Record of Decision

Trust Acquisition of 35.92 +/- acres in the City of Elk Grove, California, for the Wilton Rancheria

U.S. Department of the Interior
Bureau of Indian Affairs
January 2017

U.S. Department of the Interior

Agency: Bureau of Indian Affairs

Action: Record of Decision (ROD) for acquisition in trust by the United States of 35.92+/- acres in the City of Elk Grove, California, for the Wilton Rancheria (Tribe), for gaming and other purposes.

Summary: The Tribe submitted an application in 2013 to the Bureau of Indian Affairs (BIA) requesting that the Secretary of the Interior (Secretary) acquire approximately 282 +/- acres of land in trust near Galt, Sacramento County, California, for gaming and other purposes. The Draft Environmental Impact Statement (DEIS) identified a site near Galt as the proposed action that would allow for the development of the Tribe's proposed casino/hotel project. In December, 2016, after evaluating all alternatives in the DEIS, the BIA instead selected the Elk Grove Mall Site, which was identified as Alternative F in the DEIS, as its preferred alternative to allow for the Tribe's proposed project. The Secretary will acquire approximately 35.92 acres of land in the City of Elk Grove, Sacramento County, California (Site) for gaming and other purposes.

The Tribe has no reservation or land held in trust by the United States. In 1958, Congress enacted the California Rancheria Act of 1958, which authorized the Secretary to transfer several California Rancherias from federal trust ownership to individual fee ownership, and to terminate the government-to-government relationship between the United States and those tribes so affected, including Wilton Rancheria. In 1964, the Department of the Interior (Department) reported in the Federal Register that it had terminated federal supervision of the Tribe, among others. Following termination, the Tribe's former 38.81 acre reservation, the Wilton Rancheria, was distributed to eleven individual tribal members and the dependents of their immediate families, with two parcels held in common ownership.

The Tribe now seeks to restore its homeland in an area it historically inhabited. The Site is 5.5 miles from the Tribe's historic Rancheria, and 4 miles from the Tribe's historic cemetery. The Tribe proposes to construct a casino/hotel facility on the Site which would be 608,756 sq.f (Proposed Project). The gaming floor would be 110,260 sq.ft. Restaurant facilities include a 360-seat buffet, as well as a café, center bar and lounge, sports and lobby dining, and other food and beverage services. A 60-seat pool grill, a retail area of approximately 1,870 sq.ft., an approximately 2,120 sq.ft. fitness center, an approximately 8,683 sq.ft. spa, and an approximately 47,634 sq.ft. convention center are also proposed. The proposed hotel would be 12 stories with a total of 302 guest rooms, totaling

approximately 225,280 sq.ft. A total of 1,437 on-site surface parking spaces, along with a three-level, 1,966 space parking garage would be included.

The Department analyzed the proposed acquisition in a Final Environmental Impact Statement (FEIS) prepared pursuant to the National Environmental Policy Act under the direction and supervision of the BIA Pacific Regional Office. The BIA published a Notice of Intent (NOI) in the *Federal Register* on December 4, 2013, describing the Proposed Action and announcing the BIA's intent to prepare an EIS. The results of the scoping period were made available in a Scoping Report published by the BIA on February 24, 2014. A subsequent errata sheet was released on February 24, 2014 documenting the inclusion of two additional comments. The BIA issued notice of the availability of the FEIS and a Revised Draft Conformity Determination on December 14, 2016. The Draft Environmental Impact Statement (DEIS) and FEIS considered a reasonable range of alternatives to meet the purpose and need for acquiring the Site in trust, and analyzed the potential effects and feasible mitigation measures. The FEIS and information contained within this ROD fully consider comments received from the public on the DEIS and FEIS. The comments and the Department's responses to the comments are contained in the FEIS and **Attachment II** of this ROD, and are incorporated herein.

The DEIS identified Alternative A, located on the 282-acre Twin Cities site, as the Proposed Action that would allow for the development of the Tribe's proposed casino/hotel project; however, after evaluating all alternatives in the DEIS, the BIA has now selected Alternative F, located on the Elk Grove Site, as its Preferred Alternative to allow for the Tribe's Proposed Project. Since the DEIS was published, the Site increased by approximately eight acres, from approximately 28 to 36 acres. The additional eight acres consists of developed and disturbed land similar to the original 28 acres and was added due to parcel configuration and redesigned interior circulation. In addition, Alternative F project components have been revised in the FEIS from their discussion in the DEIS. The total square footage of the proposed facility has decreased approximately 2,299 sq.ft, from 611,055 sq.ft. to 608,756 sq.ft. Some components have also changed, such as restaurant types, and a three-story parking garage has been added, however gaming floor square footage has remained the same. These changes do not impact the conclusions of the FEIS. The FEIS was updated accordingly.

With issuance of this ROD, the Department has determined that it will acquire the Site in trust for the Tribe for gaming and other purposes. The Department has selected Alternative F as the Preferred Alternative because it will best meet the purpose and need for the proposed trust acquisition by promoting the long-term economic self-sufficiency, self-determination, and self-governance of the Tribe.

Implementation of this action will provide the Tribe with a restored land base and the best opportunity for attracting and maintaining a significant, stable, and long-term source of governmental revenue. This action will also provide the best prospects for maintaining and expanding tribal governmental programs to provide a wide range of health, education, housing, social, and other programs, as well as creating employment and career development opportunities for tribal members.

The Tribe seeks to conduct gaming on the Site pursuant to the Restored Lands Exception of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(B)(iii) (IGRA). As discussed in the ROD, the Tribe qualifies as a "restored tribe," and the Site qualifies as "restored lands." Accordingly, the Tribe may conduct gaming on the Site upon its acquisition in trust.

The Department has considered potential effects to the environment, including potential impacts to local government. The Department has adopted all practicable means to avoid or minimize environmental harm, and has determined that potentially significant effects will be adequately addressed by these mitigation measures.

The Department's decision to acquire the Site in trust for the Tribe is based on a thorough review and consideration of the Tribe's application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of land in trust and the eligibility of land for gaming; the DEIS and FEIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies, and potentially affected Indian tribes.

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Attachment I:	EIS Notices
Attachment II:	Comments and Responses to Comments on the FEIS
Attachment III:	Legal Description
Attachment IV:	Mitigation Monitoring and Enforcement Plan

1.0 INTRODUCTION

1.1 Summary

The Wilton Rancheria (Tribe) has no reservation or trust land held by the United States. On November 21, 2013, the Tribe submitted an application to initiate the fee-to-trust process for gaming purposes to acquire approximately 282 +/- acre site near Galt, California in Sacramento County. In response to the Tribe's request, the BIA published a Draft Environmental Impact Statement that identified Alternative A, a 282-acre Twin Cities site, as the Proposed Action that would allow for the development of the Tribe's proposed casino/hotel project. On June 30, 2016, the Tribe withdrew the fee-to-trust application dated November 21, 2013 and submitted a revised fee-to-trust application, requesting that the Secretary of the Interior (Secretary) instead acquire the property identified as Alternative F in the DEIS, consisting of approximately 35.92 acres of land in Sacramento County, California, at the former Elk Grove Site (the Site), for gaming and other purposes.[1] In December 2016, after evaluating all alternatives in the DEIS, the BIA selected the Elk Grove Mall Site, which was identified as Alternative F in the DEIS, as its preferred alternative to allow for the Tribe's proposed project. Under Alternative F, the Secretary will acquire approximately 35.92 acres of land in the City of Elk Grove, Sacramento County, California for gaming and other purposes.[2] The Site is located in the City of Elk Grove, Sacramento County, State of California, which also is home to the Tribe's headquarters and most of the Tribe's population. It is less than 2 miles from the Tribe's current headquarters (approximately 3 miles from the building that served as the Tribe's headquarters between 2007 and 2014), and approximately 5.5 miles from the Tribe's historic Rancheria. In addition, the Site is located approximately 4 miles from the Hicksville Cemetery which the Tribe's members have long used as a burial site.[3]

The Tribe seeks to conduct gaming on the Site pursuant to the "Restored Lands Exception" of IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii), which exempts from the general prohibition against gaming on after-acquired land, "the restoration of lands for an Indian tribe that is restored to Federal recognition.". As discussed in **Section 7.0 of this ROD**, the requirements of the Restored Lands Exception are met, and the Tribe may conduct gaming on the Site upon its acquisition in trust by the Department.

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[1] Fee-to-Trust Application for Gaming Purposes 35.92-Acre Parcel in City of Elk Grove, Sacramento County, California (July 5, 2016) [hereinafter Supplemental Application]; *see also* Fee-to-Trust Application for Gaming Purposes 282-Acre Parcel in Sacramento County, California (April 15, 2014) [hereinafter]. The Elk Grove Site, also in Sacramento County, California, is provided as Alternative F in the 2014 Application.

[2] Notice of Availability of Final Environmental Impact Statement and a Revised Draft Conformity determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento, California. 81 Fed. Reg. 90379 (Dec. 14, 2016).

[3] *Id* at 12.

The Tribe seeks to restore its homeland in an area it historically inhabited. The modern-day Tribe's members are descended from peoples who spoke variations of Uto-Aztecan languages: the Bay, Plains, and Northern Sierra dialects of the Miwok language, and the Nisenan (or Southern Maidu) language. Anthropologists who study California Indians often classify them by language group rather than by "tribe." The Miwok dialects and Nisenan both are subgroups of California Penutian, a subdivision of the Uto-Aztecan language family. The Tribe's historic Rancheria, established in 1927, and the Tribe's modern-day headquarters sit within territory that historically was occupied predominately by Plains Miwok speakers.[4]

In 1906, Congress appropriated funds to the Department to purchase land, water, and water rights for the benefit of Indians in California who either were not at that time on reservations, or whose reservations did not contain land suitable for cultivation. Congress made similar appropriations in many of the following years, through at least 1929.[5]

During this time, the Sacramento Indian Agency interacted with members of the Tribe, including sending them a draft constitution and bylaws.[6] In 1927, the Department, using money appropriated for the purchase of lands for California Indians, purchased a parcel for the Tribe measuring roughly 38.77 acres. This parcel became the Tribe's Rancheria.[7] Approximately eight years later, the Department treated the Rancheria as a "reservation" for purposes of the Indian Reorganization Act (IRA), holding an election among the Tribe's voting population.[8] They voted to accept the IRA. In 1936, the Tribe adopted a constitution as "The Me-wuk Indian Community of the Wilton Rancheria, California."[9]

By the 1950s, Federal Indian policy had turned toward assimilation of Indians and the termination of the Federal government's special relationship with Indians and Indian tribes. In 1958, Congress enacted the California Rancheria Act of 1958 (Rancheria Act), which authorized the Secretary to transfer several California rancherias and reservations from federal trust ownership to individual fee ownership, and to terminate the government-to-government

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[4] Jennifer Whiteman et al, Northwest Cultural Resource Consultants, *Ethnohistoric Summary of the Wilton Rancheria* at 5 (Feb. 2016) [hereinafter "Whiteman et al."], provided by the Tribe at Request, Supplement A, Tab 3, at 1,5, 28. (The Tribe also provided the same report at Request, Supplement B, Tab 1).

[5] Act of June 21,1906, 34 Stat. 325, 333 (appropriating $100,000).

[6] Letter from Roy Nash, Superintendent, Sacramento Indian Agency, to Mrs. Eva Cifuentes, Wilton (Sept. 14, 1925) (transmitting a draft Constitution and By-Laws for the Me-wuk Band of Indians of The Wilton Rancheria), provided by the Tribe at Request, Tab 8. It was unclear whether this draft constitution and by-laws were ever adopted.

[7] Land Division, Office of Indian Affairs, "Lands Purchased for California Indians," at Sheet B (undated) [hereinafter "Lands Purchased for California Indians"], provided by the Tribe at Request, Tab 7; Letter from John R. McCarl, Comptroller General, to Hubert Work, Secretary of the Interior (June 14, 1928), provided by the Tribe at Request, Tab 7; Indenture (Apr. 23, 1928), provided by the Tribe at Request, Tab 7.

[8] *See* 25 U.S.C. § 5123, 25 U.S.C. § 5129.

[9] Ten Years of Tribal Government Under the I.R.A., U.S. Indian Service Tribal Relations Pamphlets 1 (1947), at 16 (Haas Report). The Haas Report shows that the Department held an election on the Rancheria on June 15, 1935, and that out of a voting population of 14 persons, the vote was 12-0 in favor of accepting the IRA. *Id.* at 16. The Tribe amended its constitution in 1940. *Id.* at 26.

relationship between the United States and those affected tribes. The Tribe and its Rancheria were among those named in the Rancheria Act subject to termination. In accordance with the Rancheria Act, the Department developed a plan to terminate the government-to-government relationship with the Tribe, and to distribute the Tribe's assets, including the Rancheria.[10] In 1964, the Department reported in the *Federal Register* that it had terminated federal supervision of the Tribe, among others.[11]

In 1979, Indian residents of several California rancherias, including the Wilton Rancheria, filed a class action lawsuit against the United States and the California counties in which their Rancherias were located.[12] On February 28, 1980, the Tribe's distributees were certified as members of the Hardwick plaintiff class.[13] However, on December 15, 1983, the district court determined that Wilton Rancheria would not be included in the proposed settlement.[14] The Order Approving Entry of Final Judgment did not include the Tribe.[15]

In 2007, the Tribe filed suit against the Department, seeking declaratory and injunctive relief.[16] The Department agreed (among other things) that the Tribe was not lawfully terminated, and that it would restore the Tribe "to the status of a federally-recognized Indian Tribe."[17] The Department published notice of the restoration of the Tribe to federal recognition.[18] Since then, the Tribe has appeared on the list of Indian tribes that the Department publishes each year in the *Federal Register*.[19] Since that time, however, the United States has not acquired land in trust for the benefit of the Tribe, thus, the Tribe remains landless.[20]

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[10] H. Rex Lee, A Plan for the Distribution of the Assets of the Wilton Rancheria, According to the Provisions of Public Law 85-671, Enacted by the 85th Congress, Approved August 18, 1958 (July 6, 1959), provided by the Tribe at Request, Tab 9.

[11] Stewart L. Udall, Sec'y of the Interior, PROPERTY OF CALIFORNIA RANCHERIAS AND OF INDIVIDUAL MEMBERS THEREOF, *Termination of Federal Supervision*, 29 Fed .Reg. 13146 (Sept.22, 1964); *see also.* Leonard M. Hill, Area Director, "WILTON RANCHERIA- Completion Statement" (July 19, 1961), provided by the Tribe at Request, Tab 9.

[12] *See generally Hardwick v .United States*, No. C-79-1710 (N.D. Cal. 1979) [hereinafter "Hardwick"].

[13] *Id.*, Order re: Class Certification (Feb. 28, 1980) [Dkt. No. 20a].

[14] *Id.*, Findings and Recommendation (Dec. 15, 1983) [Dkt. No. 62].

[15] *Id.*, Order Approving Final Judgment in Action (Dec. 22, 1983) [Dkt. No. 63]; Stip. for Entry of Judgment (Dec. 22, 1983) [Dkt. No. 62A].

[16] *Wilton Miwok Rancheria and Dorothy Andrews v. Salazar*, Civil No. C-07-02681 (JF)(PVT), and *Me-Wuk Indian Community of the Wilton Rancheria v. Salazar,* Civil No. C 07-05706(JF), United States District Court for the Northern District of California.

[17] *Wilton Miwok Rancheria v. Salazar*, Case No. 5:07-cv-02681-JF, Stip. for Entry of Judgment (June 4, 2009) (N.D. Cal.).

[18] Bureau of Indian Affairs, *Restoration of Wilton Rancheria*, 74 Fed. Reg. 33468 (July 13, 2009).

[19] *See, e.g.*, Bureau of Indian Affairs, *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 74 Fed. Reg. 40218, 40222 (Aug. 11, 2009); Bureau of Indian Affairs, *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 81 Fed. Reg. 26,826, 26,830 (May 4, 2016).

[20] FEIS, Vol. II at §1.1.

LEGEND

Elicerville Cemetery	4 miles
New Tribal Headquarters	1.8 miles
Historic Rancheria	5.5 miles
Tribal Headquarters 2007-2014	2 miles
Elk Grove Site	
Sacramento County	

1.2 Authorities

Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 5108, provides the Secretary with general authority to acquire land in trust for Indian tribes in furtherance of the statute's broad goals of promoting Indian self-government and economic self-sufficiency. As discussed below in **Section 8.3**, we have determined that the Secretary has authority to acquire the Site in trust.

IGRA was enacted in 1988 to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Section 20 of IGRA, 25 U.S.C. § 2719, generally prohibits Indian gaming on

lands acquired in trust after October 17, 1988, subject to several exceptions. One exception, known as the Restored Lands Exception, dictates that IGRA's general prohibition against gaming on newly acquired lands does not apply to land taken into trust as part of the restoration of lands for an Indian tribe that is "restored to Federal recognition." 25 U.S.C. § 2719 (b)(1)(B)(iii). The regulations set forth in 25 C.F.R. Part 292, implement Section 2719 of IGRA, including the Restored Lands Exception. The criteria under Part 292 require consideration of: (1) whether the tribe is a "restored tribe," and (2) whether the newly acquired lands are "restored lands." 25 C.F.R. § 292.7 (a) - (d). As discussed below in **Section 7.0**, we have determined the Tribe and the Site meet the Restored Lands Exception.

1.3 Description of the Proposed Action

The Department would acquire in trust 35.92+/- acres in the city of Elk Grove, Sacramento County, California, for gaming. The Proposed Project on the Site would be 608,756 sq.ft. The gaming floor would be 110,260 sq.ft., restaurant facilities include a 360-seat buffet, as well as a café, center bar and lounge, dining, and other food and beverage services. A 60-seat pool grill, a retail area of 1,870 sq.ft., a 2,120 sq.ft. fitness center, a 8,683 sq.ft. spa, and a 47,634 sq.ft. convention center are also proposed. The proposed hotel would be 12 stories with a total of 302 guest rooms, totaling 225,280 sq.ft. A total of 1,437 on-site surface parking spaces, along with a three-level, 1,966 space parking garage would be included. The casino and hotel would be identified by large, multi-story signage on the parking garage that would be visible to travelers on Highway 99. Buildings would be architecturally and aesthetically compatible with the adjacent retail facility. The Proposed Project would employ approximately 1,750 full-time employees (FTE) and would serve 8,100 – 9,000 patrons per day on weekdays, and 12,900 – 14,200 on weekends.[21]

1.4 Land to be Acquired

The legal descriptions of the five parcels are found in **Attachment III**.

1.5 Purpose and Need for Acquiring the Site in Trust

The purpose and need for acquiring the Site in trust is to allow the Tribe to generate a dependable stream of income that can be used to support tribal government functions and meet the needs of its members. Acquisition of the Site would enable the Tribe to meet its needs for economic development and diversification, self-sufficiency and self-governance, and to provide its membership with employment and educational opportunities, and needed social and governmental services. Further, acquisition of the Site in trust would restore the Tribe's land base. Increased revenue and job opportunities from the Proposed Project would improve the socioeconomic condition of tribal members and reduce dependence on public assistance

[21] FEIS Vol. II at 2.7.1-2.

programs. *See* **Section 8.4** for further discussion of the Tribe's need for acquiring the Site in trust.

1.6 Procedural Background and Cooperating Agencies

The BIA published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the *Federal Register* on December 4, 2013, describing the Proposed Action of acquiring the 282-acre Twin Cities Site in trust and inviting comments.[22] *See* **Attachment I** of this ROD. The Tribe, National Indian Gaming Commission, U.S. Environmental Protection Agency – Region IX, California Department of Transportation, Sacramento County, and the City of Galt and the City of Elk Grove, were identified as cooperating agencies during the scoping process.

The Notice of Availability (NOA) of the DEIS was published in the *Federal Register* by the BIA on December 29, 2015, and the United States Environmental Protection Agency (USEPA) on January 15, 2016.[23] The DEIS was made available for a 62-day public comment period that concluded on February 29, 2016, with a ten day extension for the City of Galt, which concluded on March 10, 2016. During the comment period, a public hearing was held at the Chabolla Community Center in Galt, California, on January 29, 2016, at which time written and oral comments on the DEIS were received. Approximately 350 people attended this hearing. *See* **Attachment I** of this ROD. The BIA received a total of 34 comment letters in addition to the comments received during the public hearing. Public and agency comments on the DEIS received during the comment period, including those submitted or recorded at the public hearing, were considered in the preparation of the FEIS. Responses to comments received on the DEIS were provided in Volume I of the FEIS.

The BIA revised the FEIS as appropriate to address comments received on the DEIS, and also selected the Elk Grove Mall Site, which was identified as Alternative F in the DEIS, as its preferred alternative to allow for the Tribe's proposed project. The BIA issued notice of the availability of the FEIS and a Revised Draft Conformity Determination on December 14, 2016.[24] *See* **Attachment I.** The USEPA published a NOA of the FEIS on December 16, 2016.

The Clean Air Act requires federal agencies to assure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria pollutants. The BIA prepared and published Draft and Final Conformity Determinations in accordance with the General Conformity Rule Section 176 of the Clean Air Act, 42 U.S.C. § 7506, and EPA general conformity regulations, 40 C.F.R. Part 93, Subpart B. This Revised Draft General Conformity Determination was submitted to all required parties in accordance with 40 C.F.R. 93.155(a) and (b) and made available for public comment in accordance with 40 C.F.R. 93.0156. In compliance with the mitigation measures detailed in the FEIS and this ROD for the Preferred Alternative (Alternative F), it is recommended that the

[22] 78 Fed. Reg. 72,928 (December 4, 2013).
[23] 80 Fed. Reg. 81,352 (December 29, 2015).
[24] 81 Fed. Reg. 90,379 (December 14, 2016).

Tribe commits to purchasing 53.75 tons of nitrogen oxides (NOx) emission reduction credits (ERCs) prior to operation of the Proposed Project, an amount which will be sufficient to offset the operational effects in accordance with the federally approved State Implementation Plan (SIP) for the Sacramento Valley Air Basin (SVAB) and the applicable general conformity requirements. After the comment period for this Revised Draft General Conformity Determination, the BIA made a Final Conformity Determination pursuant to 40 C.F.R. 93.150(b), which includes 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 received documentation pursuant to 40 C.F.R. Part 93.150, supporting conformity prior to issuing this ROD. The BIA issued a Final Conformity Determination.

2.0 ANALYSIS OF ALTERNATIVES

The DEIS identified Alternative A, located on the 282-acre Twin Cities site, as the Proposed Action; however, after evaluating all alternatives in the DEIS, the BIA has now selected Alternative F, located on the Elk Grove Site, as its Preferred Alternative for the Tribe's Proposed Project. Since the DEIS was published, the Site increased by approximately eight acres, from approximately 28 to 36 acres. The additional eight acres consists of developed and disturbed land similar to the original 28 acres and was added due to parcel configuration and redesigned interior circulation. In addition, Alternative F project components have been revised in the FEIS from their discussion in the DEIS. The total square footage of the proposed facility has decreased approximately 2,299 sq. ft., from 611,055 sq. ft. to 608,756 sq. ft. Some components have also changed, such as restaurant types, and a three-story parking garage has been added. However, gaming floor square footage has remained the same. These changes do not impact the conclusions of the FEIS. The FEIS was updated accordingly.[25]

2.1 Alternative Screening Process

A range of reasonable alternatives to meet the purpose and need for acquiring the Site in trust were considered in the FEIS, including non-casino alternatives and reduced intensity alternatives. Alternatives, other than the No Action Alternative, were first screened to determine if they met the purpose and need for acquiring the Site in trust. Remaining alternatives were selected for their ability to meet the purpose and need for acquiring the Site in trust and reduce environmental impacts.

2.2 Alternatives Eliminated from Consideration

Additional sites were screened for their ability to restore the Tribe's land base. Sites that did not meet the purpose and need of the proposed project were eliminated from further consideration.

[25] 81 Fed. Reg. 90,379 (December 14, 2016).

Sites that included environmental considerations that would affect the feasibility of construction were also eliminated from further consideration.[26]

2.3 Reasonable Alternatives Considered In Detail

The DEIS and FEIS evaluated the following reasonable alternatives and the mandatory No Action Alternative in detail. *See* Sections 2.4 through 2.10.

2.4 Alternative F – Preferred Alternative

Preferred Alternative F consists of the acquisition of the 35.92 +/-acre Site in trust, development of a casino, hotel, convention center, entertainment center, and other ancillary facilities such as garage parking and infrastructure. This alternative most suitably meets all aspects of the purpose and need for acquiring the Site in trust by restoring the Tribe's historic land base and by promoting the Tribe's self-governance capability and long-term economic development. Components of Preferred Alternative F are described below.

Gaming Development and Management Contract: The NIGC reviews and approves management contracts for the management of the gaming facility between tribal governments and outside management groups. The potential management contract between the Tribe and a management company would assist the Tribe in obtaining funding for the development of the Proposed Project. Once the facility becomes operational, the management company would have the exclusive right to manage day-to-day operations of the Proposed Project. The Tribe and the management company must comply with the terms of IGRA. The Tribal Government would maintain the ultimate authority and responsibility for the development, operation, and management of the casino pursuant to IGRA, and other tribal ordinances and policies.

Proposed Facilities: Preferred Alternative F would result in the acquisition in trust of the 35.92+/- acre Site for the benefit of the Tribe. The Proposed Project on the Site would be 608,756 sq.ft. The gaming floor would be 110,260 sq.ft., restaurant facilities include a 360-seat buffet, as well as a café, center bar and lounge, dining, and other food and beverage services. A 60-seat pool grill, a retail area of 1,870 sq.ft., a 2,120 sq.ft. fitness center, a 8,683 sq.ft. spa, and a 47,634 sq.ft. convention center are also proposed. The proposed hotel would be 12 stories with a total of 302 guest rooms, totaling 225,280 sq.ft. A total of 1,437 on-site surface parking spaces, along with a three-level, 1,966 space parking garage would be included. The casino and hotel would be identified by large, multi-story signage on the parking garage that would be visible to travelers on Highway 99. Buildings would be architecturally and aesthetically compatible with the adjacent retail facility. The Proposed Project would employ approximately 1,750 full-time

[26] Sites eliminated from consideration include the Seven Mile Site, the Diocese Site, the Mingo Site, the Dry Creek Site, the Historic Rancheria Site and a Reduced Intensity and Retail on the Mall Site. FEIS Vol. II at 2.9.1-2.9.4. The Historic Rancheria Site and a Reduced Intensity and Retail on the Mall Site were similarly eliminated. FEIS Vol. II at 2.9.5-2.9.6.

employees (FTE) and would serve 8,100 – 9,000 patrons per day on weekdays, and 12,900 – 14,200 on weekends.[27]

Water Supply: Water supply demands would be supplied through connections to Sacramento County Water Agency (SCWA) infrastructure already partially developed on the Site. Two connection points to the SCWA pipelines are proposed. A flow would be provided by SCWA for fire flow. SCWA has the capacity to meet anticipated demand for domestic water use; however, the Tribe will resubmit water improvement plans to SCWA and pay the remaining water development fees.[28]

Wastewater Treatment and Disposal: Wastewater services would be provided through a service agreement with the Sacramento Area Sewer District (SASD) to provide sewer service to the Site. The projected average daily wastewater flow would be approximately 232,000 gallons per day (gpd), with peak day flows estimated at 309,000 gpd. Partially completed connections to the SASD infrastructure are located on and in the immediate vicinity of the Site. Completion of these connections to the existing wastewater conveyance system would occur and wastewater would be conveyed to the Sacramento Regional County Sanitation District (SRCSD) Wastewater Treatment Plant (WWTP) where treatment would occur. Treated effluent would meet water quality guidelines.[29]

Site Drainage: Preferred Alternative F would involve minor improvements to the Site to allow for improvements to drain via gravity. A preliminary drainage plan has been prepared to manage surface water flow and prevent downstream impacts. The development would include connections to the existing storm drainage system previously developed on the Site. The existing system is routed to an off-site stormwater detention basin, located approximately 0.5 miles west of the Site. The detention basin and storm drain system has been sized assuming full development of the Site and adjacent properties.[30]

Utilities: Electricity is available from Sacramento Municipal Utilities District (SMUD) and Pacific Gas and Electric (PG&E) will provide natural gas. The Site has infrastructure for electrical developments and natural gas, the connections were not finalized during previous development.[31]

Law Enforcement: The City of Elk Grove Police Department (EGPD) in conjunction with Tribal security staff would provide law enforcement for the Proposed Project.[32]

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[27] FEIS Volume II at 2.7.1-2.
[28] *Id.* at 2-30.
[29] *Id.* at 2-31.
[30] *Id.*
[31] *Id.*
[32] *Id.* at 2-30.

Fire Protection and Emergency Medical Services: The Cosumnes Community Service District (CCSD) Fire Department would provide fire protection and emergency medical services to the Proposed Project.[33]

To examine the potential for reduction of impacts and in response to public comments, additional alternatives were considered and carried out for full analysis within the DEIS and FEIS. These include Alternatives A, B, C, D, and E which are further detailed below.

2.5 Alternative A – Proposed Twin Cities Casino Resort

Alternative A is similar to Preferred Alternative F in many respects, but consists of the trust acquisition of the 282-acre Twin Cities site and not the Elk Grove Mall Site, and has a different footprint. The casino and hotel facilities would be similar to those proposed for Preferred Alternative F, but would be larger in scale. Alternative A consists of the construction of a casino, hotel, and restaurant space on approximately 76-acres of the 282-acre Twin Cities site. No development is proposed on the southern part of the site. The Proposed Project would have a gross footprint of 601,780 sq.ft. The gaming component of the facility would consist of electronic gaming devices, table games, and poker room tables within a 110,260 sq.ft. gaming floor area that would be open 24 hours a day. Restaurant facilities include a 360 seat buffet, as well as a café, sports bar, food court, and other food and beverage providers. A 60 seat pool grill, a retail area of 2,600 sq.ft., a 3,000 sq.ft. fitness center, a 8,507 sq.ft. spa, and a 48,150 sq.ft. convention center, and 3,500 surface parking spaces center are also proposed. The proposed hotel would be 12 levels and a total of 302 guest rooms. The casino and hotel would be identified by a large sign placed near the freeway that would be visible to travelers on Highway 99. Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, and fire protection and emergency medical services would be substantially similar to those described for Preferred Alternative F, above. [34]

2.6 Alternative B – Reduced Intensity Twin Cities Casino

Alternative B is proposed on the same Twin Cities site as Alternative A. Similar to the Proposed Action, the Alternative B development area is in the northern portion of the Twin Cities site. Alternative B consists of the construction of a casino, restaurants, some in-casino retail, and parking facilities. Alternative B would be similar to Alternative A, but without a hotel. Alternative B would employ approximately 1,700 FTEs and approximately 8,100 – 9,000 patrons would visit the facility on weekdays, while the number anticipated on weekends is 12,900-14,200. Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, and fire protection and emergency medical services, would be substantially similar to those described in Preferred Alternative A.[35]

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[33] *Id.*
[34] FEIS Vol. II at 2.2.5.
[35] FEIS Vol. II at 2.3.1.

2.7 Alternative C – Retail on Twin Cities Site

Alternative C consists of the construction of a retail complex and parking facilities on the north portion of the Twin Cities site. This alternative is non-gaming and does not require approval of a gaming management contract by the NIGC. Under Alternative C, the proposed retail complex would be 686,000 sq.ft., with at least 3,320 surface parking spaces. The retail facilities would employ approximately between 1,175 and 1,343 full-time equivalent employees and the restaurant facilities would employ approximately 160 full-time equivalent employees, for a total of approximately 2,160 employees. Alternative C would be identified by a large sign placed near the freeway that would be visible to travelers on Highway 99. Under Alternative C, required site access improvements are similar to those described under Alternative A. A gas station/car wash would be built and would include buried underground storage tanks to store various grades of fuel, fuel pumps with canopies, a small mini-mart, and restrooms. [36]

Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, fire protection and emergency medical services, would be substantially similar to those described in Preferred Alternative A.[37]

2.8 Alternative D – Casino Resort at Historic Rancheria Site

Alternative D consists of development of the Proposed Project on the 75-acre Historic Wilton Rancheria site (Historic Rancheria site). The casino/hotel would be the same scope and size as Alternative A. Alternative D would employ approximately 1,900 FTEs. Access to the Historic Rancheria site would be provided via two driveways along Green Road, located approximately 500 feet west of the existing Green Road/Randolph Road intersection and 200 feet east of the Green Road/Danlar Court intersection, which would be constructed as part of the project.[38]

An on-site water system, as recommended in the Water and Wastewater Feasibility Study, would be implemented and is identical to those discussed under Alternative A. In addition, wellhead treatment would be installed for any water quality constituent that exceeds EPA regulatory standards for drinking water. Wastewater treatment and disposal would be provided by the development of an on-site WWTP and a treated effluent discharge point to the Cosumnes River. The Historic Rancheria site would be graded to drain into several detention basins sized to maintain pre-project stormwater flows.[39]

2.9 Alternative E – Reduced Intensity at Historic Rancheria Site

Alternative E consists of development of a scaled-down gaming facility on the Historic Rancheria site identical in size to Alternative B. Alternative E is anticipated to employ

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[36] FEIS Vol. II at 2.4.
[37] *Id.* at 2.4.1
[38] *Id.* at 2.5.1
[39] *Id.* at 2.5.

approximately 1,500 FTEs. The approximate average number of patrons per weekday is 8,100-9,000, while the number of anticipated daily weekend patrons is 12,900-14,200. Under Alternative E, the required site access improvements are similar to those described under Alternative D.[40]

Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, fire protection and emergency medical services, would be substantially similar to those described in Preferred Alternative D.[41]

2.10 Alternative G – No Action

Under the No Action Alternative, the Site's partial development would likely be completed in the near-term, based on recent actions by the property owner, although the precise timing and extent of such development is not currently reasonably foreseeable. Therefore, future development of the Site that may occur would likely be centered in typical commercial and retail uses that correspond with neighboring uses at the existing Outlet Collection at Elk Grove. Under the No Action Alternative, the BIA would not take any actions in furtherance of its obligation to promote tribal self-determination and economic development.[42]

Under the No-Action Alternative, the acquisition in trust of the 35.92 +/- acre Site would not occur, and the Site would not be developed with uses described under Preferred Alternative F or Alternatives A, B, C, D, or E (Development Alternatives) in the near term.[43]

3.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS

3.1 Environmental Impacts

Implementation of Preferred Alternative F, including construction and operation, and the other Development Alternatives could result in direct, indirect, and cumulative impacts to the environment. A number of specific environmental issues were raised during the EIS process. The categories of the most substantive environmental issues raised during the EIS process include:

- Land Resources
- Water Resources
- Air Quality/Greenhouse Gas Emissions
- Biological Resources
- Cultural and Paleontological Resources

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[40] *Id.* at 2.6.
[41] *Id.* at 2-25.
[42] FEIS Vol. II at 2.8.
[43] *Id.* at 2-33.

- Socioeconomic Conditions
- Transportation
- Land Use
- Public Services
- Noise
- Hazardous Materials
- Visual Resources
- Environmental Justice

Each of the alternatives considered in the FEIS were evaluated for the potential to impact environmental issues as required under NEPA, including the concerns listed above. The evaluation of these project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments for the FEIS were accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the FEIS at the time of preparation. Alternative courses of action and mitigation measures were developed in response to the identified environmental concerns and substantive issues raised during the EIS process. A summary of the analysis of the environmental issues within the FEIS, including the issues raised during the EIS process, is presented below.

3.1.1 Land Resources

Topography: All Development Alternatives would involve clearing and grading. Given the Site is already partially developed, contains no distinctive topographical features, and minimal site improvements would be made on-site, the impact of Alternative F on site topography would be less than significant. *See* FEIS Section 4.2.6.

Soils: Construction could adversely impact soils due to erosion during construction activities, such as clearing, grading, trenching, and backfilling. The majority of the soils on the Site have a moderately-severe to severe erosion susceptibility based on soil type. Alternative F would adhere to a National Pollutant Discharge Elimination System (NPDES) permit from the USEPA for sediment control and erosion. The design and construction would not significantly affect soils on the Site. The mitigation outlines measures and Best Management Practices (BMPs) that would be included as a part of the Stormwater Pollution Prevention Plan (SWPPP). With incorporation of the mitigation, effects from construction on soils and geology would be further minimized, and thus impacts would be less than significant. *See* FEIS Section 4.2.6.

Seismicity: There are no known active faults in the vicinity of the Site. The Site does not fall within an Alquist-Priolo Fault Zone and is therefore not subject to any building restrictions. The casino and related facilities would be constructed consistent with International Building Code guidelines, particularly those pertaining to earthquake design, in order to safeguard against major structural failures and loss of life. Development would have no adverse effects related to seismic

hazards. No mitigation is required and thus impacts would be less than significant. *See* FEIS Section 4.2.6.

Mineral Resources: There are no known or recorded mineral resources within the Site. Construction and operation would not adversely affect known or recorded mineral resources. No mitigation is required and thus impacts to mineral resources would be less than significant. *See* FEIS Section 4.2.6.

3.1.2 Water Resources

Surface Water Drainage: Development would alter the existing drainage pattern of the Site and increase stormwater runoff as a result of increased on-site impervious surfaces. However, due to the previous development, an off-site detention basin has been designed and built to accommodate runoff. BMPs include various water quality features to improve stormwater quality that would ensure protection of surface water quality. No mitigation is required and thus impacts to surface water quality would be less than significant. *See* FEIS Section 4.3.6.

Flooding: The Site is located outside the 100-year and 500-year floodplains and development would not impede or redirect flood flows, alter floodplain elevations, or affect floodplain management. No mitigation is required and thus impact to floodplains would be less than significant. *See* FEIS Section 4.3.6.

Surface Water Quality Construction: Erosion from construction could increase sediment discharge to surface waters during storm events, thereby degrading downstream water quality. Discharges of sediments and pollutants, which include grease, oil, and fuel, to surface waters from construction activities and accidents are a potentially significant impact. Implementation of measures and the BMPs incorporated into the SWPPP would reduce or prevent adverse effects to the local and regional watershed from construction activities on the site. The Development Alternative incorporates design measures that would reduce sediment discharge and reduce impacts to less than significant levels. *See* FEIS Section 4.3.6

Surface Water Quality Operation: Development would include the routine use of potentially hazardous construction materials such as concrete washings, solvents, paint, oil, and grease, which may spill onto the ground and enter stormwater runoff. These pollutants may percolate to shallow groundwater from construction activities and accidents have the potential to cause a significant impact. Several features to filter surface runoff have been incorporated into the project design. Thus, the impact to groundwater quality from stormwater runoff would be less than significant. *See* FEIS Section 4.3.6.

Groundwater Quality: Development would generate wastewater and could indirectly affect surface and groundwater quality. Wastewater will be treated and disposed of on-site or through connection to the City/County municipal sewer system. A service agreement with the Tribe, SRCSD, and the SASD will be obtained to provide sewer service. Wastewater at the Sacramento

Regional WWTP is treated and discharged via a Regional Water Quality Control Board NPDES permit. Development would not result in significant adverse cumulative effects to groundwater quality. Mitigation measures will be implemented to reduce the impact to less than significant. *See* FEIS Section 4.3.6.

Treated Effluent Disposal: A services agreement with the SRCSD and the SASD will be obtained to provide sewer service to the Site. Partially completed connections to SASD infrastructure are located on and in the immediate vicinity of the Site. The completion of these connections to the existing wastewater conveyance system would occur and wastewater would be conveyed to the SRCSD WWTP where treatment would occur. Treated effluent would meet water quality guidelines. The current available capacity at the Sacramento Regional WWTP would accommodate the wastewater demands. With implementation of mitigation, the impacts to the SRCSD and SASD wastewater services would be reduced to a minimal level. *See* FEIS Section 4.10.6.

3.1.3 Air Quality

Construction Emissions: Construction emissions associated with pollutants from construction would not exceed CEQ RPs General Conformity *de minimis* thresholds; therefore, no conformity determination is required. However, to further reduce project-related construction emissions, mitigation measures implemented will be reduced to a minimal level. *See* FEIS Sections 4.4.7, 5.4.1.

Operational Emissions: Operational emissions (on-road vehicle traffic) would exceed General Conformity *de minimis* thresholds. Mitigation will be implemented to minimize emissions from operations and result in less than significant adverse effect to the air quality. *See* FEIS Section 4.4.7.

General Conformity: Past, present, and future development projects contribute to a region's air quality conditions on a cumulative basis. Therefore by its very nature, air pollution is largely a cumulative impact. The Site and vicinity is in a nonattainment area. Emissions from operations would exceed the Sacramento Metropolitan Air Quality Management District thresholds. Mitigation will minimize emissions from operations and result in a less than significant adverse impact on the regional air quality environment. *See* FEIS Section 4.15.8; *Updated Draft General Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino/Hotel Project* (Dec. 2016).

Odors: Types of operations that are typically evaluated for odor concerns include waste processing and heavy industrial facilities, such as wastewater treatment plants, landfills and composting facilities, chemical manufacturing, and confined animal facilities. The Site does not include any source types that have historically been associated with odor and results in a less than significant impact. *See* FEIS Section 3.4.1.

Greenhouse Gas Emissions: Development would generate substantial amounts of greenhouse gas emissions (GHG). Mitigation is included within the Mitigation Monitoring and Enforcement Plan (MMEP) to reduce the significance of this impact. To reduce potential GHG emissions, GHG reduction measures are recommended and therefore would result in a less than significant impact to climate change. *See* FEIS Sections 4.15.8, 5.4.3.

Climate Change: Direct and indirect CO2e emissions are above the CEQ reference point of 25,000 MT of CO2e per year. Project related GHG emissions have the potential to result in a significant cumulative effect to climate change. To reduce potential GHG emissions, GHG reduction measures are recommended and therefore would result in a less than significant impact to climate change. *See* FEIS Sections 4.15, 4.15.

3.1.4 Biological Resources

Terrestrial Habitat: The entire Site is considered to be ruderal/developed habitat. Ruderal/developed areas include graded, paved roads and parking lots, and partially constructed building shells throughout the Site. These areas are interspersed with nonnative grassland patches. No aquatic habitat types are located within the Site, and thus impact to the terrestrial habitat is a less-than-significant level. *See* FEIS Section 3.5.4.

Wetlands and /or Waters of the U.S.: Implementation of Alternative F would not result in adverse effects to waters of the U.S as there are none located on the Site. Alternative F would not contribute to adverse cumulative effects to waters of the U.S. *See* FEIS Sections 4.5, 4.15.

Federally Listed Species: Federally-listed species include those plant and animal species that are listed as endangered or threatened under the Endangered Species Act (ESA), or formally proposed for listing. The Site does not provide habitat for any federally-listed species, and no suitable habitat for special-status species is located on the Site. Because no federally listed endangered, threatened, or candidate species occur within the Site, impacts to Federally Listed Species are less than significant. *See* FEIS Section 3.5.4.

Migratory Birds: Migratory birds may be adversely affected if active nest sites are either directly removed or exposed to a substantial increase in noise or human presence during construction. Migratory birds and other birds of prey have the potential to nest within partially completed structures on the Site. If, however, no active nests are identified during the pre-construction survey, then no further mitigation is required. Birds were observed foraging, however, no birds were observed nesting and thus impact to Migratory Birds is less than significant. *See* FEIS Sections 3.5.4, 5.5.1.

State and Local Special-Status Species: The Site does not provide habitat for any state-listed species. Impacts to State and Local Special-Status Species would be less than significant. *See* FEIS Section 3.5.

3.1.5 Cultural and Paleontological Resources

Historic Properties: No historic properties would be affected by the implementation of the Development Alternatives and thus impacts would be less than significant. *See* FEIS Section 4.15.8.

Cultural and Paleontological Resources: While no known cultural and paleontological resources have been identified within the Site, there is the possibility for accidental discovery of archaeological or paleontological resources during ground disturbing activities with implementation of the Development Alternatives. The destruction or disturbance of these resources would result in a significant impact; however, implementation of mitigation measures for the treatment of unknown archaeological resources would reduce impacts to a less-than-significant level. *See* FEIS Section 4.15.8.

3.1.6 Socioeconomic Conditions

Economic Effects: The direct economic effects for both construction and operation of Alternative F are similar to those described for Alternative A, since Alternative F is of the same size and scope. Construction and operation would generate substantial economic activity within the County which is considered a beneficial effect. Both construction and operational phases would generate employment. Both construction and operational phases would also result in indirect and induced spending. Preferred Alternative F would generate substantial output to a variety of businesses and result in the greatest economic benefits to the region and the Tribe. *See* FEIS Sections 4.7.1, 4.7.6.

Housing: The projected 2019 housing market in Sacramento and San Joaquin Counties would fulfill the demands for housing under Alternative F. Alternative F would not result in significant adverse effects to the housing market and, therefore, impacts to housing would be less than significant. *See* FEIS Section 4.14.

Community Infrastructure: The Site is situated in the vicinity of adjacent areas that will likely be improved with retail, commercial, and residential developments. These adjacent developments will likely occur, or not occur, irrespective of the implementation of Alternative F. Consequently, there would be no growth inducing effects related to such developments. The minimal amount of commercial growth that may be induced would not result in significant adverse environmental growth inducing effects, and, therefore, are not anticipated to have significant impacts on community infrastructure. *See* FEIS Section 4.14.

Problem Gambling: For gaming alternatives (Alternatives A, B, D, E, and F), it is anticipated that there would be an increased need for counselors to treat the problem gambling population. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. *See* FEIS Sections 4.7, 5.7.

3.1.7 Transportation

Intersections/Freeways: Absent mitigation, the project traffic will add to the background congestion of the freeway mainline and ramps. It should be noted that the intersection of Grant Line Road/East Stockton Boulevard is projected to operate at unacceptable Level of Service (LOS) with or without the addition of Alternative F. However, Alternative F would not increase the average control delay at the intersection by five seconds or more; thus, no significant impact would occur at this location. *See* FEIS Section 4.8.3.

The following mitigation measures are recommended for Alternative F:

- Promenade Parkway/Bilby Road Intersection. The WB approach shall be widened to provide three left-turn lanes, one through lane, and one right-turn lane; and a NB right-turn overlap signal phase shall be provided during the WB left-turn phase.

- Grant Line Road Widening. Grant Line Road shall be widened to four lanes from Waterman
  Road to Bradshaw Road.

- Kammerer Road Improvements. The Tribe will pay a contribution of 6 percent towards future mitigation costs for Kammerer Road improvements.

See FEIS Section 5.8.

Bicycle, Pedestrian, Transit Facilities: The Site is not served by any fixed route transit service; therefore, no significant impact to transit service will occur as a result of Alternative F. There are existing sidewalks and bike lanes within the vicinity of the Site, and Alternative F is not anticipated to inhibit access to or eliminate any existing facilities, nor would it prevent the implementation of any planned facilities, and therefore, impacts to bicycle, pedestrian, and transit facilities will be less than significant. *See* FEIS Section 4.8.

Parking Capacity: All of the Development Alternatives were determined to have sufficient parking capacity. The Site was partially developed in 2008 with paved surface parking facilities and partially completed commercial structures including department stores and a movie theater. These commercial structures are currently vacant. A total of 1,437 on-site surface parking spaces and 1,966 parking garage spaces would be provided, with additional parking provided by the adjacent mall, and site access would be provided at existing intersections along Promenade Parkway. No mitigation is required, and therefore, impacts would be less than significant. *See* FEIS Sections 3.9, 4.2.6.

Construction Traffic: Construction-generated traffic would be temporary and therefore would not result in any long-term degradation in operating conditions on roadways in the project area. Most construction traffic would be dispersed throughout the day and would not significantly

disrupt daily traffic flow on roadways in the Site vicinity. For these reasons, construction traffic would not result in significant adverse effects. *See* FEIS Section 4.11.6.

3.1.8 Land Use

Existing Land Use Policies: The Development is compatible to the existing land use designation. Land use on the Site is designated as Commercial in the Elk Grove General Plan. Existing land use to the immediate north of the Site is designated Commercial Office, and further north along Promenade Parkway across Highway 99, land use is designated Heavy Industrial and Light Industrial. Land use to the west is zoned Commercial, Commercial/Office/Multi-Family, and Medium Density Residences Residential, Low Density Residences Residential (City of Elk Grove, 2009). Thus, impact is considered less than significant. *See* FEIS Section 4.9.6.

Airport Land Use Plans: There is no airstrip within the vicinity of the Site, and, therefore, impacts would be less than significant. *See* FEIS Section 3.9.

Agriculture: Prior to the incorporation of the City of Elk Grove, the area and the surrounding parcels were in agricultural production, but were undergoing change as the area developed. The designation of the area for urban development and subsequent development has removed much of the land from agricultural use. Existing land uses northwest and west of the Site include vacant land and agricultural uses, to the east is industrial, and to the north is primarily commercial. Therefore, no adverse effects to agricultural resources would occur. *See* FEIS Section 4.9.6.

3.1.9 Public Services

Public Water Supply: Alternative F would be supplied water through connections to the Sacramento County Water Agency (SCWA) infrastructure that is partially developed on the Site. A significant effect would occur to water supply distribution facilities as a result of the need to provide service. The SCWA has the capacity to meet anticipated demand for domestic water use; however, the Tribe would resubmit water improvement plans to SCWA and pay the remaining water development fees. Mitigation measures will be implemented to ensure that an adequate water supply is available for the operation of Alternative F, and for the necessary fire flows. With mitigation measures, the impact would be less than significant. *See* FEIS Section 4.10.6.

Public Wastewater Services: Under Alternative F, the Tribe would obtain a services agreement with the SRCSD and the SASD to provide sewer service to the Site. Partially completed connections to SASD infrastructure are located on and in the immediate vicinity of the Site. The completion of these connections to the existing wastewater conveyance system would occur under Alternative F and wastewater would be conveyed to the SRCSD WWTP where treatment would occur. Current available capacity at the Sacramento Regional WWTP would accommodate the wastewater demands of Alternative F. However, due to the lack of an existing

service agreement, a potentially significant impact to the SRCSD and SASD sewer system and WWTP would occur, and therefore mitigation is recommended. With implementation of mitigation, the impacts to the SRCSD and SASD wastewater services would be reduced to a minimal level. *See* FEIS Section 4.10.6

Solid Waste: The Development Alternatives are not anticipated to exceed the capacity or significantly decrease the life expectancy of landfills which serve the region, and thus, impacts would be less than significant. *See* FEIS Section 4.10.6.

Electricity, Natural Gas, and Telecommunications Services: Electricity, natural gas, and telecommunications services are available. Electricity will be obtained from the Sacramento Municipal Utility District. Natural gas service infrastructure is available and connections would be developed through coordination with the Pacific Gas and Electric. Several private companies provide telephone, internet, and cable services to properties within the vicinity and have the capacity to provide adequate services to the Site. Implementation would result in a less than significant impact to electricity, natural gas, and telecommunications services and future demand. Nonetheless, mitigation measures have been identified to further reduce the energy demand and ensure adequate services. Therefore, impact for the provision of electricity, natural gas, and telecommunications to the Site would be less than significant. *See* FEIS Section 4.10.6.

Law Enforcement Services: New development, including other projects, would fund the County and the City of Elk Grove services, including law enforcement, through development fees and property taxes. The Elk Grove Police Department (EGPD) would provide law enforcement to the Site. With implementation of the on-site security measures and the conditions of a service agreement between the Tribe and the City of Elk Grove, payments by the Tribe would compensate the City of Elk Grove for costs of impacts associated with increased law enforcement services. Therefore, with mitigation, Alternative F would result in a less than significant cumulative effect on public law enforcement services. *See* FEIS Sections 4.10.6, 4.15.8.

Fire Protection/Emergency Medical Services: The City of Elk Grove and/or Sacramento County services, including fire protection and emergency medical response, require funding through development fees and property taxes. Emergency medical costs are paid primarily by the individual requiring services. Due to the potential for an increase in calls for fire protection services during operation and the extended hours of operation, a potentially significant impact to the Consume Community Service District (CCSD) Fire Department could occur. With implementation of the conditions of the service agreement between the Tribe and the CCSD Fire Department, payments by the Tribe would compensate the CCSD Fire Department for costs of impacts associated with increased fire protection services. Therefore, implementation of mitigation would result in a less than significant cumulative effect on public fire protection services.

The CCSD Fire Department also provides first responder emergency medical service through paramedic staffing of ambulances and engines. The nearest emergency room is located at Methodist Hospital of Sacramento, approximately 5.7 miles north of the Site. Mitigation includes a measure for the Tribe to enter into a service agreement to reimburse CCSD Fire Department for additional demands created by the Development Alternatives. With this mitigation, Alternative F would not result in a significant cumulative effect on emergency medical services. Mitigation will reduce potential impacts to a less-than-significant level. *See* FEIS Sections 4.10.6, 4.15.8.

3.1.10 Noise

Construction Noise and Vibration: For all Development Alternatives (A through F), construction activities, including construction traffic, would be less than the Federal Highway Administration (FHWA) noise thresholds for residential of 78 A-weighted decibels (dBA) equivalent noise level (Leq). Therefore, noise resulting from construction activities would not result in a significant adverse effect to the ambient noise level during any phase of construction. Mitigation measures will further reduce the potential for noise impacts. *See* FEIS Section 4.11.6.

Operational Noise: The Development Alternatives would result in additional traffic on local roadways. The primary source of noise near the Site is traffic on Highway 99. The increase in traffic from operation of Alternative F would not double the traffic volume, however, this increase would result in an imperceptible 1.0 dBA Leq increase in the ambient noise level. Therefore, future noise levels resulting from the increased traffic would not be substantially greater than the existing ambient noise levels, and thus, the impact associated with increased traffic noise at sensitive receptors would be considered less than significant. *See* FEIS Section 4.11.6.

3.1.11 Hazardous Materials

Construction: The potential exists for previously unidentified soil and/or groundwater contamination to be encountered during site preparation and construction activities, which is considered a potentially significant impact. The possibility exists that undiscovered contaminated soil and/or groundwater exists on the site. Although not anticipated, construction personnel could encounter contamination during construction related earth moving activities. The recommended mitigation measures would further minimize or eliminate adverse effects during construction. Adherence to these mitigation measures would minimize the risk of inadvertent release and, in the event of a contingency, minimize adverse effects. Mitigation measures would reduce the impact to a less-than-significant level. *See* FEIS Section 4.12.6.

Operation: The types of hazardous materials that would be used, generated, and stored during operation of Alternative F would be similar to those of Alternative A, with the exception that no on-site WWTP would be developed. Recommended mitigation implementation will reduce

potentially significant effects from the use of hazardous materials to less than significant. *See* FEIS Section 4.12.6.

3.1.12 Visual Resources

Scenic Character: Development would be consistent with the current commercial and retail character of the site, and would be visually compatible with the City of Elk Grove land use designations for the property, adjacent commercial/retail development, and the surrounding area. Exterior signage facing Highway 99 would be integrated into the parking structure design. Mitigation measures would further reduce impacts. The Development Alternatives would alter current views of the Site; however, the Site is zoned for eventual light industrial/business park development. Therefore, aesthetic impacts would be less than significant. *See* FEIS Section 4.13.6.

Night Lighting: Development would introduce new sources of light into the existing setting; however, current lighting infrastructure is present on the Site. Downcast lighting would be used in the landscaped and parking areas to minimize offsite scatter. Lighting fixtures would be an integral part of the overall design and strategically positioned to minimize any direct sight lines or glare to the public. The exterior signage would enhance the buildings' architecture and the natural characteristics of the Site by incorporating native materials in combination with architectural trim. Illuminated signs, such as that on the parking garage, would be designed to blend with the light levels of the building and landscape lighting in both illumination levels and color. Through the use of downcast and directed lighting, and strategically positioned lighting fixtures, the impacts of lighting off-site would be minimized. With the mitigation, impacts would be reduced to a less than significant level. *See* FEIS Section 4.13.6.

3.1.13 Environmental Justice

Review of the demographics of census tracts in the vicinity of the Site show that some areas contain substantial minority communities, but none that are low-income communities. The Tribe is considered a minority community that would be impacted by Alternative F. Effects to the Tribe are positive in nature. Effects to other minority communities would be positive. Specifically, the increased economic development and opportunity for employment would positively affect other minority communities. Other effects, such as traffic, air quality, noise, etc., would be neutral, after the implementation of the specific mitigation measures related to these environmental effects. Therefore, with the implementation of the mitigation measures, Alternative F would not result in significant adverse effects to minority or low-income communities. Consequently, no significant environmental justice impacts would occur. *See* FEIS Section 4.7.6.

3.1.14 Indirect Effects

Growth-Inducing Effects: Development would result in one-time employment opportunities from construction and permanent employment opportunities from operation. These opportunities would result from direct, indirect, and induced effects. Construction opportunities would be temporary in nature, and would not be anticipated to result in the permanent relocation of employees into the City of Elk Grove and/or Sacramento County. Impact from employment would result in an annual total of approximately 2,914 employment opportunities, including direct, indirect, and induced opportunities. A majority of positions are anticipated to be filled with people already residing within the region and would, therefore, not require new housing.

The potential for commercial growth resulting from development would result from fiscal output generated throughout the City of Elk Grove and Sacramento County. This output would be generated from direct, indirect, and induced economic activity. Construction and operation activities would result in direct output. Businesses in these sectors would generate growth in the form of indirect output resulting from expenditures on goods and services at other area businesses. In addition, employees would generate growth from induced output resulting from expenditures on goods and services at other area businesses. Indirect and induced output could stimulate further commercial growth; however, such demand would be diffused and distributed among a variety of different sectors and businesses in the City of Elk Grove and Sacramento County. As such, significant regional commercial growth inducing impacts would not be anticipated to occur.

The Site is situated in the vicinity of adjacent areas that will likely be improved with retail, commercial, and residential developments. These adjacent developments will likely occur, or not occur, irrespective of the implementation of Alternative F. As well, near-term commercial/retail development would likely occur at the Site. Consequently, there would be no growth inducing effects related to such developments that would occur. *See* FEIS Section 4.14.3.

Other Indirect Effects: Development in the City of Elk Grove would be subject to the constraints of its general plan, local ordinances, and other planning policies and documents. New projects resulting from any induced effect would be subject to appropriate project-level environmental analysis. As discussed above, the minimal amount of commercial growth that may be induced by Alternative F would not result in significant adverse environmental growth inducing effects. *See* FEIS Sections 4.14.1, 4.14.2.

3.1.15 Cumulative Effects

The Development Alternatives when considered with past, present, and reasonably foreseeable future actions, as well as project design features and proposed mitigation in the MMEP, would not result in significant adverse cumulative impacts related to land resources, water resources, biological resources, cultural and paleontological resources, socioeconomic conditions, land use, agriculture, public services, noise, hazardous materials, visual resources, and environmental justice. *See* FEIS Sections 4.15.1, 4.15.2.

Air Quality: The Site and vicinity is in nonattainment for ozone and $PM_{10}PM_{2.5}$ and maintenance for CO and PM_{10}. Because project emissions of NO_X are above the applicable CEQ RPs General Conformity *de minimis* threshold for these pollutants, air quality in the region has a potential to be cumulatively impacted. However, with mitigation measures, implementation would not cumulatively adversely impact the region's air quality. *See* FEIS Sections 4.15.

A Tribal minor New Source Review (NSR) permit is required prior to construction if the projected aggregate operational emissions from stationary sources at the facility exceed the minor NSR thresholds. The area and stationary source emissions of Alternatives A through F would be covered under a Tribal minor NSR permit and therefore are exempt emissions under the General Conformity provisions of Clean Air Act (CAA), 40 C.F.R. Part 93.153(d)(1). If applicable, the Tribe would apply for and obtain a site specific or, if promulgated prior to the start of construction, a general minor NSR permit in accordance with the EPA guidelines and Tribal NSR regulations. EPA would review the emission sources at the selected alternative and determine if additional emission controls are required. *See* FEIS Section 4.4.

Transportation: The Development Alternatives would cause certain roadway intersections in the vicinity of the Site to operate at an unacceptable Level of Service (LOS) during future cumulative conditions. Mitigation is recommended to reduce potential impacts to the intersections. *See* FEIS Sections 4.15, 5.8

All study roadway segments operate at acceptable LOS in the cumulative condition with the addition of Alternative F traffic. With the addition of Alternative A traffic, the following freeway mainline segments are projected to operate at an unacceptable LOS (note that most segments would also operate at unacceptable LOS even without Alternative F traffic).

- Hwy 99 Between Ayers Lane and Walnut Avenue (NB and SB)
- Hwy 99 Between Walnut Avenue and Twin Cities Road (NB and SB)
- Hwy 99 Between Twin Cities Road and Mingo Road (NB and SB)
- Hwy 99 Between Mingo Road and Arno Road (NB and SB)
- Hwy 99 Between Arno Road and Dillard Road (NB)
- Hwy 99 Between Dillard Road and Grant Line Road (NB)
- Hwy 99 Between Grant Line Road Elk Grove Boulevard (NB)
- Hwy 99 Between Elk Grove Boulevard and Bond Road (NB)

With the addition of Alternative F traffic, the following freeway ramps are projected to operate at an unacceptable LOS (note that most segments would also operate at unacceptable LOS even without Alternative F traffic).

- West Stockton Boulevard/Hwy 99 SB Off-Ramp at Twin Cities Road
- West Stockton Boulevard/Hwy 99 SB On-Ramp at Twin Cities Road (north)

- West Stockton Boulevard/Hwy 99 SB On-Ramp at Twin Cities Road (south)
- East Stockton Boulevard/Hwy 99 NB Off-Ramp at Twin Cities Road

Project traffic will add to the background congestion of the freeway mainline and ramps. There are study locations that will operate at unacceptable LOS as a result of Alternative F, or will operate at unacceptable LOS without the Proposed Project and experience an increase in delay by 5 seconds or more and V/C ratio of 0.05 or more (intersections and roadway segments), or an increase in density of more than five percent (mainline segments and ramps) with the addition of the Proposed Project. Significant congestion is expected with and without the Proposed Project. Tribal contributions and other mitigation are recommended to reduce potential impacts. *See* FEIS Section 4.15.

3.1.16 Unavoidable Adverse Effects

The FEIS identified unavoidable adverse effects that may occur as a result of the implementation of Alternatives D and E at the Historic Rancheria site. Wetland habitat on-site would be avoided to the degree feasible. However, unavoidable impacts may occur. To the extent that unavoidable impacts would occur, such effects would be mitigated by the purchase of credits at a US Army Corps of Engineers approved mitigation bank, per the terms of an applicable Section 404 permit. A USACE Section 404 permit shall be obtained prior to any discharge into jurisdictional features.

The FEIS also identified a significant unavoidable cumulative effect under Alternative C that would occur to retail grocery businesses in the vicinity of the City of Galt. However, this effect would not be of a magnitude that would cause a physical effect to the environment (such as urban blight). Therefore the effect to the physical environment would not be substantial and no mitigation is required. *See* FEIS Sections 4.7, 4.15.

3.2 Comments on the FEIS and Responses

During the 30-day waiting period following USEPA's NOA of the FEIS on December 16, 2016, the BIA received several comment letters from agencies and interested parties. During the decision making process for the Proposed Action, all comment letters on the FEIS were reviewed and considered by the BIA and are included within the administrative record for this project. A list of each comment letter and a copy of each comment letter received from agencies as well as from interested parties considered representative of the substantive comments received on the FEIS are included within Section 3.0 of the BIA's Decision Package. Specific responses to these representative comments letters are included in the document, Supplemental Response to Comments, which is included as Section 2.0 of the BIA's Decision Package. *See* Regional Director's Recommendation 3.2

4.0 MITIGATION MEASURES

All practicable means to avoid or minimize environmental harm for the Development Alternatives have been identified and adopted. The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this decision. Specific best management practices and mitigation measures adopted pursuant to this decision are set forth below and included within the MMEP. Mitigation Measures are discussed in FEIS Section 5.

4.1 Land Resources (FEIS Section 5.2)

Implementation of the mitigation measures listed below would minimize potential impacts related to soils and geology. These measures are recommended for Alternatives A through F.

A. If the Tribe intends to disturb one acre or more of land during construction of the Proposed Project, the Tribe shall comply with the terms of the then-current NPDES Construction General Permit from the EPA to address construction site runoff during the construction phase in compliance with the CWA. Among other requirements, at least 14 days prior to commencing earth-disturbing activities, a NOI shall be filed with the EPA. A SWPPP shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. The SWPPP shall detail BMPs to be implemented during construction and post-construction operation of the selected project alternative to reduce impacts related to soil erosion and water quality. The BMPs shall include, but are not limited to, the following:

    1. Existing vegetation shall be retained where practicable. To the extent feasible, grading activities shall be limited to the immediate area required for construction and remediation.
    2. Temporary erosion control measures (such as silt fences, fiber rolls, vegetated swales, a velocity dissipation structure, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed for disturbed areas.
    3. To the maximum extent feasible, no disturbed surfaces shall be left without erosion control measures in place.
    4. Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.
    5. Creating construction zones and grading only one area or part of a construction zone at a time shall minimize exposed areas. If practicable during the wet season, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone. Minimizing the

size of construction staging areas and construction access roads to the extent feasible.

6. Disturbed areas shall be re-vegetated following construction activities.
7. Construction area entrances and exits shall be stabilized with large-diameter rock.
8. Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures.
9. A spill prevention and countermeasure plan shall be developed which identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.
10. Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the Clean Water Act, 33 U.S.C. §§ 1251 to 1387.
11. Construction materials, including topsoil and chemicals, shall be stored, covered, and isolated to prevent runoff losses and contamination of surface and groundwater.
12. Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.
13. Sanitary facilities shall be provided for construction workers.
14. Disposal facilities shall be provided for soil wastes, including excess asphalt during construction and demolition.
15. Other potential BMPs include use of wheel wash or rumble strips and sweeping of paved surfaces to remove any and all tracked soil.

B. Construction workers shall be trained in the proper handling, use, cleanup, and disposal of chemical materials used during construction activities. Appropriate facilities to store and isolate contaminants shall be provided.

C. Contractors involved in the project shall be trained on the potential environmental damage resulting from soil erosion prior to construction in a pre-construction meeting. Copies of the project's SWPPP shall be distributed at that time. Construction bid packages, contracts, plans, and specifications shall contain language that requires adherence to the SWPPP.

4.2 Water Resources (FEIS Section 5.3)

The mitigation measures relating to an on-site wastewater treatment plant and on-site groundwater production wells are not applicable to Alternative F because the casino/hotel on the mall site would be connected to the municipal water/sewer system. The single mitigation measure in 4.2 relating to surface water is a BMP to cover the garbage bin area, direct runoff to

the sewer system, and adjust landscape irrigation based on weather conditions. This measure only applies to Alts A-C. As outlined in the FEIS Executive Summary Table, surface water impacts for Alts D-F would be less than significant before mitigation due to the smaller area of impervious surfaces created as compared to Alts A-C. In addition, as noted in FEIS Sections 5.2-5.3, mitigation measures in Section 4.1-4.2 would serve to mitigate both land resources and surface water resources impacts.

Wastewater

The following measures are recommended for Alternatives A, B, C, D, and E:

A. For all on-site treatment options, wastewater shall be fully treated to at least a tertiary level using membrane bioreactor (MBR) technology. The Tribe shall apply for and obtain USEPA permits and approvals, as applicable, prior to operation.
B. Recycled water, possibly coming from the City of Galt WWTP, shall be used beneficially to the extent practical, including, but not limited to, landscape irrigation, toilet flushing, and cooling towers, as applicable.
C. 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, as applicable. The operators shall have qualifications similar to those required by the State Water Resources Control Board Operator Certification Program for municipal WWTPs
D. For all on-site treatment options, installation and calibration of subsurface disposal shall be closely monitored by a responsible engineer, and periodic monitoring shall ensure the spray and subsurface effluent disposal system is operating efficiently.

The following measures are recommended for Alternatives D and E at the Historic Rancheria site:

E. Effluent temperature shall be controlled by storing effluent in tanks and holding ponds to the extent possible without impairing the operation of the wastewater treatment facility. Water shall be treated on-site to USEPA standards prior to discharge into surface waters.
F. Dechlorination facilities shall be added to the surface water discharge treatment facilities, along with chlorine residual monitors to ensure no significant chlorine residual in the effluent, per the anticipated NPDES permit from the USEPA.
G. Installation and calibration of subsurface disposal shall be closely monitored by a responsible engineer, and periodic monitoring shall ensure the spray and subsurface effluent disposal system is operating efficiently.

Groundwater

The following measures are recommended for Alternatives A, B, C, D, and E:

A. 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.
B. The Tribe shall implement water conservation measures to reduce the amount of water used, which may include, but are not limited to use of low flow faucets and showerheads, recycled water for toilets, and voluntary towel re-use by guests in the hotel; use of low-flow faucets, recycled water for toilets, and pressure washers and brooms instead of hoses for cleaning in public areas and the casino; use of garbage disposal on-demand, re-circulating cooling loop for water cooled refrigeration and ice machines where possible, use of low volume spray rinse for pre-cleaning dishes when feasible, operation of dishwashers with full loads when feasible, and service of water to customers on request in restaurants; use of recycled and/or gray water for cooling, and use of recycled water for irrigation.

The following measure is recommended for Alternatives D and E:

C. The Tribe shall participate in groundwater recharge. This may consist of the Tribe implementing its own recharge project or participating in an off-site regional project (for example, purchasing a groundwater well in the applicable sub-basin and then retiring the well from service). The project shall be designed to offset excess groundwater pumped from the aquifer for the project alternative selected.

Surface Water

The following measure is recommended for Alternatives A, B, and C:

A. The Tribe shall cover the garbage bin area and any runoff shall be directed to the sewer system, to the extent feasible. The Tribe shall also adjust landscape irrigation based on weather conditions—reducing irrigation during wet weather—to prevent excessive runoff.

4.3 Air Quality (FEIS Section 5.4)

Construction

As shown in **Table 1**, mitigated construction emissions would continue to be less than General Conformity *de minimis* thresholds; therefore, the following construction BMPs are recommended for Alternatives A through F:

TABLE 1

MITIGATED CONSTRUCTION EMISSIONS – DE MINIMIS THRESHOLDS

Alternatives	Criteria Pollutants

	ROG	NOx	CO	SOx	PM_{10}	$PM_{2.5}$
	tons per year					
Alternative A	3.39	13.35	18.60	0.04	2.32	1.05
Alternative B	1.84	7.72	10.83	0.02	0.88	0.41
Alternative C	5.34	5.81	9.01	0.02	1.03	0.45
Alternative D	3.39	13.35	18.60	0.04	2.32	1.05
Alternative E	1.84	7.72	10.83	0.02	0.88	0.41
Alternative F	5.62	16.26	21.72	0.04	2.02	1.04
De minimis threshold	25	25	N/A	100	N/A	100
Exceed Threshold	***No***	***No***	***N/A***	***No***	***N/A***	***No***
Notes: N/A = Not Applicable; General Conformity *de minimis* thresholds are not applicable due to attainment status (Refer to **FEIS Section 3.4**). Source: CalEEMod, 2013.						

A. The following dust suppression measures shall be implemented by the Tribe to control the production of fugitive dust (PM_{10}) and prevent wind erosion of bare and stockpiled soils:

1. Spray exposed soil with water or other suppressant twice a day or as needed to suppress dust.
2. Minimize dust emissions during transport of fill material (fill material to be gathered primarily on-site) or soil by wetting down loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, and/or covering loads.
3. Restrict traffic speeds on site to 15 miles per hour to reduce soil disturbance.
4. Provide wheel washers to remove soil that would otherwise be carried off site by vehicles to decrease deposition of soil on area roadways.
5. Cover dirt, gravel, and debris piles as needed to reduce dust and wind-blown debris.
6. Provide education for construction workers regarding incidence, risks, symptoms, treatment, and prevention of Valley Fever.

B. The following measures shall be implemented by the Tribe to reduce emissions of criteria pollutants, GHGs, and diesel particulate matter (DPM) from construction.

1. The Tribe shall control criteria pollutants and GHG emissions by requiring all diesel-powered equipment be properly maintained and minimizing idling time to

five minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation.

2. Require construction equipment with a horsepower rating of greater than 50 be equipped with at least CARB rated Tier 3 engines, and if practical and available, Tier 4 engines. The corresponding Tier 3 engines shall also be fitted with diesel particulate filters.
3. Require the use of low ROG (250 grams per liter or less) for architectural coatings to the extent practicable.
4. Use of environmentally preferable materials, including recycled materials, to the maximum extent practical for construction of facilities.

Operational Vehicle and Area Emissions

As shown in **Table 2** mitigated operational emissions would continue to exceed General Conformity *de minimis* thresholds for NOx; therefore, the following mitigation is recommended for Alternatives A through F:

C. The Tribe shall reduce emissions of criteria air pollutants and GHGs during operation through one or more of the following measures, as appropriate:
   7. The Tribe shall use efficient clean fuel vehicles that use alternative fuel in its vehicle fleet where practicable, which would reduce criteria pollutants and GHG emissions within the Sacramento metropolitan region. The reduction in GHG emissions would vary depending on vehicle number, type, year, and associated fuel economy.
   8. The Tribe shall provide preferential parking for vanpools and carpools, which would reduce criteria pollutants by promoting the use of transportation options other than single-occupant vehicles. This would reduce running and total exhaust emissions of particulate matter, carbon monoxide (CO), nitrogen oxides (NO_x), and sulfur dioxide (SO_2) by 2 percent. Running exhaust emissions of GHGs would be reduced 2 percent.

TABLE 2

MITIGATED OPERATIONAL EMISSIONS – DE MINIMIS THRESHOLDS

Alternatives	Criteria Pollutants					
	ROG	NO_x	CO	SO_x	PM_{10}	$PM_{2.5}$
	tons per year					
Alternative A	15.46	54.29	91.704	0.88	50.65	14.44
Alternative B	11.17	40.67	67.79	51.1	37.64	10.68

Alternative C	18.93	52.18	50.90	0.68	47.74	13.56
Alternative D	15.46	54.29	91.704	0.88	50.65	14.44
Alternative E	11.17	40.67	67.79	51.1	37.64	10.68
Alternative F	16.88	55.05	94.48	0.88	50.04	14.30
De minimis threshold	25	25	N/A	100	N/A	100
Exceed Threshold	***No***	***Yes***	***N/A***	***No***	***N/A***	***No***

Notes: N/A = Not Applicable; General Conformity *de minimis* thresholds are not applicable due to attainment status
(Refer to **FEIS Section 3.4**).
Less mitigation for operational NO_x emissions may be needed if a newer vehicle emissions factor model becomes available during the conformity determination process and updated modeling shows fewer NO_x emissions than previously estimated.
Source: CalEEMod, 2013, USEPA 1995
These values would result from implementation of all listed mitigation measures.

9. The Tribe shall use low-flow appliances and utilize recycled water to the extent practicable. The Tribe shall use drought-tolerant landscaping and provide "Save Water" signs near water faucets. The installation of low-flow water fixtures could reduce emissions of GHG by 17-31 percent. Water-efficient landscaping could reduce GHG emissions by up to 70 percent. Reductions in indirect criteria pollutants would be expected; however, these reductions may not be in the same air basin as the project.

10. The Tribe shall control criteria pollutants, GHG, and DPM emissions during operation by requiring all diesel-powered vehicles and equipment be properly maintained and minimizing idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation. Implementation of this mitigation could reduce GHG emissions from truck refrigeration units by 26-71 percent. Reductions in criteria pollutant and DPM emissions would also be expected.

11. The Tribe shall use energy-efficient lighting, which would reduce indirect criteria pollutants and GHG emissions. Using energy-efficient lighting would reduce the project's energy usage, thus reducing the project's indirect GHG emissions. This could reduce GHG emissions by 16 to 40 percent, depending on the type of energy-efficient lighting. Reductions in indirect criteria pollutants would also be expected; however, these reductions may not be in the same air basin as the project.

12. The Tribe shall install recycling bins throughout the hotel and casino for glass, cans, and paper products. Trash and recycling receptacles shall be placed

strategically outside to encourage people to recycle. The amount of GHG reduced through recycling varies depending on the project, is difficult to quantify, and based on life-cycle analysis.

13. The Tribe shall plant trees and vegetation in appropriate densities to maximize air quality benefits on-site or fund such plantings off-site. The addition of photosynthesizing plants would reduce atmospheric carbon dioxide (CO_2), because plants use CO_2 for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the building, thus reducing heat absorption, reducing air conditioning needs, and saving energy. However, trees and vegetation emit ROGs.

14. The Tribe shall use energy-efficient appliances and equipment in the hotel and casino. ENERGY STAR refrigerators, clothes washers, dishwashers, and ceiling fans use 15 percent, 25 percent, 40 percent, and 50 percent less electricity than standard appliances, respectively. These reductions reduce GHG and criteria pollutant emissions from power plants.

15. The Tribe shall purchase 53.75 tons of NO_x Emissions Reduction Credits (ERCs) as dictated in the Final Conformity Determination for the selected alternative. A Draft Revised Conformity Determination has been completed for the Preferred Alternative, Alternative F. However, if BIA chooses another alternative, the Tribe shall purchase the following amounts of NO_x ERCs prior to the operation of that other alternative: Alternative A – 52.87 tons; Alternative B – 39.65 tons; Alternative C – 47.99 tons; Alternative D – 53.75 tons; Alternative E – 36.23 tons.

16. Because the air quality effects are associated with operation of the project 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-resort or other project. With the purchase of the ERCs the project would conform to the applicable State Implementation Plan and result in a less than adverse impact to regional air quality. ERCs shall be purchased (1) in the Sacramento Nonattainment Area (as defined in FEIS Section 3.4.2) and/or (2) in the San Joaquin Valley Air Basin and/or in another adjacent district with an equal or higher nonattainment classification (severe or extreme) meeting the requirements outlined in 40 C.F.R. Part 93.158(a)(2), with credits available within 50 miles of the Site given priority.

17. As an alternative to or in combination with purchasing the above ERCs the Tribe may implement one or more of the following measures which could reduce NOx emissions to less than 25 tons per year:

    a. Purchase low emission buses to replace older municipal or school buses used within the Sacramento Valley Air Basin.

b. Implement ride-sharing programs at the Site and/or within the Sacramento Valley Air basin.

c. Use 100 percent electric vehicles at the Site.

d. Purchase hybrid vehicles to replace existing governmental fleet vehicles within the Sacramento Valley Air Basin.

e. Implement other feasible mitigation measures to reduce project-related NO_x and ROG emissions.

f. The Tribe shall provide a bus driver lounge and adopt and enforce an anti-idling ordinance for buses, which will discourage bus idling during operation of the project.

Cumulative and Greenhouse Gas Emissions

Table 3 shows mitigated cumulative emissions. With the implementation of Mitigation Measure 5.4.3 C.9, cumulative year 2035 emissions would be below the applicable General Conformity *de minimis* threshold for NO_x for all alternatives.

TABLE 3

CUMULATIVE 2035 MITIGATED OPERATIONAL EMISSIONS – DE MINIMIS THRESHOLDS

Alternatives	Criteria Pollutants					
	ROG	NOx	CO	SOx	PM_{10}	$PM_{2.5}$
	tons per year					
Alternatives A and D	11.59	0.00	139.92	0.89	50.88	14.43
Alternatives B and E	7.68	0.00	102.41	0.61	37.59	10.61
Alternative C	12.87	0.00	133.16	0.66	45.65	12.91
Alternative F	12.48	0.00	137.38	0.88	50.05	14.23
De minimis threshold	25	25	N/A	100	N/A	100
Exceed Threshold	***No***	***No***	***N/A***	***No***	***N/A***	***No***

Notes: N/A = Not Applicable; General Conformity *de minimis* thresholds are not applicable due to attainment status
(Refer to **FEIS Section 3.4**).
Source: CalEEMod, 2013, USEPA 1995

The following mitigation is recommended for Alternatives A through F to reduce GHG emissions to below 25,000 MT of CO_2e:

D. The Tribe shall purchase 34,009 MT of GHG ERCs for Alternatives A and D. If Alternative B or E is implemented, 15,151 MT of GHG ERCs shall be purchased. If Alternative C is implemented, then the Tribe shall purchase 23,177 MT of GHG ERCs. If Alternative F is implemented, then the Tribe shall purchase 31,015 MT of GHG ERCs. As an alternative to or in combination with purchasing the above GHG ERCs, the Tribe shall implement renewable energy project(s), which may include but are not limited to solar power, wind energy, and/or other form(s) of renewable energy. The reduction in emissions from implementation of renewable energy and/or the purchase of ERCs would reduce project-related GHG emissions to below 25,000 MT of CO_2e. As all or part of any required or voluntary mitigation of GHG impacts, the Tribe may purchase carbon ERCs from the Climate Action Reserve, the Verified Carbon Standard, the American Carbon Registry, and/or an equivalent carbon ERCs trading markets that have the same or more stringent standards for carbon emissions reduction projects that reduce atmospheric GHGs or reflect direct GHG emissions reductions achieved by existing GHG emitters.

Odor

The Site does not include any source types that have historically been associated with odor and results in a less than significant impact. *See* FEIS Section 3.4.1.

4.4 Biological Resources (Section 5.5)

Given that land area on the Mall site (Alternative F) is almost completely disturbed, impacts to biological resources are greatly reduced when compared to the other alternatives. Hence, the wetlands/waters of the US and threatened/endangered species mitigation measures are not applicable to Alternative F. The mitigation for Off-Site Road Improvements and Nesting Raptors and Migratory Birds do apply to Alternative F.

The following mitigation measures are recommended for Preferred Alternative F and Alternatives A, B, C, D, and E.

Federally Listed and Other Sensitive Species

GIANT GARTER SNAKE

Twin Cities Site (Alternatives A, B and C)

Avoidance of potential GGS habitat along Drainages 1 and 3 shall include placement of significant setbacks of not less than 250 feet around potentially suitable aquatic habitat features (such as seasonal wetlands and non-impacted channels along Drainages 1 and 3) using orange

construction fencing prior to commencement of construction activity. No staging of materials or equipment, construction personnel, or other construction activity shall occur within the setback areas. The USFWS guidelines for GGS avoidance and minimization shall be followed.

E. A qualified biologist shall conduct a preconstruction survey to assess potential presence of GGS prior to the onset of construction activities along Drainage 2. This preconstruction survey shall occur during the appropriate identification period for GGS (May 1 through October 1). This pre-construction survey shall occur no more than 24-hours prior to the start of construction, if construction is scheduled to start during this period; however, if the construction activities stop on the site for a period of two weeks or more, then an additional pre-construction survey shall be conducted no more than 24-hours prior to the start of construction. If no GGS are found during the preconstruction survey, no further action is required regarding this species.

F. If GGS are identified on the Twin Cities site during the preconstruction survey or during construction activities, the USFWS shall be notified immediately and no construction activity shall occur within 50 feet of the drainage. If found on-site, the GGS shall be encouraged to leave the identified area (using standard methods such as fencing off areas of potential habitat while leaving an escape route for the species that diverts them to other comparable habitat, and then prohibiting them from returning to the original habitat) or an USFWS-approved biologist shall move the GGS to one of the protected areas (Drainage 1 or Drainage 3). The move shall be consistent with the USFWS approved GGS Move Plan which shall be developed prior to any grading activity on-site and approved by the USFWS.

G. A qualified biologist shall conduct habitat sensitivity training related to GGS for project contractors and personnel and shall monitor construction during initial grading activities within the Twin Cities site. Under this program, workers shall be informed about the presence of GGS and habitat associated with the species and that unlawful take of the animal or destruction of its habitat is not permitted. Prior to construction activities, a qualified biologist shall instruct construction personnel about: (1) the life history of the GGS; (2) the importance of wetlands and seasonally flooded areas to the GGS; (3) sensitive areas, including those identified on-site, and the importance of maintaining the required setbacks and detailing the limits of the construction area. Documentation of this training shall be maintained on site.

Historic Rancheria Site (Alternatives D and E)

Additional mitigation specific to the Historic Rancheria site includes the following measure:

H. Wetland habitat on-site shall be avoided to the degree feasible. Unavoidable impacts shall be mitigated by the purchase of credits at USACE approved mitigation bank, per the terms of an applicable Section 404 permit.

