

*Stand Up For California!*  
“Citizens making a difference”

[www.standupeca.org](http://www.standupeca.org)

P. O. Box 355  
Penryn, CA. 95663

VIA OVERNIGHT MAIL

September 11, 2015

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

Re: NOI Comments, Tejon Indian Tribe Project  
156A2100DD/AAKC001030/A0A501010.999900 253G

Dear Ms. Dutschke:

Stand Up for California! appreciates the opportunity to provide scoping comments on the August 13, 2015 Notice of Intent to Prepare an Environmental Impact Statement for the Tejon Indian Tribe's Proposed Trust Acquisition and Casino Project in Kern County, California.

The Notice of Intent states that the Tribe has submitted a request for the placement of approximately 306 acres of fee land in trust by the United States for the purpose of developing a gaming facility. The facility would initially be approximately 250,000 square feet, and in a subsequent phase, the Tribe will add an approximately 300-room hotel and banquet space. The proposed fee-to-trust property is located in unincorporated Kern County, immediately west of the town of Mettler, and approximately 14 miles south of the City of Bakersfield.

We are very concerned about the impacts the proposed project could have—both on the surrounding community and statewide. As a preliminary matter, aside from the facts mentioned above, there is very little information available regarding the proposed project. For example, it is unclear why the Tribe needs 306 acres at this time. The casino, hotel, and parking will take up approximately 50-60 acres, and the purpose of the remaining 246-256 acres is unknown. Thus, the comments below constitute an initial response only to the proposed project and focus on identifying both procedural and substantive areas of concern. We anticipate, however, that new issues will arise as more information regarding the Tribe's proposed casino is developed, and we plan to respond to those issues, as needed.

We have identified two general categories of concern: (1) comments relating to the procedure and schedule for the proposed project, and (2) comments specific to the preparation of the EIS. Because these topics are relevant to the BIA's consideration of the proposed casino, we summarize our concerns with respect to each below.

#### **A. Process and Schedule**

We have the following preliminary concerns regarding the process and schedule for the proposed project.

##### **1. Contrary to the Discussion at the Scoping Meeting, the Proposed Project Is a Two-Part Determination**

At the scoping meeting on September 1, 2015, AES described a review process to the public that is not consistent with our understanding of the applicable procedures. On August 20, 2015, Maria Wiseman, the Associate Deputy Director of the Office of Indian Gaming, informed us that this application is subject to the two-part determination process set forth in Section 20 of the Indian Gaming Regulatory Act, which requires a Secretarial finding of no detriment and gubernatorial concurrence before a final trust decision can be made.<sup>1</sup> Yet, AES described a process where a final trust decision would issue soon after the EIS is completed. We are very concerned that the process AES described was inaccurate and will mislead the public regarding the scope of participatory rights and the decisions that must be made. The Department must provide the public with accurate information; failing to do so is inconsistent with NEPA and the Administrative Procedure Act. The BIA should hold a second scoping meeting to correct the misimpressions that were created during the first meeting.

##### **2. The Anticipated EIS Schedule Is Unrealistic**

We also have concerns about the proposed EIS schedule, both because of the review processes that will apply under IGRA and because the schedule set forth in the public meeting is wholly unrealistic. The project website has posted an "Anticipated EIS Schedule."<sup>2</sup> Under that schedule, the Draft EIS and Public Comment Period are anticipated to occur during "Winter/Spring 2016." Even under a best-case scenario, such a timeline is entirely unrealistic for a project of this magnitude involving so many complex issues.

A more realistic schedule will involve a matter of years, not months. The BIA's website lists its latest decisions on Indian gaming, and the timelines associated with those projects are informative.<sup>3</sup> For example, the BIA recently issued a no detriment finding under the two-part process for the 145-acre site in the City of Airway Heights, Washington, for the Spokane Tribe of Indians. In that case, the BIA issued the Notice of Intent in August 2009, the Draft EIS in March 2012, the Final EIS in February 2013, and the ROD in June 2015. Thus, the period of

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<sup>1</sup> Stand Up! provided comments that address the inapplicability of the Section 20 exceptions to the Mettler Parcel on April 7, 2015 and July 22, 2015. We hereby incorporate those comments by reference.

<sup>2</sup> See <http://www.tejoneis.com/anticipated-eis-schedule/>.

