



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
**75 Hawthorne Street**  
**San Francisco, CA 94105-3901**

September 15, 2009

Amy Dutschke  
Acting Regional Director  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

Subject: EPA Comments on the Draft Environmental Impact Statement for the Soboba Band of Luiseno Indians Proposed Trust acquisition and Casino/Hotel Project, Riverside County, California (CEQ # 20090232)

Dear Ms. Dutschke:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Due to high workload, our review was cursory and limited to select resource sections. Based on our review, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed “Summary of Rating Definitions”).

As a cooperating agency for the project, EPA reviewed the water resources sections of the preliminary draft EIS and submitted comments to the Bureau of Indian Affairs (BIA) on September 11, 2008. The comments that were not addressed are repeated here. Our concerns regard the lack of a jurisdictional delineation for waters of the U.S. for the percolation pond area, and the inaccurate representation of EPA’s role regarding wastewater treatment and reuse. In addition, the project is located in ozone and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) nonattainment areas; but the DEIS does not incorporate measures to mitigate air quality impacts from construction equipment, nor are sustainable building or energy efficiency measures incorporated into the project.

EPA appreciates the opportunity to review this DEIS. When the Final EIS is released for public review, please send one copy to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or [vitulano.karen@epa.gov](mailto:vitulano.karen@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen M. Goforth".

Kathleen M. Goforth, Manager  
Environmental Review Office (CED-2)

Enclosure: Summary of EPA Rating Definitions  
EPA's Detailed Comments

cc: Robert J. Salgado, Sr., Chairman, Soboba Band of Luiseno Indians  
Erica Helms, Environmental Manager, Soboba Band of Luiseno Indians  
Dan Swenson, U.S. Army Corps of Engineers, Los Angeles District

## **SUMMARY OF EPA RATING DEFINITIONS\***

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

### **ENVIRONMENTAL IMPACT OF THE ACTION**

#### ***"LO" (Lack of Objections)***

The 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)***

The 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 the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

#### ***"EO" (Environmental Objections)***

The 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)***

The 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 potentially 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 or 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 analysed 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 analysed in the draft EIS, which should be analysed 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 NEPA 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.

**Jurisdictional delineation necessary to determine impacts to waters of the U.S.**

The percolation pond area, located less than a mile from the San Jacinto River, contains three ephemeral washes which, if determined by the Corps of Engineers to be waters of the U.S., would require a Clean Water Act Section 404 permit for the discharge of fill, and/or a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater. The DEIS states that a site visit to the percolation pond site did not reveal any key indicators of a jurisdictional waterway (i.e., cut banks, changes in soils characteristics, etc.) (p. 4-461), and the DEIS concludes that the waters are not jurisdictional.

Section 404 of the Clean Water Act (33 U.S.C. 1344) requires authorization for all discharges of dredged or fill material in waters of the United States, including jurisdictional wetlands. To comply with these requirements, it is necessary to be able to delineate the location and boundaries for waters of the United States (including wetlands) throughout the project area. The Corps of Engineers or, in some cases, EPA will make the final determination of whether a waterbody is jurisdictional.

*Recommendation:* EPA recommends a jurisdictional delineation be conducted for the construction of the percolation pond and submitted to the Army Corps of Engineers, Los Angeles District for jurisdictional determination. This determination has implications for wastewater discharge permitting as discussed below. EPA recommends avoiding and minimizing impacts to the waterways to the extent possible. For unavoidable impacts, the DEIS should describe mitigation that adequately compensates for lost functions. Please refer to the EPA/Corps Mitigation Rule (issued April, 2008) for the most up to date mitigation requirements: [http://www.usace.army.mil/CECW/Pages/final\\_cmr.aspx](http://www.usace.army.mil/CECW/Pages/final_cmr.aspx).

