

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

Tribal Government Services – TR
2611 MS/MTB

Jul 1 1993

Honorable Raymond Hunter
Chairman, Jamul Indian Village
P.O. Box 612
Jamul, California 91935

Dear Chairman Hunter:

We have completed our legal and technical review of the proposed revised Constitution of the Jamul Indian Village submitted by the Sacramento Area Director by memorandum of September 18, 1992. The proposed revised constitution was accompanied by an unnumbered resolution adopted by the Jamul General Council on August 15, 1992, requesting that the Secretary of the Interior (Secretary) call and conduct an election to permit the qualified voters of the Village to vote on the adoption and rejection of the proposed revised document. The resolution complies with Article XVI of the Village constitution.

As a result of our review, we recommend modification to it. The changes in the enclosed version are to make the document legally and technically sufficient, that is not contrary to Federal law. Other modifications are to clarify the apparent the apparent intent of the drafters. The modifications are discussed below.

While many of the proposed changes are merely cosmetic, the primary thrust of the revision deals with the membership portion of the constitution. The Village proposes to revise the constitution by lowering the blood quantum from one-half (1/2) or more California Indian blood to one-quarter (1/4) degree. Lowering the blood quantum would affect the very basis and foundation of the recognition of the Jamul Indian Village and could jeopardize continued recognition.

The origin of the Jamul Indian Village is different from that of an historic tribe. The term "tribe" as used in Federal Indian affairs generally refers to a community of people who have continued as a body politic without interruption since time immemorial and retain powers of inherent sovereignty. When such a tribe is

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organized pursuant to the Indian Reorganization Act (IRA), its governing authority is derived from the acknowledgement of the fact that as a single identifiable group, it has historically governed itself. By adopting an approved IRA constitution, the historic tribe enters into a government-to-government relationship with the United States whereby the Federal Government agrees to acknowledge that the tribe possesses inherent powers of self-government as modified by applicable Federal law.

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You will recall that prior to 1980, the Jamul Indian Village was not a federally recognized tribal entity. During the 1970's of the Village explored with the Bureau of Indian Affairs (Bureau) means whereby it could obtain Federal recognition and were variously advised the only avenues open to them were to seek a legislative solution, go through the Federal acknowledgment process, or the more limiting action of recognition by the Secretary as a half-blood organization. It was pointed out that acknowledgement of existence as an Indian tribe and of existence as a half-blood community are two different things. In order for the Secretary to acknowledge the Jamul community as a tribe under 25 CFR Part 83, previously 25 CFR 54, it would have to submit a detailed petition and undergo a lengthy process of consideration. Several years would have been required to complete this. If the community was not determined to exist as a tribe after this consideration, it would still have the option to organize as a half-blood community under the IRA. Representatives of the Village opted to seek recognition as a half-blood Indian community even though they were aware of the limitations that result from organizing as a half-blood Indian community.

On April 23, 1975, the Sacramento Area Director submitted 23 uncertified family tree charts of Jamul Indians who filed for the California judgment awards to be included with their request for Federal recognition. Consequently, on November 7, 1975, the Commissioner of Indian Affairs, in response to the Area Director's assertion that 20 of the 23 Indians who reside in the Jamul community possess one-half or more degree Indian blood, notified the Area Director that pursuant to Section 19 of the Indian Reorganization Act (IRA) of June 18, 1934 (25 U.S.C. §479), certain benefits of that Act are available to persons of one-half or more Indian blood even though they lack membership in a federally recognized tribe. The Commissioner found that while those individual at Jamul of one-half degree or more Indian blood do not now constitute a federally recognized entity and do not possess a land base, they are entitled to services provided by the Bureau to individual Indian pursuant to Section 19 of the IRA. The Commissioner further

held that should these Jamul half-bloods secure, in trust status, the tract of land on which they reside they would be eligible to organize as a community of adult Indians of one-half degree or more Indian blood under Section 16 of the IRA.

On July 12, 1979, the Commissioner of Indian Affairs in response to an inquiry advised the Sacramento Area Director that:

[A]cknowledgment of existence as an Indian tribe and of existence as a half-blood community are two different processes. In order for the Secretary to acknowledge the Jamul community as a tribe under 25 CFR 54 as requested by Superintendent Tomhave. It would have to submit a detailed petition and undergo a lengthy process of consideration. Several years would probably be required [to]

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complete this. If the community was not determined to exist as a tribe after this consideration, it would still have the option to organize as a half-blood community under the Indian Reorganization Act.

The Jamul community has already been determined to be eligible to organize as a community of persons of one-half degree or more Indian blood. To be treated as such a community, however, the Jamul Indians must first organize under the Indian Reorganization Act. We understand that the community is currently working on a proposed organizational document. When this proposal has been adopted by the community in an election called by the Secretary, and has been approved by the Secretary, the Jamul Indians will be able to receive services as a community.