<sup>3</sup> See <http://www.indianaffairs.gov/WhatWeDo/ServiceOverview/Gaming/index.htm>.

time between the NOI and the ROD approached nearly six years.<sup>4</sup> In addition, it took the BIA approximately 32 months to prepare the Draft EIS from the NOI. Similarly, the BIA recently issued a ROD for the trust acquisition of the Horseshoe Grande Site in Riverside County, California for the Soboba Band of Luiseno Indians, California. In that case, the BIA issued the Notice of Intent in December 2007, the Draft EIS in July 2009, the Final EIS in November 2013, and the ROD in May 2015—for a total period of time spanning nearly eight years.<sup>5</sup> Although the period between the NOI and the Draft EIS was shorter—approximately 20 months—the application did not involve a two-part determination.

The schedule provided online, however, suggests that a Draft EIS will be prepared in six to eight months. In light of these recent examples, and the significant and complex issues to be considered as part of this proposed project, a more realistic (while still very aggressive) schedule would resemble the following:

- Scoping Comment Period: August 13 – September 14, 2015
- Scoping Meeting: September 1, 2015
- Scoping Report: Anticipated Fall/Winter 2015
- Draft EIS and Public Comment Period: Anticipated Fall 2017
- Final EIS: Anticipated Spring 2019
- ROD for IGRA Decision: Anticipated Late Spring/Summer 2019
- (assuming no detriment finding) Gubernatorial Consideration – (12 to 18 months) – Anticipated Spring/Summer-Fall/Winter 2020-21
- (assuming gubernatorial concurrence) ROD for Trust Decision – Anticipated Spring/Summer 2021

### **3. California Voters Strongly Oppose the Expansion of Gaming Off-Reservation**

On November 4, 2014, almost 61% of California voters rejected AB 277 (Ch. 51, Stat. 2013), which ratified two compacts between California and, respectively, the North Fork Rancheria of Mono Indians, and the Wiyot Tribe. AB 277 would have allowed the North Fork to operate class III gaming on newly acquired lands and provided the Wiyot Tribe a share of the North Fork's profits. The compacts also exempted certain associated projects from compliance with the

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<sup>4</sup> See Record of Decision for the 145-acre site in the City of Airway Heights, Washington, for the Spokane Tribe of Indians, available at <http://www.indianaffairs.gov/cs/groups/webteam/documents/document/idc1-031452.pdf>.

<sup>5</sup> See Record of Decision for the trust acquisition of the Horseshoe Grande Site in Riverside County, California, for the Soboba Band of Luiseno Indians, California, available at <http://www.indianaffairs.gov/cs/groups/webteam/documents/document/idc1-030437.pdf>.

California Environmental Quality Act. The outcome in Proposition 48 is an indictment of the Governor's approval of off-reservation gaming.

When 61% of California voters oppose off-reservation casinos, there is simply no basis to conclude that the proposed off-reservation casino would not be detrimental to the surrounding community. The BIA should view Proposition 48 as clear confirmation that California voters consider off-reservation gaming expansion as contrary to the public interest. Unless California enacts laws to govern such decisions, the BIA should not consider any off-reservation proposal in the State of California.

## **B. Environmental Review Under NEPA**

We have the following concerns and comments relating specifically to NEPA and the EIS.

### **1. The Purpose and Need of the EIS and the Range of Alternatives**

The BIA should carefully consider an appropriate purpose and need statement in framing the EIS. The EIS purpose and need statement is critical to compliance with NEPA. "The stated goal of a project necessarily dictates the range of 'reasonable' alternatives . . ." *City of Carmel-By-The-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1995) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C. Cir. 1991)). A deficient purpose and need statement means the EIS will not address an appropriate range of alternatives.

The statement of purpose and need is supposed to "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. The BIA must first reasonably and fairly define the project's purpose. *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) (citing *Citizens Against Burlington*, 938 F.2d at 195-96). Importantly, the BIA, not the project applicant, must "tak[e] responsibility for defining the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes." *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 711 n.32 (10th Cir. 2009) (quoting *Colo. Env'tl. Coalition v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999)).