SPECIAL STATUS BRANCHIOPODS

Twin Cities Site (Alternatives A, B and C)

I. Potential VPFS and VPTS habitat shall be avoided by development, and a 250-foot setback shall be implemented around the on-site wetland/pond. This aquatic habitat and its 250-foot buffer shall be clearly marked using orange construction fencing. Fencing shall remain in place throughout the duration of construction.
J. No staging of materials or equipment or other construction activity shall occur within the setback areas.
K. A qualified biologist shall conduct habitat sensitivity training related to VPFS and VPTS for project contractors and personnel and shall monitor construction during initial grading activities.
L. Should VPFS or other listed federal species be detected within the construction footprint, grading activities shall halt, and the USFWS shall be consulted. No grading activities shall commence until USFWS authorizes the re-initiation of grading activities.

Historic Rancheria Site (Alternatives D and E)

Additional mitigation specific to the Historic Rancheria site includes the following measure:

M. Should full avoidance of VPFS or VPTS habitat by at least 250 feet be infeasible the Tribe shall initiate formal consultation with the USFWS, and shall follow the terms of that consultation and Biological Opinion (BO), which may include the purchase of credits at a USFWS approved mitigation bank.

CALIFORNIA TIGER SALAMANDER

All Sites

N. Avoidance of potential CTS habitat shall occur congruently as part of mitigation implementation for other species including VPTS, VPFS, and GGS as discussed elsewhere in this section. Placement of 50-foot setbacks and orange fencing around potentially suitable aquatic habitat features as described for other species will also be suitable to for protection of CTS. No additional mitigation measures are required for the CTS as this species is not anticipated to be present on site. No staging of materials or equipment or other construction activity shall occur within the setback areas.
O. A qualified biologist shall conduct habitat sensitivity training related to CTS for project contractors and personnel and shall monitor construction during initial grading activities within the Site.
P. Should avoidance of CTS be infeasible, the qualified biologist will prepare a CTS movement and mitigation plan and submit it to USFWS. Appropriate action may include allowing any identified CTS to passively exit the Site prior to work resuming or other mitigation which is consistent with the BO issued for the site.

CENTRAL VALLEY WINTER-RUN CHINOOK, CENTRAL VALLEY SPRING-RUN CHINOOK, AND STEELHEAD TROUT

Historic Rancheria Site (Alternatives D and E)

The following measure to protect both listed and unlisted runs of anadromous species shall be implemented:

Q. Discharge of treated wastewater to the Cosumnes River will require an NPDES permit. Continued water quality monitoring will be required to ensure the riparian corridor will not be impaired by water discharged to the river.

VALLEY ELDERBERRY LONGHORN BEETLE

Twin Cities and Historic Rancheria Sites (Alternatives A, B, C, D, and E)

VELB have the potential to occur within elderberry shrubs found on the Historic Rancheria Site in the greatest concentration along the northern levee, and an elderberry was found along Drainage 3 on the Twin Cities site. The protection provided to the riparian zone along Drainage 3 to protect special status branchiopods is sufficient to protect VELB; therefore, no further mitigation is required on the Twin Cities site. Effects to VELB on the Historic Rancheria site shall be minimized by implementing avoidance measures as follows:

R. Elderberry host shrubs shall be protected with a 100-foot buffer and shall be marked using brightly colored construction fencing to ensure full avoidance. If work is required within 100 feet of an elderberry shrub, the buffer may be reduced to as little as 25 feet following consultation with the USFWS. An on-site construction monitor will be required with the reduced buffer.

S. No staging of materials or work shall occur within the buffer area.

T. If work will occur within 25 feet of an elderberry shrub, then full mitigation for take may be required, including replanting consistent with the terms of the USFWS guidelines or purchasing credits will from a USFWS-approved mitigation bank.

U. Worker training shall occur prior to the commencement of construction to instruct employees on the identification of VELB and avoidance measures for both sites.

CALIFORNIA RED-LEGGED FROG

Historic Rancheria Site (Alternatives D and E)

V. Implementation of the buffer areas along the Cosumnes River as described in **Section 4.2**. This buffer will be supplemented by any additional terms set by the USFWS following formal consultation for the Historic Rancheria site. The tribe shall implement

any other measures required in a BO issued for this site that will reduce the impact to CRLF to a less than significant level.

NESTING RAPTORS AND MIGRATORY BIRDS

All Sites

W. A pre-construction survey for nesting migratory birds and raptors shall be conducted within 500 feet of the proposed construction areas if initiation of clearing activities is scheduled to occur during the nesting period (March 1 to September 30). The pre-construction survey shall be conducted within 14 days prior to initiation of construction activity.

X. The qualified biologist shall document and submit the results of the pre-construction survey within 30 days following the survey. The documentation shall include a description of the methodology including dates of field visits, the names of survey personnel, a list of references cited and persons contacted, and a map showing the location(s) of any bird nests observed on the Site. If no active nests are identified during the pre-construction survey, then no further mitigation is required. If active migratory bird nests are identified, a qualified biologist shall establish an appropriate buffer around the nest based on the species identified to ensure no disturbance will occur until a qualified biologist has determined the young have fledged. No active nests shall be disturbed without a permit or other authorization from the USFWS.

Y. The following measures shall be implemented to minimize the effects of lighting and glare on birds and other wildlife:

1. Downcast lights shall be installed with top and side shields to reduce upward and sideways illumination to reduce potential disorientation effects from non-directed shine to birds and wildlife species.
2. As many exterior and interior lights (in rooms with windows) as practicable, consistent with public safety concerns, shall be turned off during the peak bird migration hours of midnight to dawn to reduce potential collisions of migratory birds with buildings.

Wetlands and Waters of the U.S.

The following measures are recommended to minimize or avoid potential impacts to wetlands and waters of the U.S. on the Twin Cities and Historic Rancheria sites:

Z. Prior to the start of construction on any site, a formal Jurisdictional Delineation shall be conducted and the results of that survey shall be verified by the USACE. To ensure no adverse effects, wetlands and jurisdictional drainage features shall be avoided, fenced, and excluded from activity. Fencing shall be located as far as feasible from the edge of wetlands and riparian habitats and installed prior to any construction. The fencing shall remain in place until all construction activities on the site have been completed.

AA. Construction activities within 50 feet of any USACE jurisdictional features identified in the formal delineation process shall be conducted during the dry season to minimize erosion.

BB. Staging areas shall be located away from the areas of wetland habitat that are fenced off. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion (e.g. with tarps, silt fences, or straw bales).

CC. Standard precautions shall be employed by the construction contractor to prevent the accidental release of fuel, oil, lubricant, or other hazardous materials associated with construction activities into jurisdictional features. A contaminant program shall be developed and implemented in the event of release of hazardous materials.

DD. If impacts to waters of the U.S. and wetland habitat are unavoidable, (or in the unlikely event that Drainage 2 on the Twin Cities Site is determined to be jurisdictional), these features shall be mitigated by creating or restoring wetland habitats either on-site or at an appropriate off-site location, or by the purchase of approved credits in a wetland mitigation bank approved by the USACE. A USACE Section 404 permit shall be obtained prior to any discharge into jurisdictional features. Compensatory mitigation shall occur at a minimum of 1:1 ratio or as required by the USACE and USEPA.

EE. An NPDES General Construction Permit as required in Mitigation Measure 6.1 A will provide additional protection to wetlands and waters and the fish and wildlife species which depend on them.

FF. If an NPDES permit is required on the Historic Rancheria Site for the WWTP, consistent with Mitigation Measure 6.4.3 DD, it will be issued by the USEPA and will further ensure the protection of wetland and waters of the US and the fish and wildlife species which depend on them.

Mitigation for Off-Site Road Improvements

All alternatives require off-site road improvements. Biological mitigation measures specified above shall also apply to off-site road improvements as appropriate. Additionally, the following mitigation measures are recommended to minimize or avoid potential impacts to biological and water features for all alternatives.

GG. A formal Jurisdictional Delineation shall be conducted for all areas of potential disturbance from recommended off-site road improvements. The results of the delineation shall be verified by the USACE and a Section 404 permit shall be obtained prior to any disturbance of jurisdictional waters of the U.S. Refer to **Section 4.2** for more details.

HH. If any previously unknown federal or state listed species or habitats are discovered during the pre-construction or construction phases of off-site road improvements, a qualified biologist shall be consulted to ensure that potential impacts are eliminated or mitigated. Refer to **Section 4.1** for more details about species-specific mitigation measures.

4.5 Cultural and Paleontological Resources (FEIS Section 5.6)

The following mitigation measures are recommended for Alternatives A, B, C, D, E, and F:

A. In the event of inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the National Historic Preservation Act as amended (36 C.F.R. 800), and the BIA shall be notified. Specifically, procedures for post-review discoveries without prior planning pursuant to 36 C.F.R. 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 C.F.R. 61) can assess the significance of the find. If any find is determined to be significant by the archaeologist, then representatives of the Tribe shall meet with the archaeologist to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist according to current professional standards.

B. In the event of inadvertent discovery of paleontological resources during construction-related earth-moving activities, all such finds shall be subject to Section 101 (b)(4) of NEPA (40 C.F.R. 1500 1508), and the BIA shall be notified. All work within 50 feet of the find shall be halted until a professional paleontologist can assess the significance of the find. A qualified professional paleontologist shall be retained to assess the find. If the find is determined to be significant by the paleontologist, then representatives of the BIA shall meet with the paleontologist to determine the appropriate course of action, including the development of an Evaluation Report and/or Mitigation Plan, if necessary. All significant paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional paleontologist according to current professional standards.

C. If human remains are discovered during ground-disturbing activities on Tribal lands, all construction activities shall halt within 100 feet of the find. The Tribe, BIA, and County Coroner shall be contacted immediately, and the County Coroner shall determine whether the remains are the result of criminal activity; if possible, a human osteologist should be contacted as well. If Native American, the provisions of the Native American Grave Protection and Repatriation Act (NAGPRA) shall apply to the treatment and disposition of the remains. Construction shall not resume in the vicinity until final disposition of the remains has been determined.

D. In the event that off-site traffic mitigation improvements are implemented, detailed plans for those improvements, including limits of construction, shall be developed. Prior to construction, cultural resources record searches and archaeological or architectural surveys shall be completed. Any buildings or structures over 50 years old that may be affected by the required improvements, once they are defined in detail, shall be identified. All significant resources shall be avoided if possible, and if not, a mitigation plan prepared by a qualified archaeologist or architectural historian shall be implemented.

4.6 Socioeconomic Conditions (FEIS Section 5.7)

The following mitigation measures are recommended for Alternatives A, B, C, D, E and F, with paragraphs A, B and C below subject to specific negotiations between the Tribe and local governments:

A. The Tribe shall make in-lieu payments adequate to replace revenues lost by Sacramento County due to reduced property taxes received by the County from those land parcels taken into trust. The amount of the payments shall be adjusted to take into account payments identified in **Section 6.9** of the ROD for various municipal services.

B. Payments made pursuant to local agreements between the Tribe and local governments pursuant to Memorandums of Understanding (available in supplemental Appendix B in this FEIS), including Sacramento County, and/or the City of Galt, and/or the City of Elk Grove, would offset fiscal impacts and be used to provide support for public services (including, but not limited to, law enforcement), staffing, studies, infrastructure, community benefits, and utilities.

C. The Tribe shall contribute no less than $50,000 annually to a program that treats problem gamblers. In order to maximize the effectiveness of the payments, the organization that receives the payments for problem gambling treatment must serve the Sacramento County region and be accessible to County residents.

D. The Tribe shall prominently display (including on any automatic teller machines (ATMs) located on-site) materials describing the risk and signs of problem and pathological gambling behaviors. Materials shall also be prominently displayed (including on any ATMs located on-site) that provide available programs for those seeking treatment for problem and pathological gambling disorders, including but not limited to a toll-free hotline telephone number.

E. The Tribe shall train employees to recognize domestic violence and sexual assault situations, display domestic violence hotline numbers, and work with local agencies in domestic violence and sexual assault prevention.

F. The Tribe shall conduct annual customer surveys in an attempt to determine the number of problem and pathological gamblers and make this information available to state or federal gaming regulators upon request.

G. The Tribe shall undertake responsible gaming practices that at a minimum require that employees be educated to recognize signs of problem gamblers, that employees be trained to provide information to those seeking help, and that a system for voluntary exclusion be made available.

H. ATMs shall be not be visible from gaming machines and gaming tables.

4.7 Transportation (FEIS Section 5.8)

It is recommended that the Tribe pay a full share of the cost of implementing mitigation measures when LOS is acceptable without the addition of project trips. An exception to this general recommendation would occur in situations where the project's contribution to operation of an intersection may be relatively small, but sufficient to cause an intersection that is on the verge of operating unacceptably to operate at an unacceptable LOS. In such cases, the Tribe shall be responsible for its fair share of the costs of mitigation caused by the added project trips generated, calculated as described in the next paragraph and/or set out in **Section 6.7.3**.

Where transportation infrastructure is shown as having an unacceptable LOS with the addition of traffic from the project alternatives (and caused at least in part from project traffic), the Tribe shall pay for a fair share of costs for the recommended mitigation (including right-of-way and any other environmental mitigation). In such cases, the Tribe shall be responsible for the incremental impact that the added project trips generate, calculated as a percentage of the costs involved for construction of the mitigation measure. Fair-share proportion represents the fair-share percentage calculated using the methodology presented in the California Department of Transportation (Caltrans) Guide for the Preparation of Traffic Impact Studies (2002). The Tribe shall make fair share contributions available prior to initiation of road improvement construction.

4.8 Land Use (FEIS Section. 5.9)

The Historic Rancheria site (Alternatives D and E) is located in close proximity to several rural residential sensitive receptors. Thus, potential land use impacts are more extensive for alternatives located on that site. Thus, the only mitigation measures included for land use impacts are for Alternatives D and E.

Historic Rancheria Site (Alternatives D and E)

Mitigation in **Section 7.3**, **Section 7.7**, **Section 7.10**, and **Section 7.12** will reduce incompatibilities with neighboring land uses due to air quality, noise, traffic, and aesthetic impacts to less than significant levels.

4.9 Public Services (FEIS Section 5.10)

Off-Site Water and Wastewater Services

Implementation of the mitigation measure below will minimize potential impacts related to water and wastewater services. This measure is recommended for Alternatives A, B, C, and F.

II For all off-site options, the Tribe shall enter into a service agreement prior to project operation to reimburse the City of Galt or the City of Elk Grove or the applicable service provider, as appropriate, for necessary new, upgraded, and/or expanded water and/or wastewater collection, distribution, or treatment facilities. This service agreement shall include, but is not limited to, fair share compensation for new, upgraded, and/or expanded water supply and wastewater conveyance facilities necessary to serve development of the selected site, including development of appropriately sized infrastructure to meet anticipated flows and revisions or addendums to existing infrastructure master plans that may require updating as a result of project operation. Such improvements shall be sized to maintain existing public services at existing levels. The service agreement shall also include provisions for monthly services charges consistent with rates paid by other commercial users.

Solid Waste

Implementation of the mitigation measures below would minimize potential impacts related to solid waste. These measures are recommended for Alternatives A through F.

A. Construction waste shall be recycled to the fullest extent practicable by diverting green waste and recyclable building materials (including, but not limited to, metals, steel, wood, etc.) away from the solid waste stream.
B. Environmentally preferable materials, including recycled materials, shall be used to the extent readily available and economically practicable for construction of facilities.
C. During construction, the site shall be cleaned daily of trash and debris to the maximum extent practicable.
D. A solid waste management plan shall be developed and adopted by the Tribe that addresses recycling, solid waste reduction, and reuse of materials on site to reduce solid waste sent to landfills. These measures shall include, but not be limited to, the installation of a trash compactor for cardboard and paper products, and periodic waste stream audits.
E. Recycling bins shall be installed throughout the facilities for glass, cans, and paper products.
F. Trash and recycling receptacles shall be placed strategically throughout the site to encourage people not to litter.
G. Security guards shall be trained to discourage littering on site.

4.10 Noise (FEIS Section 5.11)

Construction

The following measures are recommended for Alternatives A, B, C, D, E, and F:

II. Construction using heavy equipment shall not be conducted between 10:00 p.m. and 7:00 a.m.

JJ. All engine-powered equipment shall be equipped with adequate mufflers. Haul trucks shall be operated in accordance with posted speed limits. Truck engine exhaust brake use shall be limited to emergencies.

KK. Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible.

All generator sets shall be provided with enclosures. On-site HVAC equipment shall be shielded to reduce noise.

Operation

The following measures are recommended for Alternatives D and E on the Historic Rancheria site:

LL. To the extent feasible, HVAC equipment shall be located the furthest practical distance from neighboring houses along Green Road.

MM. The Tribe shall fund the cost of installation of acoustically-rated, dual pane windows (with a minimum Sound Transmission Class (STC) rating of 30) and acoustically rated doors on the houses within 500 feet facing the noise source(s) to minimize noise effects for residences adjacent to the Historic Rancheria site.

NN. The Tribe shall fund the cost of raised, landscaped berms or solid walls at least 8 feet in height in order to separate sources of unwanted noise from sensitive receptors on adjacent properties within 500 feet. Should a wall be installed, it shall be attractively designed. Adjacent landowners and adjacent governmental jurisdictions shall be consulted with prior to finalizing the design of the berm or wall.

OO. Unnecessary vehicle idling shall be prevented during loading dock operations occurring between the hours of 10:00 a.m. and 7:00 a.m.

PP. Buses shall not be allowed to idle unnecessarily in areas adjacent to sensitive receptors. Bus parking areas shall also be located as far as feasible from sensitive receptors.

QQ. On-site WWTP equipment shall be shielded or enclosed.

4.11 Hazardous Materials (FEIS Section 5.12)

The following BMPs are recommended for Alternatives A, B, C, D, E, and F:

Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. BMPs that are designed to reduce the potential for incidents/spills involving the hazardous materials include the following:

RR.

1. To reduce the potential for accidental release, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment.
2. Catch-pans shall be placed under equipment to catch potential spills during servicing.
3. Refueling shall be conducted only with approved pumps, hoses, and nozzles.
4. All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
5. Vehicle engines shall be shut down during refueling.
6. No smoking, open flames, or welding shall be allowed in refueling or service areas.
7. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
8. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
9. Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, state, and federal regulations.
10. All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure.

SS. In the event that contaminated soil and/or groundwater is encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Tribe shall consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.

TT. Hazardous materials must be stored in appropriate and approved containers in accordance with applicable regulatory agency protocols and shall be stored and used on-site at the lowest volumes required for operational purposes and efficacy.

UU. Potentially hazardous materials, including fuels, shall be stored away from drainages, and secondary containment shall be provided for all hazardous materials stored during construction and operation.

4.12 Aesthetics (FEIS Section 5.13)

The following mitigation measures are recommended for Alternatives A, B, C, D, E, and F:

A. Lighting shall consist of limiting pole-mounted lights to a maximum of 25 feet tall.

B. All lighting shall be high pressure sodium or light-emitting diode (LED) with cut-off lenses and downcast illumination, unless an alternative light configuration is needed for security or emergency purposes.

C. Placement of lights on buildings shall be designed in accordance with Unified Facilities Criteria (UFC) 3-530-01, Interior, Exterior Lighting, and Controls so as not to cast light or glare off site. No strobe lights, spot lights, or floodlights shall be used.

D. Shielding, such as with a horizontal shroud, shall be used in accordance with UFC 3-350-01 for all outdoor lighting so as to ensure it is downcast.
E. All exterior glass shall be non-reflective low-glare glass.
F. Screening features and natural elements shall be integrated into the landscaping design of the project to screen the view of the facilities from directly adjacent existing residences.
G. Design elements shall be incorporated into the project to minimize the impact of buildings and parking lots on the viewshed. These elements include:
    1. Incorporation of landscape amenities to complement buildings and parking areas, including setbacks, raised landscaped berms and plantings of trees and shrubs.
    2. Use of earth tones or color shades complementary to surrounding development in paints and coatings, and native building materials such as stone as applicable.

4.13 Mitigation Measures Not Adopted

The Council on Environmental Quality (CEQ) NEPA regulations (40 C.F.R. § 1505.2(c)) call for identification in the ROD of any mitigation measures specifically mentioned in the FEIS for the alternative selected that are not adopted. Because Alternative F has been selected by the BIA and the Tribe as their respective Preferred Alternative, mitigation measures for other alternatives in the FEIS are not adopted. There is no mitigation listed in the FEIS that is not included in this ROD.

5.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)

The Preferred Alternative (Alternative F) or the No-Action Alternative (Alternative G) would result in the fewest effects to the biological and physical environment. Alternative F, the construction and operation of a casino resort and related facilities at the Site, would result in the least environmental impacts among the Development Alternatives (Alternatives A through F). This is because the Site has already been substantially developed and because much of the needed infrastructure has been constructed. A portion of the Site contains partially developed structures, surface parking lots, utility infrastructure, and existing site access points, although most of the buildings present on the Site would be demolished. Water demands for Alternative F would be met through connections to SCWA infrastructure in the vicinity. Partially completed connections to SASD infrastructure are located on and in the immediate vicinity of the Site.

Among all of the alternatives, the No Action Alternative (Alternative G) would result in the fewest environmental impacts. Under the No Action Alternative, the Site would likely be developed because of its location, existing improvements, and infrastructure. Development under Alternative F would likely occur sooner than future development under Alternative G. Because it cannot be predicted with certainty the exact type of development that would occur under the No Action Alternative, it is difficult to accurately assess whether the scope of impacts would be comparable to those under Alternative F. However, it is reasonable to assume that the scale of future development at the Site under the No Action alternative would be equal to or lesser than that under Alternative F. Taking these two factors into consideration, the No Action

alternative would likely result in fewer environmental effects in comparison with Alternative F. The No Action Alternative would not meet the stated purpose and need. Specifically, it would not provide a land base for the Tribe (which has no reservation or trust land) and therefore does not provide the Tribe with an area in which the Tribe may engage in economic development to generate sustainable revenue to allow the Tribe to achieve self-sufficiency, self-determination, and a strong Tribal government. The No Action alternative also would likely result in substantially less economic benefits to Sacramento County than any of the Development Alternatives. The No Action alternative also would likely result in lesser economic benefits to the City of Elk Grove in comparison with Alternative F.

Of the Development Alternatives, Alternative F would result in the fewest adverse effects on the human environment. Consequently, Alternative F is the Environmentally Preferred Development Alternative, and it would fulfill the purpose and need for the Proposed Action stated in the EIS.

6.0 PREFERRED ALTERNATIVE

For the reasons discussed herein, the Department has determined that Alternative F is the agency's Preferred Alternative because it meets the purpose and need for the Proposed Actions. BIA's mission is to enhance the quality of life and to promote economic opportunity in balance with meeting the responsibility to protect and improve the trust resources of American Indians, Indian Tribes, and Alaska Natives. This mission is reflected in the policies underlying the statutory authorities governing this action, namely, the IRA, which was enacted to promote Indian self-government and economic self-sufficiency, and IGRA, which was enacted to govern Indian gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Of the alternatives evaluated within the EIS, Alternative F would best meet the purposes and needs of the BIA, consistent with its statutory mission and responsibilities to promote the long-term economic vitality, self-sufficiency, self-determination and self-governance of the Tribe. The Tribal government facilities and casino-resort complex described under Alternative F would provide the Tribe, which has no reservation or trust land, with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the Tribal government. Under such conditions, the Tribal Government would be stable and better prepared to establish, fund and maintain governmental programs that offer a wide range of health, education and welfare services to Tribal members, as well as provide the Tribe, its members and local communities with greater opportunities for employment and economic growth. Alternative F would also allow the Tribe to implement the highest and best use of the property. Finally, while Alternative F would have slightly greater environmental impacts than the No Action Alternative, that alternative does not meet the purpose and need for the Proposed Action, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD. In addition, Alternative F has the least environmental impact of the Development Alternatives.

- Alternative A, while similar to Alternative F in scope, would occur on land that is currently undeveloped. Portions of the Twin Cities Site is comprised of wetlands that are avoided by selecting Alternative F. The scale of mitigating traffic improvements and payments to local agencies to mitigate traffic impacts under Alternative A would be greater than those under Alternative F.
- Alternative B would have similar impacts to Alternatives A and F, but such impacts would generally be less than those under Alternative A because of the decreased development scope of Alternative B. However, environmental effects would be greater than those under Alternative F, due to the previously constructed development and infrastructure at the Site.
- Alternative C, the retail development at the Twin Cities site also would provide economic development opportunities for the Tribe. However, the economic returns would be substantially less than the other Development Alternatives because the development of retail space is not the most effective use of the Tribe's capital resources.
- Alternative D would result in environmental effects similar to those of Alternatives A and F, as the developments are similar in size and scope. However, environmental effects would be greater than those under Alternative F, due to the previously constructed development and infrastructure at the Site. Because of its lack of rapid access to a major highway or freeway, Alternative D is less attractive than Alternative F because of its inability to secure a long term, sustainable revenue stream. The construction of the casino/hotel proposed under Alternative D has been designed to avoid direct impacts to the Cosumnes River and the intermittent seasonal wetland.
- Alternative E would have similar impacts to Alternative D, but such impacts would generally be less than those under Alternative D because of the decreased development scope of Alternative E. However, environmental effects would be greater than those under Alternative F, due to the previously constructed development and infrastructure at the Site.

In summary, Alternative F is the alternative that best meets the purposes and needs of the Tribe and the BIA while preserving the key natural resources of the Site. Therefore, Alternative F is the Department's Preferred Alternative.

7.0 ELIGIBILITY FOR GAMING PURSUANT TO THE INDIAN GAMING REGULATORY ACT

7.1 Introduction

As discussed below, the Tribe meets the requirements of the Restored Lands Exception of Section 20 of IGRA and the Department's implementing regulations contained at 25 C.F.R. Part 292 because the Tribe qualifies as a "restored tribe," and the Site qualifies as "restored lands." Accordingly, the Tribe may conduct gaming on the Site upon its acquisition in trust.

7.2 Legal Framework

Analysis of the Restored Lands Exception is governed by IGRA and its implementing regulations at 25 C.F.R. Part 292.

1. The Indian Gaming Regulatory Act

IGRA[44] was enacted in 1988 "to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."[45] Section 20 of IGRA generally prohibits gaming activities on lands acquired into trust by the United States on behalf of a tribe after October 17, 1988. However, Congress expressly provided that lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition" are not subject to IGRA's general prohibition. 25 U.S.C. § 2719 (b)(1)(B)(iii). Section 20 of IGRA does not provide the Secretary of the Interior with the authority to acquire land in trust; rather, it allows gaming on certain after-acquired lands once those lands are acquired into trust. Because the Tribe has requested that the Site in the City of Elk Grove, Sacramento County, be taken in trust for gaming, the Tribe must satisfy one of the IGRA Section 20 exceptions before it may game on the property.

One commenter, Stand Up for California!, observes that the Tribe's Resolution asks for a two-part determination, and not a restored lands opinion.[46] While this is so, the Tribe made an application to the Department for a determination that it qualifies for the Restored Lands Exception;[47] that is sufficient for our purposes.

The same commenter, in a subsequent comment, submitted a historical report by Stephen Dow Beckham, Ph.D., titled "The Wilton Rancheria: History of the Wilton Community and Its Antecedents" ("Beckham Report"). The commenter asserts that the Beckham Report demonstrates that the Elk Grove Site cannot be taken into trust and cannot be eligible for gaming because (1) the Tribe is not a "tribe" at all; (2) that the Tribe's restoration to Federal recognition in 2009 was invalid; and (3) that the Tribe has no significant historical connection to the Elk Grove Site.[48] Each of these arguments is addressed in turn in this Section.[49]

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[44] 25 U.S.C. § 2701 *et seq.*

[45] *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002). *See* also 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

[46] FEIS Comments O8-02, O8-18.

[47] *See* Application.

[48] *See generally* Letter from Cheryl Schmit, Director, Stand Up for California!, et al., to Amy Dutschke, Regional Director, Pacific Regional Office, BIA at 2 (Jan. 6, 2017) ("Schmit Letter"); Beckham Report.

[49] The same commenter also argues that the Elk Grove Site cannot be taken into trust because the Tribe was not under Federal jurisdiction in 1934. *Id.* That argument is addressed elsewhere in this document.

2. The Department's Part 292 Regulations

In 2008, the Department promulgated regulations to implement IGRA. Under those regulations, the Restored Lands Exception allows for gaming on newly acquired lands when all of the following conditions in Section 292.7 are met:

(a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
(b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
(c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to federal recognition by one of the means specified in § 292.10; and
(d) The newly acquired lands meet the criteria of "restored lands" in § 292.11.

7.3 Restored Lands Exception Analysis

Part 292 requires two inquiries for determining whether newly acquired land meets this exception:

(1) Whether the tribe is a "restored tribe," and
(2) Whether the newly acquired land meets the "restored lands" criteria set forth in Section 292.11.

7.3.1 Restored Tribe Criteria

Sections 292.7 (a) - (c) provide criteria for determining whether a tribe is a "restored tribe." As discussed below, the Tribe meets these criteria, and, thus qualifies as a "restored tribe."

1. The Wilton Rancheria was federally recognized.

In order to show that a tribe was at one time federally recognized for purposes of Section 292.7(a), a tribe must demonstrate one of the following:

(a) The United States at one time entered into treaty negotiations with the tribe;
(b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
(c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
(d) The United States at one time acquired land for the tribe's benefit; or

(e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.[50]

The Wilton Rancheria was federally recognized under at least three of the specific exceptions – Sections 292.8(b), (c) and (d). First, the Tribe meets the requirements of Section 292.8(b), because the Department determined that the Wilton Rancheria could vote on whether to accept or reject the IRA.[51] The Haas Report shows that the Department held an election on the Rancheria on June 15, 1935, and that out of a voting population of 14 persons, the vote was 12-0 in favor of accepting the IRA.[52] Second, the Tribe meets the requirements of Section 292.8(c), because the Tribe is mentioned by name in the list of rancherias and reservations to be terminated by the California Rancheria Act.[53] Third, the Tribe meets the requirements of Section 292.8(d), because the United States purchased a 38-acre parcel for the Tribe in 1927[54] with funds appropriated by various appropriations acts enacted in the early Twentieth Century.[55] Therefore, the Tribe meets the criteria in the regulations that it was at one time federally recognized.

One commenter asserts that the Tribe cannot meet this criterion because the Tribe "does not derive from any historical tribal entity at all."[56] This comment generally does not address any of the specific criteria of 25 C.F.R. Section 292.8. In fact, the Beckham Report bolsters the Department's existing evidence that the Tribe meets the criteria of Sections 292.8(b),[57] (c),[58] and (d).[59]

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[50] 25 C.F.R. § 292.8.

[51] *Ten Years of Tribal Government Under the I.R.A.*, U.S. Indian Service Tribal Relations Pamphlets 1 (1947) ("Haas Report") at 16.

[52] *Id.*

[53] Act of Aug. 18, 1958, 72 Stat. 619 ("Rancheria Act").

[54] Land Division, Office of Indian Affairs, "Lands Purchased for California Indians," at Sheet B. The Department has relied upon this document to determine whether a tribe meets the requirements of Section 292.8(d). *See* Letter from Larry Echo Hawk, Ass't Sec'y – Indian Affairs, to Hon. Jason Hart, Chairman, Redding Rancheria, at 4 (Dec. 22, 2010) [hereinafter "Redding Letter"], *provided by the Tribe at* Request, Tab 5.

[55] In 1906, Congress appropriated funds to the Department to purchase land, water, and water rights for the benefit of Indians in California who either were not at that time on reservations, or whose reservations did not contain land suitable for cultivation. Act of June 21, 1906, 34 Stat. 325, 333 (appropriating $100,000). Congress made similar appropriations in many of the following years, through at least 1929. *See, e.g.*, Act of Apr. 30, 1908, 35 Stat. 70, 76 (appropriating $50,000); Act of Aug. 1, 1914, 38 Stat. 582, 589 (appropriating $10,000 to purchase lands and improvements thereon "for the use and occupancy" of "homeless Indians of California"); Act of May 18, 1916, 39 Stat. 123, 132 (same); Act of Mar. 2, 1917, 39 Stat. 969, 975 (same, appropriating $20,000); Act of May 25, 1918, 40 Stat. 561, 570 (same); Act of June 30, 1919, 41 Stat. 3, 12 (same); Act of Feb. 14, 1920, 41 Stat 408, 417 (same, appropriating $10,000); Act of Mar. 3, 1921, 41 Stat. 1225, 1234 (same); Act of May 10, 1926, ch. 277, 44 Stat. 453, 461 (same, appropriating $7,000); Act of Jan. 12, 1927, 44 Stat. 934, 941 (same); Act of Mar. 7, 1928, 45 Stat. 200, 206 (same, appropriating $4,000); Act of Mar. 4, 1929, 45 Stat. 1562, 1568 (same, appropriating $8,000).

[56] Schmit Letter at 2-3; Beckham Report at 1-17, 54-58, 70.

[57] The Beckham Report documents the Tribe's vote to adopt a Constitution and By-Laws, including both the compiling of an "Approved List of Voters" by the BIA Sacramento Agency and the Department's ultimate approval of the Tribe's Constitution and Bylaws. Beckham Report at 58-59. Thus, the Beckham Report provides evidence that the Department determined that the Tribe could organize under the IRA.

2. The Wilton Rancheria lost its government-to-government relationship.

Once a tribe establishes that it was at one time federally recognized, it must show that it lost its government-to-government relationship with the United States. A tribe can show that its government-to-government relationship was terminated by one of the following means:

(a) Legislative termination;
(b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or
(c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.[60]

The Wilton Rancheria meets the requirements of Section 292.9(a), because it was subject to legislative termination. The Wilton Rancheria was specifically identified for termination in the Rancheria Act, and subsequent administrative action demonstrates that the Department carried out that termination.[61] Therefore, the Tribe "lost its government-to-government relationship" as required by Section 292.7(b).

3. The Wilton Rancheria was Restored to Federal Recognition.

If a tribe can successfully show that it was at one time federally recognized and that its government-to-government relationship with the United States was terminated, then it must show that it was restored to federal recognition. A tribe can show that is was restored to federal recognition by one of the following:

(a) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);
(b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or

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[58] The Beckham Report extensively documents the Department's efforts to terminate the Tribe, *id.* at 64-70, and ties those efforts directly to the Rancheria Act. *Id.* at 65-66. Thus, the Beckham Report provides evidence that Congress enacted legislation naming the Tribe, indicating that a government-to-government relationship existed.
[59] The Beckham Report documents the purchase of the Rancheria. *Id.* at 55-58. Thus, the Beckham Report provides evidence that the United States at one time acquired land for the Tribe's benefit.
[60] 25 C.F.R. § 292.9.
[61] The Department has relied upon the listing of a tribe in the Rancheria Act and the subsequent administrative termination of that tribe to determine that a tribe meets the requirements of Section 292.9(a). *See* Redding Letter note 62, at 4, *provided by the Tribe at* Request, Tab 5.

(c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.[62]

The Wilton Rancheria meets the requirements of Section 292.10(c), because it was restored to federal recognition by a court-approved settlement entered into by the United States. The Tribe sued the Department in 2007 over the Tribe's termination.[63] The parties settled pursuant to an agreement that required (among other things) that the Department restore the Tribe "to the status of a federally-recognized Indian Tribe," and in 2009 the district court entered judgment approving that settlement.[64] The Department has relied upon similar court-approved settlements to determine that a tribe meets the requirements of Section 292.10(c).[65] Therefore, the Tribe was "restored to Federal recognition" as required by Section 292.7(c).

One commenter questions the legality of the stipulated judgment entered by the District Court in 2009 as contrary to the Rancheria Act.[66] The United States remains bound by that judgment, and commenters have no standing to challenge it, more than seven years later. The Tribe's federally recognized status is beyond dispute and not subject to challenge. This federal-tribal relationship was restored in 2009[67] and the Tribe was thereafter included in all official *Federal Register* lists of federally recognized tribes.[68] Following passage of the Federally Recognized Indian Tribe List Act (List Act), inclusion on the official *Federal Register* list conclusively establishes the federally recognized status of an Indian tribe.[69]

The Wilton Rancheria is a restored tribe.

The Tribe satisfies the requirements set forth in §§ 292.8-10 and, therefore, is a "restored tribe" for purposes of IGRA and Part 292.

7.3.2 Restored Lands Criteria

Section 292.7(d) requires that newly acquired land meet the criteria set forth in Section 292.11 to qualify as "restored lands." As discussed below, the Site meets the criteria and thus qualifies as "restored land."

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[62] 25 C.F.R. § 292.10.

[63] *Wilton Miwok Rancheria v. Salazar*, Case No. 5:07-cv-02681-JF (N.D. Cal.); the case originally was captioned *Wilton Miwok Rancheria v. Kempthorne*, *see id.*, Compl. (May 21, 2007) [Dkt. No. 1].

[64] Id., Stip. for Entry of Judgment (June 4, 2009) [Dkt. No. 60-2]; Order for Entry of Judgment (June 8, 2009) [Dkt. No. 61].

[65] *See* Redding Letter at 4.

[66] Schmitt Letter at 4.

[67] Bureau of Indian Affairs, *Restoration of Wilton Rancheria*, 74 Fed. Reg. 33468 (July 13, 2009).

[68] *See, e.g.*, Bureau of Indian Affairs, *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 74 Fed. Reg. 40218, 40222 (Aug. 11, 2009); Bureau of Indian Affairs, *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 81 Fed. Reg. 26826, 25830 (May 4, 2016).

[69] 108 Stat. 4791 (1994).

In order for newly acquired lands to qualify as "restored lands" for purposes of Section 292.7, the tribe acquiring the lands must meet the requirements of Section 292.11:

> (a) If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that either:
>
> (1) The legislation requires or authorizes the Secretary to take the land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or
>
> (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.
>
> (b) If the tribe is acknowledged under § 83.8 of this chapter, it must show that it:
>
> (1) Meets the requirements of § 292.12; and
>
> (2) Does not already have an initial reservation proclaimed after October 17, 1988.
>
> (c) If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12.[70]

The Wilton Rancheria meets the requirements of Section 292.10(c), because it was restored to federal recognition by a court-approved settlement entered into by the United States. The Tribe sued the Department in 2007 over the Tribe's termination, the parties settled pursuant to an agreement that required (among other things) that the Department restore the Tribe "to the status of a federally-recognized Indian Tribe," and the district court entered judgment approving that settlement. Therefore, the Tribe was "restored to Federal recognition" as required by Section 292.7(c).

The Tribe meets the requirements set forth in Sections 292.8-10 and, therefore, is a "restored tribe" for purposes of IGRA and Part 292.

Because the Wilton Rancheria was restored to federal recognition by means of a court-approved settlement entered into by the United States, it must meet the requirements set forth in § 292.12 in order for its lands to qualify as "restored lands."[71]

Accordingly, the Tribe must meet the requirements of Section 292.12:

> (a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal

[70] 25 C.F.R. § 292.11.

[71] 25 C.F.R. § 292.11(c) ("If the tribe was restored . . . by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12.").

population, and the tribe must demonstrate one or more of the following modern connections to the land:

(1) The land is within reasonable commuting distance of the tribe's existing reservation;

(2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;

(3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or

(4) Other factors demonstrate the tribe's current connection to the land.

(b) The tribe must demonstrate a significant historical connection to the land.

(c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:

(1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or

(2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

1. Section 292.12(a): In-State and Modern Connections

The Site is located in the State of California,[72] which also is home to the Tribe's headquarters[73] and most of the Tribe's population.[74] Thus, the Site satisfies Section 292.12(a) requirement that the newly acquired lands "must be located within the State . . . where the tribe is now located." In addition, under § 292.12(a), there are four ways that a tribe can demonstrate a modern connection to land upon which it seeks to conduct gaming:

> (1) The land is within reasonable commuting distance of the tribe's existing reservation;
> (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
> (3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
> (4) Other factors demonstrate the tribe's current connection to the land.[75]

The Site meets the criteria provided in both §§ 292.12(a)(3) and 292.12(a)(4). The Site is within 25 miles of the Tribe's headquarters in accordance with Section 292.12(a)(3). The Elk Grove

[72] Request, Supplement B, Tab 2 (Elk Grove Site).
[73] *Id.*
[74] *Id.* at 16.
[75] 25 C.F.R. § 292.12(a).

Site is located 2 miles from the Tribe's current headquarters and 3 miles from the Tribe's former headquarters.[76] Because a tribe need only meet one of the criteria set forth in Section 292.12(a), this alone would suffice to demonstrate the Tribe's modern connection to the Site.

In addition, the Tribe has demonstrated its modern connections to the Site using other factors, as permitted by Section 292.12(a)(4). The fact that a parcel is within a tribe's service area is one way of demonstrating that tribe's "geographic nexus" to the parcel.[77] The Site is within the Tribe's service area.[78] Therefore, the Tribe has demonstrated a modern connection to the Site sufficient to meet the requirements of Section 292.12(a).[79]

2. Section 292.12(b): Significant Historical Connection

Part 292 defines "significant historical connection" as follows: "*Significant historical connection* means the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land."[80]

The Tribe has demonstrated its significant historical connection to the Site. First, as detailed above, the Tribe's members are descended from speakers of the Bay Miwok, Nisenan, Northern Sierra Miwok, and Plains Miwok languages.[81] The Site is located within the territory once predominantly occupied by Plains Miwok speakers, near several historic Plains Miwok village sites, and just a short distance from territory predominantly occupied by Nisenan and Northern

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[76] Request, Tab 3 (Elk Grove Site) *and* Supplement B, Tab 2 (Elk Grove Site).

[77] Mem. from Phil Hogen, Assoc. Solic., Div. of Indian Affairs, to Ass't Sec'y – Indian Affairs, at 13 (Dec. 1, 2001), *provided by the Tribe at* Request, Tab 13. Although this memorandum predates the Part 292 regulations, it is consistent with Part 292 and we find it to be persuasive.

[78] Indian Health Service, *Notice of Service Delivery Area Designation for Wilton Rancheria*, 78 Fed. Reg. 55731 (Sept. 11, 2013).

[79] The Tribe also argues that it meets the requirements of Section 292.12(a)(2), because the Wilton Site is near where a significant number of the Tribe's members reside. Request at 15-16. In support of this argument, the Tribe states that 88 percent of its adult members reside within the State of California, that 72 percent reside within a 30-mile radius of the Wilton Site and 69 percent reside within a 30-mile radius of the Elk Grove Site, and that 62 percent reside within Sacramento County. Request at 15-16 *and* Request, Supplement B at 4-5. The Tribe cites as the source of this information its Office of Enrollment. Request at 16 n.4 *and* Request, Supplement B at 4-5 nn.2-3, 5. However, the Tribe provided the Department with no evidence to support this contention.

Because a tribe need only meet one of the criteria set forth in Section 292.12(a), and because we conclude that the Tribe has a modern connection to the Sites pursuant to Sections 292.12(a)(3) and (4), we need not address whether the Wilton Site meets the criteria in Section 292.12(a)(2).

[80] 25 C.F.R. § 292.2.

[81] Whiteman et al. *Ethnohistoric Summary of the Wilton Rancheria* at 1, 5, 28 (2016) (provided by the Tribe at Supplement, Tab A1).

Sierra Miwok speakers.[82] Evidence of occupancy supports a finding that a tribe has demonstrated a significant historical connection to a site.[83]

In addition, the Site is less than 6 miles from the historic Rancheria.[84] The Haas Report shows that the historic Rancheria had a population of 40 residents, including a voting population of 14, when the Tribe voted to accept the IRA on June 15, 1935.[85] The Haas Report provides further documentation of the Tribe's occupation of the Rancheria just a few miles from the Site. A parcel's proximity to a tribe's historic reservation or rancheria is evidence that the tribe has a significant historical connection to that parcel.[86]

Finally, the Site is a short distance from the Hicksville Cemetery,[87] which the Tribe's members have long used as a burial site.[88] A proposed gaming site's proximity to a tribe's historic burial sites is evidence of the tribe's historic connection to the Site.[89] Therefore, the Tribe has demonstrated a significant historical connection to the Site sufficient to meet the criteria of Section 292.

One commenter asserts that the Beckham Report demonstrates that the Tribe lacks "any historical connection to the Elk Grove Site."[90] The commenter's specific arguments, and the Department's responses, are as follows:

First, the Beckham Report asserts that there is no evidence that the original Wilton families were Miwok and, therefore, that there is no historical connection between them and the Elk Grove Site.[91] The Department, however, finds ample evidence in the record to support its conclusions that at least one of the original Wilton families was Miwok.[92] Annie Florine (Blue) Taylor was the daughter of Aleck Blue.[93] Aleck Blue was, himself, "one of the founding members of the

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[82] *Id.* at 11 Figure 4.

[83] *See, e.g.*, Letter from George T. Skibine, Acting Deputy Ass't Sec'y – Pol'y & Econ. Dev., to Patricia Hermosillo, Chairperson, Cloverdale Rancheria of Pomo Indians of California, at 5 (Dec. 12, 2008) [hereinafter "Cloverdale Letter"], *provided by the Tribe at* Request, Tab 5.

[84] Request, Supplement B, Tab 2.

[85] Haas Report at 16.

[86] *See, e.g.*, Redding Letter at 7 ("The record indicates that the Redding Rancheria, the site of tribal residences and burial grounds from at least as early as 1922, is less than 2 miles from the subject Parcels."); Cloverdale Letter, at 5 (noting that parcels "are not only in the vicinity where the Cloverdale Tribe once occupied and subsided on land, but actually contiguous to and within the former Cloverdale Rancheria").

[87] Request, Tab 3 *and* Request, Supplement B, Tab 2.

[88] Whiteman et al. at 24.

[89] *See, e.g.*, Cloverdale Letter at 5.

[90] Letter from Cheryl Schmit, Director, Stand Up for California!, et al., to Amy Dutschke, Regional Director, Pacific Regional Office, BIA at 2 (Jan. 6, 2017); *see also id.* at 5 ("the Rancheria cannot document any significant historical connection to the area of Elk Grove"). Stand Up for California! also argues that the Beckham Report demonstrates (1) that the Tribe is not a tribe, (2) that the Tribe was not under Federal jurisdiction in 1934, (3) that the Tribe has any historical connection to the Elk Grove site, and (4) that the site qualifies as restored lands under IGRA.

[91] Beckham Report at 30-53.

[92] The Beckham Report acknowledges that the family of Annie Florine (Blue) Taylor, the matriarch of one of the original Wilton families, was Miwok, *Id.* at 15.

[93] *Id.* at 29, 39.

Wilton Rancheria," and a spiritual leader trained by Yoktco.[94] It was under the spiritual leadership of Yoktco that the *Amuchamne* built a dance house at Elk Grove.[95] Both Beckham and Whiteman agree that the *Amuchamne* were a Plains Miwok group with ties to the Elk Grove area.[96]

In addition, the Department does not conclude that all of the Tribe were Miwok, but rather that the Tribe is descended from speakers of Miwok and Nisenan languages who lived in the vicinity of the Tribe's Rancheria. This conclusion is supported by circumstantial evidence in the Beckham Report, which identifies most of the Tribe's founding members as Indians born between the 1850s and 1880s in Amador, El Dorado, Placer and Sacramento Counties[97] -- all of which are traditionally home to Miwok and Nisenan speakers, and all of which are near the Elk Grove Site.[98] Beckham suggests that those original Wilton members might have been Yokut or Paiute instead of Miwok.[99] However, these groups, too, were present in and around Sacramento County, where the Elk Grove Site is located.[100] Ultimately, the Beckham Report conclusively demonstrates only that a couple of the founding members of the Tribe were not local.[101] Most or all of the other original Wilton families had their origins among the Indians of Sacramento and adjoining counties.

Second, the Beckham Report asserts that there is no connection between the Tribe and the unratified treaties of 1851 and 1852.[102] This is a *non sequitur*. The Department does not rely on these treaties to establish the significant historical connection between the Tribe and the Elk Grove Site.

Finally, the Department found a significant historical connection in part because of the Elk Grove Site's proximity to the Tribe's Rancheria. Nothing in the Beckham Report dissuades the Department from that conclusion. The Department found further support for a significant historical relationship in the proximity between the Hicksville Cemetery and the Elk Grove Site. The Beckham Report confirms the importance of the Hicksville Cemetery to the tribe, demonstrating that many of the Tribe's founders appear to have been buried there.[103]

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[94] Whiteman et al. at 24.
[95] *Id.*
[96] Beckham Report at 10; Whiteman et al. at 24.
[97] Beckham Report at 31-53.
[98] *See* maps in Beckham Report at 1, 3, 5, 6, 7, 9; Whiteman et al. at 2, 8, 11.
[99] Beckham Report at 53.
[100] *See* maps cited *supra*.
[101] The Colonel and Bernice (Dorman) Brown family appears to have been from the Round Valley Reservation in Mendocino County, California. Beckham Report at 31. Philip and Gertrude (Alvarado/Olvarido) Dupree were from New Mexico, of Navajo and/or Pueblo origins. *Id.* at 33-34.
[102] Beckham Report at 15-29.
[103] William Smith was buried in Hicksville Cemetery. Beckham Report at 42. In addition, Charles James McKean, Jr., is reported to be buried in Hicksville, although Beckham does not specify whether he was buried in the Hicksville Cemetery. *Id.* at 38.

One commenter disputed the Tribe's connection with the Hicksville Cemetery, stating that it had no connection to the Tribe but was instead a family cemetery of the Aleck Blue family.[104] Aleck Blue, however, was a founding member of the Rancheria and, therefore, his connection to the cemetery constitutes a Tribal connection to the cemetery.[105]

3. Section 292.12(c): Temporal Connection

There are two ways that a tribe may demonstrate the temporal connection necessary to meet the requirements of § 292.12(c):

> (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
>
> (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

Here, both requirements are met. The Application is the first such land-into-trust request that the Tribe has made since it was restored to federal recognition in 2009. Thus, the Tribe meets the requirement of Section 292.12(c)(1) if the Department takes the Site into trust. In addition, the Application was first made in 2014,[106] just five years after the Tribe was restored to federal recognition, and well within the 25-year time frame provided in Section 292.12(c)(2). Therefore, the Tribe has demonstrated a temporal connection to the Site sufficient to meet the criteria of Section 292.12(c).

The Site qualifies as restored lands.

The Tribe satisfies the requirements of Sections 292.7 and 292.12 and, thus, the Site qualifies as "restored lands" for purposes of IGRA. The Tribe demonstrated its in-state and modern connections, its significant historical connections to the Site, and its temporal connection to the Site. Accordingly, the Site meets the requirements necessary to determine that it will be restored lands upon its acquisition in trust.

Restored Lands Exception Conclusion

As discussed above, the Tribe is a restored tribe and the Department has determined that the Site satisfies the criteria for restored lands. Upon its acquisition in trust, the Site is eligible for gaming pursuant to the Restored Lands Exception of IGRA, Section 2719(b)(1)(B)(iii).

8.0 TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

[104] FEIS Comment PH-18.
[105] Whiteman et al. at 24.
[106] *See* Application.

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108. The regulations found at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5.

8.1 25 C.F.R. § 151.3 – Land acquisition policy

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

(1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
(2) When the tribe already owns an interest in the land; or
(3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The Tribe's fee-to-trust request meets the threshold requirements of the Secretary's land acquisition policy in 25 C.F.R. § 151.3(a)(3). As described in the Tribe's 2014 and 2016 fee-to-trust applications and the FEIS, the Tribe expresses the need for the Site to conduct gaming and provide other services. The establishment of a land base and creation of a source of revenue would create employment opportunities for Tribal members, fund important Tribal governmental programs, and fund other development opportunities that will facilitate tribal self-determination, economic stability, and help provide needed Indian housing.[107] These needs are of particular importance given that the Tribe was restored to recognition in 2009 and is still without trust land or a reservation.

The Regional Director determined, and we concur, that the acquisition of the 36-acre Site is necessary to facilitate tribal self-determination and economic development.[108] The acquisition satisfies the conditions in 25 C.F.R. § 151.3(a)(3).

8.2 25 C.F.R. § 151.11 - Off-reservation acquisitions

The Tribe's application is considered under the off-reservation criteria of Section 151.11 because the Tribe is landless and has no reservation. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), and (e) through (h), as discussed below.

8.3 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) requires consideration of the existence of statutory authority for the acquisition and any limitations on such authority.

[107] Memorandum from Regional Director, Pacific Region, to Assistant Secretary - Indian Affairs, regarding Wilton Rancheria's Land Acquisition Request for Class III Gaming, at 28 ("Regional Recommendation").
[108] *Id.* at 2.

In *Carcieri v. Salazar*, 555 U.S. 379 (2009), the United States Supreme Court held that the Secretary's authority to acquire land in trust for Indian tribes under the first definition of "Indian" in the Indian Reorganization Act (IRA), 25 U.S.C. § 5101 *et seq.*, extended only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934. We have evaluated the applicability of *Carcieri* to the Tribe's application and have determined that the Secretary is authorized to acquire land in trust for the tribe under 25 U.S.C. § 5108.

The Department has determined that the question of whether a tribe was "under federal jurisdiction" for purposes of *Carcieri* entails a two-part inquiry.[109] The first question is to examine whether there is a sufficient showing in the Tribe's history, at or before 1934, that it was under federal jurisdiction, *i.e.*, whether the United States had taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the Tribe or in some instances tribal members – that are sufficient to establish federal obligations, duties, or responsibility for or authority over the tribe by the Federal Government.[110] Once having identified that the Tribe was under federal jurisdiction prior to 1934, the second question is to ascertain whether the Tribe's jurisdictional status remained intact in 1934.[111] The Department recognizes, however, that some activities and interactions so clearly demonstrate Federal jurisdiction over a federally recognized tribe as to render elaboration of the two-part inquiry unnecessary.[112] The Section 18 elections under the IRA held between 1934 and 1936 are such an example of unambiguous Federal actions that obviate the need to examine the Tribe's history prior to 1934.[113] Moreover, in addition to the Tribe's Section 18 election, the record here clearly demonstrates that the Tribe was under Federal jurisdiction prior to and through 1934 with the acquisition of the land base for the Tribe in 1927.

Section 18 of the IRA provides that "[i]t shall be the duty of the Secretary of the Interior, within one year after the passage [of the IRA] to call . . . an election" regarding application of the IRA to each reservation.[114] If "a majority of the adult Indians on a reservation . . . vote against its application," the IRA "shall not apply" to the reservation.[115] The vote was either to reject the application of the IRA or not reject its application. Section 18 required the Secretary to conduct

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[109] *See* M-37029, The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act (Mar. 12, 2014) (M-37029); *see also Confed. Tribes of Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 559-65 (D.C. Cir. 2016) (upholding the Department's *Carcieri* framework), *petition for cert. filed* (U.S. Oct. 17, 2016) (No. 16-539)

[110] *Id.* at 19.

[111] *Id.*

[112] *Id.* at 20.

[113] *Id.*; *see also Stand Up for California! v. United States DOI*, 2016 U.S. LEXIS 119649 at *160 (D.C. Dist. Sept. 6, 2016) ("The holding of an election in 1935, required by a 1934 federal statute, at an Indian tribe's reservation, clearly 'reflect[s] federal obligations, duties, responsibility for or authority over the tribe by the Federal Government' both before and after 1934.") (citing *Confed. Tribes of the Grand Ronde Cmty. v. Jewell*, 830 F.3d 552 (D.C. Cir. 2016)).

[114] Act of June 18, 1934, 48 Stat. 984 (codified at 25 U.S.C. § 5125); Act of June 15, 1935, ch. 260, § 2, 49 Stat. 378.

[115] *Id.*

such votes "within one year after June 18, 1934," which Congress subsequently extended until June 18, 1936.[116] In order for the Secretary to conclude that a reservation was eligible for a vote, a determination had to be made that the relevant Indians met the IRA's definition of "Indian" and were thus subject to the Act.[117] Such an eligibility determination would include deciding the Tribe was under Federal jurisdiction, as well as an unmistakable assertion of that jurisdiction.[118]

As stated in the report prepared in 1947 by Theodore H. Haas, Chief Counsel for the United States Indian Service, a majority of the adult Indians residing at the Tribe's reservation voted to accept the IRA at a special election duly held by the Secretary on June 15, 1935.[119] The calling of a Section 18 election at the Tribe's reservation unambiguously and conclusively establishes that the Tribe was under Federal jurisdiction in 1934. The IRA vote is dispositive as to a finding of Federal jurisdiction.

We also note that, as explained above, in 1927 the Department acquired approximately 38 acres of land for the Tribe.[120] The acquisition of the Wilton Rancheria in 1927, shortly before the IRA was enacted, also conclusively establishes that the Tribe was under Federal jurisdiction in 1934.[121]

Stand Up For California! (Stand Up) submitted comments concerning the effect of the Carcieri decision on the Secretary's IRA authority. Specifically, it appears that Stand Up's position is: 1) the Tribe does not derive from any historical tribal entity and was therefore not a recognized Indian tribe in 1934; and 2) the Tribe does not legally qualify as a federally recognized tribe at present.[122] Regarding Stand Up's first concern, Carcieri held only that the word "now" in the first definition of Indian modifies "under federal jurisdiction" – it did not hold, as Stand Up seems to argue, that "now" also modifies the phrase "recognized Indian tribe."[123] Accordingly,

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[116] Act of June 15, 1935, ch. 260 § 2, 49 Stat. 378.
[117] M-37029 at 21.
[118] *Id.*
[119] Haas Report at 21.
[120] Land Division, Office of Indian Affairs, "Lands Purchased for California Indians," at Sheet B (undated)[hereinafter "Lands Purchased for California Indians"], provided by the Tribe at Request, Tab 7; Letter from John R. McCarl, Comptroller General, to Hubert Work, Secretary of the Interior (June 14, 1928), provided by the Tribe at Request, Tab 7; Indenture (Apr. 23, 1928),
provided by the Tribe at Request, Tab 7.
[121] See Stand Up for California! v. United States DOI, 2016 U.S. LEXIS 119649 at *199-208 (D.C. Dist. Sept. 6, 2016).
[122] See Letter from Cheryl Schmit, Director, Stand Up For California!, to Amy Dutschke, Regional Director, Pacific Regional Office Bureau of Indian Affairs, at 4 (Jan. 6, 2017), relying on Stephen Dow Beckham Report, The Wilton Rancheria: History of the Wilton Community and Its Antecedents (Dec. 2016). Stand Up raised the same arguments in its challenge to the Department's decision to acquire land in trust for the North Fork Rancheria of Mono Indians. As Stand Up is aware, the D.C. District Court thoroughly evaluated and rejected all these arguments. See Stand Up for California! v. United States DOI, 2016 U.S. LEXIS 119649 at *163-227 (D.C. Dist. Sept. 6, 2016).
[123] See Carcieri, 555 U.S. at 398 (Breyer, J. concurring); Confed. Tribes of Grand Ronde Cmty. of Or. v. Jewell, 830 F.3d 552, 559-63 (D.C. Cir. 2016) ("Ultimately, we defer to Interior's interpretation of the statute" and "[c]onsistent with Justice Breyer's concurrence in *Carcieri*, it was not unlawful for the Secretary to conclude that a 'tribe need

federal recognition must exist only at the time of the acquisition. The Tribe is federally recognized as of the date of this decision, as demonstrated by its appearance on the list of federally recognized tribes published annually in the Federal Register, and therefore meets the requirement that it be "recognized" under the first definition of "Indian."[124]

To the extent that Stand Up is arguing that the Tribe was not a tribal entity, recognized or otherwise, at the time of the IRA,[125] we must also reject this contention. In enacting the IRA, Congress expressly defined the "tribe[s]" for whom the IRA would apply. Section 19 of the IRA defines "tribe," in part, as "the Indians residing on one reservation."[126] Federal officials charged with implementing the IRA clearly deemed the Wilton Rancheria a reservation, and its residents a tribe, as evidenced by the holding of a Section 18 election at the Rancheria and the subsequent organization of the Tribe pursuant to Section 16.[127]

Stand Up's second concern questioning the legitimacy of the Tribe's current federally recognized status is similarly unconvincing.[128] The Tribe's federally recognized status is beyond dispute and not subject to challenge. This federal-tribal relationship was restored in 2009[129] and the Tribe was thereafter included in all official Federal Register lists of federally recognized

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only be recognized' as of the time the Department acquires the land into trust") (internal citations omitted), aff'ing 75 F. Supp. 3d 387, 397-401 (D.D.C. 2014).

[124] M-37029 at 25-26; 81 Fed. Reg. 26826, 26830 (May 4, 2016). See also 25 C.F.R. § 151.2 (defining "tribe" as "any Indian tribe, band, nation, pueblo, community, Rancheria, colony, or other group of Indians . . . which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.").

[125] See Letter from Cheryl Schmit, Director, Stand Up For California!, to Amy Dutschke, Regional Director, Pacific Regional Office Bureau of Indian Affairs, at 2-4 (Jan. 6, 2017); Stephen Dow Beckham Report, The Wilton Rancheria: History of the Wilton Community and Its Antecedents, at 53-69 (Dec. 2016) (asserting that the federal government established the Wilton Rancheria for purposes of providing land to homeless Indians but that the federal government did not treat the resident Indians like a tribe); *see also* Letter from Carolyn Soares, citizen of Elk Grove, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 1 (January 5, 2017). This argument was squarely rejected by the DC District Court. *See Stand Up for California! v. United States DOI*, 2016 U.S. LEXIS 119649 at *172 (D.C. Dist. Sept. 6, 2016) ("Contrary to [Stand Up's] assertion, the calling of a Section 18 election can, by itself, conclusively establish the existence of a tribe under federal jurisdiction within the meaning of the IRA for several reasons: first, under the first definitional prong of 'Indian' under § 479 [now codified at § 5129], 'Indians residing on one reservation' constitute a 'tribe'; ... and, finally, the IRA does not require 'unified' tribal affiliation.").

[126] IRA Section 19, codified at 25 U.S.C. § 5129.

[127] See Haas Report at 16, 26. While not required by law, the Tribe has responded to Stand Up's allegations by submitting evidence of the Tribe's cultural and political unity prior to and following the Rancheria's establishment in 1927. See Wilton Rancheria's Supplemental Response to Report by Stephen Dow Beckham Submitted by Stand Up For California in Regard to the Notice of Application, at 8-11 (Jan. 13, 2017) (Wilton's Supplemental Response); Jennifer Whiteman & Dorothea Theodoratus, Ethnohistoric Summary of the Wilton Rancheria (Feb. 2016), Tab 1 to Wilton's Supplemental Response; Jennifer Whiteman, Dorothea Theodoratus, & Kathleen McBride, Supplemental Report to the Draft Ethnohistoric Summary of the Wilton Rancheria (Jan. 11, 2017), Tab 2 to Wilton's Supplemental Response; Genealogical Research on Wilton Rancheria Distributees (Jan. 12, 2017), Tab 3 to Wilton's Supplemental Response.

[128] See Letter from Cheryl Schmit, Director, Stand Up For California!, to Amy Dutschke, Regional Director, Pacific Regional Office Bureau of Indian Affairs, at 4 (Jan. 6, 2017).

[129] Bureau of Indian Affairs, Restoration of Wilton Rancheria, 74 Fed. Reg. 33468 (July 13, 2009).

tribes.[130] Following passage of the Federally Recognized Indian Tribe List Act (List Act), inclusion on the official Federal Register list conclusively establishes the federally recognized status of an Indian tribe.[131] The language of the List Act confirms that a court-approved settlement agreement like that entered by the Federal court here is a "decision of a United States court" that can restore an Indian tribe's federally recognized status.[132] Congress has never disturbed the Tribe's inclusion on the annual Federal Register lists and the time for third party challenges to the Tribe's listing has long since passed. Moreover, the Federal Government's termination of the Tribe's federally recognized status, which was subsequently restored in 2009, does not undermine our conclusion that the Tribe was under Federal jurisdiction in 1934. Indeed, the termination demonstrates the presence of a Federal-tribal relationship that the Federal Government affirmatively sought to end in 1964.[133]

Because the Tribe was under federal jurisdiction in 1934 and is presently federally recognized, the Secretary is authorized to acquire land in trust for the Tribe under Section 5 of the IRA.

8.4 25 C.F.R. § 151.10(b) - The need of the individual Indian or tribe for additional land

Section 151.10(b) requires consideration of the need of the tribe for additional land. As noted above, in 1927, a 38.81 acre parcel of land was purchased for the Tribe, through funds appropriated for that purpose. On August 18, 1958, as part of the United States' termination policy, Congress enacted the California Rancheria Act (Rancheria Act).[134] Section 1 of the Rancheria Act provided that the assets of forty-one (41) named Rancherias – including the Wilton Rancheria – would "be distributed in accordance with the provisions" of the Act.

On September 22, 1964, then Interior Secretary Stewart L. Udall published in the *Federal Register* an official notice of the termination of the Tribe.[135]

The Tribe's historic Rancheria was sold as a result of unlawful termination of the Tribe's status.[136] The Tribe was dismissed from the Tillie Hardwick litigation of the 1980s that restored many of California's other terminated tribes.[137] The Tribe was ultimately restored to federal

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[130] See, e.g., Bureau of Indian Affairs, Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 40218, 40222 (Aug. 11, 2009); Bureau of Indian Affairs, Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 81 Fed. Reg. 26826, 25830 (May 4, 2016).
[131] 108 Stat. 4791 (1994).
[132] Id. § 103(3).
[133] See Stewart L. Udall, Sec'y of the Interior, PROPERTY OF CALIFORNIA RANCHERIAS AND OF INDIVIDUAL MEMBERS THEREOF, Termination of Federal Supervision, 29 Fed. Reg. 13146 (Sept.22, 1964); see also, Leonard M. Hill, Area Director, "WILTON RANCHERIA- Completion Statement" (July 19, 1961), provided by the Tribe at Request, Tab 9.
[134] P.L. 85-671, 72 Stat. 619, amended by the Act of Aug. 1, 1964, P.L. 88-491, 78 Stat. 390.
[135] *Id.*
[136] Regional Recommendation at 28.
[137] *Id.*

recognition pursuant to the June 8, 2009 court-approved Settlement Agreement, though the recognition did not designate a land base for the Tribe.[138] The Tribe needs land because it currently has no reservation or land held in trust by the United States.[139] The effects of termination of the Tribe by the federal government in 1964 were poverty and the accompanying health and social issues.[140] Although re-recognized in 2009, this did not erase the 45-year period during which the Tribe experienced significant economic and governmental disadvantages. The Tribe has an immediate need for a reliable and significant source of income to meet these present unmet needs.[141]

In consideration of the present state of the Tribe and its increasing membership, it is necessary that the Tribe regain an ancestral land base upon which it can become self-sufficient. The history of the Tribe and the modern-day needs of the Tribe and its tribal membership provide a strong basis for acquiring lands under 25 U.S.C. § 5108, wherein Congress granted to the Secretary of the Interior the authority to acquire lands in trust for Indian tribes.

The Tribe is still faced with high poverty levels, limited employment opportunities, and a demand for adequate housing. Approximately 62.4% of the Tribe's families are below the federal poverty line, and 42% of working-age members are unemployed.[142] Unless the Tribe is able to acquire these lands in trust and is able to conduct gaming, the Tribe will likely remain unable to meet its need for economic development, self-sufficiency, and self-governance, and will be unable to provide its quickly growing Tribal member population with employment and educational opportunities and critically needed social services.

The Regional Director found, and we concur, that acquisition of the Site in trust will address the Tribe's need for additional land.[143]

8.5 25 C.F.R. § 151.10(c) – The purposes for which the land will be used

Section 151.10(c) requires consideration of the purposes for which the land will be used.

The Tribe proposes to develop a casino-resort facility and related structures on an approximately 35.92-acre site located west of California State Highway 99 in the southern part of The City of Elk Grove, California. The Tribe intends to develop a class III gaming facility with related

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[138] *See Wilton Miwok Rancheria and Dorothy Andrews v. Salazar*, Civil No. C-07-02681 (JF)(PVT), and *Me-Wuk Indian Community of the Wilton Rancheria v. Salazar*, Civil No. C 07-05706(JF), United States District Court for the Northern District of California.
[139] Regional Recommendation at 28.
[140] *Id.*
[141] *Id.* at 28-29.
[142] FEIS § 1.3.
[143] Regional Recommendation at 27-28.

facilities, including parking, hotel, convention center, restaurant facilities, and other food and beverage services.

The Proposed Project would consist of 608,756 sq.ft., and would include 110,260 sq.ft. of gaming floor. Class III gaming would be conducted in accordance with IGRA and tribal-state Compact requirements. The Proposed Project would also include a 360-seat buffet, as well as a café, center bar and lounge, dining and other food and beverage services. Other services proposed in the project include a 60 seat pool grill, 1,870 sq.ft. of retail area, a 2,120 sq.ft. fitness center, 8,683 sq. ft. spa, and an approximately 47,634 sq.ft. convention center. The hotel would be 12 levels and a total of 302 guest rooms, totaling approximately 225,280 sq.ft. A three-level parking garage with 1,966 parking spaces, along with 1,437 on-site surface parking spaces, would be provided. The signage on the parking lot would be visible to travelers on Highway 99.[144]

The proposed facilities would occupy most of the Site. We determine that the Tribe has adequately described the intended purpose of the land to be acquired.

8.6 25 C.F.R. § 151.10(e) – If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

State and County Taxes

The assessed value of the larger parcel on which the Site is located is $30,500,000.00 for FY 2016-2017, and the Site's portion of the assessed property taxes is $229,855.92.[145] Pursuant to a Memorandum of Understanding (MOU) dated June 14, 2016, the Tribe has agreed to compensate Sacramento County the following amounts, beginning one year after the opening of the proposed project, to compensate the County for loss of property tax, and sales tax:

End of Year 1	$500,000
End of Year 2	$750,000
End of Year 3	$1,000,000
End of Year 4	$1,500,000

[144] FEIS §§ 2.7.1-2.7.2

[145] *See* Regional Recommendation at 30; *see also* Letter from Christina Wynn, Assistant Assessor, Sacramento County Office of the Assessor, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 14, 2016). The City of Elk Grove assessed the Site's pro-rata share of the overall property taxes at the lower amount of $110,350.36. *See* Letter from Laura S. Gill, City Manager, City of Elk Grove, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 12, 2016).

End of Year 5 $2,000,000[146]

Payments are subsequently increased by 2% each year.[147] Such compensation is to be paid to the extent not otherwise specifically provided for in any class III gaming compact subsequently entered into between the Tribe and the State pursuant to IGRA.[148] The June 14, 2016 MOU includes provisions whereby the Tribe will make certain specified payments to the County to fund habitat conservation, health and social services, mitigation of problem gambling, law enforcement, and to fund County road improvements.[149] The Tribe also entered into an MOU with the City of Elk Grove on September 29, 2016.[150] Pursuant to this agreement, the Tribe has agreed to make both a non-recurring payment and annual payments for roadway improvements, police equipment and services, and to the City of Elk Grove community facilities and schools.[151] The Tribe and the City of Elk Grove will continue discussions regarding the mitigation of impacts related to the Tribe's Proposed Project.[152]

Although the Tribe has not completed negotiations with the State for a class III compact, most of the other California tribal-state gaming compacts contain provisions establishing funds for addressing community impacts.[153]

By letters dated November 17, 2016, with a subsequent attachment sent November 28, 2016, in accordance with 25 C.F.R. 151.10, the BIA notified the following entities that they would have 30 days in which to provide written comments as to the trust acquisition's potential consequence on regulatory jurisdiction, real property taxes, and special assessments:

- Office of the Governor
- State of California Clearinghouse
- State of California Attorney General (transmitted by the State Clearinghouse)
- County of Sacramento
- Sacramento County Assessor
- City of Elk Grove
- City of Sacramento
- Elk Grove Police Department
- Sacramento County Sheriff's Department

[146] See Regional Recommendation at 30.
[147] FEIS Appendix B, MOU and Intergovernmental Agreement between the County of Sacramento and Wilton Rancheria, at 7.
[148] *See* Regional Recommendation at 30.
[149] *See generally* FEIS Appendix B, MOU and Intergovernmental Agreement between the County of Sacramento and Wilton Rancheria.
[150] *See* FEIS Appendix B, MOU and Intergovernmental Agreement between the City of Elk Grove and Wilton Rancheria.
[151] FEIS § 1.6.
[152] *See* FEIS Appendix B, MOU and Intergovernmental Agreement between the City of Elk Grove and Wilton Rancheria; *see also* Regional Recommendation at 30.
[153] FEIS §§ 1.7, 2.2.4.

- Stand Up For California!
- Cheryl Schmit, Director of Stand Up for California
- Ione Band of Miwok Indians of California
- Buena Vista Rancheria of Me-Wuk Indians of California
- Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract),
- California
- Wilton Rancheria, California
- Diane Feinstein, U.S. Senator for California

The BIA ultimately received responses from the following entities:[154]

- State of California Chief Deputy Attorney General
- City of Elk Grove City Manager
- Sacramento County Office of the Assessor
- Stand Up For California!
- Cheryl Schmit, Director of Stand Up For California!
- Jennifer MacLean, Perkins Coie Law Firm
- Carolyn Soares, Elk Grove Citizen

The BIA also received a letter from the following tribal government:[155]

- Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California

We analyze the tax impacts below, and note that the FEIS fully evaluated the impacts on the State and its political subdivisions resulting from removal of the land from the tax rolls in Section 4.7.6.

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[154] Letter from Kathleen A. Kenealy, Chief Deputy Attorney General, State of California, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (January 10, 2017, replacing a similar letter sent January 9, 2017); Letter from Laura S. Gill, City Manager, City of Elk Grove, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 12, 2016); Letter from Christina Wynn, Assistant Assessor, Sacramento County Office of the Assessor, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 14, 2016); Letters from Stand Up For California! and Cheryl Schmit, Director of Stand Up For California! to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (January 6, 2017; December 21, 2016; December 19, 2016); Letter from Jennifer MacLean, Perkins Coie Law Firm, on behalf of Stand Up For California!, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 29, 2016); Letter from Carolyn Soares, citizen of Elk Grove, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (January 5, 2017).

[155] Letter from Nicholas Fonseca, Chairman, Shingle Springs Band of Miwok Indians, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 6, 2016), included in comment letters attachment.

Once acquired in trust, the Site will not be subject to Sacramento County property taxes.[156] While the County may experience a loss of property tax revenue, the economic benefits resulting from the development and operations of the casino resort will more than offset losses from tax revenue. The FEIS Section 4.7.6 provides estimated general economic output of construction and operation, and includes estimated fiscal effects and current property values of the Site.

The Regional Director found, and we concur, that although the acquisition of the Site in trust would result in the loss property tax revenue for the County, that revenue would be a small portion of the overall tax revenue collected by the County and would be outweighed by substantial economic activity and spending within the region that would result from Preferred Alternative F.[157]

Additional Comments

While not relating to the tax implications of acquiring the Site in trust, comments in response to the Part 151 notice letter raised several additional issues. Stand Up submitted comments seeking the recusal of Regional Director Amy Dutschke from the BIA's consideration of the Tribe's request.[158] However, the Departmental Ethics Office has concluded that the family relationships raised by Stand Up did not violate ethical rules such that her participation was improper.

The Shingle Springs Band of Miwok Indians asked BIA to consider the "saturation of the current Sacramento area Indian gaming market" and the potential impact of Wilton's proposed casino on neighboring tribal gaming operations.[159] The Shingle Springs Band indicated that it supports alternative locations for Wilton's gaming project that are located on or very near the historical Wilton Rancheria. While BIA strongly supports economic self-sufficiency for all tribes, neither the IRA nor the IGRA regulations authorize the BIA to consider market competition in approving a tribal fee-to-trust application for gaming. Moreover, as noted throughout this decision, the Elk Grove Site is located approximately 5 miles from the Wilton Tribe's historic rancheria.

Finally, the Department has received several phone calls in support of the Tribe's application, including one from Steve Lee, the Mayor of the City of Elk Grove.[160] Mayor Lee indicated that

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[156] *See* 25 U.S.C. § 5108. *See also* FEIS § 4.7.6.
[157] *See* Regional Recommendation at 31.
[158] *See* Letters from Cheryl Schmit, Director of Stand Up For California! to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 21, 2016; January 6, 2017).
[159] Letter from Nicholas Fonseca, Chairman, Shingle Springs Band of Miwok Indians, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 6, 2016).
[160] The voicemails, left on January 18, 2017, were directed to Principal Deputy Assistant Secretary - Indian Affairs Lawrence Roberts. Transcripts are on file with the Department.

the City Council is "completely behind" the trust application and has unanimous support. Mayor Lee also highlighted the beneficial MOU between the City and the Tribe. Additionally, Gary Davis, former Mayor of the City of Elk Grove, provided his support for the trust acquisition and remarked on the strength of the Tribe's relationship with the City.

8.7 25 C.F.R. §151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise.

As discussed in Sections 1.2.3 and 2.7 of the FEIS, the Site lies within the city limits of Elk Grove in Sacramento County. The Site was partially developed with parking facilities and commercial structures; however, these commercial structures were only partially constructed and are currently vacant. The Southern portion may eventually be developed as an outlet mall. The Site is within the city limits of Elk Grove's urban services boundary and has existing connections to municipal water supply, wastewater service, and stormwater infrastructure.

The Department does not foresee any jurisdictional or land use conflicts. While the State and its political subdivisions will no longer have any jurisdiction or land use control over the Site, the Tribe intends to work cooperatively with local jurisdictions to ensure that the Proposed Project is in harmony with the surrounding community. Any resulting adverse environmental impacts will be reduced through the mitigation measures described in **Section 4.0** of this ROD.

On June 6, 2016, the Sacramento County Board of Supervisors approved a Memorandum of Understanding (MOU) and Intergovernmental Agreement (IGA) between the County of Sacramento and the Tribe. Pursuant to the Sacramento County MOU, the County will not oppose the Tribe's trust acquisition request to the United States if the Tribe entered into that enforceable agreement to comprehensively mitigate all off-trust impacts of the acquisition, including, but not limited to, compensating the County for law enforcement and other public services to be provided to the Tribe's reservation lands.

In addition to payments for the mitigation of any significant off-reservation impacts identified within the Sacramento County MOU, the County and the Tribe have agreed upon numerous provisions for additional contributions by the Tribe to the County for law enforcement, public transit, wildlife habitat and agricultural land conservation, infrastructure improvements, and social services that in part serve off-reservation needs of County residents. Through the June 2011 MOU with the City of Elk Grove, the Tribe has agreed to mitigate impacts related to this acquisition. The Tribe and the City of Elk Grove officials have frequently met to discuss the Tribe's Proposed Project. The Tribe intends to continue discussions about a further cooperative agreement with the City of Elk Grove.

8.7.1 Impacts to Jurisdiction

Lands held in trust by the United States are not subject to the civil regulatory requirements of the State or local jurisdictions. The Tribe will assert civil regulatory jurisdiction. Additionally, federal law, including federal environmental laws, will apply to the Site.

Law Enforcement Services

The Tribe recognizes that future economic development on the Site will result in increased demands for law enforcement, fire protection, and emergency response services. The Elk Grove Police Department (EGPD) and/or the Sacramento County Sheriff's Department (SCSD) in conjunction with Tribal security staff would provide law enforcement for the Proposed Project.[161] Court and jail services would be provided by the SCSD. A Tribal Security force will provide security patrol and monitoring needs of the Site.[162] The need for EGPD or SCSD assistance would likely be required only in situations where a serious threat to life or property is present, or if arrests are necessary.[163] The EGPD and SCSD may require additional equipment, staffing, and facilities to meet the increased need for services and due to the potential for an increase in calls for service during operation of the Site, a potential need for extended services could occur.[164] Additionally, an increase in service demands to the California Highway Patrol (CHP) may result from development of the project. However, payments to the State under the tribal-state compact would offset any impacts.[165]

Construction may introduce potential sources of fire, but the risk would be similar to that found at other construction sites. Mitigation measures are found in **Section 5.10.4** of the FEIS to address potential impacts and reduce impacts that may result from construction on the Site. The Cosumnes Community Services District Fire Department (CSD) would provide fire protection and emergency medical services to the Site through paramedic staffing of ambulances and engines. The Tribe intends to enter into an MOU with the Cosumnes CSD Fire Department to establish a method of compensation for the increased costs of service. The Tribe has executed a Letter of Intent with the Cosumnes CSD Fire Department that states the Tribe's intent to enter into such an MOU.[166]

8.7.2 Land Use Designations and Zoning

Land use planning and development for the Site has been guided by the Elk Grove General Plan (GP) and the Lent Ranch Specific Planning Area (LRSPA).[167] The objectives of the GP are to provide guidance to the development and management of land within the City of Elk Grove. The

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[161] *See* FEIS § 4.10.6.
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *See* Regional Recommendation Tab 6.
[167] FEIS § 3.9.3.

LRSPA as approved by the Elk Grove City Council on June 27, 2001, is a special purpose zoning district that guides and controls the nature of development within the Lent Ranch project area. The SRSPA provides standards, guidelines, and procedures necessary to satisfy the provisions in the City Code. The Site and the surrounding properties are located within the LRSPA. This 295-acre area has been designated for future commercial land uses. The LRSPA is divided into five land uses consisting of a regional mall, community commercial, office entertainment, visitor commercial, and multi-family residential uses and is zoned SPA-LR by the City. The LRSPA and land uses within are consistent with the GP and related regulations, policies, ordinances, and programs governing zoning amendments and adoption of special area land use plans. If and where a conflict occurs between the LRSPA and Elk Grove Municipal Zoning Code, the LRSPA prevails.

Title 23 of the Elk Grove Municipal Zoning Code carries out the policies of the GP by classifying and regulating the use and development of land and structures within The City of Elk Grove to be consistent with the GP. The Zoning Code is adopted to protect and promote public health, safety and convenience, prosperity, and general welfare of residences and businesses in The City of Elk Grove. The Site is zoned for development under the LRSPA. The area west of the LRSPA is zoned for low density, medium density, and high density residential development, as well as for a shopping center and open space.[168]

The City of Elk Grove land use regulations would not apply to the Site once the land is taken into trust. The only applicable land use regulations would be federal and tribal, as the Site would be converted to reservation land. The Tribe relies upon the Tribal Council, the governing body of the Tribe, to guide and regulate land use on tribal lands.[169] The Tribal Government desires to work cooperatively with local and State authorities on matters related to land use.[170] The Proposed Project would be largely consistent with the LRSPA that designated the Site for commercial uses, most surrounding land uses designated as Commercial, Commercial/Office, Commercial/Office/Multi-Family, Medium Density Residences, and Low Density Residences in the GP. The Proposed Project would not physically disrupt neighboring land uses, would not prohibit access to neighboring parcels, or otherwise conflict with neighboring land uses.[171]

Additionally, Stand Up, Perkins Coie, and a private citizen have noted a petition filed with the Elk Grove City Clerk's Office protesting a city ordinance to amend a development agreement between the City of Elk Grove, Elk Grove LLC, and Howard Hughes Corp concerning the potential development of Site for a shopping mall.[172] The Chief Deputy Attorney General for the State of California also noted the existence of the development agreement as a potential issue for

[168] FEIS § 3.9.3.
[169] FEIS § 4.9.6
[170] FEIS § 4.9.6; *see also* Regional Recommendation at 31.
[171] FEIS § 4.9.6.
[172] *See* Cheryl Schmit, Director of Stand Up For California! to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 3 (December 21, 2016); Letter from Carolyn Soares, citizen of Elk Grove, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (January 5, 2017).

BIA's consideration, however the State recognized "BIA's discretion in this area."[173] Relatedly, Stand Up and Perkins Coie also stated that they have filed a complaint against the City, challenging under state law the process by which the City amended the development agreement.[174] We understand that the City has attempted to amend the development agreement, but that efforts are underway to challenge the City's actions. Even assuming that the Development Agreement is ultimately not amended, as noted above, activities on trust land are regulated by the Tribe and Federal government, and not local governments.[175] We have considered the potential for land use conflicts and jurisdictional issues and concluded that the Development Agreement does not prohibit the Department from approving the Tribe's trust application under this criterion. Assuming, for argument's sake, there could be a land use or jurisdictional conflict, we believe these conflicts are resolvable and outweighed by the other benefits associated with the trust acquisition. We note that the City's efforts to amend the development agreement reflects its desire to resolve land use conflicts, if any, posed by the development agreement, even if the City faces opposition to its efforts.

8.8 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the Acquisition

The BIA is equipped to discharge additional responsibilities that may result from this acquisition. The Pacific Regional office in Sacramento, California is approximately twenty (20) miles from the Site.[176] The Tribe intends to be responsible for all expenses and maintenance required for the Site.[177] The Site does not contain natural resources that require BIA management assistance. As the Tribe becomes more self-sufficient, its dependence on assistance from the BIA will lessen. Accordingly, the BIA is able to administer any additional responsibilities that may result from this acquisition.

