UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

OFFICE OF THE
REGIONAL ADMINISTRATOR

October 2, 2014

Franklin Keel, Regional Director
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, Tennessee 37214

RE: Comments on the Bureau of Indian Affairs Final Environmental Impact Statement
Mashpee Wampanoag Tribe Fee-to-Trust Acquisition and Casino Project
Mashpee and Taunton, Massachusetts (CEQ# 20140244)

Dear Mr. Keel:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, we have reviewed the Final Environmental Impact Statement (FEIS) for the Mashpee Wampanoag Tribe Fee-to-Trust Acquisition and Casino Project in Mashpee and Taunton, Massachusetts. The FEIS was prepared by the Bureau of Indian Affairs (BIA) to evaluate the potential impacts of transferring 151 acres of land in Taunton, Massachusetts and 170 acres of land in Mashpee, Massachusetts to the United States to be held in trust for the beneficial use of the Mashpee Wampanoag Tribe (the Tribe) for subsequent development of a destination resort casino and ancillary facilities in Taunton and tribal related facilities in Mashpee. EPA previously commented on the DEIS for the project in January, 2014.

According to the FEIS the proposed project will include a 400,000 square-foot casino, three 300-room hotels, various restaurant options, retail space, a water park, a parking garage with 4,486 spaces and approximately 1,171 surface parking spaces. The casino project is proposed within the existing Liberty and Union Industrial Park in East Taunton, Massachusetts. Offsite public safety improvements and improvements to surrounding roadway, water and sewer infrastructure are also proposed as part of the project and are described in an Intergovernmental Agreement between the Tribe and the City of Taunton.

Our review of the DEIS identified a number of areas of concern related to wetland impacts and mitigation, wastewater, stormwater/water quality, secondary and cumulative impacts and air quality. We reviewed the FEIS with particular attention to these issues and offer specific comments in the attachment to this letter. In general, we found the FEIS responsive to many of our previous comments. In those areas where more could be done we recommend that the BIA provide responses prior to the close of the NEPA process.

Thank you for the opportunity to comment on this FEIS. We continue to be available to work with the BIA as you work to address our comments. Please feel free to contact me or Timothy Timmermann, Associate Director of the Office of Environmental Review, at 617/918-1025 if you wish to discuss these comments further.

Sincerely,

H. Curtis Spalding
Regional Administrator

Attachment

cc:

Quan Tobey, Environmental Director, Mashpee Wampanoag Tribe
Jessie Baird, Vice Chairwoman, Mashpee Wampanoag Tribe
Jennifer McCarthy, New England District, US Army Corps of Engineers

Additional Detailed Comments Mashpee Wampanoag Tribe Fee-to-Trust Acquisition and Casino Project

Wetland Impacts

On Site

EPA is pleased with the design changes that have been made in the project to avoid wetland impacts. The Preferred Development (Alternative A) does not result in any direct impacts to wetlands or other waters of the U.S. Improvements to the site access plan also reflect a trend towards reduced impacts through the elimination of access option 1 which would have resulted in the construction of a new ramp spanning the Cotley River. The FEIS identifies a new access option 3 slip ramp as the Least Environmentally Damaging Practicable Alternative (LEDPA) under the Clean Water Act. EPA concurs.

Offsite

According to the FEIS, off-site improvements related to the Route 24/140 interchange will result in approximately 1.1 acres of permanent direct wetland impact. The FEIS also describes alternative Northwest-2 (NW-2) which further reduces wetland impacts through changes in the design speed at the interchange to 25 mph and the design speed for Route 140 in the area to 60 MPH. EPA supports alternative NW-2 as described in the FEIS.

Vernal Pools

Previous concerns we raised related to impacts to the vernal pool located in wetland number 7 have been addressed in the FEIS as were comments we made regarding other potential vernal pool areas. The revised design plan features a modified parking area configuration that avoids work in a larger section of vernal pool habitat around the existing vernal pool.

Mitigation

EPA supports the change to eliminate wetland mitigation originally proposed adjacent to the highway interchange. EPA intends to continue to work with the applicant and Corps of Engineers during the development of final wetland mitigation plans for the project. Moreover, the FEIS mentions that wetland creation is intended on-site to address/mitigate for watershed based impacts. Figure 8.2-16 depicts some potential mitigation options being considered for both wetland and floodplain compensation. Further investigation of suitable sites is needed to avoid impacts to forested upland habitat that should otherwise be protected or preserved. EPA intends to continue to work with the Corps of Engineers and the applicant during permitting to evaluate mitigation options.

Responses to Other Previous Wetland Comments

- The response to comment 1.8.7 is adequate.

- Section 8.21.4.1 addresses the past wetland fills and mitigation associated with the Liberty & Union Industrial Park prior authorizations. EPA notes with interest that some wetland mitigation sites that were permitted were never constructed.

- The response to comment 1.8-8 is not correct. There is now an In-Lieu Fee mitigation program available in Massachusetts.

