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March 14, 2012

Via Facsimile & U.S. Mail
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Amy Dutschke
Regional Director
United States Department of Interior
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way, Room 2820
Sacramento, California 95825

Re: Soboba Band of Luiseno Indians – Notice of (Gaming) Land Acquisition Application for 534.91 acres

Dear Ms. Dutschke:

This comment is submitted on behalf of the State of California at the behest of the Governor's Office in response to the Notice of (Gaming) Land Acquisition Application ("Notice") issued by the Bureau of Indian Affairs ("BIA") on January 11, 2012, regarding the application of the Soboba Band of Luiseno Indians ("Tribe") to have real property totaling 534.91 acres in Riverside County ("Trust Acquisition") accepted into tribal trust. Approximately 56 percent of the Trust Acquisition is located in the incorporated area of the City of San Jacinto, California. (See letter to the BIA from the Office of Governor Schwarzenegger, dated September 15, 2009, attached for reference.) Thank you for granting the request to extend the time within which to comment to March 14, 2012.

The State respectfully requests that this Trust Acquisition be denied because all but one parcel of the Trust Acquisition must be evaluated as an off-reservation acquisition; the proposed Trust Acquisition cannot be adequately evaluated prior to issuance of a Final Environmental Impact Statement; the Notice fails to state a sufficient need for additional land to be taken into trust; the proposed Trust Acquisition will result in a very significant loss of tax revenue that will have a devastating effect upon the City of San Jacinto; and the Trust Acquisition will create substantial jurisdictional problems and conflicts of land use, due to the location of over half of the proposed acquisition within the boundaries of the City of San Jacinto and the creation of what amounts to jurisdictional islands of non-tribal residents.

BACKGROUND

The Soboba reservation was originally established by Executive Order of June 19, 1883, with 3172 acres located in Riverside County. The Tribe currently has approximately 6865 acres of tribal trust land. (Soboba Fee-To-Trust Application, April 2009, ("Application") p. 3.) Thus, the Tribe's combined reservation and trust property exceeds the size of the original reservation by 3693 acres, more than doubling the size of the area originally subject to the Tribe's jurisdiction. The Tribe currently operates a successful casino on reservation land. The proposed new casino would be located less than a half mile from the existing casino. (Application, p. 6.) The Tribe also operates the nearby Soboba Springs Golf Course and Country Club, located less than a half-mile from the existing casino. The golf course website indicates this is an award winning course, and a "PGA TOUR Nationwide Tour golf course," voted Inland Empire Magazine's Best Place to Play for 2008. (<http://www.sobobaspringscc.com>.) The Tribe also operates an outdoor arena and a sports complex that hosts entertainment events.

COMMENTS

I. The Proposed Trust Acquisition Must Be Evaluated as an Off-Reservation Acquisition

Section 465 of title 25 of the United States Code authorizes the federal government to acquire land in trust for an Indian tribe's benefit. The Notice states that the Trust Acquisition parcels are contiguous to the Soboba reservation and cites the federal regulation applicable to on-reservation acquisitions as authority for the Notice. (25 C.F.R. § 151.10.) However, only one of the 34 parcels that make up this proposed acquisition is contiguous to reservation land. Parcel No. 433-140-020, a 68.64-acre parcel that curves around the Soboba Springs Mobile Home Estates, is the only parcel that has a shared boundary (of approximately one-quarter mile) with property that the Tribe has indicated is part of its reservation. The remaining parcels are each contiguous only to one or more other fee parcels also included in the proposed Trust Acquisition. Consequently, for all but one of the parcels, the Notice cites the wrong federal regulation regarding the proposed Trust Acquisition.