**Inaccurate Wastewater Permitting Information**

If the percolation pond will be located in jurisdictional waters, a National Pollutant Discharge Elimination System (NPDES) permit may be needed to discharge water into it. If the pond is not located in waters of the U.S., as the DEIS claims, then EPA would not be issuing an NPDES permit for the WWTP, and all information referencing EPA's permitting role in the DEIS is incorrect. References include the section on effluent limitations starting on p. 4-468, which states that limits would be established based on findings by the EPA of the Report of Waste Discharge. A discharge permit is also referenced on p. 4-465 and in the mitigation measures on p. 5-2.

*Recommendation:* The FEIS must clearly communicate that EPA has no role in regulating wastewater discharge when it occurs via land disposal (i.e. percolation ponds) unless the discharge will occur into a water of the U.S. as discussed above.

**Wastewater Treatment Standards / Water reuse**

- The DEIS states that wastewater for reuse would be treated to tertiary standards and would meet California's Title 2 requirements for water reuse (p. 2-8), and that effluent from the wastewater treatment plant would meet EPA requirements for reuse (p. 4-464).

There are no federal guidelines for the use of recycled water; therefore, the reference to EPA requirements should be removed.

- The DEIS states that effluent from the WWTP would meet EPA requirements for reuse and the Tribe would monitor the treatment and disposal in accordance with EPA guidelines (p. 4-464, 4-469). It is not clear what guidelines this is referring to; please clarify in the FEIS.

### **Air Quality**

The project site is located in an area that does not meet health-based air quality standards. The area is in nonattainment for the ozone, particulate matter less than 10 microns (PM<sub>10</sub>) and particulate matter less than 2.5 microns (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). There are some mitigation measures identified for dust control, but none for construction equipment emissions. Because of the nonattainment status of the area, and the proximity of residents in the trailer park, some of whom would be less than 500 feet from construction of the arena and parking garage, a strict construction mitigation plan should be implemented for this project.

*Recommendations:* EPA recommends including a Construction Emissions Mitigation Plan (CEMP) for fugitive dust, diesel particulate matter, and other construction equipment emissions in the FEIS and adopting this plan in the Record of Decision. The following mitigation measures should be included in the CEMP in order to reduce impacts associated with emissions of particulate matter and other toxics from construction-related activities:

#### *Fugitive Dust Source Controls:*

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative where appropriate. This applies to both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions.
- When hauling material and operating non-earthmoving equipment, prevent spillage and limit speeds to 15 miles per hour (mph). Limit speed of earth-moving equipment to 10 mph.

#### *Mobile and Stationary Source Controls:*

- Reduce use, trips, and unnecessary idling from heavy equipment.
- Maintain and tune engines per manufacturer's specifications to perform at California Air Resources Board and/or EPA certification, where applicable, levels and to perform at verified standards applicable to retrofit technologies. Employ periodic, unscheduled inspections to limit unnecessary idling and to ensure that construction equipment is properly maintained, tuned, and modified consistent with established specifications. CARB has a number of mobile source anti-idling requirements. See their website at: <http://www.arb.ca.gov/msprog/truck-idling/truck-idling.htm>
- Prohibit any tampering with engines and require continuing adherence to manufacturer's recommendations

- If practicable, lease new, clean equipment meeting the most stringent of applicable Federal or State Standards. In general, only Tier 2 or newer engines should be employed in the construction phase.
- Utilize EPA-registered particulate traps and other appropriate controls where suitable to reduce emissions of diesel particulate matter and other pollutants at the construction site.

*Administrative controls:*

- Identify all commitments to reduce construction emissions, and update the air quality analysis to reflect additional air quality improvements that would result from adopting specific air quality measures.
- Identify where implementation of mitigation measures is rejected based on economic infeasibility.
- Prepare an inventory of all equipment prior to construction and identify the suitability of add-on emission controls for each piece of equipment before groundbreaking. (Suitability of control devices is based on: whether there is reduced normal availability of the construction equipment due to increased downtime and/or power output, whether there may be significant damage caused to the construction equipment engine, or whether there may be a significant risk to nearby workers or the public.) Meet CARB diesel fuel requirement for off-road and on-highway (i.e., 15 ppm), and where appropriate use alternative fuels such as natural gas and electric.
- Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.
- Identify sensitive receptors in the project area, such as children, elderly, and infirm, and specify the means by which you will minimize impacts to these populations. For example, locate construction equipment and staging zones away from sensitive receptors and fresh air intakes to buildings and air conditioners.

