

SCOPING ISSUES OF THE **SOBOBA HORSESHOE GRANDE PROJECT**

Report prepared by SOC Committee

April 2009

Mission Statement

Save Our Communities is opposed to the conversion of Horseshoe Grande land from fee-to-trust; and subsequent annexation to the Soboba Band of Luiseño Indian Reservation.

We desire this land to remain with its current boundaries, jurisdictions and zoning.

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FEE-TO-TRUST PROPOSAL BY THE SOBOBA BAND OF LUISENO INDIANS:

The Bureau of Indian Affairs, in coordination with the Soboba Band of Luiseno Indians, is preparing an Environmental Impact Statement for a proposed fee-to-trust land transfer. The subject property, known as the Horseshoe Grande Property, consists of 34 parcels, totaling 534.91 +/- acres of land, located in the City of San Jacinto, Riverside County, California. In addition to the land transfer, the Proposed Action also includes the relocation of the Tribe's existing casino, which presently resides on trust lands, to the subject property. Furthermore, the Proposed Action includes the development of a 300 room hotel complex that would be connected to the proposed casino. Within the proposed casino-hotel complex, various food and beverage services, conference center, spa and fitness center, and four retail establishments are also proposed. The other proposed developments on the subject property would include a Tribal fire station and gas station/convenience store.

The Secretary of the Interior must determine whether the establishment of a gaming facility for the Tribe **on these lands** (A) *will be in the best interest of the Tribe and its members* and (B) *will not be detrimental to the surrounding communities*.

Scoping Report for the Draft Environmental Impact Statement (DEIS) Of the Soboba Horseshoe Grande Project

EXECUTIVE SUMMARY:

We believe it is not appropriate, nor the intent of the law, to harm U.S. citizens who may be caught in a Tribe's sovereign pursuit of economic gain. We believe the adverse effects of this Project, on this proposed site, significantly outweigh any possible positive effects. The accumulation of short and long-term negative effects will prove disastrous to the city, its citizens, the environment and the Tribe. We hope the Soboba Tribal government will seek other more appropriately placed projects to help their members while taking into consideration their neighbors and work together with the community to become a socially, economically and environmentally strong sovereign nation.

SOC (Save Our Communities) consists of concerned citizens from the three residential communities in the immediate vicinity of the proposed fee-to-trust land annexation by the Soboba Band of Luiseno Indians.

Mission Statement: We are opposed to the annexation of the Horseshoe Grande property consisting of 534.91 +/- acres into a fee-to-trust for the Soboba Tribe and desire the land remain within the boundaries and jurisdiction of the City of San Jacinto, County of Riverside, with its current light residential, recreational zoning intact.

It is with that goal that SOC has prepared a report outlining our response to each of the Scoping Issues mentioned in the Scoping Report for the Draft Environmental Impact Statement (DEIS) of the Soboba Horseshoe Grande Project.

These issues, found on pages 13 through 28 of the Scoping Report, and others, will be considered by the Secretary of Interior to conform to the Indian Reorganization Act (IRA), or Code of Federal Regulations (CFR) 25, 151.10 and 151.11 in which the Tribe must prove that the proposed project is *(A) In the best interest of the Tribe and its Members and (B) The proposed project will not be detrimental to the Surrounding Communities*. Within each of these sections, there are Environmental, Social, and Economic issues, which will be addressed in this report.

Attachments follow the report in an Appendix and are numbered for reference.

SCOPING ISSUES:

SOC will address the following three issues in each of the two-part determinations (A) Best Interest of the Tribe and (B) Will Not Be Detrimental to the Surrounding Communities: (1) Environment, (2) Social and Cultural impacts and (3) Economic impacts on the local and regional community.

SOC will document each issue with researched facts and present thoughtful and well-reasoned implications and conclusions. Due to the historical, geographical, cultural and other issues pertinent to the Soboba Tribe's request, SOC intends to continue to conduct further investigation and fact-finding. As a result, SOC anticipates submitting supplemental comments in opposition to the Tribe's request.

(A) Best Interest of the Tribe

vs.

(B) Will Not Be Detrimental to Surrounding Communities

<u>Environmental</u>	<u>Social</u>	<u>Economic</u>	<u>Environmental</u>	<u>Social</u>	<u>Economic</u>
Preserve Culture	Sovereignty	Growth	Air Quality	EMT	Revenue
Added Land	Aboriginal	Diversity	Water	Police	Property
Better air	Membership		Visual	Utilities	Business
Better access			Noise	Crime	Cumulative
Safety			Traffic	low \$\$	
			Biology	Cultural	
			Land Use	Legal	
			Hazards		
			Geology		

In accordance with the Indian Reorganization Act (IRA) section 5, clarified in CFR 25, 151.10 and 151.11, the Tribe must prove that this Fee-To-Trust acquisition will be

(A) IN THE BEST INTEREST OF THE TRIBE AND ITS MEMBERS

(1) ENVIRONMENTAL

(1.1).The Tribe contends that this project will **PRESERVE CULTURAL RESOURCES** (pages 5 and 27 of the Scoping Report).

The BIA requires evidence from the tribes for what they contend and what they want to accomplish. According to Larry E. Scrivner, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs in 2003, "Indian tribes sometimes think that they are entitled to the land because it is a trust responsibility of the government. We do not argue or debate that contention. Rather, we look only at the merits of the application."

We assume the Tribe wants to preserve its cultural resources on these lands. The City of San Jacinto, in its January 17, 2008 letter (comment #28 in Scoping Report), states, "...potential cultural resources, including archeological and paleontological resources, may occur throughout the City's planning area, including the Project area. Thus, the EIS for the Project should include an analysis of potential resources and should also identify potential mitigation measures to address both known resources and the discovery of resources during Project construction."

The Mission Indians Relief Act of 1892 established the Mission Indian reservations in California. Prior to that, Congress conducted a detailed and comprehensive Survey in 1888. The Soboba are identified as the San Jacinto Indians on page 28 of a copy of that Survey (1). In this survey, lands are described where the Tribe settled and lived in commonality exercising governance over their own members and the land. These lands are located on the present reservation and not on the proposed Project land. This information is on pages 4, 5, 6, & 7. Chairman Salgado, in a Hemet News article, 1/2/05, stated, "It was our property at one time, taken away in some kind of way or another and we're just paying fair-market price and then some." The land may well be within ancestral territory, however, the Chairman has offered no proof of "Indian Title" or evidence of significant historical connection to the land.

Soboba Attorney Karl Johnson, in a Hemet News article dated 3/24/08, stated "the fee-to-trust transfer would bring abutting, ancestral land back into the reservation and restore the cultural heritage of the people who originally owned it." He also offered no proof of ancestral ownership or how their cultural heritage was destroyed on this Horseshoe Grande land. If the Tribe wants to maintain existing cultural resources, archeological, paleontological and native vegetation of cultural significance to tribal life, then paving over the majority of the acreage is not going to do that.

At a Tribal/Community Working Group Meeting on March 19, 2008, the tribe was asked if it would be necessary to do an archeological study of the Horseshoe Grande property and Rose Salgado, one of the Tribal Council Members said, "It will not be necessary, all that was found on the site are a few tin cans."

Reports by SOC members refute the Tribe's contention that this Project will preserve its cultural resources on the 534.91 acres it purchased. (2 & 3)

(*)Scrivner, Larry. Acquiring Land Into Trust for Indian Tribes. 4/24/03

(*)Congressional Survey, 1888, from the Alfred Smiley Report, Smiley Library, Heritage Room Archives, 125 W. Vine, Redlands, California 92373

(1.2) The Tribe contends it needs **ADDITIONAL LAND FOR OPERATIONS** (pages 5 and 27 of Scoping Report). The Tribe states that it needs this Horseshoe Grande land, located one mile north of the existing casino, to build its hotel/casino complex and additional structures. It claims there is no land available on its several thousand acre reservation, to which it recently annexed The Oaks property (September 2007) consisting of 477 acres. This is adjacent to the northern portion of the reservation. The Tribe owned this land since 2004 and has recently added a football stadium, a baseball field, a four-field softball complex, a 1000-person capacity baseball park, locker rooms, parking lot, water supply and waste water infrastructure, restrooms and concessions.

According to the Scoping Report, page 27, “the Tribe has utilized most of its usable acreage for community services...” That implies there is usable land still available.

The hotel/casino is planned for only 35 to 40 acres of proposed land and the existing casino sits on approximately 60 acres. Although much of the reservation is mountainous, there are large parcels of land adjacent to the existing casino that could be purchased by the Tribe for the resort as well as using part of The Oaks 477 acres. Google maps show the extensive amount of land around the present casino that could possibly be donated for the hotel and parking structure. (4)

The need for additional land is not to support tribal housing, government infrastructure, or to resolve local land management conflicts. Rather, it is to create a heavily commercialized resort and Class 111 Gaming Facility (which Soboba already have) on land zoned light residential. The Tribe contends that the reason it needs additional land for the hotel/casino beyond its current reservation land is that its current casino and reservation land is in a flood zone. According to the FEMA Flood Insurance Rate Map, both sites are within the same Flood Zone X.

Our SOC member’s reports (5 and 6) discuss the flood zone and additional land issues.

It is feasible that the Tribe will operate two casinos. During a City Council meeting of June 17, 2004, "Chairman Salgado commented they are comfortable with the compact with the state, presently that means two casinos with a total of 2,000 slots. Their economists will evaluate whether it is better to do one or two (casinos)". Impacts on the surrounding areas would be magnified if both locations are used.

(1.3) The Tribe contends that the new casino would bring **IMPROVED AIR QUALITY** (pages 14 and 27 of Scoping Report). Quite the contrary, SOC believes the Project would bring more pollution with regards to grading dust, truck and car exhaust, and general construction pollution associated with such a large project. The City of San Jacinto's letter to the BIA also stated "the Project site is located within the South Coast Air Basin, which is in nonattainment for ozone and particulate matter". According to the United States Environmental Protection Agency, in a letter to Robert Salgado dated August 21, 2008, it states "Your reservation is located in an area that EPA is proposing to designate as nonattainment for the 2006 PM2.5 air quality standard" (21). According to the EPA, any proposed development would require a *New Source Review Permit* requiring more rigid air quality control standards and off-setting emissions controls for this already polluted area.

In the largest and longest study of its kind (7), USC researchers have found that living near a busy road and in a high-pollution area, there is a doubling of damage to your lungs, especially those of children and life expectancy is reduced with this pollution. The greatest damage appears to be in the small airways of the lung and is normally associated with the fine particulate matter emitted by automobiles. According to the lead author, W. James Gauderman, an epidemiologist at the Keck School of Medicine of USC, "Even if you are in a relatively low regional pollution area, living near a road produces lung problems". All the researchers conceded that *there is little that can be done to mitigate the effects of the traffic pollution*.

(1.4) The Tribe believes there will be **EASIER ACCESS** (page 27 of Scoping Report) to the new casino site, rather than the existing site less than a mile away. Since there are presently only two small two-lane country roads to the casino and

these same two-lane roads will go to the new casino, this premise is hard to understand.

Severe congestion occurs during special events on those two roads and it would continue to occur at the new casino site especially since the Project will include a hotel resort as well as the casino, and especially if the current casino site remains open in some capacity.

