

COUNTY OF SONOMA
BOARD OF SUPERVISORS
575 ADMINISTRATION DRIVE, RM. 100A
SANTA ROSA, CALIFORNIA 95403

(707) 565-2241
FAX (707) 565-3778

EVE T. LEWIS
COUNTY CLERK



PAUL L. KELLEY
SUPERVISOR FOURTH DISTRICT

pkelley@sonoma-county.org

August 27, 2002

Honorable John Hensley, Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Re: Comments On Commission Policy Pertaining to Section 5.0 of Tribal-State
Gaming Compacts (Indian Gaming Special Distribution Fund)

Dear Chairman Hensley:

I am submitting these comments on behalf of the Sonoma County Board of Supervisors, which has followed with great interest the Commission's deliberations related to Tribal-State Gaming Compact ("Compact") issues. Sonoma County, with a population of approximately 500,000 residents, is a largely rural area located about 50 miles north of San Francisco. Included among our diverse citizenry are five separate tribes with additional Indian groups seeking federal recognition. Within the County, the Dry Creek Band of Pomo Indians is poised to open a casino in the Alexander Valley, a scenic, predominately agricultural area. In addition, other tribes are planning to operate casinos in the County in the future.

Based on our experience with the Dry Creek Rancheria proposal, it is clear that the impacts on local government and the community surrounding a casino are profound. Casinos located in rural locations lack the infrastructure to support a public facility that anticipates 3,000-5,000 car trips of patrons per day and the potential for off-site impacts of the facility on law enforcement, fire, and human services are significant. While Compact section 10.8.2 (b) requires tribes to "make good faith efforts to mitigate any and all such significant adverse off-reservation impacts," it is clear that many tribes' interpretation of this provision leaves local government to absorb the costs of these facilities.

These local costs are incurred despite the special status afforded tribes in their monopoly over Nevada style gaming in California and their general exemption from taxes that otherwise contribute to the local revenue base. The Commission should strenuously resist any interpretation of the Compact that serves to further siphon funds from local and state government for mitigation purposes. To use Special Fund contributions to simply improve casino access or

provide other ancillary support, as suggested by some tribes, would harm local and state governments.

The Compact makes clear that Special Distribution Fund will be needed, and should be allocated, to local government agencies impacted by tribal gaming. (Section 5.2, (b).) While ultimately this Commission may not decide how the Special Distribution Fund is spent, the County believes it is incumbent on the Commission to interpret the Compact in a manner that is consistent with common sense and the State's intent to collect funds to insure that local citizens do not bear the costs of these operations. Based upon our experience, the County anticipates severe traffic, public health and safety impacts and related costs associated with new casino operations. In addition, due to the complexity of many casino proposals, and the lack of thorough environmental analysis by some tribes, the County also incurs a high cost in analyzing the environmental effects and potential mitigation of a project.

In Sonoma County, for example, inadequate environmental analysis by the tribe has resulted in tens of thousands of dollars expended to accurately assess the environmental impacts of the proposed Dry Creek Rancheria casino to attempt, in good faith, to work with the Tribe to mitigate off-reservation impacts. While information remains incomplete, it now appears that many of the significant impacts are not fully mitigable. (See Summary of Dry Creek Rancheria Casino Significant Off-Site Impacts attached as Exhibit A and included in the County's comments.) The Tribe has nonetheless indicated its plans to open the casino within the next few months despite outstanding serious concerns regarding health and safety issues, including wastewater disposal, emergency ingress and egress, and traffic.

The level of concern over environmental impacts and health and safety led the Attorney General to trigger, for the first time, the meet and confer provisions of the Compact. In its notice of Compact breach, among the many problems identified, the Attorney General cited the Tribe's environmental analysis' failure to, in good faith, incorporate the policies and procedures of the National Environmental Policy Act and the California Environmental Quality Act, as required in the Compact. (Attorney General's July 12, 2002 letter to Dry Creek Rancheria is attached as Exhibit B and included in the County's comments.) Despite the Attorney General's request for the Tribe to halt construction to determine and address the off-site impacts, the Tribe has accelerated building activities to advance the casino opening date.