The BIA must also take into account its own statutory mandates, not just the applicant's preferences. See *New York v. Dept. of Transp.*, 715 F.2d 732,743 (2d Cir. 1983); *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 866 (9th Cir. 2004). Here, there are two applicable statutes: (1) the Indian Reorganization Act, which relates to the trust acquisition decision; and (2) the IGRA gaming eligibility determination, which relates to where, when and how gaming is to occur. This NEPA requirement underscores why it is critical to determine the appropriate IGRA process *now*, because the statutory purpose under the two-part process is different from other processes. Here, the relevant "statutory objectives" are the dual findings that the Secretary must make before seeking gubernatorial concurrence under the two-part process: that (1) gaming is beneficial to the Tribe and (2) not detrimental to the surrounding community. 25 U.S.C. § 2719(b)(1)(a).

The BIA's EIS purpose and need statement must incorporate both (1) the need to promote the Tribe's economic development, self-sufficiency, and self-government and (2) the need to avoid detriment to the surrounding community. Properly understood, the purpose and need for the

BIA's proposed action makes clear that alternative locations outside of the proposed project site must be evaluated.

The EIS must also examine a reasonable range of alternatives to the proposed federal action (trust acquisition of the proposed site in Kern County). The "heart" of an EIS is its alternatives discussion, which must "inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts." 40 C.F.R. §§ 1502.1, 1502.14. "The existence of a viable but unexamined alternative renders an [EIS] inadequate." *Westlands Water Dist.*, 376 F.3d at 868 (quoting *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998)). Considering only one option is not a "range of alternatives," much less a reasonable range sufficient "to permit a reasoned choice." *Presidio Golf Club v. Nat'l Park Serv.*, 155 F.3d 1153, 1160 (9th Cir. 1998).

Under the two-part determination, BIA must look at alternatives that are not detrimental to the surrounding community. At a minimum, a reasonable range of alternatives must examine several off-reservation locations outside of the proposed area, but still within the Tribe's traditional territory. Each location must be evaluated for both gaming and commercial non-gaming economic development. Different development scenarios for the same location, however, must not be treated as separate alternatives, if the federal actions involved are the same (e.g., different development scenarios for large and small class II gaming operations on the same site do not require different federal actions). Alternative sites must not be chosen in locations that allow them to be rejected out of hand as unsuited for economic development.

The proposed project site is obviously not the only possible location for the Tribe's economic development, nor is it the only off-reservation gaming location that should be considered. The EIS must consider other suitable areas within the Tribe's traditional territory. Further, as discussed below, we are concerned that the proposed project area may actually be within the traditional territory of a different tribe.

Finally, the alternatives analysis in the EIS must consider the possibility of future expansion. There would be nothing preventing the Tribe from building a casino and hotel on the proposed site, and then later seeking to have adjoining land taken into trust to expand operations. The potential for future gaming expansion must be considered in the EIS to avoid improper segmentation of the required NEPA analysis.

## **2. Cumulative Impacts**

The EIS must evaluate cumulative impacts. Under 40 C.F.R. § 1508.7, a cumulative impact is "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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."<sup>6</sup> Here, the EIS must carefully analyze all past, present, and future other projects in Kern County and surrounding areas, to determine what the cumulative impacts would be.

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<sup>6</sup> 40 CFR § 1508.7.

The BIA must also examine the likelihood of additional trust acquisitions and further development of trust lands that will not be subject to state or local law, BIA approval, or environmental review, including the foreseeable subsequent development of class III gaming at the proposed project site. There is a substantial likelihood that the Tribe will seek to negotiate a compact with the State, if the proposed project site is developed, and if the State refuses, the Tribe may sue the State for failing to negotiate in good faith under IGRA. The BIA must also address the likelihood that the Tribe will seek additional land.

### **3. Mitigation and Enforceability**

Before concluding that impacts are less than significant, the BIA must address mitigation of impacts in the EIS, including whether mitigation measures and project design parameters are actually enforceable. A promise that the Tribe will negotiate a mitigation agreement sometime in the future is not a reasonable basis for concluding that impacts will be less than significant, and relying on such empty assurances renders the NEPA analysis arbitrary and capricious.

