has more than 46,000 residents in 2013. Accordingly, at these rates of growth, the FEIS's estimates for 2025 are enormously inaccurate, making the analysis for several types of impacts patently inaccurate and, thus, in violation of NEPA.

By seriously undercounting the population growth rate in the City, the FEIS downplays the existing strain on City services, personnel, response times, and transportation networks. This deficiency is further exacerbated by the FEIS's failure to acknowledge or analyze the significant impacts to the City and its revenue stream resulting from the property being moved into trust. The FEIS acknowledges that the *County* will lose property tax revenue from the parcels that are currently within the City's jurisdiction that will be taken into trust as part of the Project. (FEIS at 4-77.) However, it does not carry out this analysis for the *City*, which will experience much greater impacts than the County, nor does the FEIS provide mitigation for the City's losses. As noted in the February 2012 analysis the City previously provided, the City will immediately lose at least \$25,054.55 from its General Fund, which is 1.2 percent of the City's estimated General Fund revenue for the entire year, and will lose in future years, when the area becomes developed, \$124,000 annually. This would equate to *nine percent* of the City's General Fund revenue, and does not even include amounts the City would receive in subsequent years if the property were developed to a hotel, gas station, or another type of commercial enterprise.

While the FEIS notes the County's property tax loss is only 0.01 percent of the County's overall property taxes, this improperly neglects to disclose or analyze the impacts to the City. The FEIS further states that increased sales taxes will mitigate the County's 0.01 percent property tax loss, but this analysis and mitigation is wholly insufficient as to the City. In addition, this "analysis" wholly overlooks the fact that, while local agencies collect sales tax, those monies actually go to the state, and only one percent is returned to the local agency that collected it. By contrast, a much larger amount of property tax revenue would accrue to the City. Accordingly, even if the FEIS' statement that \$140,000 sale tax receipts would be generated is accurate (see FEIS at 4-78), only a small percentage of that would go to the City. As discussed in the report the City previously furnished to BIA, the City is taking a huge hit on a percentage basis with the property tax losses due to the fee-to-trust transfer. Despite this, the impacts to the City are almost entirely ignored by this section of the FEIS, and the significant financial and economic impacts that it will experience are almost entirely unmitigated. This is a violation of NEPA. The City requests only that it be made whole for these impacts, which are enormous, percentage-wise, to a local agency the size of the City.

Furthermore, transferring the land into trust for the Tribe would eliminate the ability of the City to impose its transient occupancy tax ("TOT") on occupants of any future hotel or lodging developments on that land. California Revenue and Taxation Code section 7280 authorizes the City to levy a TOT on the privilege of occupying a room in a hotel or other lodging for a period of less than 30 days. Through section 3.20.030 of the City's Municipal Code, the City has exercised this authority by levying a TOT of eight percent (8%), which is payable directly to the City. The purpose of the TOT is to provide mitigation for the small (per visitor) and sometimes non-concrete impacts to the City that visitors create, such as wear-and-tear on roads, and other impacts on the community and its facilities that are not otherwise mitigated. Without payment of TOT, the City is responsible for these impacts and costs. By transferring the property into trust for the Tribe, any revenue generated by such a tax could issue only to the Tribe, thereby depriving the City of this potential revenue stream. See, e.g., *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001) (demonstrating tribe's authority to impose occupancy tax for hotels on trust land). The EIS lacks any evaluation of this loss of potential future revenue that would directly result from the transfer of the land into trust, much less mitigation for it, leaving the City bearing the burden, while the Tribe gets the benefit. Requirements that an amount equivalent to the TOT continue to be paid to the City would make the City whole for this loss.

