

APPENDIX T

DRAFT GENERAL CONFORMITY DETERMINATION

**DRAFT GENERAL CONFORMITY DETERMINATION
FOR THE WILTON CASINO/HOTEL PROJECT**

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1.0 INTRODUCTION

An Environmental Impact Statement (EIS) is being prepared to assess the environmental consequences of taking 282 acres of land into Federal trust on behalf of the Wilton Rancheria (Tribe) to conduct gaming. The foreseeable consequence of this federal action will be the development of a casino/hotel resort either on the Twin Cities site, Historic Rancheria site, or the Mall site in Sacramento County, California (see EIS Figure 1-1). The effects of seven alternatives identified below are analyzed within the EIS. The alternatives are as follows:

- Alternative A – Proposed 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

Under Alternative A, the Bureau of Indian Affairs (BIA) would take the Twin Cities site into trust for the Tribe. Alternative A consists of a casino/hotel resort, which would total approximately 601,780 square feet in area, on the northern portion of the Twin Cities site. The casino-hotel resort would include restaurants, a 302-room hotel, convention center, retail space, fitness center, and pool and spa. The remainder of the Twin Cities site would remain undeveloped and be used for open space, pasture, biological habitat, and possibly subsurface wastewater disposal.

Alternative A is located adjacent to the City of Galt, approximately 20 miles south of Sacramento, adjacent to SR-99. The Sacramento Municipal Air Quality Management District (SMAQMD) has local jurisdiction over the air quality in the region including the Twin Cities, Historic Rancheria, and Mall sites, which are located within the Sacramento Valley Air Basin (SVAB).

Alternative A has the highest potential to emit, and therefore will be the alternative analyzed for project level conformity.

2.0 GENERAL CONFORMITY – REGULATORY BACKGROUND

The United States Environmental Protection Agency (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. 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.

GENERAL CONFORMITY PROCESS

The 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 State Implementation Plan (SIP).

Phase One

The purpose of a conformity review is to evaluate whether the 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 shown below:

- Determine whether the proposed action causes emissions of criteria pollutants;
- Determine whether the emissions of a criteria pollutant or its precursor (i.e. nitrogen oxides (NO_x) and reactive organic gases (ROGs) for ozone) would occur in a non-attainment or maintenance area for that pollutant;
- Determine whether the Federal action is exempt from the conformity requirement per 40 CFR 93.153 (c)(2)-(e).
- Estimate the total emissions of the pollutants of concern from the proposed action and compare the estimates to the *de minimis* threshold 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 Proposed Project conforms to the SIP.

Conformity can be shown for ozone (precursors: NO_x and ROGs) by one of following four options:

1. The applicable SIP specifically includes an allowance for emissions of the Proposed Project, 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 non-attainment or maintenance area so that there is no net increase in emissions, 40 CFR 93.158 (a)(2).

3. Emission from the Proposed Project coupled with the current emissions in the non-attainment area would not exceed the emissions budget in the SIP, 40 CFR 93.158 (a)(5)(i)(A).
4. The Proposed Project 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 particulate matter 2.5 microns in size (PM_{2.5}) by one of following two options:

1. The applicable SIP specifically includes an allowance for emissions of the Proposed Project, 40 CFR 93.158 (a)(1);
2. Modeling of directly emitted PM_{2.5} 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 for the 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 PROPOSED PROJECT

EMISSIONS

The Proposed Project's emissions are evaluated in two phases, construction and operation. The two phases would not overlap. Criteria pollutants will be produced during both phases. The pollutants of concern during construction are PM_{2.5}, and ROG and NO_x (ozone precursors), which are generally a product of combustion, in this case from heavy equipment. PM_{2.5} is generated during site grading and through diesel exhaust. Operational emissions are mainly emitted from vehicles visiting the casino/hotel, while area emissions from stationary source are negligible. Pollutants of concern during operation of the casino/hotel are ROG, NO_x (ozone precursors), and PM_{2.5}. The EIS gives a detailed account of both operation and construction emissions.