Further, while some mitigation measures that might be required under federal law—i.e., Clean Water Act requirements—would be enforceable, until federal approvals are issued, the exact nature of the mitigation required in such federal approvals or permits is uncertain. Such federal approvals should be obtained prior to approval of a trust request. In addition, the BIA cannot reasonably rely on tribal law because tribal law is subject to unilateral change by the Tribe itself, and therefore cannot be considered an independent source of authority to enforce mitigation requirements against the Tribe. Tribal sovereign immunity is a significant limitation on enforcement actions, and the EIS must consider its effect on the enforceability of mitigation measures. Similarly, the EIS must evaluate mitigation measures in any intergovernmental agreements as to enforceability.

No two-part determination has ever been qualified by specific project design parameters, and the BIA has never taken the position that it has the power (or the inclination) to ensure compliance with whatever mitigation measures it chooses to include in an EIS. Accordingly, setting forth a list of mitigation with no discussion of its enforceability would violate NEPA and the Administrative Procedure Act.

### **4. Specific Impacts**

#### **a. Water Resources**

California is in the midst of an extreme and historic drought due to a lack of rain and snowfall over three straight years. The state has undertaken substantial and unprecedented actions to address the drought's impacts. In January 2015, Governor Brown declared a drought State of Emergency and directed state officials to take all necessary actions to prepare for water shortages. Further, in his April 1, 2015 Executive Order, Governor Brown instituted a 25 percent mandatory water use reduction for cities and towns across California. In addition, California voters recently approved Proposition 1 on November 4, 2014. It is a \$7.5 billion water bond initiative to fund various state water supply infrastructure projects. The largest portion of funds is devoted to surface and groundwater storage projects, highlighting the importance of groundwater management during drought conditions.



California now has an important new water conservation law that invites tribes to participate on a voluntary basis only. On September 16, 2014, Governor Brown signed new legislation regulating groundwater use.<sup>7</sup> The new law requires local agencies in fast-depleting basins to draw up and implement groundwater sustainability plans to put groundwater basins on a path to sustainability by 2040.

The fact that tribes are not required to participate under the new law will create significant jurisdictional issues if the land goes into trust. The surrounding communities will have to comply with the new law, but the Tribe will not. State and local jurisdictions will have no oversight regarding the amount of water used on tribal lands, which will be very substantial as a result of the proposed casino and hotel. It will be very difficult for the surrounding areas to comply with California's new sustainability requirements in light of the tribal exemption, absent an enforceable agreement. Accordingly, the Tribe must develop agreements with the surrounding communities to address this issue; otherwise, it cannot demonstrate that the proposed project will not be detrimental.

The EIS must very carefully evaluate the proposed project's impacts on California's already-scarce water resources. The proposed project is substantial in size and will involve significant water usage—during both construction and operation. As just one example, the construction phase of the casino could require the watering down of the areas multiple times daily in order to preserve air quality. These issues will harm the surrounding communities and must be carefully addressed in the EIS.

#### **b. Socioeconomic Impacts**

The EIS must evaluate the socioeconomic impacts of the proposed fee-to-trust acquisition of 306 acres, which would affect landowners, businesses, and local and state governmental entities. The creation of federal trust lands for the Tribe would cause a loss of revenue to local and state general funds. Activity on tribal land is exempt from local and state taxation. The Tribe will not pay corporate income tax on its profits, nor will it collect state and local sales taxes on goods and services that are purchased and used or consumed only on the 306 acres. The tribal enterprise will not be required to pay state and local sales taxes on products it uses at the casino, including both big-ticket items (such as slot machines and gaming tables, hotel furniture, ovens and other kitchen appliances) and ongoing purchases (such as cleaning products, office supplies, and worker uniforms). In addition, the EIS should consider the effect of leasing regulations that purport to exempt all non-Indian activity taking place within Indian country from generally applicable state and local taxation.<sup>8</sup>

The EIS must evaluate the fiscal impact to the State of California as well as local jurisdictions. Federal Indian policy providing tax exemptions will significantly impact the local and regional tax revenues, thus affecting public services. The dollars spent at the proposed casino come at the expense of other consumer spending within the state. Net state and local tax revenues are certain to decline. Additionally, following the 2010 decision by the Ninth Circuit Court, *Rincon v. Schwarzenegger*, in which the Court ruled that revenue sharing with the state was an

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<sup>7</sup> The new legislation consists of three separate bills: AB 1739, SB 1168, and SB 1319.

