



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

February 25, 2016

Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Subject: EPA comments on Wilton Rancheria Fee-to-Trust and Casino Project Draft
Environmental Impact Statement (DEIS), Sacramento County, California
(CEQ# 20160000)

Dear Ms. Dutschke:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document 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. Our detailed comments are enclosed. As a cooperating agency for the project, EPA reviewed sections of the Administrative DEIS and provided comments to the Bureau of Indian Affairs (BIA) on April 13, 2015.

The Proposed Action would take 282 acres near Galt in Sacramento County into federal trust for development of a casino, event center, hotel, and associated facilities. The project includes options for water and wastewater utilities, including development of an onsite drinking water system and wastewater treatment plant. The DEIS evaluates several alternatives, including projects on two alternative sites: an historic Rancheria site and a mall site in Elk Grove.

Based on our review, we have rated the Proposed Action and all other action alternatives as *Environmental Concerns – Insufficient Information* (EC-2) (see enclosed “Summary of Rating Definitions”). Our concerns regard the completeness of the draft General Conformity Determination under Clean Air Act, section 176(c)(4), which ensures that a federal action does not interfere with the local air district’s plans to attain the National Ambient Air Quality Standards. The Sacramento Metropolitan Air Quality Management District may not have enough emission reduction credits to fully offset the project’s emissions, as proposed in the draft General Conformity Determination (Appendix T). If the project proponent will obtain offsets from outside of the air district, the General Conformity Determination should explain how emission offsets would originate from an area that contributes, or has contributed in the past, to the violations in the project area. In addition, it is not clear whether all emissions from the possible import of fill for the Twin Cities site have been accounted for in the emissions estimates.

The DEIS indicates that, of the action alternatives, Alternative F at the Elk Grove Mall site would result in the least adverse environmental impacts, overall. For this reason, we recommend it be designated the environmentally preferable alternative and that BIA and the Tribe strongly consider this site for the project. Conversely, we have substantial additional concerns regarding the historic Rancheria site, since the alternatives on that site would be constructed in the 100-year floodplain, adversely impact threatened

and endangered species, and locate the wastewater treatment plant in a wetland. We recommend against selecting Alternatives D and E on the historic Rancheria site.

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: ENF-4-2). 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.

Sincerely,



Kathleen Martyn Goforth, Manager
Environmental Review Section

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

cc: Karen Huss, Sacramento Metropolitan Air Quality Management 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 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 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.

Preferred and Environmentally Preferable Alternative

The DEIS does not identify a preferred alternative. While the Proposed Action is Alternative A at the Twin Cities site near Galt, the DEIS states that Alternative F at the mall site in Elk Grove would result in the least adverse environmental impacts because most of the required infrastructure is already in place at that site and the site, itself, is already partially developed (p. 2-34). Nevertheless, the DEIS concludes that Alternative A is the alternative that best meets the purpose and need of the Tribe to establish and maintain a long-term, sustainable revenue stream, while addressing environmental concerns in both the project design and with mitigation measures (p. 2-35). It is unclear how it was determined that Alternative A would better establish and maintain a long-term sustainable revenue stream than Alternative F. The facilities would be practically identical in size, with both alternatives proposing the same square footage for the casino, retail and other front house services, restaurants, convention center, and casino support. The hotel sizes are comparable (225,280 ft² and 302 rooms under Alternative A, and 229,680 ft² and 307 rooms under Alternative F). There would be more surface parking at the Twin Cities site, but the Elk Grove site offers more public transit opportunities. While the Twin Cities site would provide additional full-time jobs (2,000 vs. 1,750), both facilities would provide a number of jobs in excess of the Tribe's population of 700, and both facilities would serve the same number of patrons. Because, as stated in the DEIS, Alternative F would have the least adverse environmental impacts, it would better address environmental concerns than would Alternative A; therefore, it appears Alternative F would best meet the purpose and need. We understand that an agreement is not currently in place for the purchase of the Elk Grove Mall site by the Tribe.

Recommendation: Identify Alternative F as the environmentally preferable alternative and strongly consider the Alternative F Elk Grove Mall site for the project. In the Final EIS, clearly demonstrate the basis for the determination of which alternative best meets the purpose and need for the project.

Air Quality Impacts

General Conformity - Emission Offsets/Emission Reduction Credits

The draft General Conformity Determination in Appendix T specifies that the emissions of nitrogen oxides (NO_x) and Reactive Organic Gases or Volatile Organic Compounds (ROG or VOC) would be offset through the use of Emission Reduction Credits (ERCs) from the Sacramento Metropolitan Air Quality Management District. We are aware that the District has communicated to BIA that it may not have sufficient ERCs to allow the project to proceed. EPA regulations allow ERCs to be obtained from a "nearby area of equal or higher classification provided the emissions from that area contribute[s] to the violations, or have contributed to violations in the past, in the area with the Federal action" (40 CFR 93.158(a)(2)); therefore, BIA may be able to offset the emissions for this project by obtaining credits from another air district. We note, however, that the guidance contained in the preamble to the modification of the general conformity rule that allows out-of-area offsets recommends that "federal agencies show that they have met the requirements of §93.158(a)(2) -- that the emission offsets originate from an area that contributes to the violations, or have contributed to violations in the past, in the areas with the federal action."¹ The preamble further states that this demonstration should use the same techniques that EPA has approved for demonstrating contributing emissions in other SIP-related determinations. The document *Air Quality Modeling Technical Support Document for the 2008 Ozone*

¹ 75 FR 17254, April 5, 2010

NAAQS Cross-State Air Pollution Rule Proposal (November 2015)² identifies a recent technique EPA used to assess out-of-state contributions to nonattainment areas. While not directly applicable to the Sacramento and San Joaquin Valley, it does demonstrate EPA's method for assessing contributions between two areas.

