

COMMENTS ON THE “DRAFT ENVIRONMENTAL IMPACT STATEMENT AND DRAFT CONFORMITY DETERMINATION FOR THE PROPOSED FEDERATED INDIANS OF THE GRATON RANCHERIA CASINO AND HOTEL PROJECT”

Executive Summary

Proposed Project

The Federated Indians of the Graton Rancheria (“Graton Tribe”) propose to develop a casino, hotel, and other facilities (“proposed project”) in the unincorporated County, adjacent to the City of Rohnert Park and within the city’s urban growth boundary and sphere of influence. The proposed project would develop approximately 66 acres of a 252-acre site located between Wilfred Avenue, Business Park Drive, and Labath and Langner Avenues.

The proposed project includes a total of 762,300 sq.ft., which is comprised of a 2-story casino (approx. 90,000 sq.ft.), numerous restaurants and bars, a 1500-seat show room, nightclub, lounge, and banquet facility (approx. 318,150 sq.ft.); a 300-room, 8-story hotel and spa (332,850 sq.ft.); and a central plant (21,300 sq.ft.). Parking for the proposed project includes a total of 6,102 spaces, of which 4,102 are surface and 2,000 are contained within a parking structure.

Background

In February 2004 the National Indian Gaming Commission (“NIGC”), published a notice of intent to prepare an Environmental Impact Statement (“EIS”) and conduct a public scoping meeting. The County, concerned about the adequacy of the project description contained in the scoping notice and the potential for inadequate environmental review, requested that it be allowed to participate as a “cooperating agency” as provided for in the National Environmental Protection Act (“NEPA”). The Board stated that its request “in no way signifies the County’s support for the project; rather, the County’s interest is in ensuring that the environmental review process fully and fairly address the potential impacts of the proposed project within the county so that any identified impacts can be fully mitigated.” In March 2004 the NIGC approved an agreement designating the County as a cooperating agency.

In April 2004 the Board approved a lengthy set of comments to the scoping notice. The comments were intended to ensure that the EIS would be a complete and rigorous analysis of the proposed project impacts and proposed mitigations.

In November 2004 the County entered into an “Agreement to Agree” Memorandum of Understanding (“MOU”) with the Tribe for the purpose of making any project mitigations identified in the EIS, or otherwise committed to by the Tribe, binding and enforceable. The MOU requires the parties to negotiate in good faith toward an Intergovernmental Agreement identifying mitigation measures and, if no agreement is reached, for each party to submit a last and best offer to an arbitrator who would conduct a hearing and select the most reasonable pre-arbitration final offer.

In May 2006 the County received a preliminary draft of the EIS from the NIGC. The CAO and County Counsel formed a multi-departmental/agency team to review and comment on the sufficiency of the analysis and mitigations contained in the preliminary draft. Staff found the preliminary draft analysis of environmental impacts deficient in nearly every issue area, and on July 6, 2006, the County submitted more than 200 comments on the preliminary draft. The

County anticipated that the DEIS would give serious consideration to the comments, and include appropriate revisions to the environmental analysis.

The NIGC released the public Draft EIS (“DEIS”) and the Draft Conformity Determination (“DCD”) on March 9, 2007, and conducted information workshops and public hearings on April 4th and 5th. The NIGC initially required written comments on the DEIS and DCD to be postmarked by May 14, 2007. Following numerous requests from the public, the County, and other federal, state, and local governments, the NIGC extended the comment period to June 4, 2007.

County Review and Comments

Staff from the County Administrator’s office, County Counsel, Permit and Resource Management, Transportation and Public Works, Health Services, Human Services, Emergency Services, Sheriff’s Department, District Attorney, and the Sonoma County Water Agency have prepared extensive comments for submission to the NIGC.

In many cases, it is difficult to accurately assess the magnitude of impacts that would result from the proposed project, due to factual errors, analytical deficiencies, and information gaps. Staff found the DEIS analysis of the potential environmental impacts continues to be deficient in nearly every issue area. In fact, many of the comments previously submitted by the County have not been adequately addressed in the DEIS. The degree of deficiency is such that the document fails to meet the requirements of the National Environmental Policy Act (NEPA), and should be substantially revised, and re-circulated.

The County’s preliminary review and local experience indicate that the proposed project would significantly increase traffic congestion, air pollution and greenhouse gas emissions, impact local water supply and flood control, induce crime, aggravate pathological gambling and other socioeconomic problems, and substantially increase county costs for law enforcement, justice system, fire and emergency services, public works, health and human services, and other County programs. Further, the project would cause an ongoing revenue loss to the County (property tax, sales tax, transient occupancy tax, development fees, etc.) through the taking of the land into Trust. Finally, the DEIS’s mitigation measures, do not include monitoring or enforcement mechanisms. In many cases, the DEIS states the responsibility to fund or complete mitigations is actually the responsibility of some entity other than the Graton Tribe.

Major Issues

Following is a summary of the most significant issues and concerns arising from the DEIS analysis of the proposed project. The DEIS:

1. Fails to properly understand and convey the enormity of the proposed project and the unprecedented nature of its true impact on the community. The proposed project is the single most intensive development project ever proposed in Sonoma County. It simultaneously proposed both the largest hotel/resort complex in Sonoma County and the introduction of massive new Las Vegas-style casino gaming into an urban setting. If developed as proposed, the project would dramatically alter land use patterns and future growth in Sonoma County, cripple the transportation system, and aggravate already overburdened health, safety, and other crucial public services. The proposed project is inconsistent with the Sonoma County General Plan’s land use designation for the Wilfred site as well as numerous General Plan policies and goals, including policies pertaining to Community Separators. Although the proposed site is within the sphere of influence for the

City of Rohnert Park and the City's General Plan envisions urban type uses in this area following annexation, no annexation is proposed. Indeed, absent annexation to the City, the project would be the antithesis of the County's plan for this land; which includes only agricultural and scenic open space uses.