Community members have requested a traffic light at the intersection of Lake Park and Soboba Road and the City has not complied. The communities have asked for a speed monitor from TASIN money distributed by the Tribe and it has not been granted nor purchased. Access to the casino is across one two-lane bridge and that access would be the same if the casino was relocated to the Horseshoe Grande property. Easier access would be achieved to the existing casino and reservation if the Tribe followed through on its statement that it was considering a road and bridge to extend Esplanade directly to its existing casino (Press Enterprise, Dec. 31, 2006). Esplanade is a four-lane road and plans have been approved for Ramona Expressway to be widened and reconfigured with easy access to any extension of Esplanade (8). This would lessen the 24 hour traffic on Soboba Road and Lake Park Drive that is so troublesome for the three directly affected communities.

(1.5) The Tribe contends that moving the casino to the Horseshoe Grande property and incorporating it into the reservation as fee-to-trust land will create **BETTER CUSTOMER SAFETY** (page 27 of Scoping Report). However the Tribe is taking the lead in attempting to eliminate Public Law 280 which currently provides local public safety agencies access to the reservation. The three communities represented by SOC would become islands within the reservation boundaries which would create a checkerboard pattern of public safety services and confusion as to jurisdictional issues regarding police and emergency services.

In 2007 and 2008, State Legislation was introduced and debated to provide tribal governments the authority to issue fines to trespassers (SB 331). This legislation did not pass, as the appropriations committee found that it was not only detrimental to non-Indian citizens living in and around Indian lands, but the new statute could potentially be used as a tool by tribal governments to exclude and

harass des-enrolled tribal members or non-Indian citizens from their private allotments. While this legislation did not pass, it does not mean this bill will not be affected by the proposed Soboba land acquisition. The concern over non-tribal access to private property is real. Access to non-tribal private property is threatened by this land acquisition.

No evacuation plan for the reservation or the new proposed developments has been presented or discussed. There is great concern for the casino, Indian and non-Indian patrons, and neighboring communities in the case of disaster. Stand Up For California recently submitted a letter of concern, dated August 15, 2008, addressing the Soboba Breach of Compact – Unreasonable Risk of Harm to the Public (9). A multi-story hotel/casino (the EA must state how high the hotel will be) and a multi-story parking structure becomes a hazard in an earthquake, flood, fire or criminal act. Will there be sufficient high rise ladder fire trucks, emergency helicopters and supporting landing pad at the reservation? Fire Agencies and Firefighters require special firefighting equipment and breathing apparatus in buildings over 5 stories high. Will the Tribe provide funding to cover the cost of this as well as the necessary training? Moreover, with the Tribe's request to eliminate PL 280, there is no obligation by the State or its political sub divisions to provide emergency services to the Tribe, and that includes response to 911 calls for any purpose. What is the Tribe's plan to address public safety at the casino?

* The two (2) small two-lane roads would be clogged in the event of a panic evacuation with no plan.

A letter from Jim Ayres, Mayor of the City of San Jacinto, dated June 23, 2008, states that the city is concerned about the safety of the public. (10) "The public safety issues affect the ability of the City's laws enforcement and firefighters to venture onto the Reservation in order to perform their essential public safety duties." If the three communities become surrounded by Reservation land, that issue becomes even more serious. The letter continues, "Unless and until the City Council can be assured of the personal safety of the residents of San Jacinto, the public who would be visiting the Reservation, and the Tribe's own residents, any expansion of the Reservation would be inappropriate".

(2). The contention that the Fee-To-Trust Acquisition is in the **BEST INTEREST OF THE TRIBE** in the **Social** area involves three sections.

(2.1) The Tribe contends that it needs to exercise *complete* **SOVEREIGN POWER** over land that is owned by the tribal government (page 27 of Scoping Report). Complete sovereign power over the land would include what it does with the land, how it does it, policing, labor laws, criminal law, civil rights, noise regulations, traffic oversight and many other rules and regulations now presided over by the local and state authorities. Our three communities are concerned about being surrounded by a Sovereign Nation where we have no rights or guarantee to unrestricted ingress or egress through Reservation land, or any input into what happens on sovereign land directly adjacent to our homes.

There will be issues of noise and light pollution, crime, and traffic to mention a few. Neighbors who live adjacent to the Golf Course Clubhouse, which is owned by the Tribe, but on city land, have problems with noise from employees at 5 am, parties and bands on the patios past 10 pm, special events and cars leaving the parking lot until 1am. Management and the Tribe told them that they bought near the golf course so they should expect that level of activity and asked them if they had double paned windows to keep the noise out. It is not appropriate, nor the intent of the laws, to harm U.S. Citizens for the good of Tribal members.

The Indian Gaming Regulatory Act, 25 U.S.C. @ 2701 sets the criteria under which gaming activities can occur on Indian lands. One requirement is that if gaming is to occur on off-reservation lands, those lands must be trust lands over which an Indian tribe exercised governmental power. The very nature of tribal sovereignty presents varying levels of jurisdiction complicating law enforcement protocols.

According to a letter from Assistant Secretary Carl Artman to the Regional Directors, BIA, dated January 3, 2008,(11) Mr. Artman states on page 5, under the section Greater Weight, that jurisdictional issues should be given greater weight. "The more the transfer of Indian jurisdiction to that parcel of land is likely to disrupt established governmental patterns. The Department [of Interior] has considerable experience with the problems posed by checkerboard patterns of jurisdiction. With respect to jurisdictional issues, the application should include copies of any intergovernmental agreements negotiated between the tribe and

the state and local governments. Failure to achieve such agreements should weigh heavily against the approval of the application.”

The Tribe and the City of San Jacinto and the County Sheriff’s Department have failed to achieve any agreements regarding the Tribe’s contention that its sovereign power guarantees the right to govern without any outside influence or regulation.

In *Nevada v. Hicks*, (12) the State of Nevada dealt with the issue of tribal sovereignty misconstrued to be akin to that of foreign nations. Tribal sovereignty proponents embrace isolationism and insularity. Chairman Salgado appears to be of this thought as proven in his comments in the Los Angeles Times news article, dated June 10, 2008, in which he states, “We are a sovereign nation. No one has the right to tell Indians how to run their sovereign nations”.

Rather, according to *Nevada v. Hicks*, states are constitutionally established sovereigns and tribal sovereignty is developed in federal courts to shield tribes and tribal members from nonmembers, not to invest them with power over others. According to the Framers of the Constitution, Tribes have a place in the constitutional order. The federal government’s duty towards the tribes is almost universally described as protective. There is the notion that the federal government shields the tribes from harm and interference by outsiders, insulating and protecting them from non-Indian aggression. The Framers did not assume that tribes would be impervious super-sovereigns.

Chairman Salgado wishes to expand the Tribe’s jurisdiction and authority, however, such expansion is not a natural development of tribal sovereignty. Rather the Tribe must find its limits and accept others’ concurrent jurisdiction. This would require a high level of cooperation with state, local and federal entities, which has not been evident between the Tribe, the City of San Jacinto nor Riverside County. Relations are contentious, especially with regards to police services (61).

SOC members’ reports on Sovereignty (13) and Self-Reliance (14) are in the Attachments.

(2.2) The next issue is that the Tribe desires to “**RE-ACQUIRE FORMER RESERVATION LANDS**” (pages 5 and 27 of Scoping Report) claiming that the Horseshoe Grande property is Tribal **Aboriginal** land. The Tribe’s primary goal is the complete preservation and reacquisition of all aboriginal land and it recognizes the Horseshoe Grande property as aboriginal territory. It contends that Trust status will allow the Tribe to fully accomplish its goal of controlling its cultural resources through the exercise of jurisdiction over the lands. This is a flawed attempt at asserting the lands must be considered “restored lands”, thus meeting an exception in IGRA Section 2719(b) (1) (iii).

The Tribe appears to contend that the proposed site meets the requirements of the exception set forth at 25 U.S.C. section 2719 (b)(1B)(iii) – “restoration of lands for an Indian tribe that is restored to Federal recognition” – and therefore is outside the proscriptions on after-acquired land. The United States never terminated the Soboba Band of Mission Indians, indeed, the Tribe was recognized and a Reservation identified in the Mission Indians Relief Act of 1892. The NIGC has previously completed lands determinations on California Reservation Tribes and denied gaming on after-acquired lands. (See – Lands Opinions on Tule River Indian Tribe dated June 4, 1996, and Karuk Tribe of California dated October 12, 2004.)

The Tribe cites the General Land Office surveyor as proof that Tribal ancestors once inhabited this area and that this property was an Indian settlement as early as the 1890’s. The Tribe considers the protection of the land and resources as vital to the Tribal community.

According to the Soboba Tribe’s website, on June 19, 1883, the Soboba Indian Reservation was established by Executive Order that set aside 3,172.03 acres of land for the Soboba Band of Luiseno Indians for their permanent occupation and use (15). The current reservation is close to double that acreage. None of that acreage has been lost or taken away from the Tribe; therefore, there are no reservation lands to *re-acquire*.

The Horseshoe Grande property is not supported as a dwelling site by natives as supported by available archaeological, anthropological and recorded history. The Alfred Smiley Report from the Smiley Library states that the San Jacinto Reservation in an 1888 Executive Order had its chief settlement in a canyon along

Indian Creek with a legal description of reservation land far to the east of the Horseshoe Grande Project (1). There was no Tribal ownership of the Horseshoe Grande parcels.

In 1815 the land was San Luis Rey, Rancho Tract 8 of the Cahuilla. The Luiseno Indians were brought in as laborers and the two groups intermingled. The Tribe settled in the canyons where artifacts were found.

Extensive research completed by SOC Members refute the Tribe's contention that the Horseshoe Grande property was ever a Soboba Tribal aboriginal dwelling site, or that those parcels of land were ever in the Tribe's reservation, taken away or lost, and therefore must be reacquired. (16) Extensive research of historical records and Land Patent and recorded documents from the County Recorder's Office also show that these parcels of land in the Horseshoe Grande project area were not reservation land that needs to be reacquired. (17)

(2.3) The Tribe contends that it needs additional land for **MORE MEMBERS**, "given both increases in adult membership and the growing needs of emerging young families in the foreseeable future" (page 27 of Scoping Report).

Soboba's website claims there are 900 members in the Tribe. The BIA directory shows 700 and the enrolled members, those individuals that are "registered" Indians and eligible to vote, total only 683. New lands can be made available to Indians if they can demonstrate "immediate need" (1934 Indian Reorganization Act). The Soboba Tribe has a very successful casino, 8.5 acres of land per individual, and more than ample water due to the new water settlement with the State of California.

Nowhere in the Project's plan is there a plan for additional housing for Tribal members, or playgrounds or activity centers for younger family members. The allotment from the current casino amounting to five digit payments per month to each member, results in a situation where tribal members do not have to work in their commercial facilities. The newly renovated clubhouse and golf course has *one* tribal member working in the food services area, based on observation and information from other employees.

Additional trust land is not necessary for economic growth. If the Tribe desires to erect a resort hotel without a casino on that property, it could do so if the City approved a zoning change. The Tribe could also build light residential homes on that property and stay within the zoning requirements and make money for the tribal families. The money from the existing casino, clubhouse and golf course are substantial for the “growing needs of emerging young families”.

(3). Along with the Environmental and Social contentions that this Project would be **IN THE BEST INTEREST OF THE TRIBE**, they also have two sections in an **ECONOMIC** component in which the Tribe wants to promote economic **GROWTH** (pages 5 and 26 of Scoping Report) and **DIVERSIFY** its economic enterprises.

