



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

October 6, 2014

Mr. Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
Northwest Region
911 Northeast 11th Avenue
Portland, Oregon 97232

Re: Comments on the DEIS for the proposed Samish Indian Nation Trust Acquisition and Casino Project (EPA Project Number: 11-4121-BIA)

Dear Mr. Speaks:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality regulations for implementing NEPA, the U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for the proposed Samish Indian Nation Trust Acquisition and Casino Project in Anacortes, Skagit County, Washington.

The DEIS evaluates potential environmental impacts associated with the Samish Indian Nation's proposal to acquire, in trust, three parcels of land (11.41 acres) and subsequently develop a casino facility on the parcels, collectively referred to as the March's Point site or at a different site at the Fidalgo Bay Resort Flats or Flats site. When complete, the casino facility would include a 48,100-square-foot gaming floor and ancillary components, such as the facility access parking spaces, signage, lighting, landscaping, water and natural gas supplies, wastewater treatment, site drainage, and law enforcement and fire protection. The proposed project would allow the Samish Indian Nation to have a land base for its members and an economic development opportunity necessary to fund services for them.

Analysis of impacts from the proposed project considered five action alternatives (A-E), including a No Action (p. 2-1). Three of the four development alternatives (A, B, C) would be built on the March's Point site and include placing over 11 acres into federal trust status, while the fourth (Alternative D) would be built on the Flats site and place about 2.4 acres into the trust. The DEIS identifies Alternative A as the Preferred Alternative.

The EPA supports BIA's objective to assist the Samish Indian Nation in developing a strong economy by diversifying opportunities, while respecting traditional cultural values and reducing adverse impacts on environmental resources. We are also pleased to note that the DEIS addresses many of the issues we raised during the scoping period, including cumulative and climate change effects. The DEIS document also includes a good description of resources within the project area, analysis of anticipated environmental impacts, and measures to offset adverse impacts.

Overall, most impacts by the project would be due to construction activities, which would generate both temporary and permanent impacts due to the project footprint. In particular, we have concerns about the project's potential impacts to water and air quality as discussed below.

Water Quality Impacts

The DEIS indicates that water quality may be adversely affected if the project construction activities, including blasting, surface grading, excavation, and surface pavement, and building roofs alter the hydrology of springs and surface runoff, such that erosion carries sediment to surface waters and pollutants to local drainages and the underlying aquifer. In addition, land disturbance, material storage, waste disposal, inadvertent chemical or hazardous liquid spills, and compaction produced by vehicular traffic can all affect recharge to the local aquifer and groundwater quality. In particular, impacts to sections of both Fidalgo and Padilla Bays that are on Washington State's 303(d) listed waters (p. 3.3-8) should be avoided. Please also note that anti-degradation provisions of the Clean Water Act apply to those water bodies where water quality standards are currently being met. Because the proposed project has the potential to generate significant impacts to water quality, we recommend that BIA continue to coordinate with Washington State Department of Ecology (Ecology) and the Samish Indian Nation to assure that state and tribal water resources are protected during the project implementation.

As the project anticipates obtaining a National Pollutant Discharge Elimination System (NPDES) permit from the EPA for planned construction activities likely to disturb more than 11 acres, the final EIS should include updated information on the permit application process and measures to protect water quality. The proposed surface water drainage and retention systems, and Best Management Practices (BMPs) will lessen the impacts of stormwater runoff from impervious surfaces, but pollutants are still likely to accompany discharge to surface waters and infiltrate ground water. Therefore, we recommend consideration of Low Impact Development (LID) techniques¹ during the proposed project activities due to their potential to reduce stormwater volumes and thus mimic natural conditions as closely as possible. The techniques also lessen impacts of stormwater runoff from impervious surfaces such as paved roads, parking lots, and roofs and can provide energy and other utility savings.

