

# ***APPENDIX T: UPDATED***

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***DRAFT GENERAL CONFORMITY DETERMINATION  
UPDATED***

**UPDATED DRAFT GENERAL CONFORMITY DETERMINATION  
FOR THE  
PROPOSED WILTON RANCHERIA FEE-TO-TRUST AND  
CASINO/HOTEL PROJECT**

**December 2016**

**PROPOSED WILTON RANCHERIA FEE-TO-TRUST AND CASINO/HOTEL PROJECT  
UPDATED DRAFT GENERAL CONFORMITY DETERMINATION**

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## 1.0 INTRODUCTION

A Draft Environmental Impact Statement (EIS) was prepared pursuant to the National Environmental Policy Act (NEPA) to assess the environmental consequences of the U.S. Bureau of Indian Affairs (BIA) taking land located in Sacramento County, California into federal trust on behalf of the Wilton Rancheria (Tribe) to conduct gaming (Federal Action). The effects of seven alternatives identified below are analyzed within the EIS.

- Alternative A – Twin Cities Casino Resort
- Alternative B – Reduced Intensity Twin Cities Casino
- Alternative C – Retail on Twin Cities Site
- Alternative D – Casino Resort at Historic Rancheria Site
- Alternative E – Reduced Intensity Casino at Historic Rancheria Site
- Alternative F – Casino Resort at Mall Site
- Alternative G – No Action

A previous Draft General Conformity Determination was prepared for Alternative A (the alternative with the highest potential to emit) and circulated for public review and comment in accordance with 40 Code of Federal Regulations (CFR) Part 93, Sections 93.150 through 93.165. This previous Draft General Conformity Determination focused on the conformity issues related to Alternative A at the Twin Cities site located in Sacramento County just north of the City of Galt, California, within the Sacramento Metropolitan Air Quality Management District (SMAQMD). The 45-day public comment period on the previous Draft General Conformity Determination (released on December 29, 2015) ended February 11, 2016. The U.S. Department of the Interior, Bureau of Indian Affairs (BIA) received two written letters during the comment period that included comments on the Draft General Conformity Determination, from SMAQMD and the U.S. Environmental Protection Agency (USEPA) (Comment Letters A3 and A10, respectively, in the Final EIS, Volume I, Section 2.0). These comments were considered when drafting this Revised Draft General Conformity Determination.

Since the release of the Draft EIS and previous Draft General Conformity Determination, Alternative F has been selected by the BIA as the Preferred Alternative (refer to the Final EIS, Volume II, Section 2.7). Therefore, the foreseeable consequence of this federal action will be the development of a casino/hotel resort in the City of Elk Grove Mall in Sacramento County, California (see EIS Figure 1-1). Accordingly, this Revised Draft General Conformity Determination has been developed to assess conformity of Alternative F with the State Implementation Plan (SIP). Under the Preferred Alternative, the BIA would take approximately 36 acres, known as the Elk Grove Mall site, into trust for the Tribe. Alternative F consists of a casino/hotel resort, totaling approximately 608,756 square feet in area. The casino-hotel resort

would include restaurants, a 302-room hotel, convention center, retail space, fitness center, and pool and spa. The majority of the Elk Grove Mall site is currently developed or disturbed.

The Elk Grove Mall site is located within the City of Elk Grove, approximately 14 miles south of the City of Sacramento, adjacent to State Route (SR)-99. SMAQMD has local jurisdiction over the air quality in the region, which is located within the Sacramento Valley Air Basin (SVAB).

