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September 12, 2008

Re: City of San Jacinto Comments on the Administrative Draft Environmental Impact Statement for the Soboba Band of Luisefño Indians' ("Tribe") Horseshoe Grande Fee-to-Trust Application

Dear Mr. Rydzik:

Thank you for the opportunity to review and comment on the administrative draft environmental impact statement ("ADEIS") for the Soboba Horseshoe Grande Fee-to-Trust Application ("Project"). As a cooperating agency, the City of San Jacinto ("City") provides the following comments.

I. Preliminary Comments

As an initial matter, the City is very concerned that the proposed Project as described in the ADEIS is quite different than that described in the Scoping Report. For example, while the scoping materials referred generally to an events center, the ADEIS now includes an approximately 4,000 seat "Events Arena" in the Project Description. The Casino itself is also proposed to be much larger than originally disclosed. The Casino in the Proposed Action would be 160,000 square feet. Under the Reduced Casino alternative, it would be 128,000 square feet. Both alternatives are much larger than the originally proposed Casino, which was described to the public as 112,000 square feet. Restaurant and food service uses will also be much smaller, reduced from 190,000 square feet as described in the Scoping Report to just 30,000 square feet as described in the Proposed Action.

The newly proposed Events Arena in particular raises a major concern, given its potential to hold large events and its proximity to existing residential uses. The City believes that additional scoping is needed pursuant to 40 CFR 1501.7(c).

Additionally, it appears that the BIA did not consult sufficiently with all potentially affected agencies, specifically local law enforcement, fire departments, Caltrans and others. NEPA requires lead agencies to consult with affected local agencies in preparing an

environmental analysis. (40 C.F.R. § 1501.7; 516 DM 2.6(B).) The BIA must do so before releasing the EIS for public input so that the EIS will reflect all relevant views on the significance of the impact. (40 C.F.R. § 1502.9 (a) (the lead "agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action".))

## II. Alternatives

As will be explained in greater detail below, one of the City's major concerns involves inconsistency of land use regulation and the potential for conflicts with existing uses. None of the alternatives analyzed in the ADEIS, aside from the No Project Alternative, would address that concern. One straightforward alternative that should be analyzed in the ADEIS is reducing the size of the area to be transferred into trust so that no jurisdictional islands are created. Another potential alternative is to locate the proposed Casino-related facilities adjacent to the existing Casino and allowing only open-space and low-density residential uses that would be consistent with the City's existing General Plan. Given that the ADEIS acknowledged land use inconsistencies between the City's General Plan and the proposed Project, the ADEIS must include analysis of alternatives that would avoid those inconsistencies.

Additionally, it is not clear whether the waste water treatment plant ("WWTP") proposed as part of the Project would be required under Alternative 3 (Commercial Retail). Also, it is unclear whether the reduced casino alternative (Alternative 1) would involve a structure that is lower in height than the proposed Project, or not. All components of each alternative should be clearly disclosed.

## III. Impacts and Mitigation

### A. Aesthetic Impacts

While the ADEIS acknowledges that the Project would result in significant aesthetic impacts, it did not propose any mitigation to allay concerns regarding the potential lighting scheme for the Project. It is not clear, for example, whether the Project proposes to illuminate the casino with "Las Vegas Strip" style lighting. Notably, other casinos in the area do include highly illuminated signage, making such use at this Project reasonably foreseeable. The Project also proposes security lighting around structures and the parking garage. Similarly, the ADEIS is silent on whether any height restrictions would apply to the structures associated with the Project. Bright, multicolored and animated displays would be particularly incongruous with the existing setting, in which night skies are highly valued. Additionally, given the City's General Plan designations of the existing Project area (Open Space - Recreation, Rural Residential and Low Density Residential), such displays would not be possible absent action by the BIA removing the City's land use authority.

Thus, the BIA has an obligation in this EIS not only to disclose the adverse impact of such signage, but also to propose mitigation to lessen that impact.

Feasible mitigation could include, for example, a condition on the transfer that would prohibit animated signs, illuminated signs and other lights, height limitations and limits to a certain candle-foot brightness.

## B. Air Quality

The ADEIS must include a more thorough analysis of air quality in several respects. Also suggested below are a number of new and augmented mitigation measures. Development projects within the City and the region are subject to similar requirements, so such conditions should not present a burden on the Tribe.