<sup>8</sup> 25 C.F.R. 162.017 (77 Fed. Reg. 72440, Dec. 5, 2012).

impermissible tax, there can be no revenue share to the state general fund in a tribal state compact between California and any tribe. Thus, future compacts cannot recoup the significant annual loss of revenues to the State.

The creation of new Indian lands for an off-reservation casino creates a significant loss of property taxes, as well as a loss of sales tax and other revenues, resulting in a net decrease in State General Fund revenues. For these reasons, off-reservation gaming is a statewide issue. It directly affects the state's ability to provide or maintain social service programs that many Californians rely upon, regardless of where they live in the state.

The EIS likewise should not assume that the casino's construction and operation would be staffed by the currently unemployed people in the region, as opposed to new workers from outside of the region. Although casino construction and operation can mean job creation and growth, that is not always the case. This issue was examined in an Illinois study, in which, of the 16 regressions run, only three municipalities showed a statistically significant increase in employment or decrease in unemployment.<sup>9</sup> The same regressions indicated that for every job created, local businesses lost one or more jobs. *Id.* Another study, conducted by the *New York Times*, found that 27 out of 57 counties analyzed experienced a net job loss. *Id.* The relationship between casinos and job creation is complex:

The relationship between casinos and employment involves the location of the casino and the required skill level of its work force. The general premise is that casinos increase employment because a casino's operation requires labor and this labor will come from the local area, thus reducing local unemployment. The question to ask is not only whether casinos decrease unemployment, but also for whom they decrease unemployment. Most casino jobs require some skill, be it accounting, dealing cards, security, or other expertise. If a casino is planning to move to a rural area that has a relatively less-skilled work force, the casino probably will draw skilled labor from outside of the area.<sup>10</sup>

The EIS therefore needs to explore whether there is sufficient skilled labor in the proposed project region.

### **c. Public Health and Safety**

The proposed project raises multiple issues and concerns regarding public health and safety, which must be analyzed in the EIS. Numerous studies have shown that casino gambling may be correlated with domestic violence, divorce, bankruptcy, drug and alcohol abuse, risky or illicit sexual behavior (especially prostitution), and problem gambling.

As the *Bakersfield Californian* has noted, a 2006 report by the California Council on Problem Gambling found a high incidence of addictive gambling behavior in areas served by Indian

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<sup>9</sup> [http://www.picapa.org/docs/Plan\\_Reports/2008\\_2012\\_plan.pdf](http://www.picapa.org/docs/Plan_Reports/2008_2012_plan.pdf).

<sup>10</sup> <http://research.stlouisfed.org/publications/review/04/01/garrett.pdf>.



casinos, and Indian casinos were reported to be the primary gambling preference of problem gamblers by a wide margin. Another concern is that the poor tend to spend a greater percentage of their income on gambling than wealthy people do, and Kern County is among the poorest counties in the nation.<sup>11</sup> The town of Mettler in particular is a very low-income area. This potentially raises environmental justice concerns, as well as public health and safety and socioeconomic issues.

Gambling addiction hotline calls from the local 661 area code are currently among the fewest in the state,<sup>12</sup> but that would likely change with the development of the proposed casino. The increase in the number of pathological gamblers is a concerning issue regarding the development of casino gambling, and there are increasing concerns regarding child neglect and family problems associated with casinos.

Some studies have determined that areas in which casino development has occurred have faced growing demands for child protection, marriage counseling, and other social service programs. For example, studies cited by *The Washington Post* determined that casinos “lead to a plethora of social ills, including increased substance abuse, mental illness and suicide, violate crime, auto theft and larceny, and bankruptcy. The latter three all increased by 10 percent in communities that allowed gambling.”<sup>13</sup> Looking specifically at the impact of casinos on crime, a 2006 study published in *The Review of Economics and Statistics*, a prestigious academic journal produced by Harvard and MIT, concluded that opening a casino led to local crime increases averaging eight percent.<sup>14</sup> Criminal activity at casinos has been well documented for decades, with casinos becoming a particular hotbed for gangs and the mob.<sup>15</sup> The EIS should review relevant studies regarding the effects of gambling and casinos to determine the likely impacts on crime, the local community, and social service programs. The possible economic uses for medical marijuana should also be taken into account in light of recent legislation.

