

# The Double Dip

## Controversy Surrounds

### The Redding Rancheria Fee-to-Trust and Casino Project

#### *An Independent Research Project: What Drives the Controversy?*

*Written by Mary B. Machado*

The Redding Rancheria Indian Tribe is in the process of seeking approval to move its existing casino to a bigger site on agriculturally-zoned property adjacent to I-5, located in the unincorporated area of Shasta County. There is much debate and controversy in the community about the proposed new casino project.

#### Background

The Redding Rancheria Indian Tribe was *restored* to federal recognition on June 11, 1984. This means that the United States recognizes the right of the Tribe to self-government and supports their tribal sovereignty and self-determination.

The Redding Rancheria Indian Tribe currently owns and operates the Win River Casino on 14.8 acres of federal trust land, including an 84-room hotel, an event center, restaurants, and parking located at 2100 Rancheria Road in Redding, California.

The Redding Rancheria's Tribe desires to build a new casino on 232 acres of land it purchased about 15 years ago in the unincorporated area of Shasta County, California, which sits along the west side of I-5, just south of the Bonnyview-Bechelli Lane overpass in Redding. That land is commonly referred to as the Strawberry Fields, which was the agricultural use of the land (and which is still zoned as agricultural land) prior to the Tribe's purchase. The Redding Rancheria's proposed Casino Project would *transfer* 232 acres of agricultural lands and lands within the 100-year floodplain of the Sacramento River *from fee to federal trust status* to facilitate the construction of a proposed 69,541 square foot casino, a nine-story 250-room hotel, conference center and 1,800 seat outdoor amphitheater, restaurants, a 130,000 square foot retail store for outdoor sporting goods (rumored to be Cabela's), and parking for over 2,500 vehicles.

Putting the land in trust means that the United States government holds legal title to the land for the benefit, use and occupancy of an individual tribe. Trust lands are completely protected from state and local taxation, and exempt from eminent domain. Trust land is considered "Indian Country" under federal law. Both the City of Redding and Shasta County will experience significant impacts to public services if this application is approved because there will be no sales or property taxes paid by the Tribe towards the provision of those public services for the Indian Country.

On April 5, 2019, a Draft Environmental Impact Statement (DEIS) was issued for the proposed project (as required) by the Bureau of Indian Affairs (BIA) as the lead agency for the Redding Rancheria's application requesting that the United States acquire 232 acres of land in trust in Shasta County, California, for the construction and operation of a casino resort. This was the first time for most of the Shasta County Community members to receive detailed information about the project. The DEIS is available online at <http://www.reddingeis.com>. One public hearing to receive comments on the DEIS was held on May 20, 2019. There was also a 45-day comment period available for written comments on the DEIS, which was extended an additional two weeks due to the overwhelming number of responses, that ended on June 17, 2019.

The National Environmental Policy Act (NEPA) requires BIA to take what they refer to as a "hard look" at the environmental issues related to the proposed project. Additionally, the Indian Reorganization Act (IRA) and the BIA's own regulations require them to consider and analyze community impacts from fee-to-trust applications.

There are a good number of community groups who are concerned with the significant change in land use, citing serious environmental and quality of life impacts that the entire surrounding communities will experience if this application is approved.

On June 17, 2019, the law firm K & L Gates was one of those who responded to the DEIS on behalf of 56 "***Concerned Neighbors***," business owners and community members who will be directly affected by the proposed project's significant environmental impacts on their homes, businesses and community. The complete document, which expertly details a multitude of concerns not only with the proposed project, but also with what they refer to as the inappropriate ***process*** being utilized by the BIA seemingly ignoring the adverse affects of such a development, can be accessed on our website: <http://www.shastavoices.com/studies.html>

We have highlighted some of this document's key facts and information in our document, albeit in much simpler and condensed terms, together with information gathered from our local community, to demonstrate exactly why there is so much controversy associated with this proposed project.

Here is a list of the growing number of community groups with deep concerns about the proposed project:

- Concerned Neighbors (56 people and/or business owners)
- Shasta County Residents for Positive Community Development
- Speak Up Shasta (over 6,500 people)
- Churn Creek Bottom Homeowners and Friends (200 people)
- Bonnyview Bechelli Coalition

## The Controversies and Concerns

### *Restored Lands Exception*

The Indian Gaming Regulatory Act (IGRA) prohibits gaming on lands taken into trust by the Secretary of the Interior after October 17, 1988, subject to limited *exceptions*. The exception that should apply to the Redding Rancheria's application is known as the Secretarial "two-part determination" exception. Under this exception, the Secretary may take land into trust after October 17, 1988, for gaming purposes only after (1) consulting with state and local officials, including nearby Indian tribes, and (2) obtaining the state governor's concurrence with the decision to take land into trust for gaming purposes.

