

ROBB & ROSS

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

JOSEPH W. ROBB*
STERLING L. ROSS JR.*†
ALAN J. TITUS
PHILIP A. ROBB

591 REDWOOD HIGHWAY, SUITE 2250
MILL VALLEY, CALIFORNIA 94941
TELEPHONE: (415) 332-3831
FAX: (415) 383-2074

* A PROFESSIONAL CORPORATION
† CERTIFIED SPECIALIST IN ESTATE
PLANNING, PROBATE AND TRUST
LAW, THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

April 28, 2006

Mr. Clay Gregory
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Re: Comments on Draft EIS for Scotts Valley Casino Project

Dear Mr. Gregory:

I write on behalf of Artichoke Joe's, a cardroom in San Bruno, to provide comments on the Scotts Valley EIS. We join in the comments being submitted by the East Bay Coalition Against Urban Casinos, the County of Contra Costa and Overaa Construction, and we provide some additional comments.

As we have previously asserted, the project site is under state jurisdiction, and even if the land is taken into trust by the federal government for the Scotts Valley Indians and even if it is declared an Indian reservation, the land will remain under state jurisdiction unless and until the state cedes jurisdiction back to the federal government. Therefore, Class III gaming is not allowed under the Indian Gaming Regulatory Act, the proposal is unlawful, and the BIA is without jurisdiction to allow this project to go forward.

The proposed project by the Scotts Valley Indians to have the federal government take land into trust just outside the Richmond city limits and to construct and operate a new Las Vegas style casino on the site has generated widespread opposition around the Bay Area. The focus of this opposition is the introduction of Las Vegas style gaming into the urban area.

There are different types of gambling, namely casino gambling and non-casino gambling, and these different types generate very different socio-economic impacts. Even though casino gambling is being introduced into the community for the first time, and will generate much more severe socio-economic impacts than the current non-casino gambling, the EIS fails to analyze these differences and the more severe impacts. Non-banked card games, such as Texas Hold 'Em and poker, which have been legal since 1872, generate both fewer customers and less revenues than banked card games and slot machines. Even with the current popularity of poker, the number of people who play these games at cardrooms is quite limited. In contrast, almost

Mr. Clay Gregory
Bureau of Indian Affairs
April 28, 2006
Page 2

everyone at some point drops change into a slot machine. Further, the revenues generated by these two different types of gaming are of completely different scales. Revenues from card games in California is very modest. The house cannot play in the game or rake the pot. It is limited to charging a fee for use of its facilities and for its services. Slot machines involve bets against the house, and the machines are programmed to favor the house (thus constituting a percentage game). As a result, the revenues of a cardroom are dwarfed by that of slot machine casinos. The EIS estimates revenues of up to \$483,000,000 per year. These higher customer numbers and greater revenues result in severe impacts on the community.

Economic impacts would be caused by the large amount of revenues generated. These revenues would be drawn from other businesses in the area, much of it from businesses which reinvest more of the profits back into the local economy. For example, a business with \$100 million of revenue that expends 95% million on labor, services and goods, propels the economy more than one with the same revenue but with expenditures of only \$50 million. Profits that are saved or that are distributed to owners out of the area do not propel the local economy. The numbers in the EIS indicate that this casino would have extremely high profits \$325 million on revenues of \$483 million. This would result in overall negative economic impacts. Socio-economic impacts from casino gaming include increases in crime, increases in financial problems, loss of job productivity, impacts on family life, various health problems and special issues related to seniors. The EIS fails to analyze any of these impacts.

Because of these severe impacts, in 1998 and 2000, when the voters in California agreed to allow this type of gaming into California, they made clear that they did not want this type of gaming to spread from historical Indian reservations to the urban areas. Proponents of Indian gambling assured voters that this would not happen. In the Voters Pamphlet they promised that Indian casinos would be limited to Indian lands in remote, mostly rural areas of the state. Over the course of the two elections, the tribes spent \$100 million on television ads repeatedly showing settings on rural reservations. The ads were an attempt to erase the specter of urban gaming, and plant in people's minds a vision of Indian gaming in rural areas. The fact such an inordinate amount of money was spent on these ads testifies to the depth of the voters' concern.

