



OFFICE OF THE GOVERNOR

October 12, 2009

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

Mr. Dale Morris, Regional Director
Bureau of Indian Affairs
Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Honorable Gayle McLaughlin, Mayor
City of Richmond
405 Civil Center Plaza
Richmond, CA 94804

Re: Draft Environmental Impact Statement/Environmental Impact Report
Point Molate Mixed-Use Tribal Destination Resort and Casino

Dear Mr. Morris and Mayor McLaughlin:

The Governor's Office of Legal Affairs has reviewed the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/R) for the Point Molate Mixed - Use Tribal Destination Resort and Casino dated July 2009, for which the Bureau of Indian Affairs (BIA), Pacific Region Office, and the City of Richmond are lead agencies. Thank you for the opportunity to comment on the proposed acquisition of land in Contra Costa County, California, by the Bureau of Indian Affairs in trust for the benefit of the Guidiville Band of Pomo Indians of the Guidiville Rancheria (Guidiville or Tribe), and on the adequacy of the DEIS/R.

We write to express opposition to this land acquisition. We also address the necessity for an explicit waiver of sovereign immunity by the United States, as trustor, and the Tribe with regard to the State's right of oversight for ongoing remediation and/or monitoring of the Point Molate site, should the BIA decide that any portion of such site be taken into trust for the Tribe.

Mr. Dale Morris, Regional Director
Honorable Gayle McLaughlin, Mayor
October 12, 2009
Page 2

There have been different extensions of the comment deadline. We are informed that the BIA extended the deadline to September 30th and the City of Richmond extended the comment deadline to October 23rd. As a result of these conflicting deadlines from the two lead agencies, there continues to be confusion regarding the deadline for comments. I respectfully request that the Governor's Office comments be considered by both lead agencies.

Opposition to Urban Gaming

First, the Governor's Office opposes this project because it violates Governor Schwarzenegger's proclamation opposing urban casinos. In May 2005, the Governor issued a Proclamation on Tribal Gaming (Proclamation) in which he stated that he would "oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired are to be used to conduct or facilitate gaming facilities." The Proclamation utilizes the definition of "urbanized area" found in California Public Resources Code section 21071(a), which defines an urbanized area to include cities with a population of at least 100,000 persons. The Tribe proposes to locate its casino within the City of Richmond. Because Richmond's population is currently 104,513, it is considered an urbanized area for purposes of the Governor's Proclamation. (City Facts, City of Richmond, California, Planning & Building Services Dept. <http://www.ci.richmond.ca.us/DocumentView.aspx?DID=301> (last updated Jul. 28, 2009).) Therefore, pursuant to the Proclamation, the Governor's Office opposes the Project's proposed location of the Tribe's gaming facility.

On April 5, 2005, in testimony before the Senate Committee on Indian Affairs, the principal spokesperson for the proponents of Proposition 5 and Proposition 1A, Mark Macarro, Chairman of the Temecula Band of Luiseno Mission Indians of the Pechanga Reservation, located in Riverside County, California, acknowledged that Proposition 1A was never intended to result in Indian gaming in urban locales. In support of legislation that would require the Lytton Band of Pomo Indians to submit land in San Pablo, California, to the post-1988 gaming land acquisition requirements of 25 U.S.C. § 2719, Chairman Macarro provided the following testimony:

The other reason we support this legislation is that it will reverse an action which violates a promise that all California Indian tribes made to the citizens of California when propositions 5 and 1A were considered and approved. During the time those propositions were considered, tribes in California pledged that the passage of those propositions would not result in the proliferation of urban gaming, but would be confined to a tribe's existing reservation lands, the vast majority of which are not located in urban areas.

Mr. Dale Morris, Regional Director
Honorable Gayle McLaughlin, Mayor
October 12, 2009
Page 3

(Testimony of Mark Macarro, Oversight Hearing Before the Senate Committee on Indian Affairs on S. 113, a bill to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust, Tuesday, April 5, 2005; see also *Proposition 5 Stakes are High, Indian Gaming: Tribal Interests, Gambling Revenues Ride on Political Wheel of Fortune*, San Jose Mercury News (Aug. 31, 1998) [describing the Proposition 5 campaign]; *Gambling Battle Quieter, Cheaper Prop. 1A Ad Gives Incomplete Picture*, Fresno Bee, (Jan. 15, 2000) [describing the Proposition 1A campaign], copies attached.) It is indisputable that the purpose of Proposition 1A was to create a limited exception to the State's general public policy prohibiting casino-style gaming, and to allow "remote" Indian tribes an opportunity for economic and governmental advancement. Proposition 1A was not intended to expose the most populous areas of the State to the effects of casino-style gaming.