### I. Hot Spots

First, a "hot spot" analysis of carbon monoxide must be prepared. Though the Project is not a "transportation project" in an urban area, it nevertheless may result in heavy peak traffic, particularly during special events. During the scoping meeting in January of 2008, nearby residents testified to their experience with "bumper to bumper" traffic on Lake Park Drive during special events. Such traffic occurs due to large numbers of attendees and limited access to the existing reservation. Carbon monoxide "hot spots" occur during heavy traffic moving at slow speeds. Though special events currently are hosted on the existing reservation, the proposed Project would expand that capability by including a nearly 4,000-seat Events Arena. This means that literally thousands of cars may try to enter and exit the reservation in a brief period of time. Because the proposed Project does not include the construction of additional access, and includes no limit on special events, such "hot spots" are likely to occur at an increased level, and thus pose a health risk to nearby residents. NEPA imposes an obligation on the BIA to analyze that potential human health risk whether or not the project is a "transportation project."

In addition to analyzing the impact of "hot spots", NEPA also requires that the BIA explore mitigation of significant health impacts resulting there from. Several feasible mitigation measures are suggested below that may lessen that impact. Specifically, the BIA should condition the transfer on the following:

- Limit the size of special events, and Events Arena, to the number of guests that can be fully accommodated on local roads.
- Require the Tribe to provide traffic control officers to regulate the flow of traffic on local roads (i.e., to keep cars in the parking lot until light cycles clear).
- Provide funds for signalization and signal synchronization to provide smooth exit from the reservation to major thoroughfares.
- Provide off-site parking near major thoroughfares and shuttles between the parking center and the Casino.
- Provide alternative access to the Reservation – extension of Esplanade is one possibility.

These measures would reduce the potential for harmful carbon monoxide hot spots near existing residences. By reducing traffic congestion and bottlenecks, such measures would also enhance the experience of the Casino's patrons, so should not present a burden on the Tribe.

## 2. Construction Emissions

The City appreciates that the ADEIS includes several mitigation measures to address construction air quality impacts. Several of those mitigation measures should be strengthened, however. For example, the requirement to replace groundcover should include a specific timetable within which such replacement must occur. Further, with regard to fugitive dust, the specific measures should be identified. Also, the transfer must be conditioned on the Tribe providing a limited waiver of sovereign immunity so that such measures can be enforced if necessary.

## 3. Operational Emissions

The ADEIS states that the Tribe should solicit information from the South Coast Air Quality Management District regarding mitigation of operational emissions. Because the emissions will result, indirectly, from the transfer, it is the BIA's (not the Tribe's) responsibility to solicit all necessary information, and to impose mitigation as necessary. If it does not, the ADEIS should analyze a worst case scenario.

Regarding potential odor-emissions from the proposed WWTP, the ADEIS states that odors from the plant shall not be perceived beyond the limits of the Tribe's property. This raises a concern for the Soboba Springs Mobile Home Park, which will be completely encircled by the reservation if accepted in trust. The ADEIS should ensure that no odors should be perceptible from any of the City's nearby residents.

## 4. Global Climate Change

The City appreciates the BIA's discussion of global climate change in the ADEIS. The state of the science, and analysis of climate change, has rapidly evolved. Though regulatory thresholds have not yet been established, many agencies nevertheless have been able to reach conclusions regarding the significance of greenhouse gas emissions. The California Office of Planning and Research recently released a Technical Guidance memorandum regarding analysis of climate change under the California Environmental Quality Act. In addition, the California Air Pollution Control Officers Association has published a white paper providing examples of how agencies may select thresholds with a quantitative analysis. Such analysis is important to quantifying the benefits of any proposed mitigation. Mitigation is necessary even in an uncertain regulatory context.

### C. Land Use / Jurisdiction

The ADEIS fails to reach a conclusion regarding land use impacts. The ADEIS must address several distinct land use impacts. The first involves the proposed Project's conflicts with the City's General Plan. The ADEIS began to address some of those conflicts with regard to some policies, but not others. More fundamentally, however, the ADEIS did not appear to confront the fundamental question: is the proposed Casino/Hotel Project compatible with low-density residential neighborhoods in a rural setting? Though the ADEIS states that potential conflicts are addressed in other sections (noise and traffic, for example), those other sections apply traditional impact analyses measuring only whether trips or noise increases. The relevant inquiry in the context of a land use analysis is the change in community character resulting from

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the placement of an intense and quintessential urban use in a rural residential setting. The Draft EIS for the Oneida Nation of New York Conveyance of Lands Into Trust (2006), section 4.8.6, for example, analyzed land use impacts by asking whether:

- The action would conflict with public plans, as embodied in community comprehensive or master plans, for the site or surrounding area.
- The action could result in a conflict with the character of the land in the surrounding communities.
- The action could conflict with the expectations of the public for development of lands in accordance with plans ensuring predictability.
- The action creates a patchwork wherein plans could be rendered less effectual.
- The action would weaken the effectiveness of the local governments to institute comprehensive planning along the landscape.