Recommendations: If BIA plans to use out-of-area offsets, revise the General Conformity Determination to demonstrate that the nearby nonattainment area of equal or higher classification contributes, or has contributed in the past, to the violations of the National Ambient Air Quality Standards.

If BIA can make the above demonstration, obtain ERCs from near the sources of the expected emissions to the extent possible, prioritizing ERCs from the Sacramento metropolitan area first, followed by the northern portion of the San Joaquin Valley, and finally from the southern portion of the San Joaquin Valley, if necessary.

General Conformity – Fill Import Emissions

The Twin Cities site would require an extensive amount of fill -- approximately 640,000 cubic yards (p. 2-11) -- and the DEIS indicates that this fill might be taken from other areas of the site or imported from off-site (p. 4.2-3). The DEIS' estimate of 16 material hauling trips per day during construction (p. 4.11-2) does not appear to take the possibility of off-site import of fill into consideration.

Recommendation: EPA recommends that the Final EIS clarify where on the site the fill would originate and indicate the likelihood that off-site fill would need to be imported. Update the General Conformity Determination for the construction phase, if applicable.

Significance Threshold Terminology

The DEIS uses the General Conformity de minimis thresholds as significance thresholds in the NEPA impact assessment methodology; however, the DEIS refers to these levels as "Council on Environmental Quality (CEQ) Reference Points (RP)". This terminology is confusing. The only use of the term "CEQ Reference Point" that we are aware of is in reference to the 25,000 metric tons/year greenhouse gas emissions value that is cited in CEQ's Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts³. We are not aware of the use of this term for criteria pollutants, and its unconventional use may be confusing to the reader.

Recommendation: In the Final EIS, explain the use of the term "CEQ reference point" in relation to criteria pollutants. If no clear CEQ association exists with these values, we recommend using the General Conformity de minimis terminology.

Tribal New Source Review

The DEIS states that the Tribe may be required to apply for a permit under the newly implemented minor New Source Review (NSR) requirements of the Clean Air Act, and that an associated minor NSR permit would only be required if the USEPA promulgates both class-specific guidelines for casino resorts and regulations that require the Tribe to obtain a minor NSR permit (p. 4.4-4). This is not entirely correct. A minor NSR permit would be required prior to construction if the projected aggregate operational emissions from stationary emission units at the facility would exceed the minor NSR thresholds listed in Table 4.4-1 in the DEIS. Based on the information in the DEIS, it appears that most

² <http://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-2008-ozone-naaqs-cross-state-air>

³ <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>

alternatives' aggregate operational emissions of reactive organic gases (ROG) from stationary emission units would be above the 2 tons per year (tpy) minor NSR permitting threshold. The proposed casino project would require a site-specific minor NSR permit if EPA has not promulgated a class-specific general permit or permit by rule for casinos, boilers, and/or stationary compression ignition engines. If a class-specific general permit or permit by rule has been promulgated, the applicant would have the option of requesting coverage under such a general permit in lieu of applying for and obtaining a site-specific minor NSR permit. As of this time, no general permit or permit by rule for casinos, boilers, and/or stationary compression ignition engines has been promulgated by EPA; therefore, a site-specific minor NSR permit may be required.

Recommendation: Amend the discussion of Tribal NSR in the Final EIS to include the clarification provided above. If you have any questions regarding the Tribal NSR permitting process, please contact Lawrence Maurin in EPA Region 9's Air Division at (415) 972-3943 or Maurin.Lawrence@epa.gov. Also, we note that Table 4.4-1 on page 4.4-4 includes a Tribal Minor NSR threshold for nitrogen dioxide (NO₂) in addition to NO_x. This appears to be an error; perhaps it was meant to list PM, which would correspond to the listed threshold of 10 tpy.

Air Quality and Climate Change Mitigation

The DEIS includes a number of measures in Section 5.4.2 to mitigate both criteria air pollutants and greenhouse gas (GHG) emissions. One measure that addresses GHG emissions, alone, states that the Tribe shall purchase GHG emission reduction credits (ERCs), and the reduction in emissions from this purchase would reduce project-related GHG emissions to below the CEQ Reference Point of 25,000 metric tons of CO₂e (p. 5-7).