Secondary and Cumulative Impacts

We remain concerned that the section of the FEIS on secondary and cumulative impacts is based largely on assertions about available capacity in the region (in terms of the number of unemployed people and the amount of vacant housing) rather than analysis. As we indicated in our comments on the DEIS, other studies, such as the one the Spectrum Gaming Group did for the Commonwealth of Massachusetts, have projected high turnover rates in certain job categories such as unskilled, entry-level positions. At a minimum, the implications of this projection in terms of induced growth should have been evaluated. We also disagree that the preferred development is not analogous to the South Coastal Rail project, which the FEIS states is likely to result in substantial induced growth in housing. Both are large projects with the potential to induce growth, and in fact, the projected ridership for South Coast Rail (5,240-5,670) is not much larger than the expected number of new employees in this project (3,500).

We continue to believe that the analysis of cumulative impacts is too narrow, since the period of analysis is just 8 years, with an end date of 2022. By contrast, the time horizon for the traffic analysis is 2032, which we believe would better serve as the timeframe for the entire analysis. A common temporal scope for the consideration of cumulative impacts in an EIS is the life of the project. We also strongly disagree with the approach in which only those projects being evaluated for cumulative impacts are those that have recently been or are currently under Massachusetts Environmental Policy Act (MEPA) review. This is too limiting since there may be projects being planned that are not captured by MEPA. The assertion that it is unlikely that projects not captured by MEPA would have significant environmental impacts is not consistent with the overall focus of a cumulative impacts analysis which is to evaluate the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.

Wastewater

The document states that "the use of on-site wastewater treatment has not been investigated", 8.8.1; however the Intermunicipal Agreement (Section 10.A) with the City of Taunton states that "The tribe shall investigate developing on-site wastewater reclamation capacity to reduce sewage flows to the City's publicly owned treatment works facility." The FEIS refers to a Beta Group comment letter (the City of Taunton's consultant) that pretreatment for nitrogen would not be required, but that is different from using on-site reclamation to reduce flows. Further clarification/explanation of this issue should be provided prior to the close of the NEPA process. In our opinion, it would make sense to try to reduce flows to the treatment plant from the project since the City of Taunton is planning on a request for a flow increase.

The FEIS statement that the project is within the City of Taunton's allocation of capacity of the existing wastewater treatment plant (8.4 mgd) as part of "Planned Development," and therefore is not dependent on expansion of the treatment plant, should be documented. A memo issued by the Beta Group on January 14, 2014 indicated that a flow increase was required to accommodate

this flow. This discrepancy is of concern as it is not clear a flow increase for this facility will be approved.

Water Quality/Drinking Water

EPA's previous comments on water quality strongly encouraged baseline water quality monitoring of the Cotley River and offered EPA assistance developing and implementing such a plan. For example, in the letter we "strongly" suggested that baseline water quality be monitored in the Cotley River for comparison to the post-construction period, and we offered EPA assistance to develop a monitoring plan. The FEIS does not include this baseline water quality monitoring. In general, in response to our water quality comments the FEIS references its compliance with MassDEP Stormwater Management Standards and EPA National Pollution Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities as efforts that are "adequately protective of water quality." While that may be the case, it misses an opportunity to adopt measures such as low impact development (LID) techniques to further enhance the project stormwater design.

Air Quality

Our previous air quality comments regarding general conformity, motor vehicle emission modeling and emissions from stationary sources are satisfactorily addressed in the FEIS. Our outstanding air quality related concern for the project is focused on minimizing diesel emissions during construction. In our scoping comments as well as our comments on the DEIS, EPA identified health concerns associated with diesel exhaust from heavy duty diesel trucks and other heavy duty construction equipment. Section 8.19.4 of the FEIS identifies prohibition of excessive idling of construction equipment engines as well as requiring subcontractors to adhere to all applicable regulations regarding control of dust and emissions. We also, however, encourage the Mashpee Wampanoag Tribe to incorporate contract specifications that would require construction vehicles and equipment to include retrofit control equipment (oxidation catalysts or particulate filters installed on the exhaust of the diesel engine). The Northeast Diesel Collaborative has prepared model construction specifications which could be used in developing contract specifications for construction of both the Taunton and Mashpee portions of the project. The model construction specifications can be found on the Northeast Diesel Collaborative web site at http://northeastdiesel.org/pdf/NEDC-Construction-Contract-Spec.pdf. These retrofits are cost effective measures to minimize impacts to air quality during construction.

Environmental Justice

The Environmental Justice analysis documents that the project is not located in a predominantly minority or low-income neighborhood and is not likely to cause or exacerbate any disproportionately adverse environmental effects on minority and low-income populations relative to the community-at-large. There is, however, a sizable minority and low income population in the greater-Taunton area that could be indirectly affected by the casino's operation.

Outreach

Given that possibility, EPA suggests that the project's public involvement strategy be enhanced going forward to include more outreach tools such as expanded flyer distribution through areas further than the immediate area affected by construction and operation of the project. The developers may want to expand the geographic scope of any planned meetings to include areas identified as low income and minority in order to update those communities of the status of the project. Thought should be given to promote the inclusion of key stakeholders like members from community groups, social organizations, health care workers and clergy in the project outreach process. Finally, a critical issue is making sure that key materials (flyers, fact sheets, on-line information) are translated into relevant languages.