B. Insufficient Mitigation for the Soboba Springs Mobile Estates, Soboba Springs Golf Course Area Communities and Calicinto Ranch, the People Most Highly Impacted by the Project

The residents of the Soboba Springs Mobile Estates, as well as those in the communities in closest proximity to the golf course and the nearby Calicinto Ranch, which provides camp service to disadvantaged youths, will directly suffer the significant impacts of the Project much more than anyone else, but these impacts have been insufficiently acknowledged, analyzed, and insufficiently mitigated in the EIS. Currently, these nearby residents live in a quiet, safe, rural area where they can see the stars shine at night. With the Project, however, they will have to experience two years of construction noise (including potentially on holidays, since the City's previous requests that holiday construction be forbidden was not included in the FEIS) and then

will, instead of living next to quiet fields and agricultural areas, be immediately next door to an enormous, bright, heavily trafficked parking garage, casino, hotel, and arena that will block their views of the fields during the day and the stars at night. Without actually moving, the residents will nevertheless be uprooted from a peaceful rural area to a potentially hazardous urbanized one. Despite the fact that these residents will suffer almost all of the impacts of the Project, they will receive almost none of the benefits. Further, the FEIS provides woefully insufficient mitigation for these residents, since the majority of mitigation measures that the City requested that would most directly benefit these people do not appear to have been incorporated into the Project.

Accordingly, on behalf of the residents of the Soboba Springs Mobile Estates and the community adjacent to the golf course, the City requests two additional mitigation measures: (1) a solid, decorative block wall not less than six feet high to be constructed along the perimeter of the Soboba Springs Mobile Estates, and (2) funding installation of security gates at Chabela Drive, west of Soboba Road, so as to create a safe gated community, along with initial funding to ensure the ongoing maintenance of the gates for a period of not less than ten years.

In addition, the City notes that Section 5.9.3 includes “[a]n extensive green roof system . . . to further reduce contrast.” FEIS at 5-39. This appears to be the vegetative green roof system that the City requested, and the City wishes to express its thanks that this mitigation measure is being included as part of the Project.²

C. Safety and Delivery of Emergency Services During Events

The final issue of principal concern is how delivery of services will take place before and after arena events, and particularly how the Soboba Springs Mobile Estates residents, those residents in the communities in closest proximity to the golf course, Calicinto Ranch and visitors will be impacted. The City appreciates the mitigation in the Transportation Management Plan requiring notification to residents by mail of upcoming events, channelization of roadway traffic, and signage on surrounding roadways prohibiting parking during events, which will help to keep roadways clear for emergency vehicle access to some degree. (Appendix AC at pp. 4-6.) However, these measures do not fully address the effects that congestion from arena events may have on attendees and to neighboring residents in the event that an emergency situation arises during an arena event.

For example, in addition to the lack of analysis in the FEIS concerning this issue, the Transportation Management Plan (“TMP”) (Appendix AC) states only that, if emergency vehicles must access the area during an arena event, emergency vehicles can utilize roadway shoulders, medians, or even drive into oncoming traffic lanes. (at p. 7.) This is not mitigation, and it certainly does not ensure that law enforcement, fire, and other emergency vehicles will be able to quickly address emergencies during arena events, either at the event itself or in the neighboring communities. Likewise, neither the FEIS nor the TMP address the ability of residents of the Soboba Springs Mobile Estates and the hillside community to quickly evacuate

² As discussed below in the section on Incorporation and Enforceability of Certain Mitigation Measures, the City finds non-mandatory language such as that referring to the green roof system as “recommended” worrisome. However, there is no showing that this mitigation measure is impracticable, therefore, the City is of the understanding and expects that this mitigation measure “shall be implemented” as stated in Section 1.5 of the FEIS.

in an emergency during periods of high traffic congestion, such as during arena events, where access points may be blocked. Neither includes provisions for helicopter evacuation for medical or other emergencies, during arena events or otherwise. Instead, the FEIS and TMP assume the orderly movement of vehicles into and out of the arena area, itself, will ensure the adequate delivery of emergency and safety services.

This deficiency is compounded by the fact that the FEIS continues to omit consideration of, and funding for, *City* police and fire services from its mitigation measures, which may result in potential strain on *City* services and personnel during arena events and otherwise. Instead, the FEIS states that the Tribe will provide “appropriate signage” and “peak-hour traffic control staff” (FEIS at 4-177), which are intended to somehow make up for the lack of trained police officers during “peak-hours” and arena events. The *City* requests that additional detail and mitigation be added, such as a landing area for life flight helicopters, that can also be utilized by Soboba Springs Mobile Estates residents and other nearby residents in the case of an emergency during high traffic conditions.