## **2.0 GENERAL CONFORMITY – REGULATORY BACKGROUND**

USEPA promulgated the General Conformity Rule on November 30, 1993, to implement the conformity provision of Title I, Section 176(c)(1) of the federal Clean Air Act (CAA), which requires that the federal government not engage, support or provide financial assistance for licensing or permitting, or approving any activity not conforming to an approved CAA implementation plan for compliance with the NAAQS. NAAQS have been developed for carbon monoxide (CO), lead (Pb), PM with a diameter of less than 10 or 2.5 microns (PM<sub>10</sub> or PM<sub>2.5</sub>, respectively), sulfur oxides (SO<sub>x</sub>), ozone (O<sub>3</sub>) and its precursors oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs), and nitrogen dioxide (NO<sub>2</sub>). CAA conformity is an issue that may be addressed during the NEPA process, and USEPA recommends that the conformity process be coupled with NEPA analysis.

### **2.1 GENERAL CONFORMITY PROCESS**

The general conformity process will be addressed in two phases. The first phase is the conformity applicability process, which evaluates whether the conformity regulations apply to the federal action (i.e., whether a determination is warranted). The second phase is the conformity determination process, which demonstrates how a federal action conforms to the applicable SIP.

#### ***Phase One***

The purpose of a conformity review is to evaluate whether the general conformity determination requirements apply to a federal action under 40 CFR 93.153. There are four steps in the review process. The first three steps can be performed in any order; the four steps are listed below:

1. Determine whether the proposed action causes emissions of criteria pollutants.
2. Determine whether the emissions of a criteria pollutant or its precursor (i.e., nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds [VOCs] for ozone) would occur in a nonattainment or maintenance area for that pollutant.
3. Determine whether the federal action or activities to be conducted under the federal action are exempt from the conformity requirement per 40 CFR 93.153(c)(2).
4. Estimate the total emissions of the pollutants of concern from the federal action and compare the estimates to the *de minimis* thresholds of 40 CFR 93.153(b)(1) and (2) and to

the nonattainment or maintenance area's emissions inventory for each criteria pollutant of concern.

### ***Phase Two***

The purpose of the conformity determination, if needed, is to show if the Preferred Alternative conforms to the SIP. Conformity can be shown for ozone (precursors: NO<sub>x</sub> and VOCs) by meeting one or more of following four requirements:

1. The applicable SIP specifically includes an allowance for emissions of the Preferred Alternative, 40 CFR 93.158(a)(1).
2. Offset emission credits are purchased for the total direct and indirect emissions, which fully offsets within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations or have contributed in the past, in the area of the federal action) so that there is no net increase in emissions, 40 CFR 93.158(a)(2).
3. NO<sub>x</sub> and VOC emissions from the Preferred Alternative coupled with the current emissions in the nonattainment area would not exceed the emissions budget in the SIP, 40 CFR 93.158(a)(5)(i)(A).
4. The Preferred Alternative proponent can request that the SIP be changed by the State Governor or the State Governor's designee to include the emissions budget of the federal action, 40 CFR 93.158(a)(5)(i)(B).

Conformity can be shown for carbon monoxide (CO) and particulate matter 10 and 2.5 microns in size (PM<sub>10</sub> and PM<sub>2.5</sub>) by one of following two options:

1. The applicable SIP specifically includes an allowance for emissions of the Preferred Alternative, 40 CFR 93.158(a)(1).
2. Modeling of directly emitted CO, PM<sub>10</sub>, and PM<sub>2.5</sub> shows that the action does not cause or contribute to any new violation of any standard in any area or increase the frequency or severity of any existing violation of any standard in any area, 40 CFR 93.159(a)(4)(i) and (b).

Even if a project is shown to conform to the SIP by one of the above methods, the project may not be determined to conform to the applicable SIP unless the total of the direct and indirect emissions of the federal action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, including but not limited to the use of baseline emissions that reflect the historical activity levels that occurred in the geographic area, reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements (40 CFR 93.158(c)).

