



OFFICE OF THE GOVERNOR

September 15, 2009

Via Facsimile (916) 978-6099 & U.S. Mail

Mr. Dale Morris, Regional Director
Department of the Interior
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Room W-2820
Sacramento, California 95825

Re: Draft EIS Comments, Soboba Band of Luiseño Indians'
Horseshoe Grande Fee-to-Trust Casino/Hotel Project

Dear Mr. Morris:

We have reviewed the Draft Environmental Impact Statement (DEIS) dated May 2009 for the Soboba Band of Luiseño Indians' (Tribe) Horseshoe Grande fee-to-trust land application and proposed casino/hotel project (Project). Thank you for this opportunity to comment on the DEIS and the Project.

Our primary concern is that approximately 56 percent of the Project site is located in the incorporated area of the City of San Jacinto, California. (74 Fed.Reg. 31747 (July 2, 2009); DEIS at pp. 3-118, ES-1.) In May 2005, Governor Schwarzenegger issued a Proclamation on Tribal Gaming (Proclamation) in which he stated that he would "oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired are to be used to conduct or facilitate gaming facilities." The Proclamation utilizes the definition of "urbanized area" found in California Public Resources Code section 21071. The Tribe proposes to relocate its casino to the Project site, which would place the gaming facility in an urbanized area. Public Resources Code section 21071, subdivision (a)(2) defines an urbanized area to include an incorporated city with a population of less than 100,000 if the population of that city and not more than two contiguous incorporated cities combined equals at least 100,000. The City of San Jacinto's population is currently 36,477, and the contiguous, incorporated City of

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Hemet's population is 74,361. (State of California, Dept. of Finance, E-1 population Estimates for Cities, Counties and the State with Annual Percent Change – January 1, 2008 and 2009. Sacramento, California, May 2009.) Pursuant to the Proclamation, the Project's proposed relocation of the Tribe's gaming facility is in an urbanized area and, therefore, does not comply with the Governor's stated policy. Nonetheless, we submit the following comments on the Draft EIS.

We have identified several issues for which the DEIS does not appear to provide sufficient information to permit meaningful consideration of Project aspects that will have the potential to adversely affect the residents of the surrounding communities, in particular the cities of San Jacinto and Hemet.

The Project site is located on fee land that the Tribe seeks to have taken into federal trust in Riverside County. The land, referred to as the Horseshoe Grande property, consists of 34 parcels totaling 534.91 acres of Tribally-owned property. (DEIS at p. 1-1.) The Tribally-owned Soboba Springs Golf Course and Country Club are located on the Horseshoe Grand property. The Tribe operates a casino with 2,000 class III gaming devices within its current reservation boundaries and proposes to relocate its casino to the Project site near its golf course and country club in order to offer customers a "destination resort." (DEIS at p. 1-8.) The proposed casino/hotel complex includes a 160,000 square-foot casino, a 170,000 square-foot, 300-room hotel, an enclosed events arena with seating for 2,595 to 3,891, and two three-story parking structures. The DEIS evaluates the proposed construction of a new casino and hotel complex, with and without the realignment of the only access road to the reservation, as well as three development alternatives and a "no action" alternative. Alternative 1 is a hotel and casino complex, reduced in total square-footage size by approximately twenty percent from the proposed action. Alternative 2 is a hotel and convention center with no casino. Alternative 3 is a commercial enterprise consisting of a gas station, convenience store, a 200 space RV park, and a retail shopping center (no casino or hotel). Alternative 4 is the "no action" alternative; the Tribe would continue to hold the land in fee.

The Bureau of Indian Affairs (BIA) serves as the lead agency for National Environmental Policy Act (NEPA) compliance, with the United States Environmental Protection Agency and the City of San Jacinto as cooperating agencies. (DEIS at p. 1-11; Appendix C.) NEPA requires an agency to take a "hard look" at the environmental consequences of its actions and at possible alternatives. (*Kleppe v. Sierra Club* (1976) 427 U.S. 390, 410, fn. 21; *Save our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1752.) The critical measure is whether a project will have a "significant" impact. Under NEPA, whether an effect is significant depends both on the project's context and intensity. (40 C.F.R. § 1508.27.) NEPA's implementing regulations include a list of ten intensity factors, at least four of which are applicable to our discussion:

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(2) The degree to which the proposed action affects public health or safety.