II. Other Impacts That Have Been Inadequately Analyzed or Mitigated in the FEIS

A. Greenhouse Gas Impacts

The *City* appreciates that significant analysis concerning Greenhouse Gas (“GHG”) impacts has been added to the FEIS, which addresses several of the *City*’s previous comments. The FEIS now separately evaluates mobile source emissions, electrical emissions, and emissions from water treatment and other Project activities and quantifies these direct emissions. The discussion also briefly sets forth the methodologies used for each source and references Appendix AA. The discussion also now utilizes the Council on Environmental Quality’s (“CEQ”) 25,000 MT/year CO₂ equivalent threshold to determine that the Project would result in potentially significant direct GHG emissions. (FEIS at 4-44 to 4-46.)

However, the analysis remains deficient in several key ways. For example, it does not indicate the construction sources that were identified and included in the analysis, and also does not state how realigning Lake Park Drive may impact this analysis. Further, the FEIS does not explain how the mitigation measures will reduce impacts by the claimed 28.3% plus, or to a less than significant level, and the FEIS does not utilize a consistent threshold for assessing GHG emissions and reaching its conclusions. Although the discussion states that the CEQ’s threshold of 25,000 MT/year is used to determine whether an impact is potentially significant (FEIS at 4-43), Appendix AA does not include this as a GHG threshold and focuses instead on AB 32. Further, the conclusion for GHG impacts focuses on AB 32 reduction requirements and not the CEQ threshold. Thus, the GHG analysis remains deficient and fails to fully disclose Project impacts or provide any concrete support for the FEIS’s conclusion that GHG impacts are less than significant.

B. Cumulative Impacts Analysis

When considering the impacts a proposed project will have on the environment, the agency must consider and evaluate the cumulative impacts of the proposed project. 40 C.F.R. § 1508.25(c)(3). A “cumulative impact” is defined as “the impact on the environment which

results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 CFR § 1508.7. “Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.*

Each project is different, and the agency is required to rationally explain its cumulative impacts determination in the context of project-specific effects. *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011) (citing CEQ, “Considering Cumulative Effects Under the National Environmental Policy Act,” Office of NEPA Policy and Compliance, (Jan. 1997)).

The cumulative impact analysis in an EIS “must be more than perfunctory; it must provide ‘a useful analysis of the cumulative impacts of past, present, and future projects.’” *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002). To accomplish this objective, the cumulative impact analysis must include “some quantified or detailed information; . . . general statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 868 (9th Cir. 2004). If necessary to describe the cumulative effects of all past actions, agencies are required to list or analyze the effects of individual past actions. *League of Wilderness Defenders-Blue Mtns. Biodiversity Project v. U.S. Forest Serv.*, 549 F.3d 1211, 1217 (9th Cir. 2008); see also *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. Cal. 2008).

The factual basis for the cumulative impacts analysis in the FEIS is not adequately supported and, therefore, the cumulative impacts analysis is inadequate. First, Figure 4-12 of the FEIS lists fifteen projects in the Project vicinity which the FEIS states could have a cumulative effect when combined with the Project. However, the status shown for these projects, and footnote 93 on page 4-384, indicate that the list of cumulative projects has not been revisited and updated since around May 2010. Since this Project would not commence construction until at least 2014 at the earliest, the information concerning future projects that may affect the cumulative impacts analysis is outdated and the analysis is, therefore, unsupported. Reliance on this outdated information cannot be “rationally explained,” as required by NEPA, as it omits those projects that within the last three to four years have become reasonably foreseeable, and which may overlap with this Project in construction and/or operations.

