

April 4, 2019

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VIA E-MAIL AND U.S. MAIL

Ms. Amy Dutchke
Regional Director
Bureau of Indian Affairs
Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Mr. John Rydzik
Chief, Division of Environmental, Cultural Resource Management and Safety
Bureau of Indian Affairs
Pacific Regional Office, Room W-2820
Sacramento, California 95825

Re: Scoping Report, Tejon Indian Tribe Trust Acquisition and Casino Project

Dear Ms. Dutchke and Mr. Rydzik:

On behalf of Stand Up for California! (Stand Up), I submit these comments regarding the February 2019 Scoping Report for the Tejon Indian Tribe Trust Acquisition and Casino Project. Stand Up asks that the Bureau of Indian Affairs (BIA) reinstate the scoping process for this project.

More than three and a half years have gone by since the initial Notice of Intent to prepare an Environmental Impact Statement (EIS) for this project in August 2015. Indeed, the original schedule for this project called for a Draft EIS to be issued within six to eight months, or almost three years ago. The information in the scoping report is stale and must be updated. For example, groundwater management issues have continued to evolve as implementation deadlines in California's Sustainable Groundwater Management Act have been met since initial scoping. Similarly, the affected communities continue to grow and develop. Thus, the scoping report must identify these more current developments, including in the scoping determinations required under the governing regulations.

The relevant issues that must be identified also depend on the alternatives ultimately selected for evaluation, a process that is not yet complete. The scoping report identifies a new site as an alternative location for the project, and states that additional sites are currently being considered. The issues relevant to different locations will necessarily be different. In addition, it is imperative

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that the public be fully informed of the actual likelihood and feasibility of each alternative location being taken into trust, including the nature of any legal interest the Tribe may have in the property. The public was very misled by the last-minute change in proposed action from Galt to Elk Grove in the recent Wilton Rancheria gaming trust acquisition. Reinitiating the scoping process after identifying all alternative locations and disclosing the Tribe's legal interest in those sites will ensure that the public is able to comment on the full scope of the project.

Finally, the scoping report also reveals that the "Historic 1851 Tejon Treaty Area" was used as a screening criterion to identify or reject alternative locations that meet the purpose and need of the proposed action. *See, e.g.*, Scoping Report at 2-11 ("[H]owever, as the Taft Highway Site is not located within the Tribe's Historic 1851 Tejon Treaty Area, this site was eliminated from further consideration."). This is inappropriate for several reasons, and by itself requires that BIA reinitiate the scoping process.

First, this criterion was not identified as part of the purpose and need of the proposed action at any point in the scoping process—indeed, it is not even included in the stated purpose and need in the scoping report. Furthermore, what area constitutes the "Historic 1851 Tejon Treaty Area" has not been disclosed to the public. The public cannot be expected to comment meaningfully on alternative locations if it is not informed of the geographic constraints being placed on alternative locations. Alternatives are, of course, the heart of the EIS process, and the failure to disclose this criterion irremediably taint the process unless scoping is reinitiated.

Second, this criterion is unnecessary. The purpose and need in the Notice of Initiation is identified to be the improvement of the economic status of the Tribal government. A casino project need not be located in the "Historic 1851 Treaty Area" to meet this purpose and need.

Third, this criterion lacks any legal basis or rationale. The "Historic 1851 Tejon Treaty Area" presumably refers to the area that would have been set aside for the Tribe's reservation under an unratified 1851 treaty known as "Treaty D." As the Department is aware, the Tribe previously attempted to bypass the two-part determination process by requesting a determination that the Mettler Parcels were within the Tribe's "last recognized reservation" based on this unratified treaty. As we previously commented, this is incorrect for multiple reasons, including the fact that the existing Tule River Reservation was ultimately set aside for the Tribe (among others). This fact must accordingly be incorporated into the purpose and need of the project and disclosed to the public to allow a meaningful scoping process to be completed.

As you note in Section 1.1 of the Scoping Report, the "EIS scoping process is designed to provide an opportunity for the public and government agencies to have input into the scope of the EIS and alternatives." Yet by releasing a scoping report three and a half years after initiating

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scoping without providing additional notice, you undermine the public participation goals of NEPA and the diminish the value of the scoping process altogether. BIA should publish notice of its intent to prepare an EIS and give the public the opportunity to provide updated information for the EIS. We look forward to providing additional comments as more information becomes available about the proposed project.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. MacLean", with a long horizontal flourish extending to the right.

Jennifer A. MacLean

cc: James E. Cason, Associate Deputy Secretary
Cheryl Schmit, Director, Stand Up for California!