### **3.0 APPLICABILITY OF PREFERRED ALTERNATIVE**

#### **3.1 EMISSIONS**

The Preferred Alternative's emissions are evaluated in two phases: construction and operation. The two phases would not overlap. Criteria pollutants will be emitted during both phases. The pollutants of concern are PM<sub>2.5</sub>, PM<sub>10</sub>, CO, and the two ozone precursors VOCs, and NO<sub>x</sub>. Construction emissions include NO<sub>x</sub>, VOCs, PM<sub>10</sub> and CO, which are generally a product of combustion, in this case from heavy equipment. PM<sub>2.5</sub> is generated during site grading and though diesel exhaust. Operational emissions are mainly emitted from customer and employee vehicles driving to and from the casino/hotel and consist of NO<sub>x</sub>, PM<sub>10</sub> and CO. Area emissions and stationary sources are typically minor compared to mobile emissions during operations of facilities such as casinos and hotels. The area and stationary source emissions attributable to the Preferred Alternative (boilers, emergency generators, etc.) meet the thresholds requiring a Tribal Minor New Source Review (TMNSR) and require corresponding project review by USEPA and a minor NSR permit prior to the commencement of construction. The EIS gives a detailed account of both operational and construction emissions.

#### **3.2 ATTAINMENT/NONATTAINMENT AREA**

The Preferred Alternative would be constructed within the boundaries of SVAB, which is currently in attainment for SO<sub>x</sub>, Pb, and NO<sub>2</sub>. SVAB is currently designated nonattainment for PM<sub>2.5</sub> and severe-15 nonattainment for 8-hour ozone (VOCs and NO<sub>x</sub>). SVAB is designated as maintenance for PM<sub>10</sub> following California Air Resources Board (CARB) submittal of the PM<sub>10</sub> Implementation/Maintenance Plan and Redesignation Request in November 2010 to the USEPA (CARB, 2015). The northwestern portion of the SVAB is designated as maintenance for CO. The project site is not located in this designated area; although a portion of the trips generated by the Preferred Alternative would pass through the CO maintenance area.

#### **3.3 EXEMPTION**

The federal action that is described in **Section 1.0** (Preferred Alternative) is not exempt for the following reasons: (1) the action results in emission levels of at least one criteria pollutant exceeding the applicable *de minimis* thresholds; (2) the action does not have criteria pollutant emissions that are associated with a conforming program; (3) the action cannot be analyzed under certain other environmental regulation; and/or (4) the action is not in response to an emergency or natural disaster. The area and stationary source emissions of the Preferred Alternative would require the Tribe to apply for a TMNSR permit under the NSR program and, therefore, are exempt emissions under exemption 40 CFR 93.153(d)(1). While these exempt emissions are presented in **Table 1** below, the emissions are not included in the total annual emissions of the Preferred Alternative to determine conformity. The energy use and mobile emissions from the Preferred Alternative are not exempt from a conformity determination under 40 CFR 93.153(c)(2)

and are thereby considered the total annual emissions that must be compared to the *de minimis* thresholds.

**TABLE 1**  
UNMITIGATED OPERATIONAL EMISSIONS OF SIGNIFICANT CRITERIA POLLUTANTS<sup>1</sup>

Sources	VOCs	NOx	PM <sub>2.5</sub>	CO	PM <sub>10</sub>
	Tons per Year <sup>1</sup>				
<b>Exempt Emissions</b>					
Stationary Sources	0.29	1.30	4.18	0.19	0.36
Area	3.66	0.00	0.05	0.00	0.00
<b>Total Exempt Emissions</b>	<b>3.95</b>	<b>1.30</b>	<b>4.23</b>	<b>0.19</b>	<b>0.36</b>
<b>Annual Emissions</b>					
Energy	0.21	1.89	0.14	1.59	0.14
Mobile	12.51	52.49	13.97	217.02	50.18
58 Percent Mobile Reduction for CO <sup>2</sup>				-125.87	
Waste <sup>3</sup>	0.00	0.00	0.00	0.00	0.00
Water <sup>3</sup>	0.00	0.00	0.00	0.00	0.00
<b>Total Annual Emission<sup>4</sup></b>	<b>12.72</b>	<b>54.38</b>	<b>14.11</b>	<b>92.74</b>	<b>50.32</b>
Applicable Conformity Threshold	25.00	25.00	100.00	100.00	100.00
<i>Exceedance of Threshold</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>No</i>

<sup>1</sup> NOx, VOCs, CO, PM<sub>10</sub>, and PM<sub>2.5</sub> emissions values were estimated using CalEEMod air modeling program approved by the USEPA and CARB (see Revised Appendix S of the Final EIS).