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(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

....

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

....

(40 C.F.R. § 1508.27(b).)

The following deficiencies in the DEIS preclude the lead and cooperating agencies from taking the required "hard look" at the Project's environmental consequences.

No Demonstrated Need to Acquire the Property in Trust

The Tribe's current reservation consists of 6,865 acres. (DEIS at p. 3-118.) As of 2003, Tribal enrollment was 855, with 679 members living on the reservation. (DEIS at p. 3-94.) In June 2008, the Tribe's application to take 477.65 acres into trust was granted. This land, known as the "Oaks Retreat," included a newly constructed 10,000-seat outdoor arena and a sports complex. In September 2002, the Tribe's land acquisition application for the 950 acres known as Jones Ranch was approved. In 2002, the Tribe also submitted a land acquisition application for 72.16 acres known as the "Horseshoe property." That application was not acted upon and that property is now part of the current land application. The Horseshoe property Environmental Assessment stated that there were no proposed land use changes for the property. (Horseshoe property EA at p. 2-1.)

The stated need for the proposed Project is the insufficiency of the present gaming facility location. (DEIS at p. 2-43.) Although the gaming facility was renovated in 2007, the DEIS states that there is a need for additional parking to accommodate high demand and for a "permanent structure to house gaming activities and provide for air quality control." (DEIS at p. 2-43.) No information is given as to why the current gaming facility is not considered to be a permanent structure, why a parking structure cannot be built on the existing casino's surface parking areas, which appear to take up nearly half of the existing casino parcel (DEIS Fig. 2-9), or why the gaming facility is not adequate for air quality control. Nor does the DEIS explain how a new gaming facility with the same number of gaming devices as the current gaming facility will result in more customers and increased revenue. More information is needed to be able to evaluate the stated need for the proposed Project.

Water Resources

All of the Project's proposed alternatives would utilize the Tribe's existing water supply network. (DEIS at p. 2-5.) The DEIS calculates that the Tribe's current reservation and the Project's proposed action (hotel/casino complex) will require a total of 3.7 million gallons per day (MGD) of water. (DEIS at p. ES-23.) The Tribe's water system is capable of pumping 3.7 MGD at full capacity. (DEIS at p. 2-8.) However, the Tribe's existing wells draw from aquifers that are already overdrafted. (DEIS at p. 3-30.) In July 2008, Congress approved a water rights settlement between the Tribe and the Eastern Municipal Water District and Metropolitan Water District (water settlement). The DEIS states that the 3.7 MGD needed for the Project and reservation is within the amount to which the Tribe has priority rights under the settlement. (DEIS at p. ES-23.) Converting the 3.7 MGD to acre-feet per year, results in an amount of 4,144 acre-feet per year (AFA). The water settlement provides that the Tribe has an ultimate right to 9,000 AFA. (DEIS at p. 4-13.) However, the water settlement also provides that the Tribe would only have a right to a maximum of 4,100 AFA for the first fifty years. The water settlement's water development schedule provides that the Tribe would limit its use to 2,900 AFA for the first five years, increasing incrementally every five years until reaching the cap of 4,100 AFA. (Exhibit I to the water settlement, "Soboba Tribe's Water Development Schedule," at http://project.wrime.com/Hemet/Documents/HSJ_WMP_final.pdf.) Despite its reference to the water settlement, the DEIS does not provide information regarding the ability of the aquifers to produce enough water to meet the Project's needs. Even if the aquifers can produce enough water, the DEIS does not analyze the impact of the Project's increased draw on the other groups dependent on those aquifers for water. As stated in the DEIS, as the Tribe's water use increases, the groundwater pumping by others must decrease. (DEIS at p. 4-13, fn. 67.) Appendix R to the DEIS, titled "Tribal Wells Hydraulic Test Report" is a report of the ability of the various wells to pump water, but analysis of the impact on the impacted aquifers of the additional groundwater extraction necessary to support the Project is needed. NEPA requires that the environmental document address whether the water source will be adequate to meet the Project's needs and what impact the Project's water draw will have on existing and future customers.