The controversy on this issue is that, rather than using *this* exception for a review and determination on the Redding Rancheria's fee-to-trust application, the applicants are instead trying to utilize what is called the "*restored lands*" exception. To qualify for this exception, a tribe must show that the subject land is included in the tribe's *first request* for newly acquired lands since being restored to Federal recognition. Or, they must show that the Tribe submitted an application to take land into trust within 25 years after the Tribe was restored to recognition and *the tribe is not gaming on other lands*.

The Redding Rancheria, of course, *is* gaming on other lands. The Tribe owns and successfully operates the Win-River Resort and Casino on its reservation in Redding, about three miles from the Strawberry Fields site.

### *Purpose and Need*

In the DEIS, the stated "*purpose and need*" of the proposed project in the application is to "facilitate tribal self-sufficiency, self-determination, and economic development."

The Redding Rancheria *already has a profitable casino on trust lands*. The Tribe has benefitted since September 1999, from the ability to establish and operate the Win-River Casino, and has been using the profits from the Casino to promote the tribal economic development, self-sufficiency, and government since that time.

According to a document submitted to the Bureau of Indian Affairs on June 17, 2019, by the legal firm of Drummond Woodsum & MacMahon representing the Paskenta Band of Nomlaki Indians, the Redding Rancheria has generated at least \$15 million in tribal government revenues in 2017, and at least \$22 million in per capita distributions for tribal members in that year.\* The Rancheria's publicly announced "allocations of proportions" of gaming revenues to its 182 adult members and 156 minors shows that they provide *each* of their tribal members with approximately **\$67,668** per year. When income per household is considered, average annual *household income* solely from the tribal gaming revenue distributions is about **\$115,035**. To put that in perspective, the *annual household income in Shasta County is \$47,000*.

Because of the revenues generated by Win-River Casino, the Redding Rancheria is already economically developed and self-sufficient, with a strong tribal government that represents their people. Clearly, their leadership has restored the Tribe. Thus, the primary purpose of the Strawberry Fields facility would be to increase the size of the per capita distribution currently received by the members of the Redding Rancheria, without adequately offsetting the cost and drain on public services and the negative impacts on the greater community.

If the Tribe wants to obtain additional benefits from the options provided by the Indian Gaming Regulatory Act (IGRA) to expand gaming operations, it must use the same process that the other tribes are required to follow – the full and complete consideration of state, local, and tribal interests, along with the Redding Rancheria itself. Anything else would be taking advantage of the “restored lands” exception to the detriment of the surrounding community, including other tribes, in violation of IGRA. This is the equivalent of “*double dipping*,” and is clearly not supposed to be allowed.

\* *Global Market Advisors, 2017 Performance Estimate: Win River Resort & Casino (updated June 2019).*

### ***Failure to Account for State and Local Agency Concerns***

There was no meaningful input from the City of Redding, Shasta County and CalTrans in the DEIS document, even though these local agencies are all named “Cooperating Agencies.” The DEIS does not evaluate the Project’s potential mitigation measures under state and environmental law, which is required under the National Environmental Protection Act (NEPA). Against the recommendations and rejecting the assistance of these cooperating agencies, BIA failed to undertake a complete environmental review and incorporate appropriate mitigation measures into the DEIS.

### ***Significant Land Use Change Issues***

1. **Traffic-related issues** which have not been properly addressed include the inadequate access options to the Strawberry Fields site, peak hour traffic counts, level-of-service impacts to surrounding intersections and streets, road maintenance, and appropriate cumulative fair share mitigation measures.
2. **Water resources impacts** to the Sacramento River and its floodway from storm water, wastewater, and bank stabilization activities have not been properly addressed.
3. **Water supply** – One of the alternatives in the DEIS is for the City of Redding’s water supply system to be extended to the Strawberry Fields site. Although the City’s water service contract with the US Bureau of Reclamation does not permit the City to provide surface water outside of the City’s service water contract boundaries, the City has the ability to provide groundwater to the site. It may be a feasible option, but any such service is at the discretion of the Redding City Council.

4. **Wastewater service** – Additional capacity would be needed in the City of Redding’s wastewater system just north of the Clear Creek WWTP in order to provide service to the proposed project. Any service of wastewater would be at the discretion of the Redding City Council.
5. **Noise impacts** from the proposed amphitheater, construction activities, and other non-traffic noise issues have not been properly addressed.
6. **Fire protection and emergency services** - Cal Fire and Shasta County Fire Department do not have automatic aid agreements for the proposed site and there is no agreement with Federal cooperators. The DEIS improperly “assumes” these impacts will be mitigated, when no agreements exist for examination. In addition, local fire departments do not own nor operate engines and equipment capable of responding to a 9-story structural fire. Emergency egresses for such a large venue are also a serious public safety concern.
7. **Air quality impacts** have not been properly addressed in the DEIS. Emission threshold information could not be found, along with other mitigation requirements, according to the Shasta County Air Quality Management District.
8. **Electricity** – With respect to the provision of public services, the City of Redding requires annexation before services are provided by the City. The DEIS assumes that electricity to serve the project will be provided by Redding Electric Utility (REU) as one alternative. Whether or not electricity is provided by REU to properties outside of the City limits is at the discretion of Redding City Council.