According to a January 4, 2008 letter sent to the Chairman of the Chemehuevi Tribe by Carl Artman, Assistant Secretary Indian Affairs, the IRA was primarily intended to redress the effects of the discredited policy of allotment, which had sought to divide up the tribal land base among individual Indians and non-Indians, and to destroy tribal governments and tribal identity. To assist in restoring the tribal land base, the IRA gives the Secretary the authority to: 1) return “to tribal ownership the remaining surplus lands of any Indian reservation” that had been opened to sale or disposal under the public land laws; 2) consolidate Indian ownership of land holdings within reservations by acquiring and exchanging interests of both Indians and non-Indians; and 3) acquire, in his discretion, interests in lands “within or without existing reservations.” (18)

(3.1) Compliance with IRA 25 C.F.R. Part 151.3 requires that the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. The Tribe contends that the destination resort will bring economic benefits to the Tribe through cash flow from the casino/hotel operations. However, if that cash flow is lessened due to a bad economy, this development would not create self-sufficiency within the Tribe. It would only create a single industry, dependent upon the economy. It is SOC’s perspective as well as a time proven fact, that education and a career path is the way to develop self-sufficiency in the Tribe’s population.

The regulations require the Department, in 25 C.F.R. 151.10(b) to evaluate the need of the Tribe for additional land. The Tribe has 6,000 +/- acres of usable land

and the Horseshoe Grande land is not required to support tribal housing, government infrastructure, or to resolve local land management conflicts, but rather to move and expand the casino approximately a mile to the east. SOC contends that a new hotel/casino requiring 30 acres as mentioned by the Tribe can be built on the existing site.

The regulations, in 25 C.F.R. 151.10 (c), require the Department to consider the purposes of the land, which in this case is to build a larger casino facility. There is already a large casino with the maximum number of slots and several restaurants at the present site. There is also room for a high rise hotel and a high rise parking structure on the present site within the reservation.

In order for the Tribal members to be self-sufficient, there should be job training and employment of tribal members on the reservation. An informal survey of Tribal members now working at the Golf Course and Clubhouse resulted in identifying only one Tribal member, and those working at the Casino, approximately 10% or less of the total employees. The Noli School emphasizes the Indian culture, but little has been mentioned about career paths and career education to assimilate students into the job world outside the reservation. According to Mr. Artman, "employment of tribal members is an important benefit of tribal economic enterprises."

(3.2) It is our contention that the Tribe can and has **diversified** on its reservation land and off reservation land and has reaped economic benefit. There is also potential for continued diversification and economic growth without moving the casino and annexing the Horseshoe Grande Property onto its reservation.

1. **The Oaks** property is rented out to organizations and sports teams including football, baseball and softball.

2. **The Soboba Movie Ranch** was announced and opened by the Tribe in 2006. Tribal administrator Tobin White stated, "We are hoping to attract independent filmmakers, movie studios, corporate films, and music video. We can pull together the locations, shots, and services; cut through the red tape and accommodate your needs on time."(19)

3. The Tribe owns the **Soboba Golf Course and Clubhouse**, tennis courts and swimming facility and consistently rents out these facilities to groups for a

fee, as well as membership fees for the golf course and a public restaurant, bar and banquet facilities.

4. The Tribe purchased a defunct **casino in Nevada** and plans to renovate it for use or resale.

5. The tribe consistently rents its **outdoor facilities** adjacent to the casino for rodeos, pow wows, concerts, drag racing, motocross and other special events.

6. The Tribe operates **restaurants** at the current casino.

7. The Tribe was given 128 acres of highly valued property at Dominogoni Parkway and Winchester Road, worth an estimated value of \$55 million to use for **commercial development**.

8. EMWD together with LHMWD is providing \$30 million in a combination of monetary and in-kind contributions to the **water settlement** for the Tribe.

9. The water agreement includes Federal funding in the amount of \$11 million for the Soboba Tribe for rehabilitating and maintaining water and sewage infrastructure and other **water-related development projects**.

A SOC member's report on Economic Growth is included in the attachments. (20)

(B) WILL NOT BE DETRIMENTAL TO THE SURROUNDING COMMUNITIES

This is the next section in the Indian Reorganization Act (IRA) requirement. We in SOC are the *three surrounding communities directly affected* by this Project.

(4) The first issue under this heading is **ENVIRONMENTAL** with nine issues to be considered. The Scoping Report states that pollution is the fifth and sixth most distressing concern for the citizens.

(4.1) Surrounding communities are concerned with **AIR QUALITY** (page 14 of Scoping Report). It was the sixth most important concern among community members (p. 11). The Tribe contends that Air Quality from the Project will not negatively affect our communities. We contend that there will be increased pollutants, ozone, particulate matter, vehicle emissions of carbon monoxide, and nuisance odors connected with construction and resort/casino traffic.

The Draft EIS is incomplete as it does not include updated analysis methodologies regarding the changes in the project size and scope. Similarly, the Operational Ozone Effects of each alternative has used outdated traffic studies and operational emission estimates, does not adequately reflect the environmental setting as it exists upon certification of the Final EIS. The same deficiency exists with regard to Localized Carbon Monoxide Effects. Global green house gas emissions are rapidly rising, and the State of California has enacted laws that acknowledge these circumstances and require cost effective efforts to reduce greenhouse gas emissions (see AB 32, the California Global Warming Solutions Act of 2006). As a result the Project's effects on air quality and climate change are flawed.

The City's letter regarding the EIS states that "the Project is located within the South Coast Air Basin, which is nonattainment for ozone and particulate matter. The EIS for the Project must include an analysis of the Project's impact on air quality, consistency with the recently adopted 2007 Air Quality Management Plan, and consideration of applicable mitigation measures."

The Environmental Protection Agency (EPA) requires that any tribe wishing to build a large facility like this proposed destination hotel/casino Project, should inform the EPA so that proper permitting and mitigation issues will be resolved *prior* to the project. Given the fact that more diesel trucks and 4,000 plus more cars per day are projected for the Project, there may be mitigating solutions such as shuttle buses or electric trams to offset the increased pollution. According to the EPA, the BIA must address these Air Quality Standards before any project is approved and get the proper permitting in place.

A letter sent to Chairman Salgado from the U.S. Environmental Protection Agency, dated August 21, 2008, as well as evidentiary facts supporting the air pollution problem (21) state that the Reservation is in an area the EPA is proposing to designate as nonattainment for the 2006 PM 2.5 air quality standards. This pollution contributes to serious health problems including painful breathing, chronic bronchitis, decreased lung function, and even premature death in people with heart and lung disease. Fine particulate matter associated with diesel exhaust is also thought to cause lung cancer and is therefore listed as a mobile source air toxic. In the report, *California Area Designation for the 24 Hour Fine Particle National Ambient Air Quality Standards*, Table 1 indicates that there is a

significant emission of nitrogen oxides and volatile organic compounds in the (Riverside) county. These pollutants are precursors to the formation of PM2.5. Mobile sources constitute a major portion of the PM 2.5 emissions total. Riverside County along with others in California has the worst air quality for PM2.5 in the country. The main source of carbon monoxide in our air is vehicle emissions and 95 % comes from mobile sources.

The Tribe sponsors off-road vehicle races on its reservation land adjacent to the Soboba Springs Mobile Home Park. A newspaper article (22) states that “motorized off-road vehicles, including dirt bikes, and all-terrain vehicles, release as much greenhouse gas as 1.5 million car trips from San Francisco to Los Angeles, according to a report from the Center for Biological Diversity and Clean Air Initiative”.

Diesel-powered vehicles and engines contribute more than half the mobile source particulate emissions, according to an EPA report on National Emissions by Source (23). “Fine particulate matter associated with diesel exhaust is also thought to cause lung cancer and is therefore listed as a mobile source air toxic. Both on-road and non-road mobile sources are major nitrogen oxide polluters which cause a variety of health and environmental problems. Cars create exhaust and evaporative hydrocarbon emissions that are considered toxic, can cause cancer and other health problems. The main source of carbon monoxide in our air (95%) is vehicle emissions. Carbon monoxide is harmful because it reduces oxygen delivery to the body’s organs and tissues. It is most harmful to those who suffer from heart and respiratory disease.” Recent studies confirm that air pollution shortens life expectancy. Our three communities are composed mainly of older retired citizens, especially the Mobile Home Park which is designated 55 or older and has many residents in their 80’s.

The California Air Resources Board recently adopted a blueprint to slash the state’s emission of greenhouse gases to 1990 levels by 2020, cutting 174 metric tons of pollutants. A Los Angeles Times article of December 12, 2008 (24) states that automobile emissions will be cut by 31.7 million metric tons.

In the section on **Traffic** we will further discuss the increased traffic that this resort destination project will bring. The Tribe admits it will bring over 4,000 *more* cars per day to this new casino/hotel complex.

There will also be nuisance odors including exhaust from the several restaurant operations, gas fumes from a gas station, and potential fumes from the wastewater treatment plant.

It is SOC's contention that the air pollutants generated by this Project cannot be mitigated successfully (refer to **IMPROVED AIR QUALITY** section on page 14 of Scoping Report). A Project of this magnitude will bring more cars, more trucks, more construction, therefore more air pollution, and it will negatively affect our communities' air quality and cause irreversible damage to our citizen's health.

(4.2) The next issue is **WATER RESOURCES** (page 15 of Scoping Report). Comments on HR 4841 by Majel M. Russell, Principal Deputy Assistant Secretary for Indian Affairs, U.S. Department of the Interior, (25) states that the Tribe has been granted abundant water (7,500 acre-feet per year for 30 years will recharge the San Jacinto basin, an over-drafted basin). The settlement awards the Tribe \$18 million from local water districts and \$11 million from the federal government and the right to 2 billion gallons of water a year from the aquifer. The Tribe agrees to "forbear in its use of a portion of its water rights for the next fifty years", using no more than half the water allotment for those fifty years.

It is SOC's contention that the proposed Project with its golf course, clubhouse, swimming pool, restaurant, locker facilities, hotel, casino, restaurants, spa facilities, banquet facilities, retail shops, irrigation of the golf course and planned resort, as well as the reservation itself, its orchards, the Oaks facilities, the sports complex and its grass maintenance, the fire station, Noli School, administration buildings, and recreational fields and pools will use a great amount of water now and forever, past the fifty years' forbearance.

We are concerned, per SOC member's report (26), about oversight of the Tribe's water use, what will happen to the already over-drafted basin in the future and beyond the fifty years, as well as the interests of the tax-paying public for their water resources.

According to Mr. Russell, "Water resource development would further the U.S. goal of Tribal self-sufficiency and sovereignty. This means that the sovereign nation of the Soboba Tribe would use this water and monitor it within its

sovereign government. These documents are typically not public knowledge. The possibility exists that the surrounding communities could be negatively affected by shared water resources and a lack of cooperation in their use.

Increased vehicle and truck traffic will bring oil and contaminants onto vast expanses of cement in the parking structure and around the hotel/casino. During heavy rains, these contaminants will run off the downhill slope towards the San Jacinto riverbed and into the ground adjacent to the riverbed. Mitigation of this contamination would be difficult or impossible.

We are also concerned about water quality contaminated by construction runoff, underground gas tanks at the proposed gas station (according to an EPA official a previously planned gas station on the reservation was not installed because of this issue), as well as the waste-water treatment plant and its ramifications to safe water in the ground table. If this water is governed by the sovereign Indian nation, will the Tribe comply with the Clean Water Act (40 CFR 230)? That water will be shared with the City's residents and should be guaranteed as pre-project clean.

(4.3) The next issue is **VISUAL RESOURCES** (page 16 of Scoping Report). Three mountain ranges surround our three communities and we have clear, unobstructed views of all three ranges for miles. Our three communities have underground utilities to preserve these views. The legal name of the community adjacent to the golf course is Mountain View Homes. The unobstructed view from the hillside community is spectacular in all directions.