The Jamul Indians lived on one acre of private land and on land deeded to the Diocese of San Diego as an Indian cemetery. On June 28, 1979, the United States acquired from Bertha A. and Maria A. Daley a portion of the land known as "Rancho Jamul" which it took "in trust for such Jamul Indians of one-half degree or more Indian blood as the Secretary of Interior may designate." Subsequently on May 25, 1982, the Roman Catholic Bishop of San Diego conveyed to the United States in trust for the Jamul Indian Village 1.372 acres. The United States accepted these conveyances of land in accordance with the authority contained in Sections 5 and 19 of the Indian Reorganization Act of 1934.

On December 16, 1980, in response to a petition submitted by the half-blood Indian community of Jamul requesting an IRA election, the Commissioner of Indian Affairs authorized the Superintendent, Southern California Agency, to call and conduct a Secretarial election to permit the qualified voters of the community to vote on the adoption or the rejection of the proposed IRA constitution. The Commissioner noted in his letter that membership in the community was limited to individuals possessing one-half degree or more California Indian blood. The Constitution of the Jamul Indian Village was approved by the Deputy Assistant Secretary – Indian Affairs on July 7, 1981. In approving the IRA Constitution, the Village was authorized to exercise those self-governing powers that have been delegated by Congress or that the Secretary permits it to exercise. A number of “tribes” have been created, from communities of adult Indians or expressly authorized by Congress under provisions of the IRA and other Federal statutes. For example, some IRA entities availed themselves of the opportunity to adopt an IRA constitution and are considered to be IRA “tribes.” However, they are composed remnants of tribes who were gathered onto trust land. These persons had no historical existence as self-governing units. They now possess only those powers set forth in their IRA constitution. They are not an inherent sovereign. Rather, that entity is a created tribe exercising delegated powers of self-government. Such is the case of the Jamul Indian Village.

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It has been the longstanding policy of the Bureau to require that organizational documents adopted by half-blood communities contain a membership requirement of one-half degree Indian blood or more. Consistent with the intent of Section 19 of the IRA, the Department of Interior has over the more than 50 years since the passage of the IRA interpreted Section 19 to mean that those who seek recognition as a half-blood Indian community and subsequently organized under the IRA are forever restricted in their membership. In other words, once a half-blood Indian community, always a half-blood community. Therefore, the Village’s proposal to lower the blood quantum from one-half degree California Indian blood to one-quarter or more degree is contrary to applicable Federal law and if adopted we would disapprove the constitution or any amendment that contained such language or intent. Any departure from the limitations imposed by Section 19 of the IRA could jeopardize the Village’s continued right to Federal recognition and the rights of its members to Federal benefits and services. Further, since the United States acquired the Village’s land in trust for Jamul Indians of ½ or more Indian blood, any action by the Secretary to approve membership of less than ½ degree Indian blood could be viewed as a breach of trust owed to those of ½ degree or

more and thus a violation of applicable Federal law. Accordingly, we recommend you continue with the language as it now appears in the Village's existing constitution. The language was developed specifically to comply with the law.

We might also point out that even if it were possible to lower the blood quantum, the Council's proposal to amend each and every subsection of Section 1 of Article III is flawed. If it were possible to lower the blood quantum, which it is not, it could only be prospective in nature. That is, only persons of one-quarter degree California Indian blood born after the date of the adoption of an approved amendment would be eligible for enrollment. Thus, subsections (a), (b), (c) and (d) would remain as is with the addition of a new subsection to provide for those quarter-bloods born after the adoption of the amendment.

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[Omitted portion of page 4 through page 7 discussing proposed procedural amendments to the JIV constitution not involving blood-quantum membership.]

Sincerely,

/s/ Carol A. Bacon

Director, Office of Tribal Services

cc: Area Director, Sacramento
Superintendent, Southern California Agency
Regional Solicitor, Sacramento

[Federal Register Volume 78, Number 69 (Wednesday, April 10)]
[Notices]
[Pages 21398-21399]
From the Federal Register Online via Governmental Printing Office
[FR Doc No: 2013-08267]

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Notice of Intent to Prepare a Supplemental Environmental Impact
Statement of the Approval of a Gaming Management Contract

AGENCY:

National Indian Gaming Commission, Interior.

ACTION:

Notice.

SUMMARY:

This notice advises the public that the National Indian Gaming Commission (NIGC) as lead agency, in cooperation with the Jamul Indian Village (Tribe), intends to gather information necessary to prepare a supplemental environmental impact statement (SEIS) for the proposed Gaming Management Contract between the Tribe and San Diego Gaming Ventures, LLC (SDGV). The Gaming Management Contract, if approved, would allow SDGV to manage the approved 203,000 square foot tribal gaming facility to be located on the Tribe's Reservation, which qualifies as "Indian Lands" pursuant to 25 U.S.C. 2703

The Bureau of Indian Affairs (BIA), Pacific Region, Division of Environmental, Cultural Resources Management & Safety will serve as environmental staff to the NIGC in the preparation of the SEIS. As such, the BIA is the contact for further information, in lieu of the NIGC.

This notice also announces that no public scoping meeting will be held for the SEIS.