2. Fails to identify and analyze the most obvious alternative to the proposed project, a reduced casino gaming project at the Wilfred site. The DEIS includes a reduced-intensity alternative, but not at the preferred site. Further, the reduced-intensity alternative proposes to reduce the hotel, spa, and ancillary services without reducing the amount of casino gaming at all. Since the casino gaming would generate the greatest number of visitors and cause the most significant environmental impacts, the DEIS must include a reduced casino gaming alternative at the Wilfred site.
3. Grossly underestimates the project's traffic impacts on local roads and Highway 101 and suffers from a lack of understanding of the local road network and circulation patterns. Congestion on Highway 101 is an overwhelming regional problem that causes adverse effects on economic vitality, the quality of life, and local and regional air quality. The DEIS's traffic analysis is riddled with incorrect assumptions and technical errors. The analysis does not accurately identify additional traffic generated by the project, and assumes that all planned highway and road improvements will be fully funded and constructed within an unrealistic time frame. These assumptions lead to a very "project friendly" but completely irrelevant set of findings that have no basis in reality.
4. Repeatedly misrepresents jurisdictional authority. The document does not accurately describe governmental agency responsibilities and how public services are provided in the County. This leads to misunderstandings and misstatements of levels of present and future service, jurisdictional authority, and the impacts of the proposed project on responsible agencies. As an example, the DEIS includes numerous references to services to be provided by the City of Rohnert, even though the proposed sites are located in the unincorporated County and Rohnert Park has no authority to provide services outside its city boundaries.
5. Improperly concludes that the project would not result in significant socioeconomic impacts, and proposes inadequate mitigations. The casino project is intended to attract large numbers of people, some of who suffer from addictive behaviors. Studies indicate that from 1-4% of the population is addicted to gambling. The proposed project would provide close, easy access to existing residents who are not engaging in their addictive behaviors due to lack of proximity to a casino. The proposed project would create a significant demand for a wide range of health and human services provided by the County, including services that address addictive and antisocial behaviors associated with gaming and drinking. The DEIS needs to consider the impacts and cost to the County for providing health and human services if the proposed project is constructed.
6. Improperly estimates the impact on other County services including: law enforcement, justice system, and fire and emergency medical services, and proposes inadequate mitigations. The proposed project is intended to attract 28,000 visitors daily, but asserts that these visitors will not result in any substantive increase in demand for public services. As an example, the DEIS considers some proximate needs, such as increased police services (although it wrongly asserts the services will be provided by the City of Rohnert Park), but fails to analyze connected services. Responding to a criminal act and executing an arrest is only one aspect of the legal process. A suspected offender must be processed through the Sheriff's department and possibly incarcerated. Further services may be required by the

District Attorney and Public Defender. Finally, increased court costs and jail space costs may also result.

7. Fails to consider one-time and ongoing revenue loss to the County (property tax, sales tax, transient occupancy tax, development fees, etc.) resulting from the land being taken into Trust. Ironically, as the proposed project increases County costs, it also decreases County revenues by removing land from local taxing and fee collection authority. The DEIS states that the proposed project would, generate a negative fiscal impact to the County (between approximately \$36,889 and \$43,596) based on an expectation of increased County service costs coupled with a lesser anticipated increase in revenue” This is woefully inadequate. The DEIS should include a commitment to offset revenue losses and fully fund increased County service costs.

In addition to these issues, the DEIS fails to fully address, identify and analyze impacts on local water supply, wastewater disposal, flood control, and air quality. Water supply and wastewater disposal are major local and regional concerns. The adequacy of water supplies and the ability to dispose of wastewater without endangering protected species and other valued resources are of paramount concern. Further, the DEIS fails to account for flood risk as a result of site alterations and increased runoff, and appears unaware of how management practices on local drainage systems affect the system’s ability to transport runoff. The DEIS air quality analysis contains significant technical errors that serve to dramatically underestimate the proposed projects air quality impacts.

The Clean Air Act requires Federal agencies to assure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria air pollutants. The NIGC prepared a Draft Conformity Determination for the proposed project, which is deficient and incomplete with respect to NOx. The DEIS concedes that a conformity determination is necessary because NOx emissions from the proposed project exceed the *de minimus* levels, but provides no further analysis and identifies no NOx emission reductions or offsets.

A more detailed summary of the comments by issue area is attached (Attachment B). The complete comments to be forwarded to the NIGC are on file with the Clerk of the Board.

Future Actions

Staff anticipates the NIGC will release an Administrative Draft of the Final EIS and CD to cooperating agencies in 2007 or 2008. This will provide another opportunity for the County to provide comments to the NIGC. Public release of the Final EIS and CD is anticipated to occur in 2008.

The “Agreement to Agree” required the County and Tribe to initiate negotiations regarding mitigation issues within 30 days after release of the DEIS. The County and Tribe met on April 4, 2007. Staff anticipates focused negotiations will begin after the County has had an opportunity to review all of the public comments and analyze the consultant’s responses. Publication of a Final EIS will trigger a 45-day window for submitting final negotiation proposals and requesting arbitration under the Agreement.