This Project will forever alter the surrounding vistas both from the three communities' views and from the rest of the city and valley. The planned 300 room hotel will be four to five stories high, according to Tobin White in a May 8, 2007 Soboba Springs Community Meeting. The 1,470,000 foot, 2200 car parking structure will be at least five stories high. An example of a five story, 2,000 vehicle parking structure built on Sycuan land is included in the appendix (27). Since the Tribe states that these structures will be built on 35 to 40 acres, they must go up in height to accommodate the projected number of rooms and number of cars.

The entire Project will obstruct views of the San Jacinto Mountains as well as the two other mountain ranges surrounding our communities, turning them from a natural beauty into a brightly lit, cement, multistoried visual blight.

As stated in the City of San Jacinto letter to Ms. Dutschke, the City's General Plan Environmental Impact Report identified views of the San Jacinto Mountain Range from the City as a major scenic resource. To ensure protection of that resource, the City's General Plan designated the Project area as low density residential and open space uses.

Mitigation measures to reduce or avoid potential negative effects are impossible in this situation. Once the view is obstructed, it will be changed forever.

Every promotional picture of the San Jacinto area includes our mountain ranges. The back page of the December 2007, City of San Jacinto Newsletter (28), shows a view of the San Jacinto Mountains from one of the three SOC communities that would be adversely affected by the Project.

SOC members have taken photographs of the views that would be affected by the project. Those photos and a SOC member's report are in the appendix (29).

Light Pollution was the fifth most distressing issue according to the citizen response in the Scoping Report (p. 11). Presently, SOC's three communities are very dark at night as there are no glaring street lights or commercial enterprises in this area. This Project cannot help but alter the night sky line forever. Light residential zoning does not bring light pollution to the neighborhood. A multi-levelled hotel and parking structure with accompanying security and promotional lights will bring glaring light pollution.

The existing casino complex and parking lot is lit up so brightly that you can see the white glow for miles. The Tribe heard the complaints from citizens regarding the casino's booming night streamers hundreds of feet into the sky and shut them down temporarily but has now increased their use to attract more clients in a slowing economy. Obviously these moving light streamers alter the night sky and obliterate the stars in our area. There is no guarantee that if the new Project is approved, they will not resume permanently, this time even close enough to

illuminate our living rooms and bedrooms with spotlight intensity. This would definitely be detrimental to the surrounding communities.

(4.4)The next issue is **NOISE** (page 16 of scoping report). This was the second most commented upon issue in the scoping report (p.11). The Scoping Report asks if the noise levels from the Project will result in a permanent increase over pre-project levels. We believe it should state, over pre-casino levels. There are several noise issues to be considered including construction noise, operational noise, traffic noise including cars and tour buses, casino event noise including concerts, automatic weapon fire, and emergency service sirens, all of which have dramatically increased our noise level prior to the opening of the present casino. We went from relative silence, especially at night, to noise 24 hours a day 7 days a week.

Pre- casino noise consisted of occasional resident cars on Soboba Road and Lake Park Drive. The entire area was light residential, with the exception of the golf course, and consisted mainly of retired and elderly residents. Reservation residents used the roads. There was no reason for non-residents to come to the area unless they were visiting friends or relatives or were coming to the golf course. The golf course traffic was also minimal and ended after dark.

When the casino was built in 1995, traffic increased dramatically and with that, noise levels. Gravel trucks from the Tribe's commercial gravel pit, tour buses, delivery trucks, event traffic, all casino traffic going 24 hours a day, seven days a week, converging on our two-lane country roads.

Our light-residential, recreational zoned area had changed to support and lead to a heavily commercialized enterprise. Now with the proposed Project, the noise levels will at least double and if the two casinos remain with supporting buildings, the noise level will at least triple in frequency and intensity.

According to the article, Quiet, Please! In the July/August 08 issue of Ode Magazine (30), Les Bloomberg, executive director of the Noise Pollution Clearinghouse, defines noise as any sound that impacts or harms the health of people. This definition is more consistent with definitions of other forms of pollution, including air pollution. The World Health Organization reports that transportation – road, rail and air traffic - is the major source of noise pollution.

Cars and trucks produce noise in two ways. The engines make noise, and the contact between the vehicle and the road creates noise. At speeds greater than 40 mph, road noise is louder than engine noise. *The City of San Jacinto recently increased the speed limit on Soboba Road to 45 and Lake Park to 40* thus creating more noise from our increased traffic as most cars along these roads go faster than the speed limit.

According to the article, the sounds of construction, pneumatic hammers, air compressors, bulldozers, loaders, and dump trucks are another major contributor to noise pollution. Chronic exposure to loud noise is bad for the cardiovascular system. Also, long-term exposure to environmental noise, especially at night, causes chronic disturbance of the natural sleep pattern as well as increase in blood pressure and heart rate. According to the Environmental Protection Agency people who find noise annoying in their neighborhood, have considered moving because of it. Some call noise "a form of trespassing".

In a May 8, 2007, Soboba Springs Community Meeting, Tribal Administrator, Tobin White was asked about noise levels and times during special events that go sometimes until one a.m. Tobin stated, "The Tribe wants it to stop by midnight", however, the City ordinance states noise must be abated by 9 p.m. Concerts at the casino usually *start* around 9 p.m. Traffic coming and going from the casino never stops. It is feasible that if this annexation Project goes through, that the City will be allowing its own ordinance to be broken for our three communities surrounding this destination resort project and lawsuits will ensue.

Residents adjacent to the new Golf Course Clubhouse have voiced their concerns about Clubhouse noise to management and the Tribal chairman. The residents have received little empathy, concern or action. Their concerns range from:

- *employees' excessively loud vehicle stereos at 5:30 am and 10:30 pm
- *screaming vehicles through parking lot at 2am and 3am
- *car alarms going for 30 minutes, others starting at 5:22 am to 6:15 am
- *gardening blower on parking lot starting at 5:45 am
- * parties with loud amplified music until 1:45 am
- * excessive, loud and profane language from the upper patio at 10:45 pm
- * trash thrown loudly in dumpsters at 10:45 pm
- * delivery semi-truck idling from 9:30 pm to 5 am

According to the City, a new noise ordinance will now fine violators. Under the Code 8.40 (31), noise must be lower than normal conversation in some instances. It also states that the City has the right to protect public safety and preserve peace and quiet by setting reasonable regulations for the time, place and manner for using amplifying equipment. It also contains exemptions for permitted events; however the police chief has broad discretion in deciding whether to issue a permit for such events.

The specifics of the San Jacinto Municipal Code, Section 8.40 Noise Control are as follows:

- * At certain levels, noises are detrimental to the health and welfare of the citizenry
- * "Permitted" noise is exempt from the code
- * No construction noise between 7pm and 7am, none on Sunday
- * No unlawful residential noise between 9pm and 7am
- * No unlawful recreational noise between 9pm and 7am; not within 300 feet of residences
- * No unnatural, unusual noise
- * No cannon simulators from midnight to 6 am unless "permitted" (lowest charge setting; no more than one cannon every 20 acres)
- * Sound-amplifying equipment may be used between 8am and 10pm (exceptions must be "permitted"), shall not be audible in excess of 350 feet from source
- * Normal conversation is 50 decibels (U.S. Dept. of Energy), rock concerts expose people to 100 decibel levels; noise in the city must be restricted to 65 decibels in the day and 45 decibels at night.
- * Any person violating or failing to comply with this noise ordinance shall be guilty of an infraction and upon conviction a fine of \$50.00 for first violation, \$100 for second violation and \$250 for any additional violations.
- * Any violation which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed a public nuisance and may be subject to abatement by an injunction issued by a court.

How would the City enforce this ordinance for the three SOC Communities if noise pollution were to flow through the air from the nearby reservation and Horseshoe Grande Project? Noise does not stop at the borders of the reservation, in fact the noise complaints from the existing reservation and casino activities range from automatic gunfire, loud music from outdoor concerts going past 1pm, moto-cross and drag racing from early morning to late night.

The Tribe may put up a landscape barrier or a wall to mitigate both sound and light effects, as stated on page 16 of the Scoping Report however, noise travels up and over such barriers and would do nothing to help the Hill community far above the proposed Project.

(4.5) The next issue is **TRAFFIC** (pages 17 and 18 of Scoping Report) which includes **Safety, Pedestrian Traffic and Roadway Infrastructure**. According to the Scoping Report, page 11, Traffic due to Congestion was the #1 concern of surrounding residents.

The existing casino has “12,000 people visiting daily and if new facilities open it would mean 100 times more traffic,” according to Tobin White, Tribal Administrator in his speech to the Soboba Springs Community on May 8, 2007. Based on the traffic flow before the casino, this is an astounding increase. In the thirteen years since the original casino was built, the Tribe has not initiated road improvements to Lake Park and Soboba Road such as signalization or widening to mitigate the increased traffic of the present casino. Right and left turn lanes to handle this increased traffic flow were just recently installed by the City. A pedestrian crosswalk from the age 55 plus Soboba Springs Mobile Home Park across Lake Park was repainted, however, there are no Pedestrian signs or lights at night to alert motorists and the speeds at that point of the road are excessive for elderly to walk across safely. The Tribe has repeatedly denied requests for TASIN money to buy speed monitors on these two roads. Tobin White states that money is given to the City. The process requires the City to request money for improvements, the Tribe then approves what it wants to. The money, according to the City, is not a blank check. Speed monitors have been denied several times.

A Traffic Survey done by RK Engineering Group in June of 2008 (32) for the City of San Jacinto, states that the number of vehicles on Lake Park Drive between Soboba Road and the Ramona Expressway was calculated to be 15,019 on Thursday, May 8, 2008. For the same day, the vehicle count on Soboba Road from Lake Park to Chabela was 6036. That is a total of 21,055 vehicles for one day, a staggering amount of traffic for our small two lane country roads. This 24 hour traffic is definitely detrimental to the surrounding communities.

According to Lt. Vest, in an email dated Nov. 28, 2007, he stated, "Last year, we (SJPD Traffic) wrote one large request that consisted of two radar trailers and six pole displays. That came to about \$70,000 and we got nothing". He was writing another request (two have been rejected) and said, "I have no idea if this will work or not, because we never get any feedback as to why things are approved or rejected by the tribe" (33). An article entitled "Indian Gaming Impact Mitigation", written by Lt. Vest in 2008 for our Soboba Springs Community Newsletter (34), also states the traffic difficulties generated by the current casino and the lack of Tribal support to mitigate this problem.

Recently, the City has chosen to increase the speed limits on these roads based on the engineering traffic survey that states that the traffic was going faster than the posted speed limits and that was causing a hazard. The solution was to *increase* the speed limit to reduce the hazards caused by speeding vehicles! There are no permanent pole-mounted speed awareness displays, nor radar trailers on these two roads. Speeding remains a safety hazard for the residents of our three communities, as well as reservation residents and casino patrons. Elderly residents have difficulty getting out of the Soboba Springs Mobile Home Park on Lake Park Drive to turn left across two lanes of heavy, fast moving traffic. Residents of the Hill Community and the Golf Course Community have to deal with pulling out onto Soboba Road with two blind curves in both directions and excessive speeds of the vehicles rounding those curves.

A SOC Member noted a vehicle counter in April 2008 that he believed may have been contracted by the City. It counted vehicles Monday through Friday from Ramona Expressway East to Soboba Road on Lake Park Drive. The counter was placed in the northbound lane of Lake Park Drive. 15,019 vehicles were counted. It is assumed these same vehicles exited the area southbound on Lake Park. A counter was also placed on eastbound Soboba Road before Lake Park Drive.