Allowing the Guidiville Tribe's casino project to proceed would violate the State's public policy and the California electorate's good faith, and would subvert the notions of cooperative federalism that lie at the heart of IGRA. (See *Artichoke Joe's v. Norton* (9th Cir. 2003) 353 F.3d 712,715 ["IGRA is an example of 'cooperative federalism' in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes, by giving each a role in the regulatory scheme."].)

This proposed land acquisition, if approved, may also undermine the constitutionality of California's Indian gaming regime. As you may be aware, the State successfully defended a challenge to the constitutionality of Proposition 1A, which alleged that California violated the Equal Protection Clause of the United States Constitution when it permitted Indian tribes to conduct class III gaming on Indian lands, to the exclusion of all others. (*Artichoke Joe's, supra*, 353 F.3d at p. 731.) In upholding Proposition 1A, the Ninth Circuit Court of Appeals relied upon the State's restriction of tribal gaming "to carefully limited locations" as a reasonable means of serving the State's interest in protecting the public health, safety, welfare, and good order.

California's exception of operations on tribal lands from its long-standing prohibition on class III gaming passes constitutional muster. Before Proposition 1A was ratified, California absolutely banned casino-style gaming. See *Hotel Employees, supra*, 88 Cal.Rptr.2d 56, 981 P.2d at 996 (tracing the history of California's gambling prohibitions back to 1849). Thus, its regulation of gambling does not involve the State's attaching a "vice" label to an activity without a corresponding prohibition. [Citation.] California has expressed its legislative judgment that "[u]nregulated gambling enterprises are inimical to the public health, safety, welfare, and good order." California Business and Professions Code section 19801, subdivision (c)(1). By limiting class III gaming to tribal lands, Proposition 1A, and the compacts negotiated pursuant to it, foster California's "legitimate sovereign interest in regulating the growth of Class III gaming activities in California." Tribal-State Compact, pmbl. F.

Mr. Dale Morris, Regional Director
Honorable Gayle McLaughlin, Mayor
October 12, 2009
Page 4

Further, limiting class III gaming operations to those run by tribes is reasonably designed to defend against the criminal infiltration of gaming operations. By restricting large-scale gambling enterprises to carefully limited locations, California furthers its purpose of ensuring that such gaming activities" are free from criminal and other undesirable elements." *Id.*

Thus, a rational basis exists for California's decision to restrict class III gaming operations to those conducted by Indian tribes on their own lands. California could, of course, pursue these interests even more effectively by banning class III gaming altogether. However, as discussed above, rational-basis review does not require states to choose an all-or-nothing approach. It requires only that the means chosen are reasonable.

(*Artichoke Joe's, supra*, 353 F.3d at p. 740.)

Governor Schwarzenegger and California's Indian tribes have made great strides towards establishing a long-term, stable relationship on gaming matters. Granting the Guidiville application would be contrary to the State's public policy and the California electorate's good faith.

Both the United States, as Trustor of the Property, and the Tribe Must Waive Sovereign Immunity with Regard to State Oversight of Hazardous Waste Cleanup and Monitoring

Point Molate is a former Naval Fuel Depot that ceased operations in 1995. Past releases from operations at the Fuel Depot have resulted in predominantly petroleum-impacted soils and groundwater beneath the site, with some seepage of that petroleum into the San Francisco Bay. A portion of the site is subject to land use restrictions and covenants that, among other things allow for continued monitoring of the site by the San Francisco Regional Water Quality Control Board. In addition, the State, through the Regional Board, has issued a Site Cleanup Requirements Order for the remaining unremediated 40 acres of the site still owned by the Navy and the State is responsible for oversight of the cleanup process. Remaining areas of concern include underground storage tanks, waste disposal areas, sandblast grit disposal areas, treatment pond areas, and fuel/chemical storage areas.