A similar inquiry would be no less relevant for this application. Further, mitigation for such impacts should address not only reducing noise levels to below a threshold amount, but also on alleviating the human impact of the new noise source. Such measures would include limiting operating hours, establishing buffers and adequate screening, and employing personnel to address noise complaints and enforce noise limitations, among others. Mitigation for visual impacts and traffic/access impacts are suggested above.

In addition to the change in community character, another equally significant land use impact of the proposed Project is to create at least two jurisdictional islands by the expanded reservation. Such jurisdictional oddities create well-documented land use problems, notably with regard to services. (See, e.g., "Growth Within Bounds: Planning California Governance for the 21<sup>st</sup> Century," Report of the Commission on Local Governance for the 21<sup>st</sup> Century (January 2000), at pp. 58-59.)<sup>1</sup> Here, that problem is intensified by the transition from City to Tribal jurisdiction. For example, because the Tribe currently requires State and County law enforcement to have a tribal escort on the reservation, significant delays could result for members of the City's communities that would be surrounded by the reservation in the event of an emergency. Additionally, while those communities currently enjoy the protection of a coherent land use plan, adopted and implemented by their elected officials, following the transfer, those citizens would have no recourse to their elected officials regarding potential nuisance businesses (such as unregulated adult businesses) and activities occurring directly adjacent to their homes.

As will be discussed in greater detail below, the City's proposed mitigation measure to protect the provision of public safety services to the City's residents in the islands is to require

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<sup>1</sup> The BIA itself addressed similar concerns in the Draft EIS for the Oneida Nation of New York Conveyance of Lands Into Trust (2006), section 4.8.6. As originally proposed, the Oneida's trust application included 17,370 acres, not all of which were contiguous. Ultimately, the BIA developed and adopted an alternative that involved only 13,086 acres that would "establish a more contiguous and compact trust land grouping than the Proposed Action." (Record of Decision, Oneida Indian Nation of New York Fee-to-Trust Request, May 2008, at p. 19.)

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the Tribe to enter a binding agreement with local and State law enforcement that would guarantee their unrestricted access to City areas surrounded by the reservation, without requiring an escort (as the Tribe is currently requiring for some law enforcement visits). A further mitigation measure proffered by the City would be to subject any development in the expanded reservation to City land use approval and business regulation. Of course, another option that could lessen land use impacts would be for the areas surrounding the islands to be subject to permanent open-space easements to ensure that no incompatible developments are later proposed.

#### D. Noise

The local community expressed its concern during the scoping meeting in January of 2008 that special events associated with the Project could lead to increased noise in the vicinity. Despite the Scoping Report's indication that it would do so, the ADEIS did not address that concern at all. This is a serious omission given that the proposed Project now includes an approximately 4,000-seat Events Arena to be located just across Lake Park Drive from the Mobile Home park. No analysis was presented of what noise levels could be produced by sporting events, concerts, or other events that may be hosted at the facility, or whether construction methods or materials are available that would prevent noise levels from intruding upon residential uses. Such potential impacts must be analyzed and all feasible mitigation measures and alternatives (including alternative locations) must be included.

It also does not appear that the EIS disclosed the existing baseline noise levels in the area. It referred to the City's Noise Element contours and data for another project that is four years old. Instead of providing current data, the ADEIS states that a less than 3dBA increase would be less than significant. NEPA recognizes, however, that the context in which an impact may occur is a factor in determining whether the impact is significant. Here, the context is a rural residential area. An increase in noise less than 3dBA may, therefore, be detectable and significant. Additionally, it is unclear whether cumulative noise impacts were appropriately addressed if no baseline noise data were provided.

Further, the mitigation measures identified for operational noise do not appear to include identifiable performance standards. For example, "Place refuse collection in an area that will reduce noise exposure" does not indicate where appropriate areas would be. Similarly, "Place fixed equipment, such as air conditioning condensers and cooling towers, inside enclosures and/or on roofs" does not indicate by how much the noise levels would have to be reduced. Such a performance standard is necessary in the event a certain type of enclosure, for example, does not fully reduce a noise impact and other options would have to be explored.

While the ADEIS acknowledged that noise events could occur at the parking garage that could exceed the chosen threshold, the ADEIS claims that such events would be infrequent. An impact may result, even if infrequently, and must be mitigated if possible. With regard to the parking garage, possible mitigation could include: pavement treatment to reduce tire squeals and external screening to reduce noise from the garage such as car alarms.