Given the huge (and increasing) financial gains afforded to tribes through the gaming monopoly, it is clear that the Compact does not go far enough to collect funds for the purposes identified in section 5.2. The Commission should resist interpretation of the Compact, promoted by some tribes, that seeks to increase this inequity. In particular the definition of "net win", as contemplated by section 2.15 of the Compact, should be consistent with accepted accounting principles. The tribes are simply overreaching when they attempt to require an interpretation that

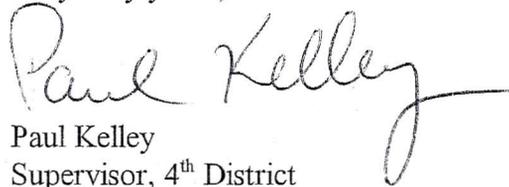
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would let them deduct virtually all operating costs as part of the "net win" formula. The Compact calls for a percentage of "net win" not "net profit" contributions. The County supports the "net win" interpretation as thoughtfully and fairly delineated in the Commission's July 2, 2002, staff report. Similarly, the County has reviewed and endorses the Attorney General's common sense and legally sound interpretation of the Special Fund contributions timetable.

The Compact is fundamentally flawed in important respects related to mitigation of off-reservation impacts and protection of local government and communities. Hopefully the State will address these important issues in future Compact renegotiations. For the present, local government depends upon the Commission to interpret and implement the Compact in a common sense manner that furthers the intent of the Compact to mitigate significant off-reservation impacts.

Thank you for your consideration.

Very truly yours,


Paul Kelley
Supervisor, 4th District

Attachments

cc: David Rosenberg, Office of the Governor
Hon. Bill Lockyer, Attorney General

SUMMARY OF SIGNIFICANT DRY CREEK RANCHERIA OFF-SITE IMPACTS

Failure to Analyze Environmental Impacts and Subject New Project to CEQA/NEPA Process

The casino site is reached via two lane State Highway 128 and a narrow access road. The original proposal was for a 50,000 square foot facility in the lower portion of the Rancheria adjacent a creek in the Russian River watershed. The current proposal is for a 60,000 square foot "sprung" structure near the top of the Rancheria property overlooking the Alexander Valley. The new sprung structure "temporary" project was not analyzed in the original October 2000 environmental study ("Study"). The Study did mention an alternative, which included building the casino (50,000 sq. ft.) on the upper portion of the Rancheria. The Study, however, did not provide any separate analysis of the alternative project other than to conclude that the "alternative would create potentially significant adverse visual resource impacts" and "would necessitate parking alternatives either disturbing further on-Reservation natural resources, or additional off-site parking analysis."

In response to the County's complaint that there was not an environmental analysis of the new project, the Tribe prepared a Project Update Report for the Dry Creek Band of Pomo Indians dated April 2002 ("Project Update"). The Project Update was neither submitted to the State Clearinghouse nor circulated for public comment or agency review. In a cursory analysis, the Project Update concluded that there are not any significant environmental impacts for the new casino. The Update, however, did not sufficiently analyze the environmental impacts of the new project, including the effects of increasing the casino size by 10,000 square feet or visual impacts of placing the casino on a higher elevation.

A full environmental analysis of the new project, consistent with section 10.8 of the Compact, does not appear to have been conducted. Public review and comment goes to the very heart of CEQA and Compact compliance. The public has been ignored in a rush to open the facility. In addition to the absence of public review of identified problems, this lack of a thorough assessment may have obscured unidentified threats to water, wildlife and the local community.

Grading and Erosion

The Rancheria and surrounding area is one of relatively unstable slopes and soil types with a hazard of erosion rated as "high to very high." The Project Update identified that the revised casino plan would require the movement of 95,000 cubic yards

and creation of steep slopes, 65 feet high with ratios reaching 1:1. (Project Update at p. 9.) The Update, however, did not provide the necessary geotechnical or other information to evaluate the stability of the slopes and risk to nearby creeks. Additional grading information submitted, at the County's request, still was not sufficient to evaluate the grading environmental impacts. The proposed fill slopes do not meet the County's adopted maximum standard ratio of 2:1 and do not include the necessary supporting retaining walls, or hydraulic protections required by the County Code. The visual and environmental impacts of this grading are substantial and slope stability poses serious concern for nearby creeks and building pad soundness.