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[173] Letter from Kathleen A. Kenealy, Chief Deputy Attorney General, State of California, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 2 (January 10, 2017).

[174] *See* Cheryl Schmit, Director of Stand Up For California! to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 3 (December 21, 2016); Letter from Jennifer MacLean, Perkins Coie Law Firm, on behalf of Stand Up For California!, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 3-4 (December 29, 2016).

[175] *See* Letter from Raymond Hitchcock, Chairperson, Wilton Rancheria, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 3 (January 10, 2017) (explaining that the MOU with the City of Elk Grove expressly acknowledges the jurisdictional change and contains a provision specifying that "if the Property is placed in trust with the United States federal government, the City does not have regulatory authority over the Property to approve, disapprove, or otherwise exercise land use control regarding the development of the Property or the Facility") (quoting MOU at Section 9(b)(iii)).

[176] Regional Recommendation at 12.

[177] *See id.*

8.9 25 C.F.R. § 151.10(h) - The extent of information to allow the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

The National Environmental Policy Act of 1969 (NEPA) requires that a public environmental review process be accomplished prior to an agency's approval of any major federal action. Section 151.10(h) requires consideration of the extent to which the applicant provided information that allows the Secretary to comply with 516 DM 6, Appendix 4 (NEPA Revised Implementing Procedures), and 602 DM 2 (Hazardous Substances Determinations). Compliance with NEPA is described in **Section 1.6** of this ROD.

The BIA published a Notice of Intent (NOI) in the *Federal Register* on December 4, 2013, which described the Proposed Project, announced the BIA's intent to prepare an Environmental Impact Statement (EIS), and invited comments.[178] In addition to accepting written comments, the BIA held a scoping meeting on December 19, 2013 at the Chabolla Community Center in Galt, CA. In February 2014, the BIA published a Scoping Report which summarized the comments received during the scoping period.

The BIA published a Notice of Availability (NOA) for the DEIS in the *Federal Register* on December 29, 2015.[179] The NOA was also published in the Sacramento Bee, the Galt Herald, and the Elk Grove Citizen. A NOA was also filed with the State Clearinghouse. The EPA published a NOA of the DEIS on January 15, 2016. The NOA provided the time and location of the public hearing on January 29, 2016 to present the Proposed Project with alternatives, and to accept comments. The DEIS was available for public comment until February 29, 2016, with an extension granted to the City of Galt until March 10, 2016.

Public and agency comments on the DEIS were considered in the preparation of the FEIS. Comment letters and the Tribe's responses to comments received on the DEIS were provided in Volume I of the FEIS. The NOA of the FEIS was published by the BIA in the *Federal Register* on December 14, 2016.[180] The NOA was also published in the Sacramento Bee, the Galt Herald, and the Elk Grove Citizen. A NOA was also filed with the State Clearinghouse. The EPA published a NOA of the FEIS on December 16, 2016. The NOA for the FEIS identified a public review period through January 17, 2017, during which additional comments were received.[181] Responses to these comments have been included as an attachment to the Record of Decision.[182]

In accordance with Department Policy (602 DM 2, Land Acquisitions: Hazardous Substances Determination), the BIA is charged with the responsibility of conducting an environmental site

[178] 78 Fed. Reg. 72,928 (December 4, 2013).
[179] 80 Fed. Reg. 81,352 (December 29, 2015).
[180] 81 Fed. Reg. 90,379 (December 14, 2016).
[181] *See* Comments received in response to the NOA.
[182] *See* Tribe's Response to comments.

assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. Hazardous material information for the Site can be found in the Lent Ranch Marketplace Final Environmental Impact Report (EIR), dated February 2001. A Phase I ESA for the Site and surrounding properties conducted by Dames & Moore, Inc. on October 1, 1996, and a recent Phase I ESA conducted by AES dated June 2016 (included in the FEIS as a supplement to Appendix Q), did not identify any existing underground or aboveground storage tanks of a potentially hazardous nature. Current BIA procedures (602 DM 2), require an update to the site assessment within the six-month period prior to the Department acquiring title to the property. Accordingly, a Phase I update was completed by the BIA on August 10, 2016, which did not identify any recognized Environmental Conditions.

8.10 25 C.F.R. § 151.11(b) - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

Section 151.11(b) provides that as the distance between a tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the Tribe's justification of anticipated benefits from the acquisition, and give greater weight to the concerns raised by the State and local governments having regulatory jurisdiction over the land to be acquired in trust.

The Site is located in Sacramento County, California, in the same state and in the same general geographical area in which a significant percentage of its members live.[183] The Tribe does not currently have a reservation, although the Site is in close proximity of the Tribe's historic Rancheria—approximately five and a half (5.5) miles southwest of the Tribe's ancestral homeland.[184]

The Site is located in the City of Elk Grove, Sacramento County.[185] The Site lies immediately west of Highway 99, north of Kammerer Road, and east of Promenade Parkway. Additionally, the proposed property is approximately 112 miles from the Nevada border and approximately 447 miles from the Oregon border.[186]

Due to the close proximity of the Site to the Tribe's former rancheria, the Department need not greatly scrutinize the Tribe's justifications of anticipated benefits from the acquisition. Moreover, neither the State nor the local governments having regulatory jurisdiction over the Site have raised regulatory concerns.

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[183] Regional Recommendation at 33.
[184] *Id.*
[185] *Id.*
[186] *Id.*; FEIS § 1.2.3; § 2.7.1; § 3.9.3.

8.11 25 C.F.R. § 151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use

The Tribe's Unmet Needs Report (Plan) prepared as part of the Tribe's application under 25 C.F.R §151 was presented to the public as Appendix C to the DEIS. The Plan presents the Tribal government's unmet needs, the anticipated economic benefits from the Proposed Project, and the Tribe's anticipated expenditures on governmental programs. The Plan provides analysis of anticipated gaming revenues, and the use of the revenues to fund Tribal government infrastructure, develop and fund a variety of social, educational, environmental, health, housing, cultural, and other programs and services for Tribal members. The Plan also outlines the means to provide Tribal members with employment opportunities, to stabilize and diversify the Tribal economy, and create more career and economic development opportunities for Tribal members. The Tribe has completed an Economic Impact Statement for the Proposed Project, prepared by Analytical Environmental Services Global Market Advisors.[187]

Accordingly, we find that Section 151.11(c) has been satisfied.

8.12 25 C.F.R. § 151.11(d) – Consultation with the State of California and local governments having regulatory jurisdiction over the land to be acquired regarding potential impacts on regulatory, jurisdiction, real property taxes, and special assessments

See discussion in **Sections 8.6 and 8.7** above.

8.13 25 C.F.R. § 151.13 - Title Examination

The Department's fee-to-trust regulations at 25 C.F.R. § 151.13 set forth the requirements for title evidence that must be furnished by applicants. In addition, section 151.13 requires that title evidence must be submitted and reviewed by the Department before title is transferred. It gives the Department discretion to require the elimination of any liens, encumbrances, or infirmities prior to acceptance in trust. Section 151.13 further requires the elimination of any legal claims, including but not limited to liens, mortgages, and taxes, determined by the Secretary to make title unmarketable, prior to acceptance in trust.[188] As recently explained by the Department in its rulemaking to revise section 151.13, "[t]he purpose of title evidence requirements is to ensure that the Tribe has marketable title to convey to the United States, thereby protecting the United States."[189] The Department has a strong interest in acquiring clean title to trust property in order

[187] DEIS Volume II Appendix H.

[188] *See* 25 C.F.R. 151.13; *see also* Final Rule: Title Evidence for Trust Land Acquisitions, 81 Fed. Reg. 30173, 31074 (May 16, 2016).

[189] 81 Fed. Reg. at 30174. *See also* 45 Fed. Reg. 62034, 62035 (Sept. 18, 1980) (noting that Section 120.a.12 [currently designated as Section 151.13] was designed to ensure title infirmities do not "impose burdens on the United States").

to avoid potential liabilities. Contrary to the commenters' assertions, the Department is not required to remove all encumbrances from title prior to the final title transfer and, as a practical matter, trust acquisitions often include some encumbrances or easements, such as those for utility access.[190] The Department must require the elimination of encumbrances from title only if it determines that such encumbrances make title to the land unmarketable.[191] In determining unmarketability, the Department evaluates whether the title creates potential liability for the United States and may consider a number of circumstances.[192]

Stand Up and Perkins Coie have submitted comments challenging the adequacy of the Site's title due to the existence of a development agreement between the City of Elk Grove, Elk Grove LLC, and Howard Hughes Corp that governs the potential development of Site for a shopping mall.[193] Stand Up and Perkins Coie argue that this development agreement constitutes encumbrances that run with the land and are inconsistent with the Site's use for tribal gaming purposes.[194] Additionally, Stand Up and Perkins Coie contest that the City of Elk Grove's efforts to amend the development agreement, removing from its scope the Site, do not comply with state law.[195]

The title examination process is separate from the process of deciding whether to accept land in trust in the first place, and here, the commenters' substantive concerns flow only from the land-into-trust decision process.[196] Indeed, only the United States has an interest in ensuring its own

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[190] *See* 25 C.F.R. § 151.13(b) ("The Secretary *may* require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition") (emphasis added); Fee-to-Trust Handbook at 18-19. 24-25. Stand Up and Perkins Coie allege that the Department previously informed the parties that it could not acquire the Elk Grove Site in trust until the encumbrances associated with the development agreements were removed. *See* Letter from Stand Up For California! and Cheryl Schmit, Director of Stand Up For California! to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 1 (December 21, 2016); Letter from Jennifer MacLean, Perkins Coie Law Firm, on behalf of Stand Up For California!, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, at 3 (December 29, 2016). Commenters apparently rely upon a statement in the City of Elk Grove Planning Commission Staff Report that "the Bureau of Indian Affairs will not allow the Phase 2 property to be moved from fee to trust status unless the encumbrances such as the Development Agreement are removed from title." Letter from Jennifer MacLean, Perkins Coie Law Firm, on behalf of Stand Up For California!, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, Exhibit 3 at 1. This statement was not directly made by a Departmental official and its basis is unknown, but in any event, the Department's policy is to work with applicants in evaluating and resolving potentially problematic encumbrances. *See* Fee-to-Trust Handbook at 18-19.

[191] *See* 25 C.F.R. § 151.13(b) (The Secretary "shall require elimination prior to such approval if she determines that the liens, encumbrances or infirmities make title to the land unmarketable").

[192] *See, generally* Memorandum from Solicitor Hilary C. Tompkins, Checklist for Solicitor's Office Review of Fee-to-Trust Applications (Checklist), Appendix 1 - Key Terms (Jan. 5, 2017).

[193] *See* Letters from Stand Up For California! and Cheryl Schmit, Director of Stand Up For California! to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 21, 2016; September 27, 2016); Letter from Jennifer MacLean, Perkins Coie Law Firm, on behalf of Stand Up For California!, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (December 29, 2016).

[194] *Id.*

[195] *Id.*

[196] *Mille Lacs County v. Acting Midwest Regional Director, BIA*, 2016 I.D. LEXIS 8, at *23 n.7 (IBIA 2016) (holding that appellant county lacked standing to challenge the United States' trust acquisition on the basis of 25 C.F.R. § 151.13); *Crest-*

compliance with the title examination process.[197] The purpose, in other words, is as noted above to ensure that after a trust decision is made, the title actually taken does not expose the United States to liability.[198] Title opinions are privileged and the land to trust process does not contemplate either public participation in or judicial review of the decision to accept title after a trust decision has been made.[199]

Moreover, and in any event, Section 151.13 is not a factor that the Department must take into consideration before deciding whether to approve a trust acquisition; rather, it is a final condition of accepting the conveyance in trust.[200] Here, the Department need only resolve any title issues raised by the development agreement prior to trust transfer.

9.0 DECISION TO APPROVE THE TRIBE'S FEE-TO-TRUST APPLICATION

I have determined that the Department will approve the Tribe's request to acquire the Site in trust and will implement Preferred Alternative F. This decision is based upon the environmental impacts identified in the FEIS and corresponding mitigation, a consideration of economic and technical factors, and the purpose and need for acquiring the Site in trust. Of the alternatives evaluated in the EIS, Preferred Alternative F would best meet the purpose and need for action. The Proposed Project described under Preferred Alternative F would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government and to fund necessary mitigation for development of economic ventures. This would enable the Tribal government to establish, fund, and maintain governmental programs that offer a wide range of health, education and welfare services to tribal members, as well as provide the Tribe and its members with greater opportunities for employment and economic growth. Accordingly, the Department will approve the fee-to-trust application subject to implementation of the applicable mitigation measures identified in **Section 4.0.**

9.1 Preferred Alternative F Results in Substantial Beneficial Impacts

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Dehesa-Granite Hillsharbison Canyon Subregional Planning Group v. Acting Pacific Regional Director, BIA, 2015 I.D. LEXIS 109, at *19-21 (IBIA 2015) (finding that the interest protected by these title requirements is that of the United States, not the land or property interests of third parties that are not being acquired).

[197] To the extent any other parties can claim an injury as a result of the United States' title determination, the proper remedy would be to file a Fifth Amendment takings claim. *See Tohono O'odham Nation v. Acting Phoenix Area Director, BIA*, 1992 I.D. LEXIS 120 (IBIA 1992) (recognizing the potential existence of a takings claim against the United States arising from an existing lien).

[198] 81 Fed. Reg. at 30174 ("The purpose of title evidence requirements is to ensure that the Tribe has marketable title to convey to the United States, thereby protecting the United States").

[199] *See* Fee-to-Trust Handbook at 19.

[200] *Crest-Dehesa-Granite Hillsharbison Canyon Subregional Planning Group v. Acting Pacific Regional Director, BIA*, 2015 I.D. LEXIS 109, at *20 (IBIA 2015).

The Preferred Alternative F is reasonably expected to result in beneficial effects for the residents of Sacramento County, the City of Elk Grove, and the Tribe and its members. Key beneficial effects include:

- Establishment of a land base for the Tribe to expand its economic development opportunities and business enterprise, and from which it can operate its Tribal government.
- Revenues from the operation of the Proposed Project would provide funding for a variety of health, housing, education, social, cultural, and other programs and services for Tribal members, and provide employment opportunities for its members.
- Creation of a new source of revenue will allow the Tribe to meet its and its members' needs and to help develop the political cohesion and strength necessary for tribal self-sufficiency, self-determination and strong Tribal government.
- Generation of approximately 2,528 jobs within Sacramento and San Joaquin Counties during the construction period, with total wages of $156.5 million.[201]
- In the first full year of operations, jobs from operating activities are estimated at 2,9,14 in Sacramento and San Joaquin Counties. Total annual wages from operations that accrue to residents of Sacramento and San Joaquin Counties are estimated at $142.5 million.
- Construction would result in an estimated $27.6 million in federal tax revenues, with State, county, and local taxes resulting from construction activities of approximately $15.5 million. Operation of the Proposed Project would result in an estimated $31.7 million in federal tax revenues and $14.0 million in State, County, and local government tax revenues annually.[202]
- State, County, and local taxes resulting from operating activities of approximately $14.0 million per year, or $13.6 million after adjusting for the elimination of the property taxes on the Site after it is taken into trust.
- Direct total output is estimated to total approximately $288.2 million, of which approximately $244.5 million would boost the gaming and entertainment industry. Indirect and induced outputs are estimated to total $67.5 million and $71.5 million, respectively. Indirect and induced output benefits would be dispersed among a variety of different industries and businesses in the local area.[203]

9.2 Alternatives A, B, C, D, and E Result in Fewer Beneficial Effects

Alternatives A, B, C, D, and E would generate less revenue than the Preferred Alternative. As a result, it would limit the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. The development of Alternative A would require mitigation for impacts to the geology and soils, water resources, biological resources, and

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[201] *Id.*
[202] *Id.*
[203] FEIS § 4.7.6; DEIS Volume II Appendix II at 80.

land use, resulting in this Alternative being less financially sustainable. Alternatives B and E would result in a reduced intensity project, but would not provide the same development opportunities as Alternatives A and F due to their proposed locations. Alternatives C and D would result in environmental impacts and require mitigation, which would restrict the economic development options for the Tribe. We believe the reduced economic and related benefits of Alternatives A, B, C, D, and E make them less viable options. Alternatives A, B, C, D, and E would fulfill the purpose and need for acquiring the Site in trust to a lesser degree, however, than Preferred Alternative F.

9.3 No-Action Alternative Fails to Meet Purpose and Need of Project

The No-Action Alternative (Alternative G) would not meet the purpose and need for acquiring the Site in trust. Specifically, it would not provide the Tribe with a land base or a source of net income to allow the Tribe to achieve self-sufficiency, self-determination, and a strong tribal government. This alternative would also likely result in substantially fewer economic benefits to the City of Elk Grove, Sacramento County, and surrounding communities than the Development Alternatives.

10.0 SIGNATURE

By my signature, I indicate my decision to implement Alternative F and acquire 35.92 +/- acres in Sacramento County, California, for gaming and other purposes for the Wilton Rancheria. Upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the land in trust.

Lawrence S. Roberts
Principal Deputy Assistant Secretary – Indian Affairs

1/19/17
Date

ATTACHMENT I

EIS NOTICES

The Sacramento Bee

P.O. Box 15779 • 2100 Q Street • Sacramento, CA 95852

ANALYTICAL ENVIRONMENTAL SERVICES
1801 7TH STREET, SUITE 100
SACRAMENTO, CA 95811

DECLARATION OF PUBLICATIO
(C.C.P. 2015.5)

COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interest ed in the above entitled matter. I am the printer and principal clerk of the publisher of The Sacramento Bee, printed and published in the City of Sacramento, County of Sacramento, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Sacramento, State of California, under the date of September 26, 1994, Action No. 379071; that the notice of which the annexed is a printed copy, has been published in each issue thereof and not in any supplement thereof on the following dates, to wit:

DECEMBER 9, 2016

I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Sacramento, California, on **DECEMBER 9, 2016**

Diane Garcia
(Signature)

NO 505 PUBLIC NOTICE
[4337-15]
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
[178A2100DD/AAKC001030/A0A501010.999900 253G]

Final Environmental Impact Statement and a Revised Draft Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Wilton Rancheria (Tribe), City of Galt, City of Elk Grove, Sacramento County (County), and the United States Environmental Protection Agency (EPA) serving as cooperating agencies, intends to file a Final Environmental Impact Statement (FEIS) with the EPA for the Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California. This notice announces that the FEIS is now available for public review. In accordance with Section 176 of the Clean Air Act 42 U.S.C.7506, and the U.S. Environmental Protection Agency's (EPA) general conformity regulations 40 C.F.R. Part 93, Subpart B, a Revised Draft Conformity Determination (Revised DCD) has been prepared for the proposed project and is included as Updated Appendix T to the FEIS.

DATES: The Record of Decision (ROD) on the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the Federal Register. Any comments on the FEIS and/or the Revised DCD must arrive on or before that date.

ADDRESSES: The FEIS (which includes the Revised DCD as Updated Appendix T) is available for public review at the Galt Branch of the Sacramento Public Library, located at 1000 Caroline Ave., Galt, California 95632, and the Elk Grove Branch of the Sacramento Public Library, located at 8900 Elk Grove Blvd., Elk Grove, California 95624, and online at http://www.wiltoneis.com. You may mail or hand-deliver written comments on the FEIS and/or the Revised DCD to Ms. Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. You may also submit comments through email to Mr. John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety, Bureau of Indian Affairs, at john.rydzik@bia.gov.

FOR FURTHER INFORMATION CONTACT: Mr. John Rydzik, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978-6051.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take into trust approximately 36 acres of land (known as the Elk Grove Mall site) currently in fee, on which the Tribe proposes to construct a casino, hotel, parking area, and other ancillary facilities (Proposed Project). The proposed fee-to-trust property is located within the incorporated boundaries of the City of Elk Grove in Sacramento County, California.

The Draft Environmental Impact Statement (DEIS) identified Alternative A, located on the 282-acre Twin Cities site, as the Proposed Action that would allow for the development of the Tribe's proposed casino/hotel project; however, after evaluating all alternatives in the Draft EIS, the BIA has now selected Alternative F, located on the Elk Grove Mall Site, as its Preferred Alternative to allow for the Tribe's Proposed Project. Since the DEIS was published, the Elk Grove Mall site increased by approximately eight acres, from approximately 28 to 36 acres. The additional eight acres consists of developed and disturbed land similar to the original 28 acres and was added due to parcel configuration and redesigned interior circulation. In addition, Alternative F project components have been revised in the FEIS from their discussion in the DEIS. The total square footage of the proposed facility has decreased approximately 2,299 square feet, from 611,055 square feet to 608,756 square feet. Some components have also changed, such as restaurant types, and a three-story parking garage has been added. However, gaming floor square footage has remained the same. These changes do not impact the conclusions of the EIS. The Final EIS was updated accordingly.

The Proposed Action consists of transferring the approximately 36 acres of property and the subsequent development of the Proposed Project. The Proposed Project would contain approximately 110,260 square-feet (sf) of gaming floor area, a 12-story hotel with approximately 302 guest rooms, a 360-seat buffet, 60-seat pool grill, other food and beverage providers, retail area, a fitness center, spa, and an approximately 48,000 sf convention center. Access to the Mall site would be provided via an existing driveway and a new driveway located along Promenade Parkway.

The following alternatives are considered in the FEIS: Alternative A – Proposed Twin Cities Casino Resort; Alternative B – Reduced Twin Cities Casino; Alternative C – Retail on the 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; and Alternative G – No Action.

Alternative F has been identified as the Preferred Alternative, as discussed in the FEIS. The information and analysis contained in the FEIS, as well as its evaluation and assessment of the Preferred Alternative, are intended to assist the Department of the Interior (Department) in its review of the issues presented in the fee-to-trust application. The Preferred Alternative does not reflect the Department's final decision because the Department must further evaluate all of the criteria listed in 25 CFR part 151 and 25 CFR part 292. The Department's consideration and analysis of the applicable regulations may lead to a final decision that selects an alternative other than the Preferred Alternative, including no action, or a variant of the Preferred Alternative or another of the alternatives analyzed in the FEIS.

Environmental issues addressed in the FEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice), transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

The Clean Air Act requires Federal agencies to ensure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria air pollutants. The BIA has prepared a Revised DCD for the proposed action/project described above. The Revised DCD is included as Revised Appendix T of the FEIS.

A public scoping meeting for the DEIS was held by the BIA on December 19, 2013 at the Chabolla Community Center in Galt, California. A Notice of Availability for the Draft EIS was published in the Federal Register on January 15, 2016 (81 FR 2214), and announced a review period that ended on February 29, 2016. The BIA held a public hearing on the Draft EIS on January 29, 2016 in Galt, California.

DIRECTIONS FOR SUBMITTING COMMENTS: Please include your name, return address, and the caption: "FEIS/Revised DCD Comments, Wilton Rancheria Fee-to-Trust and Casino Project," on the first page of your written comments. If emailing comments, please use "FEIS/Revised DCD Comments, Wilton Rancheria Fee-to-Trust and Casino Project" as the subject of your email.

LOCATIONS WHERE THE FEIS AND THE REVISED DCD ARE AVAILABLE FOR REVIEW: The FEIS and the Revised DCD (which is Updated Appendix T to the FEIS) are available for review during regular business hours at the BIA Pacific Regional Office and the Galt and Elk Grove Branches of the Sacramento Public Library at the addresses noted above in the ADDRESSES section of this notice. The FEIS and the Revised DCD are also available online at http://www.wiltoneis.com.

To obtain a compact disc copy of the FEIS (which includes the Revised DCD), please provide your name and address in writing or by voicemail to John Rydzik, Bureau of Indian Affairs, at the address or phone number above in the FOR FURTHER INFORMATION CONTACT section of this notice. Individual paper copies of the FEIS (which includes the Revised DCD) will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

PUBLIC COMMENT AVAILABILITY: Comments, including names and addresses of respondents, will be available for public review during regular business hours at the BIA mailing address shown in the ADDRESSES section of this notice. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

AUTHORITY: This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C.4371, et seq.), and is in the exercise of authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8. This notice is also published in accordance with federal general conformity regulations (40 CFR Part 93).

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Final Environmental Impact Statement and a Revised Draft Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Wilton Rancheria (Tribe), City of Galt, City of Elk Grove, Sacramento County (County), and the United States Environmental Protection Agency (EPA) serving as cooperating agencies, has prepared a Final Environmental Impact Statement (FEIS) for the Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended. This notice announces that the FEIS is now available for public review. In accordance with Section 176 of the Clean Air Act and EPA's general conformity regulations, a Revised Draft Conformity Determination (DCD) also has been prepared for the proposed project.

DATES: The BIA will issue a Record of Decision (ROD) on the proposed action no sooner than 30 days after the date EPA publishes its Notice of Availability in the **Federal Register**. The BIA must receive any comments on the FEIS on or before that date.

ADDRESSES: The FEIS is available for public review at the Galt Branch of the Sacramento Public Library, located at 1000 Caroline Ave., Galt, California 95632, and the Elk Grove Branch of the Sacramento Public Library, located at 8900 Elk Grove Blvd., Elk Grove, California 95624, and online at *http://www.wiltoneis.com.* You may mail or hand-deliver written comments to Ms. Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. You may also submit comments through email to Mr. John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety, Bureau of Indian Affairs, at *john.rydzik@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Rydzik, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978–6051.

SUPPLEMENTARY INFORMATION: The Tribe has requested that BIA take into trust approximately 36 acres of land (known as the Elk Grove Mall site) currently in fee, on which the Tribe proposes to construct a casino, hotel, parking area, and other ancillary facilities (Proposed Project). The proposed fee-to-trust property is located within the incorporated boundaries of the City of Elk Grove in Sacramento County, California.

The Draft Environmental Impact Statement (DEIS) identified Alternative A, located on the 282-acre Twin Cities site, as the Proposed Action that would allow for the development of the Tribe's proposed casino/hotel project; however, after evaluating all alternatives in the Draft EIS, BIA has now selected Alternative F, located on the Elk Grove Mall Site, as its Preferred Alternative to allow for the Tribe's Proposed Project. Since the DEIS was published, the Elk Grove Mall site increased by approximately eight acres, from approximately 28 to 36 acres. The additional eight acres consists of developed and disturbed land similar to the original 28 acres and was added due to parcel configuration and redesigned interior circulation. In addition, Alternative F project components have been revised in the FEIS from their discussion in the DEIS. The total square footage of the proposed facility has decreased approximately 2,299 square feet, from 611,055 square feet to 608,756 square feet. Some components have also changed, such as restaurant types, and a three-story parking garage has been added. However, gaming floor square footage has remained the same. These changes do not impact the conclusions of the EIS. The Final EIS was updated accordingly.

The Proposed Action consists of transferring the approximately 36 acres of property and the subsequent development of the Proposed Project. The Proposed Project would contain approximately 110,260 square-feet (sf) of gaming floor area, a 12-story hotel with approximately 302 guest rooms, a 360-seat buffet, 60-seat pool grill, other food and beverage providers, retail area, a fitness center, spa, and an approximately 48,000 sf convention center. Access to the Mall site would be provided via an existing driveway and a new driveway located along Promenade Parkway.

The following alternatives are considered in the FEIS: Alternative A—Proposed Twin Cities Casino Resort; Alternative B—Reduced Twin Cities Casino; Alternative C—Retail on the 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; and Alternative G—No Action.

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Environmental issues addressed in the FEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice), transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

Section 176 of the Clean Air Act, 42 U.S.C. 7506, requires Federal agencies to ensure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria air pollutants. The BIA has prepared a Revised DCD for the proposed action/project described above. The Revised DCD is included as Revised Appendix T of the FEIS.

A public scoping meeting for the DEIS was held by BIA on December 19, 2013 at the Chabolla Community Center in Galt, California. A Notice of Availability for the Draft EIS was published in the **Federal Register** on January 15, 2016 (81 FR 2214), and announced a review period that ended on February 29, 2016. The BIA held a public hearing on the Draft EIS on January 29, 2016 in Galt, California.

Directions for Submitting Comments: Please include your name, return address, and the caption: ''FEIS Comments, Wilton Rancheria Fee-to-Trust and Casino Project,'' on the first page of your written comments. If emailing comments, please use ''FEIS Comments, Wilton Rancheria Fee-to-

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Locations Where the FEIS Is Available for Review: The FEIS is available for review during regular business hours at the BIA Pacific Regional Office and the Galt and Elk Grove Branches of the Sacramento Public Library at the addresses noted above in the **ADDRESSES** section of this notice. The FEIS is also available online at *http://www.wiltoneis.com.*

To obtain a compact disc copy of the FEIS, please provide your name and address in writing or by voicemail to Mr. John Rydzik, Bureau of Indian Affairs, at the address or phone number above in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review during regular business hours at the BIA mailing address shown in the **ADDRESSES** section of this notice. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published pursuant to Sections 1503.1 and 1506.6(b) of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the NEPA (42 U.S.C. 4321, *et seq.*), the Department of the Interior NEPA Regulations (43 CFR part 46), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. This notice is also published in accordance with Federal general conformity regulations (40 CFR part 93, subpart B).

Dated: December 8, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–29991 Filed 12–13–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MO #4500069731, 14X.LLMTC02000. L51100000.GA0000.LVEME14CE500]

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Public Meetings for a Federal Coal Lease by Application (MTM 105485), Application To Modify Federal Coal Lease (MTM 94378), and Applications To Amend Land Use Permit (MTM 96659), and Land Use Lease (MTM 74913), Big Horn County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Bureau of Land Management (BLM) regulations, the United States Department of the Interior, BLM Miles City Field Office is publishing this notice of intent to prepare an environmental impact statement (EIS) to evaluate the potential impacts of four proposed actions related to coal mining at the Spring Creek Mine in Big Horn County, Montana. The proposed actions involve the potential sale of two tracts of Federal coal through a Lease-By-Application (LBA) and a lease modification application (LMA). Both applications cover proposed additions to an existing Federal coal lease at the Spring Creak Mine. Related to these leasing requests, the EIS will also evaluate proposed amendments to an existing land use permit to maintain access to mine monitoring and gauging stations and an existing land use lease to provide room for the placement of overburden and infrastructure. The EIS will be called the Spring Creek Coal EIS. This notice initiates the public scoping process for the Spring Creek Coal EIS.

DATES: Public scoping meetings to provide the public with an opportunity to review the proposals and gain understanding of the coal leasing process will be held by the BLM. The dates and locations of any scoping meetings will be announced at least 15 days in advance through local media outlets and through the Miles City BLM Web site at: *www.blm.gov/mt/st/en/fo/miles_city_field_office.html.* At the meetings, the public is invited to submit comments and resource information, plus identify issues or concerns to be considered in the environmental analysis. The BLM can best use public input if comments and resource information are submitted in writing by February 13, 2017. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: Please submit written comments or concerns to the BLM Miles City Field Office, Attn: Irma Nansel, 111 Garryowen Road, Miles City, MT 59301. Written comments or resource information may also be hand delivered to the BLM Miles City Field Office. Comments may be sent electronically to *BLM_MT_MCFO_SCCEIS@blm.gov.* For electronic submission, please include ''Spring Creek Coal EIS/Irma Nansel'' in the subject line. Members of the public may examine documents pertinent to this proposal by visiting the Miles City Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Irma Nansel, Planning and Environmental Coordinator; telephone 406–233–3653. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Spring Creek Coal LLC (SCC) submitted four applications to the BLM, Montana State Office in 2012 and 2013. The four applications are as follows:

A. On February 15, 2013, SCC submitted LBA MTM 105485 for the Spring Creek Northwest and Spring Creek Southeast tracts. The LBA encompasses approximately 1,602.57 acres (containing approximately 198.2 million mineable tons of coal) adjacent to the Spring Creek Mine. Since decertification of the Powder River Federal Coal Region as a Federal coal production region by the Powder River Regional Coal Team (PRRCT) in 1990, leasing is permitted to take place under the existing regulations on an application basis, in accordance with 43 CFR 3425.1–5. The PRRCT reviewed the proposed Spring Creek Northwest and Spring Creek Southeast tracts in the application and recommended that the Montana State Office begin processing the application. This LBA consists of the following acreage:

In the Superior Court of the State of California

IN AND FOR THE

COUNTY OF Sacramento

Certificate of Publication of

PUBLIC NOTICE

State of California
SS.
County of SACRAMENTO

I, DAVID R. HERBURGER, certify on penalty of perjury:

PUBLIC NOTICE

[4337-15]

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
[178A2100DD/AAKC001030/A0A501010.999900 253G]
Final Environmental Impact Statement and a Revised Draft Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Wilton Rancheria (Tribe), City of Galt, City of Elk Grove, Sacramento County (County), and the United States Environmental Protection Agency (EPA) serving as cooperating agencies, intends to file a Final Environmental Impact Statement (FEIS) with the EPA for the Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California. This notice announces that the FEIS is now available for public review. In accordance with Section 176 of the Clean Air Act 42 U.S.C. 7506, and the U.S. Environmental Protection Agency's (EPA) general conformity regulations 40 C.F.R. Part 93, Subpart B, a Revised Draft Conformity Determination (Revised DCD) has been prepared for the proposed project and is included as Updated Appendix T to the FEIS.

DATES: The Record of Decision (ROD) on the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the Federal Register. Any comments on the FEIS and/or the Revised DCD must arrive on or before that date.

ADDRESSES: The FEIS (which includes the Revised DCD as Updated Appendix T) is available for public review at the Galt Branch of the Sacramento Public Library, located at 1000 Caroline Ave., Galt, California 95632, and the Elk Grove Branch of the Sacramento Public Library, located at 8900 Elk Grove Blvd., Elk Grove, California 95824, and online at http://www.wiltoneis.com. You may mail or hand-deliver written comments on the FEIS and/or the Revised DCD to Ms. Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. You may also submit comments through email to Mr. John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety, Bureau of Indian Affairs, at john.rydzik@bia.gov.

FOR FURTHER INFORMATION CONTACT: Mr. John Rydzik, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978-6051.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take into trust approximately 36 acres of land (known as the Elk Grove Mall site) currently in fee, on which the Tribe proposes to construct a casino, hotel, parking area, and other ancillary facilities (Proposed Project). The proposed fee-to-trust property is located within the incorporated boundaries of the City of Elk Grove in Sacramento County, California.

The Draft Environmental Impact Statement (DEIS) identified Alternative A, located on the 282-acre Twin Cities site, as the Proposed Action that would allow for the development of the Tribe's proposed casino/hotel project; however, after evaluating all alternatives in the Draft EIS, the BIA has now selected Alternative F, located on the Elk Grove Mall Site, as its Preferred Alternative to allow for the Tribe's Proposed Project. Since the DEIS was published, the Elk Grove Mall site increased by approximately eight acres, from approximately 28 to 36 acres. The additional eight acres consists of developed and disturbed land similar to the original 28 acres and was added due to parcel configuration and redesigned interior circulation. In addition, Alternative F project components have been revised in the FEIS from their discussion in the DEIS. The total square footage of the proposed facility has decreased approximately 2,299 square feet, from 611,055 square feet to 608,756 square feet. Some components have also changed, such as restaurant types, and a three-story parking garage has been added. However, gaming floor square footage has remained the same. These changes do not impact the conclusions of the EIS. The Final EIS was updated accordingly.

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The following alternatives are considered in the FEIS: Alternative A - Proposed Twin Cities Casino Resort; Alternative B - Reduced Twin Cities Casino; Alternative C - Retail on the 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; and Alternative G - No Action.

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Topics addressed in the FEIS include geology and soils, water resources

That affiant is and at all times hereinafter mentioned was a citizen of the United States, over the age of eighteen years and a resident of Elk Grove, California, and was at and during all said times the printer and publisher of THE GALT HERALD, a newspaper printed and published weekly, in Galt, County of Sacramento, State of California; that said newspaper is and was at all times herein mentioned, a newspaper of general circulation as that term is defined by Sections 6000 and 6001 of the Government Code of the State of California, and as provided by said sections is and was at all times herein mentioned published for the dissemination of local and telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not and was not during all said times devoted to the interests or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all said times said newspaper has been established, printed and published in said Sacramento County and State, at regular intervals for more than one year preceding the first publication of the NOTICE herein mentioned; that said NOTICE was set in type not smaller than nonpareil and was preceded with words printed in black face type not smaller than nonpareil describing and expressing in general terms the purport and character of the notice intended to be given; that the NOTICE in the above entitled matter, of which the annexed is a true printed copy, was published in said newspaper on the following dates, to wit:

DECEMBER 14, 2016

that the date of the first publication of said

PUBLIC NOTICE

in said newspaper is DECEMBER 14, 2016

DAVID R. HERBURGER

THE GALT HERALD

Dated: DECEMBER 14, 2016

Environmental issues addressed in the FEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice), transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

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December 14, 2016

In the Superior Court of the State of California

IN AND FOR THE

COUNTY OF Sacramento

Certificate of Publication of

PUBLIC NOTICE

State of California
SS.
County of SACRAMENTO

I, DAVID R. HERBURGER, certify on penalty of perjury:

PUBLIC NOTICE

[4337-15]

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
[178A2100DD/AAKC001030/A0A501010.999900 253G]
Final Environmental Impact Statement and a Revised Draft Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Wilton Rancheria (Tribe), City of Galt, City of Elk Grove, Sacramento County (County), and the United States Environmental Protection Agency (EPA) serving as cooperating agencies, intends to file a Final Environmental Impact Statement (FEIS) with the EPA for the Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California. This notice announces that the FEIS is now available for public review. In accordance with Section 176 of the Clean Air Act 42 U.S.C. 7506, and the U.S. Environmental Protection Agency's (EPA) general conformity regulations 40 C.F.R. Part 93, Subpart B, a Revised Draft Conformity Determination (Revised DCD) has been prepared for the proposed project and is included as Updated Appendix T to the FEIS.

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The Proposed Action consists of transferring the approximately 36 acres of property and the subsequent development of the Proposed Project. The Proposed Project would contain approximately 110,260 square-feet (sf) of gaming floor area, a 12-story hotel with approximately 302 guest rooms, a 360-seat buffet, 60-seat pool grill, other food and beverage providers, retail area, a fitness center, spa, and an approximately 48,000 sf convention center. Access to the Mall site would be provided via an existing driveway and a new driveway located along Promenade Parkway.

The following alternatives are considered in the FEIS: Alternative A - Proposed Twin Cities Casino Resort; Alternative B - Reduced Twin Cities Casino; Alternative C - Retail on the 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; and Alternative G - No Action.

Alternative F has been identified as the Preferred Alternative, as discussed in the FEIS. The information and analysis contained in the FEIS, as well as its evaluation and assessment of the Preferred Alternative, are intended to assist the Department of the Interior (Department) in its review of the issues presented in the fee-to-trust application. The Preferred Alternative does not reflect the Department's final decision because the Department must further evaluate all of the criteria listed in 25 CFR part 151 and 25 CFR part 292. The Department's consideration and analysis of the applicable regulations may lead to a final decision that selects an alternative other than the Preferred Alternative, including no action, or a variant of the Preferred Alternative or another of the alternatives analyzed in the FEIS.

Topics addressed in the FEIS include geology and soils, water resources

That affiant is and at all times hereinafter mentioned was a citizen of the United States, over the age of eighteen years and a resident of Elk Grove, California, and was at and during all said times the printer and publisher of THE GALT HERALD, a newspaper printed and published weekly, in Galt, County of Sacramento, State of California; that said newspaper is and was at all times herein mentioned, a newspaper of general circulation as that term is defined by Sections 6000 and 6001 of the Government Code of the State of California, and as provided by said sections is and was at all times herein mentioned published for the dissemination of local and telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not and was not during all said times devoted to the interests or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all said times said newspaper has been established, printed and published in said Sacramento County and State, at regular intervals for more than one year preceding the first publication of the NOTICE herein mentioned; that said NOTICE was set in type not smaller than nonpareil and was preceded with words printed in black face type not smaller than nonpareil describing and expressing in general terms the purport and character of the notice intended to be given; that the NOTICE in the above entitled matter, of which the annexed is a true printed copy, was published in said newspaper on the following dates, to wit:

DECEMBER 14, 2016

that the date of the first publication of said

PUBLIC NOTICE

in said newspaper is DECEMBER 14, 2016

DAVID R. HERBURGER

THE GALT HERALD

Dated: DECEMBER 14, 2016

Environmental issues addressed in the FEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice), transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

The Clean Air Act requires Federal agencies to ensure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria air pollutants. The BIA has prepared a Revised DCD for the proposed action/project described above. The Revised DCD is included as Revised Appendix T of the FEIS.

A public scoping meeting for the DEIS was held by the BIA on December 19, 2013 at the Chabolla Community Center in Galt, California. A Notice of Availability for the Draft EIS was published in the Federal Register on January 15, 2016 (81 FR 2214), and announced a review period that ended on February 29, 2016. The BIA held a public hearing on the Draft EIS on January 29, 2016 in Galt, California.

DIRECTIONS FOR SUBMITTING COMMENTS: Please include your name, return address, and the caption: "FEIS/Revised DCD Comments, Wilton Rancheria Fee-to-Trust and Casino Project," on the first page of your written comments. If emailing comments, please use "FEIS/Revised DCD Comments, Wilton Rancheria Fee-to-Trust and Casino Project" as the subject of your email.

LOCATIONS WHERE THE FEIS AND THE REVISED DCD ARE AVAILABLE FOR REVIEW: The FEIS and the Revised DCD (which is Updated Appendix T to the FEIS) are available for review during regular business hours at the BIA Pacific Regional Office and the Galt and Elk Grove Branches of the Sacramento Public Library at the addresses noted above in the ADDRESSES section of this notice. The FEIS and the Revised DCD are also available online at http://www.wiltoneis.com.

To obtain a compact disc copy of the FEIS (which includes the Revised DCD), please provide your name and address in writing or by voicemail to John Rydzik, Bureau of Indian Affairs, at the address or phone number above in the FOR FURTHER INFORMATION CONTACT section of this notice. Individual paper copies of the FEIS (which includes the Revised DCD) will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

PUBLIC COMMENT AVAILABILITY: Comments, including names and addresses of respondents, will be available for public review during regular business hours at the BIA mailing address shown in the ADDRESSES section of this notice. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

AUTHORITY: This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371, et seq.), and is in the exercise of authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8. This notice is also published in accordance with federal general conformity regulations (40 CFR Part 93).

December 14, 2016

allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on more than 10 acres of land or one surface acre of water.

Pursuant to 40 CFR 172.11(a), EPA has determined that the following EUP application may be of regional or national significance, and therefore is seeking public comment on the EUP application:

Submitter: United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS), 4700 River Rd., MD 20737, (56228–EUP–UG).

Pesticide Chemical: Chlorophacinone.

Summary of Request: USDA APHIS is submitting an EUP application to test the efficacy of Chlorophacinone-50 Conservation (C-50) (EPA Registration Number 7173–151) under field conditions for control and eradication of wild, non-native house mice (*Mus musculus*) at the Pohakuloa Training Area, U.S. Army Garrison, Island of Hawaii, State of Hawaii.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 9, 2016.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–30326 Filed 12–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9030–8])

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 12/05/2016 Through 12/09/2016 Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160294, Draft, NMFS, LA, Reduce the Incidental Bycatch and Mortality of Sea Turtles in the Southeastern U.S. Shrimp Fisheries, *Comment Period Ends:* 01/30/2017, *Contact:* Michael Barnette 727–551–5794.

EIS No. 20160295, Draft Supplement, USACE, LA, Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana, *Comment Period Ends:* 01/30/2017, *Contact:* Steve Roberts 504–862–2517.

EIS No. 20160296, Final, USACE, AL, Update of the Water Control Manual for the Apalachicola-Chattahoochee-Flint River Basin in Alabama, Florida, and Georgia and a Water Supply Storage Assessment, *Review Period Ends:* 01/17/2017, *Contact:* Lewis Sumner 251–694–3857.

EIS No. 20160297, Draft, FTA, IN, West Lake Corridor Project, *Comment Period Ends:* 02/03/2017, *Contact:* Mark Assam 312–353–4070.

EIS No. 20160298, Draft, USFS, MT, Ten Lakes Travel Management Project, *Comment Period Ends:* 01/30/2017, *Contact:* Bryan Donner 406–296–2536.

EIS No. 20160299, Draft, BLM, AZ, Sonoran Desert National Monument Target Shooting Draft Resource Management Plan Amendment, *Comment Period Ends:* 03/16/2017, *Contact:* Darrel Wayne Monger 623–580–5683.

EIS No. 20160300, Final, BIA, CA, Wilton Rancheria Fee-to-Trust and Casino Project, *Review Period Ends:* 01/17/2017, *Contact:* John Rydzik 916–978–6051.

EIS No. 20160301, Draft, NOAA, AL, Deepwater Horizon Oil Spill Draft Restoration Plan I and EIS: Provide and Enhance Recreational Opportunities, *Comment Period Ends:* 01/30/2017, *Contact:* Dan Van Nostrand 251–544–5015.

EIS No. 20160302, Draft, NPS, MI, Address the Presence of Wolves, Isle Royale National Park, *Comment Period Ends:* 03/15/2017, *Contact:* Kelly Daigle 303–987–6897.

EIS No. 20160303, Draft Supplement, USFS, ID, Johnson Bar Fire Salvage Project, *Comment Period Ends:* 01/30/2017, *Contact:* Sara Daugherty 208–935–4263.

EIS No. 20160304, Final, NOAA, HI, Heeia National Estuarine Research Reserve, *Review Period Ends:* 01/17/2017, *Contact:* Jean Tanimoto 808–725–5253.

EIS No. 20160305, Final, USFWS, MA, Silvio O. Conte National Fish and Wildlife Refuge Final Comprehensive Conservation Plan, *Review Period Ends:* 01/17/2017, *Contact:* Nancy McGarigal 413–253–8562.

EIS No. 20160306, Final, NRC, WY, Reno Creek In Situ Recovery Project, *Review Period Ends:* 01/17/2017, *Contact:* Jill Caverly 301–415–7674.

EIS No. 20160307, Final Supplement, EPA, CT, Designation of Dredged Material Disposal Site(s) in Eastern Long Island Sound (ELIS), *Review Period Ends:* 01/04/2017, *Contact:* Jean Brochi 617–918–1536. Note: On 12/6/16, EPA published a notice in the **Federal Register** (81 FR 87820) for the Final Rule and Final Supplemental EIS.

EIS No. 20160308, Final, USFS, WY, Oil and Gas Leasing in Portions of the Wyoming Range in the Bridger-Teton National Forest, *Review Period Ends:* 01/17/2017, *Contact:* Donald Kranendonk 435–781–5245.

Dated: December 13, 2016.

Dawn Roberts.

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–30350 Filed 12–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016–0744; FRL 9956–94–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by the States of New York, State of Connecticut, New Hampshire, Rhode Island, Vermont, and the Commonwealth of Massachusetts (collectively ''Plaintiffs'') in the United States District Court for the Southern District of New York: *State of New York, et al.* v. *McCarthy, et al.* No. 1:16–cv–07827 (S.D. N.Y.). On October 6, 2016, Plaintiffs filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (''EPA'') failed to perform duties mandated by CAA to take final action to approve or disapprove the December 9, 2013 Petition submitted by the Plaintiff states, all of which are currently part of the Ozone Transport Region (''OTR''),

ATTACHMENT II

COMMENTS AND RESPONSES TO COMMENTS ON THE FEIS

Attachment 4

Comments and Response to Comments on the Wilton Rancheria Fee-to-Trust and Casino Project Final Environmental Impact Statement

As described in the Record of Decision, the Final Environmental Impact Statement (EIS) for the Wilton Rancheria Fee-to-Trust and Casino Project was made available for public review from December 14, 2016 to January 17, 2017. During the review period, eleven comment letters were received on the Final EIS as summarized in the table below.

COMMENT LETTERS RECEIVED ON THE FINAL EIS

Comment Letter	Agency/Organization	Signature	Date
1	Individual	Angela Tsubera	11/15/2016
2	Individual	Carolyn Soares	1/05/2017
3	Sacramento Metropolitan Air Quality Management District	Larry F. Greene	1/06/2017
4	City of Galt	Eugene Palazzo	1/09/2017
5	Elk Grove GRASP	Paul Lindsay	1/09/2017
6	Shingle Springs Band of Miwok Indians	Nicholas Fonesca	1/12/2017
7	Stand Up for California!	Cheryl Schmit	1/13/2017
8	Perkins Coie	Jennifer A. MacLean	1/17/17
9	U.S. Environmental Protection Agency	Kathleen Martyn Goforth	1/17/17
10	Individual	Lisa Jimenez	1/17/17
11	California Department of Transportation	Eric Fredericks	1/17/17

These comment letters are presented on the following pages. The comment letters have been annotated in the margins to identify individual comments and provide an organized format for responses. Following the comment letters, responses to new or substantive comments received on the Final EIS are presented within the table "Response to Comments on the Final EIS for the Wilton Rancheria Fee-to-Trust and Casino Project."

Comment Letter 1

15 November 2016

Angela Tsubera
9422 Rhone Valley Way
Elk Grove, CA 95624

Reg Dir ____
Dep RD Trs ____
Dep RD IS ____
Route Decals Thru 12
Response Required ____
Due Date ____
Memo ____ Ltr ____
Fax ____

Mr. John Rydzik
2800 Cottage Way
Sacramento, CA 95825

Chief John Rydzik:

I am writing you this letter today to voice my opposition on the Wilton Rancheria Casino that will be built in Elk Grove. I have been an Elk Grove citizen for over 10 years and am concerned with the casino entering my community, especially since it will be located less than ten miles from several neighborhoods, including mine. I understand that the Wilton Rancheria Casino is a family-run business; I value family owned and operated businesses. My parents operate a family business; my siblings and I work there alongside them. Our lives are where they are today because of the success of our family business which is why I understand that family businesses are extremely important.

1-1

The Wilton Rancheria Casino Tribe believes the casino that will be built in Elk Grove could provide a new form of entertainment to the city. They also believe the casino could bring many jobs to the community. In addition, the Tribe could financially benefit from the future casino's potential success. This sounds like a great project that could be a good asset to the Elk Grove community. I appreciate that the Tribe is taking into consideration the lack of entertainment in Elk Grove and is hoping to create many jobs within the community. I agree that my city is in need of more entertainment; Elk Grove is growing but its entertainment is lacking.

A casino is a dangerous form of entertainment if put in the wrong community, due to the risk of gambling addictions, and this entertainment would only appeal to a small fraction of Elk Grove residents. More families would be prone to gambling addictions. This could cause some serious issues in families, and in the community as a whole. The legal age to gamble in California is 18 and older, meaning the casino would only appeal to a small fraction of Elk Grove residents. Not only that, but casinos are more attractive to men. Casinos are neither child nor adolescent friendly; where would the younger generation be entertained?

1-2

To continue my point, Elk Grove is a highly religious community. More than a quarter of Elk Grove residents practice a religion. Two of the most practiced religions are Christianity and Islam, which do not partake in gambling. I had the chance to discuss the Elk Grove casino project with a friend of mine, Sumaya Singh (also an Elk Grove resident) who practices Islam. She believes the Wilton Rancheria Casino would affect her and many other Muslims in Elk Grove, since gambling is not allowed in their religion. It would be wrong to build a casino in the midst of a community whose religious views go against it.

1-3

As I mentioned before, the success of any family business is very important to me, but bringing any business, whether it is family operated or not, to a community that strongly opposes it is not a good thing to do. I propose that the Wilton Rancheria Casino calls its Elk Grove casino project quits and moves to a different location.

Many Elk Grove residents go against a casino being built in Elk Grove. *The Sacramento Bee* published several online articles regarding the Wilton Rancheria Casino. Many people commented on these articles, the majority opinion going against the casino in Elk Grove. Patty Johnson was mentioned in one of the articles. She has resided in Elk Grove for a long time, and she strongly objects to the Wilton Rancheria Casino being brought to her city. Johnson, along with many other residents, is not in favor of the Elk Grove casino.

L-4

Casinos are a great business and offer a great form of entertainment, but only if they are built in the right community. I am not against the Wilton Rancheria Tribe; if anything, I respect them because they operate a family business, which I understand and highly value. Instead, I am against the Tribe bringing a casino to my community. I believe the casino is a great idea, only if it were to be built elsewhere. The Elk Grove community (myself included) opposes a casino being built in their community. I believe the Tribe needs to hear and act upon our voices.

I appreciate you taking the time to read my letter. I hope you understand where I, and many others in Elk Grove, am coming from.

Thank you,

Angela Tsubera
Elk Grove Resident

Comment Letter 2

Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

January 5, 2017

RE: Proposed Land Trust for Wilton Rancheria

Dear Bureau,

I am a native Sacramentan, as is my mom. My grandmother moved to Sacramento in the late 1800's from Alta, Modoc County, California, where, as a young girl she was bit by a rattlesnake and her life was saved by an Indian who lived there.
For over 20 years I have lived a short distance from the Wilton Rancheria site, and just a few miles from the proposed hotel casino site at the Elk Grove Mall.

The proposed site for the hotel casino is not consistent with the culture or policies of the City of Elk Grove. I believe it would make a significant negative impact on our City. I object to the proposed hotel casino location for the following reasons:

2-1

Tribal designation:
As a neighbor, it was my understanding the Wilton Rancheria is a rancheria, a site established in 1927 to provide housing for about a dozen homeless families made up of members of various tribal heritages. This included Concow, Yuki, and San Juan Pueblo of New Mexico; and others from California regions populated by the Nisenan, Sierra Miwok, Yokut and Washo Indians.
To establish a new "tribe" based on where housing was established for members from various existing tribes is false and misleading.
I understand the proposed restored land trust is for a Miwok tribe. What basis and evidence is used to determine the Wilton Rancheria is a Miwok tribe?
The application states the tribe as having over 700 members. The Wilton Rancheria only housed about a dozen families. The numbers do not add up.

2-2

Community review:
The original review of property to be considered was on 282 acres in Galt, CA. The process started three years ago. The citizens and local entities in Galt had 3 years to review the impacts of the development to the overall community, traffic, and environment.
On March 10, 2016 the Galt City Manager submitted a 67 page letter to the Bureau of Indian Affairs outlining Galt's concerns and comments on the Draft Environmental Impact Statement (DEIS), stating where the development clearly violated Galt's zoning codes and included pages of mitigation requirements. Two weeks later, on March 21, 2016, Raymond "Chuckie" Hitchcock, Tribal Chairman, set meetings for "analyzing alternative sites" from Galt to the new location on 28 acres in Elk Grove, CA.

In comparison to Galt's 67 page narrative, Elk Grove City Manager Laura Gill, responded to the DEIS on February 18, 2016 with a 2 page response (plus numerous attachments), with statements "no further specifics", "not a full discussion" and "further discussion and analysis would be useful to help understand any impacts to the City"; all indicating Elk Grove needs more information to determine the effects on our city.
On April 9, 2015, Jennifer Alves, Assistant City Attorney for the City of Elk Grove, requested as follows:

"I am hearing that the EIR and other notices went out to the County of Sacramento and the City of Galt. The City of Elk Grove has not received anything. I had asked to receive such notices and I know our Agreement with the tribe required such. Can you send me what has gone out to the other jurisdictions?"
The April 10, 2015 response from John Rydzik with the Bureau of Indian Affairs stated "Unfortunately, **the City of Elk Grove is not a Cooperating Agency** under NEPA in the preparation of the EIS. Only the Cooperating Agencies received an Administrative Draft EIS for their review prior to public distribution and review. The City will certainly receive the document once a notice is published in the Federal Register." *(my emphasis in **bold** type added)*

2-2 Cont.

Galt had the advantage of three years of filings and public outreach. The City of Elk Grove did not. The hotel casino location, paperwork and hearings transferred from Galt to Elk Grove in June 2016 without notifying the public in Elk Grove or giving us access to review or give input on reports and filings.

On June 9, 2016 Wilton Rancheria released a notice "Wilton Rancheria Recommends Elk Grove Site as the Preferred Alternative for its Planned Resort and Casino". This was the first I and most Elk Grove residents heard that a location in Elk Grove was being considered.

Petition:

2-3

In less than 2 weeks, over 14,000 Elk Grove residents (about 9% of the total population) signed a petition to stop the proposed hotel casino, to let the residents in Elk Grove vote on whether the impacts would benefit or hurt the City. A decision on when this vote will be held has not been decided.

Location:

The proposed location is on land, long committed, and now again in an existing contract, to be a shopping mall designed for use by individuals, families and children. The original development was approved by the Elk Grove City Council, then halted in 2001, when the State of California Department of Conservation, sued the City of Elk Grove and mall developers stating the land was valuable agricultural land and should not be developed. It was the first time the State has sued a city over a development. Once the suit was resolved in 2004 the mall could proceed. Partially built in 2008, the economy was in a recession and the national developer went bankrupt.
Forward to October 2014, the current developer contracted with the City of Elk Grove to develop the mall. Part of that land would become the proposed hotel casino. In a February 2016 flyer from the City of Elk Grove (distribution unknown) states the "casino resort location is north of the approved outlet mall site and will not impede that project (as approved in October 2014) from moving forward. The Howard Hughes Corporation, developer of the outlet mall continues to make progress on the development and leasing for The Outlet Collection at Elk Grove and anticipates construction in 2016."

2-4

Recent "robo" calls from elected city leaders Gary Davis and Steve Detrick, urged citizens not to sign the casino petition, stating if we signed the petition and the hotel casino was rejected then the mall would not be built. "No casino, no mall." There is too much false information circulating and again, the public needs more input and truthful information.

The hotel casino site is adjacent to the approved shopping mall and theater, which is intended use by families including young children. This goes against the culture and existing zoning codes for Elk Grove. The hotel casino site is close to numerous churches, elementary schools and high schools. It is directly across the freeway from 2 large churches (Harvest Church, average attendance 1,600, and LifePointe Church, average attendance 600). Due to the extreme 12 story, 275' height of the proposed project, the hotel casino would literally cast its shadow on these two churches. Close by are residences (existing and approved), schools, parks and churches.

Law Enforcement:
The citizens of Elk Grove take pride in protecting our City and schools. When the prospect of marijuana dispensaries first came to town, on April 7, 2004 zoning was enacted restricting proposed dispensaries operating hours and from being located "1000' or more from schools". Zoning further states the "Planning Commission may impose additional distance requirements... with the respect to the distance the structure is from parks, teen centers, youth recreational facilities, day care centers, and other uses that draw minors."
The zoning restrictions were enacted due to the "secondary effects associated with them, including: illegal drug activity; robbery; driving under the influence; burglaries and robberies..." Zoning was further restricted with ordinance # 19-2010, Elk Grove municipal code chapter 9.31; and again in August 2014.

2-5

Statistics for hotel casinos in 2015:
Placer County Sheriff reported 1,457 calls for service at Thunder Valley casino
Yolo County reported 1,288 calls for service at Cache Creek casino
San Bernardino Sheriff reported 3,122 calls for service at the San Manuel Indian Bingo and Casino

Per the March 10, 2016 the Galt City Manager's "Comments from the City of Galt" to the Bureau of Indian Affairs, the proposed hotel casino, based on the 282 acre Galt location (not close to existing development), would increase police calls by 1,151 annually and 307 arrests. The compact, 28 acre Elk Grove location adjacent to the approved shopping mall and approved residential developments close to Sacramento would generate more visitors and more opportunity for crime. Elk Grove has restricted other businesses to minimize crime in our City. This proposal and the additional expected increase in police calls and arrests is completely against the history and culture of Elk Grove.

Building height and setback:
The proposed complex includes a 12 story, 275' tall hotel casino.
City code for the Lent Ranch Special Planning Area (LRSPA), where the project is proposed, is a maximum of 100'. Additionally, City code restricts any building in the City to a maximum height of 150'.

At 175' over the maximum height allowed by the LRSPA, the proposed hotel casino is almost 3 times taller than allowed by City zoning. This is clearly not allowed by code, and inconsistent with the look and culture of Elk Grove or anything for miles around the proposed location, creating a visual anomaly.

2-6

In addition, zoning requires "all buildings are set back from the ultimate right-of-way line of all abutting streets and freeways a distance at least equal to the height of the building."
At 275' tall, the building would have to be set back a minimum of 275' from the adjacent roads and freeway to meet City code and be consistent with the rest of the community. I do not see where it would be possible for the building to meet the required setbacks from property lines, again going against the existing culture and appearance of the town.

Actual plans would need to be reviewed to see if the project meets other requirements. City code requires "For any residential portion of a hotel all required yards and courts shall be increased one (1'0") foot for each foot that such building exceed forty (40'0") feet in height."

Building size:
2-7
City of Elk Grove zoning states "in any case, the floor area to lot area ratio shall not exceed 2.5 : 1".
With 28 acres, the lot size is 1,219,680'. The proposed size of 611,055' greatly exceeds the maximum allowed in Elk Grove and is inconsistent with anything in our City.

2-8

Parking:
City of Elk Grove zoning has the following parking requirements (proposed building/parking needed):
Hotels – one parking space per room (307 rooms = 307 spaces)
Restaurants – one space per 60' of dining area (62,000' = 1,033 spaces)
Card rooms – one space per 2 seats (unknown quantity for proposed site)
Bars/Night Clubs – one space per 3 seats **plus** one space per 50' (110,260' = 2,205 spaces plus an unknown quantity for the number of proposed seats)
Total minimum parking calculated = 3,545 spaces, plus spaces required for the number of seats.
Proposed parking for the site is 1,690 spaces, almost 2,000 spaces short of Elk Grove requirements.
It appears the hotel casino is planning to use parking spaces from the mall, resulting in numerous other problems, mixing hotel casino traffic with youth and families shopping at the mall and theaters.

2-9

Rural Designation:
Our area, near the Wilton Rancheria, is designated rural and city guidelines try to help us maintain our rural setting and culture. At 275' high we would be able to see the massive building from our homes. The visual impact and increased traffic is inconsistent with our rural designation and would adversely affect our lives.

2-10

Economic Development:
While I support the idea of economic development for tribal members, I question the requested need to build a multi-million dollar 12 story, 611,055 square foot, 307 room hotel casino to provide support for the Wilton Rancheria's approximate 12 families once housed there. Is this standard BIA protocol to approve a hotel casino for every homestead location established by the BIA? If so, how many more hotel casino projects should we expect?

2-11

Traffic:
We live on a residential street approximately 4 miles from the proposed hotel casino. In a January 28, 2016 letter from Laura Gill, Elk Grove City Manager, to Farhad Iranitalab regarding the Wilton Rancheria Draft EIS Review, our street, Pleasant Grove School Road is mentioned as being realigned with Wilton Road in Mitigation O (Grant Line Road/ Wilton road Intersection). I have contacted the City, and they are now reassuring me realigning our road with Wilton Road is not being considered, but the fact remains that even our quiet country road 4 miles from the site, would be effected by the increase in traffic due to the proposed hotel casino and was mentioned in mitigation measures. Other roads would be similarly impacted and the public has not been notified or given the opportunity to provide input.

I think the people and officials of Elk Grove have not been made aware of all the adverse impacts this development would bring throughout the city, and the city codes this development chooses to ignore. As a local resident, I feel I deserve to have input on the negative impacts of a development this huge, and I believe the 14,000 residents who signed the petition feel the same.

Respectfully,

Carolyn Soares
10080 Pleasant Grove School Road
Elk Grove, CA 95624
(916) 212-9954
cjsoares4@gmail.com

E-mail: amy.dutschke@bia.gov
john.rydzik@bia.gov
chad.broussard@bia.gov
Arvada.Wolfin@bia.gov

CC: U.S. Senator Diane Feinstein
www.feinstein.senate.gov/public/index.cfm/e-mail-me
U.S. Senator Kamala Harris
www.harris.senate.gov/content/contact-senator
U.S Congressman Ami Bera, District 7
repamibera@mail.house.gov
Deputy Attorney General Sara Drake, State of California
Sara.drake@doj.ca.gov

Comment Letter 3

SACRAMENTO METROPOLITAN
AIR QUALITY
MANAGEMENT DISTRICT

Larry Greene
AIR POLLUTION CONTROL OFFICER

January 6, 2017

Ms. Amy Dutschke, Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

FEIS/Revised DCD Comments, Wilton Rancheria Fee-to-Trust and Casino Project (SAC201301478)

Dear Ms. Dutschke:

As you know, the Sacramento Metropolitan Air Quality Management District (SMAQMD) is obligated by State law[1] to represent the citizens of Sacramento in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality.

3-1 I appreciate the cooperation the Bureau of Indian Affairs (Bureau) and the Wilton Rancheria Tribe (Tribe) has shown in meeting with the SMAQMD staff, discussing analysis and mitigation strategies, and responding to SMAQMD comments on the Draft Environmental Impact Statement and Draft General Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project.

Acknowledging that SMAQMD has no regulatory authority in this Federal, Tribal project, and the Bureau and Tribe have no obligation to the SMAQMD; I am requesting the Bureau and Tribe consider the construction NOx emissions impacts on the State ground level ozone standards and the related health impacts of not attaining those standards.

3-2 Ground level ozone is formed when volatile organic compounds (VOCs) and oxides of nitrogen (NOx) react with the sun's ultraviolet rays. The primary source of VOCs and NOx is mobile sources, including cars, trucks, buses, construction equipment and agricultural equipment. Ground level ozone reaches its highest level during the afternoon and early evening hours. High levels occur most often during the summer months. Breathing ozone can cause the muscles in the airways to constrict, trapping air in the alveoli (air sacs). This reduces the volume of air that the lungs breathe in and leads to wheezing and shortness of breath. Ozone inflames and damages the airways and can cause pain when taking a deep breath. It makes the lungs more susceptihle to infection, aggravates lung diseases such as asthma, emphysema, and chronic bronchitis and can cause chronic obstructive pulmonary disease (COPD). Long-term exposures to higher concentrations of ozone may lead to

[1] California Health and Safety Code §40961

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permanent lung damage, such as abnormal lung development in children. SMAQMD is required by State and Federal law to reduce ground level ozone in Sacramento County for the health of all that live, work and recreate within its boundaries, including Tribal land. SMAQMD also recognizes that air pollution knows no geopolitical boundaries.

Because the State ground level ozone standards are more stringent and health protective than the Federal ozone standards the SMAQMD has developed thresholds of significance for ozone precursors that are more stringent than the Federal de minimis thresholds. The 85 pounds per day SMAQMD NOx construction threshold equates to 15 tons per year of NOx, while the Federal de minimis threshold is 25 tons per year of NOx.

3-2 cont.

The Bureau and Tribe have committed to mitigating construction NOx emissions by requiring the construction fleet to include Tier 3 or newer off-road engines. With that measure, the analysis finds the NOx emissions are below the Federal de minimis level of 25 tons per year of NOx and nothing more is required for mitigation of air quality impacts. However, SMAQMD is requesting the Bureau and Tribe consider additional construction NOx mitigation by reducing emissions to SMAQMD's NOx threshold, providing even greater health benefits than simply meeting the Federal de minimis threshold and assisting the SMAQMD in meeting the State ground level ozone standards.

SMAQMD staff's review of the summer CalEEMod report for Alternative F (the preferred alternative) indicates approximately 4.61 tons of construction NOx emissions above the SMAQMD's thresholds of significance. The 4.61 tons could be mitigated with a fee payment in the amount of $88,380.92. The SMAQMD uses mitigation fees from construction activities to fund emission reduction projects within its jurisdiction.

Your thoughtful consideration of this request for additional mitigation is appreciated. Please contact Karen Huss at 916-874-4881 or khuss@airquality.org if you would like to discuss this further.

Sincerely,

Larry F. Greene
Executive Director/Air Pollution Control Officer

Cc: County of Sacramento
City of Galt
City of Elk Grove
US EPA

Comment Letter 4

Office of the City Manager

VIA CERTIFIED MAIL AND EMAIL

January 9, 2017

Bureau of Indian Affairs, Pacific Region
Attn: Chad Broussard
2800 Cottage Way, Room W2820
Sacramento, CA 95825
Email – chad.broussard@bia.gov

Re: FEIS/Revised DCD Comments, Wilton Rancheria Fee-to-Trust and Casino Project

Dear Mr. Broussard,

As a cooperating agency, the City of Galt (**City**) has extensively commented on both the administrative and public drafts of the environmental impact statement (**EIS**) for the Wilton Rancheria Fee-to-Trust and Casino Project (**Project**). However, a significant portion of the City's facts and analysis for the EIS has been improperly excluded in violation of the requirements of the National Environmental Policy Act (**NEPA**).

Under NEPA, a cooperating agency does not merely offer an opinion on a proposed environmental project, it is a member of the interdisciplinary team responsible for developing information and preparing the environmental analysis.[1] Although the City has been given the opportunity to comment, our input has not been properly considered by or incorporated into the EIS by the Bureau of Indian Affairs (**BIA**) in the manner required by NEPA law.

4-1

NEPA and the Department of Interior's implementing regulations require that, among other things, the Responsible Official must whenever possible: (a) consult, coordinate, and cooperate with relevant local governments concerning the environmental effects of any Federal action within the jurisdictions or related to the local governments' interests, and (b) use a consensus-based management approach to the NEPA process.[2] The Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (**CEQ Regulations**) similarly provide that the lead agency must use the environmental analysis and proposals of cooperating agencies *to the maximum extent possible*.[3] In addition, the CEQ Regulations expressly require the inclusion of discussions of: (a) possible conflicts of proposed federal actions and objectives with the local land use plans, policies, and controls; and (b) the extent to which they will be reconciled.[4]

[1] See 40 CFR §1501.6.
[2] See 43 CFR §§ 46.115 and 46.110(c).
[3] See 40 CFR § 1501.6(a).
[4] See 40 CFR §§ 1502.16, 1506.2(d).

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The BIA has not allowed the City to participate in the environmental review process to the extent required by these regulations. The BIA is required to incorporate the analysis reflecting the City's unique subject matter expertise. As a result, the City continues to have significant concerns about the Final EIS's adequacy in a number of areas.

4-1 cont.

Given the publication of Notice of Availability of the Final EIS in the Federal Register on December 16, 2016, the City wishes to use this opportunity during the 30-day mandatory waiting period to publicly comment on the Final EIS prior to the agency's final action.[5] Doing so is intended to disclose to the public and decision-makers facts and analysis that are contrary to the conclusions advanced by the BIA.

Rather than expend more of the City's limited resources in an effort to obtain BIA recognition of the same legal issues that we have raised since the inception of this process, we instead resubmit our August 18, 2016 comment letter on the administrative version of the Final EIS. The City has briefly reviewed the published version of the Final EIS and has determined that these comments remain largely applicable.

4-2

While NEPA does not require the BIA to agree with the comments of a cooperating agency, the failure to recognize cooperating agency comment letters tends to predict NEPA litigation outcomes. Courts are skeptical of the whether an EIS's conclusions have a substantial basis in fact if the agency has apparently ignored the conflicting views of other agencies having pertinent expertise.[6] We hope you use this opportunity to revisit our comments and prepare a good faith, reasoned analysis in responses to them before taking final action on the Project.

Sincerely,

CITY OF GALT

Eugene M Palazzo

Eugene Palazzo
City Manager

EP/th
Enclosure

cc: Steven Rudolph, City Attorney

[5] See 46 Fed. Reg. § 18026.

[6] *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002) (citing *Sierra Club v. Corps of Eng'rs*, 701 F2d 1011, 1030 (2d Cir. 1983).

Office of the City Manager

VIA CERTIFIED MAIL AND E-MAIL

August 18, 2016

Bureau of Indian Affairs, Pacific Region
Attn: Chad Broussard
2800 Cottage Way, Room W2820
Sacramento, CA 95825
Email - chad.broussard@bia.gov

Re: Comments on Final Environmental Impact Statement for the Wilton Rancheria Fee-to-Trust and Casino Project

Dear Mr. Broussard,

As you know, the City of Galt (**City**) has been participating in the environmental review process for the Wilton Rancheria Fee-to-Trust and Casino Project (**Project**) since its inception. After submitting comments on the Administrative Draft EIS (**ADEIS**) and offering oral testimony at the public hearing, in March 2016, the City submitted detailed comments on the Draft EIS (**DEIS**). We have reviewed the Final Environmental Impact Statement (**FEIS**) including the Response to Comments Document, and our reply regarding the adequacy of the responses to the City's comments and the FEIS as a whole is presented below.[1]

I. Executive Summary

4-3

The FEIS appears to be fundamentally flawed in that it erroneously evaluates Alternatives A, B and C, which are located at the 282-acre Galt site (**Twin Cities Site**), as reasonable and feasible project alternatives given that the Tribe determined that taking the Twin Cities Site into trust is economically infeasible and formally withdrew the application to do so. This is a significant change in circumstance with major implications on the proposed action that requires the Bureau

[1] See 46 Fed. Reg. 18026 – The Council on Environmental Quality's (**CEQ**'s) Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Question 34(b)(providing that during the 30 day mandatory waiting period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal.)

of Indian Affairs (**BIA**), at a minimum, to prepare a Supplemental Final EIS to avoid misinforming the public and decision makers about which alternatives are viable.

Supplementation is also needed to either: (a) make clear that the FEIS does not incorporate all of the analysis required of a Tribal Environmental Impact Report (**TEIR**) and Tribal Project Environmental Document (**TPED**) or, (b) work with Cooperating Agencies to add the analysis to the EIS.[2]

4-3 Cont.

Even if, for arguments sake, the Twin Cities Site alternatives were viable, significant revisions would also be necessary due to the fact that the baseline/No Action Alternative incorrectly excludes an analysis of the Twin Cities Site being annexed and developed, even though the BIA itself acknowledged this was a reasonably foreseeable consequence of no project approval. This error results in the BIA measuring all of the Action Alternatives against an incorrect baseline.

4-4

Further, the FEIS omits substantial information from the project description, even though that information was specifically identified and requested to be included in our comment letters and is essential to conducting an adequate impact analysis.

4-5

The FEIS also fails to meaningfully respond to many of our detailed comments on the DEIS. The BIA's responses to comments are deficient in a variety of ways, such as deferring the actual impact analysis and mitigation development to other agencies and/or future studies and permits, failing to defer to Cooperating Agency expertise, and providing responses that fail to address the main issues raised in the comments.

Our comments and concerns about the BIA's FEIS analysis are provided in more detail below. Some of the specific deficiencies (the list is not exhaustive) are listed in the matrix (Exhibit B) included with this letter.

II. Analysis

4-6

A. Improper Inclusion of Infeasible Alternatives A, B & C and Reliance on a Terminated Mitigation Agreement at Twin Cities Site

As you know, after submitting its application, the Tribe determined that the Twin Cities Site is an economically infeasible alternative.[3] As a result, the Tribe terminated its Memorandum of Understanding with the City (**MOU**) that set the foundation for our cooperative negotiations and

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[2] In light of the recent guidance document issued by CEQ, it appears the greenhouse gas emission / climate change analysis likely will also require supplementation. The Guidance document is available online at https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf.

[3] In a letter dated June 9, 2016, the Wilton Rancheria Tribe informed the City that it was formally withdrawing its application to have the 282-acre Galt site placed into trust and was resubmitting an application to the BIA to place an alternative site (the Elk Grove mall site) into trust. A copy of the letter is attached hereto as Exhibit A. The Tribe stated that the primary reason for this drastic change of course was because the" $30-plus million cost" of building an overpass to service the Galt location "presented an insurmountable economic challenge."

the ground rules for entering into an off-site mitigation agreement.[4] The Tribe also withdrew its application with the BIA to take the Twin Cities Site into trust.[5]

Despite having knowledge of the Tribe's determination of economic infeasibility of the Twin Cities Site and having received the application for withdrawal and submission of a new application for the Elk Grove mall site,[6] the BIA nevertheless finalized the FEIS without making any revisions in the analysis to reflect the loss of the Twin Cities Site as a location for viable alternatives.[7] The FEIS also continues to reference the MOU, relying on it as a basis for mitigation of various impacts of the project alternatives at the Twin Cities Sites to a less than significant level.[8] The inclusion of infeasible alternatives and reliance on a nonexistent mitigation agreement renders the analysis under NEPA invalid.[9]

4-6 cont.

An EIS must examine all reasonable alternatives to a proposal.[10] An alternative is "reasonable" if it is "...practical or feasible from the technical and economic standpoint and using common sense..."[11] Plainly, given the Tribe's written statements and actions, the Twin Cities Site cannot form the basis for a reasonable alternative.[12]

This is not an instance where the Tribe is merely expressing a preference for a different alternative because it better meets their purpose. Rather, the Tribe has expressly stated that because each alternative at the Twin Cities Site requires building a $30+ million highway interchange, the

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[4] Putting a fine point on their intention to abandon this location, the Tribe gave the City notice that it was terminating the Memorandum of Understanding regarding the Negotiating Process (MOU) between the parties. The Tribe made clear it "no longer intends to place land into trust near the City," which allegedly made the MOU moot and termination of that agreement appropriate.

[5] Between June 21st and July 18th our special legal counsel, Alexandra Barnhill, attempted to confirm with the BIA that the Tribe had, in fact, withdrawn their application for the Galt site as stated in their June 9th letter. On, July 12th via voicemail and 19th via phone call, Alexandra was able to confirm with Mr. Broussard that the Tribe's application had been withdrawn and that the Elk Grove mall site would become the preferred alternative.

[6] Confirmed via teleconferences between our special counsel and Mr. Broussard on July 19 2016.

[7] Except to delete the characterization of Alternative A as the proposed alternative.

[8] See for example FEIS Page 4.7-40 ("The Tribe has entered into a similar agreement with the City of Galt for reasonable costs incurred in conjunction with providing public services, community benefits, and utilities (Appendix F).") The BIA relies on the existence of the City MOU to support its conclusion that while the net fiscal effects on Galt are negative, the increased costs incurred by Galt would be adequately funded via the MOU. See also, FEIS Page 4.9-14 and 4.9-55 and the discussion of the City's General Plan policies such as PFS-1.4, 1.9, and 6.5 wherein the FEIS improperly relies on the now terminated MOU to conclude that fair share costs the Tribe will impose on the City will be mitigated to a less than significant level.

[9] See Footnote 7.

[10] 40 CFR 1502.14

[11] See 46 Fed. Reg. 18026 – CEQ's Forty Most Asked Questions Concerning CEQA's National Environmental Policy Act Regulations; Sierra Club v. Marsh, 714 F. Supp. 539 at 577 (a consideration of reasonable alternatives must have as its basis "a rational relationship to the technical and economic integrity of the project").

[12] See Exhibit A.

4-6 Cont.

economic integrity of the project is undermined to the point of infeasibility.[13] The primary purpose of a casino development in general - and this project in particular - is to enrich tribal members who are impoverished as a result of historical marginalization by government and other actions.[14] Elsewhere in this FEIS it describes the BIA as having an "obligation to promote tribal self-determination and economic development."[15] The FEIS even added a paragraph regarding the compatibility of the Twin Cities site with the Tribe's purpose and needs and expressly took into account economic feasibility as a factor.[16] Including the Twin Cities Site in the Final EIS would not serve the underlying goals of the project, meet the Tribe's fundamental needs per their own admission, or advance the BIA's mission.[17] For these reasons, Alternatives A, B and C must be eliminated from the FEIS.[18]

4-7

Elimination of the Twin Cities Site and termination of the MOU are significant changes in circumstance that directly and fundamentally change the scope of the analysis for this project.[19] The BIA's omission of this material information in the FEIS necessitates, at a minimum, the preparation of a Supplemental Final Environmental Impact Statement to truthfully inform public and decision-makers about the proposed action and alternatives available for this project and the scope of the Tribe's current agreements.[20]

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[13] See, *id.*

[14] See FEIS Section 2.1 describing the purpose and need of the Proposed Action as "to improve the Tribe's short-term and long-term economic condition..."

[15] See FEIS Section 4.7.7.

[16] See FEIS page 2-3. The FEIS includes a conclusory statement that "The site's topography, highway access and proximity to potential customers make it economically feasible." The FEIS does not include any information about tbe cost of the highway interchange that is required mitigation of Alternatives A, B and C. See also, FEIS Section 2.10, explaining that Alternative F is now the proposed and preferred alternative because of a single element – that it "would provide the Tribe witb the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream." Section 2.11 has a similar analysis.

[17] *Id.*

[18] The alternatives explored on the Twin Cities Site should be moved to Section 2.9, which is dedicated to a discussion of the alternatives that the BIA found were either not reasonably feasible or did not accomplish the purpose of the action.

[19] See CEQ's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 Code of Federal Regulations Section 1500 *et seq.*, at Section 1502.9(c)(1)(i)(providing, "Agencies...sball prepare supplements to either draft of final environmental impact statements if...there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.")

[20] See *id.* See also, *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999)(providing that NEPA precludes agencies from defining the objectives of their actions so unreasonably narrowly that they can be accomplished by only one alternative (i.e. the applicant's proposed project)," but also from completely ignoring a private applicant's objectives and "must take responsibility for defining the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes."); *Weiss v. Kempthorne*, 683 F. Supp 2nd 549, 568 (W.D. Mich. 2010), aff'd in part vacated in part 459 Fed. Appx. 497 (6th Cir. 2012) (stating that "[a]n agency may consider alternatives in a manner that is consistent with the economic goals of the project's sponsor," and that it may "accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.")

4-7 Cont

Because the Tribe's actions eliminate three of the alternatives, there remain only two alternatives studied – in notably much less detail - at the Historic Rancheria Site (Alternatives D & E) and one at the Elk Grove Mall Site (Alternative F), along with the mandatory No Action Alternative (Alternative G). We seriously question whether the FEIS would be sufficient with only these remaining alternatives, particularly because many of them are derivative and based on the Twin Cities Site analysis. However, we expect the BIA will not act arbitrarily and capriciously and will instead supplement the FEIS with a reasonable range of analysis and alternatives at the same time it informs the public that the Tribe terminated its MOU with the City, the Twin Cities Site is not economically feasible, and Alternatives A, B and C have been removed from consideration.

B. The FEIS Fails to Meet the Standards of a TEIR or TPED

The City dedicated a significant portion of its comment letter to illustrate with factual and statutory support the reasons why the DEIS failed to meet the standards of a TEIR or TPED and needed to be revised.[21]

4-8

The BIA offered only two conclusory explanations in response to our comments. Both responses specify that various sections of the document were included in the EIS to meet the standards of a TEIR/TPED. The BIA presumably is characterizing the document this way in an effort to demonstrate compliance with the requirement under NEPA for the lead agency to create one document that complies with all applicable laws.[22] Doing so requires the BIA to cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements that are in addition to, but not in conflict with, NEPA.[23]

Ignoring the substantive input of a Cooperating Agency does not amount to the high degree of coordination required under NEPA for preparation of a joint document. Nor does cross-referencing standard NEPA analyses demonstrate compliance with a TEIR or TPED, which we clearly noted have a broader scope, different thresholds of significance, and require a more stringent analysis and mitigation of impacts than an EIS does.

If the document is going to be characterized as a TEIR and TPED, it must substantively meet the requirements of those analyses. Yet, the BIA repeatedly rejected requests by the City and other commenters to include additional analysis that would be required components of a TEIR or TPED because it is outside the scope of the BIA's jurisdiction.[24] The BIA cannot simultaneously claim

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[21] See e.g., City Comments A16-1, 7 & 15.
[22] 40 CFR 1506.2(c).
[23] *Id.*
[24] See e.g. Responses to Comments A16-17(deferring analysis of highway interchange reconstruction and street closures because the state and local approvals are outside of the Tribe's jurisdiction), A16-30 (excluding local and state government BMPs for construction), A16-39, 43, 117, 134 (ignoring inconsistencies with local land use plans and policies as irrelevant to NEPA and failing to acknowledge their relevance in a TEIR and TPED analysis), A16-62 (deferring analysis of the off-site wastewater disposal options), A16-152, 155, 185, 200 (deferring implementation of off-site mitigation measures), among others.

that this document is a TEIR and TPED, while also deferring environmental analysis and mitigation to subsequent environmental review and approval processes.[25]

This point is illustrated well in the BIA's response to City Comment A16-155. The City requested additional mitigation measures and revisions to mitigation measures in order to ensure that the project is consistent with specified state and local standards. The BIA's response is that the analysis in the FEIS is limited to meeting federal standards.[26] The FEIS specifically notes that complying with local and state preferences and criteria are "potentially infeasible" or "duplicative" and were excluded from consideration.[27] Plainly, a document that expressly rejects local analysis cannot satisfy the requirements of a TEIR or TPED which must take those criteria into account. Nor does it demonstrate that the BIA cooperated with state and local agencies "to the fullest extent possible" to create one document that complies with all applicable laws.[28]

4-8 (cont)

Under NEPA, the BIA has an obligation to properly characterize the scope of its analysis. If its analysis does not include certain information, making that clear is part of the BIA's informational duty under NEPA.[29]

We believe that the information is available and it is possible to jointly prepare a FEIS/TEIR/TPED. However, the BIA has not given the City the deference it is due as a Cooperating Agency by incorporating available information for a TEIR and TPED or working with state and local agencies to develop this information.[30] While the BIA has not met its responsibility to Cooperating Agencies, it will have another chance to remedy this when it supplements the FEIS.