#### d. Valley Fever

As a separate issue from the societal ills associated with casinos, Kern County has experienced a recent and concerning spike in Valley Fever. Valley Fever is a serious illness caused by a fungus that is present in the soil in Kern County. People become infected by inhaling fungal spores. The most common symptoms are flu-like, consisting of cough, fever, headache, chest pain, and fatigue. However, complications may occur and can result in death. Anyone who lives, works,

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<sup>11</sup> “Tejon Casino Would Bring Good and Bad,” *The Bakersfield Californian*, Jan. 7, 2012.

<sup>12</sup> *Id.*

<sup>13</sup> Dylan Matthews, “Studies: Casinos Bring Jobs, but Also Crime, Bankruptcy, and Even Suicide,” *The Washington Post*, Oct. 30, 2012, available at <http://www.washingtonpost.com/news/wonkblog/wp/2012/10/30/studies-casinos-bring-jobs-but-also-crime-bankruptcy-and-even-suicide/>.

<sup>14</sup> Earl Grinols and David Mustard, “Casinos, Crime, and Community Costs,” *The Review of Economics and Statistics* (2006), available at <http://www.mitpressjournals.org/doi/abs/10.1162/rest.2006.88.1.28?journalCode=rest>.

<sup>15</sup> See, e.g., <http://www.reviewjournal.com/news/crime-courts/shootings-casino-hospital-linked-gang>; <http://www.casinowatch.org/crime/mob.html>; <http://www.cbsnews.com/news/sorting-out-details-of-casino-chaos/>.

plays, or passes through an area where Valley Fever is found is at risk of getting the disease.<sup>16</sup> Therefore, because Valley Fever is known to exist in the soil in Kern County, and the proposed project will involve substantial soil disturbance, the EIS must analyze the potential public health impacts related to Valley Fever, and the potential for exposure not only to construction workers, but also casino employees, guests, and local residents.

**e. Traffic and Transportation**

The EIS must assess the traffic and transportation impacts. A traffic study should be conducted. Traffic and air quality are already areas of concern in Kern County, and a project of this magnitude could create significant impacts to traffic, during both construction and operation. The proposed project raises concerns such as traffic jams, increased accident potential, increased incidents of drunk driving, parking needs, and generally how large numbers of guests and employees will get to and from a large casino and hotel.

At a minimum, the EIS should (1) evaluate the impacts of special event traffic included weekend and evening peak hours for the casino and hotel complex, as well as the cumulative impacts for any other event venues in the area; (2) evaluate the impacts of commute traffic generated by employees of the casino who do not reside in the immediate area, and how that traffic will affect the casino project when it is operating as well as during construction; (3) identify how transit access or buses will be operated as part of the property; (4) evaluate traffic safety issues related to the project including access to private property in the project area; (5) evaluate the emissions of criteria pollutants from the expected casino and hotel traffic and construction activities and compare to the Regional thresholds; and (6) address traffic noise impacts, during both construction and operation of the project.

**f. Housing and School Impacts**

Although details about employment at the proposed casino are unknown, a large casino of that size could easily employ several hundred full time-equivalent positions. The subsequent hotel would employ even more. The EIS must consider the impacts of people moving into the area for work and the availability of housing for them, as well as schools for their children. The number of actual full time employees the Tribe will hire is unknown and the effects on housing and schools not understood. In fact, many casino jobs are low wage jobs, and the EIS should consider whether housing—even if available—is affordable. In addition, the EIS must consider the impacts of people moving into the area to work on the proposed project's construction, and the availability of housing for those workers and their families.

**g. Visual Resources/Aesthetics**

The EIS must consider the impacts to visual resources caused by the proposed casino. The project site appears to be surrounded by largely undeveloped land, and constructing a very sizeable structure consisting of a casino and hotel will dramatically alter the landscape and visual aesthetics, possibly for miles around. Communities supporting casinos often face other visual impacts, including escalation of trash and decline of scenic beauty.

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<sup>16</sup> For more information about Valley Fever in Kern County, see <http://kerncountyvalleyfever.com/#>.

Further, as a result of a casino and hotel operating 24 hours a day, 7 days a week, there will be considerable associated light pollution. Again, in an otherwise largely undeveloped area, this light pollution could cause drastic visual impacts. In particular, night lights could significantly impact nearby residents, who may not support the casino but will have to live with its consequences.