ATTAINMENT/NON-ATTAINMENT AREA

The Proposed Project would be constructed within the boundaries of the SVAB. The SVAB is currently designated nonattainment for PM_{2.5} and severe-15 non-attainment for 8-hour ozone

(ROG and NOx). The SVAB is in attainment for PM₁₀ following California Air Resources Board (CARB) approval of the PM₁₀ Implementation/Maintenance Plan and Redesignation Request in November 2010 (CARB, 2015).

EXEMPTION

The Federal action that is described in **Section 1.0** as the Proposed Project does not result in emissions less than *de minimus* thresholds, does not have emissions that are associated with a conforming program, cannot be analyzed under certain other environmental regulation, and/or are not in response to an emergency or natural disaster. Thus, the Proposed Project is not exempt from a conformity determination under 40 CFR 93.153 (c)(2)-(e).

DE MINIMUS THRESHOLDS

Emissions were estimated for both construction and operation. The construction equipment emissions were estimated by using the USEPA and CARB-approved land use based California Emissions Estimator Model (CalEEMod) air model. Operational emissions were also estimated using CalEEMod. Because operation and construction would not overlap they were evaluated separately. Construction emissions were below the 25 tons per year (tpy) *de minimis* thresholds for ozone precursors ROG and NOx and the 100 tpy *de minimis* threshold for PM_{2.5}. Operational emissions for PM_{2.5} were below the *de minimis* level of 100 tpy. Operational emissions for NOx and ROG exceeded the 25 tpy threshold establish under 40 CFR 93.153 (b)(1). **Table 1** shows the estimated emissions for pollutants of concern during operation. Section 3.4, 4.4, and 5.4.2 of the EIS gives a more in-depth analysis.

A conformity determination is required for ozone (precursors NOx and ROG). This is due to the Proposed Project being located in a non-attainment area for ozone and the total ROG and NOx emissions being greater than the *de minimis* levels shown in **Table 1**.

Table 1
Unmitigated Operational Emissions of Significant Criteria Pollutants

Sources	ROG	NOx	PM _{2.5}
	tons per year		
Area	2.77	0.0004	0.00
Energy	0.59	0.53	0.04
Mobile	69.30	52.49	13.79
Total	72.13	53.02	14.01
Applicable Conformity Threshold	25	25	100
<i>Exceedance of Threshold</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
Note: NOx, ROG, PM _{2.5} emissions values were estimated using CalEEMod air modeling program approved by the USEPA and CARB (see Appendix S of the DEIS). Source: AES, 2015.			

4.0 OZONE DETERMINATION

Analysis

Air modeling analysis was performed for the Draft EIS and the general conformity determination concurrently. The results of this analysis can be found in this Draft EIS in Sections 4.4, and Section 5.4, and Appendices Volume II, Appendix S.

As stated above, a general conformity determination is required for ozone (precursors ROG and NO_x). The modeled estimated operational emissions of PM_{2.5} were 14.01 tons per year (tpy), which does not exceed the conformity applicability threshold of 100 tpy for PM_{2.5}. Thus, the Project's operational PM_{2.5} emissions are not subject to a conformity determination and any associated mitigation. Conformity can be shown by complying with the criteria detailed in **Section 2.0**, under phase two.

Specific SIP Allowance

The SVAB was designated as an 8-hour ozone non-attainment 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 the EPA 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. EPA approved the reclassification request on May 5, 2010. The applicable SIP for ozone in the 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: the Sacramento Metropolitan Air Quality Management District (SMAQMD); the El Dorado Air Quality Management District (EDAQMD); the Feather River Air Quality Management District (FRAQMD); the Yolo-Solano Air Quality Management District (YSAQMD); and the Placer County Air Pollution Control District (PCAPCD). CARB adopted the 2009 Plan as a revision to the 2007 SIP and submitted it to U.S. EPA. 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 does not include the estimated emissions of the Proposed Project; therefore compliance cannot be determined though inclusion of the projects emissions in the most recent applicable SIP.