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[25] This is particularly the case where the subsequent environmental review may not occur if the State were to accept the incorrect characterization of the FEIS as a TEIR/TPED.

[26] BIA cited 40 CFR 1505.2(c), 1506.2 and 1508.20 as applicable authority.

[27] We find this explanation especially confounding given that elsewhere throughout the analysis the BIA relies on the fact that the Tribe is committed to working cooperatively with state and local agencies and "has agreed to develop tribal projects on the trust land in a manner that is generally consistent with the County and the City municipal codes..." See Response to Comment A16-119, 145, 153, 154, 155, 205, and A10-09.

[28] See 40 CFR 1506.2(c). The BIA's failure to respond to our requests for a meeting to discuss and address deficiencies (made in our public comment and DIES comment letter) demonstrate the level of cooperation with the City thus far.

[29] Agencies violate NEPA when they fail to disclose that their analysis contains incomplete information. See *N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708 (10th Cir. 2009); *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005); *Sierra Club v. U.S. Army Corps of Eng'rs*, 701 F.2d 1011, 1030 (2d Cir. 1983); see also *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (holding that an agency acts arbitrarily and capriciously when it fails to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made"). See also *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011) (When relevant information is not available during the impact statement process and is not available to the public for comment, . . . the impact statement process cannot serve its larger informational role, and the public is deprived of its opportunity to play a role in the decision-making process.")

[30] See Comment A16-01.

C. The FEIS Evaluates the Impacts of the Alternatives against an Improper Baseline

4-9

A common theme among many of the City's comments was that the DEIS was flawed because the BIA refused to consider the facts in the record and/or defer to the City's local expertise regarding the reasonable foreseeability about the annexation of the entirety of the Twin Cities Site.[31] As a result, the entire analysis is skewed because the baseline and No Action Alternative assume, contrary to the facts on the record, that the land will not be annexed or developed.[32] The BIA did not correct this error in the FEIS. A summary of this issue follows.

The No Action Alternative represents the NEPA baseline, against which the impacts of the Action Alternatives must be compared.[33] This analysis provides a benchmark, enabling decision-makers to compare the magnitude of environmental effects of the action alternatives.[34] It is also an example of a reasonable alternative outside the jurisdiction of the BIA which must, nevertheless, be analyzed.[35] Inclusion of such an analysis in the EIS is necessary to inform the public and the decision-makers as intended by NEPA.[36]

4-10

The discussion of the No Action Alterative in the FEIS is woefully inadequate. First there is no actual analysis of this alternative.[37] Second, the No Action Alternative must discuss the consequences of other likely uses of the project site, should the permit be denied.[38] Where a choice

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[31] In particular, the socioeconomic and fiscal effects are uninformative and misleading without consideration of the annexation.

[32] See, for example, City Comments A16-2, 32, 52, 53, 84, 92, 93, and 94 illustrating how the BIA's failure to acknowledge the annexation results in a flawed analysis.

[33] 40 CFR 1502.14(d). The BIA's analysis is flawed in that it treats the baseline described in EIS Section 3.7 as distinguishable and distinct from the No Action Alternative. NEPA does not require such a distinction and doing so is not supported by the evidence, applicable regulatory authority, or case law. See, for example, *Friends of Yosemite Valley v. Kempthorne,* 520 F.3d 1024, 1038 (9th Cir.2008) (In which the baseline was expressed as the "no-action" alternative) and *Kilroy v. Ruckelshaus,* 738 F.2d 1448, 1453 (9th Cir.1984) (" the 'no action' status quo alternative ... is the standard by which tbe reader may compare the other alternatives' beneficial and adverse impacts related to the applicant doing nothing.").

[34] See 46 Fed. Reg. 18026 – CEQ's Forty Most Asked Questions Concerning CEQA's National Environmental Policy Act Regulations.

[35] Section 1502.14(c). See discussion above re the BIA's duty to cooperate with other agencies to complete a comprehensive analysis of the document as a TEIR/TPED.

[36] 40 CFR 1500.1(a).

[37] The No Action Alternative discussions throughout the FEIS do not contain any analysis of the no action alternative on the various resources that must be evaluated in an EIS. Instead, the BIA just repeats the same conclusory paragraph about whether the BIA expects development to occur on the site. This provides no basis for comparison whatsoever. This is not consistent with the BIA's analysis of similar projects, such as the Graton Casino Project. The relevant portion of that FEIS is available online at http://www.gratoneis.com/documents/final_eis/files/Section_4.pdf (See e.g. the extensive, substantive discussion of the No Action Alternative under Section 4.2 Land Resources.)

[38] See, Indian Affaris National Environmental Policy Act (NEPA) Guidebook 59 IAM 3-H, pages 19, 25, 26 (This Guidehook includes "Considering Cumulative Effects under the National Environmental Policy Act which discusses foreseeability in detail) available online at

of no action by the agency would result in predictable actions by others, this consequence should be included in the analysis.[39] The BIA gets this analysis wrong with respect to annexation and development at the Twin Cities Site.

The BIA acknowledged that the annexation process had been initiated by the City and was a "predicable reasonably foreseeable action" in the longer term, but not in the near term given the various procedural steps required for annexation and the possibility of opposition.[40] The BIA has also acknowledged this land is ripe for development in the future.[41] Although the BIA failed to define what actual timeframe it had in mind with respect to its distinction between near term versus long term (or what authority it was relying on to make this distinction), it chose to exclude the analysis of annexation as being long term and therefore speculative and not predictable.[42] Thus, the BIA made a classic mistake of treating the No Action Alternative as if nothing at all will happen at the Twin Cities Site. Yet, its own facts and analysis do not support this conclusion.[43]

I-10 (cont.)

Had the BIA taken us up on our requests for a meeting or made any affirmative contact, it would have also learned that the City has prepared the environmental document for annexation and received comments and is presently preparing a climate action plan. The City anticipates finalizing the environmental document and filing a formal application with LAFCO in approximately six months.

However, even if we disregarded the City's recent efforts to annex the Twin Cities Site and relied solely on the dated EIRs referenced by the BIA, the time frame annexation is less than 10 years away.[44] Thus, annexation is not speculative or mere conjecture, it is likely to occur and probable. Whether the City completes its annexation in late 2016 / early 2017 (as anticipated based on current information provided to the BIA) or in 2026 (as was predicted six years ago in certain EIRs referenced by the BIA), this should still be considered a probable event in the "near term" because it is likely to occur well within the minimum 20 year time frame of the project itself.[45]

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http://www.bia.gov/cs/groups/xraca/documents/text/idc009157.pdf. See also 40 CFR 1508.8 definition of effects.

[39] 46 Fed. Reg. 18026 – CEQ's Forty Most Asked Questions Concerning CEQA's National Environmental Policy Act Regulations.

[40] Response to Comment A16-02.

[41] The FEIS expressly provides in a new paragraph in Section 2.8 that due to the Site's adjacency to commercial development, highway access, visibility and access to municipal services, it is reasonable to assume the site will be developed, but this is not reasonably foreseeable under the NO Action Alternative because of uncertainties regarding (1) size and scope of possible development projects, (2) timing of possible development projects, (3) timing and sufficiency of new infrastructure, and (4) timing of the site's possible future incorporation into the Galt city limits.

[42] Id.

[43] See 5 U.S.C. 706(2)(e) [a reviewing court shall hold unlawful and set aside agency action, findings and conclusions found to be unsupported by substantial evidence on the record.]

[44] See Response to Comment A16-02.

[45] Gaming compacts in California are valid for a minimum of 20 years.

While potential changes in land use, development, or other reasonably foreseeable actions are not always easy to predict, they can be identified through discussions with local agencies.[46] Even where there is some potential opposition, to be reasonably foreseeable an event does not have to be guaranteed. Rather, the BIA must consider and analyze impacts when a reasonable person of ordinary prudence would consider this information relevant to the decision.[47] This is another area where the City has expertise, and is owed deference, but the City's input has been ignored.

4-10 (Cont.)

To the extent there is any question about which end of this 10 year spectrum annexation and development might occur, and further, to the extent this timeframe is even relevant under a NEPA analysis given that the BIA itself acknowledges this is a "predicable reasonably foreseeable action," the BIA has an obligation to defer to the City's expertise.[48]

Without accurate baseline data, an agency cannot carefully consider information about significant environment impacts, resulting in an arbitrary and capricious decision.[49] Accordingly, courts not infrequently find NEPA violations when an agency miscalculates the "no build" baseline.[50] Rather than make this mistake, the BIA, when it is supplementing the FEIS, should either revise the baseline/No Action Alternative or include more than one No Action Alternative analyses and scenarios, to evaluate the impacts assuming the Twin Cities Site is annexed and/or developed.

D. Inadequate Responses to the City's Comments

4-11

The BIA recognized in its General Response 1 that its legally obligated to address comments if they are: 1) substantive and relate to inadequacies or inaccuracies in the applied environmental analysis or methodologies; 2) identify new impacts or recommend reasonable new alternatives or

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[46] See, Indian Affaris National Environmental Policy Act (NEPA) Guidebook 59 IAM 3-H.

[47] *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992) (the court reviewed the issue of whether a particular indirect (secondary) impact was "sufficiently likely to occur, that a person of ordinary prudence would take it into account in making a decision"). See also 46 Fed. Reg. 18026 (Forty Questions), Question 18 (""The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." (40 CFR §1508.8(b)). In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.")

[48] This is a governmental proceeding within the City of Galt's control (i.e. Galt is the applicant). While there are no pending development proposals, this does not make the possibility of development speculative. In fact, there is ample commercial demand data in the DEIS to support Alternative C, which also proves the City's point regarding the reasonable foreseeability of development of the Twin Cities Site.

[49] See N. Plains Res. Council, Inc. v. Surface Transp. Bd., 668 F.3d 1067, 1085 (9th Cir. 2011).

[50] See, e.g., Friends of Yosemite Valley v. Kempthorne, 520 F.3d 1024, 1037-38 (9th Cir. 2008); *N.C. Alliance for Transp. Reform, Inc. v. U.S. Dep't of Transp.*, 151 F. Supp. 2d 661, 690 (M.D.N.C. 2001).

mitigation measures; or 3) involve substantive disagreements on interpretations of significance and scientific or technical conclusions.[51] Doing so furthers NEPA's goal of improving decision-making by providing decision makers and the public with pertinent and accessible information on potential project impacts on the environment.

4-11 (cont.)

The BIA's obligation when preparing a Final Environmental Impact Statement is to consider comments and respond by: (1) modifying the alternatives; (2) develop and evaluate alternatives; (3) supplement, improve or modify its analysis; (4) make factual corrections; or (5) explain with reference to sources, authorities or reasons why the comments don't warrant further response.[52] The BIA's responses to many of our comments fail to meet this standard.

Despite numerous very specific comments on particular environmental issues of concern to the City, this FEIS provided no meaningful response to many of our comments, and defers study in many another comments, as detailed in the attached matrix in Exhibit B. Below we discuss some of the more crucial areas of concern.

1. Inadequate Project Description

Despite our comments requesting specific information be added to the project description,[53] the FEIS project description continues to be unstable and incomplete.

4-12

The FEIS's project description, among other things, is lacking information about the casino sign, water tower, water and wastewater facilities, and location of grading for construction fill.[54] The result is that there is a significant amount of undisclosed development that will occur on the Twin Cities Site that is excluded from the project description but is indirectly revealed elsewhere in the document.[55] For example, the project description does not provide any details about a stand-alone highway advertising sign,[56] yet the mitigation measures require that the impacts of this sign be mitigated in various ways.[57]

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[51] See 40 CFR 1502.19, 1503.3, 1503.4, 1506.6.
[52] 40 CFR 1503.4
[53] See Comments A16-3, 12, 19, 23, 26, 28, 91, 135, 136, 143, 151, and 231.
[54] See, e.g., FEIS Section 4.2.1 (doubling the amount of fill that was identified in the DEIS that is required to be excavated for the project from unspecified locations elsewhere on the Twin Cities Site, yet still concluding, without factual support, that this would not have any significant impacts); and Section 4.4.1 (excluding the air emissions from the vehicle trips that would be required to move fill for Alternatives A, B and C, because the fill would be "sourced at the project site," and ignoring our comment in the DEIS that moving fill across the 282 acre site could involve extensive, lengthy trips and significant emissions).
[55] See, e.g., FEIS Section 4.3.1 (adding a discussion on the need to find suitable soils to support an on-site septic system, but concluding that there is no impact because "the Twin Cities site has over 80 acres of land that could potentially be used for wastewater disposal" without actually identifying where on the property the septic system would be located.)
[56] See e.g. FEIS Pages 2-7, 2-15 and 2-18 briefly mentioning a large sign will he placed near the highway, without any description of whether this would be on the Twin Cities Site, the actual size of the sign, whether it is digital or static, etc.
[57] See FEIS Section 14.13.1 noting that illuminated signage has potentially significant impacts, which must be mitigated to less than significance through Section 5.13.

4-12 (Cont.)

An accurate description of the project is a basic requirement of any EIS in order for the public and decision-makers to be able to weigh the proposal's benefit against its environmental cost, evaluate mitigation measures, and consider other alternatives.[58] The BIA's omission of this information results in an inaccurate and variable project description that does not satisfy the burden of preparing an informative and legally sufficient EIS.[59]

2. Failure to Achieve Compliance with Local Plans and Policies

Many of our comments detailed the ways in which the project and the alternatives fail to comply with the City's plans and policies.[60] The BIA's directive regarding how to handle conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls is clear.[61] The BIA must ask the City if any potential conflicts exist, either immediately or in the future.[62] If so, the EIS must acknowledge and describe the extent of those conflicts.

4-13

The Council on Environmental Quality also requires that: "The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS."[63] This EIS does not engage in this required analysis.

While the BIA claims that local land use plans and policies are discussed throughout the FEIS and contains mitigation measures to reduce these impacts, this is not accurate or complete.[64] Most of the FEIS dismisses the City policies and characterizes them as inapplicable.[65]

To illustrate our point, refer to Section 4.9.1 of the FEIS. Here the BIA concludes that minimal conflict exists with City of Galt plans and policies, despite repeated comments from Galt that significant conflict do exists. This demonstrates both the pervasive misinformation included in the document, and the failure of the BIA to defer to the expertise of a cooperating agency which is better equipped to evaluate this issue.

For example, the City's General Plan Policy LU-1.2 requires detailed city review of development proposals for consistency with general plan policies. The BIA concludes that this standard is being met with respect to the review of Alternatives A, B and C by virtue of the City's role as a Cooperating Agency. In fact, we have repeatedly stated the proposal lacks sufficient detail to make this determination and/or is inconsistent with our policies, but our comments have been

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[58] 40 CFR 1502.14.

[59] Nor does it advance the interests of the Tribe, given that they may not undertake work on the property that was not included in the project description and will have to resubmit for environmental clearance on those aspects, causing avoidable project delays.

[60] See, e.g., A16-36 39, 43, 113-118, 134, 137, 138, 145, 147, 155 and 196.

[61] 40 CFR 1502.16(c).

[62] See 46 Fed. Reg. 18026 – CEQ's Forty Most Asked Questions Concerning CEQA's National Environmental Policy Act Regulations, Question 23.

[63] *Id.*

[64] See City's Comment A16-39 and BIA's Response.

[65] See, e.g., City's Comment and BIA's Response for A16-36, 39, 43, 113-118, 134, 137, 138, 145, 147, 155 and 196.

ignored. Thus, the BIA's conclusion on this consistency determination is incorrect and not supported by the evidence.

The land use analysis in the FEIS is further flawed because it relies extensively on a logical fallacy to conclude that Alternatives A, B and C are consistent with the City's policies. The FEIS purports to undertake a consistency analysis, and does make substantive consistency evaluations with respect to certain city policies. But in most instances, the BIA concludes that the fact that the development will be on trust land means that the policies do not apply. This circular logic is used whenever there is an actual or potential conflict, rather than engaging in a substantive evaluation and attempting to harmonize the project with these policies.

4-13 (cont.)

For example, the City's Zone Code prohibits all commercial development over fifty feet and the General Plan must be consistent with the Zone Code (Policy LU-1.13). Alternatives A and B propose building a 12 story building, which is expressly inconsistent with applicable policies zoning policies. The BIA dismisses this conflict by noting that the City zoning policies are not applicable on sovereign land. If that were a legitimate basis for ignoring conflicts, then the BIA would not need to engage in a consistency analysis at all. Plainly that is not the appropriate standard. The BIA must evaluate the consistency of the development "but for" the land being taken into trust. To do otherwise renders the analysis meaningless.

3. Improperly Deferred Mitigation

Given that the various alternatives each have significant impacts, all of its specific environmental effects must be considered and mitigation measures must be developed where it is feasible to do so.[66] Notably, "[a]ll relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies."[67] Analyzing the full spectrum of mitigation effectuates the informational purpose of a EIS as it is intended to be "the most comprehensive environmental document."[68] Rather than fully analyze mitigation, however, the BIA often takes short cuts and defers mitigation, resulting in an incomplete NEPA document.

4-14

For example, the BIA responded to a comment by the City that many of the mitigation measures for off-site impacts were vague and unenforceable by stating that, "the Tribe is committed to working cooperatively with neighboring jurisdictions/agencies and establishing positive government-to-government relations."[69] This cooperative relationship is relied upon extensively throughout the document rather than including detailed mitigation or responses to comments.[70] Plainly, this conclusion is contradicted by the Tribe's actions to terminate its MOU with the City. Moreover, this response is not a suitable substitute for the preparation of actual, measurable, and

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[66] See See 46 Fed. Reg. 18026 – CEQ's Forty Most Asked Questions Concerning CEQA's National Environmental Policy Act Regulations, Question 19.
[67] Id.
[68] Id.
[69] See Response to City Comment A16-152.
[70] See Response to Comment A16-153, 154, 155, 205, and A10-09.

4-14 (Cont.) enforceable mitigation measures. It represents deferred mitigation that does not fulfil the intent of NEPA.

III. Conclusion

4-15 As detailed above, the FEIS fails to meet even the most basic NEPA requirements for good faith analysis and disclosure. Circumstances surrounding the project have changed dramatically such that the three Twin Cities Site alternatives are no longer economically feasible or meet the project needs, yet the BIA failed to inform the public and misleads decision-makers about this critical fact. Even if, for some reason, the Twin Cities Site alternatives continue to be included in the FEIS, numerous technical deficiencies that were identified in our comments on the DEIS have not been remedied in the FEIS, resulting in a flawed analysis. In addition, the FEIS's responses to comments are not good-faith responses, but instead, on multiple occasions, miss the main point of the comments, or dismiss relevant information from a Cooperating Agency. Some, but not all, of these responses are critiqued in the attached matrix.

The numerous deficiencies, including a defective project description, inadequacies in the baseline and impacts analyses, and improperly assessed and rejected alternatives, deferred mitigation, reliance on a mitigation agreement that has been terminated, and failure to respond to comments in good faith, require supplementation of the FEIS. To do otherwise would result in a misinformed public and decision-makers acting on incomplete information.

Please feel free to contact us if you have any questions regarding these comments. We look forward to working with the BIA to assure that the public and decision-makers are provided with an accurate and comprehensive environmental impact statement.

Sincerely,

CITY OF GALT

Eugene M. Palazzo

Eugene Palazzo
City Manager

Attachments:

Exhibit A: Letter from Tribe Terminating MOU
Exhibit B: Matrix of Deficiencies

Exhibit A

Letter from Tribe Terminating MOU with Galt

C: Rudolph

Wilton Rancheria

9728 Kent Street, Elk Grove, CA 95624

June 09, 2016

Eugene Palazzo
City of Galt
380 Civic Drive
Galt, CA 95632

Re: Notice of Termination of Memorandum of Understanding Regarding Negotiating Process

Dear Mr. Palazzo:

The purpose of this correspondence is to provide a Notice of Termination of the Memorandum of Understanding Regarding the Negotiating Process between the City of Galt and Wilton Rancheria ("Notice of Termination").

As you are aware, Wilton Rancheria ("Tribe") previously filed an application with the Bureau of Indian Affairs (BIA) requesting that 282 acres located near the City of Galt ("City") be taken into trust for gaming purposes. After informal initial consultations, the City required that prior to participating in any meaningful negotiations regarding mitigation, the Tribe would need to enter into an agreement that would provide financial assistance to the City for costs associated with reviewing project environmental documents and meeting with the Tribe. As a result, in May 2015, the City and the Tribe entered into the Memorandum of Understanding Regarding Negotiating Process ("MOU").

As the BIA has reviewed the Tribe's gaming project pursuant to the National Environmental Policy Act, it has become clear to the Tribe that the 282-acre site located near Galt may not be the most appropriate. Local and national environmental agencies have recommended a different location. In addition, the $30-plus million cost of building an overpass at State Highway 99 and Mingo Road has presented an insurmountable economic challenge.

The Tribe's intention has always been to select a site that worked well for both the Tribe and the selected site's immediate community. For the above-listed reasons, the Tribe has decided to formally withdraw its application to have the 282-acre site placed into trust. Instead, the Tribe will submit an application for one of the alternative sites identified in the BIA's Draft Environmental Impact Statement (DEIS).

Because the Tribe no longer intends to place land into trust near the City, there remains no continuing need to keep the current MOU in place. Hence, the Tribe submits this Notice of Termination.

Section 5 of the MOU provides that "[e]ither party may terminate this MOU by providing thirty (30) calendar days prior written notice to the other party" and that the "Tribe shall pay all consultant costs plus staff costs incurred prior to notice of termination." Thus, it is the Tribe's expectation that, pursuant to Section 5 of the MOU, no further costs will be incurred under the MOU as of the date of this Notice of Termination – June 6, 2016.

The Tribe has significant concerns that for many of the City's costs "incurred prior to notice of termination," we were never provided with written scopes of work of services and estimates of costs from consultants as required by Section 3(a) of the MOU and that work commenced with respect to some consultants before issues articulated by the Tribe with respect to the appropriateness of charges were worked out as required by Section 3(b) of the MOU. In addition, the City has never provided the Tribe with the actual invoices received from any of its consultants as required by Section 3(c) of the MOU.

Despite the City's failure to act in accordance with the MOU, the Tribe understands that the City has incurred some costs related to its previous review of the DEIS and would like to work in good faith with the City to now identify those costs and compensate the City for the same. Therefore, we respectfully request that within ten (10) days of this Notice of Termination, you submit to us copies of all scopes of work, initial cost estimates, and consultant invoices related to your review of the DEIS.

Despite this Notice of Termination, the Tribe sincerely appreciates the relationship that it has built with the Galt City Council, the Galt Chamber of Commerce, and the Galt community at-large. The Tribe hopes to continue to provide support to Galt community organizations as we have done many times over the past several years. In addition, we wish the City of Galt much success in the future.

Sincerely,

Raymond C. Hitchcock

Raymond C. Hitchcock
Chairperson

Exhibit B

Matrix of Deficiencies

Matrix of Deficiencies[1]

	Comment Number	Topic	Response Deficiency[2]
4-16	General Response 2	Alternative F as preferred alternative	Improper Inclusion of Infeasible Alternatives A, B & C.
4-17	General Response 3	Water Supply	Improper Inclusion of Infeasible Alternatives A, B & C. Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Impermissible deferral of mitigation.
4-18	General Response 4	Habitat and Species	Improper Inclusion of Infeasible Alternatives A, B & C Inadequate Project Description
4-19	General Response 5	Property Values	Evaluates the Impacts of the Alternatives against an Improper Baseline Response is misleading as the FEIS actually revised its conclusion from finding a positive effect to a negative one for Alternative D. The same rational applies to Alternatives A and B as well.
4-20	General Response 6	Crime/Law Enforcement	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
4-21	General Response 8	Quantification of Socioeconomic Effects & Mitigation	Improper Inclusion of Infeasible Alternatives A, B & C Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Failure to Meet the Standards of a TEIR or TPED

[1] This is a partial list, focusing solely on the responses to some of the City's comments. The FIES likely includes many more similar deficiencies in responses to other comment letters.

[2] The responses here are provided in summary form and often refer back to the outlined sections of our letter.

4-22	A16-1	Adequacy of the EIS as a TEIR or TPED	Failure to Meet the Standards of a TEIR or TPED Failure to respond to specific comment.
4-23	A16-2	Galt's annexation of Twin Cities site and commercial development	Improper Inclusion of Infeasible Alternatives A, B & C Evaluates the Impacts of the Alternatives against an Improper Baseline
4-24	A16-3	Project need for the entirety of the Twin Cities site / Undisclosed development on Twin Cities site	Improper Inclusion of Infeasible Alternatives A, B & C Inadequate Project Description
4-25	A16-4	Completeness of the water and wastewater analysis	Failure to Meet the Standards of a TEIR or TPED Failure to address specific comment.
4-26	A16-5	Adequacy of socioeconomic analysis	Failure to Meet the Standards of a TEIR or TPED
4-27	A16-6	Improper quantification of economic impacts	Failure to Meet the Standards of a TEIR or TPED
4-28	A16-7	Adequacy of document as a TEIR or a TPED	Failure to Meet the Standards of a TEIR or TPED

4-29	A16-8	Accuracy of impact levels	Improper Inclusion of Infeasible Alternatives A, B & C Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Failure to Meet the Standards of a TEIR or TPED Evaluates the Impacts of the Alternatives against an Improper Baseline Inadequate Project Description Failure to Achieve Compliance with Local Plans and Policies Improperly Deferred Mitigation
4-30	A16-9	Substitution effects on non-gaming local businesses	Improper Inclusion of Infeasible Alternatives A, B & C Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Failure to Meet the Standards of a TEIR or TPED Evaluates the Impacts of the Alternatives against an Improper Baseline
4-31	A16-10	Fiscal effects analysis	Evaluates the Impacts of the Alternatives against an Improper Baseline
4-32	A16-11	Fiscal effects analysis	Improper Inclusion of Infeasible Alternatives A, B & C Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Failure to Meet the Standards of a TEIR or TPED Evaluates the Impacts of the Alternatives against an Improper Baseline
4-33	A16-12	Project need for the entirety of the Twin Cities site	Improper Inclusion of Infeasible Alternatives A, B & C Inadequate Project Description
4-34	A16-13	Role of Cooperating Agencies	Failure to defer to Cooperating Agency.
4-35	A16-14	Accuracy of characterization of	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
4-36	A16-15	Adequacy of document as a TEIR or a TPED	Failure to Meet the Standards of a TEIR or TPED Failure to address specific comment
4-37	A16-16	Characterization of service agreements	Failure to address specific comment. The response offers no explanation why a mandatory service agreement is not a "local approval" or why it couldn't be listed in Table 1.1 to provide more clarity re the process to better serve NEPA's informational purpose.

4-38	A16-18	Description of California compacts	Failure to address specific comment. California compacts are not "individualized" in the areas City requested to be included. The elements described are formulaic and have been included repeatedly in each compact.
4-39	A16-19	Undisclosed development on Twin Cities site (southern part of the site)	Inadequate Project Description Failure to address specific comment. This response plays with semantics. Extensive grading is a form of development and should be affirmatively revealed, not hidden in appendices.
4-40	A16-23	Undisclosed development on Twin Cities site (sign component)	Inadequate Project Description Failure to address specific comment. Note - The FEIS is misleading as there are no specifications about a sign, yet the impacts of the sign are mitigated. The EIS should disclose as much as possible about the project to meet its informational obligation.
4-41	A16-24	Inconsistent projection of water demand for Alternative A	Inadequate Project Description
4-42	A16-25	Continued use of on-site wells at Twin Cities site	Inadequate Project Description
4-43	A16-26	Undisclosed development on Twin Cities site (Water storage for fire protection)	Inadequate Project Description. The FEIS is misleading. If assumptions are being made about the WWTP placement, those should be made express. That way if the applicant proposes a development inconsistent with those assumptions, they can be mitigated appropriately.
4-44	A16-27	Description of infrastructure for off-site water connection to Galt	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Inadequate Project Description
4-45	A16-28	Undisclosed development on Twin Cities site	Inadequate Project Description
4-46	A16-30	Evaluation against Galt policies	Failure to Achieve Compliance with Local Plans and Policies

A16-31	Application of foregoing comments to Alternative B	Refer to Deficiencies for Responses to Comments A16-17 to 30.
A16-32	Adequacy of Appendix G re Galt's annexation of Twin Cities site	Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-36	Evaluation against Galt policies	Failure to Achieve Compliance with Local Plans and Policies
A16-37	Evaluation against Galt policies	Failure to Achieve Compliance with Local Plans and Policies
A16-38	Evaluation against Galt policies	Failure to Achieve Compliance with Local Plans and Policies
A16-39	Evaluation against Galt policies	Failure to Achieve Compliance with Local Plans and Policies
A16-43	Exclusion of Galt policies (zoning and development codes)	Failure to Achieve Compliance with Local Plans and Policies
A16-46	Clarification re Galt wastewater system	Failure to Achieve Compliance with Local Plans and Policies Failure to Defer to Cooperating Agency
A16-47	Exclusion of info re Galt solid waste services	Failure to Achieve Compliance with Local Plans and Policies Failure to Defer to Cooperating Agency. Note - Intentionally excluding available information deprives the public and decision-makers of relevant information. This is particularly true when a Cooperating Agency determines the info is needed.
A16-48	Exclusion of info re County law enforcement services	Evaluates the Impacts of the Alternatives against an Improper Baseline Failure to Achieve Compliance with Local Plans and Policies. Note - Public safety impacts cannot fairly or fully be evaluated and/or mitigated without information about law enforcement response times.

A16-49	Exclusion of info re Galt amenities	Failure to Achieve Compliance with Local Plans and Policies. Intentionally excluding available information deprives the public and decision-makers of relevant information. This is particularly true when a Cooperating Agency determines the info is needed.
A16-51	Exclusion of Galt policies (General Plan)	Failure to Achieve Compliance with Local Plans and Policies. See Notes re A16-49.
A16-52	Galt's annexation of Twin Cities site and commercial development	Improper Inclusion of Infeasible Alternatives A, B & C Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-53	Unclear significance criteria	Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-54	Description and analysis of fill quantities	Failure to address specific comment. The extensive grading necessary for the project is dismissed as insignificant because the site historically has occurred. If this were a legitimate basis no grading would ever be viewed as significant except on raw land.
A16-55	Analysis re geology and soils	Failure to address specific comment. See Notes re A16-54
A16-56	Wastewater disposal analysis (Option 1)	Inadequate Project Description Improperly Deferred Mitigation
A16-58	Evaluation of wastewater disposal (Option 1)	Inadequate Project Description Improperly Deferred Mitigation
A16-59	Evaluation of wastewater disposal (Option 1)	Inadequate Project Description Improperly Deferred Mitigation
A16-60	Water and wastewater storage (Option 1)	Inadequate Project Description Improperly Deferred Mitigation

A16-61	Regulatory oversite of WWTP	Inadequate Project Description Improperly Deferred Mitigation
A16-62	Analysis of off-site wastewater disposal impacts	Inadequate Project Description Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-63	Analysis of off-site wastewater disposal impacts (Option 2)	Inadequate Project Description Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-64	Analysis of off-site wastewater disposal impacts (Option 2)	Inadequate Project Description Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-65	Analysis of off-site wastewater disposal impacts (Option 2)	Inadequate Project Description Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-66	Analysis of off-site wastewater disposal impacts (Option 2)	Inadequate Project Description Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-67	Analysis of water supply (construction)	Inadequate Project Description Improperly Deferred Mitigation
A16-68	Analysis of water supply (groundwater)	Inadequate Project Description Improperly Deferred Mitigation
A16-69	Analysis of water demand	Inadequate Project Description Improperly Deferred Mitigation
A16-70	Analysis of water demand (fire protection)	Inadequate Project Description Improperly Deferred Mitigation

A16-71	Analysis of water demand (agricultural uses)	Inadequate Project Description Improperly Deferred Mitigation
A16-72	Analysis of water supply (Option 1)	Inadequate Project Description Improperly Deferred Mitigation
A16-73	Evaluation of wastewater disposal (Option 1)	Inadequate Project Description Improperly Deferred Mitigation
A16-74	Analysis of water supply	Inadequate Project Description Improperly Deferred Mitigation
A16-75	Analysis of water demand	Inadequate Project Description Improperly Deferred Mitigation
A16-76	Analysis of water supply (Option 2)	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Inadequate Project Description
A16-84	Galt's annexation of Twin Cities site and commercial development	Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-86	Fiscal effects	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-87	Fiscal effects	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site. Note - The FEIS requires mitigation to offset public service costs of the project on the City and relies on the MOU which no longer is enforceable.
A16-89	Improper quantification of economic impacts	Evaluates the Impacts of the Alternatives against an Improper Baseline. Note - The FEIS fails to capture the revenue that will be lost by Galt because it doesn't analyze a scenario where the Twin Cities Site is annexed.
A16-90	Fiscal effects	Evaluates the Impacts of the Alternatives against an Improper Baseline See Note re A16-89.
A16-91	Development on southern portion of the site	Evaluates the Impacts of the Alternatives against an Improper Baseline See Note re A16-89.

A16-92	Improper quantification of economic impacts	Evaluates the Impacts of the Alternatives against an Improper Baseline Note - This response is misleading in that it suggests a fiscal effects analysis of losing the revenue from the Twin Cities Site was done in compliance with the CEQ regulations. As described in our letter, the Alternative G (No Action) analysis is not correct. Note - Note – Had the FEIS accounted for annexation, it would have then acknowledged that the property taxes, sales taxes and other revenue it would take from the Twin Cities Site in a No Action Alternative would be lost in the Alternatives A, B and C in which the land is taken into trust.
A16-94	Galt's annexation of Twin Cities site and commercial development / baseline	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-95	Fiscal effects	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-96	Fiscal effects	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-97	Socioeconomic impacts cumulative	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Evaluates the Impacts of the Alternatives against an Improper Baseline
A16-99	Law enforcement analysis	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-100	Law enforcement analysis	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-101	Crime impacts	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-102	Crime impacts	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-104	Crime impacts	Inadequate Project Description
A16-113	Land use impacts	Failure to Achieve Compliance with Local Plans and Policies Improperly Deferred Mitigation
A16-114	Land use impacts	Failure to Achieve Compliance with Local Plans and Policies Improperly Deferred Mitigation
A16-115	Land use impacts	Failure to Achieve Compliance with Local Plans and Policies

A16-116	Exclusion of Galt policies (General Plan)	Failure to Achieve Compliance with Local Plans and Policies
A16-117	Land use impacts	Failure to Achieve Compliance with Local Plans and Policies
A16-118	Exclusion of Galt policies (General Plan)	Failure to Achieve Compliance with Local Plans and Policies
A16-124	Impact to Galt public services	Failure to address specific comment. Note - This response ignores the impact casino employees and their families would have on City public services.
A16-125	Water Supply analysis (Option 2)	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Inadequate Project Description
A16-126	Wastewater service analysis (Option 2)	Inadequate Project Description Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-127	Law Enforcement analysis	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site
A16-129	Exclusion of Galt policies (Noise level thresholds)	Failure to Achieve Compliance with Local Plans and Policies
A16-130	Exclusion of Galt policies (Noise level thresholds)	Failure to Achieve Compliance with Local Plans and Policies
A16-131	Aesthetic impacts analysis	Failure to Achieve Compliance with Local Plans and Policies Note - It is disingenuous to suggest that because there are small commercial developments not exceeding two stories every mile or so along the highway corridor that a 12 story hotel and casino would not have any aesthetic impact.
A16-132	Aesthetic impacts analysis	Failure to Achieve Compliance with Local Plans and Policies See note re A16-131.

A16-133	Exclusion of Galt policies (inaccurate General Plan consistency analysis)	Failure to Achieve Compliance with Local Plans and Policies Failure to address specific comment Note – This is an example of the analysis ignoring City policies in some instances and acknowledging them in others. Here the Galt policies are interpreted (with no deference to the City's own interpretation) in isolation focusing only on land use types without reference to GP as a whole which promotes a small town community.
A16-134	Exclusion of Galt policies (Zoning)	Failure to Achieve Compliance with Local Plans and Policies
A16-135	Undisclosed development on Twin Cities site (sign component)	Inadequate Project Description Failure to Achieve Compliance with Local Plans and Policies
A16-136	Undisclosed development on Twin Cities site (sign component)	Inadequate Project Description Failure to Achieve Compliance with Local Plans and Policies
A16-137	Exclusion of Galt policies (height restrictions)	Failure to Achieve Compliance with Local Plans and Policies
A16-138	Aesthetic impacts analysis	Failure to Achieve Compliance with Local Plans and Policies Note – The FEIS acknowledges that Galt found that a much smaller scale development over more acreage that converted ag to commercial/industrial would be a significant and unavaoidable impact on visual resources in its General Plan EIR. Relying on this to somehow reach the conclusion that converting ag land to a 275 foot tall, 12 story hotel and casino would not also have significant and unavoidable visual impacts is illogical. Ignores reality and is another example of the BIA failing to defer to the local expert.
A16-139	Aesthetic impacts analysis	Failure to Achieve Compliance with Local Plans and Policies
A16-140	Aesthetic impacts analysis	Inadequate Project Description Failure to Achieve Compliance with Local Plans and Policies Failure to address specific comment Note - Earth tones and native building materials cannot legitimately be characterized as a panacea for large scale development that does not exist anywhere else in the region.

A16-142	Growth inducement (Highway interchange)	Failure to address specific comment Note - The response ignores the reality that the addition of a $30M interchange will involve new and/or greatly increased access to an area. Thus using BIA's own definition, this is growth inducing and should be analyzed.
A16-143	Undisclosed development on Twin Cities site	Inadequate Project Description Failure to address specific comment
A16-145	Evaluation against Galt policies (development codes)	Failure to Achieve Compliance with Local Plans and Policies Improperly Deferred Mitigation Note – This response recognizes that the Tribe agreed to develop land generally consistent with county and city codes, but this is not binding. To rely on that assumption as part of your evaluation of impact significance, the BIA must make it part of the project or a mitigation. Otherwise there could be a bait and switch, as the EIS itself acknowledges local agencies will only get what they can negotiate.
A16-147	Evaluation against Galt policies	Failure to Achieve Compliance with Local Plans and Policies
A16-151	Undisclosed development on Twin Cities site	Inadequate Project Description
A16-152	Mitigation measures are vague and unenforceable	Improperly Deferred Mitigation Note – See 40 CFR 1502.2 and 40 CFR 1508.20 .
A16-153	Mitigation measures are vague and unenforceable (water resources, air quality)	Improperly Deferred Mitigation
A16-154	Mitigation measures are vague and unenforceable	Improperly Deferred Mitigation

A16-155 to A16-214	Mitigation measures	Improper Reliance on a Terminated Mitigation Agreement at Twin Cities Site Failure to Meet the Standards of a TEIR or TPED Failure to Achieve Compliance with Local Plans and Policies Improperly Deferred Mitigation Note – The Response groups City's Comments A16-155 to A 16-214 and says these mitigation measures "rely on local and state preferences and criteria; involve off-site actions that are not within the jurisdiction of the Tribe and are therefore potentially infeasible; and/or duplicate existing measures (counter to criteria set forth in 40 CFR 1506.2)." Discuses using federal not local standards per 40 CFR 1508.20. The analysis is contradictory because it also describes the Tribe's commitment to working cooperatively with local agencies and agreeing to develop in a manner "that is generally consistent with the County and the City municipal codes."
A16-231	Undisclosed development on Twin Cities site	Inadequate Project Description
A16-243	Deference to Cooperating Agency and BIA meeting	Failure to defer to Cooperating Agency. Note – The City requested meetings on several occasions, including at the public comment period and in our comment letter on the DEIS. To suggest otherwise or imply that a meeting did not occur based on the City's inaction is inappropriate.

Comment Letter 5

From: **EG Grasp** <eg.grasp@gmail.com>
Date: Mon, Jan 9, 2017 at 9:25 PM
Subject: FEIS Comments, Wilton Rancheria Fee-to-Trust and Casino Project
To: john.rydzik@bia.gov
Cc: chad.broussard@bia.gov, Arvada.Wolfin@bia.gov, sara.drake@doj.ca.gov, joe.dhillon@gov.ca.gov, amy.dutschke@bia.gov

January 9, 2017

Mr. John Rydzik

Bureau of Indian Affairs,

2800 Cottage Way

Sacramento, Ca 95825

john.rydzik@bia.gov

RE: FEIS Comments, Wilton Rancheria Fee-to-Trust and Casino Project

Mr. Rydzik,

5-1 This is to comment on the FEIS for the above referenced project. Elk Grove GRASP is a group of active Elk Grove residents who stay abreast of the issues impacting our city and have continually participated in city meetings, hearings, and public forums to be engaged in the process of decision making. Elk Grove Grasp was alarmed by the release of a FEIS for a site that was originally planned in Galt, without the benefit of a new application in which the Elk Grove Residents would engage in the process. It was the absence of a new application and the sudden release of this FEIS that is suggestive of a rush to process without engaging the majority of Elk Grove citizens and business interests. This is further supported as no meeting in the City of Elk Grove was held by your agency to address concerns and respond to questions of the citizens and business community

5-1 cont.

residing here. The process was not transparent with the people of Elk Grove, as many believed the primary site for the casino was the Galt area as was the focus in the public notice and the DEIS.

5-2

In describing the environmental effects "furthermore the mall site is partially developed and substantial development is present to the east of the mall site. (Attachments 1, 2) The description of the development to the east of the mall in the FEIS fails to mention the Suburban Propane storage tanks. Suburban Propane as well as local residents have opposed increased densities surrounding the tanks due to the safety hazard the tanks pose. (Sacramento Bee Letters to the Editor 2002, 2004)

5-3

Elk Grove Zoning Code referenced states: the zoning code is adopted to protect and promote the public health, safety, convenience, prosperity and general welfare of residence and business in Elk Grove. In previous land use approvals and decisions the city council has ignored the voiced concerns of residents and Suburban Propane regarding increased densities surrounding the propane tanks and railroad. This is in direct conflict with the "safety" and general welfare of residents and businesses. Furthermore, with the pending Sphere of Influence applications, Suburban Propane and Elk Grove Grasp have submitted comments opposing increasing density around the propane storage tanks. (Attachments 3, 4, and 5)

A February 2015 Report prepared by Northwest Citizen Science Initiative entitled "Portland Propane Terminal" discussed large propane facilities inside urban areas. This report discussed and referenced the Propane Tanks located in Elk Grove. The report describes one credible scenario had the 1999 terrorist plot not been stopped by the FBI. Many authorities are recommending and evacuation zone of at least 2.6 miles based on the conclusion of the report from the collected data and the ALOHA source point (page 18 of the report). The City of Elk Grove dismisses the risks of the propane storage tanks, approving projects based on an outdated study and 2004 Court of Appeals decision. The BIA must not dismiss the previous history nor the present concerns of Elk Grove residents and Suburban Propane and to do so is negligent when one considers recent threats and attacks on our nation.

5-4

The conclusions supported and found in the FEIS did not address the cumulative impacts of the project in relationship to the surrounding properties. The FEIS and information regarding Land Use compatibility as stated is absent discussion of Suburban Propane Tanks. The casino projects impacts differ from the mall. A casino and mall are

5-4 cont.

significantly different projects with one example being the casino will have out of town guests staying overnight. The casino project will have twenty-four activity.

5-5

When considering placement of the casino at the site it creates a credible risk to the safety of the casino employees, residents, visitors, and out of town guests and this must be addressed, therefore a current safety study, traffic study, and air quality study must be completed. The City of Elk Grove's pending General Plan update must be included along with the Elk Grove Zoning Code when evaluating this site.

5-6

In describing areas that would be affected by the planned casino project it makes mention of Sterling Meadows, Hampton Oaks, Elk Grove High School, Markofer School, Methodist Hospital and Kaiser Permenante Offices. It fails to include other approved housing projects under construction, and near completion along with the schools nearby: Cosumnes Oaks High School, Elizabeth Pinkerton Middle School, and the Cosumnes College Satellite Campus, and Elk Grove Regional Park.

5-7

The FEIR in citing general land use designations of Elk Grove does not address the numerous general plan amendments and rezones approved by the city. It also makes no reference of the city's general plan update initiated in 2015(City of Elk Grove Web site Attachments 6-7). Therefore, it is known changes are currently underway and the surrounding property as described in the FEIS is outdated and not accurate. The land use description of Alternative F cited in the FEIS neglects to discuss or reference the current applications for development which will increase the density surrounding the proposed mall site.

The FEIR is incomplete in its assessment of Alternative F as outlined by the comments and attachments provided. Therefore, we request denial of this FEIR and request a new application be submitted, and local public outreach be conducted in Elk Grove.

Sincerely,

Paul Lindsay,

Lynn Wheat

Elk Grove GRASP

Cc

Chad Brouusard: chad.broussard@bia.gov

Amy Dutschke: amy.dutschke@bia.gov

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Sara Drake: sara.drake@doj.ca.gov

Google Maps

Imagery ©2016 Google, Map data ©2016 Google 500 ft

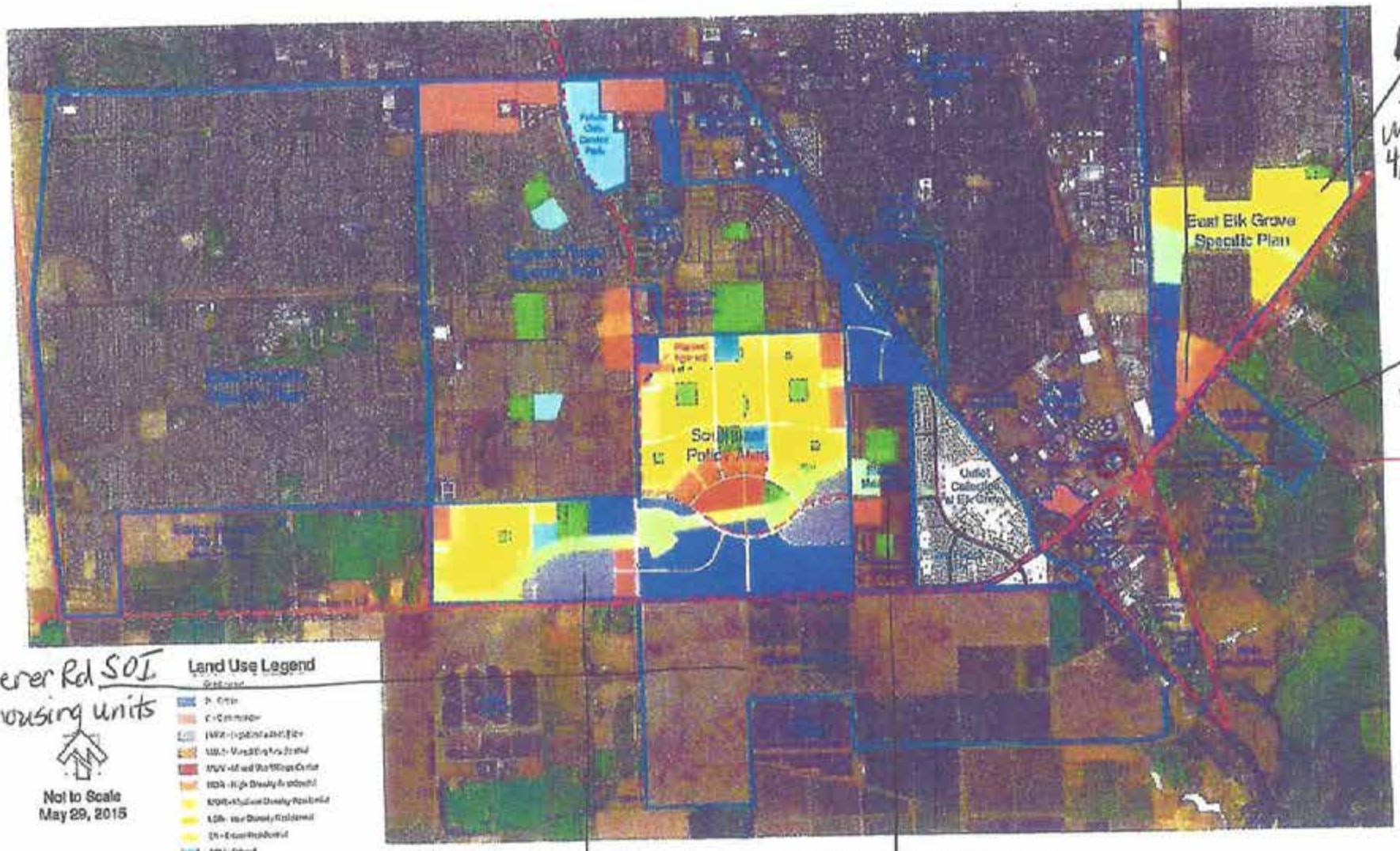
Health Net Federal Services

3/4 mile from tank to casino site

1/2 mile from soccer field to tank

Triangle Area

Area-Wide Exhibit



8/22/14 Jr housing units from 4,300 - 4513

8/2014 City purchased

Propane Tanks

Kammerer Rd SOI
5,000 housing units

Not to Scale
May 29, 2015

PROJECT NAME: Kammerer/99 Sphere of Influence Amendment, City of Elk Grove

SEPA - 1200 Acres
4,790 residential

Sterling meadows 200 Acres
984 Single family 200 multifamily

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April 2, 2016

VIA FACSIMILE AND EXPRESS MAIL
Don.Lockhart@saclafco.org

Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, CA 95814-2836
Attn: Mr. Don Lockhart, AICP, Assistant Executive Officer

Re: Suburban Propane's Opposition to the Proposed Kammerer/Highway 99 Sphere of Influence Amendment.

Suburban Propane submits the following written response to the Notice of Preparation of a Draft Environmental Impact Report for the proposed Kammerer/Highway 99 Sphere of Influence Amendment.

The subject proposal is one of two significant proposed amendments to land use policy surrounding the Suburban Propane, Elk Grove Propane Storage Facility. The other significant proposed amendment is the proposed Sports Complex on Grantline Road, to the south and east of Suburban Propane. Suburban Propane prepared and submitted a comprehensive response to the Sports Complex proposal on March 3, 2016. One month later, the community of Elk Grove, and Suburban Propane, are facing another significant proposal which will result in changes to the community and environment which cannot be underestimated. The Environmental Impact Reports, and the two projects, should be reviewed together as the two proposals have significantly greater cumulative impact to the environment and the community, than they would, if considered separately.

History of Suburban Propane's Elk Grove Storage Facility

Suburban Propane, Elk Grove, is a refrigerated propane storage facility which stores approximately 24,000,000 gallons of propane. Propane is transported to the facility via truck and rail with a predominate percentage of product arriving and departing the facility via truck transport. As many as 55 trucks and up to eight railcars will come into the plant during the day within a 24-hour period.

The property for the facility was selected in 1969 and propane was first stored on site in 1971. The facility has operated on an around-the-clock, 365 days per year basis since that time. The facility ships propane to other states and on occasion to Canada and Mexico. A significant percentage of the total propane sold in the State of California comes through, and is stored at the Suburban Propane facility.

The Suburban Propane site was selected for its convenient access to a major rail route, easy access to both I-5 and SR-99 as well as a number of east/west highways. The zoning has always been heavy industrial, (M-2) and Suburban Propane has historically been surrounded by a number of large heavy industries, including Georgia Pacific, Willamette Industries, Paramount Petroleum, The Henry Company and Concrete, Inc. Heavy industry has grown significantly around Suburban Propane over the past 30 years. This growth has been propelled by easy rail and highway access and zoning compatible with heavy industry.

During that same time, there has been tremendous residential growth in and around the City of Elk Grove. Zoning in areas around the plant have been changed, most recently in 2006. Those changes allowed for denser development and residential development into what was once considered to be a one mile protected zone around Suburban.

In Suburban's 46 years of plant operation there has never been an accident on site. Suburban utilizes state of the art security at its facility in recognition of the fact that not all potential dangers at the plant come from within the facility. In 1999 Suburban became the target of two unsophisticated terrorists, who have since been convicted of felonies including intent to use a weapon of mass destruction at the facility. While no events occurred at the plant related to terrorism, the incident sparked a further investigation into the potential of off-site consequences from an accident at Suburban Propane.

It is difficult to understand, 16 years later, that the mood in the community was charged and volatile and public officials and Suburban were held accountable by the community with respect to allowing potentially inappropriate development in close proximity to the facility. Ironically, the proposed amendment to the Sphere of Influence will allow the development of up to 5,000 dwelling units and allegedly put 20,000 new employees in close proximity to the Suburban facility. This is by far the largest proposed development in close proximity to Suburban Propane in the history of the propane storage facility and in the short history of the City of Elk Grove. While the mood in the community may have changed and City officials have changed and/or forgotten, the risks have not changed and City leaders must take into consideration the proximity of 24 million gallons of propane to 5,000 residential units and 20,000 new employees on the proposed site.

While the economy languished from 2007 until very recently, there was little economic incentive and, therefore, very little pressure to develop the agricultural areas around Suburban Propane. With an recovering economy, developers, and others, see opportunity for growth and profit.

There is an obvious pattern to develop the open space areas in and around the southern section of Elk Grove on both the east and west sides of Highway 99, essentially the open space buffer zone around Suburban Propane's storage facility.

Suburban Propane has consistently objected to changes in zoning around its facility which seek to modify the zoning of the surrounding area from agricultural, open space, heavy industry and light industry, to residential or to any other zoning designation which reduces the buffer area around the plant and which foreseeably will bring large numbers of people into close proximity to the propane storage facility. The subject proposal envisions up to 5,000 residential units and the allure of up to 20,000 jobs in the area. If we assume an average household of 3 persons per unit, there will be 15,000 residents in the area at night and up to 20,000 persons working in the area during the day. These figures are significant and represent a population density exposed to risk that cannot be mitigated in the event of a catastrophic event at the propane storage facility.

Proposed Development and the Applicants

The applicants seeking the Amendment to the Sphere of Influence are the Kamilos Companies, LLC and Feletto Development Company. Mr. Martin Feletto is an attorney/developer and the Kamilos Companies website was not up at the time of this writing. Feletto is a small development company. It appears that Kamilos is also small. However, the scope of the proposed development is impressively large. The developers are asking for modifications to land use policy which will change the southern boundary of Elk Grove to such an extent that the area will be unrecognizable. Do not expect the developers to protect the citizens of Elk Grove. Their motivation is, understandably, profit. They are "for profit" companies and their interests are not the same as the interests of the persons who will eventually populate the development. The allure of the development to the City of Elk Grove is the promise of 20,000 jobs and an increased tax base from 5,000 new residential units.

The problem is that the area of the proposed development is too close to the heavy industry of Elk Grove, and specifically, too close to 24,000,000 gallons of refrigerated propane storage.

For years, the Fire Chiefs of Elk Grove voiced their strong opposition to any residential or dense development within one mile of Suburban Propane. Following the failed criminal attempt at Suburban's Elk Grove facility, existing fire chief Meaker reduced the radius around the facility from one mile to ½ mile. However, Meaker, and his successors, continued to advise against dense development within a mile of the facility. The County of Sacramento, the lead agency on all projects submitted for review prior to July 2000, rarely followed the advice of "staff" or the leaders of fire and police services and allowed such development to occur within the one mile radius. In our opinion, a bad precedent was established by allowing dense development and residential development (i.e. Hampton Village) and Triangle Point within that "protected" one-mile radius around the Suburban Propane facility.

Land Use Issues

The Sacramento Local Agency Formation Commission, and by proxy, the City of Elk Grove, have the opportunity to enforce well reasoned land use principles and protect the community within close proximity of the Suburban Propane facility and other heavy industry. The vision and the scope of the proposed project are fantastic for a different location. For the proposed location, the proposed development is a mistake.

Unfortunately, the CEQA analysis can be narrowed to the extent that one can argue that there is no requirement for the analysis to include a review of threat to the development from outside the development itself, such as a threat from Suburban Propane. It is the view of Suburban Propane that a meaningful CEQA analysis requires, at the least, under the heading of Hazards and Hazardous Materials, an analysis of the effect that a catastrophe at Suburban Propane will have on the proposed development.

There is already a large body of experts who have analyzed the consequences of a catastrophic event at Suburban Propane's storage facility. While all are in agreement that the "risk" of such an event is extremely low from an accident, the greater concern should focus on an intentional incident at the plant.

Past Expert Analysis

There have been numerous attempts to develop land, specifically Lent Ranch, immediately adjacent to this proposed project,. The failure to develop Lent Ranch as originally proposed seems to have been influenced more by a poor economy than any analysis provided by the experts who studied and provided their opinions regarding the exposure to the Lent Ranch site from a catastrophic event at Suburban Propane.

Numerous reports were prepared by experts, some of whom were neutral in their analysis, while others were retained by the developer. For the proposed Lent Ranch Mall, it appeared that the City of Elk Grove was influenced by a single report with respect to "Major Hazardous Material Handling Facilities in the Planning Area." The report in question was the "Review of Suburban Propane Hazards Analysis Studies and Evaluation of Accident Probabilities" by Quest Consultants (May 2003). Quest Consultants were initially retained by Lent Ranch for the purpose of documenting that the outdoor mall could be built in close proximity to Suburban Propane and Georgia Pacific. In August of 2000 Quest Consultants reported that the mall was outside the zone of potential hazards from a worst case scenario at the Suburban Propane and Georgia Pacific facilities.

Despite the fact that Quest Consultants were retained directly by a developer whose sole interest was in ensuring that the development proceed, the City of Elk Grove unilaterally rejected the

reports of all other consultants, including the report prepared by the Joint Task Force, paid for by the County of Sacramento, in an effort to support its Draft EIR on the General Plan.

The City of Elk Grove in the Draft General Plan stated in conclusory fashion at page 4.4-28 that:

> "Based on technical review of these reports Quest determined that the results of the Dames and Moore reports do not appear to be accurate as it is not consistent with technical studies and large-scale experimental data associated with propane releases. Thus, the conclusions of the Dames and Moore reports regarding these events are not considered appropriate for determination of offsite hazards."

The fact that the City of Elk Grove relied solely on a consulting firm that was found by and eventually retained by the developer of the largest development of real property in the City of Elk Grove should have been cause for concern. What is even more disturbing was that the City did not consider any information, expert reports, studies or agency findings that were contrary to the findings of the Quest Consultants report.

With respect to the then proposed Lent Ranch Mall it was a concern to Suburban Propane that all other consultants were summarily dismissed by Quest Consultants and therefore by the City of Elk Grove. Other consultants, Jukes and Dunbar, retained by the County, John Jacobus retained by Suburban Propane, Dr. Koopman retained by the FBI, did not agree with the findings of Quest Consultants. However, their findings were mentioned only in passing in the Draft General Plan and clearly there was no consideration given to those experts in the Draft General Plan. The fact that experts retained by the County of Sacramento, in 2000 and 2003 felt that the proposed Lent Ranch Mall was ill advised, should be important here. The Sphere of Influence Amendment has as its subject land that is adjacent to the proposed site of the Lent Ranch Mall.

Two reports, Jukes and Dunbar (1999) and Dr. John Jacobus (1999) comprehensively analyzed potential accident scenarios. Both reports concluded that the area of the proposed mall, 3,500 feet from the Suburban Plant and even closer to the now defunct Georgia Pacific Plant, would be adversely impacted by an accident at the either facility. There was no competent data that suggested otherwise.

Studies Regarding Off-Site Consequences from an Incident at Suburban Propane

There have been a number of studies performed related to accident potentials at Suburban Propane. The County of Sacramento commissioned the first study. The County hired the engineering firm of Dames & Moore in 1992 to study accident consequences relating to an incident at Suburban Propane. That report concluded that the hazards associated with an

unconfined vapor cloud explosion and boiling liquid expanding vapor explosions presented the greatest risk to any potential off-site population within a 1.24 mile radius of the facility. The proposed Sports Complex is considerably closer.

The Lent Ranch developers then hired Dames & Moore to again evaluate the hazards presented by an accident at Suburban Propane. Based on new data relating to the explosive yield of propane, Dames & Moore concluded that the hazards from an unconfined vapor cloud explosion presented a risk to an off-site population only to approximately 2,000 feet away. This report, commissioned by the developers of Lent Ranch Marketplace, made a finding which would not preclude development of the mall based on safety criteria.

Suburban Propane hired a well-respected propane expert, Dr. John Jacobus to study the consequences of worst case scenarios from an accident at Suburban. The county of Sacramento hired two experts, Jan Dunbar and Wally Jukes to study worst case scenarios at the plant. Independently, the three experts concluded that a worst case accident would have off site consequences up to a mile from the plant. While it can be argued that Dr. Jacobus is not objective because of the fact that his work was paid for by Suburban Propane, the same cannot be said of Jukes and Dunbar. The County, not a developer or an interested party in the outcome of the findings, paid for their work. Jukes, Dunbar and Jacobus all concluded that worst case accident scenarios were sufficiently severe to call for a moratorium on all residential building and dense development within one mile of Suburban Propane.

- 1992 Dames & Moore report Paid for by County of Sacramento
  Finding: Significant off-site consequences up to 1.24 miles

- 1998 Dames & Moore report Paid for by Lent Ranch Developers
  Finding: No significant off-site consequences beyond 2,000 feet.

- 1999 Jacobus report Paid for by Suburban Propane
  Finding: Significant off-site consequences up to 1 mile

- 1999 Jukes and Dunbar report Paid for by County of Sacramento
  Finding: Significant off-site consequences up to 1 mile

In response to the two reports generated in 1999, the developers of Lent Ranch Marketplace hired the firm of Quest Consulting. Quest was retained to once again examine the consequences of off-site hazards from an accident at Suburban Propane. The City of Elk Grove then hired the Quest firm as its consultant on the Lent Ranch project.

Importantly, the fact that the City of Elk Grove hired Quest presented the appearance of impropriety and appeared to Suburban Propane to be a clear conflict of interest. The City

Council owes a fiduciary duty to its constituents. The City hired the developer's expert in what appeared to Suburban to be a clear breach of the fiduciary duty it owed to the public. That action called into question the motives and objectivity of that City Council. While there may not be any collusion present, the appearance of the impropriety existed and was not addressed.

How could the City independently evaluate this serious issue if it retained the developer's expert? With respect to Lent Ranch the City Council should have turned to the two individuals, Dunbar and Jukes, who were not tainted by affiliation to any interested party and were not tainted by bias or motive. They provided a truly objective analysis of off-site consequences. That report, prepared in anticipation of hearings on the Lent Ranch project, is equally applicable and useful to a consideration of the proposed amendment. I will reiterate, because of its importance, that experts retained by the County of Sacramento opined that there should be a moratorium on all residential development within one mile of the Suburban Propane facility.

The County of Sacramento, through the Sacramento Local Agency Formation Commission, will hopefully be more objective and exacting in its review of this proposed Amendment than was the City of Elk Grove when reviewing the Lent Ranch Mall. The evidence should compel an objective fact finder to the conclusion that it does not constitute prudent land management policy to allow the development of 5,000 residential units, which will place 15,000 residents and an additional 20,000 workers in close proximity to the propane facility.

Based on all of these factors, Suburban respectfully requests that the proposed amendment be rejected and that the record reflect that competent experts previously retained by the County of Sacramento concluded over 10 years ago that it is ill advised to allow any development which bring dense populations within 1 mile of Suburban's facility. The findings of those experts are equally applicable in this instance.

Prior Oppositions by Suburban, Applicable Here

Suburban Propane opposed the 2006 Waterman Park project which was the predecessor to the proposed Triangle Point 75 Project. Additionally, in 2006 Suburban Propane opposed the amendment to the General Plan and Specific Plan which allowed for the potential development of the Triangle Point 75 acre parcel with residential and high density residential components. Because of the close proximity of those proposed developments to Suburban Propane, the density of the proposed housing, as well as the health and safety issues such downwind proximity created, Suburban unequivocally opposed the residential and senior citizen components of the project.

Those oppositions should be read in their entirety by this agency to give context to the current opposition to the proposed Amendment. The arguments made by Suburban and by highly qualified and independent experts, including those retained by the County of Sacramento are equally valid today in opposition to the current project and are not repeated in this opposition.

As stated above, the subject amendment should be reviewed in tandem with the proposed Sports Complex project as the cumulative impact is much greater than impacts from one project. The impacts of the projects will be cumulative, the analysis of the projects should be cumulative as well.

The risk analysis that was relied upon by the representatives of the City of Elk Grove in 2006 to amend the general and special plans and to approve the Waterman Park Project failed to take into account the possibility of intentional acts by criminal elements which have as their goal the creation of a catastrophic event at the Suburban Propane facility. Unfortunately, the fact of intentional acts have only become more apparent since that time. From the standpoint of an industrial accident, this plant is unparalleled in safety mechanisms and redundancies which lower risks from accidents to that of statistical insignificance. However, neither Suburban Propane, nor any other governmental agency including the Sacramento County Sheriff's Department, the Elk Grove Fire Department, the Elk Grove Police Department, the Federal Bureau of Investigation, the EPA and the Department of Homeland Security can guarantee that there will never be an intentional act which impacts the facility. These agencies, excluding DHS, were involved with the Suburban Propane facility beginning in 1999 following the attempted threat against the facility. With the passage of the Homeland Security Act by Congress in November 2002, the Department of Homeland Security formally came into being as a stand-alone, Cabinet-level department to further coordinate and unify national homeland security efforts, opening its doors on March 1, 2003. The involvement of DHS with Suburban Propane's facility began immediately upon its creation. All agencies have given Suburban Propane high marks for its safety and security.

While Suburban Propane is committed to safety, it recognizes that certain developments in close proximity to its facility are incompatible. With respect to Triangle 75, that proposal to place senior citizens who were not fully ambulatory, and who may not have strong cognitive skills immediately adjacent to the Suburban Propane facility was not in best interests of those potential residents or in the best interests of the community. With respect to the Sports Complex, having a youth soccer tournament with over 250 teams in attendance, practically across the street from Suburban is inappropriate. Having the County Fair at that location seems unimaginable because of the risk involved. With respect to the proposed Amendment, building 5,000 residential units on the site is equally ill-advised.

Every fire chief has advised against projects which site residential housing within ½ mile of Suburban Propane. County retained experts advised against building residential units within in one mile of the Suburban facility This amendment which will allow a project which places thousands of residents and thousands of employees within a mile of the facility should be rejected. The community of Elk Grove again faces a situation in which it must seek guidance and protection by its elected officials. County retained experts spoke out against a proposed project immediately adjacent to the proposed project. Those experts would not approve the location of this project.

It is the position of Suburban Propane that allowing the Amendment to proceed, which will result in the significant and dense development of the property, invites an unnecessary risk because of its close proximity to the Suburban Propane facility. Any discussion of this project must focus on safety for members of this community and appropriate land use decisions that foster compatible uses. Consideration must be made of Suburban's location to the proposed property.

Closing

Suburban Propane has been responsible and consistent in its opposition to those projects which present obvious incompatibilities. This is a project which is incompatible with the 24 million gallon storage facility.

Whether outside threats to the plant are greater today than they were a decade ago is impossible to know with certainty. As a society we are certainly more aware today of continued threats to citizens and institutions from persons who wish to harm us. Today's knowledge of such acts and events almost makes us feel like we were naive in 1999 and 2001. The Sacramento Local Agency Formation Committee must seriously consider the inappropriateness of placing thousands of residents in close proximity to a facility which has the potential for significant off site consequences in the event of an untoward act.

As before, Suburban Propane respectfully urges decision makers to reject this project as proposed. What is needed is for leaders to recognize the land use incompatibility in placing thousands of residents and workers on Suburban's doorstep.

Suburban Propane has maintained an exemplary safety record at its Elk Grove facility. However, to ignore the fact that there are 24 million gallons of refrigerated propane stored nearby is not in the public interest..

Very truly yours,

LAW OFFICE OF JOHN R. FLETCHER

John R. Fletcher

JRF/mic

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November 20, 2015

VIA E-MAIL AND UPS:

Peter.Brundage@saclafco.org

Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, CA 95814-2836
Attn: Mr. Peter Brundage, AICP, Executive Officer

Re: Suburban Propane's Response to Notice of Preparation of a Draft Environmental Impact Report for the Elk Grove Sphere of Influence Amendment and Multi-Sport Park Complex Project

Suburban Propane submits the following written response to the Notice of Preparation of a Draft Environmental Impact Report for the Elk Grove Sphere of Influence Amendment and Multi-Sport Park Complex Project.

History of Suburban Propane's Elk Grove Storage Facility

Suburban Propane, Elk Grove, is a refrigerated propane storage facility which stores approximately 24,000,000 gallons of propane. Propane is transported to the facility via truck and rail with a predominate percentage of product arriving and departing the facility via truck transport. As many as 55 trucks and up to eight railcars will come into the plant during the day within a 24-hour period.

The property for the facility was selected in 1969 and propane was first stored on site in 1971. The facility has operated on an around-the-clock, 365 days per year basis since that time. The facility ships propane to other states and, on occasion, to Canada and Mexico. ,A significant percentage of the total propane sold in the State of California is stored at the Suburban Propane facility.

The Suburban Propane site was selected for its convenient access to a major rail route, easy access to both I-5 and SR-99 as well as a number of east/west highways. The zoning has always been heavy industrial, (M-2) and Suburban Propane has historically been surrounded by a number of large heavy industries, including Georgia Pacific, Willamette Industries, Paramount

Petroleum, The Henry Company and Concrete, Inc. Heavy industry has grown significantly around Suburban Propane over the past thirty (30) years. This growth has been propelled by easy rail and highway access and zoning compatible with heavy industry.

In Suburban's forty-five (45) years of plant operation, there has never been an accident on site. Suburban utilizes state of the art security at its facility in recognition of the fact that not all potential dangers at the plant come from within the facility. In 1999, Suburban became the target of two unsophisticated terrorists, who have since been convicted of felonies including intent to use a weapon of mass destruction at the facility. While no events occurred at the plant related to terrorism, the incident sparked a further investigation into the potential of off-site consequences from an accident at Suburban Propane.

It is difficult to understand, 16 years later, that the mood in the community was charged and volatile and public officials and Suburban were held accountable to the community with respect to allowing potentially inappropriate development in close proximity to the facility. Ironically, there isn't a single mention in any discussion of the proposed project of the fact that the proposed site is approximately a half mile from Suburban's property. While the mood in the community may have changed and City officials have changed and or forgotten, the risks have not changed and City leaders must take into consideration the proximity of twenty-four (24) million gallons of propane across the street from the proposed ball fields. Certainly not all members of the public have forgotten. I have received written requests for Suburban Propane to oppose this project based on safety concerns.

Suburban Propane has consistently objected to changes in zoning around its facility which seek to modify the zoning of the surrounding area from heavy industry and light industry, to residential or to any zoning which reduced the buffer area around the plant and which foreseeably will bring large numbers of people into close proximity to the propane storage facility. The subject proposal envisions a stadium for nine thousand (9,000) people, sixteen (16) soccer fields, classrooms, a medical facility and hopes to host the annual Sacramento County Fair. It is difficult to envision an area anywhere else in the City which will have a denser population when events are in progress. In the event that the County Fair is hosted on this site, it is forseeable that there will be fireworks as they are a part of every County Fair. It would be a colossal mistake and an invitation to disaster to have a fireworks display on this property.

Draft EIR

The City of Elk Grove seeks to amend the Sphere of Influence to accommodate a multi-sports complex and future commercial and industrial uses. The City is contemplating decisions which will determine the growth of the City and the adoption of a formal land use strategy which will serve to guide that growth over many decades. The City of Elk Grove must make those decisions based on sound land use principles while meeting its fiduciary obligation to protect the citizens of Elk Grove.

For years, the Fire Chiefs of Elk Grove have voiced their strong opposition to any residential or dense development within one mile of Suburban Propane. Following the attempt at Suburban's Elk Grove facility, existing fire chief Meaker reduced the radius around the facility from one mile to ½ mile. Meaker, and his successors, continued to advise against dense development within a mile of the facility. The County of Sacramento, the lead agency on all projects submitted for review prior to July 2000, rarely followed the advice of "staff" or the leaders of fire and police services and allowed such development to occur within the one mile radius. In our opinion, a bad precedent was established by allowing dense development and residential development (i.e. Hampton Village) and Triangle Point within that "protected" one-mile radius around the Suburban Propane facility.

Proposed Development

The proposed development is "bold" as one land use attorney has commented in the reports. The project is approximately ½ mile from Suburban's property. With sixteen (16) soccer fields, a proposed stadium designed to seat nine thousand (9,000) spectators, and intentions to hold special events including the annual Sacramento County Fair, the large number of people in such close proximity to the state's only large liquified propane storage terminal is not in Suburban's opinion, bold, it is flawed and misguided.

Land Use Issues

The City of Elk Grove has the opportunity to enforce well-reasoned land use principles and protect the community within close proximity of the Suburban Propane facility and other heavy industry. The vision and the scope of the project are fantastic for a different location. For the proposed location, it is a mistake.

While there has been no mention of the propane facility in any consideration of the multi-sport/park project, for past projects that were further away from Suburban there was considerable attention paid to the facility. Numerous reports were prepared by experts, some of whom were neutral in their analysis, while others were retained by the developer. In past projects, the City of Elk Grove has been unduly influenced by a single report with respect to "Major Hazardous Material Handling Facilities in the Planning Area." The report in question is the "Review of Suburban Propane Hazards Analysis Studies and Evaluation of Accident Probabilities" by Quest Consultants (May 2003). Surprisingly, a copy of the report was never forwarded to Suburban Propane or its representatives prior to the City Council hearing for the Lent Ranch Mall when the report was released. Quest Consultants were initially retained by Lent Ranch for the purpose of documenting that the outdoor mall could be built in close proximity to Suburban Propane and Georgia Pacific. In August of 2000 Quest Consultants reported that the mall was outside the

zone of potential hazards from a worst case scenario at the Suburban Propane and Georgia Pacific facilities.

Despite the fact that Quest Consultants were retained directly by a developer whose sole interest was in ensuring that the development proceed, the City of Elk Grove has unilaterally rejected the reports of all other consultants, including the report prepared by the Joint Task Force, paid for by the County of Sacramento, in an effort to support its Draft EIR on the General Plan.

The City of Elk Grove in the Draft General Plan stated in conclusory fashion at page 4.4-28 that:

> "Based on technical review of these reports Quest determined that the results of the Dames and Moore reports do not appear to be accurate as it is not consistent with technical studies and large-scale experimental data associated with propane releases. Thus, the conclusions of the Dames and Moore reports regarding these events are not considered appropriate for determination of offsite hazards."

The fact that the City of Elk Grove relied solely on a consulting firm that was found by and eventually retained by the developer of the largest development of real property in the City of Elk Grove was cause for concern. What is even more disturbing is that the City has not considered any information, expert reports, studies or agency findings relating to the proximity of thousands of people to the propane storage facility.

With respect to the then proposed Lent Ranch Mall it was a concern to Suburban Propane that all other consultants were summarily dismissed by Quest Consultants and therefore by the City of Elk Grove. Other consultants, Jukes and Dunbar retained by the County, John Jacobus retained by Suburban Propane and Dr. Koopman retained by the FBI did not agree with the findings of Quest Consultants. However, their findings were mentioned only in passing in the Draft General Plan and clearly there was no consideration given to those experts in the Draft General Plan. The fact that experts retained by the County of Sacramento in 2000 and 2003 felt that the proposed Lent Ranch Mall was ill advised should be important here. The proposed Sports Complex is closer to Suburban than the proposed Lent Ranch Mall.

Two reports, Jukes and Dunbar (1999) and Dr. John Jacobus (1999) comprehensively analyzed potential accident scenarios. Both reports concluded that the area of the proposed mall, thirty-five hundred (3,500) feet from the Suburban Plant and even closer to the now defunct Georgia Pacific Plant, would be adversely impacted by an accident at the either facility. There was no competent data that suggested otherwise.

Studies Regarding Off-Site Consequences from an Incident at Suburban Propane

There have been a number of studies performed related to accident potentials at Suburban Propane. The County of Sacramento commissioned the first study. The County hired the

engineering firm of Dames & Moore in 1992 to study accident consequences relating to an incident at Suburban Propane. That report concluded that the hazards associated with an unconfined vapor cloud explosion and boiling liquid expanding vapor explosions presented the greatest risk to any potential off-site population within a 1.24 mile radius of the facility. The proposed Sports Complex is considerably closer.

The Lent Ranch developers then hired Dames & Moore to again evaluate the hazards presented by an accident at Suburban Propane. Based on new data relating to the explosive yield of propane, Dames & Moore concluded that the hazards from an unconfined vapor cloud explosion presented a risk to an off-site population only to approximately two thousand (2,000) feet away. This report, commissioned by the developers of Lent Ranch Marketplace, made a finding which would not preclude development of the mall based on safety criteria.

Suburban Propane hired a well-respected propane expert, Dr. John Jacobus to study the consequences of worst case scenarios from an accident at Suburban. The county of Sacramento hired two experts, Jan Dunbar and Wally Jukes, to study worst case scenarios at the plant. Independently, the three experts concluded that a worst case accident would have off-site consequences up to a mile from the plant. While it can be argued that Dr. Jacobus is not objective because of the fact that his work was paid for by Suburban Propane, the same cannot be said of Jukes and Dunbar. The County, not a developer or an interested party in the outcome of the findings, paid for their work. Jukes, Dunbar and Jacobus all concluded that worst case accident scenarios were sufficiently severe to call for a moratorium on all residential building and dense development within one (1) mile of Suburban Propane.

- 1992 Dames & Moore report Paid for by County of Sacramento
  Finding: Significant off-site consequences up to 1.24 miles

- 1998 Dames & Moore report Paid for by Lent Ranch Developers
  Finding: No significant off-site consequences beyond 2,000 feet.

- 1999 Jacobus report Paid for by Suburban Propane
  Finding: Significant off-site consequences up to 1 mile

- 1999 Jukes and Dunbar report Paid for by County of Sacramento
  Finding: Significant off-site consequences up to 1 mile

In response to the two reports generated in 1999, the developers of Lent Ranch Marketplace hired the firm of Quest Consulting. Quest was retained to once again examine the consequences of off-site hazards from an accident at Suburban Propane. The City of Elk Grove then hired the Quest firm as its consultant on the Lent Ranch project.

Importantly, the fact that the City of Elk Grove hired Quest presented the appearance of impropriety and appeared to Suburban Propane to be a clear conflict of interest. The City Council owes a fiduciary duty to its constituents. The City hired the developer's expert in what appeared to Suburban to be a clear breach of the fiduciary duty it owes to the public. That action called into question the motives and objectivity of that City Council. While there may not be any collusion present, the appearance of the impropriety must be resolved.

How could the City independently evaluate this serious issue if it retained the developer's expert? With respect to Lent Ranch, the City Council should have turned to the two individuals, Dunbar and Jukes, who were not tainted by affiliation to any interested party and were not tainted by bias or motive. They provided a truly objective analysis of off-site consequences. That report, prepared in anticipation of hearings on the Lent Ranch project, is equally applicable and useful to a consideration of the Sports Complex.

The evidence should compel an objective fact finder to the conclusion that it does not constitute prudent land management policy to allow the development of a massive sports complex which purpose is to place thousands of our youth in close proximity to the propane facility. If the site is utilized as a County Fair site, the exposure will be to tens of thousands, if not hundreds of thousands of people at a given moment.

Based on all of these factors, Suburban respectfully requests that the proposed sports complex not be approved in its present location and that the record reflect that competent experts retained by the County of Sacramento concluded over ten (10) years ago that it was ill advised to allow any development which brings dense populations within one (1) mile of Suburban's facility. The findings of those experts are equally applicable in this instance.
Suburban Propane opposed the 2006 Waterman Park project which was the predecessor to the proposed Triangle Point 75 Project. Additionally, in 2006, Suburban Propane opposed the amendment to the General Plan and Specific Plan which allowed for the potential development of the Triangle Point 75 acre parcel with residential and high density residential components. Because of the close proximity of those proposed developments to Suburban Propane, the density of the proposed housing, as well as the health and safety issues such downwind proximity creates, Suburban unequivocally opposed those residential and senior citizen components of the project.

Those oppositions should be read in their entirety by this council to give context to the current opposition to the proposed Sports Complex. The arguments made by Suburban and by highly qualified and independent experts, including those retained by the County of Sacramento, are equally valid today in opposition to the current project and are not repeated in this opposition.

The risk analysis that was relied upon by the representatives of the City of Elk Grove in 2006 to amend the general and special plans and to approve the Waterman Park Project failed to take into account the possibility of intentional acts by criminal elements which have as the goal the creation of a catastrophic event at the Suburban Propane facility. Unfortunately, the fact of

intentional acts have only become more apparent since that time. From the standpoint of an industrial accident, this plant is unparalleled in safety mechanisms and redundancies which lower risks from accidents to that of statistical insignificance. However, neither Suburban Propane nor any other governmental agency, including the Sacramento County Sheriff's Department, the Elk Grove Fire Department, the Elk Grove Police Department, the Federal Bureau of Investigation, the EPA and the Department of Homeland Security, can guarantee that there will never be an intentional act which impacts the facility. These agencies, excluding DHS, were involved with the Suburban Propane facility beginning in 1999 following the attempted threat against the facility. With the passage of the Homeland Security Act by Congress in November 2002, the Department of Homeland Security formally came into being as a stand-alone, Cabinet-level department to further coordinate and unify national homeland security efforts, opening its doors on March 1, 2003. The involvement of DHS with Suburban Propane's facility began immediately upon its creation. All agencies have given Suburban Propane high marks for its safety and security.

While Suburban Propane is committed to safety, it recognizes that certain developments in close proximity to its facility are incompatible. With respect to Triangle 75, that proposal to place senior citizens who were not fully ambulatory, and who may not have strong cognitive skills immediately adjacent to the Suburban Propane facility was not in best interests of those potential residents or in the best interests of the community. Likewise, with respect to the Sports Complex, having a youth soccer tournament with over two hundred and fifty (250) teams in attendance, practically across the street from Suburban, seems inappropriate.

Every fire chief has advised against projects which site residential housing within ½ mile of Suburban Propane. This project proposes placing thousands of youth approximately that far from Suburban. The community of Elk Grove again faces a situation in which it must seek guidance and protection by its elected officials. Ironically, County retained experts spoke out against a proposed project even further away from Suburban Propane. Those very experts would not approve the location of this project.

It is the position of Suburban Propane that allowing the proposed sports complex in its present location invites an unnecessary risk because of its close proximity to the Suburban Propane facility. Any discussion of this project must focus on safety for members of this community and appropriate land use decisions that foster compatible uses. To date, there has been no consideration made of Suburban's location to the proposed sports complex.

Closing

Suburban Propane has been responsible and consistent in its opposition to those projects which present obvious incompatibilities. This is a project which is incompatible to the twenty-four (24) million gallon storage facility practically across the street on Grantline Road, and downwind.

Whether outside threats to the plant are greater today than they were a decade ago is impossible to know with certainty. As a society we are certainly more aware today of continued threats to citizens and institutions from persons who wish to harm us. Today's knowledge of such acts and events almost makes us feel like we were naive in 1999 and 2001. The leaders of the City of Elk Grove must seriously consider the inappropriateness of placing thousands of children downwind and next to a facility which has the potential for significant off-site consequences in the event of an untoward act.

As before, Suburban Propane respectfully urges City decision makers to reject this project as proposed. What is needed is for City leaders to recognize the land use incompatibility in placing thousands of its youth on Suburban's downwind doorstep.

Suburban Propane has maintained an exemplary safety record at its Elk Grove facility. However, to ignore the fact that there are twenty-four (24) million gallons of refrigerated propane stored nearby is not in the public interest.