Recommendation: EPA recommends that all of the mitigation measures in Section 5.4.2 be implemented. With regard to the GHG ERCs, we recommend that the purchase of credits be from a program that has been validated using rigorous protocols and guidance to ensure the credits are real, additional, and surplus. The California Air Pollution Control Officers Association has developed the Greenhouse Gas Credit Exchange for this purpose. See www.ghgrx.org. In addition, any individual can register as an individual general market participant and open a compliance instrument account in California's Cap and Trade Program, even if they don't have a compliance obligation under that program. See <http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>.

Water Resources

Wastewater Treatment for the Twin Cities Site

The DEIS includes 2 options for wastewater treatment for the Twin Cities alternatives: 1) construction of an onsite wastewater treatment plant (WWTP) and 2) offsite connection to the existing municipal WWTP. We note that the City of Galt's WWTP is located on the parcel directly adjacent to the Twin Cities site. This proximity could provide advantages for an offsite connection, including greater feasibility and simplicity of project operations.

The DEIS indicates that, if an onsite WWTP is constructed, recycled water may be used for landscape irrigation, toilet flushing, and cooling towers, with disposal of the remaining treated effluent by sub-surface disposal, or a combination of spray disposal and sub-surface disposal. Sub-surface disposal requires good percolation and several feet of clearance above the highest groundwater levels. The DEIS indicates that a majority of the soil on the Twin Cities site has low and very low infiltration rates (p. 3.3-2), but also states that, even with very conservative assumptions of soil suitability, the subsurface areas

are sufficient for disposal and the Twin Cities site has over 80 acres of land that could be used and would be sufficient for wastewater disposal. The DEIS states that percolation testing and soil evaluations would be needed before finalizing the design and sizing of the subsurface system (p. 4.3-3). If spray disposal is used, it is important to ensure that soil conditions at the site would absorb the proposed volumes of spray wastewater without runoff. Runoff and water discharges to waters of the U.S. would be in violation of the Clean Water Act unless a National Pollutant Discharge Elimination System (NPDES) permit had been obtained.

The text of the DEIS contains some wording that can be misinterpreted to imply that an on-site WWTP will be regulated by EPA, which might not be the case. For example, mitigation measure A states that the Tribe shall apply for and obtain applicable USEPA permits and approvals prior to operation of the WWTP on the Twin Cities site (p. 5-3). As we noted in our ADEIS comments, subsurface disposal can be regulated by EPA as a Class V well under the Underground Injection Control Program, and the first step is the provision of inventory information to EPA's online database, but a permit may or may not be required. Similarly, mitigation measure C states that for all on-site treatment options, the on-site WWTP shall be staffed with operators who are qualified to operate the plant safely, effectively, and *in compliance with all permit requirements and regulations*, which implies EPA permits will be obtained. Lastly, the DEIS states on p. 4.3-3 that the proposed WWTP, including either of the selected disposal options, would meet the U.S. Environmental Protection Agency wastewater disposal criteria; however, it is not clear what criteria this refers to.

Finally, we appreciate the inclusion of our recommended mitigation measure that installation and calibration of subsurface disposal lines be closely monitored by the responsible engineer to ensure the spray and subsurface effluent disposal system is operating effectively.

Recommendations:

- For the alternatives on the Twin Cities site, consider selecting the off-site WWTP option.
- Ensure percolation testing and soil evaluations occur prior to project construction to confirm the suitability of soils for effluent disposal, and include a requirement for this testing in the mitigation measures for wastewater.
- Remove the permit compliance reference for operator qualifications in mitigation measure C, but keep the mitigation that ensures operators are qualified. Clarify the reference to EPA wastewater disposal criteria.
- Include in the mitigation measures a commitment to submit a Class V Underground Injection Program inventory to EPA's online database, per 40 CFR 144.26. If there are any questions regarding the UIC program, please contact Leslie Greenberg, who can be reached at 415-972-3349 or Greenberg.leslie@epa.gov.

Groundwater/Drinking Water Mitigation

The DEIS includes a discussion of the Safe Drinking Water Act and its requirements and states that an onsite water supply option would be classified as a non-transient and non-community (NTNC) public water system subject to EPA Drinking Water Standards (p. 3.3-9). The mitigation measures for groundwater state only that, "if on-site groundwater is used as a water supply, groundwater sampling and analysis shall be performed to determine if treatment is necessary. If treatment is necessary, an on-site water treatment plant shall be constructed to treat drinking water to USEPA standards" (p. 5-4). The Groundwater Study (Appendix K, p. 17) includes a recommendation that, "if new wells are to be installed on the Twin Cities Site, wells should be positioned so as not to create a new negative impact on existing wells and surface water features in the vicinity of the Twin Cities site".

Recommendation: Include in the Final EIS a commitment to consult with EPA early in the process of setting up the public drinking water system, and to conduct baseline monitoring and submit the results to EPA prior to public water use. The Tribe should contact David Albright, Section Chief of Region 9's Drinking Water Office, at (415) 972-3971 or albright.david@epa.gov to coordinate the development of the drinking water system.

Include as mitigation a requirement that any new wells be positioned so as not to create a new negative impact on existing wells and surface water features in the vicinity of the project site.