DATES:

APPENDIX H

Written comments on the scope and implementation of this proposal must arrive by May 10, 2013. No public scoping meeting will be held for the proposal given the long history of the project and the extensive public input received to-date.

ADDRESSES:

You may mail, email, hand carry or fax written comments to: Mr. John Rydzik, Chief, Division of Environmental, Cultural Resources Management & Safety, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, CA 95825; Facsimile (916) 978-6055; Email john.rydzik@bia.gov.

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FOR FURTHER INFORMATION CONTACT:

Mr. John Rydzik (916) 978-6051.

SUPPLEMENTARY INFORMATION:

The Tribe is requesting NIGC approval of a Gaming Management Contract between the Tribe and SDGV for the management of a 203,000 square foot gaming facility on the Tribe's Reservation, which is located in unincorporated San Diego County approximately 1-mile south of the unincorporated community of Jamul. Pursuant to the Indian Gaming Regulatory Act, signed into law on October 17, 1988, the Tribe may enter into a Gaming Management Contract for the operation and management of a gaming facility subject to the approval of the NIGC. The purpose of the Proposed Action is to help provide for the economic development of the Jamul Reservation.

The enterprise to be managed includes a gaming facility, a multi-level parking structure, surface parking lot, fire-fighting facilities, wastewater treatment plant/disposal facilities, water delivery system, and improved on-site traffic circulation. The main use within the gaming facility is the gaming floor, which would contain slot machines, table games, and poker entertainment. The total estimated gaming floor area for the gaming facility is 70,000 square feet. The exterior of the complex would include downcast lighting consistent with San Diego County codes and ordinances to maintain consistency with the surrounding area.

The environmental effects of a gaming facility on the Tribe's Reservation has been extensively studied and evaluated since 2000 when the Tribe originally approached the BIA and NIGC with fee-to-trust and Gaming Management Contract requests.

Serving as the lead agency for these initial requests, the BIA originally developed and published an environmental assessment (EA) on February 1, 2001. The NIGC served as a Cooperating Agency for this early request. The Final EA was completed and published in November 2001. Following a decision by the BIA and NIGC that the mitigation measures in the EA were too provisional, the BIA and NIGC developed an environmental impact statement (EIS) for the proposed fee-to-trust and Management Contract requests. The notice of intent for the EIS was published in the Federal Register on April 2, 2002 (67 FR 15583). The notice of availability for the Draft EIS was published in the Federal Register on January 17, 2003 (68 FR 2538). After release of the Draft EIS, a public meeting was held on February 6, 2003 at the El Cajon Community Center to take comments from the public. Following receipt and consideration of all comments on the Draft EIS, the notice of availability of the Final EIS was published on November 14, 2003 (68 FR 64622).

Between late 2003 and early 2006, the Tribe revised their project to eliminate the fee-to-trust component and to reconfigure all uses onto the existing Reservation except for an access road, which is designed to travel through adjacent tribally owned land connecting the Reservation with State Route 94. The project modifications were evaluated by the Tribe in a Tribal Environmental Impact Statement/Report (December 2006). Additional changes to the project resulted in the release of a Draft Tribal Environmental Evaluation (Tribal EE) in March 2012 and a Final Tribal EE in January 2013. Between release of the Draft and Final Tribal EE, the Tribe provided a public comment period and held a public meeting to accept comments on the Draft Tribal EE. All written and oral comments provided by the public during the comment period were responded to and incorporated into the Final Tribal EE. The Final Tribal EE was certified as adequate and complete by the Tribe in January 2013. Now that the Tribe has completed the final version of the proposed gaming facility, they are requesting NIGC approval of a Gaming Management Contract between the Tribe and SDGV.

The gaming facility has always been designed to be located on the Reservation; however, other uses such as the wastewater treatment/disposal facilities, fire-fighting facilities, and structured parking were designed to be located on adjacent land north of the Reservation. The reconfiguration of uses to place all features on the Reservation, together with the passage of time since the Final EIS was circulated, has resulted in the need for the NIGC to develop and issue an SEIS to address these changes. No other alternatives will be addressed in the SEIS.

Issues to be addressed in the SEIS include updating the environmental baseline and impact/mitigation analysis of the 2003 Final EIS as it relates to the new design alternative. Areas to be analyzed include land resources, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomics, transportation, land use, agriculture, public services, noise, hazardous materials and visual resources.

Directions for Submitting Public Comments: Please include your name, return address, and the caption “SEIS Jamul Gaming Project” on the first page of any written comments you submit. Please note that comments will only be received in writing by email, facsimile or regular mail. Pursuant to 40 CFR 1502.9, no public scoping meeting will be held for this SEIS.

Public Availability of Comments: Comments, including names and addresses of respondents, will be available for public review at the BIA, Pacific Region address shown in the ADDRESSES section of this notice, during regular business hours, Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published in accordance with 25 U.S.C. 2711, section 1501.7 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), and the Department of the Interior regulations (43 CFR part 46), implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4321 et seq.).

Dated: April 4, 2013.

Dawn Houle,

Chief of Staff.

[FR Doc. 2013-08267 Filed 4-9-13; 8:45 am]

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