Offsets

Conformity can be determined by fully offsetting the Proposed Project's mitigated operational emissions through the acquisition of emission reduction credits (ERCs) for ROG and NO_x (ozone precursors), which shall be real, surplus, permanent, quantifiable, enforceable, and must be obtained and used in accordance with the federally approved SIP for the SVAB, or an equally enforceable measure. The Proposed Project does not include the purchase of offset credits in the project description, but this purchase of offset credits is included in the mitigation for the project proposed in Section 5.4.2 of the Draft EIS.

Emission Budget

The Proposed Project coupled with the most recent SVAB emissions inventory (2013) exceeds the applicable ozone SIPs emission budget.

Addendum to SIP

The Proposed Project does not anticipate that the Governor or State Governor designee will approve an addendum to the present applicable SIP, which would include the Proposed Project's estimated emissions. Therefore conformity will not be determined using this option.

Mitigation

Mitigation measures for emissions of ROG and NO_x (ozone precursors) associated with the operation of the Proposed Project are outlined in Section 5.4 of the Draft EIS. Mitigation measures were also used to reduce project emissions estimated by the CalEEMod air model. The estimated mitigated emissions are shown in **Table 2**.

The BIA and Tribe may choose to demonstrate conformity through the following:

- Agree to purchase emission reduction credits (ERC) in the amount of 72 tons of ROG and 53 tons of NO_x banked within the SMAQMD in accordance with 40 CFR 93.158 (a)(2) prior to operation of the project.

It should be noted that the ERCs must be real, surplus, permanent, quantifiable, enforceable, and obtained and used in accordance with the federally approved SIP for the SVAB. The Tribe will provide 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.

Table 2

Mitigated Operational Emissions of Significant Criteria Pollutants

Sources	ROG	NO _x
	tons per year	
Area	3.05	0.0004
Energy	0.59	0.53
Mobile	68.45	51.85
Total	71.56	52.38
Applicable Conformity Threshold	25	25
<i>Exceedance of Threshold</i>	<i>Yes</i>	<i>Yes</i>
Note: NO _x , ROG, PM _{2.5} emissions values were estimated using CalEEMod air modeling program approved by the USEPA and CARB (see Appendix S of the DEIS). Source: AES, 2015.		

5.0 CONCLUSION

This Draft Conformity Determination will serve as a submittal to the USEPA, CARB, SMAQMD, NIGC, and BIA per 40 CFR 93.155 (a). After the comment period for this Draft Conformity Determination, the BIA will make a Final Conformity Determination per 40 CFR 93.150 (b), prior to the federal action being taken.

In compliance with the mitigation measures detailed in the EIS and future Record of Decision (ROD), the Tribe commits to purchase ERCs sufficient to offset the operational effects of the proposed project in accordance with the federally approved SIP for the SVAB. Because the anticipated air quality effects are associated with operation of the casino/hotel and not with construction of the facility, real, surplus, permanent, quantifiable, and enforceable ERCs will be purchased prior to the opening day of the casino/hotel.

The proposed casino/hotel would generate an estimated 72 tons of ROG and 53 tons of NO_x during operation of the Proposed Project. To mitigate these effects, the Tribe will purchase 72 tons of ROG and 53 tons of NO_x ERCs. Therefore, the proposed project would conform to the applicable SIP and meet general conformity requirements.

6.0 REFERENCES

CARB. 2013 (October). Staff Report on Proposed Revisions to the 8-Hour Ozone State Implementation Plan for the Sacramento Federal Nonattainment Area. Available online at:

http://www.arb.ca.gov/planning/sip/planarea/sacsip/sac97o3_2013update-staffreport_final.pdf. Accessed February 2015.

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<http://www.arb.ca.gov/planning/sip/planarea/sacsip/sacplanozone2009.pdf>. Accessed February 2015.

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