



DIANNE JACOB

SUPERVISOR, SECOND DISTRICT
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September 2, 2016

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Laurie Berman, Director
Caltrans, District 11
4050 Taylor Street
San Diego, CA 92110

Dear Ms. Berman:

I am in receipt of your letter dated August 19, 2016, in which you assert Caltrans' limited role with regards to the traffic safety improvements required on State Route 94 due to the increased traffic caused by the Jamul Indian Village's (JIV) gaming development.

My original letter to you was in regards specifically to your authority through the encroachment permit process, which is a discretionary permit, where Caltrans has the ability to require highway improvements before a project can obtain ingress and egress onto a state highway, not the overall development of the Casino.

Improvements and work done on State Route 94 is the sole responsibility of Caltrans, and therefore I again call upon your agency to require that all promised highway improvements (at least Phases I & II) be in place prior to this Casino opening. It defies logic to require improvements to address critical highway safety issues and then not enforce the requirements prior to the opening of the casino. Caltrans has made such requirements for other projects so why not in this case?

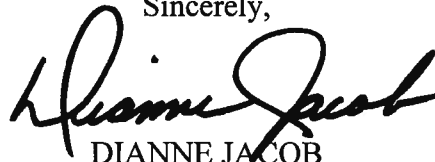
Furthermore, in a 2009 agreement (attached) between JIV and Caltrans it is stated that "The improvements intended to mitigate the impacts from the project shall be implemented prior to the opening and operation of the project." The 2009 agreement makes it crystal clear that Caltrans recognized the significant traffic impacts associated with the casino project, and both parties agreed to all highway improvements being completed prior to the opening of the casino.

With regards to your comment about the County exercising its authority in the Memorandum of Understanding (MOU) with JIV, the County had no authority to require improvements on State Route 94 or improvements to the County road network. This was a negotiated agreement with JIV that I didn't support in large part because it did not adequately address traffic safety issues. Unlike Caltrans, the County did not have any authority to require road improvements, did not have a discretionary permit process, and could not require JIV to do anything.

My main concern continues to be public safety. As I have previously stated, I intend to hold the leadership at Caltrans and other state officials accountable for the reckless decisions that will likely result in injury or loss of life after the casino opens.

Once again, I urge you to take whatever actions necessary to assure the safety of all those driving SR 94 who would be impacted by the opening of JIV's Hollywood Casino. If you have any questions or would like to discuss further, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Dianne Jacob". The signature is fluid and cursive, with a large initial "D" and "J".

DIANNE JACOB
Vice-Chairwoman

SETTLEMENT AGREEMENT

Between

The Jamul Indian Village

And

State of California, Department of Transportation

regarding

Encroachment Permit Application Process and the Selection

and Implementation of Measures to Mitigate Adverse Traffic Effects of the

Jamul Indian Village Casino Project

This Settlement Agreement (hereinafter "Agreement") is made this 7th day of April, 2009, by and between the Jamul Indian Village ("Tribe"), and the State of California, Department of Transportation ("State"). The Tribe and State shall be collectively referred to in this Agreement as the "Parties."

RECITALS

WHEREAS, the Tribe intends to construct and operate a casino facility for Class II and/or Class III gaming ("Project") on the Tribe's Reservation ("Reservation") in Jamul, County of San Diego, adjacent to State Route 94 ("SR94");

WHEREAS, State owns and controls the State Highway System, including the right of way along SR94 that is adjacent to the Tribe's Reservation and the Project site, which may directly and/or indirectly be impacted as a result of the Project and may serve as the point of access for the Project;

WHEREAS, the Parties seek to resolve the controversies and matters contested in Case No. 08-CV-1793 (DMS/POR) (ANx), filed in the U.S. District Court for the Southern District (the "Action"), through this Agreement which acknowledges the rights and duties of the respective parties;

WHEREAS, the Parties seek to resolve the design and operational impacts of traffic from the Project upon the State Highway System during the construction and operation of the Tribe's Project through the issuance by State of an Encroachment Permit and the Tribe's agreement to conduct traffic mitigation;

WHEREAS, the Parties seek to insure that the activities arising from Tribe's Project maintain the public health, safety and welfare in the State Highway System;

NOW, THEREFORE, the Parties agree as follows:

§1. PURPOSE

The purpose of this Agreement is to memorialize the Parties' agreement regarding the planning and construction of improvements to SR94 that address access and traffic impacts to the State Highway System arising from the construction and operation of the Project.

§2. OBJECTIVES

A. The State's objectives are to maintain the safety and efficiency of the State Highway System while cooperating with the Tribe to establish safe and adequate access for the Tribe's Project.

B. The Tribe's objectives are to complete the Project as expeditiously as possible while avoiding or mitigating potential adverse traffic safety impacts and environmental effects, if any, arising therefrom.

