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Via Facsimile & U.S. Mail
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Amy Dutschke
Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

RE: Final Environmental Impact Statement for the Soboba Band of Luiseno Indians'
Proposed 534-Acre Trust Acquisition and Casino Project, Riverside County, California

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 Final Environmental Impact Statement for the Soboba Band of Luiseno Indians' Proposed 534-Acre Trust Acquisition (Trust Acquisition) and Casino Project, Riverside County, California (FEIS), dated February 18, 2014. The Notice indicates that the final comment date is March 24, 2014.

We understand the significance of gaming revenues to the operation of tribal governments, provision of social services to tribal members, and to the economic development and diversification of tribal communities. However, we are also mindful that the decision to place land into trust for tribes may have adverse consequences on surrounding communities and that any such effects should be identified and appropriately mitigated prior to making a decision to place the land into trust. The FEIS has been prepared to assess the consequences of the Soboba Band of Luiseno Indians' (Tribe) proposal to convey 34 parcels totaling approximately 534 acres to federal trust status, and to develop approximately 55 of those acres into a destination hotel/casino complex (Proposed Project). (FEIS, p. ES-1.) The State opposes approval of the FEIS because the property upon which a casino and related facilities is proposed to be located is off-reservation land and any proposed gaming use is subject to the Secretary's two-part determination and gubernatorial concurrence envisioned by the Indian Gaming Regulatory Act. (25 U.S.C. § 2719.) In addition, approximately 56 percent of the Trust Acquisition is located in the incorporated area of the City of San Jacinto, California, which will lead to a significant loss of tax revenue for the City. (FEIS, p. 3-130.) Furthermore, the FEIS fails to adequately address or mitigate matters relating to water resources, water quality, traffic, and soil removal.

These comments generally address the consequences of Proposed Actions A and B since these are the preferred alternatives.

The Proposed Casino and Related Facilities May Not Be Constructed in the Proposed Off-Reservation Location

The FEIS incorrectly states that the Proposed Project site is contiguous to the boundaries of the existing Soboba Reservation. (FEIS, p. 1-1.) As stated in our letter of March 14, 2012, submitted on behalf of the State at the behest of the Governor's Office, in response to the "Soboba Band of Luiseno Indians – Notice of (Gaming) Land Acquisition Application for 534.91 acres," only one of the 34 parcels that make up the proposed Trust Acquisition for the FEIS 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 indicates is part of its reservation. The remaining 33 parcels are each contiguous only to one or more other fee parcels also included in the proposed Trust Acquisition.

These 33 parcels are not contiguous to the reservation for two reasons. First, the proposed Trust Acquisition property is not a single parcel. Each parcel proposed to be conveyed in trust must be considered on the basis of whether it is contiguous to a tribe's reservation. If that contiguity does not exist, the trust application for that parcel must be considered as an off-reservation acquisition. Even in a situation where one parcel to be acquired in trust touches a tribe's reservation land, to not consider each parcel proposed to be conveyed under this analysis 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 land between its reservation and the parcels on which it desires to conduct a business and submit those parcels *and* the one actually contiguous to the reservation for approval at the same time. It 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 as 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.

Even if it were not clear that 33 of the subject parcels do not share contiguity with the reservation, 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 a piece of land owned by the City of San Jacinto and used for a City-maintained roadway (Lake Park Drive). The 31 parcels on the other side of this City-owned property are, for that additional reason, not contiguous to the reservation. Thus, the vast majority of the Trust Acquisition is not contiguous even to the tribal fee land closest to the reservation.

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.)

The Trust Acquisition Will Result in a Very Significant Loss of Tax Revenue to the City

As noted above, approximately 56 percent of the Trust Acquisition is located in the incorporated area of the City of San Jacinto (City) which stands to lose significant present tax revenue, as well as future increasing tax revenue if the BIA approves the Trust Acquisition. By letter dated December 23, 2013, the City submitted comments that, among other things, addresses the FEIS' lack of analysis of the City's lost revenue stream. It notes that the City will be taking a "huge hit" on a percentage basis with the property tax losses if the Trust Acquisition and Proposed Project are approved.

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 FEIS 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 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 FEIS has not fairly and accurately considered future negative impacts of removing the subject property from the tax rolls.

The FEIS Fails to Analyze the Environmental Effects of Water Use and Proposes No Mitigation

Section 4.2 of the FEIS purports to discuss environmental consequences of the Proposed Project as it relates to water resources. The FEIS states an expected water demand for the Proposed Project of 1,398 acre-feet per year (AFY) without explanation as to how that conclusion was reached, and without assurance that there is adequate well capacity to supply the projected demand.¹ (FEIS, p. 4-14.) The FEIS goes on to state that since the Tribe has a priority water right of at least 2,900 AFY (pursuant to a Water Rights Settlement and associated Water Management Plan (WMP)), the Proposed Project would result in "less than significant effects to the San Jacinto Groundwater Basin since the WMP will account for any overdraft caused by the

¹ Page 3-30 of the FEIS refers to Appendix M as containing the most recent pumping test results for the Tribe's domestic and golf course wells, but Appendix M is five pages of "Pump Check" results containing technical information with no discussion, either in the appendix or elsewhere, of what the technical information means in terms of capacity or water supply.

proposed developments.” (FEIS, p. 4-15.) This conclusion fails to account for the Tribe’s current water use and does not address what the combination of the existing and future use is anticipated to be, nor is there any discussion of how these combined uses may be expected to affect the groundwater basin.

As discussed in the GO Letter of September 15, 2009, the Draft Environmental Impact Statement (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.) . . . Converting the 3.7 MGD to acre-feet per year, results in an amount of 4,144 acre-feet per year (AFY).” The FEIS does not explain the difference in projected water use between the DEIS and this final document.