Sincerely,

LAW OFFICE OF JOHN R. FLETCHER

John R. Fletcher

JRF/mic

* The EIR should not rely on outdated information from the previous Municipal Services Review submitted by the City. The EIR should clearly document attempts to obtain updates and where applicable, denote that such information is updated.

* The EIR should obtain updated information on water consumption and the ability of the service provider to serve the Project, taking into account the updated groundwater supply reporting requirements that will be required by the State.

*The EIR should include the traffic analysis of the City's Hazardous Waste Facility at full build out.

General Questions:

* Recognizing that the Project is for property that is 25% owned by the City, and 75% on private property, the taxpayers of Elk Grove would like to know if all costs to process this application by LAFCo will be proportionally shared by the affected private property owners who will benefit from this application?

Thank you for the opportunity to submit comments.

Sincerely,

Lynn Wheat

Allenya Kirby

Elk Grove Grasp
Eg.grasp@gmail.com

November 19, 2015

To: Peter Brundage, AICP, Executive Officer
Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, Ca 95814-2836

Subject: NOP of a Draft Environmental Impact Report for the Elk Grove Sphere of Influence Amendment and Multi-Sport Park Complex Project

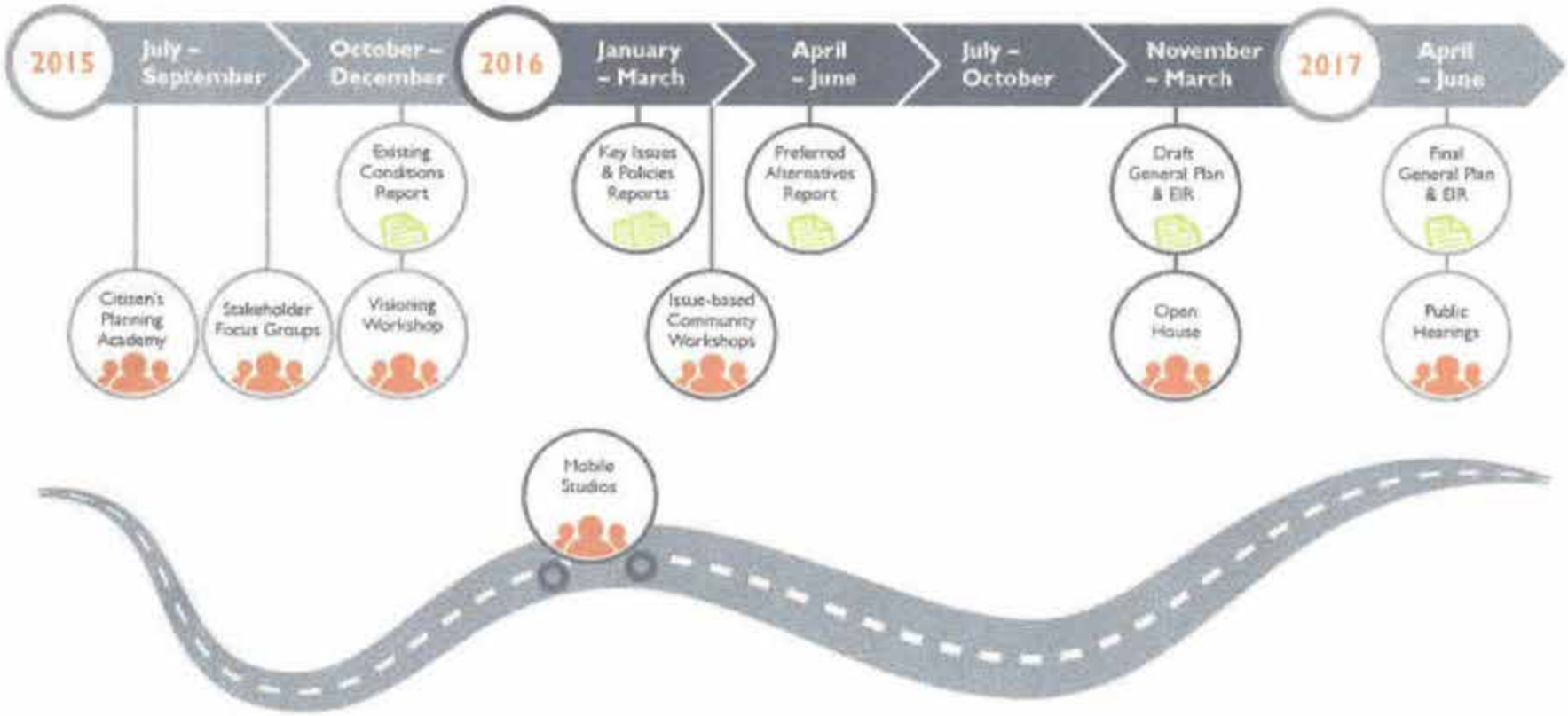
* The NOP gives the impression that 479 acres were added to the application because "Sacramento LAFCo policy discourages annexation of peninsula-shaped parcels". To base a policy simply on the shape of the annexed property as viewed on a map is difficult for the public to understand. The EIR needs to explain this LAFCo policy that essentially results in a 75% expansion of the original city application. An EIR no-project alternative needs to include only the 100-acre city-owned property, because the additional 479 acres is growth-inducing and relies on speculative zoning.

* The EIR needs to identify a baseline environmental setting that includes the proximity of the site to the propane tanks, which represent the largest above-ground storage of propane in the country, according to Suburban Propane documents.

*The EIR needs to address the hazard risk of designating public assembly uses within close proximity to approximately 22 million gallons of explosive storage tanks.

* The EIR needs to specify all federal, state, and local permits which may be required to the extent possible.

NEXT STEPS


2015
July – September
October – December
2016
January – March
April – June
July – October
November – March
2017
April – June
Citizen's Planning Academy
Stakeholder Focus Groups
Existing Conditions Report
Visioning Workshop
Key Issues & Policies Reports
Issue-based Community Workshops
Preferred Alternatives Report
Draft General Plan & EIR
Open House
Final General Plan & EIR
Public Hearings
Mobile Studios

Directly taken from the City of Elk Grove Website:

The City of Elk Grove is updating its General Plan, which lays out the community vision for the future of the City and sets a road map to get us there. It is the primary governing document that will determine future jobs, housing, and growth in our community. Since the current General Plan was adopted in 2003, the City has grown and changed considerably. Now is the time for an update.

Beginning in July 2015, the City has been engaging the community through a series of events and online workshops to arrive at a draft plan for the future. Below is a list of some of those activities. Details about these can be found on the Resources page.

- Citizen's Planning Academy
- Focus Groups
- Mobile Workshops
- Visioning Charrette
- Topic Workshops
- Issues and Considerations Papers
- Online Workshop, Listening Sessions and Map – Potential Areas of Change
- Online Workshop and Listening Sessions – Draft Alternatives for Land Use and Circulation
- City Council and Planning Commission Presentations
- Policy Topic Papers

As of August 2016, staff is working on developing a new draft land use plan for the City, as well as some key policies. The objective is to bring these materials to the City Council and Planning Commission for review and direction so that the balance of the General Plan can be prepared. Details about the upcoming presentation of these materials will be identified soon.

Resources from the Citizen Planning Academy

- A Guide to Local Planning
- Planning Healthy Neighborhoods
- Understanding the Basics of Land Use and Planning: Glossary of Land Use and Planning Terms
- Glossary of Land Use and Planning Terms: Acronyms and Abbreviations

Presentations

- Community Workshop on TRANSPORTATION
- Community Workshop on GROWTH STRATEGIES
- Community Workshop on VISIONING

- June 1, 2015 STUDY SESSION
- December 17, 2015 STUDY SESSION
- February 25, 2016 STUDY SESSION
- May 26, 2016 STUDY SESSION
- July 28, STUDY SESSION
- August 25, 2016 STUDY SESSION

Policy Topic Papers

- 1.0 Specific Plans and Special Planning Areas
- 2.0 Community and Area Plans
- 3.0 Governance
- 4.0 Complete Streets
- 5.0 Fixed Transit
- 6.0 Clustering
- 7.0 Jobs/Housing
- 8.0 Annexation Strategy
- 9.0 Mobility Standards

Comment Letter 6

SHINGLE SPRINGS BAND OF MIWOK INDIANS

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shinglespringsrancheria.com

January 12, 2017

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

Re: FEIS Comments

The Shingle Springs Band of Miwok Indians ("Tribe") submits this comment in response to the Final Environmental Impact Study (FEIS) for the Wilton Rancheria Fee-to-Trust and Casino Project ("Project"). Specifically, this comment will address the Tribe's preference for the Historical Rancheria site, transportation, and annexation.

Support for Historical Rancheria

The Tribe supports Alternatives D and E for the Project. These Alternatives are ideal because they are located on the Historical Wilton Rancheria. All other alternatives are located at least 10 miles from Wilton's Historical Rancheria. Therefore, any gaming activities on those sites would constitute off-reservation gaming.

It is important for the legitimacy of Indian gaming that all tribes be treated similarly. Because other tribes have not been allowed to operate off-reservation gaming activities, it would be unfair for the Wilton Rancheria Project to be approved on any of the off-reservation Alternatives. On November 4, 2014, the voters of California resoundingly voted against off-reservation gaming when they defeated Proposition 48. Proposition 48 would have ratified the North Fork Rancheria's compact, which would've allowed that tribe to acquire land in Madera County, approximately 38 miles from that tribe's reservation, and to build a casino and hotel on it. 60% of voters said no to allowing North Fork Rancheria's compact. If the North Fork Rancheria was not allowed to engage in off-reservation gaming, neither should Wilton Rancheria.

6-1

Putting land from Elk Grove or Galt into trust for the purpose of gaming activities amounts to reservation shopping. Every tribe desires to have their gaming facility near a large population center. However, they've been restrained by being required to having their facilities on their original Rancherias. If Wilton Rancheria is allowed to engage in reservation shopping for off-reservation gaming, then every Tribe should he allowed to do so.

It might be argued that Wilton Rancheria does not possess their original Rancheria, which is true. However, the site of the Historical Rancheria is adjacent to and shares 4 acres with the original Rancheria and is available. This land certainly has more connections to the Tribe than the Alternatives located 10 miles away.

Transportation

The Tribe supports the Alternatives D and E located at the Historical Rancheria because it appears to impact traffic/freeways less than any of the other Alternatives. If either the Elk Grove Mall or Twin Cities sites are chosen, it will require extensive changes to the roads and freeways surrounding those sites. Those sites are located off major freeways and near populous areas. Therefore, construction on any of the surrounding roads will have a greater impact on traffic than construction near the Historical Rancheria would. Furthermore, placing a casino off of a freeway, as the Elk Grove mall and Twin Cities sites propose, will create increased loads and congestion to the roads of an already populous area. Comparing all the Alternatives, increased loads and congestion at the remote Historical Rancheria would impact fewer people than at the populous Elk Grove and freeway adjacent Twin Cities sites would.

Specifically, Kammerer Road, located at the Elk Grove site, is already a dangerous two-lane road. Increasing loads and congestion will cause a significant impact by making it even more dangerous. Twin Cities Road, located at the Twin Cities site, is also a two-lane road that intersects with a train track. Increasing traffic to a road that is often slowed down by train crossings will cause a significant impact.

There are also additional concerns for public safety when a casino is placed near a major freeway. The potential for drunk driving on heavily used roads is greater at the Elk Grove mall and Twin Cities sites because of their proximity to freeways. Because the Historical Rancheria is more remote it provides an incentive for intoxicated individuals to remain at the Casino/Hotel rather driving on roads/freeways.

6-2

The Tribe basis its opinion on the information below, which is reported in the DEIS and supplemented in the FEIS.

Elk Grove Mall Site

With the addition of Alternative F traffic, two intersections would operate at an unacceptable level of service (Promenade Parkway/Bilby Road, Grant Line Road/East Stockton Boulevard). With the addition of Alternative F traffic, five roadway segments (Fermoy Way to Marengo Road, Waterman Road to Bradshaw Road, Bradshaw Road to Wilton Road, Wilton Road to Calvine Road, Calvine Road to Jackson Road) are projected to operate at an unacceptable level of service. Alternative F would not cause any freeway mainline segments to operate at an unacceptable level of service. Alternative F traffic will cause three freeway ramps to operate at unacceptable levels of service (Hwy 99 SB Off-Ramp at Twin Cities Road, Hwy 99 SB On-Ramp at Mingo Road, Hwy 99 NB On-Ramp at Mingo Road). Alternative F is anticipated to add up to 1,500 trips per day to Kammerer Road, which would need widening and shoulders added to be able to support traffic generated by Alternative F.

Twin Cities Site

With the addition of Alternative A traffic, four intersections (West Stockton Boulevard/Twin Cities Road, East Stockton Boulevard/Twin Cities Road, West Stockton Boulevard/Hwy 99 SB Ramps, Grant line Road/East Stockton Boulevard) are projected to operate an a unacceptable levels of service. Alternative A would create considerable amount of additional traffic to the Twin Cities roundabouts, which would contribute to the congested conditions at these locations. With the addition of Alternative A, Highway 99 SB between Mingo Road and Arno Road would operate an unacceptable level of service. With the addition of Alternative A, four freeway ramps (Hwy 99 SB Off-Ramp at Twin Cities Road, Hwy 99 SB Off-Ramp at Mingo Road, Hwy 99 SB On-Ramp at Mingo Road, 99 NB On-Ramp at Mingo Road) would operate at an unacceptable level of service. The increase in traffic generated by Alternative A would contribute to unacceptable traffic operations at a number of locations. Alternative A is anticipated to add up to 2,700 vehicle trips per day to East Stockton Boulevard between Mingo Road and Twin Cities Road, where exiting daily traffic volumes are very low. Because the existing pavement condition is very poor, in its current condition, this road would not support traffic generated by Alternative A.

Historical Rancheria Site

6-2 Cont.

Alternative D will cause seven roadways (Grant Line Road/East Stockton Boulevard, Grant Line Road/Bond Road, Wilton Road/Green Road, Grant Line Road/Wilton Road, Wilton Road/Consumnes Road, Green Road/Project Driveway 1, Green Road/Project Driveway 2) to operate at an unacceptable levels. However no freeway mainlines will operate at an unacceptable level of service. Alternative D traffic would result in three offramps operating at an unacceptable level (Hwy 99 SB Off-Ramp at Twin Cities Road, Hwy 99 SB On-Ramp at Mingo Road, Hwy 99 NB On-Ramp at Mingo Road). Alternative D would add to the background congestion of the freeway mainline and ramps. Alternative D is anticipated to add up to 3,000 -3,100 trips per day to the certain roads. The roads' conditions range from very poor to fair. Therefore, roadways would need improvement to support traffic generated by Alternative D.

As shown from the excerpts above, Alternative D at the Historical Rancheria will not impact specific freeway mainlines to the extent the Twin Cities site will. Nor is it projected that Alternative D will impact freeway ramps to the level of the Twin Cities site. Finally, Alternative D is not projected to impact intersections like the Twin Cities and Elk Grove sites will. Alternative D will impact more roadways and create a higher percentage increase of trips per day. All of the Alternatives will have significant impacts on traffic if not mitigated. However, it appears that overall Alternative D will have the least amount of impact on traffic. Therefore, the Tribe supports placing the project at Wilton's Historical Rancheria.

Conclusion

The Tribe believes that Wilton's Historical Rancheria is the ideal site for any future project. Placing a casino on the Historical Rancheria would be consistent with not allowing tribes to reservation shop for the purpose of off-reservation gaming. Also, placing the project on the Historical Rancheria appears to have the smallest impact on traffic.

The Shingle Springs Band of Miwok Indians appreciates the opportunity to comment on this Project, and the work that the BIA performs to assist Tribe's in acquiring trust land.

If you have any questions please contact the Tribe's Attorney General, AmyAnn Taylor, at (530) 387-4194.

Sincerely,

Nicholas Fonseca
Chairman

Comment Letter 7

Stand Up For California!
"Citizens making a difference"

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

January 13, 2017

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

RE: FEIS Comments, Wilton Rancheria Fee-to-Trust and Casino Project

Dear Ms. Dutschke:

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The following comments are being submitted on behalf of Stand Up For California! (Stand Up), Elk Grove GRASP, the Committee to Uphold Elk Grove Values, and concerned citizens of Elk Grove, regarding the Bureau of Indian Affairs' (BIA) Final Environmental Impact Statement (FEIS) for the Wilton Rancheria's (Rancheria) Fee-to-Trust and Casino Project (Project).

First and foremost, we strenuously object to what is clearly a rush to take the Elk Grove site into trust before the Trump administration takes office. We note in particular that, three years after BIA first initiated its review of this Project, the *first* notice to the general public published by BIA that the proposed action and preferred alternative had changed from the Galt site to the Elk Grove site was the December 14, 2016 Federal Register notice of the availability of the FEIS for public review and comment.[1] In addition, we reiterate our objections to the supervision of BIA's consideration of the Project by Ms. Dutschke, whose family ties to membership of the Wilton Rancheria present a clear conflict of interest, and necessarily taint any final decision. Given that all indications are that BIA has already pre-determined a final decision to take the Elk Grove site into trust, it is not surprising that the FEIS continues to suffer from multiple deficiencies, as we have described in previous comment letters.[2]

[1] 81 Fed. Reg. 90379 (Dec. 14, 2016).

[2] We reiterate and incorporate by reference in their entirety our comments submitted by letters dated January 6, 2014 (scoping comments); February 9, 2016 (DEIS comments and February 12, 2016 amendment thereto); February 12, 2016 (comments regarding authority for gaming); September 27, 2016 (comments regarding change in proposed action); December 21, 2016 (comments regarding title encumbrances on Elk Grove site); December 29, 2016

I. The FEIS fails to consider that the Elk Grove site continues to be encumbered by development agreements.

As we have previously explained, the proposed casino site is encumbered by development agreements approved by the City of Elk Grove, precluding acquisition in trust. In 2005 and 2014, the City approved, by ordinance, executed and recorded development agreements with respect to Parcel Number 134-1010-001-0000 (Portion). Although the FEIS fails to consider their effect, BIA is aware of those development agreements, having previously informed the parties that the United States could not acquire Parcel Number 134-1010-001-0000 (Portion) in trust for the proposed purpose until the encumbrances associated with those agreements were removed. Schedule B to the November 17, 2016 notice of application also identifies those encumbrances as exceptions number 13, 14 and 27.

The development agreements expressly reserve to Elk Grove the right, subject to the vested rights, to:

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- grant or deny land use approvals;
- approve, disapprove or revise maps;
- adopt, increase, and impose regular taxes, utility charges, and permit processing fees applicable on a city-wide basis;
- adopt and apply regulations necessary to protect public health and safety;
- adopt increase or decrease fees, charges, assessments, or special taxes;
- adopt and apply regulations relating to the temporary use of land, control of traffic, regulation of sewers, water, and similar subjects and abatement of public nuisances;
- adopt and apply City engineering design standards and construction specification;
- adopt and apply certain building standards code;
- adopt laws not in conflict with the terms and conditions for development established in prior approvals; and
- exercise the City's power of eminent domain with respect to any part of the property.

These encumbrances are not only inconsistent with the federal title standards, they prevent the land from qualifying as "Indian lands" eligible for gaming under the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2703(4). These rights, which are recorded on the deed, establish that the City of Elk Grove has governmental jurisdiction over the site. The City can impose taxes; the City adopts regulations to protect public health and safety; the City will regulate building codes, engineering design standards, etc.; and the City will regulate land use, sewers, traffic, etc. BIA

(seeking assurances that Elk Grove site will not be taken into trust before judicial review is possible); and January 6, 2017 (regarding history of Wilton Rancheria and lack of authority to take land into trust for gaming).

has previously denied gaming determinations based on development agreements that accord local governments some authority over the proposed gaming sites. *See e.g.*, Letter to Michael Toledo from Assistant Secretary L. Echo Hawk Regarding Trust Application of Pueblo of Jemez (Dec. 1, 2011). Here, the authority is part of the deed itself. The land cannot qualify as "Indian lands" under IGRA.

On November 9, 2016, the City recorded an amendment to the development agreement, which made it appear that these encumbrances had been removed from an approximately 35.92-acre parcel of land. That recordation was premature and of no legal effect.

Under California law, a city must enact an ordinance approving the execution of a development agreement, which is then recorded as an encumbrance on the title to the property.[3] A city must approve amendments to a development agreement by ordinance, as well. California law requires cities to wait for 30 days before any ordinance goes into effect. The purpose of that delay is to allow aggrieved parties to exercise their rights under Section 9 Article II of the California Constitution (i.e., the referendum right) and/or to file claims arising under State law, including the California Environmental Quality Act. Specifically, with respect to the referendum power, Government Code section 36937 and Elections Code section 9235.2 provide that an ordinance approving or amending a development agreement will not take effect for 30 days, during which time the voters of a jurisdiction are entitled to exercise their right of referendum by presenting a petition protesting the ordinance. *See* Government Code sections 65867.5(a) and 65868 and Elections Code sections 9235 and following.

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The City failed to comply with applicable state laws. On October 26, 2016, the City approved an amendment to the development agreement encumbering Parcel Number 134-1010-001-0000 (Portion) by removing the parcel from the existing development agreement. Although State law imposes a 30-day waiting period before an ordinance goes into effect, the City executed the amendment to the development agreement prior to that date and recorded the amendment on November 9, 2016. The City therefore did not have authority to execute the amendment to the development agreement when it did, nor record that amendment.

On November 21, 2016, approximately 14,800 citizens filed with the City Clerk's office a referendum petition protesting the ordinance authorizing the amendment. That petition was verified by the City Clerk on January 6, 2017, and thus the ordinance will not go into effect until such time as a majority of the voters in Elk Grove approve that ordinance. Accordingly, the City was without authority to execute and record the amendment, and the land continues to be encumbered by the development agreement.[4] These encumbrances will remain in place at least until a special election can be held, at the earliest in April 2017.

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[3] A development agreement is an agreement between a local jurisdiction and an owner of legal or equitable interest in property that addresses the development of the property it affects. It must specify the duration of the agreement, the permitted uses of property, the density or intensity of use, the maximum height and size of proposed building, and provisions for reservation or dedication of land for public purposes. A development agreement is a legislative act that must be approved by ordinance and is subject to referendum. After a development agreement is approved by ordinance and the City accordingly is enabled to enter into it, the agreement may be executed and recorded with the county recorder, as it was in this case.

[4] In addition, on November 23, 2016, the undersigned filed in state court a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief challenging the City's ordinance under the California

The Department nonetheless appears to be determined to take the Elk Grove site into trust before the Trump Administration takes office on January 20, 2017, despite these encumbrances.[5] The FEIS, however, entirely fails to analyze the effects of taking the Elk Grove site into trust subject to these encumbrances. Instead, the FEIS assumes that by taking the land into trust, state and local jurisdiction will be displaced, allowing the Rancheria to build and operate a casino. As we have explained, however, the land will not be eligible for gaming as long as the encumbrances are in place, precluding the operation of a casino. Moreover, the encumbrances on title are a property interest held by the City of Elk Grove, not the Rancheria. Even if BIA is authorized, despite the encumbrances, to take into trust the Rancheria's property interests in the Elk Grove site, it cannot take into trust the City's property interests. The City will therefore retain all of the powers it reserved in the development agreement, a result that the FEIS does not consider at all. In short, as long as the encumbrances remain in place, the FEIS does not in any way fulfill BIA's duty under NEPA to evaluate the effects of taking the Elk Grove site into trust.

7-2 cont.

II. BIA must prepare a supplemental EIS to address the change in the proposed action.

As we have previously explained, BIA cannot rely on the draft EIS it prepared to evaluate the Rancheria's trust application for 282 acres of land in Galt to support acquiring trust land in Elk Grove. Those concerns remain. Proceeding without a supplemental EIS will violate NEPA regulations and thwart public notice and opportunity to comment, one of NEPA's two key purposes.

A. NEPA regulations require BIA to prepare a supplemental EIS.

NEPA requires federal agencies to prepare a supplemental EIS if: (i) an agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c).

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The federal action that has been under BIA's review for almost three years is the proposed trust acquisition of land in Galt. BIA's December 2013 Notice expressly states that the Rancheria has applied to have "approximately 282 acres of fee land ... located within the City of Galt Sphere of Influence Area" acquired "in trust in Sacramento County, California, for the construction and operation of a gaming facility." 78 Fed. Reg. 72928-01 (Dec. 4, 2013). The Notice identifies the parcels (Parcel Numbers148-0010-018, 148-0041-009, 148-0041-006, 148-0041-004, 148-0041-001, 148-0031-007, and 148-0010-060). *Id.*

Environmental Quality Act (CEQA), alleging that approval of the amendment authorizing the removal of Parcel Number 134-1010-001-0000 (Portion) from the development agreement was a discretionary decision subject to review under that Act. Petitioners allege that by entering into the amendment without an effective ordinance in place and recording that amendment, the City violated statutory law and the right to referend. The City has since recorded an acknowledgment that the proposed trust land is still encumbered by the 2014 development agreement—an implicit concession of its illegal action—but the Department appears to be moving forward with the application despite these state proceedings.

[5] The Department has refused to allow a short delay before taking the land into trust to allow the undersigned to seek preliminary judicial relief after a final decision. *See* Exhibit 1, Email from Eric Shepard, Associate Solicitor, to Paul Smyth, counsel for Stand Up (January 9, 2017). The undersigned subsequently have sought emergency preliminary relief in federal court to enjoin the immediate transfer of the land into trust upon the Department's final decision.

The Notice does not identify land in Elk Grove as an alternate application of the Rancheria's. There is no question that the acquisition of land in the City of Elk Grove is a "substantial change[] in the proposed action" from the acquisition of 282 acres of land in the City of Galt that BIA provided notice of in 2013. The change is clearly relevant to environmental concerns. The change in location will obviously have different environmental impacts. Likewise, the Rancheria's application change is also a "significant new circumstance[]" that directly affects environmental concerns. BIA only provided limited notice in November that the Rancheria had submitted a new application to take the Elk Grove site into trust. BIA did not give the general public notice of this until December, when it published in the Federal Register its notice of availability of the FEIS. Proceeding directly to a final EIS, as it appears BIA is planning to do, will violate NEPA.

7-3 cont.

BIA appears to be relying on the principle that an agency can select an alternative different from the preferred alternative without preparing a supplemental EIS. That principle, however, applies when the proposed action itself is not limited to one specific action. For example, when a proposed action is a transmission line connecting points A and B, there can be several possible routes that would satisfy that action. Accordingly, an EIS will list several alternatives and can readily select an alternative that was not initially the preferred alternative because the notice itself makes that possibility clear. The same is true of highway proposals.

This scenario is entirely different. Because the 2013 Notice of Intent identified the proposed acquisition of land in Galt and only that proposal, no one could have anticipated that the Rancheria would change its application to another location. *cf. California v. Block*, 690 F.2d 753, 772 (9th Cir.1982) (concluding that supplemental analysis is required when the selected alternative "could not fairly be anticipated by reviewing the draft EIS alternatives"). Indeed, the Secretary cannot acquire land in trust unless the applicant owns the land. One reasonably assumes that when a tribe files a trust application, it either owns the land or has an option to own the land. That was clearly not true of the Elk Grove alternative considered in the draft EIS. The draft EIS specifically stated that "an agreement is not currently in place for the purchase of the Mall site by the Tribe." DEIS 2.10.2, 2-34. Thus, the fact that the draft EIS evaluated the acquisition a 28-acre parcel of land at the Elk Grove Mall, *see* DEIS 2.7, 2-25, does not satisfy NEPA.

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In addition, the Elk Grove alternative has changed substantially from what was evaluated in the DEIS. Alternative F in the DEIS described a 28-acre site. The proposed action now includes 36 acres, a *29% increase* in the area proposed to be put in trust. Other changes in the project components are also described, including a new three-story parking garage. The notice of availability and FEIS make conclusory statements that these changes not significant, but these are substantial changes in the proposed action that are relevant to environmental concerns because they go directly to the extent and intensity of development proposed. The 29% increase in land area affected and substantial new project components clearly introduce significant new circumstances or information relevant to environmental concerns, which the draft EIS entirely failed to address. *See Natural Resources Defense Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) ("Where the information in the initial EIS was so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives. revision of the EIS may be necessary to provide a reasonable, good faith, and objective presentation of the subjects required by NEPA." (quoting *Animal Def. Council v. Hodel*, 840

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F.2d 1432, 1439 (9th Cir.1988))). A supplemental EIS is therefore required under 40 C.F.R. § 1502.9(c).

B. The history of the review process and public opposition underscore the need for a supplemental EIS.

The regulations implementing NEPA require a supplemental EIS in circumstances such as these precisely because the public notice and participation requirements of NEPA are not satisfied when the public did not have adequate notice of the action under consideration. If the public has not had adequate opportunity to comment on a proposed action at the draft stage of the environmental review process, a supplemental EIS is required. *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). Indeed, the Ninth Circuit has struck down federal agency action when the agency has failed to provide notice of the action in question. *Buschmann v. Schweiker*, 676 F.2d 352 (9th Cir. 1982) and *Western Oil & Gas Association v. U.S. Environmental Protection Agency*, 633 F.2d 803 (9th Cir. 1980).

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The residents of Elk Grove obviously did not have notice of a proposed trust acquisition in Elk Grove until June of 2016, at the earliest, as the history of the review process establishes. As set forth above, when BIA published its Notice of Intent, it described a trust acquisition in Galt. *See* 78 Fed. Reg. 72,928-01 (Dec. 4, 2013). BIA offered a 30-day public comment period, which ran from December 6, 2013, to January 6, 2014, and a December 19, 2013 scoping meeting in Galt. No one from the City of Elk Grove attended the scoping meeting, including the City of Elk Grove. Nor did anyone from Elk Grove provided comments in response to the scoping notice. Similarly, when BIA issued a Notice of Availability for the draft EIS on the proposed Galt acquisition, *see* 80 Fed. Reg. 81,352 (Dec. 29, 2015), it appears that no citizens from Elk Grove responded raising issues related to the Elk Grove alternative.

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Significantly, the draft EIS does not include the City of Elk Grove among the governmental entities that were invited to be cooperating agencies. Any municipality that is expected to be directly affected by a proposed action—particularly one that results in the loss of jurisdictional and regulatory control and a reduction in its tax base—is typically extended an invitation to participate as a cooperating agency by the BIA, as required by its own NEPA guidance. Indeed, the trust regulations require notice to the City.[6] The City itself did not request to become a cooperating agency until May 13, 2016, a request granted by the BIA on May 19, 2016.

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In fact, the change in the preferred project is of great public concern. At a public meeting held by the Rancheria in July (not by BIA, as federal regulations require), over 300 local residents showed up to express their concerns about the Rancheria's announcement. Many of the comments focused on the fact that the Rancheria was changing its application and that the commenters did not know of the change nor have an opportunity to participate in the process. As

[6] It was not until February 18, 2016, that the City of Elk Grove participated in any fashion. Even then, the City stated that "[w]hile there is not an application at this time to take the Alternative F site into trust, our understanding is that this is still the appropriate time to comment on the Alternative F site." FEIS Comment letter A8. The City appears to have based these comments on preliminary discussions with the Rancheria regarding its interest in the Elk Grove site.

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previously noted, the draft EIS specifically stated that no agreement was currently in place for the purchase of the Mall site by the Rancheria. DEIS at 2-34.

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Furthermore, the Elk Grove alternative is the only site for which multiple alternatives, including a reduced intensity casino and/or commercial retail development, were not considered. These alternatives were rejected for the Elk Grove site for nonsensical reasons, resulting in both an inadequate range of alternatives, and a clear signal that the Elk Grove site was not being seriously considered.[7] Significantly, many of the deficiencies in the analysis of the Elk Grove site, detailed below, are not correspondingly found in the analysis of the Galt site—a clear indication that BIA initially assumed the Tribe's Proposed Action to take the Galt site into trust would be its final decision, and gave the Elk Grove site short shrift in the draft EIS.

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The lack of participation from Elk Grove residents until July of 2016 stands in contrast to the participation from those living in Galt. The obvious reason for that lack of participation is that the residents of Elk Grove did not know that a site in Elk Grove was under consideration and accordingly, they did not participate. After spending more than three years processing the Rancheria's proposed casino project in Galt, the BIA is now determined to take the Elk Grove site into trust with only 30 days notice to the general public. That is the very definition of a bait-and-switch.

"[A]n agency's failure to disclose a proposed action before the issuance of a final EIS defeats NEPA's goal of encouraging public participation in the development of information during the decision making process." *See Half Moon Bay*, 857 F.2d at 508. This case is a perfect example of this legal violation.

C. A supplemental EIS would allow BIA to correct its public participation missteps.

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BIA's actions here meet neither the letter nor the spirit of NEPA. Pursuant to CEQ's NEPA regulations:

> Federal agencies shall to the fullest extent possible:
> (a) Interpret and administer the policies, regulations, and public laws of the United *States in accordance with the policies set forth* in the Act and *in these regulations.*
> (b) Implement procedures *to make the NEPA process more useful to* decisionmakers and *the public*;
> ...

[7] A reduced-intensity development was eliminated from consideration on the grounds that the environmental effects of the Mall site were likely relatively low since the site is already developed. DEIS at 2-31. This entirely ignores the difference in socioeconomic and other effects that would result from a reduced intensity casino or retail development. A non-gaming alternative was eliminated on the grounds that competitive effects would affect other retailers. *Id.* The existence of socioeconomic effects, by itself, is obviously not a logical basis to exclude an alternative. All of the action alternatives evaluated in the draft EIS have socioeconomic effects. In particular, competitive effects on other gaming providers were not considered a basis to exclude gaming alternatives, and there is no legitimate reason to reject a viable alternative simply to protect non-gaming businesses from competition.

(d) *Encourage and facilitate public involvement* in decisions which affect the quality of the human environment.

40 C.F.R. § 1500.2 (emphases added). Federal agencies are also required to:

> (a) *Make diligent efforts to involve the public* in preparing and implementing their NEPA procedures.
> (b) *Provide public notice* of NEPA-related hearings, public meetings, and the availability of environmental documents *so as to inform those persons and agencies who may be interested or affected.*
> ...
> (3) In the case of an action with effects primarily of local concern the notice may include:
> ...
> (iii) *Following the affected State's public notice procedures for comparable actions.*
> (iv) *Publication in local newspapers* (in papers of general circulation rather than legal papers).
> (v) Notice through *other local media.*
> (vi) Notice to *potentially interested community organizations* including small business associations.
> (vii) Publication in *newsletters that may be expected to reach potentially interested persons.*
> (viii) Direct mailing to *owners and occupants of nearby or affected property.*
> ...
> (c) *Hold or sponsor public hearings or public meetings whenever appropriate* or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:
> (1) *Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.*
> ...
> (d) *Solicit appropriate information from the public.*

40 C.F.R. § 1506.6 (emphases added).

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BIA implemented none of these actions with respect to Elk Grove. Instead, BIA's actions have had the practical effect of blindsiding the people of Elk Grove. In addition, the City of Elk Grove should have been invited to be a cooperating agency from the start, *see* 40 C.F.R. § 1501.7(a)(1), which would also have allowed time for the involvement of citizens through their elected officials. The fact that over 14,000 citizens signed a petition to referend the City ordinance allowing the land to be put into trust is a measure of the magnitude of the lack of notice and cooperative communication among and between the BIA, the City, and the citizens of Elk Grove. A supplemental EIS, along with additional public participation measures, would help correct these violations of the letter and spirit of NEPA and its implementing regulations.

III. The analysis in the FEIS of the Elk Grove alternative is inadequate.

A. The mitigation discussion is inadequate.

As we previously explained, there are fundamental flaws in the treatment of mitigation in the EIS. These flaws remain unaddressed in the FEIS. One overarching deficiency is the unsupportable presumption that project design parameters and recommended mitigation measures are enforceable. The EIS assumes that all design parameters and mitigation measures are enforceable because they are either inherent in the project design; subject to the terms of the Rancheria's Memorandums of Understanding (MOUs) with the City of Elk Grove and Sacramento County[8] (or other agreements yet to be negotiated); and/or required under federal or state law. In fact, once the land is taken into trust, the Rancheria is under no obligation to build the project as proposed, nor is it required to implement the mitigation measures described.

While mitigation measures that might be required under federal law would indeed be enforceable, no federal approvals have yet been issued. The exact nature of the mitigation that might be required in such federal approvals or permits is therefore uncertain. Nor would such federal permits or approvals include all of the mitigation measures relied upon by the final EIS. State law, of course, would generally not apply once the proposed site is taken into trust. To the extent Tribal law is relied upon, it is subject to unilateral change by the Rancheria itself, and
7-11 therefore cannot be considered an independent source of authority to enforce mitigation requirements. Tribal sovereign immunity is a significant limitation on enforcement actions, the effect of which has not been considered in the EIS.

More fundamentally, the EIS is premised on the enforceability of design parameters of the proposed project, yet there is no explanation of how that is true. It is irrelevant that certain parameters and mitigation measures are described as part of the project design, if there is no mechanism to require the Rancheria to adhere to the project design for the alternative chosen. Onee the land is taken into trust, there is nothing preventing the Rancheria from changing its proposed design. The EIS does not explain how the Rancheria would, or even could, be required by BIA to build the alternative chosen in the Record of Decision (ROD). Without such an explanation, it is entirely uncertain what the actual effects of the proposed federal actions will be, and there is no way to comment on the adequaey or effeetiveness of any proposed enforcement mechanism. *See* Council on Environmental Quality, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," 46 Fed. Reg. 18,026, 18,032-33 (March

[8] With very little public notice, the City of Elk Grove and the Sacramento County recently entered into Memorandums of Understanding (MOU) with the Rancheria regarding the mitigation of impacts resulting from the casino project in Elk Grove. *See* FEIS App. B. Those MOUs cannot be assumed to adequately mitigate impacts, given the deficiencies in mitigation identified in these comments; each MOU is explicitly based on the evaluation of impacts and mitigation in the DEIS. *See* 2016 Elk Grove MOU at 3; 2016 County MOU at 3. In addition, approval of the MOUs is subject to the California Environmental Quality Act, and the City and County have not complied with the requirements of that Act.

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23, 1981) ("the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies.") (citing 40 C.F.R. §§ 1502.16(h), 1505.2).

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The FEIS offers inadequate explanations of enforceability and its likelihood. *See* Response to Comment A16-152. BIA asserts that it will include an enforceable mitigation monitoring and reporting plan in the ROD, but this does not alleviate its responsibility to identify the specific mechanisms it proposes for enforcement, to evaluate the likely effectiveness of those mechanisms, and to allow public review and comment on that analysis. BIA also asserts that mitigation monitoring will be available "through tribal environmental laws that would be developed for trust land," but as previously noted, tribal law is subject to unilateral change by the tribe itself, tribal sovereign immunity is a substantial bar to third-party enforcement (which the EIS does not consider), and in any case, no specific laws are identified or evaluated for effectiveness.[9]

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Similarly, there is no explanation of how the NIGC regulations at 25 C.F.R. Parts 522, 571, 573, 575, 577 (sic; Part 577 is reserved), and 559—none of which even mention mitigation—could be used to make enforceable the mitigation measures identified in the FEIS, or the likelihood of their effectiveness. Certain provisions of these regulations speak of a tribe's obligations to operate and maintain gaming facilities in a manner that is protective of environmental and public health and safety, *see, e.g., id.* §§ 222.2(i); 222.4(b)(7); 573.4(a)(12); but such generic statements do not meet the requirement under NEPA to identify specific enforcement mechanisms and to evaluate their likely effectiveness. Furthermore, each of these provisions is in terms of *the tribe's own gaming ordinance/resolution and enforcement.* Indeed, the most detailed of these general statements in the NIGC's regulations speaks of a tribe's obligation to *self-certify* enforcement of applicable laws *by the tribe itself. See* 25 C.F.R. § 559.4. As previously noted, reliance on self-enforcement by the tribe is inherently problematic, and in any case, the FEIS identifies no tribal laws that might apply, nor evaluates their likely effectiveness.

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In the end, BIA seems to assume that anything it puts in the ROD is enforceable—but once the land is in trust (which BIA asserts must be accomplished immediately upon a final decision, pursuant to 25 C.F.R. § 151.12) the ROD does not provide any authority for BIA to take the land out of trust if mitigation measures are not complied with, or to otherwise take actions to ensure that such measures are implemented. BIA has never interpreted a trust acquisition decision to include the power to condition the acquisition or continuing trust status of land upon compliance with continuing conditions. Indeed, any such interpretation by BIA that the ongoing trust status of land is contingent upon compliance with conditions imposed by BIA would raise serious concerns under the Federal trust responsibility to Indian tribes.

BIA's conclusions in the EIS regarding the significance of numerous impacts, therefore, are inextricably bound to the assumption that the described project design and mitigation measures will be implemented. These conclusions are unsupported if those parameters and mitigation measures are not enforceable, because there is otherwise no reason to believe that they will in fact be implemented. Without some reasonable assurance of enforceability, the actual impact of

[9] If no such tribal laws currently exist, that fact must be disclosed and evaluated under 40 C.F.R. § 1502.22.

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the proposed project cannot be accurately predicted, analyzed, or commented on. The public has had no opportunity to comment on the adequacy and effectiveness of specific proposed methods of enforcement for each mitigation measure. Without a thorough analysis of this issue—including evaluation of any unavailable or incomplete information, as required by 40 C.F.R. § 1502.22—the FEIS is fundamentally deficient, and must be supplemented and recirculated for public comment before a final decision.

B. Transportation impacts are underestimated.

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The FEIS completely ignores our September 27, 2016 comments regarding the fundamental deficiencies in the traffic impacts analysis. A traffic impacts analysis is only as good as the assumptions that go into it. A critical parameter of the Traffic Impact Study (App. O) is the trip generation rates, yet the rate chosen for the Weekday PM peak period (when overall traffic is highest) is far too low to be accurate. The traffic study uses the rate observed at a single casino (Thunder Valley Casino), which the study asserts is a reasonable comparison. The standard Institute of Transportation Engineers (ITE) rate for casinos (which is based on multiple studies) is 13.43 (trips per 1,000 sf gaming floor area), but the rate chosen—9.84— is substantially lower, and therefore will considerably underestimate peak traffic (for perspective, the standard ITE rate is *36.5%* higher than the rate employed). The standard ITE rate was rejected on the grounds that the ITE rate is based on much larger, more urban hotel/casinos "of the nature commonly found in Las Vegas and Reno" and is therefore "generally not applicable to this smaller, more rural project." App. O at 57. This is incorrect. The standard ITE rate is for facilities that expressly "do not include full-service casinos or casino/hotel facilities such as those located in Las Vegas. Nevada or Atlantic City, New Jersey." ITE, *Trip Generation* (9th ed.) at 888. To the contrary, the standard ITE rate is based on much smaller casinos, located in rural regions, that are directly comparable to the proposed project. *Id.* Without a valid basis for rejection, the standard ITE rate should be employed to reevaluate the traffic impacts of the proposed project.

Even assuming, as the Traffic Impact Study does, that the Thunder Valley Casino is a reasonable comparison, the Weekday PM trip generation rate is still too low. The EIS argues that the Thunder Valley trip generation rates are reasonable because the rates "are consistent with the daily customer and employee totals projected for the proposed project." FEIS at 4.8-1; App. O at 59. However, the ratio of projected weekday to weekend patrons suggests that the Weekday PM rate should be at least 11.6—in other words, at least 17.8% higher than the rate employed.[10] The Traffic Impact Study therefore severely underestimates traffic impacts.

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Finally, the FEIS confirms that the Tribe changed its proposed action from Alternative A to Alternative F based on new information that the necessary improvements to accommodate traffic impacts at the Alternative A site would cost substantially more than previously thought and involve further delay. FEIS at 2-36. Such new information has not been analyzed in the EIS, nor made available to the public for review and comment. More importantly, it correspondingly calls

[10] Under Alternative F, the casino is projected to serve 8,100-9,000 patrons each day per weekday, and 12,900-14,200 on weekends. FEIS at 2-30. Given the resulting weekday-to-weekend ratio of 1:1.6 and the Weekend PM rate of 18.4 chosen for the Traffic Impact Study, the corresponding Weekday PM rate should be approximately 11.6.

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into question the evaluation of traffic impacts under Alternative F and their costs. The basis for the Tribe's about-face should be disclosed to the public and analyzed in a supplemental EIS.[11]

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In addition, the Galt alternative includes 3,500 parking spaces and a transit facility. The Elk Grove alternative has only 1,690 on-site surface parking spaces, with additional parking provided by the adjacent mall, and site access would be provided at existing intersections along Promenade Parkway. The EIS does not take into account the impacts to the proposed outlet mall of a reduction of almost 2,000 parking spaces available to mall patrons, nor the impacts of mixing casino traffic with families and children visiting the mall and theaters.

C. The public services analysis is inadequate.

7-18

The FEIS continues to have insufficient analysis with regard to Public Services. In particular. Section 4.10.6 of the EIS analyzes water supply for Alternative F. It concludes that "[a] significant effect would occur to water supply distribution facilities as a result of the need to provide service to Alternative F." Despite identifying this significant effect, the FEIS discussion is brief and conclusory, stating that "mitigation measures" in Section 5.10.1 will "ensure that an adequate water supply is available for the operation of Alternative F." In fact, Section 5.10.1 contains just one mitigation measure (not multiple), which states only that the Tribe will enter into a service agreement to reimburse the applicable service provider for necessary new or upgraded facilities. This general mitigation measure is recommended for several of the alternatives and is not specific to Alternative F. It is unclear how this alone will ensure adequate water supply distribution facilities and mitigate the significant effect identified in the FEIS.

7-19

The FEIS estimates daily water consumption for Alternative F to be approximately 260,000 gpd: however, it is unclear whether this estimate should be revised in light of the new project. FEIS at 4.10.6. The FEIS states that the Sacramento County Water Agency (SCWA) "has the capacity to meet anticipated demand for domestic water use under Alternative F." *Id.* But the FEIS does not analyze SCWA's distribution system in relation to the service area. Moreover, the FEIS does not address any increased capacity required by new proposed project for the acquisition of nearly 36 acres instead of 28. This is especially important considering the severe drought conditions in California.[12] For these reasons, the FEIS discussion relating to water supply for Alternative F is insufficient and warrants further detail and analysis.

D. The cumulative effects analysis is incomplete.

7-20

Cumulative effects are effects "on the environment which result from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7. The cumulative setting includes past, present, and

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[11] If such information is not available, it must be evaluated under 40 C.F.R. § 1502.22.

[12] The FEIS asserts that "[h]istoric drought conditions are taken into account in Appendix K (groundwater supply report) of the Draft EIS." Response to comment O8-11. Appendix K, however, only addresses *average* drought duration, and therefore does not in any way address the historic drought California is currently experiencing. Whether recent heavy precipitation has alleviated the current drought remains to be seen, and is not evaluated in the FEIS.

reasonably foreseeable future actions not part of the Proposed Action, but related to cumulative effects.

7-20 cont.

The FEIS continues to omit the Kammerer Road Project in the list development projects in the cumulative setting in the City of Elk Grove. Table 4.15-2. In addition, the FEIS fails to consider numerous amendments to Elk Grove's General Plan, nor does it consider that the process to update the General Plan has been underway since 2015, and is now in its final stages.[13] Changes to the General Plan are thus specifically foreseeable, and changes in the cumulative setting resulting from those changes are therefore reasonably foreseeable, yet the FEIS contains no analysis of these effects.

7-21

As noted above, traffic impacts have been severely underestimated, and "[a] significant effect would occur to water supply distribution facilities as a result of the need to provide service to Alternative F." FEIS at 4.10-25. Unidentified projects that should have been included in the cumulative setting, which are currently under development and reasonably foreseeable, will further impact traffic, water supply, and other factors in Elk Grove. Accordingly, the FEIS's cumulative impact analysis is woefully inadequate and must incorporate a more complete range of current and foreseeable projects within the City of Elk Grove and must include future projects based on the City's current efforts to expand its sphere of influence.

E. The FEIS ignores new information regarding the public safety risks associated with the nearby Suburban Propane Storage facility.

7-22

We previously commented that, in an April 2, 2016 letter to the Sacramento Local Agency Formation Commission (LAFCo) opposing the City of Elk Grove's application for amendments to expand its sphere of influence for the Kammerer/Highway 99 Project and the new proposed sports complex, Suburban Propane outlined serious concerns related to the projects' proximity to its propane storage tanks, which hold 24 million gallons of refrigerated propane. While Suburban Propane noted its superb safety history, it also informed LAFCo of a past, unsophisticated and foiled, terrorist plot. At trial, the director of the Chemical-Biological National Security Program at Lawrence Livermore Laboratory, one of the world's foremost experts on explosions, testified that if the plot had been successful, a "gigantic fireball" would have caused injuries and damage up to 1.2 miles away, including fatal injuries to roughly 50 percent of the people in the blast radius, and fatalities and injuries up to 0.8 miles from the explosion. In addition, the initial blast would likely have caused two smaller on-site pressurized propane loading tanks to explode, rupturing the formaldehyde storage tank at another nearby industrial facility, creating in turn a toxic cloud that would be potentially deadly to anyone encountering it, and which would travel for almost a mile with the prevailing wind.[14] Terrorism concerns have only increased since that time, and Suburban points out that increased development near the storage tanks potentially puts many people at risk. Terrorism risks are not easily quantified, but this is precisely the type of incomplete or unavailable information that must be evaluated pursuant to 40 C.F.R. § 1502.22 (Incomplete or unavailable information).

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[13] *See* http://www.elkgrovecity.org/city_hall/departments_divisions/planning/a_brighter_future/.

[14] *See* Sacramento Business Journal, *Elk Grove project ignores nearby propane risk* (Dec. 9, 2001), available at: http://www.bizjournals.com/sacramento/stories/2001/12/10/editorial4.html.

As described in its letter, numerous studies have evaluated the accident potential at the Suburban Propane, Elk Grove Propane Storage Facility. The most reliable and unbiased studies agree that the hazards associated with an unconfined vapor cloud explosion and boiling liquid expanding vapor explosions present serious safety risks to any potential off-site population within one mile of the facility. Among the locations Suburban notes as in the danger zone is the Lent Ranch area. The draft EIS noted, "Lent Ranch and the Marketplace at Elk Grove are located in the immediate vicinity of the Mall site," yet the draft EIS did not mention or address Alternative F's location in relation to Suburban Propane's storage tanks or the past demonstrated and future dangers that proximity to the site may represent. In fact, the Mall site is located approximately half a mile from the Elk Grove Storage Facility. Accordingly, we requested in our September 27, 2016 comment letter that the propane storage facility and any associated or potential environmental or public safety concerns should be addressed and analyzed in a supplemental EIS.

7-22 cont.

The FEIS, in section 3.12.3, acknowledges this issue, but declines to analyze this risk on the basis of a February 2001 Environmental Impact Report (EIR) by the City of Elk Grove that concluded that the risk levels posed by the Suburban Propane facilities "are viewed as acceptable and impacts are considered to be less-than-significant," and a 2004 state appellate court decision that the EIR's findings were adequately supported by the evidence. The FEIS, however, fails to consider new information available after February 2001, including the reevaluation of terrorism risks after the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon; information in Suburban Propane's April 2, 2016 letter, and the 2003 risk evaluation report identified in that letter; and the February 2015 report prepared by Northwest Citizen Science Initiative regarding the Portland Propane Terminal,[15] which discusses the risks posed by large propane storage facilities in urban areas, including specifically the Suburban Propane facility. To comply with NEPA, BIA must evaluate this significant new information in a supplemental EIS because it is relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c).

F. Air quality impacts are inadequately addressed.

The Updated Draft General Conformity Determination ("Updated Draft CD") fails to meet the regulatory requirements for a Clean Air Act conformity determination under 40 C.F.R. Part 93. Additionally, the Updated Draft CD does not address the comments submitted by Stand Up for California! ("Stand Up") on the Draft General Conformity Determination on September 27, 2016. As Stand Up commented on the Draft CD, "it is impossible to assess the air quality impacts of the project prior to the completion of the conformity determination." For the following reasons, BIA must prepare and make available for public comment a supplemental EIS after completing a final conformity determination.

7-23

BIA improperly released the Updated Draft CD simultaneously with the Final EIS for public comment. In its September 27, 2016 comments, Stand Up reminded BIA that they must finalize the conformity determination, including an opportunity for public comment, before releasing the

[15] *See* Exhibit 2; available at: http://sustainable-economy.org/wp-content/uploads/2015/02/Portland-Propane-Terminal-NWCSI-3rd-rev-ed-Feb-27-2015.pdf. The report concludes that the risks posed by a terrorist attack targeting smaller pressurized propane tanks near the main storage tanks is much greater than the risks of an attack targeting the main storage tanks directly; the pressurized tanks are more easily exploded, and could in turn explode the main tanks more effectively, in a domino-style effect. *Id.* at 17.

Final EIS. *See* EPA, General Conformity Training Manual at 1.3.4.2 ("At a minimum, at the point in the NEPA process when the specific action is determined, the air quality analyses for conformity should be done."). Without a finalized conformity determination before the public comment period on the final EIS, the public and agency decision makers cannot sufficiently analyze the environmental consequences of the Project.

The Updated Draft CD fails to comply with 40 C.F.R. § 93.160(a) because it does not describe all air quality mitigation measures for the Project and it does not outline the process for implementation and enforcement of those air quality mitigation measures. The Updated Draft CD only describes two mitigation measures: purchasing emissions reduction credits for nitrogen oxides ("NOx") and preferential parking for vanpools and carpools. Updated Draft CD, § 4.2. For other mitigation measures, it merely references their inclusion in Section 5.4 of the draft EIS and does not provide a description as required under 40 C.F.R. § 93.160(a). *Id.*

As Stand Up commented on the Draft CD, the only semblance of an implementation timeline provided for a mitigation measure in the Updated Draft CD is that ERCs will be purchased prior to operation of the Project. This still does not constitute an "explicit timeline" and there are no other timelines or deadlines for the other mitigation measures in the Updated Draft CD. *See* 40 C.F.R. § 93.160(a).

7-23 cont.

Like the Draft CD, the Updated Draft CD does not contain any information on the process for enforcing mitigation measures, including the purchase of ERCs. A description of enforcement measures is required under 40 C.F.R. § 93.160(a). The Updated Draft CD merely recommends that the Tribe commits to purchasing the required ERCs. Even though the Updated Draft CD states that the Tribe will provide the "documentation neeessary to support the emissions reductions through offset purchase," it does not establish any specific procedures or requirements for doing so, nor it explain how the purchase will be enforceable. Additionally, the Updated Draft CD is incomplete because BIA has not obtained written commitment from the Tribe that it will purchase ERCs under 40 C.F.R. § 93.160(b). As such, the final EIS and the public are unable to consider how effective the enforcement measures will be, or even if there will be any at all.

BIA must ensure compliance with the Clean Air Act's conformity determination requirement prior to making a decision to take land into trust for a gaming acquisition. Because the conformity determination is not finalized before the final EIS and does not fully comply with 40 C.F.R. Part 93, BIA must prepare a supplemental EIS after considering public comments and issuing a final conformity determination.

G. Socioeconomic impacts are inadequately analyzed.

Finally, the FEIS also fails to give any estimate of the possible range of increases in societal problems that may result from the proposed casino, including problem gambling, divorce, suicide, prostitution, bankruptcy, and demand for social services. An estimate is provided (for Alternative A only) of the anticipated increase in calls for law enforcement service and

7-24

7-24 cont.

percentage that would result in arrests,[16] but there is no quantification of the different types of additional crimes that would result, including DUIs, a particular concern given that the Project is within walking distance of three schools. The FEIS should therefore evaluate the possible range of social costs of different types that would be borne by the local community as a whole, as well as by more vulnerable segments of our community. We note in particular that the target market for the Project is disproportionately senior citizens and the Asian community. In addition, we note that the Rancheria's contractual arrangement with Boyd Gaming of Las Vegas, Nevada typically provides for compensation of 30% of gross revenues—given projected revenues of $449 million annually, that would mean over $130 million leaving the local economy annually, an impact completely ignored in the FEIS's economic impact statement.

CONCLUSION

For the foregoing reasons, the FEIS is deficient and cannot support a decision to take the Elk Grove site into trust. The BIA must prepare a supplemental EIS for additional public review and comment before any final decision.

Sincerely,

Cheryl Schmit
Director, Stand Up for California!

Lynn Wheat
Elk Grove GRASP

Joe Teixeira
Committee to Protect Elk Grove Values

[16] *See* DEIS App. N (Socioeconomic Analysis) at 40. The report speculates that the other alternatives "may experience similar impacts relative to their proposed size and gaming positions." The City of Galt, however, estimated more than twice as many service calls and arrests based on data for comparable casinos in California. BIA declined to consider this information, however, on the grounds that because Galt "did not cite the published source of its information, the figures described by the Commenter could not be verified." Response to Comment A16-234. BIA admits, however, that often that information is available only by direct inquiry to the relevant law enforcement agencies, a relatively easy task. BIA's failure to verify the information and consider it is therefore a violation of 40 C.F.R. § 1502.22 (Incomplete or unavailable information).

Patty Johnson

Enc.

cc:
Mr. John Rydzik
Chief, Division of Environmental,
Cultural Resource Management and Safety
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825
John.Rydzik@bia.gov

From:	Shepard, Eric
To:	Smyth, Paul (WDC)
Cc:	Lawrence Roberts; Amy Dutschke
Subject:	Re Wilton ranceria Application - City of Elk Grove - Notice of Sufficiency of Referendum Petition
Date:	Monday, January 09, 2017 4:39:18 PM
Attachments:	2016.12.29 Stand Up letter to Larry Roberts and Hilary Tompkins (3).pdf

Paul,

Thank you for your email and comments. As you are aware, the comment period on the Wilton Final Environmental Impact Statement has not closed. The Department has not yet made a decision whether to acquire the Elk Grove Mall Site in trust and therefore your request is premature. However, the Department's land-into-trust regulations on this point are clear. The Department "shall . . . [i]mmediately acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements." 25 C.F.R. 151.12(c)(2)(iii). In addition, as to the question of harm, if a court determines that the Department erred in making a land-into-trust decision, the Department has stated that it will comply with a final court order and any judicial remedy that is imposed. 78 Fed. Reg. 67928, 67934 (Nov. 13, 2013).

Thank you,
Eric

---------- Forwarded message ----------
From: **Smyth, Paul (Perkins Coie)** <PSmyth@perkinscoie.com>
Date: Fri, Jan 6, 2017 at 4:08 PM
Subject: Re Wilton ranceria Application - City of Elk Grove - Notice of Sufficiency of Referendum Petition
To: "larry.roberts@ios.doi.gov" <larry.roberts@ios.doi.gov>, "Tompkins, Hilary" <hilary.tompkins@sol.doi.gov>, "amy.dutschke@bia.gov" <amy.dutschke@bia.gov>
Cc: "karen.koch@sol.doi.gov" <karen.koch@sol.doi.gov>, "Caminiti, Mariagrazia" <marigrace.caminiti@sol.doi.gov>, "sarah.walters@ios.doi.gov" <sarah.walters@ios.doi.gov>

Dear Assistant Secretary Roberts, Solicitor Tompkins and Regional Director Dutschke,

I am following up on the attached letter sent December 29, 2017, to Mr. Roberts and Ms. Tompkins on behalf of my client Stand Up For California!, et al., seeking assurances that if Mr. Roberts makes an affirmative decision to take land into trust for the Wilton Rancheria, not to effectuate the transfer of the land before Stand Up! has the opportunity to seek emergency judicial relief. Since the letter was sent the City of Elk Grove has found sufficient the petition by my clients and others to seek a referendum on the removal of the development restrictions that now exist on the subject property. See e-mail below. Thus, the restrictions remain in place pending the referendum. Transferring the land into trust before the referendum would make the referendum moot to the detriment of my clients.

We request written confirmation before close of business, Monday January 9, 2017, that the Secretary or any department official, upon any decision to accept the Wilton Rancheria's application, will not transfer title to land in trust until the referendum occurs or we will be forced to seek emergency relief in the Court

to protect the interests of my clients in the referendum.

Thanks for your attention to my request.

Paul B. Smyth

From: Jason Lindgren [mailto:jlindgren@elkgrovecity.org]
Sent: Friday, January 06, 2017 11:00 AM
To: Ashlee N. Titus <atitus@bmhlaw.com>
Subject: City of Elk Grove - Notice of Sufficiency of Referendum Petition

Good Afternoon,

The referendum petition entitled "Referendum Against an Ordinance passed by the City Council; Ordinance No. 23-2016. An Ordinance of the City Council of the City of Elk Grove adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.," filed with the Office of the City Clerk on November 21, 2016 has been deemed sufficient.

I will be requesting certification of the results of the examination of the referendum petition to the City Council of the City of Elk Grove at the regular meeting of January 11, 2017.

The agenda and related staff reports for the January 11, 2017 regular meeting are anticipated to post today (Friday, January 6, 2017) at 2 p.m., and can be found at the following location on the City website: http://www.elkgrovecity.org/city_hall/city_government/city_council/council_meetings/agendas_minutes/

(click on the link to the agenda, and the staff reports are linked under each item number – Item 10.1 is the requested action to certify the petition)

If you have any questions or concerns regarding this matter, feel free to contact me, 478-2286, jlindgren@elkgrovecity.org.

Regards,

Jason Lindgren

City Clerk

City of Elk Grove

8401 Laguna Palms Way

Elk Grove, CA 95758

916.478.2286 (office)

916.627.4400 (fax)

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Portland Propane Terminal

Prepared By

Northwest Citizen Science Initiative*

(Hayden Island Group)

3rd Revised Edition, February 27, 2015

Abstract

In 2014, Pembina Pipeline Corporation (PPC) inked an agreement with the Port of Portland, Oregon, to build a West Coast shipping terminal to export Canadian propane. Why Portland? The simple answer: lower regulatory hurdles; if Canadian propane bound for overseas markets is transported by rail to US shipping terminals, it is largely free of export restrictions and Federal permits are not required. However, the project has already hit a snag due to the existence of a protected natural shoreline. The proposed terminal location is close to and equidistant from Portland's northern suburbs and downtown Vancouver, Washington.

Nationally, the planning and building of energy export terminals is happening at a rate that far-outstrips the ability of city councils and planning departments to keep up. Moreover, the PPC project is far from green... and according to the city, the terminal would increase Portland's CO_2 emissions by about 0.7%. The PPC terminal also offers few direct jobs, would close public waterways for days each month, and unnecessarily endanger the lives of a significant portion of the Portland and Vancouver populations.

In this paper we discuss ways in which propane transportation and storage on such a large scale is highly vulnerable and not inherently safe. Particularly in view of the expected 25+ year lifetime of the facility, we demonstrate that the PPC propane export terminal project presents an unacceptable risk, and high potential for serious impact on our entire Portland/Vancouver urban area. It also far exceeds any industrial factor originally envisioned for Portland's industrial zoning. We will comment on the environmental impact statement and environmental impact report (EIS/EIR) for a California LNG project that is similar in many ways to the PPC proposal, but which was canceled due to the improbability of mitigation of various environmental issues: everything from high density housing less than two miles away, to seismic liquefaction risk, and the pressurized storage of up to 6-million gallons of liquid propane on site. This EIS/EIR is representative of the level of planning detail that we believe should be required before large, high-impact projects get official go-ahead approval.

Simulation results obtained using well validated EPA/NOAA models for various accident and incident scenarios, whether manmade or due to natural causes, or whether due to deliberate acts of terrorism, are discussed. The results, which as presented in the form of easy-to-understand maps, demonstrate that Portland's industrial zoning is outdated, and that the thinking of our civic leaders who would support the construction of a large scale propane export terminal so close to where we Portlanders live our lives, is obsolete, and due to its role in expanding the use of fossil fuels, is at odds with Portland's widely promoted image as America's Greenest City.

We believe that our propane accident model results are of sufficient confidence to support a conclusion that a propane export terminal less than 10 miles beyond the Portland and Vancouver urban boundaries is contraindicated, and must be rejected if our cities are to live long and prosper.

We will also briefly consider some legal ramifications embedding a large propane export facility inside a busy urban area.

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*Northwest Citizen Science Initiative (NWCSI) is an association of civic leaders, scientists, engineers, legal scholars, and environmental researchers that promote thorough, valid, and reliable methods for the scientific study and enhancement of all of Nature's systems of livability and sustainability across the Pacific Northwest.

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Statement of Copyright:

Modeling Software Authority Statement

The ALOHA (Areal Locations of Hazardous Atmospheres) program used to produce the propane threat zone maps presented in this paper originated in the 1970s as a simple tool for modeling and estimating the dispersion of gas plumes in the atmosphere. Over the years since t hen, it has evolved into a tool used for a wide range of response, planning, and academic purposes. It is currently distributed to thousands of users in government and industry (in the USA it is distributed by the National Safety Council).

ALOHA, now at version 5.4.4, is maintained by the Hazardous Materials Division of National Oceanic and Atmospheric Administration (NOAA), and is widely used by Fire Departments and first responders for Emergency Chemical Release Modeling.[1] The following is a list of the credentials of the ALOHA project team members and external review team (as of February 2006) who added new features related to fire and explosions (pool fire, BLEVE—boiling liquid expanding vapor explosion—, flare or jet fire, flammable explosive vapor cloud):[2]

ALOHA Project Team Credentials:

Jerry Muhasky PhD (Mathematics). More than ten years' experience in design of large environmental software programs. Lead programmer for ALOHA version 5.

Bill Lehr PhD (Physics). Over twenty years' experience in software model development in the environmental field. Dr. Lehr was lead scientist for the source strength component of ALOHA, version 5.

Jon Reinsch. Experienced software developer and was lead programmer for the NOAA/EPA RMPCOMP project.

Gennady Kachook. Experienced programmer and has worked on several environmental modeling programs.

Debra Simecek-Beatty. Environmental modeling specialist and has worked on several large modeling projects.

Robert Jones PhD (Chemistry). Has been lead researcher on many ALOHA updates.

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[1] Jones, Robert, et al. ALOHA (Areal Locations of Hazardous Atmospheres) 5.4.4 Technical Documentation. NOAA Technical Memorandum NOS OR&R 43. November 2013. http://response.restoration.noaa.gov/sites/default/files/ALOHA_Tech_Doc.pdf Retrieved Feb 20, 2015.

[2] "Technical documentation and software quality assurance for project-Eagle-ALOHA: A project to add fire and explosive capability to ALPHA." Feb 2006. Office of Repsponse and Restoration. Noational Oceanic and Atmospheric Administration (NOAA); Environmeutal Protection Agency (EPA); Pipelines and Hazardous Materials Safety Administration, Department of Transportation. http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/Final%20techdoc%20and%20QA.pdf Retrieved Feb 20, 2015.

ALOHA 5.0+ External Review Team:

James Belke	Environmental Protection Agency
Don Ermak	Lawrence Livermore National Laboratory
Martin Goodrich Baker	Engineering and Risk Consultants
Greg Jackson	University of Maryland
Tom Spicer	University of Arkansas
Doug Walton	National Institute of Science and Technology
Kin Wong	Department of Transportation

The following is a check list of relevant features of ALOHA (our emphasis):[3]

ALOHA 5.0+ Features:

- Quality Control. Significant effort has been put into checking user inputs for reasonableness and for providing guidance on how to select input correctly. Numerous warnings and help messages appear on the screen throughout the model.
- Useable accuracy. Even though approximations are necessary, every effort is made to ensure that the result is as accurate as possible. When compared to the results from sophisticated, specialized models or field measurements, ALOHA generally will deviate in a conservative direction, (i.e., predict higher concentrations and larger affected areas).
- Contingency planning. ALOHA 5.0 can be used for site characterization of industrial settings. Dimensions of permanent tanks, pipes, and other fixtures can be described and saved as text or ALOHA-runnable files. Different accident scenarios can then be played to derive worst-case possibilities.
- Neutral or heavy gas models. ALOHA 5.0 is able to model heavy gases and neutral gases.
- Pressurized and refrigerated tank releases. ALOHA 5.0 will model the emission of gas from pressurized tanks or refrigerated tanks with liquefied gases. Flashing (sudden change from liquid to gas inside the tank), choked flow (blocking of the gas in an exit nozzle), and pooling of the cryogenic liquid are considered.

ALOHA Special Training Requirements/Certification:

There are no special additional requirements or certification required to use the new fire and explosion option scenarios in ALOHA 5.0+. However, since some terminology peculiar to the new scenarios will be different from those involving the toxic gas modeling, it is recommended that anyone new to fire and explosives forecasting review the user documentation and become familiar with the example problems. In particular, the modeled hazards now include overpressure and thermal radiation risk, in addition to toxic chemical concentrations.

[3] Reynolds, R. Michael. "ALOHA (Areal Locations of Hazardous Atmospheres) 5.0 Theoretical Description." NOAA Technical Memorandum NOS ORCA-65 (August 1992). Pages 2-3. http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/ALOHA-Theoretical-Description.pdf Retrieved Feb 20, 2015.

Introduction

On Aug 28, 2014, Canadian fossil fuel company Pembina Pipeline Corporation (PPC) publicly announced that it had entered into an agreement with the Port of Portland, Oregon, for the building of a new West Coast propane export terminal.[4] The stated use of the terminal is to receive propane produced in the western provinces of Canada, and export it to international markets. The agreement includes the provision of a marine berth with rail access. The chosen location, adjacent to the Port of Portland's Terminal 6 facility, has already hit a snag due to the existence of a protected environmental zone along the river shoreline adjacent to the planned location of the propane terminal. This protection was created in 1989 to protect wildlife habitat, prevent erosion and preserve the Columbia's visual appeal.[5] The protection includes a ban on transporting hazardous materials through the zone except by rail or on designated roads; however PPC needs to use a pipeline to cross the zone.

PPC intends the export terminal project to "initially" develop a 37,000 barrel (1.16 million US gallons) per day capacity with an expected capital investment of US$500 million and with an anticipated in-service date of early 2018.[6] The site of the proposed terminal is just 2¾ miles equidistant from downtown Vancouver, WA; downtown St. Johns in Portland; and the Interstate 5 Bridge across the Columbia River. Within the 24 square miles defined by this perimeter, exist many other valuable assets including the Port of Portland's Rivergate Industrial District and marine terminals; the entire Port of Vancouver; the Smith and Bybee Wetlands Natural Area; the BNSF rail bridge across the Columbia River: West Hayden Island; the Hayden Island manufactured homes community and business center; the Portland suburbs of Cathedral Park, St Johns, and Portsmouth; several of Portland's floating home communities; the BNSF rail bridge across the Columbia River; and of particular mention, the under construction Columbia Waterfront project ("The Waterfront in Vancouver, Washington"), which is in the process of developing 32 acres of long neglected riverfront land to extend Vancouver's urban core back to its riverfront roots.

While the number of accidents and incidents involving propane and other volatile energy fuels being extracted, transported and stored has not increased generally, the *severity* of incidents and accidents seems to have increased. Part of the reason may be that oil companies are having trouble building additional pipelines, so they've taken to the road.[7] They've also taken to the rails, with trains that are longer (mile-long unit trains consisting of 100 tanker cars are now standard). Compared to two decades ago, storage tanks are larger, there are many more trains,

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[4] http://www.pembina.com/media-centre/news-releases/news-details/?nid=135242. Retrieved Sep 02, 2014.
[5] House, Kelly. "Portland Propane Export Project Hits Environmental Snag." Retrieved from Oregon Live, Jan 05, 2015 http://www.oregonlive.com/environment/index.ssf/2014/12/portland_propane_export_projec.html
[6] PR Newswire. "Pembina Chooses Portland, Oregon for New West Coast Propane Export Terminal." http://www.prnewswire.com/news-releases/pembina-chooses-portland-oregon-for-new-west-coast-propane-export-terminal-273541321.html Retrieved Jan 05, 2015.
[7] Krauss. Clifford; Mouawad, Jad. The New York Times. "Accidents Surge as Oil Industry Takes the Train." http://www.nytimes.com/2014/01/26/business/energy-environment/accidents-surge-as-oil-industry-takes-the-train.html?_r=0 Retrieved Jan 07. 2015

and loads tend to be a lot more volatile (particularly with the propane-rich Bakken oil[8]). Other factors are profit pressure, many new (rookie) workers in an expanding workforce, and liability caps.

Therefore, if we factor in the humongous scale of the PPC proposal, together with PPC's stated intention to expand the facility in the future to even larger volumes; it is difficult to see how, for Portland, a "bridge-fuel" like propane (much of which actually goes to manufacture propylene, rather than be burnt as a fuel) is a bridge to anywhere except perdition. This paper discusses ways in which energy transportation and storage on such a large scale in Portland is highly vulnerable in a number of ways. Particularly in view of the expected 25+ year lifetime of the facility, we will show that it presents an unacceptable risk, and that even a minor accidental fire in one part of a propane facility can escalate to larger fires, and explosions, in other parts of the facility (domino effect), with the potential for very dire consequences and impact on our entire Portland and Vancouver urban area. Indeed, the potential for harm to our area is great, and clearly exceeds any industrial factor originally envisioned for Portland's industrial zoning.

The propane threat zone estimates discussed in this paper have been computed with the best available information we currently have from the City of Portland, Port of Portland, and PPC, and in an ongoing absence of any meaningful analysis from any of those entities. We believe the analysis benchmark that PPC should be held to before any "overlay" of the beachfront environmental zone can be even considered by Portland's Bureau of Planning and Sustainability, is the 825-page "*Draft Environmental Impact Statement/Environmental Impact Report Volume 1-2*" dated Oct 2005, submitted by the Port of Long Beach, CA, in support of their (ultimately unsuccessful[9]) application for approval of *The Long Beach LNG Import Project*.[10] The Executive Summary and the contents pages from this monumental document are provided in Appendices C and D, respectively, as an example of what, in the US, is considered normal practice for energy terminal and pipeline projects. To give an idea of the depth of this document, the word "security" appears 335 times in its pages, yet, "mitigate" and "mitigation" only appear a total of 220 times. Some of the other words used frequently are: "terrorist" 217x; "terrorism" 13x; "threat" 73x; "quake" 184x; "seismic" 102x; "liquefaction" 37x. Interestingly, "propane" is mentioned 76 times, "explosion" 109x; "explod" 7x; a 20-foot high full-enclosure concrete wall is mentioned 16x; and boiling liquid vapor explosions are mentioned 19x (the site planned to use two 85-ft diameter pressurized spheres near the LNG tanks, to store "hot gas" impurity components

[8] Stern, Marcus; Jones, Sebastian. "Too Much Propane Could Be a Factor in Exploding Oil Trains." Bloomberg News, Mar 5, 2014. http://www.bloomberg.com/news/2014-03-05/too-much-propane-could-be-a-factor-in-exploding-oil-trains.html Retrieved Jan 03, 2015.

[9] Gary Polakovic "Long Beach energy project halted: The city cancels plans for a liquefied natural gas terminal. Many had voiced safety concerns." LA Times, Jan 23, 2007. http://articles.latimes.com/2007/jan/23/local/me-lng23 Retrieved Feb 24, 2015.

[10] http://www.energy.ca.gov/lng/documents/long_beach/LongBeachImport/Draft%20POLB%20EIR-EIS%20Vol.1-2%20Full%20Text%20document%20without%20figures.pdf Retrieved Feb 24, 2015.

propane and ethane from the LNG. "Sabotage" is mentioned 5x; "vapor cloud" 117x; and "vapor cloud explosion" 134x.

Propane, being a relatively new energy commodity (from the POV of high-volume terminal construction for export), whether for overseas energy production or chemical feed stock), largely had to follow the existing LNG safety regulations surrounding refrigerated storage tanks.[11] Indeed, as stated in the Long Beach document mentioned above, the hazards common to both propane and LNG refrigerated tanks are *torch fires* (gas and liquefied gas releases), *flash fires* (liquefied gas releases), *pool fires* (liquefied gas releases), *vapor cloud explosions* (gas and liquefied gas releases). The same document states that Propane is much more hazardous due to its propensity for *boiling liquid vapor explosions* (BLEVEs), when it is stored and/or transported in rail tankers, tanker trucks, bullet tanks, and other above-ground pressurized storage tanks.

The Need for Urban Resilience

For the cities of Portland and Vancouver to flourish and live long, we must make them as safe and as resilient as we know how. This means avoiding or eliminating the potential for serious disasters, especially man-made. Dr. Judith Rodin, in her major new book, *The Resilience Dividend*,[12] describes the concept of resiliency of cities, and not only how they can recover after a major catastrophic event, but also how to make decisions to avoid such events in the first place. Former investment banker Mark R. Tercek, now president and CEO of The Nature Conservancy, said of her work, "Judith Rodin details connections between human, environmental and economic systems, and offers a strategy to proactively address the threats they face." Tercek's book, co-authored with biologist Johnathan S. Adams, *Nature's Fortune*,[13] makes the case that investing in nature—the green infrastructure—makes for good business, and is the smartest investment we can make.

Our civic regulatory process already eliminates or mitigates a lot of potential for disaster through our building and zoning codes. Unfortunately zoning alone cannot create resiliency because it does not balance all aspects of our communities. Moreover, due to globalization, we are seeing a scale and rate of industrialization, particularly in the fossil fuels energy space, that puts an unprecedented amount of pressure on our city administrators and planners to follow the dollar. Moreover, we are asked to believe that the recent energy boom—which has been advancing with little regard to our environment—will enhance our lives, solve all of our problems, and produce thousands of family wage jobs (the truth, at least as far as the PPC propane terminal is concerned, is much closer to half a job per acre, and no more than 30–40 direct jobs total). We are also asked to accept that any consequent loss of wild habitat and

[11] Not all propane import/export terminals use refrigerated storage. For example, the Cosmo Oil propane and LPG terminal that blew up on March 11, 2011 in Tokyo Bay, at that time used only pressurized storage.
[12] Dr. Judith Rodin chair of the Rockefeller Foundation, and author of *The Resilience Dividend: Being Strong in a World Where Things Go Wrong*. Public Affairs, New York, 2014.
[13] Tercek, Mark R.; Adams Jonathan S. *Nature's Fortune: How Business and Society Thrive By Investing in Nature*. Basic Books, New York, 2013.

recreational areas, loss of air and water quality due to heavy industrialization within our city boundary is a worthwhile tradeoff. Moreover, given the potential for a credible large scale propane accident or incident at the planned terminal, and given the high probability of a long and protracted recovery from such a calamity (were a recovery even possible), it cannot be offset by a promise of good housekeeping. The handling of humongous quantities of an extremely dangerous chemical amidst our two cities, Portland and Vancouver must, therefore, be avoided at all costs. Only by saying no to large-scale propane facilities in Portland can we avoid the unthinkable. History records that despite best efforts, accidents and incidents happen. Only by making Portland as resilient as we know how, can we reap what Dr. Judith Rodin calls "the resilience dividend."

Why Portland?

Why did Canadian company Pembina Pipeline choose Portland? Put simply, the answer is lower regulatory hurdles. Due primarily to the North American Free Trade Agreement (NAFTA), and quirky US export laws that were crafted in the days of oil shortages, we have a situation where imported Canadian natural gas liquids are largely free of export restrictions, a status shared by propane imported from Canada by train (but not by pipeline).[14] Although PPC denies that this is the reason, a partial acknowledgement came from Port of Portland Executive Director Bill Wyatt, who told Oregon Live[15] that propane is not regulated in the same way as natural gas or domestic oil. He added that although PPC must obtain building permits from the City of Portland, an air quality permit for the Oregon DEQ, and maybe also a water quality permit from the state, Federal permits are not required. However, he did say that Portland also has the advantage of competing railroad companies, not to mention the port's experience with export terminals.

Nationally, these types of projects are happening at a rate that far-outstrips the ability of city councils and planning commissions to keep up. At the same time, a burgeoning population is putting an unprecedented pressure on our urban boundaries, and also on the industrial zoning which, once upon a time, was thought to be a safe distance from current (and future) residential areas. These populations would be much better served by new clean-tech industries (e.g., computer software and film animation) that are much cleaner, safer, and more easily integrated into our modern city environment than traditional heavy industries. The bottom line is that large energy facilities (such as the one that PPC wants to build in Portland) have no place within or close to our cities!

That the PPC proposal has progressed so far as to identify a site for a large propane export facility so close to where people live and play is a complete mystery. The first responsibility of

[14] Irwin, Conway (Nov 20, 2013) "The US's Absurd Oil & Gas Export Laws." http://breakingenergy.com/2013/11/20/the-usss-absurd-oil-gas-export-laws/ Retrieved Jan 05, 2015.
[15] Francis, Mike. Oregon Live (Sept 02, 2014) "Pembina Pipeline's Portland propane project faces lower hurdles than other terminals." http://www.oregonlive.com/business/index.ssf/2014/09/pembina_pipelines_portland_pro.html Retrieved Jan 05, 2015.

government is the protection, health, and welfare of the population, not participation in an industry that is not as green as some would lead us to believe;[16] that would use vast amounts of our resources (8,000 MWh of electricity per month; which would increase Portland's CO_2 emissions by about 0.7%,[17] and which would raise a large question about awards recently received by the city[18] in recognition of its Climate Action Plan to reduce greenhouse gas emissions by 80 percent from 1990 levels by 2050[19]), by PPC's own admission would offer very few direct jobs (30–40), would close public waterways used by the gas carrier ships for days each month, and unnecessarily endanger the lives of a significant proportion of the Portland and Vancouver population. Therefore we need to ask: Where are our city officials? To whom are they answering?

When information about PPC's desire to build a propane export terminal became public, Portlanders were surprised to hear that the city and the port had already been in secret negotiations with PPC for six months. An agreement that the Port of Portland would provide a space at Terminal 6 for construction of a facility that would include refrigerated storage for 30 million gallons of liquid propane was already in place! Amid claims from port personnel to the contrary, neither Audubon Society nor Sierra Club, nor Columbia Riverkeeper had received any communication from the port, or the city, informing them of the proposal. There was no public disclosure until after the agreement with PPC was already inked. At that point, PPC met with Hayden Island residents and hinted that the project was being fast tracked, also mentioning that if Portland did not want the terminal, PPC would withdraw and move on.[20] Cleary the project was being pushed through without the protective umbrella of public discussion and public process; a process more important than usual, given Portland's lack of experience with large propane projects (and PPC too, since this is also PPC's very first propane export terminal). Pembina intends to build two steel, double-walled tank-within-a-tank insulated tanks, totaling 33.6 million gallons. The design is probably similar to two the 12.5 million gallon double steel wall tanks built for Suburban Propane, in Elk Grove, CA. (figure 1). Unlike Elk Grove, Pembina tanks would be of unequal size (see artist's rendering in figure 2), the largest of which would be some 130 feet tall. The propane in such tanks is stored as a refrigerated liquid, cooled to approximately -44 °F to allow storage at close to atmospheric pressure.

[16] Warrick, Joby; Washington Post. "Methane plume over western US illustrates climate cost of gas leaks." http://www.theguardian.com/environment/2015/jan/04/leaking-methane-gas-plume-us Retrieved Jan 07, 2015

[17] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*. Dec 12, 2014. Page 29. http://www.portlandoregon.gov/bps/article/512520 Retrieved Jan 07, 2015.

[18] House, Kelly; Oregon Live. "Portland wins presidential award for climate change work." http://www.oregonlive.com/portland/index.ssf/2014/12/portland_wins_presidential_awa.html Retrieved Jan 02, 2015 .

[19] City of Portland and Multnomah County: Climate Action Plan 2009 https://www.portlandoregon.gov/bps/49989 Retrieved Jan 07, 2015.

[20] Hayden Island Neighborhood Network (HINooN) meeting, Oct 09, 2014.