To ensure that remediation is completed the DEIS/R must require a waiver of sovereignty immunity from the United States, as trustor, and the Tribe in favor of the State as to any State action necessary to enforce remediation efforts at the site, until the State determines that remediation activities for the specified restricted areas have been completed or that restrictions are otherwise no longer necessary to protect human health and the environment. Such a waiver must also allow for continued monitoring as determined necessary by the State. Since some of

Mr. Dale Morris, Regional Director
Honorable Gayle McLaughlin, Mayor
October 12, 2009
Page 5

the monitoring efforts are anticipated to continue in perpetuity, it is essential that the State have full authority to regulate and enforce its efforts to protect both groundwater and the immediately adjacent San Francisco Bay.

Conclusion

The Governor's Office urges the Bureau of Indian Affairs and the Secretary of the Interior to exercise its discretion to reject the Guidiville trust application, and all other similar acquisitions. Land acquisitions that would allow Indian gaming in urban areas are contrary to the intent of the voters of the State and the State's policy. In addition, the DEIS/R does not provide assurances that the State will be able to enforce its Site Cleanup Requirements Order and continue to conduct long term monitoring of the site.

These comments do not constitute the entirety of the State's comments on the DEIS/R. Other State agencies with specific technical expertise may provide additional comments in separate letters. Thank you for this opportunity to comment on the DEIS/R. We look forward to your response to our comments.

Sincerely,


ANDREA LYNN HOCH
Legal Affairs Secretary

Enclosures

cc: The Honorable Ken Salazar, Secretary, U.S. Department of the Interior

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8/31/98 SJMERCN 1A

8/31/98 San Jose Mercury News 1A
1998 WLNR 1696446

San Jose Mercury News (CA)
Copyright 1998, San Jose Mercury News

August 31, 1998

Section: Front

**PROPOSITION 5 STAKES ARE HIGH INDIAN GAMING: TRIBAL INTERESTS, GAMBLING REVENUES
RIDE ON POLITICAL WHEEL OF FORTUNE.**

BRANDON BAILEY, Mercury News Staff Writer

The television ads have been running all summer:

One spot shows a garish casino rising in a suburban neighborhood, to the dismay of actors portraying a young couple out for a stroll. In another, a young tribal chairman complains that out-of-state interests are funding a dishonest, anti-Indian campaign.

While most fall campaigns are just getting started, this one's already in high gear. And at the rate both sides are spending, Californians will hear countless more claims and countercharges before they vote Nov. 3 on **Proposition 5**, the Indian gambling measure.

Why? California gamblers -- most of them non-Indians -- dropped more than \$1.4 billion last year at tribal casinos in this state. And after years of court battles with officials who contend the casinos are illegal, a group of tribes is hoping voters will settle the dispute.

Proposition 5 would change state law to specifically authorize Indian casinos like the ones that exist now: with video slots, card games and some off-track betting. Opponents say it would lead to more gambling in the state, although backers of the measure say that's not their intent. It would clear away obstacles for more tribes to enter the business. But it doesn't provide as much regulation as state officials would like.

With annual profits topping \$630 million, the tribes sponsoring **Proposition 5** say their casinos represent political independence and financial salvation for a long-impooverished and often-abused minority group.

On the other side is a broad coalition of folks who normally wouldn't be caught sitting next to each other: anti-gambling groups and Nevada casino operators, along with powerful unions and Republican Gov. Pete Wilson. Some fear the social costs of legalized gambling; others just don't like the competition.

For the Indians, it's a matter of freedom to pursue their economic interests. To the opponents, it's a question of whether California should allow more gambling -- and how to regulate the betting that's already taking place.

Indian 'lifeblood'

"Indian gaming is our lifeblood," said Mary Ann Martin Andreas, chairwoman of the Morongo band, which runs a casino in Riverside County. "If we don't maintain our existing gaming, we lose the economic engine that has significantly reduced unemployment (and) taken Indians off welfare."

California's 105 tribes are relatively small and scattered, with just 55,000 members living on mostly remote reservations called rancherias. About 40 have casinos now. And many tribal leaders say gambling is their best hope for reversing the high rates of unemployment, under-education, alcoholism and other problems suffered through decades

of discrimination and neglect.

As evidence of what gambling can do, they point to new housing, sewage systems, fire engines, after-school programs and even non-gambling businesses financed with the help of casino revenue.

Federal law says Indian tribes have a right to conduct gambling on their reservations, but they are limited to the kinds of games permitted in each state. And for years, California tribes have feuded with Wilson and other officials over what kinds of games are allowed.