6,036 vehicles were counted and it is assumed these same vehicles exited the area westbound on Soboba Road. These two numbers totaled 21,055. This comes to 4211 vehicles per 24 hour day. This would equal 175 vehicles per hour one way through the intersection of Soboba Road and Lake Park and since there is only one entrance/exit to the casino, these cars would return bringing the total to 350 vehicles per hour passing through the intersection, almost 6 per minute. There would be 6007 per day, 250 per hour and 4 vehicles per minute, day and night, passing the Soboba Springs Mobile Home Park where elderly drivers are attempting to exit with no street light or stop signs, with cars approaching at 45 plus miles per hour. This situation is detrimental to our communities.

The new golf course clubhouse, which would be part of the annexation, is 40,000 square feet. The new casino/hotel project with all accompanying establishments would be 384,000 square feet. The parking structure would be 2200 spaces according to the Federal Register notification, December 14, 2007. It is estimated this establishment square footage could generate 27,000 cars per day based on the other five mega casinos that recently were allowed to expand. This would be the equivalent of having PETCO Park (42,445 fans) or ARCO Arena (17,317 fans) in our midst, the daily equivalent of attendance at a major league baseball game *every day and night, 24/7.*

Another issue is **access** to communities within City limits, but made islands through this proposed annexation. Both Soboba Road and Lake Park Drive would be the two access roads to the reservation, therefore considered Indian Reservation Roads (IRRs). Section 25 CFR 170.120 states that IRRs must be open and available for public use. However, the Tribe has recently erected a guard shack on Soboba Road where the public is generally prohibited from passing through.

In the 2008 State Legislative Session, Senate Bill 331 supported by tribes seeking control of access to their reservations, died in Appropriations. This bill reflects the concerns of the three affected communities over the Soboba proposed acquisition, as the legislature clearly stated in its analysis that "California has many non-Indian homeowners and businesses whose only access to their private properties is across IRRs and easements and who thus may be negatively impacted by this legislation."

A Traffic Impact Analysis Preparation Guide developed by The Riverside County Transportation Department (35) requires that the traffic and circulation impacts of a proposed development project, General Plan Amendments, and Specific Plans be analyzed. A thorough analysis of traffic patterns must be completed by the Tribe *prior* to the Project. A project scoping form must be submitted for approval prior to preparation of the traffic study. A Traffic Impact Analysis (TIA) is developed which takes into consideration all of the traffic concerns the citizens of the three communities have already communicated such as zoning, city sphere of influence, intersections, traffic volumes, special event traffic and traffic speed.

(4.6) The next issue is **BIOLOGICAL RESOURCES** (page 19 of Scoping Report). The City states in their letter their concern for multiple species in the Habitat Conservation Plan, as well as vegetation, riparian habitat and wildlife corridors.

Figure RM – 3, Vegetation Communities of the San Jacinto General Plan, January 2006 (36) shows the Horseshoe Grande area to contain Riversidean alluvial fan sage scrub and xeric chaparral from the San Jacinto River to the National Forest to the Soboba Indian Reservation. Two sensitive annual species are endemic to alluvial scrub vegetation in the Plan Area: slender-horned spine lower and Santa Ana River woollystar.

According to Multiple Species Habitat Conservation Plan, Volume 1 – Section 2.0 page 14 (37) “regional diversity in conserved areas translates directly into biological and genetic diversity. By ensuring regional representation of species and redundancy of resources, there is some buffer against the effects of natural and anthropogenic catastrophic events, such as wildfires, floods, and disease, on conserved areas.” The Horseshoe Grande area is prone to excessive winds, dust storms, and floods. Surrounding areas are prone to wildfires. Excessive building and concrete exacerbate these issues. Winds have caused building destruction and large paved concrete areas prevent rain from soaking into the ground.

The Mammal Species Survey Areas map along with the Final Critical Habitat Report (38) shows the Horseshoe Grande area to be habitat for the San Bernardino Kangaroo Rat and the L.A. pocket mouse. The *Final Critical Habitat Report* from the Department of Fish and Wildlife, dated October 17, 2008, states

that Unit 3, encompassing the Soboba Reservation area and the lands adjacent to the proposed fee-to-trust transfer “contains one of only three large extant core populations of the San Bernardino kangaroo rat and is the only core population in Riverside County. The physical and biological features within this unit may require special management considerations or protection to minimize impacts associated with ...urban development. Large- scale development projects may permanently eliminate and fragment habitat containing the PCEs (primary constituent elements) for the subspecies. Because this subspecies is active at night, lights from adjacent developed areas should be minimized and directed away from San Bernardino kangaroo habitat.” The lights from the current casino complex extend over a large portion of this sensitive habitat and light up acres of land and the night sky with a white glow.

The Burrowing Owl Survey Areas map shows the existence of Burrowing Owls in the Project area (39).

These and many more possible species of wildlife in the Project area are designated in the Multiple Species Habitat Conservation Plan (MSHCP) (40).

Other wildlife spotted in our area include coyote, hawks, bald and golden eagles, large owls, toads and frogs, skunks, raccoons, rabbits, mountain lion, bob-cat, snakes, herons, sandhill cranes, geese, butterflies and a variety of birds.

All of this vegetation and wildlife would be adversely affected by a heavily commercialized building area with its traffic and pollution and would negatively affect the biological diversity and resources of the area that are intact at this time. Increased traffic and casino activity may be the cause of the decline of the coyote population which ran in packs and is now almost non-existent.

In a report, “Native Communities and Climate Change: Protecting Tribal Resources as Part of National Climate Policy” (41), page 6 and 7, it states “because fossil fuel emissions are such a major contributor to climate change, development of alternative energy technologies will be an important component to any future strategy. Tribes are the most vulnerable to the impact from climate change caused in large part by conventional fossil fuels. The change fundamentally harms tribal culture and the close relationship tribes have with the land, water, wildlife and other natural resources.” Yet, this Project will increase emissions and

further deplete this area instead of preserving the land, wildlife and natural resources.

The City of San Jacinto is in the San Jacinto Watershed. According to *The Guidebook for Living in the San Jacinto Watershed, 2006*, (42) the San Jacinto Watershed Council lists various environmental challenges facing this area:

Storm water Pollution (page 6) – Trash, bacteria, pesticides, fertilizers and oil wash into streets and storm drains and contaminate our streams, groundwater, and lakes.

Trees and Urban Forestry (page 14) - The urban heat island effect is due to the replacement of plants with asphalt, concrete, and building surfaces that absorb and store heat. Trees improve air quality by collecting and filtering dust and other pollution particles, absorbing carbon dioxide, and releasing oxygen. They improve water quality and reduce flooding by intercepting rainfall and increasing its absorption into the ground.

Fire Safety and Fuel Modification (page 16) – Fires are always a serious concern. If you live in a canyon or on a slope, the risk is even higher, especially if your property is adjacent to natural space.

Air Quality, Automobiles, and Energy (page 17) – Electricity generation and the use of fossil fuels for transportation are the major sources of air pollutions in the United States, contributing to smog, acid rain and global warming. One of the single most effective ways to improve air quality and help the environment is to reduce dependence on cars and gasoline.

The Multi-Species Habitat Conservation Plan (page 29) – Certain areas are considered important to keep as open space. This conserves habitats for some of our most beautiful and threatened species of wild life and provide linkages among the conserved areas. The San Jacinto River is a vital corridor in this Habitat Conservation Plan. As development continues in our watershed, we must ensure that enough of the “criteria areas” of the MSHCP are conserved, to ensure that our river continues to meander in winter across the valley, nourishing rare plants that are found nowhere else, providing a haven for large and small wildlife, and replenishing our underground water.

The Tribe’s proposal will be detrimental to the surrounding communities because of increased storm water pollution from this large commercial project; buildings cement parking structures, and asphalt will replace nature and cause more urban heat; fire hazards make the project even more dangerous and especially with no

evacuation plan for the communities; the Project will bring more cars, more pollution to the area; the Project and accompanying traffic will make it even more difficult for habitat to use the wildlife corridor from the San Jacinto river to the mountains. Mountain lions, coyotes, rabbits, owls, to name a few still make this area home.

According to the document on the Assessment District 94-1 (43), the piece of property for the proposed Project had a master plan, called the Soboba Springs Project, incorporating approximately 400 acres adjacent to the intersection of Lake Park Drive and Soboba Road. "The master plan also provides a 3.6 acre open space/park, 7.8 – acre open space/park and hiking trail and 46.2 – acres open space/park and hiking trail. Residents, who bought into our three communities affected by this Project, used this plan as a guide for the lifestyle we wanted to invest in. Maintaining the City zoning of "light residential and recreational" would ensure a safe investment for residents of pre-existing residential communities.

(4.7) The next issue is **LAND USE PLANNING** (page 19 of Scoping Report). The City, in its letter, is concerned about the City's General Plan zoning for the area as low density residential and open space. It is concerned about land use conflicts of increased negative impacts and regulation of those impacts in the future.

It is clearly evident that the Horseshoe Grande property is not zoned for commercial activity based on the City of San Jacinto Zoning Map and Land Use Policy Map from the San Jacinto General Plan (44). The first page of the Zoning Map shows plans for a park on the land southwest of the Soboba Springs Mobile Home Park. The second page shows LDR, Low Density Residential (2.1 to 5.0 Dwelling Units per acre) for the Horseshoe Grande area, including the land where the proposed hotel/casino would be constructed.

When the Tribe purchased this property, it knew the zoning was not conducive to a huge destination resort, strip malls and restaurants. The Tribe wants to develop the land as commercial and once it is in trust, there will be no city or county oversight. The residential character of the entire area will be destroyed and changed forever. Scenic views will be forever altered and wildlife will be displaced and disappear which is already happening with the coyote. This will be

detrimental to the surrounding communities, to the natural environment so important and vital to this area, and to the City of San Jacinto's General Plan.

According to the Scoping Report page 11, residents stated that this issue was the 3rd and 7th most important concern, "altering the peaceful and quiet rural community that is essential to retirement". When buying property and moving to an area, residents consider zoning in their neighborhood. To change zoning after citizens have bought their homes or moved into an area zoned light residential is unjust and unethical. Changing from light residential to dense commercial cannot be mitigated if the citizens' bought into a quiet, rural residential area. Negative impacts and a decline in property values associated with living next to a heavily commercialized area cannot be mitigated.

(4.8) The next issue is **HAZARDS AND HAZARDOUS MATERIALS** (pages 23 and 24 of Scoping Report). The Tribe contends that there will not be a detrimental effect to the surrounding communities from hazards or hazardous materials. **Flooding** and **Fires** are the two hazards that have recently impacted our area.

Several fires in the foothills affected our area by burning away the chaparral, creating bare land and causing erosion. The steep mountainsides allow rain water during storms to run like rivers across Soboba Road causing landslides, mudslides and closure of the road. That leaves only one road out of our area to use in case of evacuation, Lake Park Drive. Adding a resort hotel to this area would make this even more dangerous during a natural disaster. The City of San Jacinto erected a Mud Interceptor (45) to mitigate this flood problem. An area consisting of primarily cement would increase the flooding issues.

Pictures are included (46) that show the cleanup of mud prior to this Interceptor in our Soboba Springs neighborhood off of Soboba Road. This area is adjacent to the Project area that does not have a Mud Interceptor. The first picture shows a catch basin surrounded by a chain link fence that is filled to capacity. The last picture shows the dust and pollutants generated during this cleanup, a monumental, dirty task.