The Tribe proposes that the BIA take 34 different parcels into trust at this time and that all these parcels be considered contiguous to the Tribe's reservation. These 34 different parcels were acquired by the Tribe at different times. (Application, pp. 22 through 25.) Thirty three of these parcels are not contiguous for two reasons. First, the proposed acquisition property is not a single parcel. Each parcel proposed to be conveyed in trust must be considered on the basis of whether it itself is contiguous to a tribe's reservation. If that contiguity does not exist, the application for that parcel must be considered an off-reservation acquisition. Even if one of the parcels to be acquired in trust touched reservation land, a contrary construction would allow a tribe to circumvent the distance requirements of 25 C.F.R. § 151.11(b) and the economic benefit requirements of section 151.11(c) by simply buying up land between its reservation and the parcels on which it desired to conduct a business and submit those parcels *and* the ones actually contiguous to the reservation for approval at the same time. Such a construction would also

allow tribes to circumvent the provisions of 25 U.S.C. § 2719 by enabling them to avoid the prohibition on off-reservation gaming absent the Secretary's two-part determination and gubernatorial concurrence through this simple expedient (e.g., once in trust, all contiguous parcels could be construed as a single parcel contiguous to a reservation and thereby eligible for gaming). Thus, treating after-acquired parcels contiguous to trust land itself contiguous to a reservation as if they were all contiguous to an existing reservation could create an impermissible conflict with the provisions of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.) ("IGRA") by allowing these regulations to be utilized as a means for evading the prohibitions on off-reservation gaming established by IGRA.

Second, the three parcels closest to the reservation (Parcels No. 433-140-020 (68.4 acres), 433-140-024 (0.43 acres) and 433-140-026 (3.09 acres)), are separated from the remaining 31 parcels by land owned by the City of San Jacinto and used for a city maintained roadway (Lake Park Drive). These 31 parcels would, for that reason, not be contiguous to the reservation. Thus, the vast majority of the Trust Acquisition is not contiguous to the tribal fee land closest to the reservation.

Since only one of the Trust Acquisition parcels is contiguous to the Tribe's reservation, the remaining 33 parcels of the proposed acquisition are subject to the requirements of the federal regulation for off-reservation acquisitions which requires "greater scrutiny of the tribe's justification of anticipated benefits." (25 C.F.R. § 151.11.) In addition, since 33 of the parcels in the Trust Acquisition are not contiguous to the Tribe's reservation, any proposed gaming use on a non-contiguous parcel is subject to the Secretary's two-part determination and gubernatorial concurrence envisioned by IGRA. (25 U.S.C. § 2719.)

II. The Proposed Trust Acquisition Cannot Be Adequately Evaluated Prior to Issuance of a Final Environmental Impact Statement

The required National Environmental Policy Act ("NEPA") process has not been completed in that only a Draft Environmental Impact Statement (May 2009) ("DEIS") has been issued. To date no Final Environmental Impact Statement ("FEIS") has been forthcoming, making it impossible to accurately assess the environmental impact of taking the property into trust. By letter dated September 15, 2009, Governor Schwarzenegger's Office commented on the DEIS, raising serious issues regarding the preliminary environmental evaluation for the proposed acquisition, and expressed its concern that 56 percent of the Trust Acquisition is located within the incorporated area of the City of San Jacinto. These issues have not yet been acknowledged or addressed. The State reiterates by incorporation all of the concerns expressed in this earlier letter. The lack of a final environmental document also prevents the State from considering the specific comments of other interested parties that might provide additional information or points of view regarding various facets of the DEIS, and from determining if those comments have been adequately considered and addressed in a final environmental document. Without an FEIS there has been no "hard look" at environmental consequences and there has been no determination of whether the proposed acquisition will have a "significant" impact on the environment (*Kleppe v. Sierra Club* (1976) 427 U.S. 390, 399, 410, fn. 21; *Save*

our Residential Environment v. City of West Hollywood (1992) 9 Cal.App.4th 1745, 1752), thus making it impossible to offer the most useful comments regarding the potential environmental effects of the trust acquisition at this time. Even if an FEIS is forthcoming prior to a BIA decision to actually take the proposed acquisition into trust, the State has lost the opportunity to provide meaningful input prior to the BIA decision. This is of particular concern where the Trust Acquisition is opposed by local government and local citizens groups that are attempting to fully participate in a discussion of potential effects of such acquisition.