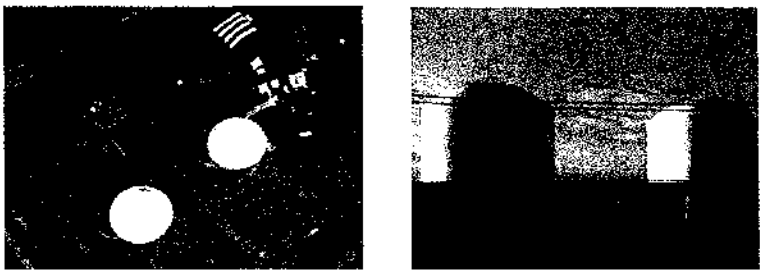

Figure 1: Suburban Propane's two 12-million gallon double steel wall refrigerated propane tanks, separated from four 60,000 gallon pressurized tanks (LH picture, top right), by an earthen berm. Elk Grove, CA

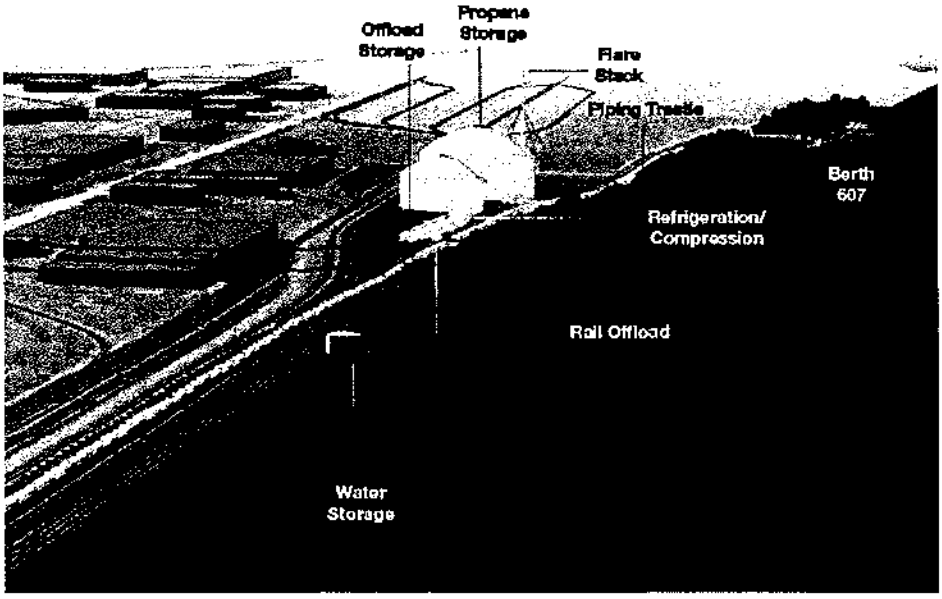

Figure 2: The two double-walled steel refrigerated storage tanks proposed by Pembina for Terminal 6, Portland, OR are of unequal size. The larger tank is 130 feet tall, dwarfing nearby trees. Shown, in front of the storage tanks, are eight 125,000 gallon pressurized bullet transfer tanks. Also shown, stretching diagonally across the picture is a 100 car unit propane train. Propane storage, plumbing, and transportation are shown with yellow highlighting.

The Elk Grove tanks appear to be similar to a design that has been replicated many times already in the LNG industry, including the Everett LNG Terminal, the CMS Energy's Lake Charles Terminal; the El Paso Corporation's Elba Island LNG Terminal, near Savannah, GA (phase IIA tank 42 million US gallons, diameter 258 feet, height 123 feet; phase IIIB tank 48 million US gallons).[21]

[21] Quillen, Doug (ChevronTexaco Corp.) "LNG Safety Myths and Legends." Conference on Natural Gas Technology Investment in a Healthy U.S. Energy Future, May 14–15, 2002, Houston, TX. http://www.netl.doe.gov/publications/proceedings/02/ngt/quillen.pdf

To date there have been no accidents with very large refrigerated LNG or propane tanks, although there have been threats to their safety (see *A clear and Present Danger* section, below). Whether such tanks can remain accident free remains to be seen, especially since no large-scale accident tests have ever been conducted on them. Safety margins are therefore largely theoretical, relying on simulations, and accident data from much smaller tanks.

On the other hand, accidents involving *pressurized* liquid propane storage and transportation are in the news almost every week. One of the most cited propane transportation accidents occurred in Murdock, IL, Sep 02, 1983. However, even though it involved a much smaller quantity of propane than held by the large refrigerated tanks mentioned above, the magnitude of the event shocked those who witnessed it. All-told, this accident involved 60,000 gallons of propane, and 50,000 gallons of isobutane, in four tanker cars. Police evacuated a one-mile radius. Things became dangerous when a 30,000 gallon propane BLEVE (Boiling Liquid Expanding Vapor Explosion) was set off by a fire in a nearby 30,000 gallon ruptured propane tanker car. As a result of the BLEVE, a 6-ton tanker car fragment was rocketed ¾ mile (3,640 feet) from the explosion. Shocked at the power of the blast, a TV news crew retreated back 2½ miles. Later in the day, the flames triggered a second large BLEVE, this time in one of the isobutane tanks.[22]

Propane 101

Propane is considered by the energy industry to be a cost effective and statistically safe fuel. However, due to the large size of transportation units nowadays (a unit train consists of a hundred DOT tanker cars of 30,000 gallons each, for a total of three-million gallons), the increasingly large scale of storage facilities, and the business pressure on suppliers to get this material to market quickly at minimal cost, there have been many incidents and accidents.

Ambient-temperature storage of liquid propane at a propane terminal is typically achieved with a row of high-pressure bullet tanks. Formerly these were sized in the 30,000 to 60,000 gallon range, but nowadays 90,000 to 125,000 gallons is now becoming more common. Likewise, -44 °F refrigerated bulk propane storage which several years ago was in the 12-million gallon ballpark, now ranges to 48-million US gallons per tank and more. As a result of these developments we cannot avoid the fact that propane storage and transfer facilities tend to house very significant amounts of chemical energy, some 4.6 quadrillion Joules (4.6 PJ), in the case of a 48-million gallons of refrigerated liquid propane.

When propane burns, its chemical energy is transformed into thermo-mechanical energy. A trade-off exists between the thermal and mechanical effects. How much we obtain of one or the other depends on factors such as the rapidity and degree of the conversion of the propane into a vapor, and the timing of the ignition event. The lower and upper explosive limits (known as LEL and UEL) define the flammability range, respectively 2.1% and 9.5% (by volume) for propane

[22] Brockhoff, Lars H. Institute for Systems Engineering and Informatics. EUR 14549 EN. "Collection of Transport Accidents. Involving Dangerous Goods." 1992

vapor. Before a fire or explosion can occur, three conditions must be met simultaneously: LEL < fuel < UEL (i.e., a fuel mixture that is not too lean or too rich); air (which supplies oxygen); and a source of ignition (such as a flame or a spark). When sufficient oxygen is present, propane burns completely to carbon dioxide and water. The chemical reaction is $C_3H_8 + 7O_2 = 3CO_2 + 4H_2O$ + heat. Unlike natural gas, propane is heavier than air (around 1.5 times as dense). A poorly mixed cloud of vapor in air may burn as a ***deflagration***, at a relatively slow speed governed by the speed of diffusion of propane molecules through the cloud; whereas in a finely mixed vapor cloud we may get a ***detonation***, which propagates through the cloud driven by a pressure wave that travels at the speed of sound. ***Vapor Cloud Explosions*** (VCE), whether due to deflagration, or to detonation, can generate ***overpressure waves*** that have sharp onsets as well as significant overpressures.

Depending on circumstances, other "classical" types of fires are possible, such as flash fires (a non-explosive combustion of a vapor cloud), and/or jet fires (with any remaining puddles of liquid propane burning as a relatively slow-moving pool fire). Depending on circumstances, there is the potential for the generation of fireballs that are intensely luminous in the infrared range, together with the ejection of showers of "missiles" consisting of sharp tank wall fragments and other debris. This is the Boiling Liquid Expanding Vapor Explosion, or BLEVE, which in the context of propane is applicable mainly to pressurized storage tanks. Introduced in the previous section, BLEVEs generally start when a fire heats the outer wall of the tank. If the heating occurs faster than the relief valve can vent, the pressure inside the tank rises until through the combined effects of pressure and heat-caused weakening of the metal tank wall, the tank ruptures, typically with great force. The heated contents flash-boils, instantly mixes with the air, and the resulting vapor cloud quickly ignites to create a fireball. The bursting of the tank typically ejects fragments at high velocity (10--200 m/s) in all directions; 99% of the fragments landing within a radius of 30x the fireball radius. Frequently, a major part of the tank will rocket to even larger distances, accelerated by the rapid burning of any remaining contents. Typically 100% of the propane is quickly consumed in the fireball, which due to its high luminosity at infrared wavelengths can cause significant radiant heat damage at surprisingly large distances. Another effect of the propane BLEVE is a transient spike in local atmospheric pressure, which spreads out radially from the source of ignition. The magnitude of such an overpressure wave depends on the ignition source and its strength (whether spark, flame, or detonation). If the wave is strong enough to cause injuries or property damage, it is known as a blast wave.

Before leaving this comparison of combustion scenarios, it is worth emphasizing that BLEVEs are generally not applicable to refrigerated propane storage, due to the amount of heat it would take to boil the frigid liquid, by which time it would likely all have vented. Having said that, we need to point out that there are mechanisms involving large-scale mechanical disruption of the walls of a refrigerated storage tank, which can relatively quickly atomize a significant fraction of the liquid into a vapor mixed with air, from whence various VCE scenarios can be considered.

It is useful as well as informative, to define threat zones as contours (often given a color) of decreasing severity with distance from a deflagration or explosion. We define a zone as an area over which a given type of accident or incident can produce some similar level of undesirable consequences. For example, an orange *thermal threat zone* is defined as the area between two radiant flux contours where second-degree burns occur in less than 60 seconds (such as may occur if the infrared radiant flux exceeds 5 kW/m^2). A red *blast threat zone* is defined likewise as the area between two overpressure contours, where there is significant risk of ear and lung damage or the collapse of unreinforced buildings (such as may be caused by an 8 psi overpressure blast wave). A *shrapnel threat zone* may be defined as the area that captures 50% or 99% of the fragments from a tank explosion, in other words the area over which there is significant risk of injuries caused by flying debris or rocketing tank fragments accelerated by the blast (such as often occur in a BLEVE). In the propane BLEVEs (with ignition) discussed in this paper, at a radial distance approximately equal to the orange thermal threat zone (5 kW/m^2), the overpressure may be as high as 8.0 psi. Proceeding outwards towards lower threat, 3.5 psi is enough to rupture lungs and cause serious injury. Further out still, 1.0 psi is enough to rupture eardrums; 0.7 psi is enough to cause glass to shatter. Even a relatively small sudden overpressure (0.1 psi) may be enough to cause the breakage of small windows under strain.[23]

Due to the high flammability of propane vapor (i.e., propane in the gaseous state mixed with air in a concentration range between the LEL and UEL), care must be exercised in its handling. Of the two different approaches to propane storage, pressurized storage at ambient temperature is the cheapest although the most dangerous. Refrigerated storage, which uses a temperature of -44 °F at essentially atmospheric pressure, is the safest. However, all refrigerated propane facilities use high pressure bullet storage tanks for propane transfers to or from other high pressure storage or transportation tanks, and PPC's planned Portland propane terminal is no exception. PPC plans to have eight 125,000-gallon high-pressure bullet tanks, with a total storage capacity of one million gallons of propane. Inexplicably, such tanks are typically installed in close proximity to one-another. At Elk Grove they are spaced, broadside, about 10 feet apart). PPC's widely publicized site layout map does not significantly deviate from this practice. As will be discussed, these relatively small high pressure tanks are the Achilles' heel of propane facilities, especially wherever security is lax, representing in PPC's case a credible danger, not only to surrounding areas as far away as the major residential part of St Johns, the Port of Portland's Rivergate area, the Port of Vancouver, the 240 MW natural gas fired River Road Generating Plant owned by Clark Public Utilities, the Smith and Bybee Wetlands Natural Area, West Hayden Island, and the BNSF rail bridge across the Columbia River, but also to the big refrigerated tank (or tanks) that PPC plans to build little more than a stone's throw from the bullet tanks.

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[23]Renjith, V. R., 2010, PhD thesis. "Consequence Modelling, Vulnerability Assessment, and Fuzzy Fault Tree Analysis of Hazardous Storages in an Industrial Area." Cochin University of Science and Technology, Kochi, Kerala, India. Chapter 3, Hazard Consequence Modeling. http://dspace.cusat.ac.in/jspui/bitstream/123456789/5059/1/Consequence%20modelling%20vulnerability%20assessment%20and%20fuzzy%20fault%20tree.pdf Retrieved Feb 09, 2015

A Clear and Present Danger

The safety score for large refrigerated propane tanks would still be in the "excellent," range, had it not been for one terrorist incident. If the terrorists had succeeded, the score would have been "fail." As a result of the FBI's success in neutralizing the plot, the score is "needs improvement." Besides terrorist plots (who according to several studies, have at their disposal high explosives and trucks to carry them, commercial aircraft, drones, and shoulder-launched rocket-propelled grenades), there are a lot of other potential dangers for such tanks, ranging from earthquake risks (shaking and/or liquefaction leading to wall and roof collapse), to design errors, to, to accidents in other parts of propane facilities that could spread and multiply domino-fashion, to the big tank. Large tanks are only as safe as the integrity of their walls. Everything on the above list is capable of creating a fast-acting high-impact kinetic energy event which, at worst, could collapse the tank expelling its entire contents as droplets that evaporate into vapor cloud that detonates, or at best only causes a tank wall breech and consequent slower loss of contents that results in a very large pool fire, or some combination of both scenarios. The heat energy required to vaporize the refrigerated propane is a negligible fraction of the heat released when the first gallon of propane vaporizes and catches fire, so the process is completely self-driving.

Whatever causes an initial BLEVE at a propane facility, whether it be in a pressurized bullet transfer tank, or an incoming DOT rail tanker car, there is every possibility that it could quickly spread, domino fashion, from one pressurized tank to another, especially if they are closely spaced (in PPC's plan it could spread over a total of eight 125,000 gallon pressurized transfer tanks, a number which expands hugely if all one hundred 30,000 gallon tanker cars of an incoming unit train became involved). The resulting boiling liquid expanding vapor explosions (BLEVEs) could soon release enough thermo-mechanical energy in the form of radiant heat and overpressure blast damage, also generating a shrapnel-field of high-velocity missile-like tank fragments. This could not only quickly disrupt and overwhelm any remaining bullet tanks, but do so with enough force to disrupt the walls of the nearby much larger refrigerated storage tanks, from whence it is likely that the propane liquid would partly spill, and partly disperse to mix with the air as a vapor cloud, which gives us the possibilities of a fire or a detonation. If a detonation, the result would be what is known as a vapor cloud explosion (VCE). Several very serious chain reaction incidents similar to this have been reported in the past few years (check YouTube). Since it is not possible to protect large propane storage facilities from every conceivable catastrophe, the PPC facility planned for the Port of Portland's Terminal-6, would effectively plant the potential for a hugely destructive explosion near the OR/WA state line, within the Portland/Vancouver urban area.

The tank sizes at smaller propane facilities (which typically store propane as a liquid at ambient temperature and a pressure of 250 psi) use pressurized bullet tanks in the range 30,000 to 125,000 gallons per tank. Larger propane facilities also include refrigerated tanks (typically 12-million to 48-million gallons) that store liquid propane at -44 °F, essentially at atmospheric

pressure. As recently revealed by Portland's Bureau of Planning and Sustainability,[24] the propane facility that PPC is planning to build in Portland consists of two large storage tanks with a total capacity of 33.6-million gallons of liquid propane refrigerated to -44 °F, together with eight 125,000 gallon pressurized transfer tanks. This facility has the ability to process one incoming unit train (100 tanker cars each holding 30,000 gallons) every two days. From when propane arrives by rail to when it leaves by ship, there are at least four risk-prone transfers of propane from one type of container to another:

30,000 gallon pressurized liquid propane rail tanker cars
↓
Eight 125,000 gallon pressurized liquid propane transfer tanks
↓
Refrigeration unit
↓
Refrigerated liquid propane storage, 33.6-million gallons at -44 °F
↓
Refrigerated liquid propane storage at -44 °F
onboard a gas carrier ship for overseas markets.

However, the risks extend well beyond these necessary transfers; the storage tanks themselves also pose a risk. Either way, most of the risk ultimately comes down to the flammability of propane as a vapor mixed with air (vapor cloud), and its high energy content. Whether due to accident, or deliberate criminal act, or through natural causes, the principal chemical mechanisms are the same. Moreover, while propane may be more difficult to ignite than other fuels, once it starts burning it is difficult to stop. Irrespective of whether a vapor cloud originates as the result of a BLEVE (typically from a fire-heated pressurized tank in which the relief valve is insufficient or faulty), or whether it is the result of a sudden mechanical disruption of a (typically larger) -44 °F refrigerated tank, the end result is the same, a vapor cloud explosion or VCE.

The heat radiation and overpressure blast wave yield of propane VCEs depends a lot on details such as how much propane is available to feed it, how much pressure is built up before a tank rupture (BLEVE), or the hydrodynamic details of impacts and the high-explosive-driven shock waves (deliberate criminal acts), in other words on how fast the liquid disperses into droplets, and how much these droplets vaporize and mix with the air before ignition from flame or spark. Large refrigerated tanks are more difficult to explode, but propane facilities tend to also have large numbers of pressurized storage tanks and rail tanker cars in close proximity to the refrigerated tank, creating the potential for scenarios where an accident or incident with one of

[24] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*, December 12, 2014. http://www.portlandoregon.gov/bps/article/512520 Retrieved Jan 07, 2015.

these smaller tanks can spread domino fashion, multiplying the damage through heat, and showers of missile-like, razor sharp flying tank fragments. Compared to an overpressure BLEVE of a smaller pressurized tank, the consequences of disruption of the typically nearby typically much larger refrigerated tank is potentially much more dire, even if only part of the large tank contents is ejected. Reports of suitable methods to do this abound in news reports of terrorism, so it does not take much imagination to extrapolate to the use of an aircraft collision with the tank, or the use of a large quantity of high explosives (e.g., a car or truck bomb driven into the facility and parked close to a tank), or rocket-propelled munitions such as shoulder launched armor-piercing grenades. The terrorism threat is a clear and present danger, and cannot be overlooked, as exemplified by the plot, foiled by the FBI in December 1999, of two militiamen who conspired to blow up the two 12-million gallon refrigerated propane tanks at the Suburban Propane facility in Elk Grove, near Sacramento, California. One of the conspirators was knowledgeable in bomb making, and a large amount of explosives were found in his possession.

Company officials downplayed the matter, saying that the type of threat envisioned by the militiamen could not detonate the refrigerated propane tanks because they are non-pressurized. The company surmised that the liquid propane would pool within the protective dirt berms, where it could, they said, only ignite after it had considerable time to warm up, vaporize, and mix with the air. "You could have one hell of a fire, but it would all be contained right there within the berms," said John Fletcher, outside legal counsel for Suburban Propane.

The Suburban company view of the incident loses credibility when we factor in that the facility also has four 60,000 gallon pressurized propane tanks, which may well have been the primary target, and that the militiamen's intention may have been to focus on destroying these, thereby releasing enough blast energy, heat radiation and flying tank fragments to trigger the rapid destruction of the secondary target, the large refrigerated tanks located in clear line of sight just 220 feet away. In our measured opinion, the consequences of a truck bomb driven through the front gate and exploding next to the neat array of pressurized tanks (see figure 2), would have been to create an increasing cascade of BLEVE type explosions, domino style, which through the combined effects of blast, heat, and bullet tank fragmentation would have destroyed the earthen berm and have initiated the destruction of the large tanks, with a significant proportion of the propane mixing with the air to create a large vapor cloud explosion and/or fireball, potentially damaging a radius up to 4½ as large as that due to the smaller pressurized tanks alone. Figure 3 shows a map of the Elk Grove site overlaid with data from an ALOHA simulation (see appendix A) of a BLEVE of just one of the 60,000 gallon pressurized storage tanks. The resulting modeled fireball engulfs almost the entire facility. There are three radiant-heat threat zones, red, orange, and yellow, with red the most serious.

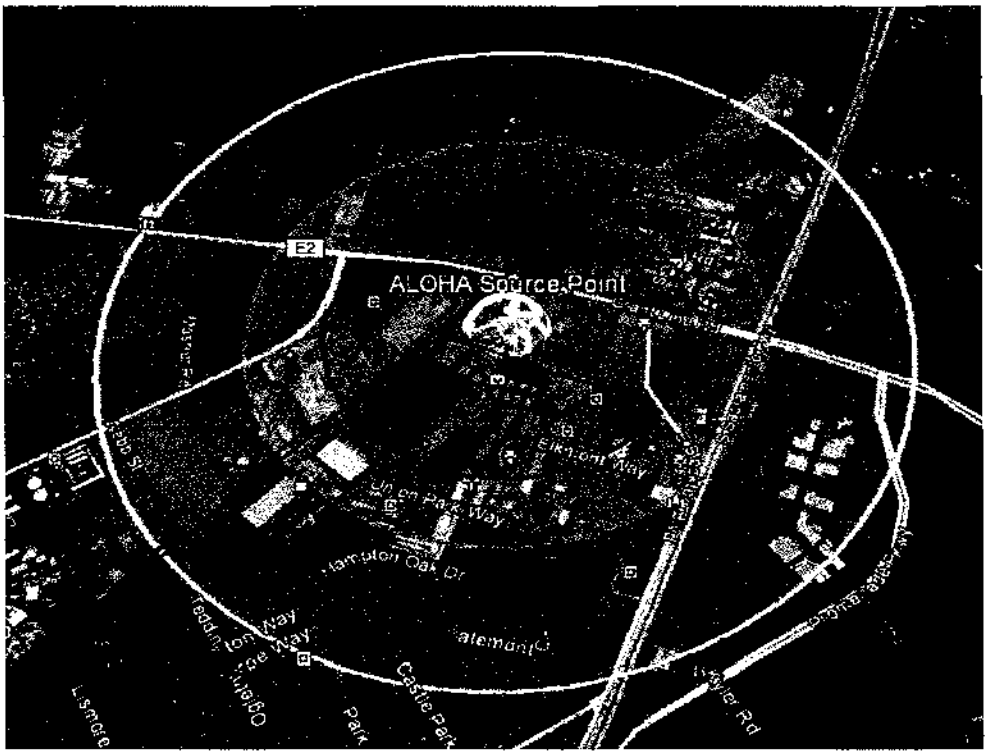

Figure 3: A Google Earth overlay showing one credible scenario had the terrorist plot that targeted the Suburban Propane facility in Elk Grove, California, not been neutralized by the FBI in 1999. It shows thermal threat zones modeled for a boiling liquid expanding vapor explosion in just one of four 60,000 gallon pressurized propane bullet tanks at the facility. The resulting fireball would have engulfed most of the facility, and the thermal radiation effects would have extended ¾ of a mile. If you look to the RH edge of the fireball, below the "e" in "Source," one of the facility's two 12-million gallon refrigerated propane storage tanks can be seen on the RH edge of the fireball which would have engulfed most of the site. In a scenario that caused all four bullet tanks to explode nearly simultaneously, the model predicts that the threat zones would extend up to 50% further. Not shown in this figure are the additional effects of overpressure blast wave, and the missile ejection of shrapnel (tank fragments and other debris), which could credibly puncture the large tanks, leading to potentially even larger consequences, which at the very least could cause a large pool fire and deflagration extending well beyond the boundary of the facility. Ironically, the Elk Grove fire station is within the yellow threat zone (the red dot toward the top RH corner of this map). (Fireball diameter 308 yards; Red zone radius: ⅜ mile [10 kW/m^2] potentially lethal in less than 60 seconds; Orange zone radius: ½ mile [5 kW/m^2] 2nd-degree burns in less than 60 seconds; Yellow zone radius: ⅞ mile [2 kW/m^2] pain in less than 60 seconds)

The other effects of this BLEVE, the potential destructive power of high-speed hazardous tank fragments, and the blast force from, are not modeled by ALOHA. However, there is plenty of data collected from many such accidents to justify our expectation that these effects would be considerable, especially the fragments, and especially at close range. Indeed, due to the danger of showers of these flying fragments, many authorities now recommend an evacuation zone of 30- to 40-times the radius of a BLEVE fireball, which is at least 2.6 miles in our Elk Grove example. In other words, at least three times the radius of the yellow threat zone shown in figure 3.

Not unexpectedly, the credible viewpoint concerning the foiled terrorist plot at the Elk Grove Suburban Propane facility came from the Elk Grove Fire Department and Lawrence Livermore Laboratory scientists, who in opposition to the official company position on the matter, said that destruction and fires could have occurred at considerable distances from the plant. Indeed, Fire Chief Mark Meaker of the Elk Grove Fire Department said, "Our experts have determined there would have been significant off-site consequences."[25] He added that a major explosion and fire likely would have blown the earthen berms out and led to a vapor cloud and/or pool fire that could affect nearby residents, schools and businesses, and depending on the size of the blast, residents could be endangered by heat from a large fireball, flying projectiles "like portions of tank shells flying through the air," and a pressure wave that would emanate from the blast. "In close, there would be a high level of destruction," said Meaker, adding that office buildings and warehouses stand within 200 yards (182 meters) of the plant, with the nearest residential neighborhood, just 0.6 of a mile (.96 km) from the plant. At any given time, Meaker estimated 2,000 people are within a mile of the plant.[26]

In particular, the director of the Chemical-Biological National Security Program at Lawrence Livermore Laboratory, one of the world's foremost experts on explosions, said that,

> ... if the two accused men had been successful in the terrorist plot, a "gigantic fireball" would have been created, causing injuries and damage up to 1.2 miles away. This would, he said, have caused fatal injuries to roughly 50 percent of the people in the blast radius, while many others outside would be severely injured by debris. There would have been fatalities and injuries up to 0.8 miles from the explosion. Then, he said, the initial blast would likely have caused the two smaller on-site pressurized propane loading tanks to explode, rupturing the formaldehyde storage tank at another nearby industrial facility. This would have caused, he said, a toxic cloud that would travel for almost a mile with the prevailing wind, causing life-threatening symptoms to anyone encountering it.[27]

What makes the Elk Grove incident and the testimonies of the fire chief and scientists particularly credible is that after the arrests of the terrorists, company officials added numerous security devices to protect the facility, including a trench designed to stop a car bomb attack at the perimeter.

According to statistics released by the FBI, between 1991 and 2001, 74 terrorist incidents were recorded in the United States, while during this same time frame, an additional 62 terrorist acts being plotted in the United States were prevented by U.S. law enforcement.[28] Elk Grove was

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[25] Industrial Fire World. "Targets of Opportunity." http://www.fireworld.com/Archives/tabid/93/articleType/ArticleView/articleId/86841/Targets-of-Opportunity.aspx Retrieved Jan 03, 2015.

[26] CNN Dec 04, 1999, "Police: California men planned to bomb propane tanks." http://www.cnn.com/1999/US/12/04/bomb.plot.02/index.html Retrieved Jan 03, 2015

[27] Jaffe, Dong, "Elk Grove project ignores nearby propane risk." Sacramento Business Journal, Dec 08, 2001. http://www.bizjournals.com/sacramento/stories/2001/12/10/editorial4.html?page=all Accessed Jan 02, 2015.

[28] http://www.fbi.gov/stats-services/publications/terror/terrorism-2000-2001 Accessed Jan 02, 2015.

one of those that were prevented, and the only one (so far) to target a propane energy storage facility. Elk Grove was not the only prevented terror plot that planned to use explosives. There was also the March 2000 plot to blow up the Federal building in Houston, TX, and in December 1999 law enforcement thwarted a plot to blow up power plants in Florida and Georgia. Of the 74 successful terrorist incidents listed for these years, 4 used hijacked U.S. commercial aircraft as missiles, a majority used arson, and there were several incendiary attacks. FBI data for all terrorism 1980–2001 (including incidents, suspected incidents and prevented incidents) shows 324 bombings (67%), 33 arson (7%), 19 sabotage/malicious destruction (4%), 6 WMD (1%), 6 hijackings/aircraft attacks (1%), 2 rocket attacks (0.4%). Further terrorist incidents have occurred in the United States since September 11, 2001, and although nothing before or since 9/11 compares in scale, lives lost, or scope, the thwarted terrorist plot at Elk Grove can remind us that as a result of the energy boom and the building of many large propane and LNG storage facilities around the country, such tanks pose a "clear and present danger" to public safety.

Potential Hazard 1: Bullet Tanks & Domino-Effect BLEVE Cascades

Pressurized, ambient-temperature liquid propane storage tanks are particularly susceptible to a process called a Boiling Liquid Expanding Vapor Explosion or BLEVE, one of the most severe accidents that can occur in the fuel process industry or in the transportation of hazardous materials.[29] Such tanks come in all sizes from fractions of a gallon to 125,000 gallons, with 30,000 gallons being the most common for transportation by rail and road. Although such tanks are quite robust against normal wear and tear, if a tank becomes engulfed by a fire, which typically over a few hours, raises the temperature of the tank and its contents to the point where the relief valve can no longer cope (earlier if the valve is faulty), the internal pressure in the tank will rise until the tank ruptures, causing instant boiling of the superheated liquid contents, which quickly and turbulently mix with outside air, forming a rapidly expanding vapor cloud. Indeed, since pressurized tanks store propane at temperatures well above its atmospheric boiling point of -43.7 °F, any event that causes a serious breach of the tank wall, can trigger a BLEVE.

If a suitable source of ignition is present (the initial fire will do admirably), moments later the cloud of vapor will experience ignition, adding the thermo-mechanical chemical energy of a Vapor Cloud Explosion, or VCE, to the mechanical energy of the original BLEVE tank burst. This gives rise to the visually most striking feature of typical propane BLEVE, the fireball. A fireball will quickly expand in a roughly spherical shape until all of the propane that burst out of the tank is consumed by it. The point where the firehall stops expanding, its volume is proportional to the mass of propane burnt, and the radius is proportional to its cube root. Propane fireballs have extremely high peak luminosity at infrared wavelengths. These effects are

[29] Casal, J., et al. "Modeling and Understanding BLEVEs" Ch. 22 in Petrochemistry Handbook. http://aeynmont.free.fr/SACH-BOOKS/Petrochemistry/Handbook%20of%20Hazardous%20Materials%20Spills%20Technology/Part%20V.%20Spill%20Modeling/22.%20Modeling%20and%20Understanding%20BLEVEs.pdf Retrieved Jan 01,2015

amenable to mathematical modeling, allowing the quantification of thermal radiation threat zones:

Thermal Threat Zones[24]

Red	(> 10.0 kW/m^2)	=	Potentially lethal within 60 sec.
Orange	(> 5.0 kW/m^2,)	=	Second-degree burns within 60 sec.
Yellow	(> 2.0 kW/m^2)	=	Pain within 60 seconds.

Apart from heat damage due to heat radiation from the fireball, BLEVEs often produce an overpressure, which if it is strong enough to causes injury or damage to structures, is termed a blast wave or shock wave:

Overpressure and Blast Threat Zones[30]

Red	(> 8.0 psi)	=	Destruction of buildings. High risk of lethal injury. Eardrum rupture in 60% of subjects.
Orange	(>3.5 psi)	=	Damage to buildings. Serious injury likely. Rupture of lungs. Rupture of eardrums in 12% of subjects.
Yellow	(> 1.0 psi)	=	Eardrum rupture in 1% of subjects. Glass shatters.

BLEVEs typically also project flying tank fragments at high velocity in all directions. There are many propane industry studies which show that a fireball resulting from tank failure worries fire officials less than the projectiles which are sent out at high velocity in all directions from such a blast.[31] One study by the National Propane Gas Association found in 13 induced BLEVEs, that "rocket-type projectiles" or "shrapnel" from tanks as small as 80 to 100 gallons "can reach distances of up to 30 times the fireball radius."[32] These fragments are generally not evenly distributed, and due to various factors, can be launched in any direction, with severe fragment risk up to 15 times the fireball radius, and almost all fragments inside 30 times the fireball radius.[33] Many authorities suggest, therefore, that the evacuation radius should be 30 times the fireball radius. Indeed, it is the typical shower of sharp-edged tank fragments projected at high velocity (up to 200 m/s or 450 mph) in all directions from propane BLEVEs that makes them particularly dangerous to other propane storage tanks, often resulting in a kind of "power amplifier" domino effect.

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[30] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Pages 5, 7, 10, 14, 18. mroberts@abs-group.com http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/roberts.pdf

[31] Industrial Fire World, "Targets of Opportunity." http://www.fireworld.com/Archives/tabid/93/articleType/ArticleView/articleId/86841/Targets-of-Opportunity.aspx Retrieved Jan 03, 2015.

[32] Hilderbrand, Michael S.; Noll, Gregory S., National Propane Gas Association (U.S.) "Propane Emergencies" 2nd. Ed., 2007, p. 136.

[33] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Pages 10, 18. mroberts@abs-group.com http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/roberts.pdf

It was recently reported on the SmartNews section of the Smithsonian website that with just 29 dominoes, you could knock down the Empire State Building.[34] In a video on the website, Toronto professor Stephen Morris, demonstrate that a toppling domino can knock down another domino that is 1.5-times larger. Therefore, starting with a domino 5 mm tall, the 29th domino would be $1.5^{(29-1)}$ = 85,222-times taller, or about 1398 feet, toppling with enough kinetic energy to knock down The Empire State.

What this demonstrates is the potential for BLEVEs to propagate like a row of toppling dominoes, successively releasing increasing amounts of energy. When one pressurized propane tank (say, a typical bullet tank), is heated by a fire (either accidentally or deliberately set), to the point, as previously described, where the tank bursts, losing its contents as a boiling liquid that immediately flashes to a rapidly expanding vapor, that through contact with the fire, will instantly detonate, liberating a lot more energy than expended in the trigger event. A similar sequence of events can also be triggered by an amount of high-explosives. The result is that any propane tank BLEVE can threaten an adjacent tank with the "triple aggression" of fragment, blast, and fireball, causing it to immediately BLEVE too, and this can cascade, domino-fashion down a row of tanks.[35] The closer the bullet tanks are together, the faster this chain reaction occurs, potentially causing all of the bullet tanks to explode in a short space of time. How quickly this happens determines the degree to which the power of the original BLEVE is multiplied, in a trade-off of intensity and duration of the number and velocity of shrapnel and missile-like tank fragments, the intensity of the blast wave, and the size and thermal power of the ensuing fireball. Due to their important role in spreading the effects of an incident or accident from one tank to others, the three quantities, fragments, overpressure (blast), and heat flux (fireball), are known as escalation vectors.[36]

The major risk from a pressurized propane tank BLEVE explosion to nearby refrigerated propane storage is fragment impact. The important parameters are velocity, shape and mass of the fragments, and the trajectory distance and time. BLEVE fragment ejection velocities are in the range of 10–100 m/s. When such a fragment (particularly at the higher end of the velocity range) impacts on and penetrates an (assumed large) refrigerated storage tank, *a hydrodynamic ram is generated in the liquid which may cause the tank to burst.* This produces a sequence of events[37] in which liquid propane is ejected as jet at a velocity high enough that with the arrival of a strong overpressure blast wave vector may experience primary break-up (atomizing into a mist

[34] Schultz, Colin. Smithsonian. "Just Twenty-Nine Dominoes Could Knock Down the Empire State Building." http://www.smithsonianmag.com/smart-news/just-twenty-nine-dominoes-could-knock-down-the-empire-state-building-22329441/?no-ist Original idea by Lorne Whitehead, who called it the domino amplifier effect. American Journal of Physics, vol. 51, p. 182 (1983).

[35] Heymes, Frederic, et al. "On the Effects of a Triple Aggression (Fragment, Blast, Fireball) on an LPG Storage." Chemical Engineering Transactions, vol. 36, 2014, pp. 355-360. http://www.aidic.it/cet/14/36/060.pdf Retrieved Jan 11, 2015.

[36] Heymes, Frederic, et al. "On the Effects of a Triple Aggression (Fragment, Blast, Fireball) on an LPG Storage." Chemical Engineering Transactions, vol. 36, 2014, pp. 355-360. http://www.aidic.it/cet/14/36/060.pdf Retrieved Jan 11, 2015. p. 356.

[37] Ibid. Section 2.1, p. 356.

of micron-sized droplets) and partial evaporation. If the onslaught from outside the tank is sufficiently aggressive, the tank contents may flash boil and/or result in a two phase flow and vapor cloud. The Depending on circumstances and timing, in addition to the possibility of total loss of containment, there may be a vapor cloud explosion (VCE), jet fires, pool fires, and structure fires, in any combination.[38]

Relating this to the published configuratiou of PPC's proposed propane export terminal at Terminal 6 in Portland,[39] eight 125,000 gallon high pressure transfer tanks, stationed close to one another, totaling 1-million gallons could be set off by a BLEVE in several derailed and burning DOT-112 tanker cars[40] (for example), which once started, could start quickly exploding, domino-fashion, causing enough damage to the much larger refrigerated tank(s) (33.6-million gallons) to cause an even more destructive event. Figure 4 shows simulated thermal radiation threat zones (fireball, red 10 kW/m^2, orange 5.0 kW/m^2, and yellow 2.0 kW/m^2), corresponding overpressure blast wave threat zones (light blue 8.0 psi, blue 3.5 psi, and purple 1.0 psi) and a 6.7 miles radius tank fragment missile threat zone[41] (turquoise blue) due to a 1-million gallon worst-case near simultaneous BLEVE of all eight of PPC's planned pressurized transfer tanks (see appendix A for the model data). The missile fragment threat covers 149 square miles. Figure 5 shows the blast zones for a BLEVE in just one of the 125,000 gallon bullet transfer tanks, something that could be initiated by a fire in an adjacent bullet tank, itself punctured by shrapnel from a fire and BLEVEs in a nearby fully loaded DOT-112 unit train. The threat zone radii in the 125,000 case are half as big as those for the 1-million gallon case, giving a 3.3 miles radius tank fragment missile threat zone.

In light of these results, it is the measured opinion of the authors of this white paper that a massive BLEVE in the transfer tanks could cause massive mechanical-, thermal-, and overpressure-driven disruption a nearby unit train and of one or both of the refrigerated storage tanks. The net result would be a complex deflagration involving one or both of the large

[38] Ibid. Section 3.1, p. 357.

[39] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*, Dec 12, 2014. http://www.portlandoregon.gov/bps/article/512520

[40] A new, "safe" DOT-112 tank car derailed and exploded on Oct. 19, 2013 in Gainford, Alberta, leaving several "unsafe" DOT-111 tanker cars, still coupled together, lying safely on their sides. Following a siding derailment of 13 cars, including four DOT-111 tank cars containing crude oil, nine DOT-112 tank cars containing LPG, two LPG cars were punctured and caught fire. A third LPG car released product from its safety relief valve, which ignited. About 600 feet of track was destroyed, and a house located nearby was damaged by the fire. This was a relatively slow-speed derailment (between15 and 25 mph), caused by rail defects. One DOT-112 car was punctured in the underbelly by the coupler from another car. This caused it to release its load (of LPG) and explode. Despite double shelf couplers designed to keep the cars coupled during derailments, the DOT-112 cars uncoupled during the derailment and apparently jackknifed across the track, making them vulnerable to secondary impacts from following cars. http://www.tsb.gc.ca/eng/medias-media/communiques/rail/2015/r13e0142-20150224.asp Retieved Feb 25, 2015.

[41] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Page 10. mroberts@abs-gronp.com
http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/Roberts%20abstract.pdf

refrigerated tanks, combining the worst effects of BLEVEs, and most of the other effects already mentioned.

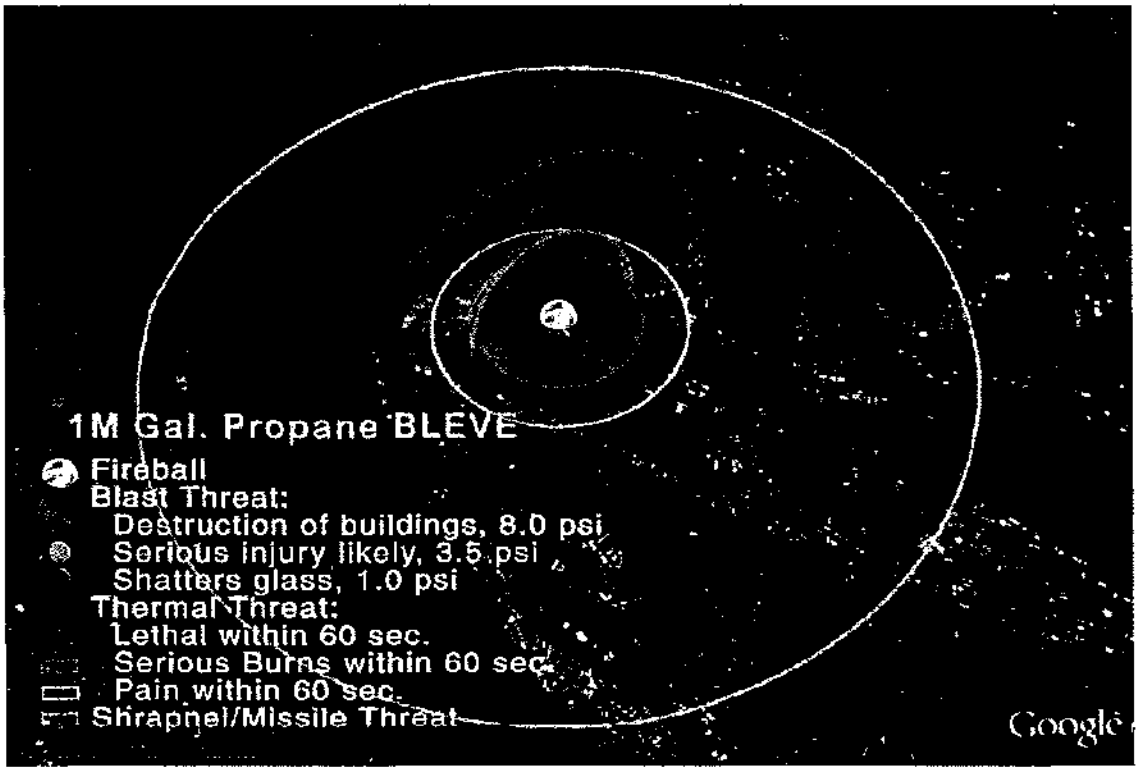

Figure 4: A Google Earth overlay showing thermal radiation and missile fragment threat zones modeled for a worst case boiling liquid expanding vapor explosion of one-million gallons of propane stored in pressurized tanks at Terminal 6 in North Portland. The black lines on the map represent the rail network.

Thermal Threat Zones: Fireball diameter 787 yards. Red zone: 1682 yards radius [10 kW/m^2] potentially lethal in less than 60 seconds; Orange zone: 1.3 miles radius [5 kW/m^2] 2nd-degree burns in less than 60 seconds; Yellow zone: 2.1 miles radius [2 kW/m^2] pain in less than 60 seconds.

Overpressure Blast Zones (shown in cut-away view): Blue zone: 1.3 miles radius [8.0 psi] destruction of buildings; Green zone: 1.5 miles radius [3.5 psi] serious injury likely; Magenta zone: 2.9 miles radius [1.0 psi] shatters glass.

Shrapnel Zone: Turquoise zone: Tank fragment missile threat zone: 30 x fireball radius = 6.7 miles radius, which is also the recommended evacuation radius to avoid tank fragment missiles. Areas included within the missile threat zone are all of downtown Portland, all of North Portland, PDX airport, the eastern half of Sauvie Island, all of Hayden Island, most of Vancouver, and all of the marine terminals of the ports of Portland and Vancouver.

Potential Hazard 2: Terrorist Attack Scenarios

Typical actions by terrorists include the commandeering of commercial aircraft, but also drive-up vehicle-borne improvised explosive devices (truck bombs), the use of explosive projectiles such as shoulder-launched armor piercing rocket-propelled grenades, or the hand-placing of satchel or

shaped charges. Shaped charges are specifically designed to leverage previously-mentioned hydrodynamic effects for best focus and maximum destructive power with the least amount of explosive material. Any or all of these can lead to the scenarios described in the *Potential Hazards 1* section, above.

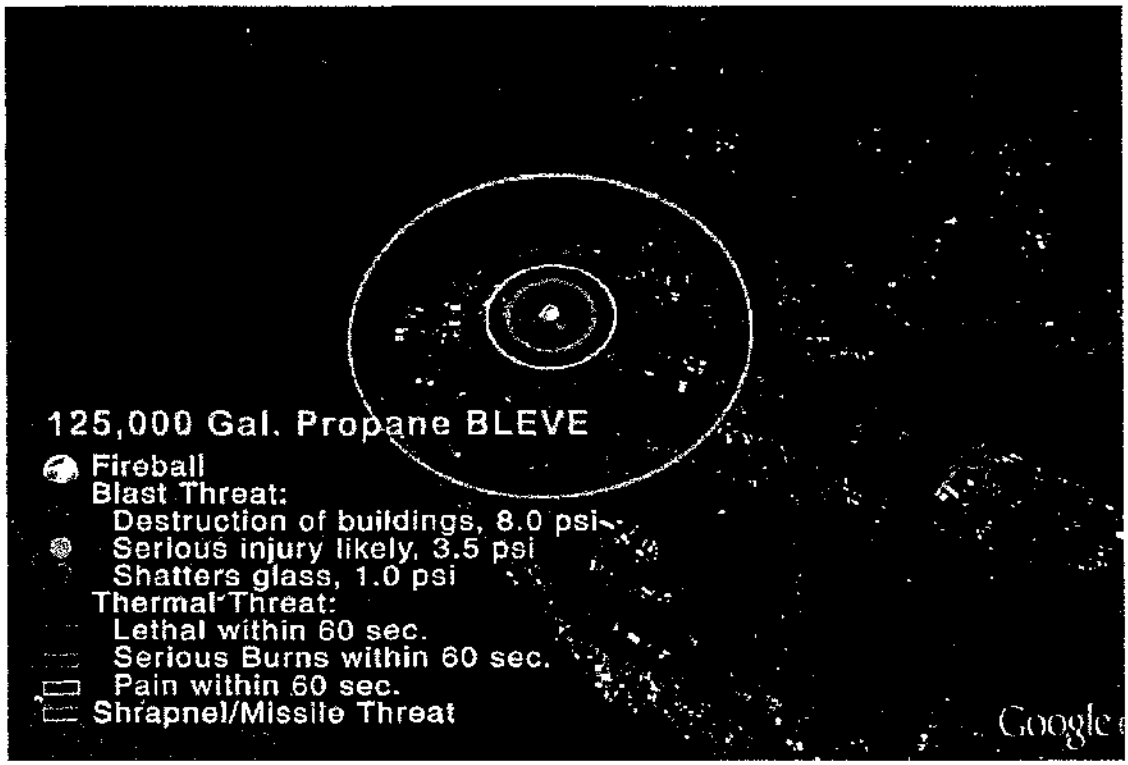

Figure 5: A Google Earth overlay showing thermal radiation and missile fragment threat zones modeled for a worst case boiling liquid expanding vapor explosion of 125,000 gallons of propane stored in pressurized tanks at Terminal 6 in North Portland. Shown at the same scale as figure 4.
Thermal Threat Zones: Fireball diameter 393 yards, Red zone: 841 yards radius [10 kW/m^2] potentially lethal in less than 60 seconds; Orange zone: 0.65 miles radius [5 kW/m^2] 2nd-degree burns in less than 60 seconds; Yellow zone: 1.05 miles radius [2 kW/m^2] pain in less than 60 seconds.
Overpressure Blast Zones: Blue zone: 0.65 miles radius [8.0 psi] destruction of buildings; Green zone: 0.75 miles radius [3.5 psi] serious injury likely; Magenta zone: 1.45 miles radius [1.0 psi] shatters glass.
Shrapnel Zone: Turquoise zone: Tank fragment missile threat zone: 30 x fireball radius = 3.35 miles radius, which is also the recommended evacuation radius to avoid tank fragment missiles. Areas included within the missile threat zone are all of downtown Vancouver, all of the Portland St Johns neighborhood, part of the Portland Portsmouth neighborhood, the eastern edge of Sauvie Island, most of Hayden Island, and all of the marine terminals of the ports of Portland and Vancouver.

Potential Hazard 3: The Big One—A Magnitude 9 "Megathrust" Quake

The proposed site of PPC's propane export terminal, adjacent to The Port of Portland's Terminal 6, lies in the Portland basin, a well-documented area of seismic activity. Three seismic sources

have been determined:

1) Interplate earthquakes along the Cascadian Subduction Zone located near the Pacific coast.
2) Relatively deep intraplate subduction zone earthquakes located as far inland as Portland.
3) Relatively shallow crustal earthquakes in the Portland metropolitan area.

The maximum credible events associated with these sources are postulated to be in the range of Magnitude 8.5-9.0, 7.0-7.5, and 6.5-7.0, respectively.[42] Indeed, the City of Portland's Bureau of Planning and Sustainability (BPS), with input from the Port of Portland, has already authored a statement that "an earthquake [at the proposed PPC propane export facility] is one of the biggest risks to create a spill or explosion."[43] Oddly enough, this statement was offered by the Port of Portland in *support* of a proposed zoning change to the protected riverfront at Terminal 6, without which PPC's terminal cannot go ahead. It is then revealed in the same document that the port has established a risk level target of a 1% in 50 years probability of earthquake-induced collapse. In other words, approximately 0.5% risk of a collapse over the expected 25 year service life of the facility, even after all required mitigations have been incorporated into the structural design of the refrigerated storage tanks, such as the "ground improvement and/or deep foundations…. a combination of stone columns and jet grouting ground improvements …." that were completed within the last five years for another marine facility just downstream. Deep foundations such as driven pipe piles are currently being considered as an alternative to support the tank."[44] To our knowledge, there has been insufficient investigatory work by engineering geologists and geotechnical engineers to map and understand the geological limitations of the planned terminal location just east of Terminal 6, a site at which the basalt bedrock may be unusually deep.[45] At a recent public meeting on Hayden Island, a Pembina representative said that their geotechnical exploration of the site reached to 165 ft, and that they had no intention of going deeper, did not need to know the bedrock depth, and intended to run several concrete-filled caisson pilings to 160 ft. On the face of it, this seems inadequate, because industry sources I have consulted recommend drilling at least 20 ft deeper than your intended pilling depth. The proposed tank design uses two large aboveground double-wall insulated steel storage tanks that together store 33.6-million gallons of refrigerated propane at -44 °F. Also in the BPS document is a statement that the geology of the site and the potential for a megathrust quake (Magnitude 9) from the Cascadia Subduction Zone (which would originate near the Oregon coast), and a Magnitude 7 Portland Hills Fault quake (which would originate less than 5 km away) appear to agree with current geological knowledge of the region, and may in fact overstate the Portland Hills Fault potential

[42] Dickenson Stephen E., et al. Assessment and Mitigation of Liquefaction Hazards to Bridge Approach Embankments in Oregon. Final Report, SPR 371. Oregon DOT Research Group, and Federal Highway Administration. Nov 2002. p. 139.

[43] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*, Dec 12, 2014. http://www.portlandoregon.gov/bps/article/512520 p.18. Seismic Risks

[44] Ibid. p. 18.

[45] Professor Scott Burns, Oregon State University, private communication.

by 0.5.[46] The BPS document also briefly mentions that the major seismic hazards for a large storage tank at Terminal 6 include soil liquefaction, lateral spreading and seiches.

A more detailed review of the seismic risks in the Portland basin and related areas[47] describes the high likelihood of prolonged ground shaking (the geological estimate is five minutes), causing the destructive effects of *primary* seismic effects: soil liquefaction (loss of strength of the soil), lateral spreading (surface soil moves permanently laterally, damaging structures such as buildings, tanks, and tank supports; an effect that could be exacerbated by slope failure of the Terminal 6 dredged shipping channel), co-seismic settlement (the ground surface is permanently lowered, and potentially becomes uneven), and bearing capacity failures (foundation soil cannot support structures it was intended to support). The alluvial soils in the Portland Basin, and in particular those surrounding the Portland peninsular, and associated with the wetlands at the confluence of the Willamette and Columbia rivers, are particularly at risk to this sequence of events. Portland's rivers, sloughs, lakes and wetlands makes for a high water table, which when coupled with an unusually large distance to bedrock, makes these water-saturated soils very vulnerable to the previously mentioned effects of ground shaking. Possible *secondary* seismic hazards relevant to the Portland basin area include: seiches (earthquake-induced standing waves in narrow bodies of water), fire, and hazardous material releases, such as liquid fuel overtopping tanks by ground-shaking-induced sloshing.

Due to the particular dangers of liquefaction to large tank structures, and as discussed above, the BPS zoning change proposal document rightly pays special attention to its mitigation in the design of the tank and its foundations. However, given that a Magnitude 9 earthquake in the Cascadia Subduction Zone could bump Portland into 6th place in the USGS list of the most powerful earthquakes ever recorded worldwide,[48] such mitigation may be woefully inadequate. With 100 times the ground movement and 1,000 times the energy of a much more common Magnitude 7 earthquake, a Magnitude 9 quake is a very powerful event. Strengthening a 30-million gallon tank against this seems hardly feasible. Scientists agree that such a large quake is overdue. Earthquake-induced failure of such a tank would only add insult to Portland and Vancouver's already massive earthquake injury.

Until proven otherwise, we must assume that the intensity of earthquake-driven liquefaction of the ground around Terminal 6 is likely to result in collapse and loss of contents of the planned large refrigerated tank structures. Given a nearby source of ignition, a massive pool fire is only one possible outcome. Another (and the one we've chosen to use here) is a very large, toxic, wind-driven heavy vapor cloud (12,600 ppm = 60% LEL) containing many flame pockets ignited

[46] Professor Scott Burns, Oregon State University, private communication.
[47] Wang, Yumei, et al. "Earthquake Risk Study for Oregon's Critical Energy Infrastructure Hub." Final Report to Oregon Department of Energy & Oregon Public Utility Commission. Oregon Department of Geology and Mineral Industries. Aug 2012. p. 39.
[48] Largest Earthquakes in the World Since 1900. The current list is: 9.5, 9.2, 9.1, 9.0, 9.0, 8.8, 8.8, 8.7, 8.6, 8.6, 8.6, 8.6, 8.5, 8.5, 8.5, 8.5, 8.5. http://earthquake.usgs.gov/earthquakes/world/10_largest_world.php Retrieved Jan 12, 2015.

by various sources of ignition across miles of the Portland or Vancouver metropolitan areas. The potential for the compounding effects of water inundation of Terminal 6 due to dam loss caused by the earthquake-induced movement of recently discovered fault lines along the Columbia River, have yet to be determined. As Ian Madin, chief scientist with the Oregon Department of Geology and Mineral Industries (DOGAMI) told the Oregonian, "None of the dams were designed with this kind of fault in the analysis." He added that the Bonneville Power Administration is spending millions to secure transformers and other links in their power system, which speaks for itself.[49]

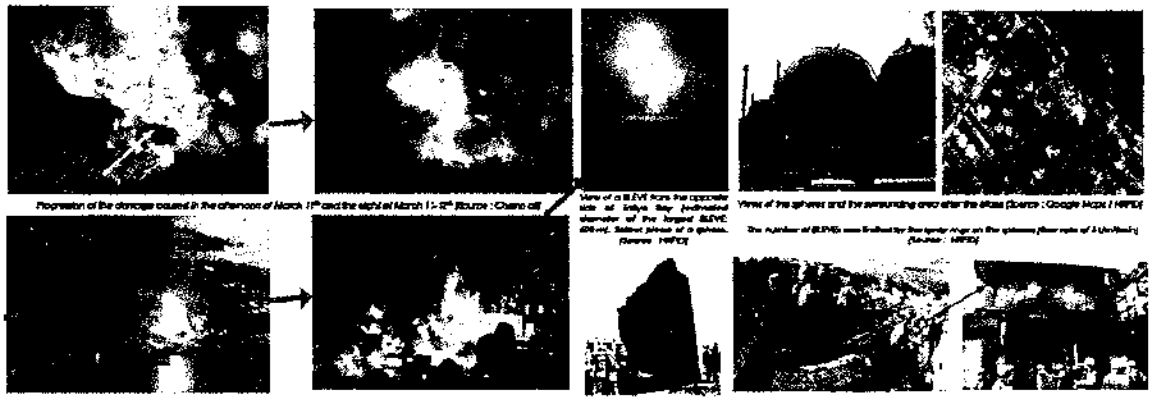

Figure 6: Cosmo Oil's LPG terminal in Tokyo Bay is built on harbor fill consisting mainly of water-saturated sandy alluvial soils (LPG is a mixture of gases, including propane). This high seismic risk location and facility has many similarities to the site of Portland's proposed propane export terminal. On March 11, 2011, an earthquake similar in magnitude to Portland's expected "big one" caused structural failure and tank collapse due to soil liquefaction. A lethal domino cascade ensued, which over a period of three hours, included a large vapor cloud explosion, and five BLEVEs the largest of which had a fireball diameter of almost 2,000 feet. All told, seventeen LPG tanks were destroyed. Damage included thermal radiation, overpressure blast, and rocketing tank fragments and other debris. Cleanup took two years.

A seismic scenario, very similar to the one being discussed for Portland, developed at the Cosmo Oil LPG terminal in Tokyo Bay as a result of the Great Tohoku earthquake March 11, 2011.[50] This quake registered as Magnitude 9 (Shindo 5-), with Magnitude 7 aftershocks. Built on sandy soil reclaimed from Tokyo harbor, the Cosmo facility was placed in jeopardy by earthquake-induced soil-liquefaction. Over a period of about three hours, this led to a series of propane or LPG tank collapses, a large vapor cloud explosion (VCE), a sustained fire, and a string of BLEVEs (see figure 6). The lethal domino cascade included five BLEVEs. The largest of these produced a 600 m diameter (1968 feet) fireball, from which we may infer an LPG volume of around 500,000 gallons! All told, a total of seventeen high-pressure storage tanks were destroyed. Fortunately there was no very large (tens of millions of gallons) refrigerated storage

[49] Rojas-Burke, Joe, The Oregonian. (Aug 29, 2011) "Hidden Earthquake Faults Revealed at Mount Hood, Oregon." http://www.oregonlive.com/pacific-northwest-news/index.ssf/2011/08/hidden_earthquake_faults_revealed_at_mount_hood_oregon.html Retrieved Jan 05, 2015.

[50] This was the same earthquake that preceded the tsunami inundation and meltdown of three of the four cores at the Fukushima Daiichi nuclear reactor complex.

tank on site. In total, the incident consumed 5,272 tonnes of propane/LPG, equivalent to around 2.8 million US gallons. Nearby pipes and buildings were destroyed. Heat radiation caused leaks in several nearby bitumen storage tanks; roads and buildings at the site were also damaged by soil liquefaction. Shock waves and rocketing debris from the explosions ignited fires in nearby petrochemical facilities. Vehicles and boats were destroyed, homes were damaged (windows and roofs), and nearby vehicles and homes were covered in fire debris. The damage cost was € 100 millions (multiples of US$ 113 million), and repairs to the facility took two years. The technical lessons learned from this disaster include reinforcing the tank bases, wider tank spacing, and improvements in safety equipment to limit domino effects.[51] *See* appendix A for a complete chronology.

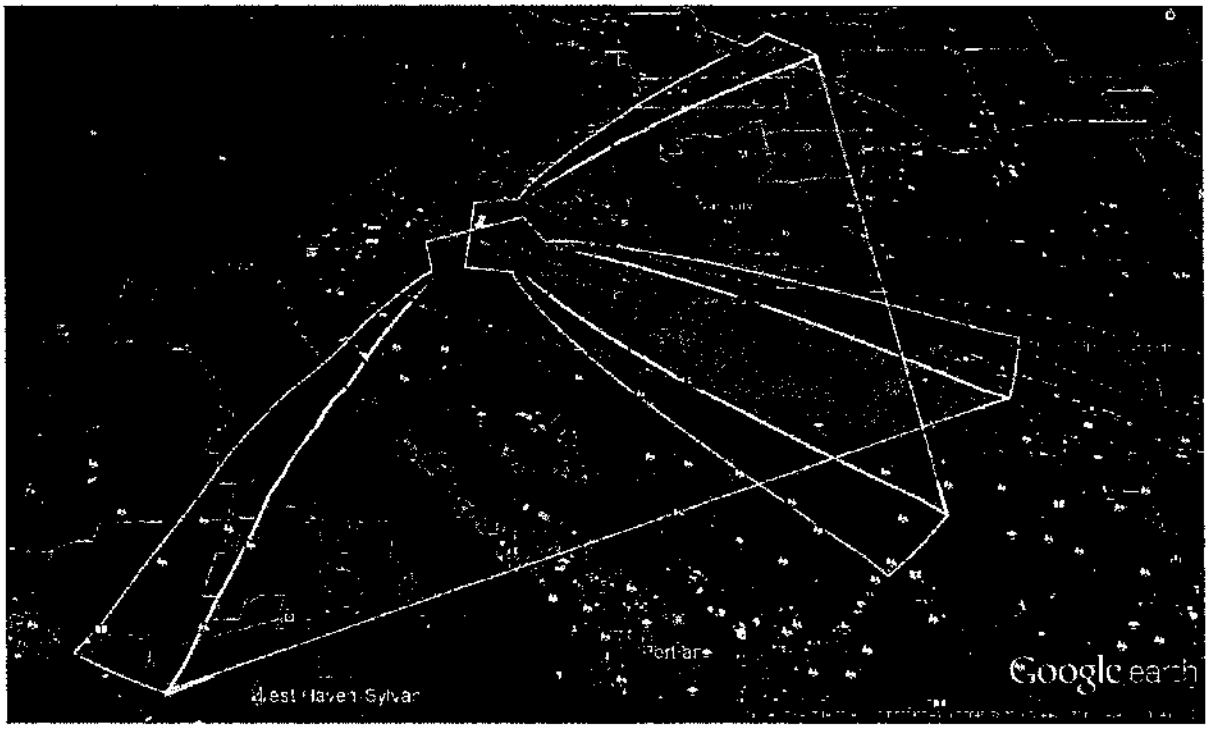

Figure 6: The Impact on Portland and Vancouver of an earthquake scenario in which a large refrigerated propane storage tank collapses at Terminal 6. We assume that cold liquid propane is ejected and/or flows at the rate of 560,000 gallons per second for one minute. The escaping liquid may flash boil and/or result in two-phase (liquid/vapor) flow. The simulation assumes that 100% of the propane evaporates into a large vapor cloud, which is blown by the wind, assumed to be 10 mph from the NW, and covers much of Portland. Overlaid on the same map is the result of a 10 mph wind from W, which covers much of Vancouver. The straight edges do not mark the edge of the vapor cloud, but simply the extent of the simulation; the cloud will therefore extend much further, with a roughly oval outline. The red threat zone extends further than 5.8 miles (12,600 ppm = 60% LEL = Flame Pockets), and the yellow threat zone extends even further (2,100 ppm = 10% LEL).

[51] Overview of the Industrial Accidents Caused by the Great Tohoku Earthquake and Tsunami, Japan, March 11, 2011. ARIA. French Ministry of Ecology, Sustainable Development and Energy. Retrieved Feb 11, 2015. http://www.aria.developpement-durable.gouv.fr/wp-content/files_mf/Overview_japan_mars_2013_GB.pdf

Figure 6 shows an earthquake scenario in which large refrigerated propane storage tank(s) collapse at Terminal 6. For the purposes of the simulation, we created a 120 ft. diameter hole in a single 33.6-million gallon tank, through which the cold liquid propane is ejected and/or flows at the rate of 560,000 gallons per second for one minute. The ALOHA software reports that the escaping liquid may flash boil and/or result in two-phase (liquid/vapor) flow. In any case we assume that 100% of the propane evaporates into a large vapor cloud, which is blown by the wind, assumed to be 10 mph from the NW, and covers much of Portland. Overlaid on the same map is the result of a 10 mph wind from W, which covers much of Vancouver. The straight edges do not mark the edge of the vapor cloud, but simply the extent of the simulation; the cloud will therefore extend much further, with a roughly oval outline. The red threat zone extends further than 5.8 miles (12,600 ppm = 60% LEL = Flame Pockets), and the yellow threat zone extends even further (2,100 ppm = 10% LEL).

Legal Ramifications

Finally, we will place the proposed PPC propane export terminal under the legal microscope by using a Rest.2d Torts approach to examine the legal ramifications of siting any such large energy storage and handling facility in the center of the extended Portland/Vancouver urban area, in a geological zone subject to Magnitude 9 "megathrust" earthquakes, and earthquake-induced ground liquefaction and dam bursts, with such an earthquake in fact overdue. Specifically, Restatement (Second) of Torts, § 520 (commonly referred to as Rest.2d Torts § 520), which has been adopted by California and some other states, provides a framework for examining an activity or process to determine if it presents an unavoidable risk of serious harm to others, or their property, despite reasonable care exercised by the actor to prevent that harm. Section 520, Restatement Second of Torts enumerates the factors to be considered in determining if the risk is so unusual, either because of its magnitude or because of the circumstances surrounding it, that such an activity is "abnormally dangerous" or "ultrahazardous,"52and therefore subject to strict liability.

Given the huge potential for devastation in Portland or Vancouver (depending on wind direction) out to at least seven miles from the facility, a 1-in-200 risk is much too high. Indeed, simulation tests we have run demonstrate a credible potential for an event so destructive that the establishment of any large energy storage facility within the urban boundary of Portland, that endangers all of Portland and Vancouver qualifies as ultrahazardous, defined in Wex[53] as, "An activity or process that presents an unavoidable risk of serious harm to the other people or others' property, for which the actor may be held strictly liable for the harm, even if the actor has exercised reasonable care to prevent that harm." Oregon may well need to follow California in adopting a Rest.2d Torts approach for determining whether such ultrahazardous activities are

[52] Ultrahazardous activity. http://www.law.cornell.edu/wex/ultrahazardous_activity

[53] Wex is the Cornell University Legal Information Institute's community-built, freely available legal dictionary and encyclopedia. http://www.law.cornell.edu/wex

"abnormally dangerous," setting forth six factors which are to be considered in determining liability. These are:

> "(a) existence of a high degree of risk of some harm to the person, land or chattels of others;
> "(b) likelihood that the harm that results from it will be great;
> "(c) inability to eliminate the risk by the exercise of reasonable care;
> "(d) extent to which the activity is not a matter of common usage;
> "(e) inappropriateness of the activity to the place where it is carried on; and
> "(f) extent to which its value to the community is outweighed by its dangerous attributes."

We comment on these factors, as follows:

(a) Portland's adoption of a 1% risk of tank collapse in 50 years is a high degree of risk.
(b) The potential harm from credible tank collapse and transfer tank BLEVE scenarios is great, and worst-case Portland and/or Vancouver would likely never fully recover.
(c) Residents cannot avoid the risk by any reasonable exercise of care, other than leaving.
(d) Large propane facilities are not commonly embedded in cities.
(e) Large propane facilities are inappropriate inside or close to urban boundaries.
(f) Recognizing that Portland is considered to be well overdue for a big earthquake, and considering that propane tanks have been terrorist targets, the credible magnitude of loss for such incidents pales in comparison to the 50 direct jobs and several million dollars of taxes that Portland would receive from such a facility.

Some Rejected Energy Storage Proposals

- The Long Beach LNG Import Terminal Project, CA (onshore)
  Withdrawn after 4 years of scrutiny of project (LA Times Jan 23, 2007).
  Population density (< 2 miles from houses, >60/sq. mi; 3,033 households within a 2 mi radius). Seismic concerns. Flaws in the draft environmental study.

- Calpine LNG Project, Humbolt Bay, CA (onshore)
  Withdrawn (LA Times Mar 18, 2004)
  Population density (1 mile to pop. density >60/sq. mi).

- Shell/Betchel LNG Project, Vallejo, CA (onshore)
  Withdrawn Jan 30, 2003.
  Population density (1 mile to pop. density >60/sq. mi).

- Conoco LNG Project, El Paso, TX
  Permit denied.
  Population density (< 1 mile to pop. density >60/sq. mi).

- Broadwater Energy LNG Export Terminal, Long Island Sound, NJ
  Permit denied.
  Environmental issues.

Conclusion

The scale of potential disasters due to a large propane facility inside the combined Portland/Vancouver urban area more than outweighs any theoretical estimate of its improbability. We believe that our region would not properly recover from such events for decades, if ever.

To avoid this present danger, the solution is clear: We must not make the requested zoning change. We must not allow the thin end of an industrial wedge through our environmental protections, because it will set a bad precedent.

Accident data shows that the largest propane risk areas are pressurized storage, pressurized transport, and transfer. This includes any units trains incoming to the site (derailments), the movement of the tanker cars at the site (shunting derailments), and the transfer of liquid propane from one container to another (accidents with pipes, valves, hoses, and other equipment). Such dangers at the proposed site are exacerbated by the relatively close proximity of the pressurized tanks to each other, and also due to the high probability of domino amplification effects. Moreover, the proposed large refrigerated tanks, no more than a stone's throw from the pressurized transfer tanks, are likely to become involved due to the secondary effect of rocketing high-speed sharp tank fragments, generated from one or more BLEVEs in the pressurized tanks. These fragments, also known as shrapnel, travel at speeds up to 400 mph, and are capable of slicing through both walls of the refrigerated tanks, and any remaining intact pressurized tanks, which aided by hydrodynamic forces, are likely to cause loss of contents. The ballistic range of such fragments is typically many miles, which would place large parts of suburban Portland and Vancouver in jeopardy. The magnitude of credible incident and accident scenarios (similar to many of the events which seem to be ever present in our news feeds, including the finding, just days ago, that a recent multiple BLEVE in derailed DOT-112 tanker cars was primarily caused by a design oversight that is present in all DOT-112s) is sufficiently high that we conclude that planners must remotely locate such large energy storage facilities. The need to be far away from our cities and towns, and also fragile natural areas such as West Hayden Island, and the Smith and Bybee lakes; beyond the threat zones of any credible disaster (at least ten or twenty miles).

Federal and state regulators must also require that these facilities are themselves better protected from human error and any malicious intention, by the best means available. If necessary we must enact laws to ban the siting of large energy facilities inside or close to our urban areas.

Portlanders are heavily invested in Portland. Committed to finding sustainable solutions, and supporting a burgeoning artisan economy, Portlanders enjoy a unique lifestyle. Yet, while dreaming of award-winning green and self-sufficient sustainability, they achieve home ownership, and safe bicycle lanes and bridges. They also dream of one day having a functional light rail system, and of transforming Portland's major employers, the large semiconductor, electronics, sports equipment, and film companies into clean-tech success stories.

Therefore, for the city to take our "savings" and risk them on a bet that there will never be a serious propane train or tank incident or accident at Portland's Terminal 6, in the next 25 to 50 years, is like a financial services bank taking our "investment" and reinvesting it on the tables in Las Vegas.

Banks are not allowed to do this.
City councils should not be allowed to do this either!

Sure it's true that some desperate companies have done this with investor funds, but Portland is not that desperate! Propane accidents are rarely small, so why situate a propane terminal smack in the middle of our Portland/Vancouver urban area? Why do this when it would be easy to use the same railway that would bring the propane to Portland, to take it somewhere else, at least 20 miles from where people live, work, and play? Why dash the dreams of Portlanders with a short-sighted project that will only produce 30-40 direct jobs (less than half a job per acre), that will trash Portland's greenest city status, and that will increase US unemployment by creating stronger overseas competitors who will increase their share of the global market.

Moreover, when we consider the results of EPA/NOAA/FEMA modeling, that heat threat, blast waves, and shrapnel from even a modest propane deflagration could wipe out and/or injure all of North Portland and downtown Vancouver, Terminal 6, and all of the Rivergate facility, up to a six mile radius, Portland needs to say, "No thank you, we wish to be green!" and promote green trade and industries. Only through means such as these will our cities more surely live to ripe, resilient old age.

Appendix A: Models and Data Used in Estimating Threat Zones

1) Elk Grove Propane Facility Data

I) Pressurized liquid propane transfer bullet tanks:

Number of tanks: 4
Storage capacity (each tank): 60,000 gallons
Tank size: Diameter 12 ft.; Length 91 ft.,
Tank Mounting: Horizontally, 5 ft. off ground. Spacing 10 ft. broadside

ALOHA Model Data (Bullet tank BLEVE):

Location (Lat., Long.): 38.3824314392 N, 121.356808023 W
Surroundings: Unsheltered
Chemical: Liquid Propane
Chemical stored at: 65 degrees F
Ground Roughness: Urban or Forest
Cloud Cover: Partly Cloudy
Tank Size & Orientation: Hor. Cylinder, 12 ft. dia., 91 ft. length, 76,988 gallons
Tank filled: 60,000 gallons (77.9%)
Propane mass: 114,998 kg
Scenario: Tank containing a pressurized flammable liquid.
Type of Tank Failure: BLEVE, tank explodes and propane burns in a fireball.
Potential Hazards from BLEVE: Thermal radiation from fireball and pool fire.
Not modeled by ALHOA: Hazardous fragments.
Downwind toxic effects of fire byproducts.

Threat Modeled: **Thermal radiation from fireball**
Fireball Diameter: 308 yards diameter
% propane mass in fireball: 100%

Red:	691 yards radius	(10.0 kW/(sq m) = potentially lethal within 60 sec.
Orange:	976 yards radius	(5.0 kW/(sq m) = 2nd degree burns within 60 sec.
Yellow:	1520 yards radius	(2.0 kW/(sq m) = pain within 60 sec.

II) Refrigerated liquid propane storage tanks:

Number of tanks: 2
Storage capacity (each tank): 12-million gallons
Tank size: Diameter 146 ft.; Height 122 ft.
Tank construction: Double steel wall
Storage temperature: -44 °F

2) Proposed Portland Propane Terminal Data

Ia) Pressurized liquid propane transfer bullet tanks:

Number of tanks: 1
Storage capacity (each tank): 125,000 gallons
Tank size: Diameter 20 ft. (est.); Length 62 ft. (est.),
Tank Mounting: Horizontally, 5 ft. off ground (est.),
Separated broadside by 10 ft. (est.),
and in pairs by 30 ft. (est.).

ALOHA Model Data (Bullet tank BLEVE):

Location (Lat., Long.) 45.6276169997 N, 122.733791252 W
Surroundings: Unsheltered
Chemical: Liquid Propane
Chemical stored at: 65 degrees F
Ground Roughness: Urban or Forest
Cloud Cover: Partly Cloudy
Tank Size & Orientation: Hor. Cylinder, 20 ft. dia., 62 ft. length
Tank filled: 125,000 gallons (86%)
Propane mass: 238,638 kg
Scenario: Tank containing a pressurized flammable liquid.
Type of Tank Failure: BLEVE, tank explodes and propane burns in a fireball.
Potential Hazards from BLEVE: Thermal radiation from fireball and pool fire.
Not modeled by ALHOA: Hazardous fragments.
Downwind toxic effects of fire byproducts.

Threat Modeled: **Thermal radiation from fireball**
Fireball Diameter: 393 yards diameter
% propane mass in fireball: 100%

Red:	0.48 miles radius	(10.0 kW/(sq m) = potentially lethal within 60 sec.
Orange:	0.65 miles radius	(5.0 kW/(sq m) = 2nd degree burns within 60 sec.
Yellow:	1.05 miles radius	(2.0 kW/(sq m) = pain within 60 sec.

Threat Modeled: **Overpressure (Blast Force) Threat Zone**
Type of Ignition of Vapor Cloud: Detonation
Model: Heavy Gas

Red:	0.65 miles radius	(8.0 psi = destruction of buildings)
Orange:	0.76 miles radius	(3.5 psi = serious injury likely)
Yellow:	1.4 miles radius	(1.0 psi = shatters glass)

Ib) Pressurized liquid propane transfer bullet tanks:

Number of tanks: 8
Storage capacity (each tank): 125,000 gallons
Tank size: Diameter 20 ft. (est.); Length 62 ft. (est.),
Tank Mounting: Horizontally, 5 ft. off ground (est.),
Separated broadside by 10 ft. (est.),
and in pairs by 30 ft. (est.).

ALOHA Model Data (Bullet tank BLEVE):

Location (Lat., Long.) 45.6276169997 N, 122.733791252 W
Surroundings: Unsheltered
Chemical: Liquid Propane
Chemical stored at: 65 degrees F
Ground Roughness: Urban or Forest
Cloud Cover: Partly Cloudy
Tank Size & Orientation: Hor. Cylinder, 20 ft. dia., 496 ft. length
Tank filled: 1,000,000 gallons (86%) (simulating 8 tanks as one)
Propane mass: 1,909,103 kg
Scenario: Tank containing a pressurized flammable liquid.
Type of Tank Failure: BLEVE, tank explodes and propane burns in a fireball.
Potential Hazards from BLEVE: Thermal radiation from fireball and pool fire.
Not modeled by ALHOA: Hazardous fragments.
Downwind toxic effects of fire byproducts.

Threat Modeled: **Thermal radiation from fireball**
Fireball Diameter: 787 yards diameter
% propane mass in fireball: 100%

Red:	1682 yards radius	(10.0 kW/(sq m) = potentially lethal within 60 sec.
Orange:	1.3 miles radius	(5.0 kW/(sq m) = 2nd degree burns within 60 sec.
Yellow:	2.1 miles radius	(2.0 kW/(sq m) = pain within 60 sec.

Threat Modeled: **Overpressure (Blast Force) Threat Zone**
Type of Ignition of Vapor Cloud: Detonation
Model: Heavy Gas

Red:	1.3 miles radius	(8.0 psi = destruction of buildings)
Orange:	1.5 miles radius	(3.5 psi = serious injury likely)
Yellow:	2.9 miles radius	(1.0 psi = shatters glass)

II) Refrigerated liquid propane storage tanks:

Number of tanks: 2
Storage capacity (combined) 33.6-million gallons
Individual tank sizes: Diameter (1) 190 ft., (2) 140 ft. (est.); Height 120 ft. (est.)
Tank construction: Unknown.
Storage temperature: -44 °F

ALOHA Model Data (Refrigerated tank loses contents):

Ambient Boiling Point: -43.7° F
Vapor Pressure at Ambient Temperature: greater than 1 atm
Ambient Saturation Concentration: 1,000,000 ppm or 100.0%
Wind: 10 miles/hour from W (or NW) at 3 meters
Ground Roughness: urban or forest
Cloud Cover: 5 tenths
Air Temperature: 65° F Stability Class: D
No Inversion Height Relative Humidity: 50%
Direct Source: 560,000 gallons/sec Source Height: 0
Source State: Liquid
Source Temperature: -44 ° F
Release Duration: 60 minutes
Release Rate: 163,000,000 pounds/min
Total Amount Released: 9.80e+009 pounds
Note: This chemical may flash boil and/or result in two phase flow.

Threat Modeled: **Flammable BLEVE-generated Vapor Cloud**
Model Run: Heavy Gas
Red: greater than 6 miles (12600 ppm = 60% LEL = Flame Pockets)
Yellow: greater than 6 miles (2100 ppm = 10% LEL)

3) Cosmo Oil Refinery, Port of Chiba, Tokyo Bay, March 11, 2011

Site Overview

- Refinery within an integrated petrochemical complex (area: 1.17 km^2)
- Built in 1963. Capacity: 220,000 bpd
- 382 employees (2,500 for the petrochemical complex)

Earthquake Data

- Magnitude 9 (Shindo 5-), max. 7.2 magnitude aftershock

Seismic Protection

- Equipment and storage facilities built to seismic standards (liquefaction-resistant foundations). Automatic shutdown of facilities (acceleration > 0.2 m/s^2)

Accident chronology

14.46: Foreshocks (acceleration: 0.11 m/s^2).

14.52: Aftershocks off coast of Tokyo (0.4 m/s^2). Automatic shutdown of facilities. The legs on propane tank No. 364 (still filled with water from a hydraulic proof test 12 days earlier) crack but do not break. Emergency response unit deployed.

15.15: A new aftershock (0.99 m/s^2) causes the cross-bracings of the legs of tank No. 364 to break. One minute later, the tank collapses, crushing nearby pipes.

15.45: LPG begins leaking from the pipelines leading to the tank farm. The automatic safety valve is unresponsive (bypassed in open position following a malfunction on the pneumatic system a few days earlier). Fire brigade alerted.

15.48: A hot spot (nearby steam cracking unit?) ignites the LPG cloud. Fire breaks out among the LPG tanks despite the cooling rings being turned on.

17.04: First tank BLEVE. Utilities (electricity, air) downed throughout the area.

17.54: Second BLEVE. The pipes throughout the farm do not automatically shut down due to the lack of power and the considerable thermal flows render manual shutoff impossible. The decision is taken to let the fire in the tank farm burn itself out and protect the nearby facilities from the flames. A series of three other BLEVEs occurs during the night (2,000 m^3 and five LPG spheres explode). One thousand local residents are evacuated for 8 hours. The fire is brought under control at 10.10 on March 21st, 2011

Casualties

- Six employees injured, one with serious burns (three Cosmo employees, three from neighbouring sites)

Damage caused by the earthquake

- [All] seventeen [LPG] tanks destroyed, of which five exploded (BLEVE, including a 600 m fireball). Nearby pipes and buildings destroyed: 5,227 tonnes of LPG burnt.

- Leaks on several bitumen storage tanks due to the heat waves [and debris impact][54]
- Roads and buildings on the site damaged by soil liquefaction
- The shock waves and debris from the explosions ignited fires in the petrochemical facilities (steam cracking unit) operated by Maruzen and JMC
- Vehicles and boats destroyed. Homes damaged (windows, roofs).
- Surrounding vehicles and homes covered with fire debris

Damage Cost

- € 100 millions

Chronology of Resumption of Operations

18-31 March 2011: Existing stocks of diesel, kerosene and petrol are shipped

Early May 2011: Bitumen around damaged storage tank cleaned up. Refined petroleum products arrive via tanker. Diesel, kerosene and petrol shipped out in tanker trucks

17 December 2011: Authorization to restart the LPG facilities at pressures > 10 bar granted following compliance inspection (operations suspended by the government since 06/2011).

12 January 2012: Refining facilities partially brought back into operation

30 March-20 April 2012: The 2 crude-oil distillation units are brought back into operation

Spring 2013: End of LPG tank farm repairs. Operation at full capacity

Technical Lessons

- Redesign of the LPG tank farm (reinforced base, wider spacing, doubled coolant flow rate). Improvement in pipe flexibility and change in pipework to limit domino effects
- Reinforcement of zone-based automatic network cutoff system

Organizational Lessons

- Overhaul of tank hydraulic proof testing procedure (fast draining). Better communication between engineering and operations teams
- Safety-awareness training for employees. Heightened inspections

[54] Krausmann, Elizabeth; Cruz, Anaa Maria. "Impact of the 11 March 2011, Great East Japan earthquake and tsunami on the chemical industry." Nat Hazards (2013) 67:811-828. Page 820.

Appendix B: ALOHA Threat-Modeling Software and Disclaimer

The propane threat zone estimates discussed in this paper have been computed with the best available information we currently have from the City of Portland, Port of Portland, and PPC, and in an ongoing absence of any meaningful analysis from any of those entities. The primary authorities for this analysis are:
a) the ALOHA (Arial Locations of Hazardous Atmospheres), atmospheric dispersion modeling software maintained by the Hazardous Materials Division of National Oceanic and Atmospheric Administration (NOAA), widely used by Fire Departments and first responders for Emergency Chemical Release Modeling.
b) The many published industry and scientific references cited in the paper.

ALOHA models the dispersion of a gas in the atmosphere and displays a map view of the area (footprint) in which it predicts gas concentrations typically representative of hazardous levels (Levels of Concern, or LOC). The footprint represents the area within which the concentration of a gas is predicted to exceed a LOC at some time during the release. ALOHA uses simplified heavy gas dispersion calculations that are based on the DEGADIS model, and are therefore unreliable under very low wind speeds, very stable atmospheric conditions, wind shifts and terrain steering effects, or concentration patchiness, particularly near the spill source.

ALOHA models source strength and type (direct, puddle, tank release), uses air dispersion models to calculate concentration threat zones, models and calculates overpressure blast effects from vapor cloud explosions. It also uses thermal (infrared) radiation and flammable area models to calculate the emissivity, view factor, transmissivity and duration of BLEVE fireballs; the emissivity and view factor of jet fires; the emissivity, view factor, and pool dynamics of pool fires; and the flammable area of flash fires.

ALOHA does not model hazardous missile fragments, does not model the downwind toxic effects of fire byproducts, and does not account for the effects of fires or chemical reactions, particulates, chemical mixtures, and terrain.[55] The missile fragment threat zones were modeled using the lower limit of the industry's widely accepted range of 30- to 40-times the fireball radius.[56]

Google Earth was used to display ALOHA thermal and overpressure KML data on 3-D location maps. KML uses a tag-based structure with nested elements and attributes and is based on the XML standard. A big advantage of KML for the current purpose is that the threat data are automatically scaled and merged with Google Earth's maps, allowing seamless and accurate

[55] Jones, Robert, et al. ALOHA (Areal Locations of Hazardous Atmospheres) 5.4.4 Technical Documentation. NOAA Technical Memorandum NOS OR&R 43. November 2013.
[56] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Page 10. mroberts@abs-group.com
http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/Roberts%20abstract.pdf

viewing from any perspective. Shrapnel threat zones, computed as 30x the ALOHA fireball radius, were generated using a KML circle generator,[57] and the XML tags were manually edited to adjust circle line-width and color.