Another hazard is the underground gas tanks at the proposed service station as well as disposal of hazardous waste such as oil or chemicals. Jeff Scott, the EPA's Waste Management Director for the Pacific Southwest Region, states, "Proper operation, maintenance and leak prevention is critical because unseen leaks caused by corrosion, overfills or other spills can pollute precious ground water supplies". To prevent releases, federal law requires that all regulated underground storage tanks have spill and overfill equipment and corrosion protection in place by December 22, 1998. Releases that are detected quickly can be cleaned up at far less expense than releases that go undetected for long periods of time. Will the Tribe comply with these federal mandates on the proposed fee-to-trust reservation land? Have they complied on their present reservation land? Both are dangerously close to the San Jacinto River basin and precious underground water tables.

(4.9) Negative effects must be considered related to **SOILS** and **GEOLOGY** (page 24 of the Scoping Report), topography, seismicity, and mineral resources. The City's letter states that mudslides, non-uniform subsidence, emergency evacuation, and the emergency services issue must be considered.

The Project site is located within a known, active **fault** zone. According to a SOC member report (47), the epicenter concentration is highest along the San Jacinto Fault – the area of the proposed high-rise casino/hotel complex. A possible 6.7 earthquake predicted for the next 30 years would cause many deaths and injuries, especially in high-rise buildings, even those built to rigid safety standards. It would be extremely dangerous to put a high rise hotel on such a fault zone and it would be detrimental to our communities since emergency services would be spread thin in an earthquake catastrophe.

The **soil rating** for the Project area, according to a SOC Member's report (48), is subject to liquefaction in the event of a major earthquake. Building standards would be under tribal sovereignty and control which raises troubling questions about safety of the community and hotel/casino patrons.

Regarding the **flood zone** issue, both the proposed site and the present site of the casino are in Flood Zone X, according to a SOC member's report (49). Therefore,

the contention by the Tribe that it must move the casino to the new project site because of flood issues with the present site, are not substantiated.

(5) The next section of the Indian Regulatory Act showing the Project **WILL NOT BE DETRIMENTAL TO THE SURROUNDING COMMUNITIES** deals with the **SOCIAL ISSUES** of which there are seven components.

(5.1) The first issue is **EMERGENCY RESPONSE** (page 20 of the Scoping Report). The City is concerned about response times related to fire, emergency and health issues. If the three communities in SOC are surrounded by reservation land, there will be issues of access as there are now with the present reservation boundaries. Time will cost lives. PL 280 must be clarified and agreed to by the state, local and federal agencies as well as the Tribe in order for clear standards of control and response to be adhered to. All of these issues must be mitigated for the Soboba Reservation's policy *before* any fee-to-trust approval is even considered.

The California Gambling Control Commission Regulation CGCC-7 (50) approved by the Tribal-State Association, states that there must be a clear Emergency Evacuation and Preparedness Plan for each gaming facility. During several recent gun battles and fugitive investigations on the reservation, no evacuation plan went into effect at the casino to protect and/or evacuate the public. During the massive sheriff SWAT presence on 11/19/08 (58), the casino was open and fully operational with no mention of criminal activity that could invade the facility and harm its patrons. A dangerous delay and a massive traffic pileup for the entire length of Soboba Road resulted after the sheriff's department closed a section of Lake Park which was used as a command post. Any emergency in the three surrounding communities during this time could be disastrous as there was no access to or from the communities from Ramona Expressway for several hours.

A letter from Wally J. Leimgruber, Imperial County Supervisor, March 27, 2008, (61) shows the property tax losses for a proposed casino by the Manzanita Band of Mission Indians. He states the importance of county public services and the fact that "these mandated services have been significantly impacted by the expansion of Indian gaming" related to fee-to-trust acquisitions and the loss of property taxes to pay for these services. He goes on to say "The California experience particularly has made clear that large casino facilities have impacts

beyond the immediate jurisdiction in which they operate. Attracting many thousands of car trips per day, larger facilities cause traffic impacts throughout a local or even regional transportation system.” He believes the BIA should address the issues of citizen safety by establishing a “coherent and consistent policy for acquired lands consistent with Section 20 of the Indian Gaming Regulatory Act”.

(5.2) The next issue is **POLICE SERVICES** (page 20 and 21 of Scoping Report). The Tribe recently discontinued its extra patrol services from the Riverside County Sheriff’s Department and subsequently has had a multitude of crimes and criminal activity on the reservation as well as confrontations with the Riverside County Police Chief.

The Soboba Tribe is also leading the way in trying to dismantle PL280 which mandates protection for the reservation and engage in *retrocession*, a process to remove themselves from PL 280 services and attempt to build their own justice departments with their own police departments and court system.

Further information comes from Stand Up For California (52) in which it states that without PL 280 no emergency services can be provided to the Reservation, no protection from law enforcement for criminal acts on the reservation and no emergency services can be provided for the patrons of the casino, a requirement of the 1999 Tribal State Compact. The report also cites a brief list of incidents that are independent of one another, but which when pieced together show an alarming trend of increased organized criminal and gang activity. The outcome of these incidents has been determined by whether or not there was cooperation, mutually agreed upon local protocol, or an enforceable agreement between the Tribe and law enforcement. The report goes on to say that this list does not begin to address the ripple-effect of increased crime that flows off reservation related to gaming further exacerbated by increased traffic, DUI’s, meth use and sales. On the Soboba Reservation deputies have seized assault weapons and recovered \$500,000 in stolen vehicles, in addition to being engaged in three shootouts, three tribal member deaths and a former felon being held without bail.

The report states that the Soboba Band of Mission Indians does not appear to be ready to engage in cooperative agreements that are judicially enforceable by the State of California. Thus, why expand the jurisdiction and authority of a government unwilling to provide adequate safety for not only its members but for

the thousands of non tribal citizens it invites onto the reservation in order to enjoy economic development. What responsibility will the Secretary of Interior and the National Indian Gaming Commission take to protect the life safety of the casino patrons? Soboba has offered NO alternative plan for public health and safety other than to state elimination of PL 280.

This uncertainty in the area of who provides services and how, is unsettling to the SOC communities who would be directly affected by this fee-to-trust acquisition.

According to Lt. Vest, San Jacinto Police Chief in 2008, "if the area is approved and dropped from the city, the responsibility for police and fire protection would revert to Riverside County (Fire and Sheriff). For our SOC communities, this may mean longer wait times for service. This would definitely be detrimental to our communities.

(5.3) The next issue is **UTILITIES** (page 21 of Scoping Report). The water settlement will give the Tribe enough water for the Project, but monitoring its use in the future was discussed in the Water Resources section above.

The City is concerned with the waste water treatment facility and the City's groundwater supplies. A picture of a water treatment facility also shows the possible visual impact of such as structure (53).

A report by a SOC member relates information she received from Lyle Treend, Southern California Edison and Mrs. Flores, The Gas Company (54). Both stated that they would need specific plans from the Tribe before they could calculate the cost and requirements of electric and gas service to the Project. Mr. Treend stated, "Current facilities may need to be upgraded to support outlying communities". The three SOC communities may be affected by increased demand on power lines in the area and possible loss of service during construction and upgrading. The Tribe should give the utility companies a detailed plan of the Project *prior* to any fee-to-trust acquisition approval so that the terms and conditions can be discussed and mitigated. Tribes are exempt from local regulation of building and other types of codes.

(5.4) The next issue is **CRIME** (pages 22 and 23 of Scoping Report), the 4th most important citizen concern (page 11).

According to the document, Gambling In the Golden State, May 06, "six years after casino openings, property crimes were 8% higher and violent crimes were 10% higher in casino counties."

In the Hesperia Star article, dated 6/6/06, information is given that proves that "casinos raise the level of serious crime in a community over time, despite casino revenues spent on additional police, according to a new study." (55) The study, "Casino, Crime and Community Costs" by David Mustard of Terry College of Business at the University of Georgia and Baylor University Professor, Earl Grinois, looked at all 3,165 counties in the United States from 1977 to 1996 (reference <<http://www.terry.uga.edu/%7Edmustard/casinos.pdf>>). "Five years after a casino opens, robbery in the community goes up 136%, aggravated assault is up 91%, auto theft is up 78%, burglary is up 50%, larceny is up 38%, rape is up 21% and murder is up 12%, compared to neighboring communities."

A document entitled, "Gambling and Crime Among Arrestees" by the National Institute of Justice (56) found that "both men and women arrestees who are compulsive or pathological gamblers tend to be from lower social and economic classes...and those arrestees were pathological gamblers in Las Vegas and Des Moines three to five times the percentage of the general population." This group committed double the robberies of low-risk gamblers; one in four assaults reported by pathological gamblers was related to gambling; one-third of the gamblers sold drugs to finance their gambling; sixty percent of the arrestees used illegal drugs; two-thirds reported they drank alcohol to the point of dependence; forty percent had committed more than one theft in the past year. There are social ills engendered by problem gambling and gambling in general that must be dealt with for the safety of the surrounding communities.

The document developed by the San Jacinto Police Department entitled, "Calls for Service and Arrest Analysis" (57) shows a dramatic increase in crime, especially citations, from 6/04 to 12/07 in the area around the Soboba reservation, east of Ramona Expressway. Crimes committed only at the Soboba Casino are outlined in a document printed from an Excel Spreadsheet from Lt. Vest, San Jacinto Police

Chief, (58) that shows dramatic increases in all crimes from 1999 to 2007 at the casino.

A recent crime, currently being investigated, shows the vulnerability of the senior citizens at the Soboba Springs Mobile Home Park on Lake Park Drive which is passed by patrons going to the Soboba casino. In December, 2008, a car entered the unlocked gates during the daylight hours, stopped at the first mobile home, a lady knocked on the door, an ill elderly homeowner answered, let the lady in because she asked to use her phone. When the lady asked for a glass of water, the resident went to the kitchen and the lady stole her wallet out of her purse. Nothing else was targeted except cash, possibly to use at the casino a mile from the Mobile Home Park. A resident in the Soboba Springs community, while working in her yard, has had people stop and ask for gambling money! Many patrons of the casino, coming into our area, are not the law-abiding citizens we would hope to see. As a result, crime and fear has infiltrated our formerly quiet, rural communities.

Another document, "Gambling With Our Future" (59) also confirms the increase in crime at the Casino San Pablo with the introduction of slot machines. Emergency calls to the casino increased 341%, Ambulance calls increased 233% and Trespassing calls near the casino increased 343%. Vehicle Theft increased 279%, Disturbance 219%, Burglary 243%, Drunk in Public 100%, Drug Possession, 200%.

It is evident that "a casino fundamentally alters the environment in which it is located. It provides a myriad of opportunities for criminal activity and has the potential to attract a larger segment of the criminal population, increasing the possibility of economic, property and violent crimes to occur".

The Soboba Tribal Administrator, Tobin White, during a tour of the Reservation in 2007, stated to a SOC member and her husband, that the man guarding The Oakes property no longer sits in the guard shack erected there because he was shot at. He also stated that a guard shack erected on Soboba Road was to keep the criminal element out of the reservation. Problems have risen with this premise, as crime and gun battles generating on the reservation have spilled over into the city and our communities. Police and emergency services must now stop at the guard shack to sign in to investigate these crimes. The reservation has

been an escape route and safe haven for criminals. Some of these incidents are documented in newspaper articles (61).