#### **h. Noise**

Similarly, the EIS must consider the noise impacts of the proposed project. The construction of such a large project in an otherwise quiet area will create substantial noise impacts for local residents and others. Further, once the casino and hotel are in operation, noise impacts from increased traffic, large tourist gatherings, and other causes could be significant and should be analyzed in the EIS. Commercial activity taking place 24 hours a day, 7 days a week will be a new and unusual occurrence for the local community. In particular, the noise impacts occurring at night once the casino is in operation could significantly impact local residents and others.

#### **i. Cultural Resources**

The EIS must analyze the potential impacts to cultural resources in the area of the proposed project, especially due to the history of other tribes in the area. According to the 2013 Investigative Report of the Tejon Indian Tribe, research conducted by the OFA in 2007 and 2012 revealed that a number of other groups have potential historical, genealogical, and ancestral claims to the original Tejon Indians.<sup>17</sup>

Further, it appears the proposed project area is actually within the historical traditional territory of a different tribe. According to the *Handbook of Yokuts Indians*, historically the northern and western shores of Kern Lake were occupied by the Halaumne Yokuts tribe.<sup>18</sup> Therefore, the EIS must carefully examine the history of the area and the potential impacts to its cultural resources.

#### **j. Air Quality**

We are very concerned about the potential impacts of the proposed project on air quality. Kern County already has a serious air quality problem and is currently in nonattainment, and traffic is already heavy in the project area. According to a recent report from the American Lung Association, Bakersfield ranked *third worst in the United States* for three main categories: ozone pollution, short-term particle pollution and annual particle pollution.<sup>19</sup> In that same report, Kern County received an “F” for ozone pollution and poor grades for both short-term and annual particle pollution. *Id.* San Joaquin Valley has some of the most polluted air in the country, putting millions of residents at greater risk of lung cancer, asthma attacks, heart attacks, and premature deaths. *Id.*

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<sup>17</sup> Investigative Report of the Tejon Indian Tribe, Jan. 9, 2013, at 3. We have concerns with the reaffirmation of the Tejon Tribe, which we have expressed in previous comments submitted on July 22, 2015. We hereby incorporate those comments by reference.

<sup>18</sup> Frank F. Latta, *Handbook of Yokuts Indians*, at 216.

<sup>19</sup> “American Lung Association: Bakersfield has 3rd worst air in US,” *BakersfieldNow*, April 30, 2014, available at <http://www.bakersfieldnow.com/news/health/American-Lung-Association-Bakersfield-has-3rd-worst-air-in-US-257371041.html>.

Against this backdrop of already terrible air quality, the construction, operation, and increased traffic associated with a casino and hotel of this size will make the problem even worse. The EIS must very carefully analyze air quality impacts and the increased risks for residents, workers, and guests. It should evaluate the emissions of criteria pollutants from the expected casino and hotel traffic and construction activities and compare to the regional thresholds.

**k. Biological Resources**

The EIS must carefully analyze any impacts to biological resources under the applicable federal and state statutes. We do not currently have any specific information about the species that may be affected by the proposed project, but we are particularly concerned that the proposed project area is within a migratory corridor. Kern County is home to many plant and animal species that are protected under both the California and federal Endangered Species Act, and a project of this magnitude could have significant impacts on those species. Consultation may be required under the Endangered Species Act, and other statutes, such as the Migratory Bird Treaty Act, may be implicated as well.

**l. Land Use**

The EIS must evaluate potential land use issues associated with the proposed project. Although we do not yet have any information about the proposed project site, it appears from a map to be agricultural land. The EIS therefore needs to examine the land use requirements and other issues associated with converting agricultural land to commercial use. For example, California's Williamson Act enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to full market value. Along with other land use issues, the EIS should examine whether the proposed project site is subject to Williamson Act restrictions, and if so, what the financial consequences would be if the land is removed from agricultural use.

**C. Conclusion**

We thank you for this opportunity to provide our initial comments and concerns regarding the proposed fee-to-trust acquisition, and we look forward to providing additional comments and input as more information becomes available about the proposed project.

Sincerely,



Cheryl Schmit  
Director, Stand Up for California