Additionally, the ADEIS describes construction of a wall as an "optional" mitigation measure. If the measure is necessary to reduce impacts to a less than significant level, the EIS

should so disclose, and should not describe mitigation as optional. Any potential impacts resulting from the construction of the wall (loss of views, for example) would also have to be addressed.

Noise from maintenance also does not appear to have been addressed. Leaf blowers, lawnmowers, power-washers and other maintenance equipment may produce very loud noise, particularly if it occurs close to residences. This potential noise impact should be addressed and appropriate mitigation should be addressed in this regard.

## E. Public Services

### 1. Police

The City appreciates that the ADEIS considers the potential increase in crime that could result from the Project. The ADEIS concludes that increases would not occur because one study found that crime could result from either gambling or tourism. Whether or not the study is sufficiently credible, we note that the Project involves both gambling (a casino) and tourist facilities (hotel, convention center and events arena). Thus, increased demand on police services is foreseeable under either scenario.

The discussion of demand for police services also lacks certain key information. For example, while the ADEIS notes that crime is higher in the cities than in Riverside County, it does not acknowledge that violent crime rates on the reservation are three (3) times higher than in surrounding cities. Further, according to an article in the New York Times<sup>2</sup>, and contrary to the information presented in the ADEIS, 911 calls to the existing casino have climbed steadily since the Tribe cancelled its contract with the Riverside County Sheriff's Department ("RCSD"). Criminal activity on the reservation has included very dangerous and significant crimes. In August of 2007, an armed robber tied up Casino employees and stole over \$1.5 million dollars. In May 2008, three men were arrested and a very large weapons cache, including high-powered weapons, rifles and hundreds of rounds of ammunition, was seized. In addition, approximately \$500,000 in stolen cars were also reportedly found on the existing reservation. Also, the ADEIS did not mention that the Tribe once contracted for law enforcement service with the Riverside County Sheriff's Department, but shortly thereafter cancelled that contract. This information is relevant to the analysis of law enforcement services because it speaks both to the demand created for services in the Project area and the burden that will be placed on existing local law enforcement agencies.

The ADEIS also describes an agreement between the Riverside County Sheriff's Department and the Tribe regarding jurisdiction and response to calls. That discussion should be updated to reflect the on-going dispute between those entities regarding the application of Public Law 280. Specifically, no mention is made in the ADEIS of the Tribe's insistence that County and State law enforcement be escorted when responding to calls on the existing reservation. The ADEIS needs to include an analysis of the increased burden the escort requirement places on law enforcement as well as the impact of any such escort requirement on the existing communities

<sup>2</sup> "Clash With Tribe Spurs Effort to Shut a Casino," NEW YORK TIMES (September 2, 2008), A14 [available online at <http://www.nytimes.com/2008/09/02/us/02soboba.html?n=Top/News/U.S./U.S.%20States,%20Territories%20and%20Possessions/California&pagewanted=all>]

that will be surrounded by the proposed expansion. Additionally, the discussion of the agreement between local law enforcement and the tribe should not be overstated. That agreement addresses communication and coordination. It does not, however, provide for any additional funding or other tangible measures to reduce the potential increased burden on law enforcement.

The City must respectfully disagree with the conclusion in the ADEIS that the Project will result in less than significant impacts regarding law enforcement. The ADEIS acknowledges that the RCSD is currently operating below capacity (i.e., with fewer peace officers than its service thresholds require). The ADEIS also acknowledges that studies have found a link between crime and gambling and/or increased tourism. Evidence also exists that contradicts the information in the ADEIS and that shows that 911 calls to the existing casino have increased, not decreased, since 2006. Further, evidence indicates that the Tribe requires County and State law enforcement to be escorted onto the existing reservation in order to respond to service calls, and that as a result of the Project, approximately 750 of the City's residents will be encircled by the expanded reservation and that a casino will locate immediately adjacent to those residential areas. Each of these facts indicates an increased burden on local law enforcement, and the local community that will suffer diminished public safety service levels.

The ADEIS anticipated increased service calls related to fire services based on a comparison to nearby tribal casinos. It is unclear why a similar comparison was not made for law enforcement services.

Surprisingly however, the ADEIS proposes no mitigation for potential impacts related to law enforcement. Given the potential impacts discussed above, mitigation should include, among others:

- A condition on the transfer to allow State and local law enforcement unimpeded access to the City's remaining jurisdictional territory that will be encircled by the reservation.
- A binding agreement between the Tribe and local law enforcement to provide funding for anticipated increased service calls, as well as a mechanism to increase funding if necessary.
- A binding agreement between the Tribe and local law enforcement to provide for on-Reservation law enforcement services.