The latest version of ALOHA (V5.4) released in February 2006 added the ability to model the hazards associated with fires and explosions. With this major update, users can now estimate the hazards associated with jet fires (flares), pool fires, vapor cloud explosions (VCE), BLEVEs (Boiling Liquid Expanding Vapor Explosions), and flammable regions (flash fires) as well as toxic threats. The ALOHA user manuals were completely updated to include extensive material associated with fires and explosion.[58,59]

WARNING

The data computed here are for general reference and educational purposes only and *must not* be relied upon as a sole source to determine worst case or typical results of damage to propane storage vessels and loss and possible ignition of contents, or where matters of life and health and safety are concerned. This paper's authors have taken all care to ensure the accuracy of the results, but do not warrant or guarantee the accuracy or the sufficiency of the information provided and do not assume any responsibility for its use. Sufficient data has been provided for anyone to use the same software to reproduce the same general results.

[57] KML circle generator: http://www.thesamestory.com/kmlcircle/

[58] "Technical documentation and software quality assurance for project-Eagle-ALOHA: A project to add fire and explosive capability to ALPHA." Feb 2006. Office of Repsponse and Restoration, Noational Oceanic and Atmospheric Administration (NOAA); Environmental Protection Agency (EPA); Pipelines and Hazardous Materials Safety Administration, Department of Transportation. http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/Final%20techdoc%20and%20QA.pdf Retrieved Feb 20, 2015.

[59] Reynolds. R. Michael. "ALOHA (Areal Locations of Hazardous Atmospheres) 5.0 Theoretical Description." NOAA Technical Memorandum NOS ORCA-65 (August 1992). http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/ALOHA-Theoretical-Description.pdf Retrieved Feb 20, 2015.

Appendix C: ES for the Long Beach LNG Terminal Draft EIS/EIR

[footnotes and tables removed]

On January 26, 2004, Sound Energy Solutions (SES) filed an application with the Federal Energy Regulatory Commission (Commission or FERC) under section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations. SES seeks authorization from the FERC to site, construct, and operate a liquefied natural gas (LNG) receiving terminal and associated facilities in the Port of Long Beach (POLB or Port) in Long Beach, California as a place of entry for the importation of LNG. The FERC is the federal agency responsible for authorizing sites for onshore LNG import facilities. As such, the FERC is the lead federal agency for the preparation of the environmental impact statement (EIS). The FERC will use the document to consider the environmental impact that could result if it issues SES an Order Granting Authorization under section 3 of the NGA.

The Board of Harbor Commissioners (BHC) has authority over the City's Harbor District, commonly known as the POLB or Port. The City of Long Beach owns the land within the Harbor District in trust for the people of the State of California. SES would have to obtain a lease from the City of Long Beach to build and operate its proposed Long Beach LNG Import Project. SES submitted an application to the POLB for a Harbor Development Permit on July 25, 2003, seeking approval for a development project within the Port. The application was designated POLB Application No. HDP 03-079. The POLB is the lead agency in California for preparing the environmental impact report (EIR). The BHC will use the document to determine the project's consistency with the certified Port Master Plan (PMP) and the California Coastal Act of 1976 as well as to consider the environmental impact that could result if it issues Harbor Development Permits for the project.

The environmental staffs of the FERC and the POLB (Agency Staffs) have jointly prepared this draft EIS/EIR to assess the environmental impacts associated with the construction and operation of the Long Beach LNG Import Project. The document was prepared in accordance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA [Title 40 Code of Federal Regulations (CFR) Parts 1500-1508], the FERC's regulations implementing NEPA (Title 18 CFR Part 380), the California Environmental Quality Act (CEQA), and the guidelines for the implementation of the CEQA (California Code of Regulations Title 14, section 15000 et seq.). The purpose of this document is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and to recommend all feasible mitigation measures.

The U.S. Army Corps of Engineers (ACOE) has jurisdictional authority pursuant to section 404 of the Clean Water Act [33 United States Code (USC) 1344], which governs the discharge of dredged or fill material into waters of the United States, and section 10 of the Rivers and Harbors Act (33 USC 403), which regulates any work or structures that potentially affect the navigable capacity of a waterbody. Because the ACOE must comply with the requirements of NEPA before issuing permits under sections 404 and 10, it has elected to act as a cooperating agency with the FERC and the POLB in preparing this EIS/EIR. The ACOE would adopt the EIS/EIR per Title 40 CFR Part 1506.3 if, after an independent review of the document, it concludes that its comments and suggestions have been satisfied.

The U.S. Coast Guard (Coast Guard) within the U.S. Department of Homeland Security exercises regulatory authority over LNG facilities that affect the safety and security of port areas and navigable waterways under Executive Order 10173; the Magnuson Act (50 USC section 191); the Ports and Waterways Safety Act of 1972, as amended (33 USC section 1221, et seq.); and the Maritime Transportation Security Act of 2002 (46 USC section 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval and compliance verification as provided in Title 33 CFR Part 105, and siting as it pertains to the management of vessel traffic in and around the LNG facility. As required by its regulations, the Coast

Guard is responsible for issuing a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG marine traffic. The Coast Guard has elected to act as a cooperating agency in the preparation of this EIS/EIR and plans to adopt the document if it adequately covers the impacts associated with issuance of the LOR.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation has authority to promulgate and enforce safety regulations and standards for the transportation and storage of LNG in or affecting interstate or foreign commerce under the pipeline safety laws (49 USC Chapter 601). This authority extends to the siting, design, installation, construction, initial inspection, initial testing, and operation and maintenance of LNG facilities. The PHMSA's operation and maintenance responsibilities include fire prevention and security planning for LNG facilities under Title 49 CFR Part 193. The PHMSA is participating in the NEPA analysis under the terms of an interagency agreement between the PHMSA, the FERC, and the Coast Guard.

PROPOSED ACTION

LNG is natural gas that has been cooled to a temperature of about -260 degrees Fahrenheit so that it becomes a liquid. Because LNG is more compact than the gaseous equivalent, it can be transported long distances across oceans using specially designed ships. SES proposes to ship LNG from a variety of Asian and other foreign sources to provide a new, stable source of natural gas to serve the needs of southern California, particularly the Los Angeles Basin (LA Basin). The LNG would be unloaded from the ships, stored in tanks at the terminal, and then re-gasified (vaporized) and transported via a new 2.3- mile-long, 36-inch-diameter natural gas pipeline to Southern California Gas Company's (SoCal Gas) existing Line 765. A portion of the LNG would he distributed via trailer trucks to LNG vehicle fueling stations throughout southern California to fuel LNG-powered vehicles.

Natural gas is a mixture of hydrocarbon compounds, principally methane. It also contains small amounts of heavier hydrocarbons, such as propane, ethane (C_2), and butane, which have a higher heating value than methane. A portion of these components may need to be removed from the LNG that would be stored on the terminal site in order for the natural gas to meet the British thermal units (Btu) and gas quality specifications of SoCal Gas as well as the specifications for LNG vehicle fuel established by the California Air Resources Board (CARB). The components that are removed are called natural gas liquids (NGL). SES has stated that it would accept only lean LNG [i.e., LNG containing fewer heavy (non-methane) hydrocarbons than regular LNG] from its suppliers. However, up to 10,000 million Btu per day of C_2 recovered from the LNG would be vaporized and distributed to ConocoPhillips' existing Los Angeles Refinery Carson Plant (LARC) via a new 4.6-mile-long, 10-inch-diameter pipeline.

Specifically, SES' proposal would involve construction and operation of LNG terminal and pipeline facilities as described below.

The LNG terminal facilities would include:

- An LNG ship berth and unloading facility with unloading arms, mooring and breasting dolphins, and a fendering system;
- Two LNG storage tanks, each with a gross volume of 160,000 cubic meters (1,006,000 barrels) surrounded by a security barrier wall;
- 20 electric-powered booster pumps;
- Four shell and tube vaporizers using a primary, closed-loop water system;
- Three boil-off gas compressors, a condensing system, an NGL recovery system, and an export C2 heater;
- An LNG trailer truck loading facility with a small LNG storage tank;
- A natural gas meter station and odorization system;
- Utilities, buildings, and service facilities; and
- Associated hazard detection, control, and prevention systems; site security facilities; cryogenic piping; and insulation, electrical, and instrumentation systems.

The pipeline facilities would include:

- A 2.3-mile-long, 36-inch-diameter pipeline and associated aboveground facilities to transport natural gas from the LNG terminal to the existing SoCal Gas system; and
- A 4.6-mile-long, 10-inch-diameter pipeline and associated aboveground facilities to transport vaporized C2 from the LNG terminal to the existing ConocoPhillips LARC.

PUBLIC INVOLVEMENT AND AREAS OF CONCERN

On June 30, 2003, SES filed a request with the FERC to implement the Commission's Pre-Filing Process for the Long Beach LNG Import Project. At that time, SES was in the preliminary design stage of the project and no formal application had been filed with the FERC. On July 11, 2003, the FERC granted SES' request and established a pre-filing docket number (PF03-6-000) to place information filed by SES and related documents issued by the FERC into the public record. The purpose of the Pre-Filing Process is to encourage the early involvement of interested stakeholders, facilitate interagency cooperation, and identify and resolve issues before an application is filed with the FERC. After receipt of SES' Harbor Development Permit application on July 25, 2003, the POLB agreed to conduct its CEQA review of the project in conjunction with the Commission's Pre-Filing Process.

As part of the Pre-Filing Process, the FERC and the POLB worked with SES to develop a public outreach plan for issue identification and stakeholder participation. As part of the outreach plan, SES met with local associations, neighborhood groups, and other non-governmental organizations to inform them about the project and address issues and concerns. In coordination with the FERC and the POLB, SES also consulted with key federal and state agencies to identify their issues and concerns.

On September 4, 2003, SES sponsored two public workshops in the Long Beach area. The purpose of the workshops was to inform agencies and the general public about LNG and the proposed project and to provide them an opportunity to ask questions and express their concerns. The FERC and the POLB participated in these workshops and provided information on the joint environmental review process. Invitations to the public workshops were sent to federal, state, and local agencies; elected officials; environmental groups; affected landowners; and tenants of the POLB. Notices of the public workshops were published in the local newspapers.

Between September 22, 2003 and November 3, 2004, the FERC and/or the POLB issued three separate notices that described the proposed project and invited written comments on the environmental issues to be addressed in the EIS/EIR. The September 22, 2003 notice also announced a joint NEPA/CEQA public scoping meeting that was held in Long Beach on October 9, 2003. All three notices were mailed to federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; POLB tenants; and local libraries and newspapers. Announcements of the public scoping meeting were published in the local newspapers. Each notice opened a formal scoping period for the project.

A transcript of the public scoping meeting and all written comments are part of the public record for the Long Beach LNG Import Project and are available for viewing on the FERC Internet website (http://www.ferc.gov).[2] The environmental scoping comments received during the public scoping periods raised issues related to the alternatives analysis, geologic hazards, contaminated soils and sediments, land use, socioeconomics, traffic, air quality, cumulative impacts, and reliability and safety.

This draft EIS/EIR was filed with the U.S. Environmental Protection Agency (EPA), submitted to the California State Clearinghouse, and mailed to federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; POLB tenants; intervenors[3] in the FERC's proceeding; local libraries and newspapers; and other interested parties (i.e., miscellaneous individuals who provided scoping comments or asked to be on the mailing list). A formal notice indicating that the draft EIS/EIR is available for review and comment was published in the Federal Register, posted in the Los Angeles County Clerk's office in California, and sent to the remaining individuals on the mailing list. The public has at least 45 days after the date of publication in the Federal

Register to review and comment on the draft EIS/EIR both in the form of written comments and at public meetings to be held in Long Beach. All comments received on the draft EIS/EIR related to environmental issues will be addressed in the final EIS/EIR.

ENVIRONMENTAL ISSUES

The environmental issues associated with construction and operation of the Long Beach LNG Import Project are analyzed in this EIS/EIR using information provided by SES and further developed from data requests; field investigations; scoping; literature research; alternatives analysis; contacts with federal, state, and local agencies; and input from public groups and organizations. The Agency Staffs' analysis indicates that the project would result in certain adverse environmental impacts. As part of the environmental analysis, specific mitigation measures were identified that are feasible and that, when implemented, would reduce potential adverse impacts of project construction and operation. Table ES-1 at the end of this Executive Summary summarizes the significant impacts of the project and the mitigation measures recommended by the Agency Staffs to reduce the impacts. These impacts are described in detail in section 4.0. A brief summary by resource is provided below.

Geology

The project area is underlain by fill materials, alluvial and marine sediments, sedimentary rocks, and metamorphic basement rocks. Construction of the LNG terminal, electric distribution facilities, and pipelines would occur primarily within near-surface non-native fill deposits and unconsolidated soils and sediments. Therefore, construction and operation of the Long Beach LNG Import Project would not materially alter the geologic conditions of the area or worsen existing unfavorable geologic conditions. All active and abandoned petroleum production wells would be identified in the field just prior to the commencement of construction.

The potential for tsunamis or surface rupture to affect the project facilities is very low and, therefore, no specific mitigation is proposed. Geologic hazards present in the project area are related to seismic activity and historical subsidence associated with petroleum production in the area. Seismic activity could potentially damage the LNG terminal site facilities, shoreline structures, and pipeline and electric distribution facilities through strong shaking or secondary ground deformation such as liquefaction, shaking-induced settlement, or lateral spreading.

SES conducted a detailed analysis that resulted in seismic design criteria that meet the POLB requirements and exceed the Office of Pipeline Safety and the FERC requirements as specified in National Fire Protection Association 59A (2001). This analysis indicates that an earthquake of Richter magnitude M9.0 on the Palos Verde fault or M7.5 on the THUMS-Huntington Beach fault would be necessary to generate ground motions strong enough to rupture the LNG storage tanks and release their contents. These events have estimated return intervals of approximately 15,000 years and, therefore, are extremely unlikely to occur during the 50-year life of the project.

The Agency Staffs reviewed the current engineering designs for the LNG storage tanks and other critical terminal structures. These designs are of sufficient detail to demonstrate that the project facilities would withstand the seismic hazards that could affect the site when they are constructed to the specifications of the plans. SES would ensure that final engineering designs also meet or exceed applicable seismic standards, and would provide the final plans to the FERC and the POLB for review and approval before construction. The POLB would construct the shoreline structures to meet the stringent seismic design criteria developed for the site, and stone columns would be installed between the shoreline structures and the LNG storage tanks, thereby providing the required lateral support to limit displacement and minimize stress and strain levels well within the design limits of the LNG storage tanks and other heavy load structures in the event of an earthquake.

Regional subsidence due to ongoing hydrocarbon production is effectively monitored and controlled and, therefore, would not affect construction or operation of the project.

Soils and Sediments

Because of the highly developed, industrial nature of the area and the presence of mostly fill materials under the majority of the project facilities, the project would not reduce soil productivity by compaction or soil mixing. However, construction of the project facilities would temporarily expose the fill materials on the affected portion of Terminal Island and the native soils at the end of the pipeline routes to the effects of wind, rain, and runoff, which could cause erosion and sedimentation in the area. Erosion control measures proposed for the Long Beach LNG Import Project are detailed in SES' Sediment Control Plan that is included in its Storm Water Pollution Prevention Plan (SWPPP).

Existing soils at the LNG terminal site are not capable of adequately supporting the LNG storage tanks or other heavy load structures. As a result, SES proposes to install deep-driven pile foundations beneath the LNG storage tanks and other heavy load structures to meet the stringent static-settlement criteria for the structures at the LNG terminal. Other soil improvements at the site would include the installation of approximately 3,380 stone columns to depths of 60 to 80 feet below ground surface between the shoreline structures and the security barrier wall and an additional approximately 2,000 stone columns to a depth of 60 feet below ground surface between the security barrier wall and the LNG storage tanks. In addition to excavation for the soil improvements, construction of the project would involve excavation for the LNG spill impoundment systems and other utilities and foundations at the LNG terminal site, and trenching for the pipeline and electric distribution facilities. Contaminated soil and other hazardous materials could be encountered during any of these activities. If hazardous substances are encountered during construction, SES would notify the POLB. SES, in consultation with the POLB, would comply with all applicable environmental regulations. Before construction, SES and the pipeline contractor(s) would submit work plans that outline appropriate environmental site investigation and remediation activities to the appropriate agencies for approval. The work plans would include a site specific Health and Safety Plan, Sampling and Analysis Plan, Project Contractor Quality Control Plan, and an Environmental Protection Plan that would also include a Waste Management Plan.

Spills or leaks of fuels, lubricants, or other hazardous substances during construction and/or operation of the project could also have an impact on soils. This potential impact is expected to be minor, however, because of the typically low frequency, volume, and extent of spills or leaks, and because of the hazard detection system and other safety controls designed to prevent or contain spills and leaks at the LNG terminal site. Implementation of SES' Spill Procedure included in its SWPPP would further reduce the likelihood of a significant spill or leak occurring during construction or operation of the project, and would reduce the impact of any spill or leak that may occur.

Disturbance of the West Basin sediments during in-water activities would temporarily resuspend sediments in the water column, which could cause turbidity. An increase in sediment and turbidity levels could adversely affect water quality and aquatic organisms. Resuspension of contaminated sediments could also impact marine organisms in the area. The POLB has recently negotiated a consent agreement with the California Department of Toxic Substances Control (DTSC) for its concurrence with the Installation Restoration Site 7 (West Basin) sediment remediation. Accordingly, the dredging associated with the project would be done only with the concurrence of the DTSC. Turbidity levels would return to baseline conditions after dredging operations were completed. Disposal suitability issues would be addressed in compliance with the EPA/ACOE *Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. – Testing Manual*. Disturbance of the West Basin sediments could also encounter ordnance. Any ordnance found during dredging for the proposed project would be handled in accordance with federal regulations and the POLB's procedures.

Water Resources

Activities associated with construction of the proposed project facilities, including hydrostatic test water appropriation, the installation of deep-driven pile foundations and stone columns at the LNG terminal site, the horizontal directional drills (HDDs) of the Cerritos Channel, site excavation and dewatering, and accidental spills or leaks of hazardous materials could adversely affect groundwater quality within the project area. SES would minimize the potential for these impacts by negotiating project

water requirements with the City of Long Beach for appropriate fees and mitigation measures; driving, rather than excavating, the foundation piles at the LNG terminal site and installing a cement plug at the base of each stone column in order to prevent the creation of an opening where potential cross-contamination could occur; implementing its HDD Plan; identifying and protecting all underground piping in the construction area; evaluating all dewatered material for contamination prior to removal in accordance with the Health and Safety Plan and Sampling and Analysis Plan; and implementing its Spill Procedure to address preventive and mitigative measures that would be used to minimize the potential impact of a hazardous spill during construction of the project facilities.

Potential operational impacts on groundwater include an accidental spill or leak of hazardous materials during operation of the project facilities and water requirements for the LNG terminal vaporization process, firewater system, and miscellaneous potable water needs. The measures in SES' Spill Procedure would reduce the potential impacts on groundwater associated with a hazardous spill or leak during project operation. All of the operational water required for the LNG terminal would be obtained from the POLB and the City of Long Beach municipal water system. SES would negotiate with the City of Long Beach or a local supplier to determine appropriate fees and to ensure that the project would have no impact on water availability in the area.

Activities associated with construction of the project facilities, including reinforcement of the shoreline structures, construction of the LNG ship berth and unloading facility and associated dredging, the HDDs of the Cerritos Channel, installation of the C_2 pipeline over the Dominguez Channel, hydrostatic test water discharge, storm water runoff, and accidental spills or leaks of hazardous materials could adversely affect surface water quality and/or water circulation within Long Beach Harbor. Adherence to the measures of all applicable permits, implementation of the POLB's Dredge and Disposal Plan and SES' HDD Plan and Spill Procedure, as well as disposal of all sediments at approved sites would minimize impacts on water quality. In addition, the Agency Staffs will recommend to their respective Commissions that SES revise its HDD Plan to describe the procedures that would be followed if an existing submerged pipeline is encountered during the HDD operations.

Operational impacts on water quality include the potential to contribute additional pollutants to the waterbody via accidental spills or leaks of hazardous materials, storm water runoff, or an LNG spill. There would be no intake or discharge of sea water during operation of the project facilities. Implementation of SES' Spill Procedure included in its SWPPP would reduce the likelihood of a significant spill or leak occurring during operation of the project, and would reduce the impact of any spill or leak that may occur. In accordance with its SWPPP, best management practices (BMPs) consisting of permanent features and operational practices designed or implemented to minimize the discharge of pollutants in storm water or non-storm water flows from the LNG terminal site would be implemented to reduce the potential operation-related impacts on surface water resources.

Biological Resources

Due to the highly developed nature of the POLB and the lack of vegetative habitats, the terrestrial environment in the project area supports few wildlife species. Individuals in the area are acclimated to the industrial nature of the POLB, routinely experience disturbance associated with Port activities, and would likely relocate into adjacent habitats. The project would not have a measurable impact on the local population of any species.

Activities associated with dredging could potentially affect marine organisms by destroying the benthic infauna of the dredged sediments and temporarily displacing mobile organisms, such as fish. In addition to the direct disturbances to the bottom substrates, dredging activities would temporarily increase turbidity and the presence of suspended sediments in the water column, which could indirectly affect marine organisms. However, monitoring of larger dredging projects within San Pedro Bay has shown that turbidity associated with dredging is short term and localized and that compliance with the requirements of the Regional Water Quality Control Board's Waste Discharge Requirements and the ACOE's section 404 permit results in minimal turbidity. The short-term loss of benthic organisms in a small portion of the

harbor is generally recognized as an insignificant impact on aquatic resources and benthic communities would be expected to repopulate following the completion of construction activities.

Activities associated with the reinforcement of the shoreline structures and construction of the LNG ship berth and unloading facility could directly affect benthic and fish species during the removal or installation of any in-water structures (e.g., pilings, underwater rock buttress). Individuals of non-mobile species attached to hard substrates that are removed or covered would suffer mortality. However, these species are relatively widespread throughout the harbor and would recolonize new hard substrates within 2 to 3 years.

Noise could impact marine organisms that occur in the project area within Long Beach Harbor. Project vessels operating within Long Beach Harbor could create sounds that lead to responses in fish. Additionally, specific construction activities (e.g., driving steel piles) could also generate underwater sound pressure waves that potentially kill, injure, or cause a behavioral change in fish in the immediate vicinity of the construction activities. Given the abundance of fish in the harbor despite continuous maritime activity, marine organisms found in the project area have generally adapted to these conditions.

There is also the potential for spills, leaks, or accidental releases of potentially hazardous materials to occur during construction of the proposed project. SES' Spill Procedure specifies BMPs that would minimize the chances of a spill and, if a spill were to occur, minimize the chances of the spill reaching a waterbody and affecting marine organisms.

Dredging and construction activities associated with the Long Beach LNG Import Project would affect water-associated birds through disruptive noise and/or temporary loss or degradation of foraging habitats in the marine waters of the West Basin. Birds found in the area are acclimated to these types of activities and would use similar habitats in adjacent areas.

Consultation with the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) identified the proposed project area as designated essential fish habitat (EFH) for the Coastal Pelagics and Pacific Groundfish Management Plans. Fourteen of the 86 species managed under these two plans are known to occur in Long Beach Harbor and could be affected by the proposed project. Although disturbance of an estimated 11.9 acres of sea floor and the temporary resuspension of sediments into the water column during dredging activities could potentially adversely affect EFH (resulting in avoidance by adults and some loss of larval northern anchovy in the immediate vicinity of the dredging activity), implementation of the control measures and management practices proposed by SES or required by the regulatory agencies would serve to avoid or minimize impacts on EFH. Additionally, construction impacts would be temporary and turbidity levels would return to baseline conditions following construction.

Seven species listed as federally threatened or endangered potentially occur in the project area. The California brown pelican, California least tern, and leatherback sea turtle are federally listed endangered species and the western snowy plover, green sea turtle, olive Ridley sea turtle, and loggerhead sea turtle are federally listed threatened species. Both the U.S. Fish and Wildlife Service and NOAA Fisheries provided comments indicating that federally listed threatened or endangered species would not likely be adversely affected by the proposed project and the FERC staff concurs with these determinations. Three state-listed endangered species, the American peregrine falcon, the California brown pelican, and the California least tern, have been identified as potentially occurring in the proposed project area. The California brown pelican and the California least tern are also federally listed species and, as discussed above, would not likely be adversely affected by the project. Construction and operation of the Long Beach LNG Import Project could disturb the American peregrine falcon through temporary loss or degradation of foraging habitat and disruptive noise from construction and operation of the project facilities. However, peregrine falcons in the project area have become acclimated to POLB operations, including construction and dredging activities as evidenced by their continued use of the local bridges for nesting. In addition, the proposed project would not result in the permanent loss or degradation of existing foraging habitat or significantly increase existing noise levels during construction and operation.

Land Use, Hazardous Waste, Recreation, and Visual Resources

A total of 88.0 acres of land would be affected during construction of the Long Beach LNG Import Project (56.9 acres for the LNG terminal facilities, 30.1 acres for the pipeline facilities, and 1.0 acre for the electric distribution facilities). Of the 88.0 acres of land affected by construction of the project, 37.0 acres would be permanently affected during operation of the project facilities (32.1 acres associated with the LNG terminal, 3.9 acres associated with the pipelines, and 1.0 acre associated with the electric distribution facilities). The LNG terminal would be an industrial use that generally conforms to the overall goals of the current PMP, local zoning ordinances, and relevant regional plans and would be consistent with existing surrounding uses. However, an amendment to the PMP would be necessary to accommodate the LNG facility because LNG is not an expressly identified "hazardous cargo" as permitted within Terminal Island Planning District 4. The pipeline and electric distribution facilities would be an industrial/utility use that is consistent with existing surrounding uses and conforms to the overall goals of the current PMP, local zoning ordinances, and relevant regional plans.

All of the land and marine uses immediately adjacent to and within 1 mile of the proposed project facilities are associated with the industrial activities of the ports of Long Beach and Los Angeles or the Cities of Long Beach, Los Angeles, and Carson. No permanent residences are located within the POLB or the Port of Los Angeles. The closest potential residences are in a recreational vehicle park about 1.3 miles east-northeast of the LNG terminal site and possibly live-aboard boats at two marinas in the East Basin of the Cerritos Channel between 1.2 and 1.6 miles northwest of the LNG terminal.

The Long Beach Naval Shipyard and Station are listed as hazardous waste sites. The Navy also documented soil contamination in the area during closure of its Long Beach Complex. Several other hazardous waste sites were identified within 0.25 mile of the pipeline routes and electric distribution facilities. Because none of these sites would be crossed by the proposed facilities, Phase I Environmental Assessments were not conducted.

Although the Long Beach area provides several opportunities for recreational activities, the immediate area surrounding the LNG terminal site, pipelines, and electric distribution facilities does not provide for recreational activities due to the industrial nature of the Port and the adjacent area to the north. Construction and operation of the Long Beach LNG Import Project would not threaten the viability of a recreational resource, prohibit access to recreational resources, or cause termination of a recreational use.

Construction and operation of the LNG terminal facilities would have a permanent but not significant impact on visual resources. Although there are a substantial number of potential mobile and stationary viewers and visibility is high in some locations, the LNG facilities would be seen in the context of the existing industrial facilities at the POLB and would not adversely affect the viewshed from sensitive locations or change the character of the landscape in terms of either physical characteristics or land uses. Construction and operation of the pipeline and electric distribution facilities would not result in significant impacts on visual resources.

Socioeconomics

Construction of the project would result in a temporary increase in population and the demands on temporary housing, public services, and utilities and service systems. Due to the temporary and limited nature of these impacts they are not considered significant. Of the 60 full-time workers SES would hire to operate the project facilities, about 54 workers are expected to be from the local area. Therefore, operation of the project would not have a significant impact on population or the demand for housing. Because LNG would be a new product to the POLB, it would also be new to the local fire and emergency response services. SES is working with local emergency providers to develop procedures to handle potential fire emergencies and is working with the Long Beach City Fire Department (LBFD) to provide hazard control and firefighting training that is specific to LNG and LNG vessels. SES has also committed to funding all necessary security/emergency management equipment and personnel costs that would be imposed on state and local agencies as a result of the project and would prepare a comprehensive plan that identifies the mechanisms for funding these costs. These measures should adequately equip the LBFD to handle any

type of emergency at the proposed LNG terminal. Construction and operation of the project would have a beneficial impact on local tax revenues.

Transportation

The duration of construction for the LNG terminal is estimated to be 48 months. During this time, traffic would be generated by trucks transporting materials and equipment to and from the laydown area and project site as well as trucks transporting materials directly to the project site. Driveway access to the laydown area is located along Pier S Avenue. Also, construction worker trips would occur during the construction period. These worker trips would total approximately 808 trips (404 in and 404 out) into the area. All construction workers would park adjacent to the laydown area. The construction workers would then be transported via buses to the project site. The transporting of these workers would generate a total of 46 daily bus trips (23 in and 23 out). The transporting of construction equipment and materials would generate approximately 676 daily truck trips (338 in and 338 out) during the most active construction period. These project construction worker and truck and material haul trips would result in a temporary, short-term significant impact at the intersections of Navy Way and Seaside Avenue (evening only) and Henry Ford Avenue and Anaheim Street (evening only). The Agency Staffs will recommend to their respective Commissions that SES require the construction workforce to work 6 a.m. to 2:30 p.m. instead of 7 a.m. to 3:30 p.m. Improvements at the Henry Ford Avenue/Anaheim Street intersection would be implemented if required by the Los Angeles Department of Transportation. Operation of the project would not result in a significant impact on traffic.

The Long Beach LNG Import Project would generate a maximum of 120 ship calls and 240 ship movements within the POLB each year. This would typically mean the addition of one ship movement per day on up to 240 days of the year or possibly two ship movements in the event of a rapid discharge call with arrival, discharge, and departure occurring during one calendar day. The increase in ship traffic associated with the LNG terminal could cause vessel traffic congestion within the harbor and/or conflicts with other commercial interests if an LNG ship arrival or departure delays the movement of another vessel, either due to scheduling or traffic management resulting in slow speed or waiting time. Delays experienced by other ships are expected to be temporary and of short duration. In addition, SES would participate with the Coast Guard in the development of procedures to reduce impacts on marine transportation, including implementation of an LNG Vessel Operation and Emergency Contingency Plan that would provide the basis for operation of LNG ships within the POLB.

Cultural Resources

The FERC and the POLB, in consultation with the State Historic Preservation Office, have determined that there would be no impact on any properties listed, or eligible for listing, on the National Register of Historic Places or the California Register of Historical Resources or on any unique archaeological resources for the proposed project; therefore, no mitigation would be required. SES prepared an Unanticipated Discovery Plan to be used during construction. The plan describes the procedures that would be employed in the event previously unidentified cultural resources or human remains are encountered during construction. SES' continued cooperation with Native American tribes who were identified by the California Native American Heritage Commission as potentially having knowledge of cultural resources in the project area should address any tribal issues associated with the proposed project.

Air Quality

Construction emissions associated with the Long Beach LNG Import Project would be caused by tailpipe emissions from worker vehicles and supply trucks, as well as construction equipment and fugitive dust. The South Coast Air Quality Management District (SCAQMD) significance thresholds would be exceeded for all criteria pollutants except sulfur oxides (SO_x) on a peak daily and quarterly basis. The exceedances are considered a significant impact. To reduce project construction emissions from onsite diesel-fueled combustion equipment, SES' contract specifications would require that all off-road diesel fueled equipment powered by compression ignition engines meet or exceed the various emission

standards in accordance with table 1 of Title 40 CFR Part 89.112. For all other equipment, contract specifications would require that the newest equipment in the construction contractors' fleets be used to take advantage of the general reduction in emission factors that occurs with each model year. SES would also adhere to the POLB's air quality requirements and construction standards some of which include the use of electric-powered dredges for all hydraulic dredges and ultra-low sulfur or emulsified diesel in all other types of dredges, construction phasing to minimize concurrent use of construction equipment, turning equipment off when not in use, watering specifications, restrictions on soil excavation and hauling in windy conditions, suspension of construction activities during Stage II smog alerts, and speed limit restrictions. In addition to SES' proposed control measures, the Agency Staffs will recommend to their respective Commissions that SES require all contractors to use ultra-low sulfur or CARB-approved alternative diesel fuel in all diesel-powered equipment used onsite during construction.

The construction workforce would be relatively small (peak of about 404 workers) and would primarily consist of workers from within the Los Angeles and Orange County labor pool. The workers would commute to the temporary laydown and worker parking area on Ocean Boulevard and would then be transported to the site via buses. Materials and equipment would be shipped to the site by road, rail, or barge or to the temporary laydown area on Ocean Boulevard. The Agency Staffs will recommend to their respective Commissions that SES use alternative-fuel buses to transport workers to and from the temporary laydown and worker parking area.

Although implementation of SES' control measures and the mitigation measures recommended by the Agency Staffs would reduce emissions during the construction phase, the impacts of the project on air quality during construction are still expected to remain significant. Construction impacts would, however, be temporary and intermittent and cease at the end of the construction phase.

Operational emission sources associated with the project would include marine vessels, vaporization equipment, fugitive process emissions, on-road vehicles, and emergency generator and firewater pumps. The project's operational emissions would exceed the SCAQMD daily emission thresholds for nitrogen oxides (NO_x), reactive organic compounds (ROC), particulate matter having an aerodynamic diameter of 10 microns or less (PM_{10}), and SO_x. Therefore, the project would be significant for ozone, PM_{10}, and SO_x. The project would not be significant for carbon monoxide. SES proposes to minimize criteria pollutant emissions associated with operation of the Long Beach LNG Import Project through the following control measures: Lowest Achievable Emission Rate/Best Available Control Technology would be applied as needed to the stationary sources; LNG trailer trucks would be LNG fueled and their engines would be turned off during onsite loading; LNG ships would generate power from combustion of boil-off LNG rather than fuel oil if they are equipped to do so; fugitive ROC emissions from various points in the terminal would be minimized by design elements and through the implementation of a comprehensive leak detection and repair program; and operational personnel would be encouraged to rideshare and use mass transit.

SES would also ensure that all diesel-powered, non-road mobile terminal equipment would meet the emissions standards set forth in the EPA's Control of Emissions of Air Pollution From Non-Road Diesel Engines and Fuel and require ships calling at the terminal that do not use LNG boil-off gas in the main engines for power during unloading to use fuels such as the CARB's #2 diesel, gas-to-liquid diesel, biofuels, or a marine distillate fuel, in the ship's auxiliary power generator motors, or use exhaust treatment technology. Because the SCAQMD significance thresholds would be exceeded for NO_x, ROC, PM_{10}, and SO_x even after implementation of SES' control measures, the project's operational impact on air quality would be considered significant. Given the nature of the project operations, especially vessel operations, the Agency Staffs have determined that there are no additional feasible measures that would further reduce air emissions.

The proposed project would comply with all applicable regulations in the 2003 Air Quality Management Plan (AQMP). The AQMP includes control measures that are intended to be implemented

by federal and state governments to reduce emissions from ships and on-road trucks in order to bring the South Coast Air Basin (SCAB) into conformity with federal ambient air quality standards.

The FERC is required to conduct a conformity analysis for the Long Beach LNG Import Project to determine if the emissions associated with the project would conform to the State Implementation Plan (SIP) and would not reduce air quality in the SCAB. This draft EIS/EIR includes a draft conformity analysis; however, documentation supporting conformity with the applicable SIP and AQMP in accordance with Title 40 CFR Part 93.158 has not been filed with the FERC. Until this information is provided by SES, the Long Beach LNG Import Project is deemed to not conform to the applicable SIP and AQMP. The FERC staff recommends that SES completes a full air quality analysis and identify any mitigation requirements necessary for a finding of conformity and file this information with the FERC before the end of the draft EIS/EIR comment period for review and analysis in the final EIS/EIR.

In accordance with SCAQMD Rule 1401, a Health Risk Assessment of toxic air contaminant emissions on humans was conducted for the water heaters associated with the vaporization equipment, the unloading of the LNG ships at berth (vessel activities during that period are referred to as hotelling), movement of the LNG ships within the SCAQMD's boundary, tugboats, pilot boats, Coast Guard escort boats, and idling emissions from the LNG trailer trucks that would load at the terminal. Although the proposed project would not exceed cancer risk level significance thresholds established by the SCAQMD for toxic air pollutant health impacts, the SCAB and Port areas in particular are assumed, on the basis of the SCAQMD's Multiple Air Toxics Exposure Study in the SCAB, to suffer significant impacts related to toxic air pollutants and associated cancer risk levels. Therefore, toxic air pollutants resulting from the project would likely contribute to an existing cumulatively significant air quality impact in the SCAB.

Noise

The noise associated with construction activities would be intermittent because equipment would be operated on an as-needed basis. Construction activities at the LNG terminal and along the routes of the pipelines and electric distribution facilities would generate short-term increases in sound levels during daylight hours when construction activities would occur. The strongest source of sound during construction would be noise associated with installing deep-driven pile foundations beneath the LNG storage tanks and other heavy load structures to meet the stringent static-settlement criteria for the LNG storage tanks and other heavy load structures at the LNG terminal. Although the noise levels at the property boundary during this activity would be higher than existing noise levels, the impacts would be short term and would be contained within the industrial area immediately surrounding the LNG terminal site within the POLB.

The major noise-producing equipment associated with operation of the LNG terminal would be the boil-off gas compressors, primary and secondary booster pumps, water pumps and heaters, instrument air compressors, and fans for the heaters. Noise control measures included in the design of the LNG terminal facilities consist of buildings, barrier walls, and tanks to provide the appropriate level of noise screening. The predicted operational noise level is below the FERC limit of 55 decibels of the A-weighted scale (dBA) day-night sound level (L_{dn}) at the nearest noise-sensitive area (NSA). The predicted property boundary noise level is below the City of Long Beach noise limit of 70 dBA. To ensure that the actual noise resulting from the operation of the LNG terminal is below the FERC limit of 55 dBA L_{dn} at any nearby NSAs and the City of Long Beach property boundary noise limit of 70 dBA, the Agency Staffs will recommend to their respective Commissions that SES conduct a noise survey to verify that the noise from the LNG terminal when operating at full capacity does not exceed these limits.

Reliability and Safety

The safety of both the proposed LNG import terminal facility and the related LNG vessel transit was evaluated. With respect to the onshore facility, the FERC staff completed a cryogenic design and technical review of the proposed terminal design and safety systems. As a result of the technical review of the information provided by SES in its application materials, a number of concerns were identified by the FERC staff relating to the reliability, operability, and safety of the facility. In response to staff's

questions. SES provided written answers prior to a site visit and cryogenic design and technical review conference for the proposed project that was held in Long Beach in July 2004. Specific recommendations have been identified for outstanding issues that require resolution. Follow up on those items requiring additional action would need to be documented in reports to be filed with the FERC.

The FERC staff calculated thermal radiation distances for incident flux levels ranging from 1,600 to 10,000 Btu per square foot per hour (Btu/ft2-hr) for LNG storage tank and trailer truck loading LNG storage tank fires. An incident flux level of 1,600 Btu/ft2-hr is considered hazardous for persons located outdoors and unprotected, a level of 3,000 Btu/ft2-hr is considered an acceptable level for wooden structures, and a level of 10,000 Btu/ft2-hr would cause clothing and wood to ignite and is considered sufficient to damage process equipment. It was determined that the exclusion zone distance for the 10,000 Btu/ft2-hr incident flux would not extend beyond the property line. The LNG storage tank thermal radiation exclusion zone distance for the 1,600 and 3,000 Btu/ft2-hr incident flux would extend outside the terminal site to the east onto Pier T property. For the trailer truck loading storage tank, the thermal radiation exclusion zone distance for the 1,600 and 3,000 Btu/ft2-hr incident flux also would extend outside the terminal site to the east onto Pier T property. Although no prohibited activities or buildings currently exist within these exclusion zones, according to Title 49 CFR Part 193, either a government agency or SES must be able to exercise legal control over activities in these areas for as long as the facility is in operation. The POLB owns the land surrounding the LNG terminal site but leases parcels to other tenants. In its application, SES stated that it is currently negotiating with the POLB and adjacent tenants for restrictive covenants to limit the use of the areas impacted. The FERC staff recommends that SES provide in its comments on the draft EIS/EIR, or in a separate document submitted at the same time, evidence of its ability to exercise legal control over the activities that occur within the portions of the thermal radiation exclusion zones that fall outside the terminal property line that can be built upon.

The FERC staff also conducted flammable vapor dispersion analyses and determined that design spills for the storage tanks, process area, and trailer truck loading area would not extend beyond the terminal property line.

Thermal radiation and flammable vapor hazard distances were also calculated for an accident or an attack on an LNG vessel. For 2.5-meter and 3-meter diameter holes in an LNG cargo tank, the FERC staff estimated distances to range from 4,372 to 4,867 feet for a thermal radiation level of 1,600 Btu/ft2-hr.

In addition to the analysis conducted by the FERC staff, the POLB commissioned a study by Quest Consultants, Inc. (Quest) to identify the worst-case hazards that would result from a release of LNG or other hydrocarbons in or near SES' proposed LNG import terminal. Using a detailed methodology, Quest identified potential accidental and intentional release events involving the LNG terminal and LNG ships. Quest's final report is titled *Hazards Analysis of a Proposed LNG Import Terminal in the Port of Long Beach, California* (POLB Quest Study) and is included in its entirety in appendix F.

The POLB staff reviewed each of the release events identified by Quest using probability definitions developed by the Los Angeles County Fire Department (LACFD). Using the LACFD criteria, an event is considered possible if it could occur once every 100 to 10,000 years. Based on the chances of their occurrence, the release events that are considered possible per the LACFD criteria are a release from process equipment within the LNG terminal and a release from an LNG ship following a collision with the breakwater or with another ship outside the breakwater.

There are no residential, visitor-serving, or recreation populations and essentially no exposed Port workers within the thermal radiation exclusion zone for the 1,600 Btu/ft2-hr incident flux for a release from a rupture of process equipment at any location. Furthermore, the thermal radiation exclusion zone for the 10,000 Btu/ft2-hr incident flux for a release from a process equipment rupture would not impact the adjacent industrial facilities.

The analyses in the draft EIS/EIR and the POLB Quest Study have shown that based on the extensive operational experience of LNG shipping, the structural design of an LNG vessel, and the operational

controls imposed by the ship's master, the Coast Guard, and local pilots, the likelihood of a cargo containment failure and subsequent LNG spill from a vessel casualty – collision, grounding, or allision – is very small.

Unlike accidental causes, historical experience provides little guidance in estimating the probability of a terrorist attack on an LNG vessel or onshore storage facility. For a new LNG import terminal proposal that would store a large volume of flammable fluid near populated areas, the perceived threat of a terrorist attack is a primary concern of the local population. However, the POLB Quest Study reported that the historical probability of a successful terrorist event would be less than seven chances in a million per year. In addition, the multi-tiered security system that would be in place for an LNG import facility in the POLB would reduce the probability of a successful terrorist event.

Some commenters have expressed concern that the local community would have to bear some of the cost of ensuring the security of the LNG facility and the LNG vessels while in transit and unloading at the dock. The potential costs will not be known until the specific security needs have been identified, and the responsibilities of federal, state, and local agencies have been established in the Coast Guard's Waterway Suitability Assessment (WSA). SES has committed to funding all necessary security/ emergency management equipment and personnel costs that would be imposed on state and local agencies as a result of the project and would prepare a comprehensive plan that identifies the mechanisms for funding these costs. In addition, section 311 of the Energy Policy Act of 2005 stipulates that the FERC must require the LNG operator to develop an Emergency Response Plan that includes a Cost-Sharing Plan before any final approval to begin construction. The Cost-Sharing Plan shall include a description of any direct cost reimbursements to any state and local agencies with responsibility for security and safety at the LNG terminal and near vessels that serve the facility. To allow the FERC and the POLB the opportunity to review the plan, the Agency Staffs will recommend to their respective Commissions that SES submit the plan concurrent with the submission of the Follow-on WSA.

Cumulative Impacts

When the impacts of the Long Beach LNG Import Project are considered additively with the impacts of other past, present, or reasonably foreseeable future actions, there is some potential for cumulative effect on water resources, socioeconomics, land transportation, air quality, and noise. For the Long Beach LNG Import Project, control measures have been developed and additional mitigation measures have been recommended by the Agency Staffs to minimize or avoid adverse impacts on these resources. However, the cumulative projects represent additions of potentially significant and unavoidable emissions to the SCAB. In addition, even though project-specific toxic air pollutant health impacts would not be significant, it is likely that the incremental increase in the cancer risk level for toxic air pollutants as a result of the proposed project would contribute to an existing cumulatively significant health impact in the SCAB.

Growth-inducing Impacts

The potential growth-inducing impacts of the Long Beach LNG Import Project would be an increase in development and population in the area associated with a new source of natural gas. Most of the natural gas that would be supplied by the LNG terminal would be transported into the SoCal Gas system and would be used to meet existing and future natural gas demand in the LA Basin. The demand for energy is a result of, rather than a precursor to, development in the region. Currently, imports from out of state represent approximately 87 percent of supply and are anticipated to rise to 88 percent by 2013, meaning that additional external supplies will be needed to keep up with demand. Given the shortand mid-term demand for natural gas and the need to reduce potential supply interruptions, the California Energy Commission has identified the need for California to develop new natural gas infrastructure to access a diversity of fuel supply sources and to remove constraints on the delivery of natural gas. The LNG that would be made available for vehicle fuel would be used to meet existing and projected future demand and provide a new source of fuel to facilitate conversion of diesel or gasoline-fueled vehicles to LNG, which could reduce air emissions in the area. Given the large local labor pool in Los Angeles and Orange

Counties, no substantive influx of workers would occur during construction and operation of the Long Beach LNG Import Project.

ALTERNATIVES CONSIDERED

The No Action or No Project Alternative was considered. While the No Action or No Project Alternative would eliminate the environmental impacts identified in this EIS/EIR, none of the objectives of the proposed project would be met. Specifically, SES would not be able to provide a new and stable supply of natural gas and LNG vehicle fuel to southern California. It is purely speculative to predict the actions that could be taken by other suppliers or users of natural gas and LNG in the region as well as the resulting effects of those actions. Because the demand for energy in southern California is predicted to increase, customers would likely have fewer and potentially more expensive options for obtaining natural gas and LNG supplies in the near future. This might lead to alternative proposals to develop natural gas delivery or storage infrastructure, increased conservation or reduced use of natural gas, and/or the use of other sources of energy.

It is possible that the infrastructure currently supplying natural gas and LNG to the proposed market area could be developed in other ways unforeseen at this point. This might include constructing or expanding regional pipelines as well as LNG import and storage systems. Any construction or expansion work would result in specific environmental impacts that could be less than, similar to, or greater than those associated with the Long Beach LNG Import Project. Increased costs could potentially result in customers conserving or reducing use of natural gas. Although it is possible that additional conservation may have some effect on the demand for natural gas, conservation efforts are not expected to significantly reduce the long-term requirements for natural gas or effectively exert downward pressures on gas prices.

Denying SES' applications could force potential natural gas customers to seek regulatory approval to use other forms of energy. California regulators are promoting renewable energy programs to help reduce the demand for fossil fuels. While renewable energy programs can contribute as an energy source for electricity, they cannot at this time reliably replace the need for natural gas or provide sufficient energy to keep pace with demand.

Alternatives involving the use of other existing or proposed LNG or natural gas facilities to meet the stated objectives of the proposed project were evaluated. None of the pipeline system alternatives could provide a stable source of LNG for vehicle fuel or the storage of up to 320,000 cubic meters of LNG to address fluctuating energy supply and demand (two of the three stated objectives of the Long Beach LNG Import Project). Several of the proposed LNG import systems (either offshore California or in Mexico) could provide a new source of natural gas to southern California markets; however, none of these system alternatives could meet the proposed project's stated objective of providing a stable source of LNG for vehicle fuel. Furthermore, each of the system alternatives could result in its own set of significant environmental impacts that could be greater than those associated with the proposed project.

Alternative sites for an LNG import terminal were evaluated. The examination of alternative sites for an LNG import terminal involved a comprehensive, step-wise process that considered environmental, engineering, economic, safety, and regulatory factors. The alternative sites evaluated for an LNG terminal were not found to avoid or substantially lessen any significant environmental effects of the proposed project and/or could not meet all or most of the project objectives.

An evaluation of alternative routes for the natural gas and C_2 pipelines was also conducted. The alternatives were not found to avoid or substantially lessen impacts associated with the corresponding segment of the proposed routes and/or were infeasible due to the number of existing utilities already in place along the alignments and the lack of adequate space to install the facilities.

Reduced dredge/fill alternatives and alternative ship berth configurations, dredge disposal alternatives, and alternative dredging methods were evaluated to avoid or minimize impacts on water quality or biological resources associated with the in-water work needed for construction of the LNG ship berth and unloading facility and strengthening the shoreline structures. None of these alternatives were

found to be feasible or would avoid or substantially lessen any significant environmental effects of the proposed project.

Vaporizer alternatives were also evaluated. The shell and tube vaporizer, which is the proposed vaporizer for the Long Beach LNG Import Project, was found to be efficient, readily able to be integrated with the NGL extraction system, and to utilize proven vaporizer technology. Shell and tube vaporizers are also the most compact LNG vaporizers available, an important consideration given the size of the LNG terminal site. New vaporization processes that primarily utilize air exchangers as a heat source were also evaluated because they would have lower fuel gas requirements than conventional combustion vaporizers. Reduced fuel use would lead to a corresponding reduction in air emissions and operating costs. The space requirements of these new vaporization processes, however, appear to make this approach technically infeasible at the proposed site.

ENVIRONMENTALLY PREFERABLE/SUPERIOR ALTERNATIVE

The Agency Staffs will recommend to their respective Commissions that SES' proposed project is the environmentally preferable/superior alternative that can meet the project objectives.

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Appendix D: TOC Long Beach LNG Import Terminal Project Draft EIS/EIR

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Long Beach LNG Import Project

Draft Environmental Impact Statement/
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Comment Letter 8

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VIA HAND DELIVERY AND EMAIL

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Re: Land-into-Trust Application of Wilton Rancheria to the Bureau of Indian Affairs

Dear Mr. Roberts and Ms. Tompkins:

Pursuant to 5 U.S.C. § 705, Stand Up for California!, Patty Johnson, Joe Teixeira, and Lynn Wheat (collectively, "Citizens") respectfully request that the Department of the Interior ("Interior") and Bureau of Indian Affairs ("BIA") (collectively, "Department") postpone the effective date of any decision the Department may issue on behalf of the Wilton Rancheria to acquire land in trust. This request pertains specifically to BIA's November 17, 2016 Notice of (Gaming) Land Acquisition Application related to an approximately 36-acre parcel of land in Elk Grove, known as the "Elk Grove Mall site."

8-1

Because this request and the justification set forth herein identifies issues that directly pertain to the Department's consideration of the pending application under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"), the Indian Reorganization Act, 25 U.S.C. § 5103 *et seq.* ("IRA"), and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA"), we submit this request in response to BIA's December 14, 2017, Notice Final Environmental Impact Statement (final "EIS") and a Revised Draft Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California.[1]

[1] The BIA will issue a Record of Decision ("ROD") on the proposed action no sooner than 30 days after the date EPA publishes its Notice of Availability in the Federal Register. 81 Fed. Reg. 90379-01 (Dec. 14, 2016). EPA published notice on December 16, 2016. 81 Fed. Reg. 91169-01 (Dec. 16, 2016). The BIA must receive any comments on the FEIS on or before January 17, 2017.

For the reasons set forth below, Citizens believes postponement of the effective date of a decision to acquire the 36-acre parcel of land located in Elk Grove, California in trust for the Wilton Rancheria is warranted and respectfully request that the Department respond to the issues set forth below in formulating its trust decision and request for postponement.

JUSTIFICATION FOR REQUEST

A. Standard Governing Interior's Consideration of Citizens' Request

Under the Administrative Procedure Act, 5 U.S.C. § 501 *et seq.* ("APA"), "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." 5 U.S.C. § 705. The APA gives agencies broad authority to stay the effect of agency action.

1. Meaning of "when justice so requires"

The Department has not had the occasion to consider when "justice [may] so require[]" it to "postpone the effective date of action taken by it, pending judicial review" in a trust acquisition case. It has not promulgated regulations for implementing 5 U.S.C. § 705 in this (or any other) context. It is clear from the face of the statute, however, that "irreparable injury" is not necessary for an agency to postpone the effective date of agency action. Section 705 authorizes agencies to postpone agency action when "justice so requires"; by contrast, courts can enjoin agency action "to the extent necessary to prevent irreparable injury." When Congress uses different language in the same provision of a statute, it is presumed that the difference is intentional and that the different language has a different meaning. *See Keene Corp. v. United States*, 508 U.S. 200, 208 (1993). Thus, the authority Congress granted agencies to "postpone the effective date of action taken by it" is broader than the authority it granted courts "to issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings."

8-1 Cont.

Federal courts have interpreted the phrase "justice so requires" in the context of the Federal Rules very broadly. Under Rule 15(a) of the Federal Rules of Civil Procedure, for example, courts "freely" grant leave to amend a complaint "*when justice so requires.*" Fed.R.Civ.P. 15(a) (emphasis added). In fact, the grounds for denying leave to amend include "undue delay, bad faith, dilatory motive ... repeated failures to cure deficiencies by [previous] amendments, undue prejudice to the opposing party ... [or] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962) (citing 3 Moore, Federal Practice (2d ed. 1948), 15.08, 15.10); *see also James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1098 (D.C. Cir. 1996), *cert. denied*, 519 U.S. 1077 (1997).

Borrowing from existing law, Congress granted agencies broad power to postpone the effective date of agency action, subject to general APA principles. *See* 1947 Attorney General's Manual on the Administrative Procedure Act at 105 (stating the first sentence of section 705 restates existing law). An agency cannot arbitrarily or capriciously refuse a request for postponement under 5 U.S.C. § 705.[2] *See* 5 U.S.C. § 706(2)(a); *see, e.g., Chicago, B. & Q. R. Co. v. Illinois Commerce Commission,* 82 F. Supp. 368, 377 (N.D. Ill. 1949) (finding state administrative agency refusal to postpone effective date of order unreasonable and arbitrary given severe penalties for violation of order).

2. Because 25 C.F.R. § 151.12(c) creates substantial problems with judicial review, Interior should grant relief under 5 U.S.C. § 705 liberally

In the context of trust decisions, the issues are uniquely complicated and significant. The acquisition of land in trust implicates fundamental federalism concerns by disrupting long-established jurisdictional relationships and the expectations based thereon. The Department should consider the importance of this concern, as well as the various issues not addressed in the rulemaking for 25 C.F.R. § 151.12(c) in framing its analysis. These issues are for the Department to liberally grant relief under 5 U.S.C. § 705.

8-1 cont.

The history of 25 C.F.R. § 151.12(c) is important to understanding the legal problems the rule creates and why Interior should invoke its authority under 5 U.S.C. § 705. Between 1994 and 2012, Interior voluntarily stayed the effective date of all transfers of title to land into trust, pending judicial review of the underlying trust decision. By regulation, the Department implemented a 30-day waiting period to permit judicial review before transfer of title to the United States. *See* 61 Fed. Reg. 18082 (Apr. 24, 1996) (citing *South Dakota v. Dep't. of Interior*, 69 F.3d 878 (8th Cir. 1995)). Interior established this rule after the Eighth Circuit held that the IRA violated the non-delegation doctrine to persuade the United States Supreme Court to vacate the Eighth Circuit's decision. *See Dep't. of Interior v. South Dakota*, 519 U.S. 919, 919-20 (1996). The purpose of the voluntary stay was to prevent the Quiet Title Act, 86 Stat. 1176, from precluding judicial review upon transfer of title.

[2] Judicial review of agency action under the APA applies to agency procedures and the substantive reasonableness of their decisions. *James Madison Ltd.*, 82 at 1098 (citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971) (stating that section 706 "require[s] the reviewing court to engage in a substantial inquiry")). Courts must conduct a "'thorough, probing, in-depth review' to determine if the agency has considered the relevant factors or committed a clear error of judgment." *Id.* (quoting *Overton Park,* 401 U.S. at 415-16). Thus, courts will consider the procedure that the Department will adopt to address requests under 5 U.S.C. § 705, as well as the substantive reasonableness of its decision in the context of trust decisions and the specifics of a particular case.

In 2012, however, the Supreme Court held that the Quiet Title Act did not bar challenges arising under the APA. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012). Parties having property rights in acquired land—such as an easement or a restrictive covenant—however, could not vindicate those interests because the Quiet Title Act does not include a waiver of sovereign immunity for such rights in Indian lands. *Id.* at 2209.

Following that decision, the Secretary determined that staying the effect of every trust decision was no longer required, and the Secretary eliminated the 30-day rule. *See* 78 Fed. Reg. 67928, 67937-938 (Nov. 13, 2013). In its place, the Secretary promulgated 25 C.F.R. § 151.12(c), which requires the Assistant Secretary to "[i]mmediately acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements." *Id.*

Commenters identified a number of problems with the rule. *See e.g.*, Ex. 1 (City of Medford); Ex. 2 (Forest County Potawatomi Community); Ex. 3 (Oregon League of Cities); Ex. 4 (City and County of Milwaukee); Ex. 5 (Citizens Against Reservation Shopping). First, commenters noted the problem raised by the immediate transfer of title. For example, by eliminating the 30-day window, "[t]he Proposed Rule ... will force a party seeking a preliminary injunction to anticipate the [Notice of Final Agency Decision] and file in advance. *The United States will likely claim that such a complaint is premature, because no final agency action has been taken.* The plaintiff will then explain the dilemma caused by the lack of a 30-day window. The court will be needlessly dragged into an inefficient use of judicial resources beeause of the emergency created by this rule change." Ex. 2 at 6 (emphasis added). Interior only responded that "a party can seek judicial review of a final decision ... regardless of the trust status of the land at issue," and that they must determine "whether pursuing an injunction is an efficient use of resources in any particular case." 78 Fed. Reg. at 67932-33. That is precisely the problem created in this case. Because of the potential immediacy of the transfer of title, parties cannot know when that will occur and must necessarily seek relief before agency action. The simple solution to that problem was to provide for the transfer of title in 30 days, yet the Department did not consider that simple expedient.

8-1 Cont.

Second, commenters noted that the new rule eliminated their ability to seek injunctive relief before the trust transfer is effectuated, potentially causing irreparable harm, cutting off rights, and raising the same concerns the Eighth Circuit identified in *South Dakota*. *See* Ex. 1 at 2-3; Ex. 2 at 1-4; Ex. 3 at 5; Ex. 4 at 1; Ex. 5 at 1-2. BIA only responded that there was no legal or practical basis for retaining the 30-day rule. 78 Fed. Reg. at 67933. That is incorrect. The legal and practical basis for retaining the 30-day rule was clearly stated in commenters' letters—i.e., to allow parties to seek injunctive relief before title to land was transferred.

Third, commenters identified as a potential problem tribes deciding not to intervene in a judicial action. Commenters noted that "[o]nce land is in trust, a tribe is free to begin development immediately. Tribes may seek to develop their land as quickly as possible, while litigation is pending, so that the remedies that challengers seek become unavailable." Ex. 1 at 4; *see also* Ex. 3 at 5. Interior responded that that concerns were "speculative," and that the comments raised "hypothetical scenarios and potential outcomes." 78 Fed. Reg. at 67933. Given that the purpose of commenting on a proposed rule is to identify potential problems, which necessarily requires some speculation, dismissing comments as "speculative" does not meet basic APA requirements. Moreover, that speculation was precisely the strategy adopted by the Mashpee Tribe, which began building on a site in Taunton and only stopped after a federal court held that the underlying trust decision was arbitrary, capricious, and contrary to law. Ex. 6 (Tennant Declaration).

Fourth, commenters objected that it was unclear whether land could be transferred out of trust. One commenter stated, "The position of the Department of Interior that the Secretary has authority in all cases to take land out of trust is clearly a new and untested theory." Ex. 2 at 5. In addition, the commenter noted that "[t]he *Patchak* decision did not decide, or even consider, the question of whether the Secretary is authorized, or under what circumstances the Secretary is authorized, to take land out of trust." *Id.* Interior responded only that "if a court determines that the Department erred in making a land-into-trust decision, the Department will comply with a final court order and any judicial remedy that is imposed." 78 Fed. Reg. at 67934. That comment does not address the legal uncertainty identified. A decision is arbitrary or capricious under the APA if an agency failed to provide a reasoned explanation, failed to address reasonable arguments, or failed to consider an important aspect of the case. *See Pettiford v. Sec'y of the Navy*, 774 F. Supp. 2d 173, 181–82 (D.D.C. 2011).

8-1 cont.

Finally, commenters raised concerns about the possibility of title to land being transferred before individuals with a property interest could be identified. *See, e.g.*, Ex. 1 at 5; Ex. 3 at 6. Interior responded, "the exhaustive nature of the title examination process and the limitations of judicial remedies on persons who do not record their property interests, the likelihood that a person with a valid competing interest in the property will not be identified is too low to justify delaying implementation of every final decision." 78 Fed. Reg. at 67934.

Since then, however, Interior has eliminated the requirement that applicants comply with the Department of Justice's Standards for the Preparation of Title Evidence in Land Acquisitions by the United States. *See* 81 Fed. Reg. 30173 (May 16, 2016). Applicants now furnish a deed evidencing that they have ownership, or a written sales contract or written statement from the transferor that they will have ownership and a current title insurance commitment or a policy of title insurance. *Id.* Thus, the nature of the title examination is no longer as "exhaustive," making

the allowance of at least 30 days far more important. Moreover, BIA did not consider how its decision to eliminate federal title standard compliance could interact with its decision to immediately acquire land in trust under 25 C.F.R. § 151.12(c). Given that BIA has not always adequately accounted for property interests in proposed trust land, its response that its "exhaustive review" will protect property interests is no longer sound. *See e.g. Crest-Dehesa-Granite Hills-Harbison Canyon Subregional Planning Group v. Acting Pacific Regional Director*, 61 IBIA 208, 216 (2015) (remanding decision for failure to consider the effect of acquisition on easements).

Thus, under 25 C.F.R. § 151.12(c), potentially aggrieved parties do not know when BIA will conduct its review of title, nor how a particular encumbrance may affect the acquisition of the land. Aggrieved parties do know when to move for emergency relief because these processes are not public. Interior does not have a process for removing land from trust, in the event a decision is vacated, and has not indicated whether is has authority to do so. Aggrieved parties cannot know whether the applicant tribe will intervene in a particular suit, and if they do not, courts cannot enjoin their construction activities. The rule ultimately does nothing to solve the problem *Patchak* purportedly created, but does create serious issues for judicial review and the availability of complete relief.

8-1 con.

All of these reasons weigh heavily in favor of Interior postponing the effective date of agency action under 5 U.S.C. § 705 when a potentially aggrieved party applies for such relief. Moreover, doing so would encourage parties to identify issues with clarity before final agency action, as well as reduce the likelihood that they might delay for an extended period of time before filing suit.

B. Citizens should be granted relief under 5 U.S.C. § 705

As set forth above, Citizens need not establish irreparable harm before being entitled to relief under 5 U.S.C. § 705. Nonetheless, they are facing irreparable harm if Interior does not postpone the effective date of any trust decision it may grant on behalf of the Wilton Rancheria. This application is highly unusual because of the substantial encumbrances that exist on the property.

1. The land is heavily encumbered and cannot be used for the purposes of the proposed acquisition

As set forth by the Interior Board of Indian Appeals, "[t]he only interests that will or can be conveyed by the Tribe and acquired by the United States in trust for the Tribe are the property interests already owned by the Tribe." *Crest-Dehesa-Granite Hills-Harbison Canyon*, 61 I.B.I.A. at *7; *see also David J. Bartoli*, 123 I.B.L.A. 27, 40 (1992) (noting agency had "no grant of

authority to declare adverse claims of ownership invalid"). Thus, the Secretary can only acquire proposed trust land subject to these restrictive covenants, which prevent the Rancheria from being able to acquire marketable title.

The proposed trust land is subject to the Lent Ranch Marketplace Special Planning Area ("SPA"), as amended in 2014 for purposes of building an outlet center. The SPA is regulatory in nature, and serves as zoning for the entire site, including the proposed trust land. The SPA, as amended, includes a reservation of rights by the City, including:

- Grant or deny applications for land use approvals for the Project and the Property, provided such grant or denial is consistent with this Agreement;
- Adopt, increase and impose regular taxes applicable on a City- wide basis;
- Adopt, increase and impose utility charges applicable on a City- wide basis;
- Adopt, increase and impose permit processing fees, inspection fees and plan check fees applicable on a City-wide basis;
- Adopt and apply regulations mandated by Law or necessary to protect the public health and safety. To the extent that such regulations affect the Developer, the City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and all other public or private owners and properties affected thereby. For purposes of this Agreement, any Law with respect to flood protection shall be deemed necessary to protect the public health and safety;
- Adopt, increase or decrease the amount of, fees, charges, assessments or special taxes, except to the extent restricted by this Development Agreement; provided, however, that Developer may challenge the imposition of any newly imposed fee solely on the grounds that such fee was not properly established in accordance with applicable law;
- Adopt and apply regulations relating to the temporary use of land, the control of traffic, the regulation of sewers, water, and similar subjects, and the abatement of public nuisances;
- Adopt and apply City engineering design standards and construction specifications;
- Adopt and apply the various building standards codes, as further provided in Section 4.6;
- Adopt Laws that are not in conflict with, or that are less restrictive than, the terms and conditions for development of the Project established by this Agreement; and
- Exercise its power of eminent domain with respect to any part of the Property.

8-1 cont.

In addition, the 2014 amendment provides that the City will compensate the Applicant for unreimbursed off-site improvements and the public parking and access license in an amount totaling $15,581,689. Funding that is to come from sales taxes generated at the mall development.

Finally, the Agreement expressly provides:

> The parties intend and determine that *the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the parties hereto.* All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City owned property or property interest, (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

2014 Development Agreement at 6 (§ 2.3).

8-1 cont.

The legislative body of a city may enter into a development agreement for the development of real property in order to vest certain rights in the developer and to meet certain public purposes of the local government. Cal. Gov. Code, §§ 65864 *et seq*. The general plan provisions, ordinances, rules, regulations and official policies that govern are those that were in effect as of the date of the development agreement. *Id.* Local governments cannot authorize developers to engage in uses of the land that are unauthorized under the agreement. *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997 (2007).

2. These encumbrances are still in place and subject to referendum and CEQA litigation

Although the City of Elk Grove held a hearing on a proposal to eliminate the encumbrances on the proposed trust land, that effort is not legally effective. On October 26, 2016, Elk Grove approved an amendment to the 2014 Development Agreement ("2016 Amendment") via Ordinance No. 23-2016.

Under California law, however, an ordinance adopting or modifying a development agreement is a legislative act subject to referendum. For that reason, "No ordinance shall become effective

until 30 days from and after the date of its final passage." Cal. Elections Code § 9235. "If a petition protesting the adoption of an ordinance . . . is submitted to the elections official of the legislative body of the city in his or her office during normal office hours, as posted, within 30 days of the date the adopted ordinance is attested by the city clerk or secretary to the legislative body, and is signed by not less than 10 percent of the voters of the city . . . *the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance*." *Id.* § 9237 (emphasis added).

Elk Grove disregarded Cal. Elections Code § 9235 by prematurely executing and recording the 2016 Amendment to the 2014 Development Agreement on November 9, 2016, only 14 days after adopting Ordinance No. 23-2016. On November 21, however, approximately 14,800 citizens of Elk Grove signed a petition to submit to referendum Ordinance No. 23-2016, suspending its effective date. Under State law, the City lacked the authority to execute the 2016 Amendment and its recordation is of no legal effect.

On December 12, 2016, the City provided comments in response to BIA's Notice of (Gaming) Acquisition Application, but it did not acknowledge in response to the inquiry about jurisdictional impacts that the proposed land was still subject to the development agreement. Of course, the Department is aware that Elk Grove implicitly acknowledged on December 16, 2016 that its execution of the 2016 Amendment violated State law when it recorded an acknowledgment that the proposed trust land is still encumbered by the 2014 Development Agreement. The City's acknowledgment states that, "pending the disposition of the referendum petition, the effectiveness of the Ordinance and the Development Agreement Amendment is suspended." *Id.* Thus, to the extent that title may have transferred between November 9, 2016 and December 16, 2016, that transfer was without legal effect. Under the 2014 Development Agreement, the owner of the property may sell the land only with approval by City Council, and the encumbrances run with the land.

The City certified the petition in January. *See* Cal. Elections Code §§ 9239, 9240. Under State law, the City can repeal the ordinance or submit it to the voters at the next regular municipal election (November 2018) or at a special election called for the purpose, not less than 88 days after the order of the legislative body. *See id.* § 9241. The statute also provides that "[t]he ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it." *Id.* In addition, "[i]f the legislative body repeals the ordinance or submits the ordinance to the voters, and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters." *Id.* Transferring title to land now cuts off this process, with the result that the ordinance would be indefinitely suspended.

The pending suit against the City of Elk Grove under the California Environmental Quality Act ("CEQA") compound the jurisdictional problems. That suit was filed on November 23, 2016, and challenges the City's failure to prepare an Environmental Impact Report evaluating the effects of the 2016 Development Agreement before approving Ordinance No. 23-2016. *See Stand Up California!, et al. v. City of Elk Grove, et al.*, No. 32-2016-80002493 (Cal. Super. Ct. Nov. 23, 2016). If the land is transferred into trust, the court is highly likely to dismiss the case. Those claims—which still have force if the majority of voters vote in favor of the ordinance—cannot be revived.

The enforcement of CEQA "involve[s] important rights affecting the public interest." *Ctr. for Biological Diversity v. Cnty. of San Bernardino,* 185 Cal.App.4th 866, 892-893, 895 (2010) (citations omitted); *see also Healdsburg Citizens for Sustainable Sols. v. City of Healdsburg,* 206 Cal.App.4th 988, 993 (2012). Thus, immediate acquisition of the proposed trust land—cutting off those rights under CEQA—would constitute irreparable harm, as well.

3. The transfer of title would jeopardize public rights in the land

As noted above, Interior has eliminated the requirement that applicants comply with the Department of Justice's Standards for the Preparation of Title Evidence in Land Acquisitions by the United States, but it has not eliminated the requirement of marketability. 81 Fed. Reg. 30173 (May 16, 2016). The encumbrances on the proposed trust land prevent Interior from acquiring title, and it is critical that Interior address this issue in its decision.

8-1 cont.

As Interior explained in the rulemaking, "[t]he rule also continues the practice of requiring the elimination of any legal claims, including but not limited to liens, mortgages, and taxes, determined by the Secretary to make title unmarketable, prior to acceptance in trust." *Id.* at 30174. Importantly, Interior did not change the meaning of "unmarketable."

Given that Interior relied on the Department of Justice's Standards for the Preparation of Title Evidence in Land Acquisitions by the United States from 1980 until 2016, the meaning of "marketability" comes from those standards. *See* 45 Fed. Reg. 62034, 62035 (Sept. 18, 1980) (originally codified at 25 C.F.R. § 120a.12). Under 40 U.S.C. § 3111(a), reviewing attorneys were required to "compare the title evidence with the requirements of the project for which a property is needed. Conflicts may arise for example, from limitations imposed by restrictive covenants or by rights associated with outstanding mineral interests." https://www.justice.gov/enrd/page/file/922431/download at 25. The regulations establish that "[n]o outstanding rights may be approved that could foreseeably prevent the acquiring agency's intended land use." *Id.*

Here, the proposed use of the land—the acquisition of land in trust for a tribal casino—conflicts with virtually all of the covenants on the land. State law prohibits casino gaming. California Constitution, Art. IV, Sec. 19. The development restrictions—which are limited to a regional mall—conflict with the Rancheria's proposed development. In addition, the City's authority over the proposed trust land conflicts with the requirement that land be "Indian lands" over which the Rancheria exercises governmental authority in the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2703 (defining "Indian lands" as "all lands within the limits of any Indian reservation" and trust lands "over which an Indian tribe exercises governmental power"). "[I]t is not enough that restricted fee land is Indian country over which a tribe *can* exert primary jurisdiction; to be 'Indian land,' the tribe *must* affirmatively exercise its governmental power." *Citizens Against Casino Gambling in Erie County v. Hogen*, 704 F. Supp. 2d 269, 276 (W.D.N.Y 2010).

Under the restrictive covenants, the City of Elk Grove will continue to exercise primary jurisdiction, preventing the land from being marketable for the proposed purpose. Interior has denied trust requests when local governments exercised far less authority over the proposed trust land. In 2011, the Secretary denied the Pueblo of Jemez's application for land into trust because the Tribe was not actually controlling the exercise of governmental power over the proposed trust lands. Letter from Assistant Secretary-Indian Affairs to Governor, Pueblo of Jemez (Sept. 1, 2011). The Secretary also determined that the intergovernmental agreement interfered with tribal governance under 25 C.F.R. § 151.11(b).

8-1 cont.

It is imperative, however, that Interior address these issues. Interior stated in its 2013 rule that "[l]and acquisitions completed pursuant to 25 U.S.C. § 465 are voluntary transactions and do not involve the exercise of the eminent domain authority of the United States." 78 Fed. Reg. at 67934. In addition, the rules explains that "[t]he Department takes all reasonable and necessary steps to identify and resolve competing claims on the property before issuing a decision to acquire the land in trust and completing such trust transfer." Nonetheless, Interior would not address comments from several parties raising concerns regarding the "substantial uncertainty" as to the application of the Quiet Title Act and *Patchak* in specific fact situations, involving State or local governments, refusing "to speculate on how a court may apply *Patchak* in hypothetical fact situations."

This, however, is one of those "hypothetical situations." Here, the encumbrances on the proposed trust lands are actual rights and interests in land, vindication of which would be barred by the Quiet Title Act if title is transferred. A development agreement is enforceable by the parties to the agreement. Cal. Gov. Code, § 65865.4. Citizens have the right to enforce compliance with development agreements under California's a taxpayer standing statute that authorizes suits. *See* Cal. Civ. Pro. § 526a. Its purpose is to "'enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the

standing requirement.' California courts have consistently construed section 526a liberally to achieve this remedial purpose." *Blair v. Pitchess*, 5 Cal.3d 258, 267-268 (1971).

Once the land is in trust, however, the Quiet Title Act would bar any citizen action asserting that the development agreement encumbers the federal government's title. *See McKay v. United States*, 516 F.3d 848, 850 (10th Cir. 2008) (Quiet Title Act applies to title disputes involving estates less than fee simple, such as easements or rights-of-way). Thus, if the federal court were to uphold the trust acquisition upon APA review, despite the encumbrances, Citizens would be unable to enforce their rights under the development agreement, resulting in irreparable harm.

Interior is aware of this problem, given that it argued in 1992 that:

> [U]pon acquisition of title by the United States, existing liens survive but cannot be enforced against the United States because of sovereign immunity. *United States v. Alabama*, 313 U.S. 274 (1941). [However,] the loss of enforcement remedies for an existing lien because of the acquisition of title by the United States is a destruction of a property right which constitutes a compensable taking under the Fifth Amendment. *Armstrong v. United States*, 364 U.S. 40, 48 (1960); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 602 (1935).

8-1 cont.

Tohono O'Odham Nation v. Acting Phoenix Area Director, BIA, 22 I.B.I.A. 220 (1992).

The Quiet Title Act, enacted in 1972, is the *exclusive* means to bring suit against the United States to resolve a title dispute, *Block v. North Dakota*, 461 U.S. 273, 286 (1983), but it expressly excludes "trust and restricted Indian lands." 28 U.S.C. § 2409a(a). This limitation remains even after *Patchak*. *See* 132 S.Ct. at 2206-08. Thus, the encumbrances on the proposed trust lands will become unenforceable upon trust acquisition, causing irreparable harm.[3]

4. The immediate transfer of title could result in irreparable harm if the Rancheria does not intervene in the suit

Although Interior refused to address concerns commenters in the rulemaking process raised about the ability to enjoin construction if a tribe does not intervene in a judicial action, the Department is now aware that this concern is not speculative. This precise situation arose in Massachusetts in *Littlefield v. Dep't of Interior*, Case No. 1:16-CV-10184. Interior has the power to postpone the effective date of agency action in situations such as this and make the transfer of title during the pendency of litigation contingent on intervention, a limited waiver of sovereign

[3] As noted, the loss of enforcement remedies is a compensable taking. Trust acquisition would therefore be in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

8-1 cont.

immunity, or an enforceable agreement not to initiate construction without providing a litigant the opportunity to seek injunctive relief.

Without such measures, transferring title could result in irreparable harm. As stated above, there is a pending CEQA case against the City of Elk Grove regarding its attempt to eliminate the proposed trust land from the 2014 Development Agreement, which includes a variety of land use restrictions, mitigation requirements, and other safeguards that are critical to protecting the environment and the public interest. Citizens are very concerned about the environmental impacts associated with the proposed project, including the inadequate environmental review process conducted by BIA in the case.

The application has been formally pending for only two months. *See* November 17, 2016 Notice of (Gaming) Acquisition Application. The affected community—the residents of Elk Grove, including Citizens—learned that the Wilton Rancheria was interested in acquiring land in Elk Grove in trust in June. BIA did not engage with Elk Grove or the affected community following the Rancheria's announcement. The review period for this application is unheard of—fee to trust applications for gaming typically take years of review before moving to final decision.

Although BIA has been considering a different application since 2013—one for a 282-acre site located 12.5 miles away in Galt, California—it cannot approve a different proposal without first complying with the National Environmental Policy Act. Since December 4, 2013, BIA, the State of California, Sacramento County, Galt, Elk Grove, and the public understood that the Wilton Rancheria was proposing that BIA acquire 282 acres of land in Galt for a casino. *See* Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California, 78 Fed. Reg. 72928 (Dec. 4, 2013); *see also* 40 C.F.R. § 1502.4 ("Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined.").

Consistent with the Rancheria's Galt application, BIA held a scoping meeting at the Chabolla Community Center in Galt. *Id.*; *see also* 40 C.F.R. § 1501.7(b)(4) (stating that "a scoping meeting will often be appropriate when the impacts of a particular action are confined to *specific sites*") (emphasis added). On February 11, 2014, BIA invited the City of Galt to participate as a cooperating agency in the NEPA process." *See* 40 C.F.R. § 1501.7 (requiring agencies, as part of the scoping process, to "invite the participation of affected Federal, State, and local agencies). It also invited Sacramento County, the Wilton Rancheria, and the California Department of Transportation to participate. *See* Draft Environmental Impact Statement (Dec. 15, 2015), Appendix B. BIA circulated a draft environmental impact statement for the Galt proposal in December of 2015. 80 Fed. Reg. 81352-02 (Dec. 29, 2015). Elk Grove was not invited to be a cooperating agency.

The Wilton Rancheria announced in June that it would seek trust land in Elk Grove. BIA did not announce a notice of project change or revise its scoping determinations. *See* 40 C.F.R. § 1501.7 (requiring agencies to "revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts"). BIA did not hold a public hearing to scope 40 C.F.R. § 1506.6 (requiring agencies to "[h]old or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency," including when there is "[s]ubstantial environmental controversy concerning the proposed action or substantial interest in holding the hearing" or to "[s]olicit appropriate information from the public").

8-2 Cont.

BIA did not request that Elk Grove participate as a cooperating agency. The City made its own request on May 13, 2016. BIA did not prepare a supplemental environmental impact statement. *See* 40 C.F.R. § 1502.9 (requiring agencies to prepare "supplements to either draft or final environmental impact statements" if there are "substantial changes in the proposed action that are relevant to environmental concerns" or "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts"). BIA did not prepare a supplement to the draft environmental impact statement—which was all that BIA had completed when the Rancheria changed its proposal—and circulate for public comment. *See* 40 C.F.R. § 1502.9(c) (requiring agencies to "prepare, circulate, and file a supplement to a statement *in the same fashion* (exclusive of scoping) *as a draft and final statement* unless alternative procedures are approved by the Council"). BIA prepared a final environmental impact analysis with several supplemental studies added, which does not comport with NEPA's requirements.

If Interior proceeds to final decision, Citizens believe that its failure to comply with NEPA renders its decision arbitrary and capricious. If the Rancheria can build the casino, shielded by its sovereign immunity, Citizens will suffer irreparable environmental harm and will be left remediless for those injuries. A casino will cause serious disruptions to traffic, causing pollution, noise, increased crime, and other adverse impacts. The development will irreparably change Elk Grove. *See New York v. Shinnecock Indian Nation*, 280 F.Supp.2d 1, 4-5 (E.D.N.Y.2003) (finding irreparable harm from "incredible traffic congestion" and "drastically heighten[ed] air pollution" that would likely be caused by the construction of a casino).

8-3

Apart from the harm associated with casino impacts, Citizens' right to judicial review of its NEPA claims would effectively be eliminated. A NEPA claim does not present a controversy when the proposed action has been completed and no effective relief is available. *See Neighborhood Transp. Network, Inc. v. Pena*, 42 F.3d 1169, 1172 (8th Cir. 1994) (holding that

there was no relief available to the plaintiffs when the I–35W high occupancy vehicle lanes were completed while the case was awaiting appeal); *accord Bayou Liberty Ass'n, Inc. v. United States Army Corps of Eng'rs*, 217 F.3d 393, 398 (5th Cir.2000) ("[B]ecause completion of construction of the retail complex has foreclosed any meaningful relief that would flow from granting [the plaintiff's] original requests for relief this action has become moot."); *Knaust v. City of Kingston*, 157 F.3d 86, 88 (2d Cir.1998) (dismissing the NEPA claims as moot when the park project was completed and federal monies disbursed because the plaintiff "seeks to enjoin the future occurrence of events that are already in the past"). As a district court has stated, it is aware of no case where a court in a NEPA case ordered a defendant to dismantle a completed construction project. *See Finca Santa Elena, Inc. v. U.S. Army Corps of Engineers*, 62 F. Supp. 3d 1, 5 (D.D.C. 2014).

8-3 cont.

CONCLUSION

For the reasons set forth above, Citizens believes that Interior should postpone the effect of any trust decision it might make on behalf of the Wilton Rancheria.

Sincerely yours,

Jennifer A. MacLean

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Exhibit 1

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July 18, 2013

Kevin Washburn
Indian Affairs
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
1849 C Street, NW

Re: RIN 1076-AF15 Land Acquisitions: Appeals of Land Acquisition Decisions

Dear Mr. Washburn and Ms. Appel:

The City of Medford, Oregon appreciates the opportunity to comment on the Bureau of Indian Affairs' ("BIA") proposed change to its trust regulations, which BIA states is needed "to address changes in the applicability of the Quiet Title Act as interpreted by a recent United States Supreme Court decision." The City strongly opposes the proposed rule.

The City has two overarching comments regarding this proposed rule change. First, piecemeal revision of the trust regulations will not resolve myriad problems with the trust process. For many years, parties have objected that the regulations implementing the Secretary's trust authority do not contain intelligible standards to guide BIA decision-making. Moreover, jurisdictional governments have long objected that BIA largely ignores the concerns of state and local government and does not accord adversely affected parties a significant voice in these critically important decisions. As Chief Justice Roberts recently pointed out, taking land into trust is "an extraordinary assertion of power." *Carcieri v. Kempthorne*, 1 No. 07-526, Oral Arg. Tr. 36:13-17 (Nov. 3, 2008). The regulations implementing this extraordinary power should be revised to address these long-standing concerns and to account properly for the interests of parties, other than applicant tribes. The proposed rule is a step backwards and will only worsen the perception that BIA decision-making is fundamentally unfair and opaque.

Second, the proposed rule will exacerbate tensions between applicant tribes and affected parties and undermine the ability of parties to negotiate cooperative agreements. BIA asserts that it has developed the

proposed rule to promote notice and participation, but the changes will have the opposite effect. The rule seems intended to insulate BIA decision-making from public review and challenge by creating obstacles to participation and employing notice provisions that are more difficult to track. The Federal Register is the central repository for information regarding federal actions. If BIA promulgates this proposed rule, the effect will be to increase distrust in BIA decision-making, undermine efforts to reach cooperative solutions, and precipitate litigation that might have been avoided.