The City of San Jacinto, as a cooperating agency, has reviewed a preliminary draft of the FEIS concerning the Soboba Horseshoe Grande Fee-To-Trust Application ("Project") and responded by letter to the BIA dated January 13, 2012, in which it raised numerous concerns about the Project. It found serious substantive problems with the preliminary draft FEIS including a failure to identify and address significant impacts as well as objecting to what it deemed illusory mitigation measures that are not required to be implemented. The State concurs in the concerns raised by the City, especially since the Project would directly impact the five residential communities in the immediate vicinity of the Project. The State, however, is hampered from raising its own concerns due to the fact that the FEIS has not been completed and released to the public .

Furthermore, the concerns and needs of the five residential communities located adjacent to the proposed casino/hotel complex and other commercial development, must be considered and addressed by a thorough discussion of the many environmental concerns that have been raised by the locally organized Save Our Communities (see letter to BIA dated September 9, 2009, and letter to BIA dated January 30, 2012) and Lake Park Soboba Springs (see letter to BIA dated February 8, 2012).

III. The Notice Fails to State a Sufficient Need for Additional Land to Be Taken into Trust

The Notice states that the 534-acre property would be used for a gaming and hotel project that would include a new casino facility, among other things. (Notice, p. 1.) The Tribe currently has a successful casino on reservation property located less than half a mile from the proposed new location. As discussed at page 4 in the September 15, 2009 letter from the Governor's Office, the Tribe has not explained the insufficiency of the present gaming facility and more information is needed to evaluate the Tribe's proposal to move the gaming facility (especially when the move is to off-reservation land). The proposed hotel and other commercial development does not require that the property be held in trust unless unless "a principal purpose of which is to serve the activities of" the Tribe's casino, as required by section 2.8 of the Tribe's class III gaming compact with the State. If the property is held in fee and developed for commercial purposes (as is the tribally-owned golf course and country club), it contributes to the strength of the local community as well as the Tribe, while respecting local concerns for development and avoiding jurisdictional and land use conflicts.

In response to the Notice, the City of San Jacinto submitted a comment letter dated February 23, 2012, ("City Letter") in which it discusses a "devastating financial loss" (see discussion below) as well as a "crushing blow to the City's vision for new development and land use that is compatible with its natural surroundings and the existing environment." The City discusses General Plan conflicts and zoning inconsistencies as well as the severe effect the proposed casino complex development would have on the rural communities, including a senior citizen mobile home park immediately adjacent to, that would appear to be surrounded by, the proposed trust property. The concerns raised by the City must be considered and addressed by adequate analytical discussion prior to any decision to accept the property into trust. The City notes that it envisions positive effects on the Tribe and City from a properly designed casino/destination resort project and that the City is supportive of the project going forward at a location other than the one presently proposed.

The Tribe has a successful casino less than half a mile from the proposed new development on the Trust Acquisition and the Tribe has not indicated that commercial development, absent a new casino, cannot occur under continued fee ownership which allows the Tribe to control the land use. Other citizens of the City and County utilize and develop properties in compliance with local regulation. The Tribe must at least attempt to work with local government and within the strictures placed on all local citizens before it concludes that its only option for further economic development is a conversion of the property to trust status. (See 25 C.F.R. § 151.10(b).) While the Tribe may want the federal government to acquire the land in trust, it has not articulated a genuine need, or necessity arising from existing circumstances, nor has it articulated a satisfactory economic benefit, to justify transferring into trust land that the Tribe already owns in fee.