Though he has long opposed the Indian casinos, the governor started talks in 1996 with the Pala tribe of San Diego County, in hopes of producing an agreement that could be a model for the state. In April, Wilson and the Palas signed a pact that limits how many electronic games each tribe can have in its casino. It also forces them to replace their lucrative slot machines with games modeled on the state lottery, which Indians fear will be less profitable.

State legislators ratified the agreement last week. But a number of tribes denounced the pact, saying it violated their status as "sovereign nations" under federal law.

"The Wilson compact seeks to undermine (federal law) by taking away tribal economic development, tribal self-sufficiency and strong tribal government," charged Richard Milanovich, chairman of the Agua Caliente band.

But if most California tribes feel Wilson's terms are too restrictive, a handful have signed agreements based on the Pala model. And a few Indian leaders say **Proposition 5** doesn't provide enough regulation to protect workers, casino patrons and surrounding communities.

"Ultimately, we believe the failure to offer such protections unnecessarily tarnishes the fair and decent reputation of gaming tribes," said Paula Lorenzo of the tiny Rumsey band, which has a casino outside Sacramento.

Exaggerated ads

The issues of regulation and growth have prompted exaggerated claims on both sides of the **Proposition 5** campaign.

Indians backing the measure say their casinos are already more regulated than other forms of gambling, since they are subject to tribal government rules, state criminal law and the federal Indian Gaming Regulatory Act. Pechanga tribal Chairman Mark **Macarro** raises that point in one TV ad.

But critics note that California tribes have resisted state gambling oversight by invoking sovereign status. And some federal officials say the National Indian Gaming Commission, which is supposed to enforce the federal rules, is understaffed and relatively toothless.

Some of the smaller Indian casinos have had problems: internal theft, disputes over profits, even infiltration by organized crime. Tribes say they've learned from experience and taken steps to keep their operations clean.

In their own television ads, opponents have charged that **Proposition 5** would lead to a great deal more gambling in California.

While the measure contains no limits on size or number of casinos, tribes say future expansion will be kept at reasonable levels by market forces -- and the fact that most Indian lands are far from major cities.

Opponents warn that a tribe only needs permission of "two politicians" to buy land and build a casino in an urban area. But the opponents' ads don't explain that the politicians in question are the governor and the U.S. secretary of the interior. According to a spokesman for the U.S. Bureau of Indian Affairs, such approval is rare.

Some experts, however, predict the initiative could lead to more non-Indian gambling in the state.

Essentially, the ballot measure would let tribal casinos continue with the games they have now -- provided winners are paid from a pool consisting of players' wagers.

If voters permit those games, the state's non-Indian card clubs and horse-racing tracks will lobby hard for the same permission, to remain competitive, said Whittier law Professor Nelson Rose, who studies and sometimes consults for the gambling industry.

"It will lead to much more gambling in California," he predicted.

Some initiative opponents, including the governor, contend that gambling is a threat to the character of California communities.

Labor raps exemptions

Some of their allies have other concerns.

Labor leaders say they oppose **Proposition 5** primarily because it preserves the tribes' exemption from state worker protection and collective bargaining rules.

Nevada casinos, meanwhile, are unhappy about the prospect of more competition in the Golden State.

Analysts with Bear Stearns Inc. and BancAmerica Robertson Stephens have estimated **Proposition 5** would cost Nevada corporations several hundred million dollars in annual revenue from California bettors who would no longer see a need to leave the state.

Nevada interests have been the biggest financial sponsors of the campaign against **Proposition 5**, along with several of California's non-Indian cardrooms.

That's strange comfort to grass-roots activists like Sacramento-area resident Patty Neifer, who has fought cardrooms in her community and now leads a group opposed to **Proposition 5**.

"I really don't mind having allies against gambling expansion," said Neifer. Still, she conceded, "it does make a strange alliance."