<sup>2</sup> CO emissions were reduced per the trip distribution provided in the Traffic Impact Study (TIS) prepared by Kimley Horn, August 14, 2015 (Appendix O of the EIS). Per the TIS 42 percent of project related vehicles would pass through the SMAQMD CO and PM<sub>10</sub> maintenance area, which equates to a 58 percent reduction.

<sup>3</sup> Emissions from waste and water are negligible and round to zero.

<sup>4</sup> Excludes exempt emissions in accordance with 40 CFR 93.153(d)(1).

Source: AES, 2016.

### 3.4 DE MINIMIS THRESHOLDS

Emissions estimates were provided in the EIS for both construction and operation (mobile, area, stationary, and energy) of the Preferred Alternative. EIS Sections 3.4, 4.4, and 5.4.2 give a more in-depth analysis. Because operation and construction would not overlap, their emissions were evaluated separately by using the most up-to-date USEPA and CARB-approved land use based California Emissions Estimator Model (CalEEMod) air model. Stationary source emissions (e.g., boilers and emergency generators) were estimated using manufacturer emission specifications and EPA AP-42 emission factors. Construction emissions were below the 25 tons per year (tpy) *de minimis* thresholds for ozone precursors VOCs and NOx and the 100 tpy *de minimis* threshold for PM<sub>2.5</sub>. CO and PM<sub>10</sub> emissions were also below the *de minimis* levels of 100 tpy.

Accordingly, no Conformity Determination is required for construction emissions. **Table 1** presents the estimated total annual emissions for pollutants of concern during operation.

Operational emissions for NO<sub>x</sub> exceeded the 25 tpy threshold established under 40 CFR 93.153(b)(1), while VOCs were below the 25 tpy *de minimis* threshold. Because the project site is located within the maintenance areas, partially or in whole, for CO and PM<sub>10</sub>, these emissions were also evaluated for conformity and the results are included in **Table 1**. Based on the trip distribution of new vehicle trips presented in the Traffic Impact Study prepared for the EIS, 42 percent of trips generated by the Preferred Alternative would pass through the CO maintenance area. The resulting portion of the total operational emissions for CO (92.74 tons per year) were below the *de minimis* level of 100 tpy. Furthermore, in accordance with the 2004 *Revisions to the California State Implementation Plan for Carbon Monoxide* (CARB, 2004), California will meet the requirements to transition to attainment in 2018, the year prior to when the Preferred Alternative would begin operation. For PM<sub>10</sub> and PM<sub>2.5</sub>, emissions were below the *de minimis* level of 100 tpy.

A conformity determination is required for ozone precursor NO<sub>x</sub>. This requirement is due to the Preferred Alternative being located in a nonattainment area for ozone and the total NO<sub>x</sub> emissions being greater than the *de minimis* levels shown in **Table 1**.

## **4.0 CONFORMITY DETERMINATION: OZONE PRECURSOR NO<sub>x</sub>**

### **4.1 ANALYSIS**

Air modeling analysis was performed for the EIS and the general conformity determination concurrently. The results of this analysis can be found in the Final EIS, Volume II, Sections 4.4 and Section 5.4 and the revised Appendix S. As stated above, a general conformity determination is required for ozone precursor NO<sub>x</sub>. Conformity for NO<sub>x</sub> can be shown by complying with the criteria detailed in **Section 2.0**, under phase two.