As identified above, the FEIS’s population figures for the City are erroneous, and this also impacts the cumulative impacts analysis. The population growth figures in Table 4-96 of the EIS show that the City of San Jacinto is expected to have a population of 40,025 by the year 2025. However, the City had already surpassed this projection by 2010, more than fifteen years ahead of schedule according to the FEIS. Reliance upon inaccurate 2007 figures (see FEIS at 4-388) that contain demonstrably inaccurate population and growth projections for the cumulative impacts analysis cannot reasonably be supported.

In light of the above-identified inadequacies in the cumulative impacts analysis, cumulative impacts to certain impact areas may be greatly underestimated and inaccurately quantified (if at all). For instance, with the unaccounted for population increase in the City of San Jacinto and projects that may be developed in the vicinity, the cumulative impacts analysis

may underestimate the significance of impacts to public services, including police and fire services, and to traffic and transportation corridors.

C. School Services

While the City appreciates the mitigation measure requiring the payment of “reasonable in-lieu development fees and property taxes to the San Jacinto Unified School District” (FEIS at 5-34), there is no discussion of how these fees will be calculated. Because the amount is unknown, it is impossible to know whether the amount will be sufficient to fully mitigate the Project’s impacts.

D. Law Enforcement/Fire Protection

As San Jacinto previously commented, the Tribe and the Sheriff’s Department have already entered into a MOU for services at the Project site, potentially indicating a predetermined outcome in violation of NEPA. (See FEIS at 3-149.) Further, the MOU can be terminated unilaterally, thereby making it and its measures to remedy strain on police and fire services illusory. (See Appendix W.) Even more egregious, the FEIS continues to omit consideration of, and funding for, City Police services from its mitigation measures. Without such funding, and in light of the illusory nature of existing mitigation, the FEIS’s conclusion that impacts are mitigated to a less than significant level is unsupported.

E. Noise

The noise analysis continues to use an outdated baseline, now almost 10 years old. (FEIS at 3-164.) The responses to comments state that, if noise has increased in the interim, then the Project’s contribution would be even less of a percentage of the total noise and thus the current data is conservative. (Response A01.A-13.) However, this “harmless error” rationalization does not support the use of a baseline that cannot accurately reflect site conditions and impacts to nearby residents who would already be deprived of their tranquil and rural lifestyles and thrust into a noisy Las Vegas-style setting.

In addition, noise is largely additive, and therefore the fact that existing noise levels may be substantially louder than when the EIS analysis was first performed does not make the additional noise from the Project *less* important, as the Responses to Comments (Response A01.A-13) erroneously suggest. Instead, as demonstrated by the regulatory standards cited in the FEIS (FEIS at 3-165), itself, for traffic noise, where the ambient noise level is greater than 65 dbA, an increase in noise levels of only 1.5 dbA over the ambient level results in a potentially significant increase. Where ambient levels are between 60 and 65 dbA, an increase of 3 dbA or more is considered significant. This demonstrates that, contrary to what the Responses to Comment suggest, as ambient levels increase, the overall increase in noise levels resulting from a proposed project that is required for the impact to be potentially significant *decreases*. For non-traffic noise sources, as stated in the FEIS (FEIS at 3-165), an increase in 5 dbA is considered potentially significant. Thus, the reference in Response to Comment A01.A-13 to percentage contributions to noise levels is irrelevant and contrary to the regulatory standards relied upon in the FEIS. As a result, the noise analysis remains deficient under NEPA.

F. Purpose and Need

Despite the City's previous comments, the FEIS continues to fail to identify Project goals which could not also be achieved by not acquiring the land into trust. The revisions continue to identify tax exemption, and tribal maintenance and preservation of culture as the prime purpose and need for the acquisition of the land into trust. Thus, as previously commented, the Purpose and Need remains deficient under NEPA.

III. CONCLUSION

Thank you for the opportunity to comment on the FEIS, and for incorporating some of the changes and mitigation measures previously requested by the City. If you have any comments or questions, please contact us, as the best solutions for all concerned to the above-identified problems would be best explored prior to Project approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Hults". The signature is fluid and cursive, with the first name "Tim" and last name "Hults" clearly distinguishable.

Tim Hults, City Manager