A letter by Riverside County Sheriff Sniff, dated July 28, 2008, (62) outlines the concerns about access to the reservation by law enforcement authorities to enforce California criminal statutes required by PL 280. He states that Tribal Council actions have created safety issues for tribal members, their employees and the general public. The latest confrontation required the police to close Lake Park Drive and use it as a staging area and helicopter pad in order to search the reservation to apprehend a fugitive (63). Our formerly quiet residential neighborhood has become a battle zone.

Appendix C of the Indian Country Drug Threat Assessment 2008, deals with the policing and law enforcement in Indian Country under Public Law 280 (64). Table 15 shows the confusing jurisdictional issues relating to crimes where the offender or victim is either Indian or Non-Indian. There are also crimes where the jurisdiction is not conferred under PL 280. Participating agencies involved in combating criminal activity and drugs are the FBI, DEA, BIA, ATF, tribal police departments and state and local law enforcement agencies. Presently, the Soboba Tribe and these agencies are at odds regarding law enforcement on the Reservation.

According to Cheryl Schmit, Director of Stand Up For California, PL 280 states that local governments are required to provide law enforcement, fire and ambulance services to Indian lands. This requirement is generally not a significant increase in emergency services costs when local governments are dealing with residential tribal lands; however, there is a significant increase in costs when a commercial facility such as a casino is involved. In addition to significantly impacting the fiscal aspects of local government, Public Law 280 dramatically restricts local government by its lack of any regulatory provisions. This distinction in jurisdiction between law enforcement/emergency services and regulatory authority creates issues of inadequate and insufficient public protection for all citizens on and around Indian lands.

If the fee-to-trust acquisition is approved, these issues will only magnify with the inclusion of more land, the golf course, clubhouse, hotel and new casino, all surrounding our three SOC communities.

(5.5) The next issue is **MINORITY/LOW INCOME** (page 23 of Scoping Report under Environmental Justice). The Tribe states that low income and minority populations would benefit from this Project. As shown above in the article “Gambling and Crime Among Arrestees”, most pathological gamblers come from a low socio-economic group. Losing money through gambling contributes to crimes, arrests, drug and alcohol use and breakup of the family unit. Casinos do not make money by giving it to minority and low income patrons. Rather, these patrons fund the casino profits at the patrons’ social expense.

(5.6) The next issue is **CULTURAL RESOURCES** (page 23 of Scoping Report). Social values of Indian Tribes are closely tied to their cultural resources including paleontological, historical and archeological resources in their area.

The National History Preservation Act, Section 106 is applicable in preserving any cultural resources of the area. The purpose of Section 106 is to evaluate the effects of any *federal* undertaking on cultural resources as early in the NEPA process as possible. An archeological evaluation and/or study must be completed for the proposed project and submitted to the State Historical Preservation Office for review and concurrence.

SOC contends that destruction of these possible cultural resources would not only be detrimental to the Tribe, but also to the surrounding communities. Covering over these sites with a destination hotel/casino resort and parking structure would not help mitigate this destruction.

A SOC member’s report, however, states that there is no evidence of a claim that the proposed fee-to-trust land was a historic site or contained artifacts or cultural resources and contends that the Project will not preserve Tribal culture (65).

(5.7) The next issue is **PROCEDURAL AND OTHER LEGAL ISSUES** (page 25 of Scoping Report). This fee-to-trust acquisition and proposed casino Project must follow strict federal and state legal guidelines. SOC contends that many of these guidelines have not been followed and this has jeopardized the process and made it difficult for the surrounding communities to respond. We do not believe the Tribe has been honest and forthcoming with its plans and has not involved the communities or desired to work together in the planning of this Project.

On July 24, 2007, the Soboba Band of Luiseno Indians created a Resolution (66) stating that they wanted to submit to the BIA an application for the Horseshoe Grande Fee-To-Trust comprised of total acreage of approximately 534.91 +/- acres.

On December 14, 2007, the Federal Register notice, issued by the Department of Interior and the Bureau of Indian Affairs, stated the Tribe wanted 289 acres put into trust (67).

A SOC member contacted the Tribal lawyer, Karl Johnson, asking for information about the possible fee-to-trust application on August 15, 2007, October 5, 2007, and November 21, 2007(68). Even though the Resolution was public information, Mr. Johnson stated that he was unable to talk about it publicly until the Federal Register notification (email of December 18, 2007). At that time he said the Federal Register was incorrect stating 289 + acres when it should have been 534+ acres. The Federal Register information is given to the BIA by the Tribe and dated by Carl Artman on November 9, 2007 and the tribal lawyer should have known it was incorrect and attempted to correct it before publication. The person to contact with any questions, John Rydzik, BIA Environmental Scientist, (916) 978-6042 was on vacation from December 16 to December 26, 2007.

The first announcement to the public came out on December 21, 2007 as an article in the Press Enterprise tucked away in the "PAGE" section which could easily have been overlooked. Not everyone in our three communities gets the Press Enterprise. Some subscribe to the L.A. Times, Riverside County edition.

In an article on December 14, 2007, a journalist who was called and told about the proposed fee-to-trust application, interviewed Rose Salgado who stated the Tribe "wanted to annex the site not necessarily to allow a casino there". This was in direct conflict with the Tribe's resolution which Ms. Salgado signed on July 24, 2007 and with the Federal Register posting which states a hotel/casino was planned. A project of this magnitude would not be forgotten or misinterpreted.

A Public Scoping Meeting was scheduled for January 8, 2008 (less than 30 days notice) and comments were to be heard regarding this incorrect Federal Register information. Further written comments were allowed until January 22, 2008. The time from the local notifications of the actual acreage involved, December 21,

2007 at the earliest and January 4, 2008 at the latest gave little time to prepare for a public scoping meeting where comments would be heard by BIA and Tribal officials. Combine this with the fact that the contact person, John Rydzik, was on vacation and this was scheduled in the middle of the holiday season shows either a lack of consideration for the citizens of the city, or a total disregard for the legal procedures.

A SOC member emailed Mike Hiles, the Tribe's public relations person, at <mhiles@mphpr.com> on January 2, 2008, (69) to tell him about the three surrounding communities and to ask why notices weren't placed at the entrances to each of these three communities (now SOC). They should have been on the list of possible notification procedures, since the Indian Reorganization Act states that the Tribe must show the annexation and Project "will not be detrimental to the surrounding communities". These three communities are the closest and most directly impacted by this proposal and should have been notified directly. When asked why notice wasn't placed in the Riverside edition of the L.A. Times Mike stated that no one reads that in this area and he didn't have enough time to get it in anyway.

Mike Hiles responded saying he was getting out notices on January 3, 2008. The notice (70) enlarged to 24" X 36" was put on a 4x4 wood post and stuck behind a yellow utility object where no one could get to it or see it, especially passing motorists. This gave residents five days to gather information and respond at the community meeting, January 8, 2008. Some Hill Community members received this notice when it was placed in their mail boxes with no postage paid. The Mobile Home Park and the Soboba Springs Homes had to rely on this 24" X 36" posting. This was the local notification for the community citizens who may not get the Press Enterprise, read the City of San Jacinto website daily, or go to the Hemet, Valle Vista or Riverside Library and look at the message board daily.

Adding to the confusion, the postings at the three communities differed in content and information from the original Federal Register.

Federal Register
35-40 acres proposed for development
300 room hotel
No gas station mentioned

Public Notice Sign
45-55 acres proposed
250-300 room hotel
12 pump gas station

2200 space parking garage

doesn't mention size of garage

The Federal Register also does not coincide with the Scoping Report information on pages 3 and 4.

Federal Register
90,000 sq ft casino
224,000 sq ft hotel

Scoping Report
112,000 sq ft casino
210,000 sq ft hotel

The Federal Register states, "The new gaming facility would *replace* the existing one located on the reservation." However, according to the Tribe's 1999 Gaming Compact, Sec. 4.2 Authorized Gaming Facilities, "the Tribe may establish and operate not more than **two** Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance".

Under the IGRA, there is a general prohibition of the development of casinos on lands acquired after the cut-off date of October 17, 1988. However, in the IGRA, there are exceptions (25 US Sec. 2719 (a) (1) if such lands are within or contiguous to the boundaries of the reservation. While the Tribe may state they are *replacing the existing casino*, there is nothing to prevent them from having two casinos as is permitted through the Tribal State Compact. They can always change their mind once the land is put into trust and say that two casinos are in their best interests. Theoretically, that casino or some form of gaming could also be located in the Golf Clubhouse once the land is in trust. By not stating the correct acreage involved, which ultimately includes the golf course and clubhouse, crucial decision making issues will be hard to determine.

Another negative effect on the surrounding communities comes from the fact that we may become "islands" of city land surrounded by reservation land with only two roads for ingress and egress. These roads have been clogged for various reasons, floods, mud slides, fires, special events at the casino, accidents and police activity. A report by a SOC member (71) states that 385 homes will be at risk of being isolated from city and county boundaries.

An article entitled “Victims on reservation frustrated by Inaction” relates a similar problem of being land-locked within a reservation. This relates to a business on a Montana Indian reservation near East Glacier (72).

Brian Kelly owns several businesses on the Blackfeet Indian Reservation. He describes his problem as “sovereign anarchy”. The Tribe bans deputies from enforcing state laws, a fact he did not know when he invested in the businesses. When his business was vandalized by his tribal employees, he received no help in investigating the crimes.

According to Montana Board of Crime Control, crime on the Blackfeet Reservation was seven times that of the national average in 2005. America’s crime index, the article states, a combination of the seven most serious crimes – homicide, rape, robbery, aggravated assault, burglary, motor vehicle theft and grand larceny – was 2,575 index crimes per 100,000 people. On the Blackfeet Reservation, it was 16,465 crimes for every 100,000 residents.

The disconnect between the tribe and law enforcement leaves reservation residents feeling unprotected. The same would be true of our three communities as islands within the Federal Trust reservation.

In summary of Legal and Procedural Issues, the first procedural non-compliance error was the Notice of Intent published in the Federal Register on December 14, 2007, by the DOI and BIA stating incorrect acreage.

The second non-compliance error was the lack of timely notice given to the public and the confusing misinformation in the notices. If Mike Hiles had not been queried about this notification, subsequent notices probably would not have been posted.

According to the Department of Interior Regulations for Land into Trust, the off-reservation comment period should be 60 days. We were not given that time frame. A letter from Amy Dutschke, Acting Regional Director of BIA stated that even though the notification was incorrect on December 14, 2007, we had until January 22, 2008 to respond, over the minimum 30 days, even though it contained incorrect information on which to base our comments (73).

Another non-compliance error is the Scoping Report's publication of the Written Comment Cards that citizens wrote, but which cannot be read by citizens who received the report. Many of these cards are just dark pages. On page 13 of the Scoping Report, it states that this report is a "consolidation/representation" and lists potential effects of the Project. This does not give those people whose cards cannot be read, the voice they deserve when the Scoping Report is given to people who need to comment and make decisions.

During the verbal public comment period, there were statements made that were not incorporated into the document. The officials stated that the proceedings were not recorded. When asked why the casino could not be placed at the far northern end of the golf course, Chairman Salgado made the comment that that area contained kangaroo rat habitat. That information was not included in the Scoping Report, but was heard by participants. Since this proposed Project land is located in an endangered species habitat area, that comment was significant to the Environmental Impact Statement document.

The totality of these misleading statements, conflicting information, non-compliance errors and omissions have the effect of confusing and misinforming the public about the scope and legal issues connected to this Project. This non-compliance, confusion, misinformation makes it extremely difficult for the public to comment and discuss the impact of this Project on the surrounding and regional communities. It has been a year since this process started, so to give such little time for research and original response for the Scoping Report is unacceptable.