#### ***Specific SIP Allowance***

SVAB was designated as an 8-hour ozone nonattainment area in 1997 and in 2004 was classified as serious nonattainment, with an attainment deadline of June 15, 2013, under the 1997 ozone NAAQS. On February 14, 2008, CARB, on behalf of the air districts in the Sacramento region, submitted a letter to USEPA requesting a voluntary reclassification of the Sacramento Federal Nonattainment Area from ‘serious’ to ‘severe-15’ for the 8-hour ozone nonattainment area with an extended attainment deadline of June 15, 2019. USEPA approved the reclassification request on May 5, 2010. The applicable SIP for ozone in SVAB is the 2009 *Sacramento Regional 8-Hour Attainment and Reasonable Further Progress Plan* and the 2013 *Update to the 8-Hour Ozone Attainment and Reasonable Further Progress Plan*. This plan is considered the latest air quality management plan for 8-hour ozone, per the SMAQMD. The following is a summary of how the 2009 plan and 2013 update became effective.

On March 26, 2009, CARB approved the 2009 *Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan*. The plan sets out a strategy for attaining the 1997 federal 8-hour ozone standard in the Sacramento Nonattainment Area by 2018 (CARB, 2015). The 2009 Plan was adopted by the five districts that make up the Sacramento Nonattainment Area: SMAQMD; El Dorado Air Quality Management District (EDAQMD); Feather River Air Quality Management District (FRAQMD); Yolo-Solano Air Quality Management District (YSAQMD); and Placer County Air Pollution Control District (PCAPCD). CARB adopted the 2009 Plan as a revision to the 2007 SIP and submitted it to USEPA. The 2009 Plan included a request for the Sacramento Nonattainment Area to be reclassified from ‘serious’ to ‘severe-15.’

On November 21, 2013, CARB approved the 2013 SIP Revisions to the *Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan*. This revision incorporates improvements and updates in reasonable further progress and transportation conformity analyses, emissions inventories, and existing and proposed control measures developed since adoption of the 2009 Plan. This update also revises the attainment demonstration and reconfirms the strategy for attainment of the 1997 and 2008 federal 8-hour ozone standard by 2018 (CARB, 2015).

Emission control measures and regulations that have been included in the 2013 SIP do not include the estimated emissions of the Preferred Alternative; therefore compliance cannot be determined though inclusion of the project’s emissions in the most recent applicable SIP.

### *Offsets*

Conformity can be achieved by fully offsetting the Preferred Alternative’s mitigated operational emissions through the acquisition of emission reduction credits (ERCs) for ozone precursor NO<sub>x</sub>, which shall be real, surplus, permanent, quantifiable, enforceable, and must be obtained and used in accordance with the federally approved SIP for SVAB, or an equally enforceable measure. The Preferred Alternative does not include the purchase of offset credits for NO<sub>x</sub> in the EIS project description, but this purchase of offset credits is included as mitigation in Section 5.4.2 of the EIS.

As stated above ERC fully offsets project emissions and must be purchased within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations or have contributed in the past, in the area of the federal action) so that there is no net increase in emissions. Therefore ERCs can be purchased from the SVAB or adjacent air basin that meets the above criteria such as the San Joaquin Valley Air Basin. The California Clean Air Act of 1988 required the ARB to assess the relative contributions of upwind emissions to downwind State ozone standard exceedances. The initial Transport Assessment was approved by ARB in 1990. The first triennial updates to the 1990 ozone transport report were approved by the ARB in August 1993, November 1996, and April

2001. The ARB determined that “(t)he analyses done over the last decade have given us a good understanding of pollutant transport statewide – including the fundamental transport relationships between air basins” (ARB, 2001). According to the April 2001 update, the San Joaquin Valley is classified as having various levels of impact to the greater Sacramento air basin (which includes the project site) ranging from significant to inconsequential depending on the day of the year. Accordingly, the results of these assessments indicates that the San Joaquin valley contributes to the violations within the Broader Sacramento Area. Accordingly, purchase of ERCs from SJVAB meets the requirements to show conformity.