### *Negative Economic Impacts*

1. **Sporting goods** - The DEIS identifies potentially negative economic impacts to existing *sporting goods stores* in the City of Redding. It does not address how the impacts will be mitigated. The report suggests the demand for sporting goods in Shasta County cannot support the proposed “store” along with existing stores. Existing stores can expect a 24 percent decrease in sales. Closures of existing stores in Redding will result in a decrease in sales tax revenue to the City of Redding, and vacant stores can lead to an increase in unemployment, crime and blight.
2. **Hotels** - The local existing and/or new lodging businesses will be negatively affected. Not only do lodging facilities pay the property and sales taxes that are not collected by Redding Rancheria, they also pay Transient Occupancy Tax (TOT). Redding Rancheria is also exempt from collecting and paying the TOT tax. This creates another distinct competitive disadvantage to all local lodging establishments.
3. **General Business Impacts** - Existing local businesses will be negatively affected. Redding Rancheria is exempt from paying property taxes and sales taxes. Local businesses are not. A component of the proposed project is the inclusion of a retail strip mall. This creates a distinct competitive disadvantage to all local businesses that must pay all taxes.

4. **Theatre Venue Impacts** - Competing Casino performing arts and theater venues will threaten the existence of Redding's Civic Auditorium and Cascade Theatre venues.

### *Quality of Life Issues*

1. **Crime** – The Shasta County Sheriff's Office was called for **1,351** incidents for crimes at the Win-River Casino between January 2017 and October 2018. Of those, Part 1 crimes alone accounted for: 2 rapes, 3 robberies, 33 aggravated assaults, 24 burglaries, and 127 incidents of larceny. A larger facility, the lack of required tax payments and impact fees to Shasta County will only serve to further strain the already underfunded Sheriff's Department resources. Furthermore, the District Attorney's Office is the only county department that will **absorb the full impact** of crimes related to the casino and its operation, regardless of whether those crimes occur on or off the casino property. The DA's office has the responsibility to review, file, and prosecute all crimes occurring in Shasta County regardless of the law enforcement agency that initiates the investigation.
2. **Problem gambling/substance abuse** - The impacts of the proposed project to the Shasta County Health and Human Services Department will require mitigation to offset the additional costs of related treatment programs addressing problem gambling and its related impacts including substance abuse, mental abuse, elder abuse, domestic violence, and child abuse and neglect.
3. **Drain on local government resources** – Redding Rancheria is **exempt** from paying property taxes, retail sales tax, and Transient Occupancy Tax (TOT) for hotels. Currently, the annual property tax paid by the Rancheria for the Strawberry Fields is **\$41,000**. If the property is placed into trust, that revenue will no longer be generated. Assuming an average occupancy rate of 50% and an average nightly room rate of \$150, the proposed 250 room hotel would generate about **\$685,000** in TOT tax to the County if developed in its current fee title status. Shasta County also imposes impact fees on all developments in its jurisdiction to **offset the impacts** attributable to new development, namely public protection, public health, library, sheriff patrol and investigation, general government, animal control, fire protection, and traffic. The proposed development of this project, if placed into trust, would not be subject to those fees.
4. **Aesthetics** – The beautiful riverside property, often referred to as the gateway to Redding, is zoned for agriculture and designated floodway for the Sacramento River. This project will cover the property with asphalt, wastewater facilities, a 9-story hotel (taller than any building in the Shasta County area), parking structure, concert venue, shopping center and casino. An overwhelming majority of local residents have expressed that they believe this project would erode the rural character of the area and transform the community identity. The City of Redding

also has taken issue with the aesthetics conclusion in the DEIS. That conclusion says “The proposed development would substantially alter the visual character of the northern portion of the site by transforming it from rural, undeveloped green space along the Sacramento River to commercial development. However, the proposed development would not be out of character with typical roadside development adjacent to I-5...located along I-5 within the City of Redding.”

The City’s response to that is “we do not concur with the conclusion...existing, approved, and proposed developments adjacent to I-5 *differ substantially* from the proposed project with respect to building mass and height.” They further point out that the proposed 9-story hotel is taller than any other building in Redding, and the proposed 4-story parking structure would be the first and only parking structure adjacent to I-5.

### **Conclusion**

Our independent research demonstrates that all of the concern and controversy surrounding the proposed Redding Rancheria Fee-to-Trust Casino Project is *well founded*. The Shasta County community has asked some very important questions, and expressed multiple legitimate concerns that have not yet been addressed.

The BIA is required to analyze, respond and publish its response to public comments received on the DEIS report after the public comment period closes. The final day for receiving public comment was June 17, 2019.

Once all the public comments are reviewed, the BIA will issue a final environmental impact statement, to be followed by a record of decision on the application. There is no timeline for a decision.

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