Public Safety

Three residential areas in the City of San Jacinto will be directly affected by the Project. One, the Soboba Springs Mobile Estates, is on an island of non-tribally owned land located completely within the Project site. (DEIS at p. 3-118.) Two other residential areas will be separated from the City of San Jacinto by the Project site. The City of San Jacinto has expressed its concerns regarding the "jurisdictional islands" that will be created if the land is taken into trust. (City of San Jacinto's Comments on Horseshoe Grande Environmental Impact Statement, August 5, 2009 (San Jacinto Comments).)

The DEIS provides that no changes in the crime rate would be expected from the Project. (DEIS at p. ES-26.) According to the DEIS, the rate of crime on the reservation has decreased over the last two years and the number of services calls have decreased. (DEIS at p. 3-135.) According to the City of San Jacinto, however, crime and the number of service calls to the reservation have increased. (San Jacinto Comments.) The DEIS states that the Riverside County Sheriff's Department (Sheriff) will continue to provide law enforcement for the Project area and the residential areas. The DEIS references an agreement between the Tribe and the Sheriff signed on July 7, 2008. (DEIS at pp. 3-137-3-138.) The May 2009 DEIS does not reveal the subsequent breakdown of that agreement.

As of July 2009, the Sheriff established a Tribal Liaison Unit that has reportedly improved relations between the Tribe and the Sheriff. However, given the past history of the Tribe and the Sheriff, it may be prudent to allow more time to pass without incident. Two fatal shootings on the reservation were reported in July 2009. (Press-Enterprise, reports dated July 13, 2009 and July 18, 2009.) Due to budget issues, the Sheriff is stated to be operating at a level 14% below the level considered to be ideal to fully serve its jurisdiction. (DEIS at p. 3-137.) The projected increase in visitors to the Project will further strain the Sheriff's resources. Based on the Tribe's history and the lack of a current agreement between the Tribe and the Sheriff, more information is needed to address the Sheriff's additional workload and current status of the relationship and cooperation between the Tribe and the Sheriff.

The DEIS describes the Tribe's plans to construct two fire stations and to enter into mutual aid agreements with the California Department of Forestry and Fire Protection (CDF) and the Riverside County Fire Department. (DEIS at p. 3-139.) In order to adequately evaluate the ability of the new tribal fire stations to work with the CDF and the Riverside County Fire Department to provide fire protection services, more detailed information is needed, such as completed mutual aid agreements.

Traffic

The DEIS estimates the Project would generate 22,525 daily vehicle trips, an increase of 19,568 over the 2,957 daily vehicle trips to the existing casino. (DEIS at p. ES-19.) The proposed events arena is projected to generate approximately 6,848 daily vehicle trips when events are held at the arena. (DEIS at p. ES-21.) The only access to the proposed arena is Lake Park Drive. The arena already located on Oaks Retreat must also be accessed by Lake Park Drive, then on Soboba Road to Castile Canyon Road. In October 2008, the Tribe considered reducing the seating in the Oaks Retreat arena in order to reduce the number of vehicles on the road because of traffic backups experienced during events at the arena. (Soboba Tribe Considers Reducing Arena Seating, Press-Enterprise, October 27, 2008.) At the public scoping meeting held on January 8, 2008, the most frequently expressed concern was the Project's impact on an already problematic traffic situation. (Appendix B to the DEIS, Scoping Report.) Residents of the Soboba Springs Mobile Estate expressed concern that they would be not be able to enter or exit their park during events, because the only park entrance is located on Lake Park Drive and there is no traffic light at that point on Lake Park Drive. (*Ibid.*)

The DEIS offers as traffic mitigation measures the installation of traffic lights at various intersections, both on the reservation and in the cities of San Jacinto and Hemet. (DEIS at pp. 5-9 – 5-23; p. ES-19.) Another proposed mitigation measure is the alteration of Lake Park Drive and Soboba Road to secondary highway width at certain points adjacent to the Project. (DEIS at p. 5-9.) The installation of traffic lights off the reservation relies upon the funds being provided by the Tribe to the cities and the cooperation of the cities in the installation of the signals.