(6) The next section under the larger title, **WILL NOT BE DETRIMENTAL TO THE SURROUNDING COMMUNITIES** is **ECONOMIC** of which there are four issues.

(6.1) The first is **REVENUE** under the **SOCIOECONOMIC** title (pages 21 and 22 of Scoping Report). The City is concerned about its Bonds in relation to the Lake Park bridge construction. Tax increments from our area are used to repay these Bonds and they are currently outstanding. If the Horseshoe Grande Property is annexed, there will be a significant loss in tax revenue including the golf course and clubhouse, as well as the new destination resort Project and

additional businesses. This would be a violation of the covenants of the Bond documents.

According to a SOC member's research of the 2008 Property Tax figures of the Tribe's land holdings (74), the current annual property taxes are \$399,788.00 which includes 978.83 acres.

According to "The Economics of Gambling", written by Professor Earl Grinois, Department of Economics, University of Illinois (75), social costs from gambling are approximately \$214 per adult annually (of which crime = \$63). Social benefits are less than \$42 per adult. In a typical county of 100,000 adults the introduction of casinos would create additional costs of \$12.7 million annually and direct social benefits of \$4.2 million.

He determined that more people working next door to you may have nothing to do with the well being of the citizens in your area. Well being may actually decline. The value of an additional job has been estimated to be worth as little as zero to the community, or between \$0 - \$1,500. Gambling promoters argue gambling creates regional jobs. In general, however, gambling loses area jobs when local gambler dollars are removed from the area (when they otherwise would not have been) in the form of taxes or are spent by the casino owners or employees outside the area.

He also researched tax revenues and states that "taxes on gambling revenues cost \$2.53 per dollar of tax collected if the tax rate is 50 %, a number that rises above \$4.82 per dollar if the gambling tax rate is 20%". His research implies that gambling costs the nation \$30 to \$53 billion dollars.

A study called "Casino Impacts and Schools" (76) states that 40-50% of property taxes goes to education funding. Using Agua Caliente Casino as an example, if it were to pay its fair share equivalent of property tax (\$6-8 million) and corporate tax (\$7.5 million) it would bring a minimum of \$6-8 million into education funding. Currently Agua Caliente Band makes voluntary contributions to public schools in the range of \$30-50,000 a year, 1% of a fair share contribution.

The study found that "children of casino workers are likely to be poor or low-income. Based on wages earned at the casino, up to 70% of the children of Aqua

Caliente Casino workers, or 300 children, could qualify for subsidized school meals”.

If this Project is approved, the City will be the big loser. It will lose commercial and property tax revenue, property values will go down, other business in town that pay these taxes will suffer from the competition, crime rates will go up causing added expense to the city and county, jobs in the resort may have no oversight and may not include benefits or good wages. People will lose money so that the casino can make money. The SOC communities engulfed in this problem will suffer socially and economically.

(6.2) The next issue is **PROPERTY VALUES** of the surrounding communities (page 22 of Scoping Report). An article in the Valley Chronicle, July 25, 2008, stated that according to RealtyTrac, a national real estate company, San Jacinto had foreclosures on 265 homes (only those that had action on them in June, 2008). This is a 112% increase over June 2007 with action on 125 homes.

Riverside County is second only to Los Angeles County in defaults with 24,968 in the second quarter of 2008. In Riverside County 9.54 % of households entered foreclosure. The national average is 2% so it is obvious that our county and city are in dire conditions regarding home losses.

A SOC member and real estate professional took an informal poll of her colleagues and found that 100% believed that a casino on the Horseshoe Grande land would reduce home values in the immediate area.

In real estate terms, an *incurable defect* is the concept of external or economic obsolescence. Sellers must disclose all material facts that could adversely affect a buyer's use and enjoyment of the property. Those of us who live in the surrounding communities to this proposed Project would have to disclose all the potential negative effects of this project including noise, increased traffic, construction chaos, visual obstructions, increased crime threat and proximity, air pollution, and public services/safety concerns regarding jurisdictional issues and response time to mention a few of the potential negative effects. As a seller, we should not employ the idea of “caveat emptor” (let the buyer beware), rather “disclose, disclose” and possibly suffer the consequences of lower home values and sales.

(6.3) The next issue is **BUSINESS** (page 21 of Scoping Report). The City Chamber of Commerce should be concerned that existing businesses that offer the amenities in the Proposed Project will be and currently are being negatively affected.

The Clubhouse at the Golf Course currently pays commercial and property taxes on its facilities. Its restaurant and banquet facilities offer an excellent place for weddings, business meetings and social clubs. If these facilities were to be incorporated into the fee-to-trust land, their income would not be taxed and other banquet facilities would lose their business to them because the Tribe could lower costs.

The proposed hotel/casino complex would siphon money from other hotels, gas stations, spas, restaurants, without paying taxes. Special events would bring revenue to the Tribe without sharing that revenue with the city.

A SOC member report cites two studies, "Gambling in the Golden State 1998" and "Tribal Casinos and their impact on a California Community"(77). It outlines the devastating cost of casinos on a community in every economic category. The report states that "tribal businesses do not transfer funds to State and local governments like other businesses. Yet local government and local taxpayers must attend to the impacts of the business for the overall future health and safety of the community."

The motivation for Governor Arnold Schwarzenegger to renegotiate Tribal State Compacts has been both the financial and social justice issues of the failure of the 1999 Tribal State Compact. Soboba has a 1999 Tribal State Compact.

(6.4) The last section is the issue of the **CUMULATIVE EFFECTS** of the Proposed Action (page 24 of Scoping Report). The negative effects of this destination resort proposal will be felt initially through the construction process, increased traffic and noise and degradation of the surrounding communities' quality of life. These cumulative negative effects will continue on in the future and may or may not have been mitigated or mitigated successfully.

Since the original casino opened, there are negative effects which have not been mitigated at all including the speed, intensity or control of the traffic, the noise generated by it 24 hours a day, 7 days a week, noise from concerts and special events that go well beyond the city's noise ordinances, a constant glow of light pollution in the night sky, clogged evacuation routes with only one road to enter and exit, and serious gun battles and crime surrounding the reservation and our communities.

In a Press Enterprise article, August 26, 2008 (78), Alfonso Zavala, an organizer for the National Sand Drag Association, said they pulled out of Soboba for their event citing safety issues. He said his parents were forced to remain on the reservation after authorities closed off the only road leading to and from the area. He described it as "an emotionally difficult experience for them".

Extra costs for utilities and public services, water use and crime are effects that may not be known initially and which may get progressively more devastating in the future. The track record of cooperation between the Tribe and the City is not a good one. The City has extended its hand and the Tribe has not responded. Chances are it will get worse once the Tribe exerts its sovereignty on its annexed reservation land.

The precedent has been set in words spoken by the Tribal chairman, Bobby Salgado. In a Valley Chronicle article of August 1, 2008 (79), Salgado demonstrates his disdain for the County Sheriff's Department by saying, "Same old story of treaties being broken...The white man speaks with a forked tongue – you know the saying. This is 2008, not the 1800s where the cavalry came in and took our women and our kids and massacred them". Rose Salgado, a tribal council member stated, "...deputies have no right to enter the reservation. It seems equally clear that the sheriff cannot enter the tribal reservation, which is closed off to the public." In a Los Angeles Times article, June 10, 2008, (80) Chairman Salgado said that "No one has the right to tell Indians how to run their sovereign nations". When referring to the residents of the mobile home park complaining about gunfire from the reservation and bullets falling onto their roofs, Chairman Salgado stated, "If those in the trailer park aren't happy, they should get back on Plymouth Rock and sail back to Europe".

Some questions arise:

Would a Memorandum of Understanding (MOU) be legally binding when the city finds it is running out of funds to support the Project and the Tribe says it doesn't have the funds?

If the hotel/casino were erected on unstable soil filled with earthquake faults and there were no building permits or safeguards in place as there would be on city land, would there be lawsuits for injuries sustained when the building becomes unsafe? Would these lawsuits be binding on the Tribal nation, or ignored in their courts?

Would the citizens who patronize these establishments know that their civil rights are not guaranteed on Indian land?

Is it mandatory that the Tribe work with the local and state governments to mitigate problematic issues?

A SOC member's report on economic self-sufficiency (81) comes from a person who has worked in the Tribal community for many years and who has first-hand knowledge of their attitude and situation. She contends that the casino has started a downward slide for the Tribe and its members. It is especially devastating to the young children who only need to wait for a handout to feel self-sufficient. Drug abuse and domestic violence have increased since the casino opened and a new casino will only exacerbate the problems.

SUMMARY:

The Tribe's application for a fee-to-trust land transfer into their reservation and the Proposed Horseshoe Grande Project of a hotel/casino destination resort is not in the best interest of the Tribe and it will be detrimental to the surrounding communities.

SOC has gathered information and facts to prove that this annexation and Project is too massive and overbearing, environmentally, socially and economically, for the area in which it is being proposed. The tone of the entire area will forever be altered and it will not be a positive development for the surrounding communities if it is placed on the Horseshoe Grande land.

Evidence has been gathered to show that this land is not being reacquired as former reservation land, that cultural resources will not be preserved, and that the Tribe's desire to exercise complete sovereign powers over land that is in fee to trust by the Tribal government and do it with the combative attitude presently displayed by the council, is not positive for the local, state and federal government nor its citizens. Citizens of the surrounding communities would be islands within reservation borders and would have little input in what happens on sovereign Indian land around them with regard to gun fire, noise and visual pollution, traffic, crime, air quality, hazardous conditions and water and environmental issues.

The Scoping Report shows an overwhelming concern about this Project being placed in the middle of a rural residential area. Letters and comments from residents show disapproval of the fee-to-trust transfer and developing a hotel/casino complex on the Horseshoe Grande property. SOC members have compiled information to prove that this would be detrimental to the surrounding communities environmentally, socially and economically.

The City has grave concerns and stated that, due to issues with citizen safety, it wants the application rescinded and if the Tribe does not withdraw, then the City will not support the Project (82).

The Executive Director of The League of California Cities, in a letter dated February 22, 2008, (83) asks The Secretary of the Interior for more local government consultation when fee-to-trust applications are submitted by tribes.

The Association of California County Supervisors is also concerned about this issue (84).

CONCLUSION:

The Secretary of the Interior must value the City's disapproval of this Project within its city limits and its stand that it will be detrimental to the surrounding communities, taking into consideration the citizen's safety and well-being.

SOC agrees with Colleen Ferrini, Colusa County Citizen for Safe Water, when she states, "There are very few people who would deny economic development for the tribe. It would be nice if the neighbors were considered as well."

SOC wants the Tribal Members to be self-sufficient, to have jobs and career opportunities, however, this Proposed Project, a hotel/casino high-rise resort situated on light residential zoned land in the middle of a predominately senior citizen residential area is not appropriate and not the answer to those goals.

Their casino and any other projects planned for the reservation may be their answer to their self-sufficiency. We believe, however, that it is not productive to increase allotment checks to Tribal members in the hopes that the money will go for education and job security. Many Casino allotment checks have been used to fund drug habits, buy guns, increase crime and in fact stifle self-improvement. It is a well documented problem on the Soboba Reservation that plagues other casino reservation communities as well.

"Federal law is supposed to enable and help empower Native Americans to create or recreate a homeland, but was it intended to destroy other people's homelands to accomplish this?" Peter Hedglon, Mayor of Oneida, New York