**Hazardous Materials/Contamination**

The contamination identified onsite at the maintenance area of the golf course resulted from washwater draining into the ground from wash areas, yet there is no indication that measures are being taken to avoid future contamination from these practices. The primary wash area, where total petroleum hydrocarbons and tetrachloroethylene were detected, does not include an oil-water separator. To reduce the potential for continued soil contamination, EPA recommends the proposed project upgrade these facilities and install pollution prevention equipment such as a washrack where water is recycled and eventually discharged to the wastewater treatment plant or other appropriate disposal.

**Energy Efficiency / Green Building**

The project does not commit to ensuring construction of energy efficient buildings nor does it explore alternative energy elements such as solar hot water. Additionally, the parking lot offers an opportunity to generate clean, renewable energy through installation of photovoltaics on carport structures. Photovoltaic carports provide highly desirable shade for parked cars and offer the opportunity for public education, energy reliability, and better air quality.

Additionally, the project offers an opportunity to construct a high performance and sustainable building utilizing energy efficient elements. BIA and the Tribe should commit to a facility that is certified as a green building per the Leadership in Energy and Environmental Design (LEED) green building rating system. LEED emphasizes state of the art strategies for sustainable site development, water savings, energy efficiency, materials selection, and indoor air quality. More information about the LEED green building rating system is available at <http://www.usgbc.org>.

We understand that indoor smoking provides some limitations to LEED certification. To address this, smoking sections could be provided separately which would allow the rest of the facilities to pursue LEED certification. A recent survey by J.D. Power and Associates shows that a vast majority (85%) of Southern California Indian gaming casino customers prefer a smoke-free environment<sup>1</sup>. Additionally, a separate survey of hotel guests showed that 82 percent of hotel guests say they prefer a smoke-free hotel environment<sup>2</sup>.

*Recommendation:* EPA recommends the FEIS identify additional mitigation measures to minimize energy use for the project. Solar hot water and photovoltaics on carport structures should be considered and the feasibility explored. These project elements should become an integral part of the project description.

BIA and the Tribe should specify that project facilities will be constructed for certification by LEED. This specification will guide the building process and create a high-performance, sustainable building. LEED certification will enable the Tribe to establish themselves as recognized leaders in the green building sector and offer them the opportunity to market their venue as an environment-friendly facility.

### **Evaluation of Connected Actions**

- Appendix F contains a Fire Station Plan with two new planned fire stations, with one to be co-located and built in conjunction with the casino (App F, p. 7). It is not clear that the impacts of this station are included in the impact assessment. These stations are connected actions<sup>3</sup> and are included in the project facilities list in Appendix N.
- The DEIS incorrectly defines the wastewater treatment plant, which is a connected action for the project, as an “indirect effect” and evaluates the direct impacts from this connected action in a separate section at the back of the document starting on page 4-458. We recommend that these effects be included in the main body of the DEIS as they are *direct effects* of the proposed action.

### **Miscellaneous**

The discussion of the State Phase II General Stormwater Construction Permit for Riverside County is confusing since it does not apply to a project on Tribal land. We recommend removing this paragraph and referencing only the permit the applicant will obtain from EPA. More information about this permit is available at: <http://www.epa.gov/region/water/tribal-CWA-workshop/docs/StormwaterFactSheet.pdf>.

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<sup>1</sup> See <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008082>

<sup>2</sup> See (<http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?id=2007116>)

<sup>3</sup> 40 CFR 1508.25 (a)1