This Trust Acquisition, if approved, would have a significant individual and a cumulative adverse impact on the State and its political subdivisions within the meaning of 25 C.F.R. § 151.10(e). If the proposed development occurs, the City loses significant and needed tax revenue (discussed below), as well as losing the ability to control development in a way that protects the interests of the City as a whole and all of its citizens. And, at the time of development, the State may no longer have the ability to conduct environmental oversight or require compliance with its environmental regulations for the protection of State resources. This is especially significant in light of the fact that the DEIS raises issues concerning endangered and special-status species (DEIS, Appendix H, Biological Resource Assessment), and notes that the Trust Acquisition contains critical and potential habitat for the endangered San Bernardino kangaroo rat as well as twenty special-status species. (Regarding the San Bernardino kangaroo rat, Appendix H, at page 15, notes that "critical habitat is present within Project limits," i.e., exactly where construction is proposed.) The proposed development is of great concern to the State and we observe that the Notice itself does not provide any justification for removing the parcels from the jurisdiction of the City, the County or the State.

The Indian Reorganization Act, of which 25 U.S.C. § 465 is a part, was enacted as a result of the loss of enormous amounts of tribal land because of the inability of tribes and tribal members to pay local and state land taxes. This is not the case with this Tribe, which operates a

successful casino as well as a successful golf course/country club. The Tribe's existing trust property (6865 acres) already exceeds by 3693 acres the size of the reservation at the time it was established. There is no sufficiently articulated reason to support this additional Trust Acquisition. A mere desire for trust acquisition of additional land is inadequate to justify the federal action of removing property from the jurisdiction of the State, Riverside County, and the City of San Jacinto.

IV. The Proposed Acquisition Will Result in a Very Significant Loss of Tax Revenue

We observe that the Notice itself does not provide any analysis or justification for removing the parcels from the City and County tax rolls and the State's jurisdiction. The Notice does indicate that the current combined property tax on these parcels is \$264,850.82. This loss of tax revenue is, in the words of the City, "a devastating financial loss." (City Letter, p. 1.) We are informed that the Tribe has not attempted to negotiate any "in lieu" payment to the City to compensate for the loss of property tax specific to these parcels. The Notice also fails to consider appreciating property values and corresponding tax revenue losses as the Tribe continues to develop the Trust Acquisition. As this property is developed, the tax value will increase exponentially and the City and County will suffer a substantial loss of tax revenue that is inversely proportionate to the increased property value. Additionally, the increased usage of all infrastructure and land within or near the Tribe's development, without any incoming property taxes to prevent, mitigate or offset damages to the infrastructure and land, will negatively impact the State, the City and the County. The Tribe has not fairly and accurately considered future negative impacts of removing the subject property from the tax rolls.

In addition, a BIA policy of taking land into trust absent a clear necessity governs more than a single tribe's contribution; it implicates contributions from every other tribe in California that no longer needs the protection of trust acquisitions, especially when one considers that this loss will continue in perpetuity.

CONCLUSION


The State requests that the BIA deny the Trust Acquisition because the BIA has used the wrong standard for trust consideration since the proposed trust parcels can only be evaluated pursuant to the federal regulation for off-reservation acquisitions. In addition the Trust Acquisition cannot be adequately evaluated at this time absent a Final Environmental Impact Statement. Furthermore, the Tribe has not stated a genuine need for additional land to be taken into trust and removal of the land from the tax rolls and State and local jurisdiction will negatively impact the State and the City of San Jacinto. These factors, independently or collectively, present just cause to deny the Trust Acquisition.

For the foregoing reasons, the State of California respectfully requests that the Tribe's Trust Acquisition be rejected.

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Thank you for the opportunity to comment on this Trust Acquisition and Notice. If you have any questions concerning this comment please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen E. Gnekow', followed by the word 'for' written in a cursive script.

KATHLEEN E. GNEKOW
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

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Enclosure

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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.

....

(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

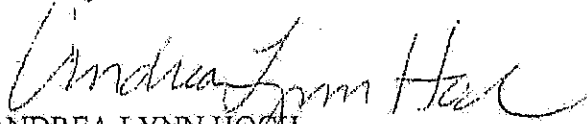
In light of the foregoing, it appears that the Tribe's proposal to relocate its gaming facility on the Horseshoe Grande property will have detrimental impacts on the environment. The surrounding communities have concerns regarding the proposed land acquisition's impact and those concerns must be addressed 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