



OFFICE OF THE GOVERNOR

October 19, 2010

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

John Rydzik, Chief
Division of Environmental Cultural
Resources Management and Safety
United States Department of the Interior
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Re: Amended Finding of No Significant Impact (FONSI)
Proposed 40-Acre Fee-to-Trust Acquisition for the Tule River Indian Tribe

Dear Mr. Rydzik:

This letter provides comments submitted on behalf of the Governor's Office regarding the Amended Finding of No Significant Impact (FONSI) dated September 2, 2010 for the Environmental Assessment (EA) for the proposed fee-to-trust acquisition of approximately 40 acres of land on behalf of the Tule River Indian Tribe (Tribe). The FONSI was amended in order to address the July 26, 2010 comments submitted by the Governor's Office regarding the EA.

Pursuant to the National Environmental Policy Act (NEPA), a FONSI is an explanation of why a proposed action will have no significant effects on the human environment and provides the reasons why the preparation of an Environmental Impact Statement (EIS) is not required. (40 C.F.R. § 1501.4(e), 1508.13.) In regard to this application, the EA does not provide sufficient data and analysis to determine whether the proposed project will have a significant impact or whether the impact is great enough to require an EIS. As originally stated in the Governor's Office's July 26, 2010 comments, the EA fails to adequately describe any proposed development and states that "construction of future development [is] not known at this time due to a combination of

external issues.” (EA section 2.1.2, p. 9.) Without any specific project description, it is not possible to evaluate the potential impacts to the environment caused by development on the land after it is conveyed into trust.

Federal regulations require that the Secretary of the Interior consider certain criteria in evaluating a tribe’s request to acquire land in trust for the benefit of the tribe. (25 C.F.R. §§ 151.10, 151.11). Where land is being acquired for business purposes, the Tribe must provide a plan which specifies the anticipated economic benefits associated with the proposed use. (25 C.F.R. § 151.11(c).) While the FONSI does not provide such a plan, it does list anticipated economic benefits that will result from the conveyance, including employment tax credits and tax-exempt financing.¹ (FONSI, p 5.) Both the EA and the FONSI are inconsistent in that they state that the proposed conveyance will not result in any change to the present use of the land, while also referring to the benefits to the Tribe resulting from future, increased development on the land. The EA contains no analysis of the impact of the anticipated commercial development, nor does it provide sufficient information and analysis to support a conclusion that the project will not have a significant effect on the environment.

The FONSI responds to various comments regarding the lack of a business plan by reference to the Cooperation Agreement entered into by the Tribe and the City of Porterville. (FONSI, pp. 8-9.) The Cooperation Agreement, however, is not a valid substitute for a plan pursuant to 25 C.F.R. § 151.11(c) and does not provide any information regarding future development on the land. Without more information about the anticipated development on the land, neither the State nor the Secretary can evaluate the Tribe’s need to acquire this additional land (25 C.F.R. §§ 151.11(a), 151.10(b)), or evaluate the purpose for which the land will be used (25 C.F.R. §§ 151.11(a), 151.10(c)). For these reasons, we do not believe that the EA was sufficient to allow for the issuance of a FONSI.

Additionally, in considering a Tribe’s trust application, the Secretary of the Interior has a duty under NEPA to consider all reasonably foreseeable uses to which the land could be put, and cannot simply limit consideration to the environmental impacts from the current use of the land. (See *Kern v. United States Bureau of Land Management* (9th Cir. 2002) 284 F.3d 1062, 1075-1079.) NEPA requires that a “hard look” be taken at the environmental impacts of a proposed action. (*Blue Mountains Biodiversity Project v. Blackwood* (9th Cir. 1998) 161 F.3d 1208, 1211.) However, without quantified or detailed information, there is no assurance that the required “hard look” was taken. (*Te-*

¹ None of the economic benefits discussed on page 5 of the FONSI were discussed in the EA. According to section 5.3 of the Bureau of Indian Affairs’ NEPA handbook, “The FONSI shall be based only on information included in the EA. If new information is developed between the EA and FONSI stages, amend the EA.” (59 BIAM 3-H, April 2005, p. 25.)

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Moak Tribe of Western Shoshone of Nevada v. U.S. Dept. of Interior (9th Cir. 2010) 608 F.3d 592, 603.) “Because the very important decision whether to prepare an EIS is based solely on the EA, the EA is fundamental to the decision-making process.” (*Metcalf v. Daley* (9th Cir. 2000) 214 F.3d 1135, 1143.) Because the EA for this application does not contain enough information to allow the Secretary to comply with his NEPA obligations, a FONSI should not have been issued. (See 25 C.F.R. § 151.11.)

Thank you for the opportunity to comment on this important matter.

Sincerely,



ANDREA LYNN HOCH
Legal Affairs Secretary