The DEIS states that Alternative A would affect approximately 0.05 acres of potentially jurisdictional waters of the U.S., but that impacts to those waters will be avoided if possible. If such waters would be impacted, then a Clean Water Act Section 401 water quality certification and a Section 404 permit would be required. The final EIS should include any updated information about the permits and recommended measures to protect aquatic resources.

Please also note that under Section 438 of the Energy Independence and Security Act (EISA), federal agencies are required to reduce stormwater runoff from federal development projects to protect water resources. The EPA Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act can be accessed online². In addition to strategies outlined in this guidance, it will also be useful to consult with Ecology for relevant stormwater management practices in the project area.

¹ <http://www.epa.gov/owow/NPS/lid/>

² <http://www.epa.gov/owow/NPS/lid/section438/#techguid>

Air Quality Impacts

The DEIS describes current air quality conditions in the project area and indicates that the project is within an area designated as an attainment area for all criteria air pollutants (p. 3.4-8). The DEIS provides valuable information and data, including evaluation of Hazardous Air Pollutants (HAP) and greenhouse gas emissions. Even though background concentrations of criteria pollutants within the project area and vicinity are currently within standards, there is potential for significant local air emissions from the project due to things such as fugitive dust releases during ground disturbing activities and cumulative impacts from surrounding activities, such as road construction and site preparations, regular traffic on dirt roads, emissions from vehicles using local roads, agriculture, fire, woodstoves, and refineries and vessel traffic in the area.

Because the project area and vicinity include sensitive receptors (p. 3.4-9) and the project would increase traffic to and from the project area up to 52% (p. 4.8-4), we recommend monitoring air quality and, if necessary, taking corrective action to prevent deterioration of air quality conditions in the area. Monitoring strategies should tailor to local conditions because localized air quality impacts can be substantial when area-wide and/or long term monitoring may show compliance with air quality regulatory requirements. We would also recommend that the BIA maximize implementation of mitigation measures described in the DEIS to reduce emissions associated with activities under the proposed project, and continue to coordinate with other entities in the area, especially Ecology, to assure that the project would meet air quality standards throughout its lifespan.

Energy Efficiency and Conservation

Because the proposed project would involve construction, operation and maintenance of buildings and facilities, the EIS should include information on energy use and conservation to be consistent with Executive Order (E.O.) 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*³. Under this E.O., federal agencies are required to:

- Increase energy efficiency.
- Measure, report, and reduce their greenhouse gas emissions from direct and indirect activities.
- Conserve and protect water resources through efficiency, reuse, and stormwater management
- Eliminate waste, recycle, and prevent pollution.
- Leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products, and services.
- Design, construct, maintain, and operate high performance sustainable buildings in sustainable locations.
- Strengthen the vitality and livability of the communities in which federal facilities are located.
- Inform federal employees about and involve them in the achievement of these goals.

We recommend that the final EIS discuss energy efficiency and conservation in the context of E.O. 13514 and show how the project would comply with the order.

³ http://www.whitehouse.gov/assets/documents/2009fedleader_eo_rel.pdf

Monitoring

Since the proposed project has the potential to impact resources within the project area and vicinity for a long time, we recommend that the final EIS describe a monitoring program designed to assess impacts from the project and the effectiveness of the proposed mitigation measures. The document should also indicate how the program would use an effective feedback mechanism to assure environmental objectives will be met throughout the project lifespan.

Based on concerns discussed above and missing or unclear information, we are assigning a rating of EC-2 (Environmental Concerns – Insufficient Information) to this DEIS. A copy of the rating system used in conducting our review is enclosed for your reference.

We appreciate the opportunity to comment on this project DEIS. If you have questions about our comments, please contact me at (206) 553-1601 or by e-mail at reichgott.christine@epa.gov, or you may contact Theo Mbabaliye of my staff at (206) 553-6322 or by email at mbabaliye.theogene@epa.gov.

Sincerely,



Christine B. Reichgott, Manager
Environmental Review and Sediments Management Unit

Enclosure

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.