The only mitigation proposed for the “bumper-to-bumper” traffic expected to be generated by special events at the proposed arena, creating access issues for the Soboba Springs Mobile Estates park, potentially blocking the park's only egress point by the traffic on Land Park Drive, and impacting the Soboba Springs community and the Soboba Heights community, is to provide off-site parking “near major thoroughfares” and shuttles from the parking center. (DEIS ES-21.)

The DEIS suggests potential sites for the off-site parking, each of which is an educational facility, including four elementary schools.¹ (DEIS at pp. 5-10, ES-21.) The use of elementary schools and high schools as mitigation for event parking is not fully explained and we have

¹ The DEIS proposes parking at Mt. San Jacinto Community College, San Jacinto High School, San Jacinto Valley Academy, Monte Vista Middle School, Park Hill Elementary School, De Anza Elementary School, Mountain View High School, Caswston Elementary School and Hemet Elementary School. (DEIS at pp. 5-10, ES-21.)

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concerns whether this mitigation measure is adequate, particularly when those educational facilities are likely to have their own nighttime activities requiring their use of their parking structures.

Additionally, the DEIS has not addressed the likelihood that the significant increase in traffic volume will affect the ability of law enforcement and emergency services to access the Project and the reservation. The main access road leading onto the reservation is Lake Park Drive. At one point, it consists of a two-lane bridge passing over the San Jacinto River. Even with traffic signalization to address traffic flow issues, the DEIS does not address emergency services access through potential chokepoints such as Lake Park Drive. In the event of a large-scale emergency, such as a forest fire or earthquake, the residents and patrons must be able to expeditiously exit the area and emergency services must be able to enter the area.

Noise

The DEIS provides detailed noise mitigation measures for the construction phase of the project, but does not provide adequate noise mitigation measures for the operational phases of the project alternatives. (DEIS at p. 5-31.) The few mitigation measures discussed for the operational phase address only the parking structures, the loading docks and maintenance equipment and the HVAC equipment. (DEIS at p. 5-32.) The Noise Analysis included as Appendix F to the DEIS is only an analysis of Alternative 3—which consists of a commercial enterprise consisting of a gas station, convenience store, a 200-space RV park, and a retail shopping center—no casino or hotel. The DEIS does not provide information regarding the impact on the surrounding communities, especially the Soboba Springs Mobile Estates. Although the DEIS states that a noise barrier will be built around the Soboba Springs Mobile Estates that will reduce the noise attenuation approximately 6 decibels, there is no data provided as to what the increased noise level attributable to the Project is expected to be. The DEIS does not provide adequate information regarding the noise impact on the surrounding communities, nor does it provide sufficient mitigation measures for the noise impact of the Project on those communities.

Conclusion

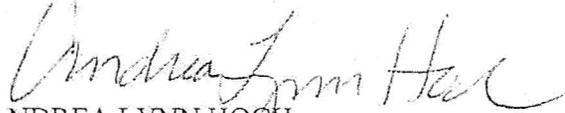
In light of the foregoing, it appears that the Tribe's proposal to relocate its gaming facility on the Horseshoe Grande property will have detrimental impacts on the environment. The surrounding communities have concerns regarding the proposed land acquisition's impact and those concerns must be addressed in the Project's final EIS. Further, the proposed new gaming facility will be located in an urbanized area as defined in the Governor's May 2005 Proclamation, and does not comply with the Governor's stated policy.

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In terms of the proposed alternatives that do not include relocating the gaming facility, the DEIS appears to need further work in several areas, including additional information required to fully assess the nature and scope of the alternatives' environmental impacts and to determine whether the measures proposed to mitigate those impacts are sufficient.

These comments do not constitute the entirety of the State's comments on the DEIS. Other State agencies with specific technical expertise may provide additional comments in separate letters. Thank you for this opportunity to comment on the DEIS. We look forward to your response to our comments.

Sincerely,



ANDREA LYNN HOCH
Legal Affairs Secretary

cc: Honorable Robert Salgado, Sr., Chairman, Soboba Band of Luiseño Indians