Photos (2)

PHOTO IN FAVOR\(\box) In an ad promoting **Proposition 5**, a young tribal chairman complains that out-of-state interests are funding a dishonest, anti-Indian campaign. (Scene from TV ad)\(980831 FR 1A 1)\ PHOTO AGAINST\(\box) In an ad designed to oppose **Proposition 5**, a casino rises in a suburban neighborhood to the dismay of actors portraying a young couple. (Scene from TV ad.)\ (980831 FR 1A 2)

ELECTION '98\RELATED STORY: PAGE 12A

---- INDEX REFERENCES ----

COMPANY: BEAR STEARNS COMPANIES INC

INDUSTRY: (Entertainment (1EN08); Casinos (1CA80); Gaming Industry (1GA25))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Nevada (1NE81); California (1CA98))

Language: EN

OTHER INDEXING: (AGUA CALIENTE; BANCAMERICA ROBERTSON STEPHENS; BEAR STEARNS INC; INDIAN; INDIAN GAMING; MORONGO; NATIONAL INDIAN GAMING COMMISSION; PALA; PALAS; PROPOSITION; TV; US BUREAU OF INDIAN) (California; Californians; Essentially; Indians; Labor; Mark Macarro; Mary Ann Martin Andreas; Neifer; Nelson Rose; Nevada; Patty Neifer; Paula Lorenzo; Pete Wilson; Proposition; Richard Milanovich; Scene; Ultimately; Wilson) (LIST)

EDITION: Morning Final

Word Count: 1669
8/31/98 SJMERCN 1A

END OF DOCUMENT

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

1/15/00 FRESNOBEE A15

1/15/00 Fresno Bee A15
2000 WLNR 1720587

Fresno Bee
Copyright Copr. 2004 The Fresno Bee. All rights reserved.

January 15, 2000

Section: TELEGRAPH

GAMBLING BATTLE QUIETER, CHEAPER PROP. 1A AD GIVES INCOMPLETE PICTURE

BEE CAPITOL BUREAU

Proponents of **Proposition 1A** are airing 60-second TV commercials supporting a measure on the March 7 ballot that would let California Indian tribes offer Nevada-style gambling. Following is a description of the spot and an analysis by The Bee's Capitol Bureau:

Mark **Macarro**, the pony-tailed chairman of the Pechanga Band of Luiseno Indians of Riverside County, appears wearing blue jeans and a blue shirt with a bola tie. He walks forward and stands next to a tree in front of a dry creek bed and says:

"Last year, California voters overwhelmingly passed Proposition 5, the Indian self-reliance initiative. Indian gaming has transformed the lives of California Indians. Gaming has replaced welfare with work, despair with hope and dependency with self-reliance, and it has allowed us to provide better health care, housing and education for our people.

"Unfortunately, the same big Nevada casinos that wanted to kill competition from Indians were able to overturn Prop. 5 on a technicality. Now, **Proposition 1A** has been put on the March ballot to resolve this issue and establish once and for all that gaming on our own tribal lands is legal.

"The issue is simple: If Prop. 1A is not passed, Indian casinos in California could be shut down and the jobs and economic benefits they provide will be lost. Please help us take this final step to make Indian self-reliance a reality. Vote yes on Prop. 1A. Thank you."

Analysis: **Macarro's** statement that gambling has "transformed the lives of California Indians" is somewhat misleading, because only a small fraction of the state's American Indian population belong to the 41 tribes that have casinos. Many of the state's 107 federally recognized tribes will never be able to support casinos because their reservations are geographically remote. Some Indians have become very wealthy, and gambling tribes generally have been able to fund important services for their members.

The statement that Prop. 5 was overturned on a "technicality" is inaccurate. The state Supreme Court ruled that Prop. 5, which was written to allow Indian gambling to continue, was invalid because the California Constitution specifically bans Nevada-style gambling. Indeed, Prop. 1A would amend the Constitution to exempt tribes from that prohibition and let tribes operate casinos.

Macarro does not say that Prop. 1A was put on the ballot by the state Legislature with the support of Gov. Davis, who negotiated side agreements that will require gaming tribes to share revenue with nongaming tribes.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33))

INDUSTRY: (Entertainment (1EN08); Casinos (1CA80); Gaming Industry (1GA25))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Nevada (1NE81); California (1CA98))

Language: EN

OTHER INDEXING: (BEE; CALIFORNIA CONSTITUTION; CALIFORNIA INDIANS; CAPITOL BUREAU; CONSTITUTION; INDIANS; PECHANGA BAND OF LUISENO INDIANS; STATE LEGISLATURE; STATE SUPREME COURT; TV) (Davis; GAMBLING BATTLE; INCOMPLETE PICTURE; Macarro; Mark Macarro; Prop; Vote)

EDITION: HOME

Word Count: 508

1/15/00 FRESNOBEE A15

END OF DOCUMENT