§3. ROLES AND RESPONSIBILITIES

A. **The Tribe hereby agrees to:**

- 1) Dismiss in its entirety, without prejudice, the Action;
- 2) Investigate the design and location of feasible alternatives to the Tribe's existing access in light of the construction and operation of the Project;
- 3) Prepare, in cooperation with State a complete encroachment permit application for the selected alternative for the Project access and provide State with all the necessary data and documentation to process the application;
- 4) Follow the State processes for the creation of an appropriate project scoping document ("PSD") and environmental documentation ("ED"), which is subject to final approval and adoption by State, in order to analyze all reasonably feasible alternatives for the access to the Project;
- 5) As a part of the PSD, conduct a traffic study for the Project consistent with State's "Guide for the Preparation of Traffic Impact Studies." The traffic study will be used in conjunction with the ED to analyze the reasonably feasible alternatives to determine the preferred entry and exit and to identify mitigation measures to reduce to an acceptable level or avoid adverse effects to SR94 arising from traffic from the Project; and
- 6) Design and provide funding for operational traffic improvements on SR94, as agreed upon in the final ED. The design of any improvements within State's right of way shall be consistent with the California Highway Design Manual. Tribe's funding obligations shall include one hundred percent (100%) of the costs to mitigate for direct impacts and reasonable fair-share (cumulative impacts) contributions towards improvements along SR94 which will mitigate, to an acceptable level, the increased traffic on SR94 arising from the Tribe's

Project. The improvements intended to mitigate the impacts from Project construction shall be implemented prior to project construction activities and the improvements intended to mitigate impacts from Project operation shall be implemented prior to the opening and operation of the Project.

B. State hereby agrees to:

1) Diligently process the Tribe's completed encroachment permit application, including the PSD and CEQA required ED;

2) Recognize the Tribe's historic traffic volumes (herein referred to as "existing use"). By recognizing the existing use, State does not intend to restrict the Tribe's access to or from SR 94. This acknowledgment in no way implies that State agrees that the Tribe has unfettered access to SR94; and

3) Once the above-referenced mitigation measures are approved, and the encroachment permit process completed, State will issue the encroachment permit.

C. Both Parties agree:

1) To act in good faith on the permit processing; and

2) To commit to alternative dispute resolution as provided herein to resolve any procedural or subsequent disagreements which may arise pursuant to implementation of these measures.

3) Neither the execution of this Agreement nor any of the provisions herein shall operate as an admission of any fact, liability or responsibility by any Party regarding the subject matter of the Agreement or the Action. All Parties reserve all rights, claims, arguments and positions as stated in the proceedings of the Action.

§4. SOVEREIGN IMMUNITY

Nothing in the Agreement shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, officers, agents, or employees. Nothing herein shall authorize the award of injunctive relief, damages of any nature, or attorney's fees as against the Tribe or any of its enterprises, officers, agents or employees.

§5. MODIFICATION OF AGREEMENT AND DISPUTE RESOLUTION

A. Voluntary Dispute Resolution; Reference to Other Means of Resolution.

In recognition of the government-to-government relationship of the Tribe and the State of California, the Parties shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to any right of legal recourse by either Party, the Parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subject to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and

monitoring of performance and compliance by each other with the terms, provisions and conditions of this Agreement, as follows:

1) Either Party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

2) The Parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) calendar days after receipt of the notice, unless both Parties agree in writing to an extension of time.

3) If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then either Party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither Party shall be required to agree to submit to arbitration.

B. Arbitration Rules.

Arbitration shall be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and shall be held on the Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location as the Parties may agree. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing and shall give reasons for the decision.

C. No Waiver or Preclusion of Other Means of Dispute Resolution.

This Section may not be construed to waive, limit, or restrict any legal remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor; provided that neither party is under any obligation to agree to such alternative method of dispute resolution. In addition, this Section may not be construed to waive any Party's sovereign immunity from suit or judicial process.

D. Notice.

Any Notice required by the Agreement shall be delivered by Certified Mail - Return Receipt Requested on the following representatives of the respective Parties:

If to the Tribe:	The Jamul Indian Village Attn: Chairman 13910 Lyons Valley Road, Suite R Jamul, CA 91935
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With a Copy to: Law Offices of Eugene Madrigal
Attn: Eugene Madrigal
28581 Old Town Front Street, Suite 208
Temecula, CA 92590

And To: Lakes Kean Argovitz Resorts-California
Timothy Cope, President
130 Cheshire Lane
Minnetonka, MN 55305

If to State: California Department of Transportation, D 11
Attention: Mark Bobotis
4050 Taylor Street, MS 240
San Diego, CA 92110

And To: David H. McCray, Assistant Chief Counsel
California Department of Transportation
Legal Division
1120 N Street, MS 57
P.O. Box 1438
Sacramento, CA, 95812-1438

§6. MISCELLANEOUS

A. Mutual Diligence, Good Faith. Time is of the essence in order to realize the goals of this agreement and each Party agrees to diligently perform their respective duties with as little delay as possible. Throughout the term of this Agreement, the Parties agree to exercise good faith and to observe the covenants contained herein.

B. No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, create any right on the part of a Third Party to bring any action to enforce any of its terms.

C. Standard of Reasonableness. Unless specifically provided otherwise, all provisions of this Agreement shall be governed by a standard of reasonableness.

D. Plain Meaning. Where terms, phrases or words are not defined, they shall have their ordinary accepted meanings within the context with which they are used. The edition current on January 2002 of Webster's Third New International Dictionary of the English Language, Unabridged shall be considered as providing ordinarily accepted meanings.

E. Captions. The captions of each paragraph, section, or subsection contained in the Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement.

F. Preparation of Agreement. This Agreement was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against any party. This Agreement may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the purposes of the Agreement.


G. Authority. Each Party represents and warrants that the individuals whose signatures appear below on behalf of each Party are duly authorized to execute this agreement on behalf of the respective Parties, and bind them to the terms thereof.


§7. TERM; EFFECTIVE DATE

This Agreement shall become effective upon signature by all Parties and shall remain in effect until modified or terminated by mutual written consent.

JAMUL INDIAN VILLAGE

**CALIFORNIA DEPARTMENT OF
TRANSPORTATION, DISTRICT 11**


By: Kenneth Meza
Its: Chairman


By: Pedro Orso-Delgado
Its: District Director