## 2. Fire Services

The ADEIS indicates that the Tribe will construct two fire stations to serve the Project and the expanded reservation. While a fire department development plan is included as an appendix, there is no analysis of the financial feasibility of such an endeavor. Further, while a mutual aid agreement is "being discussed," no firm mitigation measures require it to be in place prior to finalization of the transfer. The ADEIS acknowledges that the Project could increase calls for fire service by approximately 700 calls. If the Tribe does not establish its own fire department, such calls could impose a substantial new burden on existing fire services.

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Therefore, the transfer must be conditioned upon the Tribe's binding commitment to create a fully funded fire department. The mutual aid agreement being negotiated with Riverside County and the California Department of Forestry and Fire Protection must also be in place prior to finalization of the transfer.

#### F. Transportation

The City appreciates the Tribe's willingness to contribute funds necessary to mitigate offsite traffic impacts. As the City has commented on prior occasions, that willingness must be reduced to a binding agreement prior to transfer of the Project lands into trust.

Additionally, we note that the ADEIS did not consider the possibility of creating an alternative access point to the reservation from Esplanade Avenue. Doing so could alleviate some traffic impacts at the Lake Park Drive and Ramona Expressway intersection, as well as impacts on local residents that have expressed concerns regarding access to their properties during special events. Doing so would also create an alternate route that could assist in rapid evacuation in case of an emergency. Given the above, the City urges the BIA to consider a mitigation measure requiring the extension of Esplanade Avenue in order to more efficiently serve the project area and Protect area residents as well as visitors to the Project.

Similarly, the ADEIS did not analyze potential impacts to residents of the surrounding communities, particularly Soboba Springs Mobile Home Park and the Soboba Springs and Soboba Heights communities. Residents testified during the scoping meeting that during special events, access to their homes was blocked due to "bumper-to-bumper" traffic along Lake Park Drive and Soboba Springs Road. While the ADEIS acknowledges that the Events Arena could create 6,848 daily trips, and while the Scoping Report stated that the BIA would do so, no analysis of the impact of that many cars on the roadways at one time was included in the ADEIS. That impact must be addressed in the EIS, as well as signals, traffic personnel and other potential mitigation.

#### G. Hazardous Materials

While the ADEIS did address hazardous material use and storage, to some degree, there appears to be no consideration of hazards from service station tanks or the WWTP, or impacts from leakage to groundwater. Further, there is no discussion of responsibility for responding to hazardous situations. While mitigation measures were provided that dealt with leakage from gas tanks, they were not tied to any analysis. The proposed gas station and its underground storage tanks are proposed to be located in close proximity to groundwater that supplies many of the City's residents and businesses. It is crucial that the ADEIS consider potential impacts to this drinking water source and mitigate those impacts.

#### H. Water Quality

Similar to the concerns noted above concerning hazardous materials, the City again notes that the proposed WWTP would be placed in very close proximity to a source of groundwater that supplies potable water for many of the City's residents and businesses. No analysis of potential groundwater contamination from the operation of the WWTP was provided. Potential pollutants include nitrates, total suspended solids and others. Additionally, the ADEIS needs to

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clarify which government entity would be responsible for monitoring and enforcement.

I. Socioeconomic Impacts

While the ADEIS concludes that overall the Project will have a positive fiscal impact, the City is concerned that the ADEIS did not address potential urban decay impacts, particularly associated with Alternative 3 (commercial development). The EIS should consider the potential that the Project will draw visitors and customers away from the City's commercial establishments, thereby leading to urban decay, as well as any feasible mitigation measures.

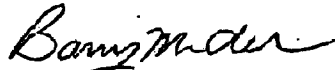
J. Cumulative Impacts

It is not clear which projects were included in the analysis of cumulative impacts. At a minimum, that analysis must include the proposed Tenaya and Festival projects.

IV. Conclusion

The City again thanks the BIA for the opportunity to review and comment on the ADEIS as a cooperating agency. We look forward to working with you on these issues. We would request the opportunity to review any revised draft of the EIS before it is made public in order to ensure that all of the City's concerns are addressed.

Very truly yours,



Barry McClellan  
City Manager  
City of San Jacinto

cc: Honorable Mayor and City Council  
Tim Hults, Assistant City Manager  
Jeff Ballinger, City Attorney  
Karl Johnson, Legal Counsel, Soboba Band of Luisefio Indians