The Tribe’s existing wells already draw from aquifers that are over drafted. (FEIS, p. 3-32.) The FEIS does not provide information regarding the ability of the aquifers to produce enough water to meet the Proposed Project’s needs. And even if the aquifers can produce enough water, the FEIS does not analyze the impact of the Proposed Project’s increased draw on the other users dependent on those aquifers for water. As the Tribe’s water use increases, the groundwater pumping by others must decrease. The FEIS seems to conclude that since the Tribe has the stated water rights, no analysis of environmental effects is necessary. The National Environmental Policy Act, however, requires that the environmental document address whether the water source will be adequate to meet the Proposed Project’s needs as well as what impact the Proposed Project’s water draw will have on existing and future users.

The Mitigation section of the FEIS, under the category Groundwater, merely states that “[n]o mitigation measures are required.” (FEIS, p. 5-3.)

The FEIS Fails to Analyze the Environmental Effects of Development on Water Quality and Fails to Provide Appropriate Mitigation

The FEIS addresses mitigation for surface water runoff, presumably during construction and during subsequent project operation, by stating that levees present at the Proposed Project site will not be altered and the “runoff created by the proposed development will be properly disposed of by the facilities discussed in Section 4.3.1.” (FEIS, p. 5-3.) (The correct reference is Section 4.2.1 which relates to water while Section 4.3.1 relates to air quality.) While Section 4.2.1 generally discusses drainage of surface water, it lacks the specificity needed to understand and evaluate the adequacy of particular measures. The FEIS, Section 4.2.1, notes that Proposed Action A “would change up to 55 acres of existing natural vegetation in the watershed and replace it with a designed landscape and impervious surfaces including building structures, parking lots and roadways.” (FEIS, p. 4-11.) There then follows a discussion of ideas for detention basins, culverts and pipes for a system to control storm water flows, but the limited details regarding the potential effects of development and the lack of specifics regarding measures for controlling runoff do not allow for an evaluation of likely significant effects or mitigation since none is definitively stated. Under mitigation for water quality at Section 5.2.3, the FEIS states that a Water Quality Management Plan is required to comply with the Clean

Water Act and that a federal discharge permit is also required, and proceeds to list the “best management practices” for source controls and treatment controls. This list contains only general categories of potential mitigation for all projects impacting surface waters. There is no development of the categories into a specific plan for this Proposed Project and no detail as to how mitigation would be implemented. (FEIS, pp. 5-3 to 5-4.) Section 5.2.3 also notes that prior to construction the Tribe will prepare a [federally required] Storm Water Pollution Prevention Plan which “could include but not be limited to” a list of ideas for preventing storm water pollution. (FEIS, p. 5-4.) Such purported “mitigation” is non specific, undeveloped, and does not promise anything. A discussion of general ideas cannot substitute for a detailed plan and specifically identified mitigation. Consequently, it is not possible to determine what significant environmental effects might result from the Proposed Project nor what mitigation might reduce any such effects.

The FEIS Fails To Provide Appropriate Mitigation For Increased Traffic

The FEIS estimates the Proposed Project would generate 22,525 daily vehicle trips, an increase of 19,568 over the 2,957 daily vehicle trips to the existing casino. (FEIS, p. 4-94.) Despite this increase in traffic and analysis showing significant loss of service impacts at several nearby intersections, the mitigation proposed by the FEIS fails to promise funding for traffic signals at relevant intersections approaching the Proposed Project site and instead only indicates that “[t]raffic signals shall be installed when warranted at the Development Site entrances/Soboba Road intersections.” The installation of traffic lights off the reservation relies upon the funds being provided by the Tribe to the affected city. The City of San Jacinto has no promise or assurance that the Tribe will fund even one signal light. The mitigation does list that the “proposed development shall participate in” the Western Riverside County Transportation Uniform Mitigation Fee program and “pay required development impact fees” but there is no discussion of the relationship of the payment of any such fees to needed traffic signals. (FEIS, p. 5-13.) A fee paid to the County may well serve the County’s needs but it does not fund needed City traffic signals.

The FEIS Fails to Address Soil Removal for Proposed Action B or any Alternative Development

The FEIS estimates that approximately 94,000 cubic yards of existing soil would be cut during construction, and approximately 74,000 cubic yards of this soil would be placed as fill “for the construction of the relocation of Lake Park Drive and in the surrounding low-lying area.” (FEIS, p. 4-1.) It then notes that 20,000 cubic yards of soil would be trucked off-site during development grading activities. Under Proposed Action B and any other development alternatives, Lake Park Drive is not relocated and so the 74,000 cubic yards of soil will not be used onsite. The FEIS mentions that “soils present at the Development Site are suitable for use as compactable fill” (FEIS, p. 4-7), but there is no information presented regarding the amount of fill that might be needed (depending on specific development) and the FEIS does not present any plans regarding the hauling of some amount less than 94,000 cubic yards of soil. The FEIS lacks

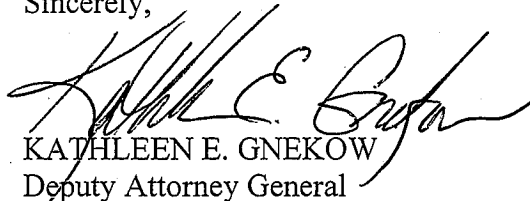
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both an evaluation of any potential significant environmental effects from the relocation and/or hauling of 94,000 cubic yards of soil, and it does not propose mitigation for any such effects.

Conclusion

For the above-stated reasons, the State opposes approval of the FEIS in its present form. We appreciate this opportunity to comment on the FEIS and request that the issues discussed herein be addressed.

Sincerely,



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For KAMALA D. HARRIS
Attorney General

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