### ***Emission Budget***

The NOx emissions of the Preferred Alternative coupled with the most recent SVAB emissions inventory (2013) exceeds the applicable ozone SIP’s emission budget.

### ***Addendum to SIP***

The Preferred Alternative does not anticipate that the Governor or State Governor designee will approve an addendum to applicable provisions of the SIP, which would include the Preferred Alternative’s estimated NOx emissions. Therefore conformity will not be determined using this option.

## ***4.2 MITIGATION***

Mitigation measures for the Preferred Alternative emissions of NOx are outlined in Section 5.4 of the Final EIS. According to the EIS, mitigation would include an operation feature that would reduce NOx emissions by providing preferential parking for vanpools and carpools. This is a standard mitigation feature that is included as a mitigation option within CalEEMod.

Conservatively, it was assumed that two percent of those travelling to the site would select to utilize carpools or vanpools. The results indicate that through the implementation of this mitigation measure (refer to Section 5.4.2, Mitigation Measure C.2), the unmitigated operational NOx emissions presented in **Table 1** would be reduced by 2 percent to 53.75 tons per year. Nevertheless, the operational NOx emissions of 53.75 tons per year for the Preferred Alternative still exceed the applicable Conformity Threshold of 25 tons per year and require further action to show conformity.

As presented in Section 5.4.2 of the Final EIS, to reduce impacts under NEPA the BIA shall demonstrate conformity for the Preferred Alternative through the purchase prior to operation of Alternative F by the Tribe of 53.75 tons of NOx ERCs (1) in the Sacramento Nonattainment Area (as defined in **Section 4.1**) and/or (2) in the San Joaquin Valley Air Basin and/or another adjacent district with an equal or higher nonattainment classification (severe or extreme) meeting the requirements outlined in 40 CFR 93.158(a)(2), with credits available within 50 miles of the project site given priority. This ensures compliance with the applicable federal, state, and District

requirements. Real, surplus, permanent, quantifiable, and enforceable ERCs will be purchased prior to opening day of the casino/hotel, not necessarily prior to or during construction, as the anticipated NOx emissions presented in **Table 1** are associated with operation of the casino/hotel and not with construction of the facility. The Tribe will provide the BIA and thereby the USEPA and other agencies with documentation necessary to support the emissions reductions through offset purchase, such as certification of ERC purchase or a binding agreement requiring ERC purchase prior to operation. This information will be included in the Final General Conformity Determination.

## **5.0 CONCLUSION**

This Revised Draft General Conformity Determination will be submitted to all required parties in accordance with 40 CFR 93.155(a) and (b) and made public for public comment in accordance with 40 CFR 93.0156. In compliance with the mitigation measures detailed in the Final EIS and future Record of Decision (ROD) for the Preferred Alternative (Alternative F), it is recommended that the Tribe commits to purchasing 53.75 tons of NOx ERCs prior to operation of the casino/hotel, an amount which will be sufficient to offset the operational effects in accordance with the federally approved SIP for the SVAB and the applicable general conformity requirements. After the comment period for this Revised Draft General Conformity Determination, the BIA will make a Final Conformity Determination per 40 CFR 93.150(b), which will include detailed information on the purchase of NOx ERCs. At the time these credits are purchased, the Preferred Alternative will have met the requirements of conformity and conformed to the applicable SIP.

The BIA expects to receive documentation supporting conformity before issuing a ROD, pursuant to 40 CFR 93.150. Upon receipt of documentation supporting conformity, the BIA will issue a Final Conformity Determination.

## **6.0 REFERENCES**

California Air Resources Board (CARB). 2004 July). 2004 Revision to the California State Implementation Plan for Carbon Monoxide: Updated Maintenance plan for Ten Federal Planning Areas. Available online: <http://www.arb.ca.gov/planning/sip/co/co.htm>. Accessed May 25, 2016.

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