The Scotts Valley casino would contravene the intent of the voters and would be the first urban casino in the Bay Area, and arguably in California. Thus, the change in land use at the proposed site would not only violate local land use controls, such as zoning, general plan, and redevelopment plan, but also violates what essentially was statewide limits on location for Indian gaming. Because the change in land use fails to conform to both local and state limits, the EIS should devote particular attention to the impacts of the new use. Unfortunately, the EIS fails to adequately analyze environmental and social impacts caused by the introduction of gambling into the urban area, and in fact gives the subject very short shrift.

Mr. Clay Gregory
Bureau of Indian Affairs
April 28, 2006
Page 3

The EIS fails to distinguish between tourist gambling and convenience gambling, to recognize that this proposed casino would constitute convenience gambling, and to evaluate the environmental and socio-economic impacts on that basis. When a casino is a long distance from people's homes and jobs, it is visited only on vacation. In general, the trips are infrequent and the gambling budgeted. In contrast, when the casino is local, it is visited with the ease and convenience of the local supermarket. The result is much more frequent visits and much, much more money spent. Explanation of the differences between these types of gambling is more fully explained by Prof. William Thompson in his report *A Casino for San Pablo: A Losing Proposition* (attached to the letter from East Bay Coalition). The EIS fails to consider that this casino would be located in a heavily populated urban area and would offer a convenience and opportunity unprecedented in the state and uncommon in the country. As an urban location, it would need to be evaluated differently from remotely located casinos.

The EIS relies on some government financed studies, but these studies are inappropriate to this situation as they do not pertain to this type of convenience gambling in an urban location. The report of the National Gambling Impact Study Commission discussed the phenomena of convenience gambling (see p. 2-4), but only in the context of truck stops and convenience stores where there are a few machines and few customers. In contrast, the proposed casino offers the size and excitement of a Las Vegas style casino (including many machines), but in a convenient location near customers homes.

The EIS addresses socio-economic impacts in section 3.7.4, under the sub-heading "Potential Social Costs Associated with Gambling." The EIS attempts to dismiss concerns that the introduction of Nevada-style gambling into the urban area at this site could result in increases in crime. However, the material presented to support the claim is completely inadequate. The EIS cites one study, by NORC, which found that proximity to gambling had no effect on serious crime. The EIS then cites another study which found no link between casino-style and crime. However, the general body of academic study finds there is a connection between crime and casinos. We enclose three studies, a March 2001 study by Earl Grignols and David Mustard, entitled *Measuring Industry Externalities: The Curious Case of Casinos and Crime*, a 1996 study by William Thompson, entitled *Casinos and Crime in Wisconsin*, and a 2005 Report of Maryland Attorney General J. Joseph Curran, Jr. entitled *The House Never Loses and Maryland Cannot Win: Why Casino Gaming is a Bad Idea*. The EIS does not explain why it relies on the one study instead of on other studies and it would be inappropriate for the EIS to rely on a study based on the result desired. It is especially inappropriate to rely on one anomalous study and to ignore the overwhelming body of academic literature that hold a contrary position.

The proposed site is near high crime areas of Richmond, and would be expected to attract drug-dealing and other problem activity. This would lead to further urban decay and

Mr. Clay Gregory
Bureau of Indian Affairs
April 28, 2006
Page 4

deterioration in Richmond, which already has a severe drug problem and a high crime rate. We enclose a study issued in July 2004 by the U.S. Department of Justice entitled *Gambling and Crime Among Arrestees: Exploring the Link* which indicates that locating a casino near a population high in arrestees will lead to more crime and will lead the arrestees into further problems with the law. The EIS fails to address this problem.