Wastewater Treatment and Disposal

A useful assessment simply was not possible due to the lack of information regarding the water treatment system, leach field soils and geology, permitting authority, or suitability of the proposed water treatment plant for the intended site. The County identified various concerns caused by the lack of information and stated that: *"If the concerns are not adequately addressed, there is a potential for serious off-site impacts to water quality and public health. Inadequate treatment of the sewage may lead to groundwater contamination."* While the Project Update provided some additional description of the treatment plant there remain significant questions regarding the disposal of treated wastewater.

For example, the potential for off-site impacts cannot be evaluated without knowing the location of the leach field and the hydraulic capacity of the soil to accept the wastewater. Further, the Tribe has not specified any means for maintenance or oversight of its wastewater treatment and disposal systems. A wastewater system requires on-going monitoring system to ensure proper functioning. In the event of a system failure, wastewater could contaminate surface or groundwater leading to significant hazards.

Public Safety/Traffic

The proposed casino would be the County's largest public facility serving alcohol that will operate 24 hours per day, seven days per week. The Tribe's own conservative estimate (for the smaller 50,000 sq. ft. facility without views) indicates that the new casino will generate at least 2,744 car trips to the facility per day. Access to the facility is via State Highway 128, a rural two lane highway which includes several ninety degree turns. Two public schools abut the access route and, Highway 128 near the casino, experiences over 80 pick-up/drop-offs per day by school buses. Children must often cross the road to and from their home to the busses. In addition, there is not a left hand turn or deceleration lane leading to the Rancheria access road, and the vehicular sight

distance coming from the access road and looking in either direction is poor. Although the Tribe has committed itself to improving the entrance ingress and egress, it has not yet obtained a permit from CalTrans to do so, and it appears that there may be insufficient space within the State's right of way to make the needed road modifications. It is directly foreseeable, given the experience in Yolo County and other similarly situated casino facilities, along with the heavy use of the road by school children and buses that there will be a significant increase of accidents and fatalities on the road due to the vehicle load, as well as the 24/7 nature of this alcohol serving venue.

Limited Ingress/Egress for Emergency Vehicles

To reach the casino site requires travel on a narrow winding access road. The risks associated with the more remote siting of the facility from Highway 128 were not addressed in the Project Update. The project will be one of the largest gathering locations in the County but will have a remote narrow lane for ingress and egress in an area with high potential for wildland fires. Neither the Study nor Update addressed alternative emergency access or evacuation plans for patrons and employees. Ingress and egress from the casino for emergency vehicles or evacuation is inadequate in times of high demand or in the case of an accident on the road. The limited access creates major safety concerns for either evacuation or emergency access.

Off-Site Parking Inconsistent with Compact

The limited parking resources on the Rancheria are also of great concern. The Study indicated that if the currently proposed alternative site was used that there would only be room for 85 parking spaces unless off-site locations were utilized or on-site resources disturbed. Nonetheless, the Project Update, while indicating that there will be 293 improved and 193 unimproved (valet) parking spaces on the Rancheria does not analyze the impacts from the disturbance of the on-site natural resources (to create these spaces) or identify the necessary off-site parking locations to service the expected traffic. It appears clear that the planned on-site parking cannot handle the 2,744 plus cars expected per day, causing potential dangerous back-ups on Highway 128 and requiring off-site parking.

The Tribe's obvious reliance on off-site parking also raises legal concerns. Under IGRA and Section 2.8 of the Compact parking lots and related facilities must be located on Indian Lands. The Tribe's reliance on off-site parking locations to serve the facility that are not on trust lands runs afoul of both IGRA and the Compact.¹

¹The threshold concerns regarding the overall legality of the casino project is also based on the Attorney General's legal analysis. This "preliminary" analysis determined that land, such as the Dry Creek Rancheria which is owned in fee by the government, rather than held in trust for the tribe, does not constitute Indian Lands under the Indian Gaming Regulatory Act ("IGRA") (or Compact) and therefore is not a legal site for Class III gaming activities.