The EIS then attempts to dismiss concerns that the casino could lead to an increase in bankruptcies and the resulting effects on the urban environment. The EIS cites a single study finding that no relationship exists between casino gambling and increased bankruptcy. The EIS does not make clear if this study applies to the circumstances here, a casino located in a high-population urban area, so close to lower-income area. The study cited is contrary to general academic opinion which holds that the more convenient the gambling the higher the rates of bankruptcy in the area. I enclose a study by John Barron, Michael Staten, and Stephanie Wilshusen, entitled *The Impact of Casino Gambling on Personal Bankruptcy Filing Rates* (August 2000), and an excerpt on bankruptcies in a 2002 study by William Evans and Julie Topoleski entitled *The Social and Economic Impact of Native American Casinos*. Both of these find that casinos lead to increased numbers of bankruptcies and that the closer the casino to the population of players, the higher the impact. The Evans and Topoleski study refutes the studies cited in the EIS. The EIS does not explain why it relied on this study instead of on other ones.

The EIS then states that whether the casino will have an effect on problem gambling is still unanswered. That is not consistent with the general body of academic thought. The more convenient the gambling, and the closer it is to a high concentration of population, the higher the incidences of problem gambling. Even if the rate of problem gambling were to remain steady, the number of people with problems will skyrocket.

Section 4.7 of the EIS further addresses socio-economic effects of the proposed casino. This section is based on a an Economic Impact Analysis by Klas Robinson QED Hospitality Consulting and is seriously flawed. The Analysis estimates revenues of up to \$483 million, and expenses of only \$158 leaving profits of \$325 million before payment of local and state taxes. Those profits represent monies not being reinvested in the community, and the study fails to discuss the economic effects of so large a percentage of revenues which are likely to leave the Bay Area and not be reinvested in the community.

The Klas Robinson study considers substitution effects of the new casino, but bases its conclusions on unfounded and improper assumptions. The study assumes that 12 percent of total spending at the casino would be substituted from expenditures that would have been made at other facilities in the County. The study also assumes that 82% of total spending at the proposed casino will be substituted from other California businesses, including Contra Costa. The study

Mr. Clay Gregory
Bureau of Indian Affairs
April 28, 2006
Page 5

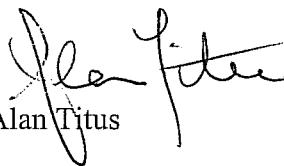
acknowledges that substitution effects are difficult to estimate and provides no background to the estimates made. In fact, the casino will serve the area, not tourists, and so all the spending will be substitution for other spending. It will largely substitute for other entertainment venues, and to the extent it substitutes for venues that reinvest a higher percentage of revenues in the area, it will cause a significant negative economic effect on the area. As a result of problem gambling, some spending will be substituted for spending on food and clothing and that cause both economic problems as well as other problems. To the extent that spending is new and comes from savings and to the extent it goes beyond affordability of the patron, that could cause immediate and long-term problems for the community. The analysis of these issues in the EIS is inadequate.

Due to the inappropriate analysis of the substitution effect and the failure to consider how much profit there is leaving the area, the analysis of the multiplier effect is also erroneous. This project will represent a serious economic drain on the community as discussed more fully in the study of Professor Thompson on the San Pablo casino proposal and consequently will have significant adverse environmental effects. The EIS needs to consider that analysis.

Section 4.7 contains less than half a page on socio-economic impacts resulting from problem gaming. The section does not discuss any of the host of issues problem gaming presents, such as financial problems resulting from excessive gaming, generation of crime in the community, impacts on jobs, impacts on family life, various health issues, and special issues related to seniors. These issues require much more study to understand what impact the acceptance of this property in trust will have on the area. The extraction of revenue of \$480,000,000 by a business that the citizens of California have outlawed in the state and did not want in urban areas is extraordinary and the EIS should thoroughly study the resulting socio-economic impacts.

Thank you for your attention to these comments.

Sincerely,



Alan Titus

Enc.