The City strongly urges BIA not to adopt the proposed rule. It is counter-productive and suffers from substantial legal infirmities, as set forth below.

Objections to BIA's Proposed Changes to Part 151

1. Removal of the 30-day Notice Provision

The Administrative Procedure Act ("APA") is intended to promote sound federal decision-making by helping generate rules that advance overall public welfare and comply with an agency's statutory mandates. The APA requires transparency and opportunity for public participation to help ensure that an agency acts fairly and listens to the broad spectrum of public perspectives. Agencies make mistakes, and accordingly, the APA allows affected parties to seek judicial review of federal agency decisions and authorizes courts to grant interim relief, when such relief is appropriate. Removal of the notice provision undermines these objectives, is inconsistent with the APA, and is dismissive of the interests of jurisdictional governments.

a. The proposed rule conflicts with the APA's section 705, which authorizes courts to grant injunctive relief.

The proposed rule appears designed to prevent parties from seeking emergency relief from trust decisions, in violation of the APA. The proposed rule directs the Secretary to "[p]romptly acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements." If a lower level BIA official is responsible for the decision, the proposed rule would similarly require the BIA official to "take the land into trust under § 151.14 promptly following an IBIA [Interior Board of Indian Appeals] decision affirming the decision, or dismissing the appeal, and after fulfilling the requirements of § 151.13 and any other Departmental requirements."

The APA, however, requires a different approach—one that allows potentially affected parties to seek emergency judicial relief before harm occurs, which in this case is before land is transferred into trust. Section 705 of the Act states that "[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process *to postpone the effective date of an agency action or to preserve status or rights pending* conclusion of the review proceedings." 5 U.S.C. Sec. § 705 (emphasis added). Congress clearly authorized federal courts to prevent irreparable injury before it occurs by empowering them (or recognizing their inherent power) to postpone a decision. Indeed, the power of federal courts to grant stays pending judicial review is "'firmly embedded in our judicial system,' 'consonant with the historic procedures of federal ... courts,' and 'a power as old as

the judicial system of the nation.'" *Nken v. Holder*, 556 U.S. 418 (2009) (*quoting Scripps–Howard Radio, Inc. v. FCC*, 316 U.S. at 13, 62 S.Ct. 875).

BIA's proposed rule, however, circumvents section 705 by transferring land before an affected party can seek judicial review and preventing the court from exercising its clear authority to postpone trust transfers. Unlike most other federal decisions, the harm occurs not only when development itself is initiated, but upon the trust transfer, which fundamentally alters the rights of jurisdictional governments, stripping them of authority and diminishing their sovereign power. If BIA adopts this rule and transfers land into trust without providing notice to affected parties to seek emergency relief, it will be doing so in violation of the APA.

b. Trust decisions have immediate and irreparable impacts on jurisdictional governments.

BIA's position seems to be that the transfer of land into trust—by itself—affects no irreparable harm, regardless of the circumstances of the acquisition or the identity of the affected party. In fact, that is the position that BIA adopted in litigation in recent cases. The courts held that the affected parties would not be irreparably harmed by the trust transfers, because the Secretary insisted that the transfers could be undone and the courts accepted the Secretary's representations. Those cases, however, did not involve as challengers jurisdictional governments, which are immediately and irreparably harmed by their loss of regulatory, taxing and land use jurisdiction. Moreover, in both of those cases, the courts required the tribes to provide sufficient notice of any ground disturbing activity so as to allow the parties to seek emergency relief.

Jurisdictional governments suffer irreparable harm from the trust transfer itself. As Chief Justice Roberts has stated, the acquisition of land in trust is an extraordinary power. "Of all the attributes of sovereignty, none is more indisputable than that of [a State's] action upon its own territory." *Green v. Biddle*, 21 U.S. 1, 43 (1823). BIA appears to take the inconsistent position that while jurisdiction over land is critical to tribes, it is of no import to state and local governments, which face losing all land use and regulatory authority, tax revenue, and investment in nearby development and infrastructure.

In fact, BIA is proposing to provide less (or no) notice for the most extraordinary of federal powers--the removal of land from state jurisdiction for the creation of new sovereign land--than it provides for far lesser exercises of federal power. All other cases involving the withdrawal of land from state authority provide multiple safeguards. For example, when the United States requires land for necessary purposes, the U.S. Constitution requires substantial process. The Enclave clause in the U.S. Constitution prohibits taking lands from states without legislative consent: "[T]o exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings" U.S.C.A. Const. Art. I § 8, cl. 17.

Other federal acts that authorize the federal acquisition of land require substantial notice to affected jurisdictional governments. Under the Federal Land Policy and Management Act of 1976 ("FLPMA"), a notice of land exchange requires multiple notices. 43 C.F.R. § 2200.0-6(m)

(requiring at least 60 days-notice to the governor of the affected state and any political subdivision of a conveyance of land to U.S.); 43 C.F.R. § 2201.2(a) (requiring four weeks-notice of initiation of an agreement to exchange); 43 C.F.R. § 2201.7-1 (providing a 45-day period to protest a notice of decision to exchange lands). *See also* Migratory Bird Treaty Act of 1929, 16 U.S.C. §§ 703, et seq. (authorizing the purchase of land for the National Wildlife Refuge System only when the state has consented to the acquisition (16 U.S.C. §§ 715f and 715k-5)). There are several different avenues through which Congress has permitted the federal government to acquire land from states by purchase or exchange, but all require far more notice than what this proposed rule envisions.

c. The proposed rule raises constitutional questions regarding the ability of affected parties to seek full redress.

The proposed rule change is likely to prevent challengers from obtaining complete relief. Once land is in trust, a tribe is free to begin development immediately. Tribes may seek to develop their land as quickly as possible, while litigation is pending, so that the remedies that challengers seek become unavailable.

As BIA is aware, challengers may be unable to obtain emergency relief from the courts if tribes are not parties to challenged trust decisions because of sovereign immunity. In the past, tribes regularly sought to intervene to protect their interests in trust decisions that benefitted them. If the proposed rule is adopted, however, tribes will be far less likely to intervene so that they can develop the land quickly without risk of injunction, ultimately influencing the outcome of the suit by *not* participating.

Indeed, there is some question of whether that is what BIA intended in proposing this change. BIA is encouraging tribes to begin development immediately. Doing so shifts the equities in favor of the tribe. Courts are less likely to order land to be removed from trust if the tribe has already invested substantially in its development, even if a trust decision is clearly arbitrary and capricious.

This policy may have benefit a tribe or two in the short term, but is likely to undermine the process as a whole over time. Courts will not long tolerate having challengers lose their rights to full remedy because BIA's removal of the notice provision works to insulate BIA's decisions from complete review. Courts will either mandate that BIA remove the land from trust, while an action is pending or simply erode tribal sovereignty in the context of economic development by concluding that tribal sovereignty does not present the same barrier in the context of economic development activities. Thus, the proposed rule is likely to be harmful to tribes, not helpful.

d. The proposed rule does not address the problem BIA identifies.

Removing the 30-day notice provision before transferring land into trust does not address the purported uncertainty created by the *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012), which held that the Quiet Title Act ("QTA") is not a bar to APA challenges to trust decisions. BIA adopted the 30-day notice provision to provoke vacatur of a 1995 Eighth Circuit decision holding that 25 U.S.C. § 465, the statute authorizing trust acquisitions of land, was an unconstitutional delegation of legislative powers because the Secretary was foreclosing judicial review of his decisions by immediately transferring title. *See State of South Dakota v. U.S.*

Dep't of the Interior, 69 F.3d 878 (8th Cir.), *vacated*, 69 F.3d 878 (1995). The purpose of the rule was to provide a 30-day window before BIA would transfer title and invoke the QTA. If someone filed suit during that period, BIA would voluntarily stay the transfer to provide opportunity for judicial review. Had it not made this change, it is likely that the Supreme Court would have upheld the Eighth Circuit's decision.

Abandoning the notice requirement, however, does nothing to address the Court's recent conclusion that the QTA does not bar challenges to title and trades one legal infirmity for another. There may be no reason automatically to self-stay a trust decision in every case, but notice of a decision to strip jurisdictional governments of their authority is still critical to enable parties to seek complete relief. Removing the notice requirement does not correct any uncertainty created by *Patchak*, but instead treads very closely to the constitutional infirmities found in *South Dakota*, 69 F.3d 878.

2. The changes in notice do not increase public notice and transparency.

The proposed rule is very unfair to the public. BIA proposed to require interested parties to make themselves known to BIA officials at every decision-making level to receive written notice of a trust land acquisition. It is extremely difficult for jurisdictional governments, let alone the public, to know who in BIA will be responsible for making a final decision, what chain of command an application moves through, or how and when any particular application will be processed. The BIA decision process is not generally known, and when requests under the Freedom of Information Act are made, responses often come very late or sometimes not at all.

The proposed rule creates a trap for the unwary, making participation for parties that might be opposed to the trust land acquisition decision far more difficult and time-consuming. The APA does not envision agencies promulgating rules that make decision-making more opaque and participation more difficult. If BIA intends to adopt this requirement, it should also adopt provisions requiring BIA to publish applications on its website, provide regular updates as to the status of its review, identify who is responsible for the decision at any given time, and provide contact information to allow parties to identify themselves as interested parties. Failure to adhere to such requirements should exempt all parties from the exhaustion requirement.

A similar problem is presented by the proposal to remove the requirement to publish a Federal Register notice of a decision at levels below the Assistant Secretary. Such a notice is the commonly accepted means by which federal decisions are noticed, especially trust land decisions that adversely affect interested parties. There is no reason for BIA to depart from its longstanding practice of using multiple means of public notice, and resorting to publication in newspapers of general circulation. As BIA knows, people do not rely on newspapers today as they once did. Many, many people look to the internet for their news. BIA should respond in kind by providing notice on their webpages of all decisions to improve transparency. Notices buried in the public notice or classified section of newspapers that are not widely read anymore harms the public interest and weakens federal decision-making.

3. Conclusion

In conclusion, the proposed rule is inconsistent with the APA, harms the interests of jurisdictional governments, and ultimately will harm tribal interests, as well. BIA should reject this proposed rule and seek comments through extensive outreach on how to improve the process as a whole.

In addition, the City requests that the BIA extend the comment period for 60 days. From our contacts with other jurisdictional entities, it has become clear that notice of this proposed rule and its importance has not reached all who might be affected. The City has contacted as many jurisdictional entities as possible to seek their views, but believes that additional time is necessary for BIA to obtain a full range of views on the proposed rule. These comments are preliminary in nature, and the City reserves the right to provide additional comments, as necessary.

Respectfully submitted,

Gary H. Wheeler
Mayor

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Exhibit 2

FOREST COUNTY POTAWATOMI COMMUNITY

Legal Department

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July 29, 2013

Submitted to *Federal Rulemaking Portal: http://www.regulations.gov*

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United States Department of Interior
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Re: Comments on Land Acquisitions: Appeal of Land Acquisition Decisions
Docket ID: BIA-2013-0005: BIA-2013-0005-0002 and BIA-2013-0005-0003

Dear Ms. Appel:

The following comments are submitted on behalf of the Forest County Potawatomi Community of Wisconsin (the "Community") in response to the Notice of Proposed Rule, 25 C.F.R. Part 151, Land Acquisitions: Appeals of Land Acquisition Decisions, 78 Fed. Reg. 32214 (May 29, 2013) (the "Proposed Rule"), which proposes to amend the regulations governing appeals of trust land acquisition decisions made by the Department of the Interior (the "Department").

Among other things, the Proposed Rule amends 25 C.F.R. Part 151.12(b) to remove the 30 day waiting period which allows an interested party to initiate judicial review before land is put in trust after a Notice of Final Agency Determination ("NOFAD") is published in the Federal Register. Under the current rule, the Secretary of Interior (the "Secretary"), or his/her authorized representative, may not acquire title to land held in trust until at least 30 days after publication of a NOFAD in the Federal Register, or a newspaper of general circulation. 25 C.F.R. § 151.12(b)(2012). Under both the current rule and the Proposed Rule, decisions by the Assistant Secretary of Indian Affairs ("AS-IA") are final agency actions under the Administrative Procedures Act ("APA"). 25 C.F.R. § 151.12(b) and Proposed Rule, 25 C.F.R. § 151.12(c). The Proposed Rule does away with the waiting period. Under the Proposed Rule, if the AS-IA approves a trust land acquisition, the AS-IA is required to publish a notice in the Federal Register and then the AS-IA *shall* "[p]romptly acquire the land in trust under this part." Proposed Rule, 25 C.F.R. § 151.12(c)(2)(ii)&(iii) (*emphasis added*). There is no waiting period.

The Community's comments on the Proposed Rule are limited to the proposed elimination of the 30 day waiting period for trust land acquisition decisions by the AS-IA. The Community objects to eliminating this 30 day waiting period. First, the 30 day period to allow judicial review of land acquisition decisions was adopted to protect the constitutionality of Section 5 of the IRA and it should not be disturbed absent a compelling reason. Re-litigating the constitutionality of any provision of the IRA is a bad choice for Indian country in the current judicial climate. Second, the Department's rationale for the rule change is based on the Supreme Court decision in *Mash-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S.Ct. 2199 (2012) ("*Patchak*"), but *Patchak* does not compel removal of the 30

day period. The Supreme Court held in *Patchak* that the Quiet Title Act does not prohibit suits involving Indian lands under the Administrative Procedures Act against the government so long as the plaintiffs do not assert competing rights to title. The *Patchak* case did not even consider the question of whether the Secretary is authorized, or under what circumstances the Secretary is authorized, to take land out of trust. The Department's position on the circumstances which will allow the Secretary to take land out of trust should be narrow. Finally, the elimination of the 30 day waiting period will complicate judicial review for both the United States and nearby communities, including Indian tribes and will create practical problems for all interested parties.

I. History of 30 Day Rule

The 30 day waiting period to allow for judicial review of land acquisition decisions was established as an emergency rule in light of the 8th Circuit Court of Appeals ("8th Circuit") decision in *State of South Dakota v. U.S. Department of Interior*, 69 F.3d 878 (8th Cir. 1995)(*"South Dakota")*. The decision arose out of the State of South Dakota's challenge to the Department of Interior's decision to acquire 91 acres of land in trust for the Lower Brule Tribe of Sioux Indians (the "Tribe") under Section 5 of the Indian Reorganization Ac ("IRA"), 25 U.S.C. § 465. In late 1990, the Secretary decided to take the 91 acres of land in trust for the Tribe over the objections of the State of South Dakota and City of Oacoma (collectively the "Plaintiffs"). The Plaintiffs were notified of the Secretary's action in March of 1991. In July of 1992, the Plaintiffs filed suit in the District Court against the Department under the Administrative Procedures Act ("APA") alleging, among other things, that this trust acquisition was invalid because 25 U.S.C. § 465 was an unconstitutional delegation of legislative power.

In November of 1992, the Secretary took title to the lands in trust for the Tribe and later moved to dismiss the lawsuit on the grounds that a § 465 IRA acquisition was not subject to judicial review because it was an action "committed to agency discretion by law" and thus not subject to review under the Administrative Procedures Act, 5 USC § 701(a)(2). The District Court granted the motion to dismiss holding that § 465 was not an unconstitutional delegation of power and, on its own motion, held that the Court had no jurisdiction to review Plaintiffs' other claims because the Quiet Title Act, 24 U.S.C. § 2409a, did not allow a challenge to trust or restricted Indian lands. *South Dakota,* 69 F.3d at 880-881. The Court did not address whether a § 465 decision was "committed to agency discretion." *Id* at 880.

The 8th Circuit disagreed with the District Court holding that 25 U.S.C. § 465 was an unconstitutional delegation of power. *South Dakota*, 69 F.3d 878. The 8th Circuit decision may have been motivated, at least in part, by the Secretary's unwillingness to place any limitations on his authority to take land into trust, including the limit of judicial review. *See* Frank Pommersheim, *Land into Trust: An Inquiry into Law, Policy, and History*, 49 Idaho L. Rev. 519, 531 (2013). In reaching its decision, the Court explained:

> [I]n drafting § 465, Congress failed to include standards to reflect its limited purpose. Instead, the Secretary was delegated unrestricted power to acquire land "for Indians" in a statute that contained no "boundaries" defining how that power should be exercised. The Secretary has responded by asserting all of the unlimited power conferred by the statute's literal language. First, he promulgated regulations that place no restrictions on the purpose for which land may be placed in trust "for Indians." [citation omitted] Second, when his acquisition procedures and decisions were challenged in court, he asserted that his exercise of power is not subject to judicial review under the APA because it is "committed to agency discretion."
>
> This case illustrates the problems created by the exercise of such unrestricted power.

South Dakota, 69 F.3d 878 at 883. The issue of judicial review was central to the Court's application of the non-delegation doctrine. Quoting Justice Marshall, the 8th Circuit explained "judicial review perfects a delegated-lawmaking scheme by assuring that the exercise of such power remains within the statutory bounds." *South Dakota*, 69 F.3d 878, 881 (quoting *Touby v. U.S*, 500 U.S. 160, 170 (1991)). Accordingly, the Court held that the Secretary had no authority to acquire land in trust for the Tribe. *South Dakota*, 69 F.3d at 885. This decision, invalidating a sixty year old provision of the IRA, sent shockwaves throughout the Department and Indian country.

In an unprecedented about face, and in an attempt to avoid review of the IRA by the Supreme Court, the Secretary reversed his position and declared that acquiring land in trust was not committed to agency discretion and was subject to judicial review. Petition for Writ of Certiorari, *U.S. Dep't of Interior v. South Dakota*, No. 95-1956 (June 3, 1996), 1996 WL 34432929. In addition, the Secretary promulgated a regulation adopting a 30 day waiting period for taking land into trust after giving notice of a final decision. This regulation, 25 C.F.R. § 151.12, remains in effect today. In its Petition for Writ of Certiorari, the Department argued:

> Moreover, recent developments further undermine the ruling below. The court of appeals premised its decision on the assumption that the Secretary's decision to acquire land held in trust is not subject to judicial review. Since the court rendered its decision, however, the Secretary has issued a regulation that acknowledges the availability of judicial review of such decisions and affords an opportunity for judicial review to be instituted before the land is actually taken in trust.

Petition for Writ of Certiorari, *U.S. Dep't of Interior v. South Dakota*, No. 95-1956 * 15 (June 3, 1996), 1996 WL 34432929 (emphasis added).

In light of his changed position, the Secretary requested that the Supreme Court grant certiorari, vacate the 8th Circuit opinion, and remand ("GVR") the matter to the Secretary for reconsideration of his administrative decision. If granted, the GVR would allow the Secretary to reconsider his trust decision in lieu of the new regulations and avoid a decision from the Supreme Court on the constitutionality of the IRA. The Secretary succeeded in obtaining the GVR, but only over a strong dissent written by Justice Anton Scalia, and joined by Justices O'Conner and Thomas:

> The decision today – to grant, vacate, and remand in light of the Government's changed position – is both unprecedented and inexplicable… [W]e have never GVR'd simply because the Government, having *lost* below, wishes to try out a new legal position. The unfairness of such a practice to the litigant who prevailed in the court of Appeals is obvious. ("Heads I win big," says the Government; "tails we come back down and litigate again on the basis of a more moderate Government theory.") Today's decision encourages the Government to do what it did here: to "go for broke" in the courts of appeals, rather than get the law right the first time.

Dep't of Interior v. South Dakota, et. al, 519 U.S. 919, 921 (1996) (Scalia, J., dissenting) (emphasis added).

Thus, the 30 day waiting period, which the Department now proposes to abandon, played a vital role in protecting the constitutionality of the IRA.

II. The 30 day period to allow judicial review of land acquisition decisions was adopted to protect the constitutionality of Section 5 of the IRA and it should not be disturbed without a compelling reason.

The 30 day waiting period following publication of a NOFAD should not be eliminated without a compelling reason. The Supreme Court's decision to grant, vacate, and reverse the Petition for Certiorari in *South Dakota* was a rarely used procedure which both removed the precedential effect of the 8th Circuit decision and avoided a Supreme Court decision on the constitutional challenge to Section 5 of the IRA. The United States obtained the GVR based upon the Petition of the Solicitor for the United States in which he represented to the Court that the Department of Interior had adopted 25 C.F.R. § 151.12(b) which would allow instituting judicial review *before* land was taken into trust and, further, that judicial review was a significant factor in saving a statute from a claim that it was an unlawful delegation of authority. The Proposed Rule would renege on that representation and remove the very tool which saved Section 5 from a constitutional review by the Supreme Court in 1996.

There is simply no compelling reason to take any risk with Section 5 of the IRA by removing the 30 day waiting period for judicial review. What benefit does the BIA seek to create for Indian country in exchange for this Section 5 risk? The removal of 30 days in a process that typically takes many, many years is not a significant gain. The proposal to remove the 30 day waiting period is a reckless proposal that will be regretted if it contributes, even in a very minor way, to a re-litigation of *South Dakota v. United States*. There is simply no compelling need to renege on the representation made by the United States to the Supreme Court that the Department of Interior's rules will allow the initiation of judicial review prior to the Secretary taking land in trust. The current rule helped prevent the Supreme Court from considering the merits of the constitutional challenge to Section 5 of the IRA. This representation was made by the Solicitor General on behalf of the Department of Interior and should not be violated without a compelling reason.

The challenge to Section 5 of the IRA as an unconstitutional delegation has not come before the Supreme Court again since *South Dakota*. However, this is not the time to tempt fate. As evidenced by the recent case of *Carcieri v. Salazar*, 555 U.S. 379 (2009), the United States Supreme Court is not adverse to overturning almost 70 years of the Department's interpretation of the IRA. Further, it is not enough that lower courts have upheld the Constitutionality of Section 5 of the IRA. Those courts reviewed Section 5 of the IRA with the explicit understanding that Departmental regulations provided for judicial review before the land went into trust. *See Mich. Gambling Opposition v. Kempthorne*, 525 F.3d 23 (D.C. Cir. 2008), *cert* denied, 555 U.S. 1137 (2009); *Carcieri v. Kempthorne*, 497 F.3d 15 (1st Cir. 2007)(en banc), *rev'd on other grounds*, 555 U.S. 379 (2009); *U.S. v. Roberts*, 185 F.3d 1125 (10th Cir. 1999), *cert denied*, 529 U.S. 1108 (2000); *City of Lincoln City v. U.S. Dep't of Interior*, 229 F.Supp.2d 1109 (D. Or. 2002). Substantially changing this regulation could change the scope of the analysis and again leave the IRA vulnerable to attack.

III. The *Patchak* case does not compel the removal of the 30 day waiting period and the Department's position on the circumstances which will allow the Secretary to take land out of trust should be narrow.

The Department's rationale for removing the 30 day waiting period is the Supreme Court decision in *Mash-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S.Ct. 2199 (2012)("*Patchak*"), but *Patchak* does not compel this rule change. Generally speaking, the Administrative Procedures Act ("APA") waives the federal government's sovereign immunity for suits seeking "relief other than money damages and stating a claim that an agency or officer or employee thereof acted or failed to act in an official capacity or under color of legal authority." 5 U.S.C. § 702. The waiver does not apply if another statute "grants consent to suit expressly or impliedly forbids the relief which is sought" by the plaintiff. *Id*. The defendants in *Patchak* argued, as many had long assumed, that the Quiet Title Act

("QTA"), 28 U.S.C. § 2409a, was such a statute which grants consent to suit, and, therefore, an APA suit involving Indian lands is barred by the QTA. Consequently, a 30 day period to allow a party to commence judicial review prior to taking the land into trust is needed because a suit after land is put in trust would be barred by the QTA and unreviewable under the APA. The Supreme Court disagreed with the *Patchak* defendants and held that the Quiet Title Act ("QTA") does not bar a suit involving Indian lands under the APA if the suit does not challenge the title, interest, or right to the government's title (a "quite title action"). Despite the fact that all parties agreed that Patchak's suit sought to divest the federal government of title to trust land, the Court held that it was not a "quiet title action" and thus could proceed under the APA. *Patchak*, 132 S. Ct. at 2206. As a result, where the plaintiff does not assert a competing right to title (a vague test at best), a suit may now be brought under the APA. However, if a person does assert a competing quiet title claim, this action would still be barred by the QTA. This result seemed implausible to Justice Sotomayor:

> The majority's conclusion hinges, therefore, on the doubtful premise that Congress intended to waive the Government's sovereign immunity wholesale for those like Patchak, who assert an "aesthetic" interest in land, *ante*, at 2201, while retaining the Government's sovereign immunity against those who assert a constitutional interest in land – the deprivation of property without due process of law. This is highly implausible.

Patchak, 132 S.Ct. at 2215 (Sotomayor, J. dissenting).

The BIA's rationale for removing the 30 day waiting period is premised on the *Patchak* decision, *see* 78 Fed. Reg. 103 (May 29, 2013), and the BIA's contention that the Secretary can and will freely take land out of trust if a court subsequently determines that the Secretary committed an error in the administrative process. This is wrong for at least two reasons.

First, BIA is jumping the gun. The Patchak decision did not decide, or even consider, the question of whether the Secretary is authorized, or under what circumstances the Secretary is authorized, to take land out of trust. The position of the Department of Interior that the Secretary has authority in all cases to take land out of trust is clearly a new and untested theory. It is not supported by established judicial determinations and certainly not by the *Patchak* decision. We would prefer that the Department of Interior read *Patchak* narrowly and resist claims that the Secretary is free under all circumstances to take land out of trust. The BIA should not willingly concede that a trust deed will be reversed based on any error in the administrative process. At minimum, the BIA should only take land out of trust based on a determination that the Secretary had no authority in the first place to place the land in trust. There is a substantial difference between the effect of a district court decision that the Secretary lacked authority, such as under *Carcieri*, and a decision that the Secretary simply made an error, for instance, in applying Section 20 of the IGRA.

Second, the *Patchak* case creates substantial uncertainty with respect to who may bring an APA claim. Removing the 30 day waiting period will effectively preclude any pre-trust acquisition judicial review in cases where a plaintiff's action does in fact qualify as a "quiet title action." In such cases, given the uncertainty with respect to the Secretary's authority to take land out of trust, a party could theoretically be deprived of property without due process of law as suggested by Justice Sotomayor. In addition, the *Patchak* case creates incentives for plaintiffs to disguise their property or competing interest claims as lesser interests in order to sue under the APA. This could result in less certainty for tribes who want to take land into trust given the 6 year statute of limitations for APA claims.

IV. Eliminating the 30 day waiting period will complicate judicial review of final AS-IA decisions for both the United States and the surrounding communities, including nearby Indian tribes, and will create practical problems for all interested parties.

The elimination of the 30 day waiting period for taking land into trust will complicate judicial review of final decisions by the AS-IA for both the United States and surrounding communities, including nearby Indian tribes.

A. The current rule preserves the discretion of the AS-IA to acquire land in trust 30 days after publishing a notice in the Federal Register, or to agree to a self-stay when the AS-IA and the Department of Justice conclude that a self-stay is appropriate. The current rule also allows time for a district court to decide whether a stay is justified. Under the Proposed Rule, the AS-IA has no discretion to agree to a self-stay and instead "shall promptly acquire the land in trust." Proposed 25 C.F.R. § 151.12(c)(2)(iii). There is no good reason for the AS-IA or the DOJ to give up their current discretion to agree to a self-stay when appropriate. At a minimum, the "shall" in § 151.12(c)(2)(iii) should be changed to "may."

B. An advantage of the current 30 day waiting period is to encourage the prompt filing of Administrative Procedures Act (APA) claims. Under the current practice, most APA cases have been filed within the 30 day waiting period. Eliminating the 30 day waiting period will reduce the likelihood that APA challenges will be filed promptly and could encourage plaintiffs to rely instead on the much longer statute of limitations period. Encouraging the prompt filing of APA challenges is in the interest of the United States, applicant tribes and surrounding communities.

C. The 30 day waiting period allows parties challenging a trust acquisition decision to wait until after a NOFAD is published in the Federal Register before seeking a preliminary injunction or temporary restraining order. The 30 day waiting period provides an appropriate window for seeking preliminary relief from a district court. The Proposed Rule eliminates this window and will force a party seeking a preliminary injunction to anticipate the NOFAD and file in advance. The United States will likely claim that such a complaint is premature, because no final agency action has been taken. The plaintiff will then explain the dilemma caused by the lack of a 30 day window. The court will be needlessly dragged into an inefficient use of judicial resources because of the emergency created by this rule change. The Department of Justice, the applicant tribe and any challenging party will all be forced to engage in needless expedited proceedings wasting party and judicial resources.

D. The current policy of the Department of Justice and Department of Interior regarding self-stays changed after the decision in *Patchak*, but the policy has not been eliminated entirely. The Department of Justice and the Department of Interior still have reason to agree to a self-stay in certain circumstances. These circumstances may become more frequent if the Department of Interior takes the position, which it should, that not every potential challenge to a decision of the AS-IA, even if successful, would authorize the Secretary to take land out of trust. In any event, this is an unknown legal doctrine and the applicant tribe may resist, and in some cases successfully resist, the decision of the Secretary to take land out of trust once the land is placed in trust. Given the uncertainty in this area, it is unwise for the Secretary to eliminate the discretion to ever agree to a self-stay, which seems to be the result of the Proposed Rule.

E. The 30 day waiting period also provides a good opportunity for local governments in the surrounding community to determine whether or not any contingencies upon which they have agreed to support a trust land application have been fully satisfied. For instance, many cities and counties support land in trust applications on condition that a particular memorandum of understanding is valid and enforceable. At times, the determination of whether those

contingencies have been satisfied cannot be definitively made by the local cities and counties until after the decision to take land in trust has been formally announced. The 30 day waiting period, in other words, serves a number of useful purposes which lead to an orderly acquisition of land in trust.

The current rule, 25 C.F.R. § 151.12(b), requires that the Secretary wait at least thirty (30) days after publishing a NOFAD before acquiring land in trust. The current rule should continue to apply to land acquisition decisions of the AS-IA. These decisions are not subject to any administrative appeal. The waiting period serves both practical and legal goals and should not be disturbed. The 30 day waiting period has worked well and has not caused any meaningful delay for land acquisition decisions by the AS-IA. The Community hereby objects to the Proposed Rule which removes the 30 day waiting period before the AS-IA may acquire land in trust after publishing a Notice in the Federal Register.

Respectfully Submitted,

FOREST COUNTY POTAWATOMI COMMUNITY

Jeffrey A. Crawford
Attorney General

Exhibit 3

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RE: RIN 1076-AF15 Land Acquisitions: Appeals of Land Acquisitions Decisions

Dear Mr. Washburn and Ms. Appel:

Founded in 1925, the League of Oregon Cities (League) is a voluntary statewide association representing all of Oregon's 242 incorporated cities. The League submits this letter on behalf of those cities to express concern regarding the proposed rule changes in RIN 1076-AF15 pertaining to Tribal trust lands decisions by the Bureau of Indian Affairs (BIA). Specifically, as further explained below, the League opposes the proposed rule because it modifies existing notice requirements, removes the current 30-day waiting period and replaces it with a procedure that lacks transparency and works to the detriment of jurisdictional governments. Consequently, the League urges the Department of the Interior to reject the proposed rule in favor of rules that result in timely and proper fee-to-trust decisions following reasonable notice and an opportunity for affected parties to be heard.

I. Tribal Trusts and The Current Fee-to-Trust Process

Tribal Trusts are a result of the Indian Reorganization Act of 1934 (IRA), which Congress enacted to remedy the devastating loss to Indians of over 90 million acres of Indian lands that began with the General Allotment Act of 1887. To achieve this, the IRA authorizes the Secretary of the Interior to obtain and hold land for Indian Tribes and individual Indians in

trust (so called fee-to-trust), thereby securing Indian lands for economic development, housing, and related purposes. It also allows the Tribe to benefit from the housing and other federal programs which can only be used on land which has been placed in trust.

Just as the IRA and the fee-to-trust process serve an important and substantial purpose in restoring Tribal land, equally important and substantial are the interests of jurisdictional governments in fee-to-trust decisions. When property is held in fee by an individual or Tribal Government, it is subject to state and local regulations. However, when the property is converted and held in trust, the land becomes exempt from state and local government taxes and local land use regulations, and can be removed from local law enforcement jurisdiction as well. The consequences of these decisions for communities across Oregon and the United States are the loss of revenue, loss of control over coordinated and consistent land development, and the inability to exercise other regulatory control. Those consequences receive even greater attention when a proposed trust acquisition is for Indian gaming.

Because federal law only permits Indian gaming on Tribal lands, trust status is a necessary prerequisite for any property on which a Tribe wishes to establish a gaming operation.[1] Given the expansion of Indian gaming; apprehension regarding the impact of gaming on the surrounding community; concerns about how the development will integrate with surrounding land uses; and concerns regarding the adequacy of water, sewer, transportation infrastructure and public safety services; it is all the more important that jurisdictional governments be made aware and have a voice in fee-to-trust applications involving gaming. Indeed, it should be emphasized that concerns about how the development will integrate with surrounding land uses, and concerns regarding the adequacy of water, sewer, transportation infrastructure and public safety services, exist regardless of the proposed use of the land. Consequently whenever a fee-to-trust application proposes any level of development for the property, those concerns exist.

A. Overview of the Current Fee-To-Trust Rules

The current fee-to-trust process, as set out in 25 CFR Part 151 and as applied by the BIA, although imperfect, has provided a platform upon which jurisdictional governments could express and in most instances resolve those concerns. Specifically, the current regulations require that the BIA notify state and local governments when it receives an application from a Tribe to process a taxable parcel of land to trust status. Notices must identify the land to be

[1] Indian tribes may only game on Indian lands that are eligible for gaming under the Indian Gaming Regulatory Act (IGRA). Such lands must meet the definition of "Indian lands" at 25 U.S.C. § 2703, which requires that the land be within the limits of a Tribe's reservation, be held in trust by the United States for the benefit of the Tribe or its member(s), or that the land be subject to restrictions against alienation by the United States for the benefit of the Tribe or its member(s). Additionally, the Tribe must have jurisdiction and exercise governmental powers over the gaming site. The IGRA, 25 U.S.C. § 2719, contains a general prohibition against gaming on lands acquired into trust after October 17, 1988 (the date the IGRA was enacted into law). Tribes may game on such after-acquired trust land if the land meets one of the exceptions laid out in § 2719.

transferred and the requesting Tribe, as well as the Tribe's proposed use of the land. The notification is provided for the purpose of allowing government entities an opportunity to comment.

As currently drafted, the regulations provide affected governments 30 days to comment. After all comments have been received and reviewed, the BIA is then in a position to issue a decision on whether to convert the land into trust land. After making a decision, but before transferring land into trust, the BIA provides notice and implements a 30-day waiting period before converting land to trust, thereby allowing interested parties to obtain judicial review of the decision. If a party seeks judicial review, the BIA has historically stayed the conversion of land to trust until such time that the courts have acted.

Those regulations have allowed jurisdictional governments the opportunity to start a dialogue between communities, tribes and states over the concerns noted above. Although not a prerequisite for trust approval, those discussions have resulted in agreements between Tribes and local governments over provision of infrastructure, coordination with surrounding land uses, and agreements to pay a fee for particular services. As explained further below, the proposed rule changes remove the opportunity, if not the incentive, for Tribes and local governments to reach such agreement.

B. History of the Current 30 Day Waiting Period Provision

It's important to note that BIA instituted the 30-day waiting period to obtain an unprecedented United States Supreme Court vacation of a landmark decision from the 8th Circuit Court of Appeals that held the fee-to-trust provisions of the IRA unconstitutional. South Dakota v. U.S. Dep't of the Interior, 69 F.3d 878 (8th Cir. 1995), vacated 117 S.Ct. 286 (1996). Although subsequent litigation has altered parts of that decision, the fundamental principles set out in that decision and reasons for the current rules remain. Consequently a review of the 8th Circuit decision is instructive to understanding the basis for the League's objection to the proposed elimination of that rule.

The case arose from the 1990 action of the Department of the Interior acquiring 91 acres in trust for the Lower Brule Tribe of the Sioux Indians, pursuant to §5 of the IRA. The State of South Dakota challenged that decision in Federal District Court, contending both that the Department's particular action violated the Administrative Procedure Act (APA), 5 U.S.C. § 706 and that the Department's statutory authority to acquire lands under the IRA is unconstitutional as a delegation of legislative power. Throughout the litigation, the Department of the Interior maintained that IRA land acquisitions were unreviewable under the APA because they fall within the exception for matters "committed to agency discretion by law." §701(a)(2). The District Court upheld the Department's authority, although on different grounds, holding that because the United States had acquired title, the Quiet Title Act (QTA), 28 U.S.C. § 2409a

provided the sole statutory means of challenging the action, and that the QTA explicitly prohibits actions challenging title to Indian lands.

The 8th Circuit reversed the District court concluding that the trust provisions of the IRA violated the non-delegation doctrine of the U.S. Constitution and that the Department lacked authority to acquire land into trust for the Tribe. Specifically, the 8th Circuit noted that "[j]udicial review is a factor weighing in favor of upholding a statute against a non-delegation challenge." 69 F.3d 878, 882

In response to the 8th Circuit's ruling, the Department of the Interior promulgated what is the current regulation requiring publication of notice of intent to take land into trust and giving a 30-day window of opportunity for judicial challenges to agency decisions to acquire land in trust. The United States then petitioned the Supreme Court for review and vacation of the 8th Circuit's decision. In its petition the Department of the Interior argued that the new procedure provided an avenue for judicial review, thereby curing the infirmity noted in the 8th Circuit's opinion. The Supreme Court granted the petition and vacated the 8th Circuit's decision with instructions to vacate the District Court's decision and remand the matter back to the Department. 519 U.S. 919 (1996).

Subsequently, the Tribe submitted a new trust application and the Department of the Interior again approved the Tribe's request. South Dakota again challenged the Department's authority to acquire lands into trust under Section 5 of the IRA. In 2004, a Federal District Court upheld Department's decision and rejected South Dakota's constitutional and statutory challenges. The State again appealed to the 8th Circuit urging it to hold, as it previously had, that Section 5 violated the non-delegation doctrine. This time, against the backdrop of a rule that provided a clear avenue for judicial review, the 8th Circuit reversed its previous analysis and jointed two other Circuit courts that following had upheld the constitutionality of the IRA. *See* State of South Dakota v. U.S. Dep't of the Interior, 423 F.3d 790 (8th Cir. 2005) (citing U, 185 F.3d 1125 (10th Cir.1999); Carcieri v. Norton, 398 F.3d 22 (1st Cir. 2005), both which were decided after the Department had instituted the 30-day waiting period).

II. The Patchack Decision and Overview of BIA's Proposed Rules

In 2012, the Supreme Court would have the opportunity to revisit the issue of whether the QTA precluded an interested party from filing a legal challenge to a trust decision after the land had been converted. In Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchack, 132 S.Ct. 2199 (2012), the Supreme Court concluded that the QTA is not a bar to APA challenges to the Deparment's decision to acquire land in trust. It is that decision that has prompted the Department of the Interior to propose changes to the federal rules that are the subject of these comments relating to the fee-to-trust process

Specifically, the proposed changes would remove the current notice and 30-day waiting period and allow the BIA to provide notice only after the property has been taken into trust. In

addition, the proposed changes create different appeal rules for trust decisions made by the Assistant Secretary – Indian Affairs (AS-IA) as compared to other BIA officials. Finally, although the rules maintain BIA's requirement to notify jurisdictional governments of fee-to-trust applications, it requires all other interested parties to make themselves known in writing to the BIA official making the decision, and requires those parties to make themselves known in writing at each stage of the administrative review.

III. The League's Objections to the Proposed Rules

For the following reasons the League believes those rule changes are short-sighted, are legally infirm, lack transparency by obscuring and decentralizing decision-makers, and impede meaningful public participation in those types of decisions.

A. The Elimination of the 30-Day Waiting Period Removes Incentives to Reach Agreement and Raises Constitutional Questions.

The League objects to the removal of the 30-day waiting period. Although the Patchack decision allows a party to file a legal challenge after land has been taken into trust, the 30-day waiting period still serves a valid purpose. As noted above, the current rules, including the 30-day waiting period has created an environment where jurisdictional governments and Tribes can engage in dialog over the substantial impacts of any development of trust land and to come to agreements that are in their mutual best interests.

Moreover, without the 30-day waiting period, jurisdictional governments will be left with having to file suit after property has been taken into trust. Given tribal sovereign immunity, such legal actions would involve solely the Department of the Interior, thereby leaving the property, now in trust, to be developed during the pendency of the litigation. If such a result were to occur, jurisdictional governments would be irreparably harmed, nullifying the benefit of any judicial review. Put differently, the proposed rules lack sufficient safeguards to enjoin further development of the property during the pendency of litigation, thereby depriving would-be challengers of any meaningful relief in a subsequent legal challenge. Indeed, this potential drastic result severely undermines a party's ability to obtain judicial relief, which raises once again the specter of the IRA's constitutionality under the non-delegation doctrine.

B. The Inconsistent Rules Regarding Appeals of Final Decisions Will Lead to Confusion and Deprive Parties of Judicial Review

The League also objects to the proposed changes that create different appeal rules for trust decisions made by the AS-IA as compared to other BIA officials. Under the proposed rules, decisions by the AS-IA are final decisions that are now subject to judicial review under the APA in light of the Patchack decision. In contrast the proposed rules also allow other BIA officials to make trust related decisions. Those decisions are appealable to the Interior Board of Indian Appeals (IBIA), the decisions of which are subject to judicial review. However, an interested

party must file its appeal with the IBIA within 30 days of a decision; otherwise the decision of the BIA official becomes final. The proposed rules provide no indication of the types of decisions that will be made by the AS-IA as compared to the types of decisions left to other BIA officials.

This bifurcated decision and appeal process, particularly without direction as to what types of trust decisions will be made by who, creates confusion, lack transparency, and is an unnecessary trap for the unwary. Under the APA, parties that fail to exhaust administrative remedies are precluded from seeking judicial review. Thus, under the proposed rules, if a decision of the BIA official becomes final, and an appeal is not filed with the IBIA, interested parties will not be able to seek judicial review of that trust decision. This, coupled with the proposed removal of the requirement to publish notice in the Federal Register for decisions at levels below the AS-IA makes it very likely that interested parties will not receive notice of the decision and/or fail to follow the appropriate procedures that would otherwise preserve their ability to obtain judicial review.

C. The Proposed Rules Result in Less Opportunity for Public Participation.

Under existing regulations, BIA officials who issue decisions are required to provide interested parties with written notice of the decisions. The proposed rules unfairly place the burden on interested parties to make themselves known in writing to the BIA official making the decision, and requires those parties to make themselves known in writing at each stage of the administrative review. Put differently, the proposed rules alleviate the BIA's responsibility to provide notice to the public and instead place the burden on the public to provide notice to the specific BIA official making the decision of that party's interests. Although practically speaking BIA cannot know who is interested until they make themselves known, the requirement that interested parties must correctly identify the proper BIA official who will be making the decision let alone to notify each BIA official who will be making a decision on appeal, is patently unfair and unduly burdensome.

This shift in burden to the public to provide notice to the BIA at every stage of a proceeding, combined with the lack of clear guidance as to which BIA officials will be making various types of trust decisions and the procedural trap noted above with respect to the exhaustion of administrative remedies, will surely foreclose opportunity for interested parties to participate in trust decisions.

IV. Conclusion

In conclusion, the League respectfully requests the Department of the Interior to reject the proposed rules. Although the impacts of the Patchack might warrant some modification to the existing process, the proposed rules are not the right solution for the reasons stated above. Additionally, given the complexity of the issues and the substantial interests of both the tribes and jurisdictional governments, the League requests the Department of the Interior to extend the

comment period for these rules to allow other interested parties the opportunity to submit comments.

Respectfully Submitted

Sean E. O'Day
General Counsel
League of Oregon Cities

Exhibit 4

July 29, 2013

RE: Comments in regards to the land in trust decision

The City and County of Milwaukee have land in trust for gaming and non-gaming interests within our respective municipal boundaries. We are also within 25 miles of a proposed off-reservation casino in Kenosha, Wisconsin.

We are contacting you about the Proposed Rule that would remove the 30 day waiting period on moving land into trust applications. The current 30 day window provides a more reasonable and fair process for parties that disagree with the decision of the Assistant Secretary-Indian Affairs (AS-IA).

The purpose of the 30 day waiting period is to allow parties such as ours that are going to be detrimentally impacted by proposed off-reservation casinos the opportunity to seek judicial review of the AS-IA decision. The removal of the 30 day waiting period means that land can be put in trust without any advance notice to the surrounding communities. This also means that land may be put into trust by the AS-IA for a controversial gaming project without any prior hearing before a court. In essence, the decision of the AS-IA will become a fait accompli.

The opportunity for judicial review is especially important to a local government, such as ours, that is within 25 miles of a proposed off-reservation casino. We believe that meaningful and transparent consultation with communities that are impacted by proposed off-reservation Indian casinos is an important part of the process.

Moreover, the 30 day window for allowing judicial review of a land acquisition decision of the AS-IA should be retained because it allows municipalities like ours an outlet to seek judicial appeal of an AS-IA decision that will have detrimental impacts on our governments and communities.

Thank you for your time and consideration.

Sincerely,

Milwaukee County Executive Chris Abele

Mayor Tom Barrett

CC: The Honorable Kevin Washburn, Assistant Secretary
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

Exhibit 5

July 22, 2013

Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
Bureau of Indian Affairs
1849 C Street, NW
Washington, DC 20240

Dear Ms. Appel:

We are writing on behalf of Citizens Against Reservation Shopping (CARS) to comment on the proposal to rescind the 30-day wait period under 25 C.F.R. § 151.12 before title can be transferred into trust status and to make other changes to the BIA decision-making process. As a non-profit citizens group that is actively involved in BIA trust land decisions, we strongly oppose the proposed changes.

The 30-day wait period is an essential component of reasoned and efficient decision-making. Trust land acquisitions are often complex and controversial. Any question about this fact can be answered by looking at the procedures associated with trust acquisition for the Cowltiz Tribe, that we are involved in as one of many plaintiffs. When first issued in December 2010, this decision had a 117-page record of decision (ROD) that covered a wide range of issues.

Obviously, detailed records of this nature require time to review for all affected parties, and allowing for an immediate transfer of title forces parties concerned about trust land acquisition into immediate litigation because the land is removed from state and local regulation immediately and will often be subject to development activities by the tribe that cause harm to the local community. Providing a 30-day waiting period gives parties time to work towards the resolution of conflicts before title transfer and allows all parties affected by the decision to review the approved action under a time frame that could avoid the need for restraining orders or preliminary injunctions.

These same advantages result from the longstanding BIA practice of imposing a voluntary stay of title transfer when a lawsuit is filed challenging the action. We understand that BIA is no longer uniformly applying this common sense course of action. We recommend that BIA reinstate this practice. The practice of agreeing to stay trust land decisions during the course of litigation avoids unnecessary conflict and litigation expense, preventing the need for a court-ordered injunctions and the expense and conflict that will result from a legal battle to stop the tribe's actions.

We also oppose the proposal that parties, such as our organization, must give notice of our position on a trust land request to every BIA official responsible for the ultimate decision to acquire land in trust, or lose our ability to challenge the decision in court. This rule serves no legitimate purpose; its obvious intent is to make it difficult for citizen groups and third-parties opposed to trust land decisions to contest them by making their right to litigate contingent upon repetitive written notices with every BIA official involved. This rule is unfair because it is often not possible to indenitfy such officials or know the timing of their action to meet whatever deadlines might be created. Of course, filing a single objection during the course of a BIA review is sufficient to go on the record with a stated position.

Adding paperwork and placing public participation at risk, as would result from this proposal, is contrary to President Obama's directives on both regulatory efficiency and reduced burdens on the public and his mandate that federal agencies increase and facilitate public participation in agency decisions. *See* "Memorandum for the Heads of Executive Departments and Agencies," Executive Office of the President, Office of Management and Budget (Dec. 8, 2008); *see also* The Open Government Partnership: National Action Plan for the United States of America (Sept. 20, 2011); Executive Order 13579, "Regulation and Independent Regulatory Agencies (July 11, 2011).

As a final point, we note that BIA's effort to preclude legal challenges based on the burdensome and unfair requirement for written notice at every step is not likely to have the preclusive effect BIA desires. The courts have ruled that commenters need not participate at every level, so long as they have raised their objections in a timely way at some point during the administrative process. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978) (finding that commenters should structure their participation so that it is meaningful and alerts the agency to the reviewers' position and contentions).

For these reasons, we request that BIA drop the proposed rule in its entirety. Please contact me if you have any questions or if we can be of further assistance.

Very truly yours,

Edward C. Lynch, Chair
Citizens Against Reservation Shopping
915 Broadway St Ste 302
Vancouver, WA 98660-3247
(360) 696-3611

Exhibit 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STAND UP FOR CALIFORNIA!, PATTY JOHNSON, JOE TEIXEIRA, and LYNN WHEAT, Plaintiffs, v. UNITED STATES DEPARTMENT OF INTERIOR, et al., Defendants.	Civil Action No.

DECLARATION OF DAVID H. TENNANT IN SUPPORT OF PLAINTIFFS'EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, DAVID H. TENNANT, being a duly licensed attorney in the States of New York and California, hereby declare as follows:

1. I am a partner in Nixon Peabody LLP, and serve as lead counsel of record for the Plaintiffs in an action entitled *Littlefield v. Dep't of Interior*, Case No. 1:16-CV-10184 pending in the United States District Court for the District of Massachusetts. The *Littlefield* plaintiffs are private citizens, homeowners, and residents of Taunton and East Taunton, Massachusetts, a semi-rural area in southeastern Massachusetts. These citizens successfully sued to overturn the Department of the Interior's decision to take land into trust for the Mashpee Wampanoag Tribe for the express purpose of constructing a billion-dollar-plus tribal resort casino in what is a quiet, wooded, residential neighborhood. The district court

held the Secretary lacked authority under the Indian Reorganization Act of 1934 (25 U.S.C. § 465 et seq.) to take land into trust for the Mashpees.[1]

2. I submit this declaration to point out that the Department's arguments in *Littlefield,* in opposing the citizens' request for preliminary injunctive relief, when combined with the positions advanced by the Department here and in other land-into-trust cases, present a startling picture of the Department working to deprive plaintiffs of the right and opportunity under the Administrative Procedure Act ("APA") to preliminarily enjoin unlawful acts of the Secretary. Under the Department's view—as explained in more detail below—a citizen's application for injunctive relief is either too soon or too late when it comes to challenging the Secretary's acquisition of title in trust. There is never a time when a preliminary injunction motion would be appropriate, in the Department's view. Rather, the Department contends that a plaintiff challenging such a decision must await the final determination on the merits, and if the plaintiff prevails, secure an order directing the Secretary to reverse the transaction and take the land out of trust.

3. The Department's extremely cabined viewed of a plaintiff's remedies under the APA—eliminating altogether injunctive relief under 5 U.S.C. § 705(a)—is erroneous in its own right. But it is disastrous for litigants when coupled to a tribe's decision not to intervene, leaving it free—according to the Secretary—to begin construction and outside the jurisdiction of the court due to sovereign immunity. Thus, even if title to land is unlawfully transferred into trust, litigants may face irreparable harm and courts unable to grant complete relief.

[1] The Department and the Tribe have filed notices of appeal while simultaneously engaging in further proceedings on remand to the Department.

The Littlefield Record of Decision (ROD) and Department Opposition to Injunctive Relief

4. The Department issued a ROD to acquire land in trust for the Mashpee Tribe on September 18, 2015. The ROD covered two parcels. According to the Department's regulations, title to these two parcels passed "immediately" to the Department. *See* 25 C.F.R. § 151.12(c).

5. The Department did not inform Plaintiffs when it would acquire title and it did not give Plaintiffs notice that there would be any delay.

6. Plaintiffs had six years to file an APA action.

7. When Plaintiffs filed suit in January 2016, the Taunton site was not disturbed.

8. Plaintiffs raised claims under the Indian Reorganization Act of 1934, the Indian Gaming Regulatory Act, and the APA.

9. The Tribe did not intervene in the action until after the district court issued its decision in the case, purposefully avoiding subjecting itself to the court's jurisdiction.

10. The Tribe held a ground breaking ceremony in April 2016, and in various public announcements, both before and after the groundbreaking, represented that it would begin construction of a casino resort on a "fast track" and open in 17 months.

11. The Tribe proceeded to immediately demolish buildings and clear-cut trees. What was previously an unobtrusive, low-rise garden-style warehouse complex, was quickly turned into a moonscape.

12. The citizens promptly moved for a preliminary injunction in response to the construction activity.

13. The Department opposed the citizens' request arguing that the Plaintiffs had waited too long; missed their opportunity to seek injunctive during the window between the

issuance of the ROD and actual title transfer that occurred three months later; and argued injunctive relief was not warranted in any event because the harm sought to be enjoined—the construction activity—was being conducted by the Tribe, which was not a party and was immune from suit. A true and correct copy of the Department's Memorandum of Law in *Littlefield* ("United States' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction or Writ" (June 17, 2016) (Dkt # 38)) is attached as Exhibit A.

14. Plaintiffs asked the court to order the title to land be removed from trust to prevent any additional irreparable harm from occurring.

15. The Regional Director objected to Plaintiffs' request for several reasons, including how burdensome doing so would be for the agency, how it would create jurisdictional uncertainty, and how there was no clear process for undoing a trust transfer. Attached as Exhibit B is an affidavit submitted in connection with the U.S. Opposition (Exhibit A) ("Affidavit of Bruce W. Maytubby in Opposition to Plaintiffs' Motion for Preliminary Injunction or Writ" (dated June 17, 2916) (Dkt # 38-1)).

The Department's Position in Other Land-Into-Trust Cases

16. Attached as Exhibit C is a true and correct copy of the United States' Response to Plaintiffs' Motion for Preliminary Injunction in *Stand Up for California! v. U.S. Dep't of the Interior*, No. 1:12-cv-02039-BAH, United States District Court for the District of Columbia, dated January 18, 2013. In that case, various municipalities and citizen groups challenged the Secretary's decision to acquire lands under the IRA for a California tribe. The plaintiffs in *Stand Up for California!* sought injunctive relief under the APA, 5 U.S.C. § 705, and Fed. R. Civ. P. 65 to preserve the status quo—i.e., before the lands were taken into trust and placed in possession of a tribe that was seeking to develop a casino. The *Stand Up for California!*

plaintiffs were forced to seek injunctive relief at the outset of the lawsuit because the Department advised them in that case that it was abandoning its policy of staying the transfer of title to land in trust, in light of the Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band v. Patchak*, 132 S. Ct. 2199 (2012).

17. The Department in *Stand Up for California!* opposed the plaintiffs' application for injunctive relief, arguing that their motion was premature and they had failed to show irreparable harm because: (a) the plaintiffs were not harmed by the title to land going into trust; and (b) the tribe's plans to build a casino were speculative and not imminent.

18. Attached as Exhibit D is a true and correct copy of the United States' Opposition to Plaintiff's Request for a Temporary Restraining Order in *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. Salazar*, No. 2:12-cv-3021, United States District Court for the Eastern District of California, dated January 18, 2013. As in *Stand Up for California!*, the plaintiffs sought a preliminary injunction under Fed. R. Civ. P. 65(a) to enjoin the government from taking land into trust, after the Department announced that it was abandoning its self-stay policy. The Department opposed the motion for a preliminary injunction, arguing, just as it did in *Stand Up for California!*, that the taking of land into trust would not harm plaintiffs and that construction on the subject parcel was not imminent. The court agreed that the act of taking land into trust would not cause substantial, immediate, and irreparable harm to plaintiffs because it would be at least four months before the land would be developed. *See Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. Salazar*, No. 2:12-cv-3021, 2013 WL 417813, at * 4 (E.D. Cal. Jan. 30, 2013). However, the court noted that plaintiffs' concerns might support a finding of irreparable harm if construction was imminent. *Id.*

19. In both cases, the tribe intervened in the action so that the court had jurisdiction to enjoin construction activity. In addition, the Department had not yet promulgated 25 C.F.R. § 151.12(c) requiring the immediate transfer of title into trust upon a final decision.

Combined Lessons from Department's Oppositions:
No Time Is Right For Preliminary Injunctive Relief

20. Taking all of the Department's arguments and explanations for why plaintiffs were not entitled to a preliminary injunction in *Cachil Dehe Band of Wintun Indians, Stand Up for California!*, and *Littlefield* (and expected in a rush of other land-into trust decisions before January 20, 2017), the following principles emerge:

a. If a plaintiff applies for a preliminary injunction before the ROD is issued, the Department will argue that the application is premature because there is no final agency action;

b. If a plaintiff waits until after a ROD is issued and the Department has not yet acquired land in trust (i.e., has not taken title to the land), the Department will argue that the plaintiff is too early because even taking title to the land does not cause irreparable harm—the plaintiff must wait for construction to be imminent;

c. If a plaintiff waits until after a ROD is issued and the title has transferred, the Department will argue that it is too late because the Department has undertaken the expense of doing the title work and otherwise processing the land for transfer into trust, which should not be un-done except by a final order (assuming that some process is discovered for doing so);

d. If a plaintiff actually waits for construction to be imminent (in keeping with the principles identified above), the plaintiff may very well have no option if the applicant tribe has not intervened. In that case, the plaintiff—the Department will argue—should have brought a

challenge as soon as the ROD was issued, even though doing so would have been too soon under principles "a" and "b"); and

e. In no case does a plaintiff have any information regarding if or when the Secretary will make a trust decision, when the Secretary will acquire title to the land (immediately or otherwise), or if an applicant tribe will intervene so that a court could actually enjoin construction activity that causes irreparable harm.

21. The Department now plays this "shell game" across all land-into-trust cases, in each case explaining why no right to judicial review exists prior to a final judgment on the merits. The Department is playing the same game here.

22. The Department's approach enables tribes to construct their casinos without interference of an injunction while the court proceeds to rule on the merits. While the relative speed of tribal development and judicial proceedings will vary, a real prospect exists for court proceedings to take long enough to allow substantial construction activity to occur, and to even allow a gaming facility to open. In that case, a court may be very reluctant to "un-do" that development even upon finding the land-into-trust transfer was unlawful and invalid ab initio. Whether or not blunting or avoiding judicial review is the purpose of the Department's "principles," that consequence naturally flows from the Department's rejection of any role for preliminary injunctive relief in APA challenges to land-into-trust transfers.

23. The Department's elimination of the opportunity for judicial review before land goes into trust creates enormous practical problems for plaintiffs and the courts. The Department has created an untenable situation where a tribe can spend hundreds of millions of dollars on construction before the court rules, while plaintiffs desperately watch the prospect of receiving any meaningful relief erode if not completely evaporate.

The Littlefield Experience with Fast Track Litigation

24. The Tribe in *Littlefield* expedited construction in an attempt to open in 17 months and it would have completed its gaming floor and opened its facility within that compressed timeline had the district court not apprcciated the race that was setting up between the casino construction and the federal court proceeding. The district court demanded that the Department produce the administrative record in two weeks and ordered an expedited hearing on the merits of the *Carcieri* claim, addressing the Secretary's statutory authority to take land into trust. The district court advanced the *Carcieri* claim for an immediate trial under Fed R. Civ. P. Rule 65(a)(2). Thus, within three weeks of the case being assigned to the judge, the court held a hearing on the merits. The districts court issued its decision three weeks later. In this way, the judicial system outpaced the casino construction, and the judicial declaration that the Secretary had acted unlawfully in taking land into trust for the Mashpee was still relevant and shut down construction.

25. Had the *Littlefield* litigation proceeded at the pace that the Department sought, the Tribe would have opened its casino gaming floor before the district court ruled. That result—where the facts on the ground overtake the judicial system—can have serious implications. It presents the real prospect of meritorious legal challenges to federal agency overreach being mooted by intervening developments. While that can be true in cases not involving tribes, virtually none of those cases involve the elimination of state and local jurisdiction at some undisclosed time (ranging from immediately to whenever) *and* activities by a party that is outside the reach of federal courts.

26. No court should be put in the position of having to "unwind" a billion dollar investment that should not have been started in the first place and litigants should not have to

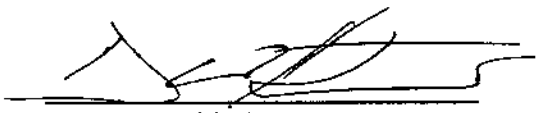
gamble on a tribe's decision to intervene to have a remedy. Courts have the ability to grant preliminary injunctions and/or expedite trials to make sure that they and the parties before them are not put in that untenable position.

27. The district court in *Littlefield* understood these dynamics and ensured that the citizens' rights under the APA were protected; that they had their day in court; and that when the court issued its decision vindicating their position, it still had meaning and was not rendered a Pyrrhic victory.

28. But the better answer is for federal agencies not to place potentially aggrieved parties and courts in this position in the first place. Challenging federal decisions, particularly those that eliminate state and local jurisdiction and create territory subject to tribal law, should follow a clear process that allows courts to grant complete relief.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed within the United States this 11th day of January, 2017



David H. Tennant

Comment Letter 9

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

January 17, 2017

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 Final Environmental Impact Statement, Sacramento County, California (CEQ# 20160300)

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.

EPA reviewed the Draft Environmental Impact Statement and provided comments to the Bureau of Indian Affairs (BIA) on February 22, 2016, rating the Proposed Action and all other action alternatives as *Environmental Concerns – Insufficient Information* (EC-2). Our concerns regarded 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 (NAAQS). We noted that 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, and if the project proponent would 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 NAAQS violations in the project area.

9-1

As a cooperating agency for the project, EPA reviewed the Administrative FEIS and provided comments to BIA on August 22, 2016. We commended BIA for designating Alternative F as the Preferred Alternative, as we recommended, which would result in the least adverse environmental impacts since the Elk Grove site is already partially developed and infrastructure is already in place. We also noted BIA's proposal to obtain emission reduction credits within 50 miles of the project site.

In our AFEIS comments, we reiterated that, if BIA planned to use out-of-area offsets, the General Conformity Determination should demonstrate that the nearby nonattainment area of equal or higher classification contributes, or has contributed in the past, to the violations of the NAAQS. We have reviewed the Final EIS and note that the updated draft General Conformity Determination cites several studies by the California Air Resource Board (CARB), including the initial Transport Assessment approved by CARB in 1990 and the first triennial updates to the 1990 ozone transport report approved by CARB in August 1993, November 1996, and April 2001. According to the April 2001 update, CARB determined that the San Joaquin Valley is classified as having various levels of impact to the greater Sacramento air basin, ranging from significant to inconsequential, depending on the day of the

9-2

year. Accordingly, the results of these assessments indicate that the San Joaquin Valley contributes to NAAQS violations within the broader Sacramento area and that purchase of emission reduction credits from San Joaquin Valley would meet the requirements to show conformity. As a final step in documenting compliance with conformity, we recommend that BIA document discussions or correspondence with the San Joaquin Valley Air Pollution Control District indicating their understanding that the emission reduction credits will be used outside of the San Joaquin Valley.

9-2 (cont.)

EPA appreciates the opportunity to review this FEIS. 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

cc: Karen Huss, Sacramento Metropolitan Air Quality Management District
Raymond Hitchcock, Chairman, Wilton Rancheria
Steve Hutchason, Environmental Director, Wilton Rancheria

Comment Letter 10

January 17, 2017

VIA Email to:

Mr. John Rydzik
Chief, Division of Environmental, Cultural
Resource Management and Safety
Bureau of Indian Affairs
john.rydzik@bia.gov

Email subject line: "FEIS Comments, Wilton Rancheria Fee-to-Trust and Casino Project"

Dear Mr. Rydzik:

The Wilton Rancheria (Rancheria) has a contentious and troubled history with respect to membership disputes since restoration. The dramatic growth in membership since restoration—from approximately 300 to over 700—and the even more dramatic shift in composition—including the disenrollment of much of the original membership at the time of restoration, and the wholesale migration of members of the Ione Band of Miwok Indians to membership in the Rancheria, including many relatives of Regional Director Amy Dutschke—necessarily calls into question the basis for that restoration, and the BIA's administration of initial membership eligibility determinations. Accordingly, these issues must be resolved before any final decision is made to acquire land in trust for the benefit of the Rancheria.

I have previously detailed and documented these issues in letters and emails with BIA officials since restoration and my disenrollment in 2009. That correspondence comprises records within the possession of BIA, and I hereby incorporate them by reference in their entirety. Those documents and other records within the possession of BIA establish the following:

10-1

- Since restoration in 2009, the Rancheria's membership has increased from approximately 300 to over 700 members.

- Many of the Rancheria's new members come from the Ione Band of Miwok Indians, including many relatives of Regional Director Amy Dutschke. These members now occupy leadership positions within the Rancheria.

- Many of the Rancheria's original members at restoration have since been disenrolled, including the descendants of Alec Blue, whose family history is central to the Rancheria, and indispensable to establishing a historical connection with the original Rancheria.

- By letter dated December 19, 2012, I brought to BIA's attention the conflicts of interest and misconduct in BIA's actions with respect membership eligibility that benefited members of the Rancheria related to Regional Director Amy Dutschke.

- Troy Burdick, BIA Assistant Secretary, conducted an investigation and found no wrongdoing. However, Mr. Burdick himself left the BIA amid allegations of improper use of a BIA credit card, raising doubts as to the quality of his investigation.

- Significant questions remain regarding the full extent of Ms. Dutschke's familial connections to the Wilton Rancheria. Ms. Dutschke is a second cousin to members of the Hatch family and related by marriage to the Andrews family, two of whom currently serve on the Wilton Rancheria Tribal Council.

- In 2014, Stand Up for California! filed comments in response to the EIS scoping notice, and requested that the Regional Director "recuse herself and take action to ensure that someone that is not subject to her supervision or oversight take responsibility for overseeing the Wilton Project" because the Regional Director's family relations to members of the Wilton Rancheria presented a conflict of interest in her supervision of the processing of the trust acquisition application.

- In addition, other BIA officials, including relatives of Ms. Dutschke, are also related to members of the Rancheria, but have not recused themselves from working on matters related to the Rancheria that benefit relatives in the Rancheria membership.

10-1 (cont.)

These facts raise serious questions about the current membership of the Rancheria and call into doubt the continuity of the current Wilton Rancheria as a historical, sovereign tribal entity. These questions must be resolved before any land is taken into trust for the current Wilton Rancheria.

Sincerely,

Lisa Jimenez

Comment Letter 11

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DISTRICT 3 – SACRAMENTO AREA OFFICE
2379 GATEWAY OAKS DRIVE, STE 150 – MS 19
SACRAMENTO, CA 95833
PHONE (916) 274-0635
FAX (916) 263-1796
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Serious drought.
Help save water!

January 17, 2017

03-SAC-2016-00081
SCH #2013124001

John Rydzik
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

Final Environmental Impact Statement (FEIS) – Wilton Rancheria Fee-to-Trust Acquisition and Casino Project

Dear Mr. Rydzik:

Thank you for including the California Department of Transportation (Caltrans) in the application review process for the project referenced above. Caltrans' new mission, vision, and goals signal a modernization of our approach to California's transportation system. We review this tribal development for impacts to the State Highway System (SHS) in keeping with our mission, vision and goals for sustainability/livability/economy, and safety/health. We provide these comments consistent with the State's smart mobility goals that support a vibrant economy, and build communities, not sprawl. 11-1

The proposed action is the acquisition of approximately 36 acres of fee land in trust by the United States upon which the Wilton Rancheria would construct a casino project (Project). The proposed property is located within the City of Elk Grove in Sacramento County, immediately west of State Route (SR) 99, north of Kammerer Road, and east of Promenade Parkway.

We have appreciated Wilton Rancheria's coordination over the last few years of Project development. This has included several meetings and communications. Caltrans District 3 provides the following comments on the FEIS.

Proposed Mitigation for State Highway System Impacts

Before construction of the Project, we recommend that Wilton Rancheria and Caltrans enter into an intergovernmental agreement that provides for timely mitigation of all traffic impacts to the SHS and facilities that are directly attributed to the Project, and fair share payment towards measures that will address the Project's contribution towards cumulative traffic impacts to the SHS. If impacts are going to 11-2

be addressed through payment into the Interstate 5 (I-5) Freeway Subregional Corridor Mitigation Program (SCMP), then the agreement may be minimal, if needed at all.

Caltrans agrees with the recommended mitigation for impacts to SHS from the preferred Alternative F contained in the FEIS, which is for the Wilton Rancheria to contribute fair share funding toward future freeway improvement projects along SR 99. The fair share calculation, and payment, could be addressed through the I-5 SCMP. The SCMP is a voluntary program that project proponents can use to address projected future cumulative mainline freeway traffic impacts from new developments. Caltrans views payment into the I-5 SCMP as an acceptable mitigation measure. The use of funds collected by the I-5 SCMP is flexible and can be applied to ready to go projects, potentially providing more immediate benefits. The SCMP also includes nearby local projects to the proposed gaming facility, such as the Kammerer Road extension, the Elk Grove Intermodal Transit Station, and the Hi-Bus line to Cosumnes River College light rail station, all which would reduce regional vehicle miles traveled.

11-2 (cont.)

If this is the preferred mitigation implementation method, Wilton Rancheria could potentially 1) adopt the I-5 SCMP itself and contribute directly toward the transportation projects listed in the SCMP, 2) pay fair share to the City of Elk Grove once the City has adopted the I-5 SCMP, or 3) enter into an agreement with one of the I-5 SCMP partner agencies.

As an alternative to payment into the I-5 SCMP, Wilton Rancheria may also consider contributing directly to projects on the SR 99 corridor listed in the Sacramento Area Council of Governments Metropolitan Transportation Plan (MTP), such as the SR 99 bus/carpool lane and auxiliary lane projects. Given that the projects are not projected in the 2036 horizon of the funded portion MTP, contributing fair share to the I-5 SCMP may be a more feasible mechanism to mitigate impacts prior to construction of the Project and deliver projects with immediate benefits to the Project site vicinity.

Please provide our office with copies of any further actions regarding this project. We would appreciate the opportunity to review and comment on any changes related to this development.

If you have any questions regarding these comments or require additional information, please contact Alex Fong, Intergovernmental Review Coordinator at (916) 274-0566 or by email at: Alexander.Fong@dot.ca.gov.

Sincerely,

Eric Fredericks

ERIC FREDERICKS, Chief
Office of Transportation Planning – South Branch

c: Raymond C. Hitchcock, Tribal Chairman, Wilton Rancheria
State Clearinghouse

Comment Letter	Comment Number	Comment Issue Area	Response
Comment Letter 1: Angela Tsubera, Individual			
1	1-1	General	Comment noted.
	1-2	General	Problem and pathological gambling are addressed in Section 4.7 of the Final EIS.
	1-3	General	Non-NEPA issue.
	1-4	General	Non-NEPA issue.
Comment Letter 2: Carolyn Soares, Individual			
2	2-1	Tribal Designation	Non-NEPA issue.
	2-2	Community Review	See Response to Comment 7-6 regarding Elk Grove's role as a cooperating agency.
	2-3	Petition	Non-NEPA issue.
	2-4	Location	City of Elk Grove zoning codes would not apply once land is taken into trust. As analyzed in Section 4.13 of the FEIS, "[t]he nearest buildings off-site are located north of the site. The direction of the sunrise will vary from east to southeast throughout the year; the direction of the morning shadow from the hotel would vary from west to northwest, accordingly. In the late afternoon, the casino-resort facility may briefly cast a shadow over the east and northeast during certain times of the year. However, the shadow from the development would not result in adverse effects to nearby buildings since the casino and resort structures are not located near any easterly buildings." Residences, schools, and parks are located further away than the churches.
	2-5	Law Enforcement	Refer to Response to Comment A16-234 in Volume I of the FEIS. See also Section 4.7.6 of the FEIS, which states "[s]ocial impacts including… crime from Alternative F would be similar to those of Alternative A… [t]he 2016 MOUs between the Tribe and Sacramento County and the Tribe and the City of Elk Grove require the Tribe to make annual payments to each of these local governments to address social effects, especially regarding the potential for increased crime." Section 4.10.6 of the FEIS acknowledges that there may be a need for "additional facilities, equipment, and staffing to meet the increased need for services under Alternative F… However, payments to the State under the Tribal-State compact would offset any impacts to the CHP, and the 2016 MOU between the City of Elk

Comment Letter	Comment Number	Comment Issue Area	Response
			Grove and the Tribe requires a onetime payment for police equipment and annual payments for police and code enforcement services."
	2-6	Building Height and Setback	City of Elk Grove zoning would not apply once land is taken into trust; however, the design is consistent with the highway commercial character of the area, as discussed in Section 4.13 of the Final EIS.
	2-7	Building Size	City of Elk Grove zoning would not apply once land is taken into trust; however, the design is consistent with the highway commercial character of the area, as discussed in Section 4.13 of the Final EIS. Additionally, the Commenter is incorrect that the Mall site is 28 acre; it is approximately 36 acres.
	2-8	Parking	City of Elk Grove zoning would not apply once land is taken into trust, and the Commenter is incorrect in stating proposed parking for the site is 1,690 spaces. Proposed parking is 1,437 on-site surface spaces and 1,966 parking garage spaces, for a total of 3,403 parking spaces under Alternative F.
	2-9	Rural Designation	As stated in Section 3.9.3 of the FEIS, the current land use designation of the Mall site is Commercial. Additionally, local zoning codes or designations would not apply to trust land. Refer to Section 4.13.6 of the FEIS, which states "Alternative F would be consistent with the current commercial and retail character of the site, and would be visually compatible with City of Elk Grove land use designations for the property, adjacent commercial/retail development (Section 2.6), and the surrounding area. Exterior signage facing Highway 99 would be integrated into the parking structure design. Therefore, aesthetic impacts would be less than significant."
	2-10	Economic Development	Non-NEPA issue.
	2-11	Traffic	Mitigation Measure O applies to Alternatives D and E, not Alternative F.
Comment Letter 3: Larry F. Greene, Sacramento Metropolitan Air Quality Management District			
3	3-1	General	Comment noted.
	3-2	Air Quality	The Commenter, while acknowledging SMAQMD's lack of regulatory authority over Federal and/or tribal projects and that neither the Bureau of Indian Affairs nor the Tribe has an obligation to SMAQMD, suggests purchasing NO_x ERCs to account for construction emissions above state standards but below Federal standards. Comment noted.
Comment Letter 4: Eugene Palazzo, City of Galt			

Comment Letter	Comment Number	Comment Issue Area	Response
4	4-1	General	Information and analysis from the City of Galt was carefully considered at multiple stages of the preparation of the environmental analysis. See Response to Comment 4-2.
	4-2	General	Cooperating agency comment letters (including the letter submitted by the City of Galt) on the administrative draft FEIS were carefully considered, and revisions to the FEIS were made to address a number of them. It is incorrect to characterize the BIA as "fail[ing] to recognize cooperating agency comment letters."
	4-3	Executive Summary	See Response to Comments 4-6 through 4-11.
	4-4	Executive Summary	See Response to Comment 4-12.
	4-5	Executive Summary	See Response to Comment 4-16 through 4-131.
	4-6	Inclusion of Alternatives A, B, and C and Reliance on Mitigation Agreement	40 CFR 1502.14(a) states that an EIS should "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." At the time the alternatives were developed, all of the alternatives were considered feasible. It is correct that as the NEPA process progressed, there were changes in the relative merits of the alternatives analyzed in the EIS. In particular, during 2016, the Tribe concluded that Alternative A was less desirable in comparison with other alternatives. The Tribe's letter to the City of Galt dated June 9, 2016 documents this. In a letter from the Tribe to the BIA dated September 30, 2016, the Tribe explained the comments misconstrued by the City of Galt thusly: "...the Tribe was not making reference to any impossibility of development of Alternatives A, B, and C. Rather, the Tribe was attempting to point out the extraordinary challenge of Alternative A ever being as desirable a site for the Tribe's gaming project as Alternative F in light of the freeway improvements needed for Alternative A, the existing infrastructure on and around Alternative F, and in light of careful consideration all other above-noted factors." The letter goes on to state that "the Tribe still considers all three alternative sites listed within the ADFEIS to be feasible."

Comment Letter	Comment Number	Comment Issue Area	Response
			Response to Comment O8-05 in the FEIS discusses the feasibility of Alternative A, B, and C.
	4-7	Inclusion of Alternatives A, B, and C and Reliance on Mitigation Agreement	See Response to Comment 4-6 regarding why it was appropriate to include Alternatives A, B and C in the EIS. The City of Galt Letter of Intent and MOU, dated May 6, 2015 established a framework for the Tribe and the City of Galt to negotiate specific terms of certain mitigation measures. This document also described the terms whereby the Tribe would reimburse the City of Galt for various studies the City had undertaken to evaluate the analyses included in the EIS. Language in the EIS and Volume I of the FEIS (Response to Comments) has been updated to reflect the termination of the City of Galt Letter of Intent and MOU. In the September 30, 2016 letter from the Tribe to the BIA, the Tribe explains the termination of the MOU: "...the purpose of the Preliminary Galt MOU was to fund the City's project review of the Draft EIS after the Tribe filed a land into trust application with respect to Alternative A. The Tribe may only file a land into trust application for gaming purposes for one site at a time. After the Tribe replaced its Twin Cities site land into trust application with the new one for the Elk Grove site, there was no longer a negotiating process between the Tribe and the City of Galt to continue to fund; thus, the Preliminary Galt MOU was no longer necessary." However, the termination of this document does not result in substantive changes to the EIS or alter its conclusions. Consequently, a Supplemental EIS is not warranted. In fact, none of the thresholds to prepare a Supplemental EIS have been met in this case. Consistent with the BIA NEPA Guidebook (59 IAM 3-H 5.4 and 8.5.4), according to 40 CFR 1502.9(c), "Agencies shall prepare supplements to either draft or final environmental impact statements if (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." Neither of these situations apply to the Wilton FEIS. Additionally, the US Department of the Interior Manual (516 DM 4.5.A) goes on to say that "Supplements are

Comment Letter	Comment Number	Comment Issue Area	Response
			only required if such changes in the proposed action or alternatives, new circumstances, or resultant significant effects are not adequately analyzed in the previously prepared EIS." In this case, none of the criteria are met for the preparation of a Supplemental EIS.
	4-8	Standards of TEIR/TPED	See Appendix B to the FEIS, which includes the MOU among Sacramento County, the City of Elk Grove, and the Wilton Rancheria, which details the requirements of a TPED. The MOU describes the requirements of a TPED in 3.b.2.B, all of which are met by the FEIS. As stated in the FEIS, Volume 1 - Response to Comments within Response to Comment A16-01, "the Draft EIS serves as the TPED required under the MOU between the County of Sacramento/City of Elk Grove and the Tribe (Appendix B of the Draft EIS), as explained in Draft EIS Section 1.1. The MOU requires the TPED comply with NEPA, discuss potential physical environmental impacts to off-reservation land (as would be required in a TEIR), and include specific content such as a description of the proposed project, environmental setting, mitigation measures, cumulative analysis, et al. The Draft EIS meets the TPED/TEIR requirements set forth in tribal-State compacts and the 2011 MOU." Exact requirements of a TEIR, if required by a tribal-state compact as recent California Tribal-State compacts have, are unknown. See Section 1.7 and Section 2.2.4 of the FEIS. Additionally, within Response to Comment A16-01 in Volume I of the FEIS, the second to last paragraph details the sections in the EIS that were specifically included in anticipation of the Tribal-State compact. Please see Response to Comment 4-7 regarding the thresholds for preparing a Supplemental FEIS.
	4-9	Baseline	The existing environmental setting is the baseline or benchmark against which the alternatives are evaluated. See also FEIS Response to Comment A16-92, which addressed this issue. Although there may be exceptions where the environmental “baseline” under NEPA is defined as something other than existing conditions, existing conditions is the standard definition, which has been used in the EIS. No changes to the EIS are warranted. Additionally, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of

Comment Letter	Comment Number	Comment Issue Area	Response
			Alternative A, B, or C will occur.
	4-10	Baseline	Analysis of the No Action Alternative (Alternative G), along with the development alternatives (Alternatives A through F), occurs in Section 4.0 of the EIS. As of January 17, 2017, no application had been filed with the Sacramento Local Area Formation Commission (LAFCo) regarding the annexation of the Twin Cities site. Therefore, annexation of the area is not reasonably foreseeable. However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur. Refer to the FEIS, Volume I, Section 3.0, Response to Comment A16-02. See also Section 3.0 of Volume I of the FEIS, Response to Comment 4-131 regarding the lack of a formal meeting request.
	4-11	Response to Comments	See responses to specific City of Galt comments below.
	4-12	Project Description	The sign is described under the subheading "Casino and Hotel" in Section 2.2.5 of Volume II of the EIS and the towers associated with on-site treatment and disposal of wastewater (under Option 1) are described under the "Wastewater Treatment and Disposal subheading in the same section. Under the same section, additional details are available regarding the water and wastewater facilities. Under the "Grading and Drainage" subheading, information about fill can be found in the last sentence of the first paragraph. However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur.
	4-13	Local Plans and Policies	Please see Response to Comment A16-43 in the FEIS, which contains a summary of the solicitation of input from the City of Galt in its role as cooperating agency, as well as the subsequent changes to the EIS made as a result of that input. As described in Section 3.0 of Volume I of the FEIS, Response to Comment A16-43, in the City of Galt's March 10, 2016 comment letter on the public DEIS, Comment A16-43 contained a list of additional policies to add to the land use discussion (see Section 3.9 and 4.9 of Volume II of the FEIS). Some of these policies have been added to the EIS, while detail was included on why others were not added, as requested in Section 3.0 of Volume I of the FEIS, Response to Comment A16-

Comment Letter	Comment Number	Comment Issue Area	Response
			155. As required by 40 CFR 1502.16(c), "possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned" have been disclosed in the EIS. Additionally, the EIS complies with 40 CFR 1506.2(d), which reads: "To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned)." Additionally, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including conflicts with the City of Galt's local plans and/or policies.
	4-14	Mitigation	In response to the City of Galt's August 18, 2016 comment letter, text was deleted from FEIS Volume 1, Response to Comment A16-152 and A16-155, as well as references to working cooperatively with the City of Galt in FEIS, Volume II, Section 4.9. Note that working cooperatively with the City of Galt is not listed as specific mitigation. In addition, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, and no cooperative relationship with the City of Galt will be relied upon for any mitigation measure.
	4-15	General	See FEIS Response to Comments 4-16 through 4-131. See FEIS Response to Comment 4-7 regarding supplementation of the FEIS.
	4-16	General Response 2	See Response to Comment 4-6.
	4-17	General Response 3	See Response to Comment 4-6, 4-7, and 4-14.
	4-18	General Response 4	See Response to Comment 4-6 and 4-12.
	4-19	General	See Response to Comment 4-9 and 4-10. As stated in the General Response 5 in Volume 1

Comment Letter	Comment Number	Comment Issue Area	Response
		Response 6	of the FEIS, the conclusions were intended to be conservative. The Commenter is incorrect that the FEIS found a negative effect on property values as a result of Alternative A, for which the conclusion was a less than significant impact, nor Alternative B, for which the conclusion was a neutral impact. In response to the City of Galt's August 19, 2016 comment letter, text was added to the FEIS, Volume 1, General Response 5: "Except at the Historic Rancheria, where there may be a neutral to slightly negative effect." However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any effects to City of Galt property values.
	4-20	General Response 6	See Response to Comment 4-7. Response does not rely on the MOU between the City of Galt and Wilton Rancheria. Mitigation mentioned in this response requires entering into a separate agreement with law enforcement agencies.
	4-21	General Response 8	See Response to Comment 4-6, 4-7, and 4-8.
	4-22	A16-1	See Response to Comment 4-8. See also FEIS Response to Comment A16-1, which adequately summarizes and responds to all aspects of Comment A16-1.
	4-23	A16-2	See Response to Comment 4-6, 4-7, 4-9, and 4-10.
	4-24	A16-3	See Response to 4-6, 4-7, and 4-12. No additional development is proposed on the remainder of the Twin Cities site. Additionally, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any development at all on the Twin Cities site.
	4-25	A16-4	See Response to Comment 4-8. See FEIS Response to Comment A16-4, which adequately summarizes and responds to all aspects of Comment A16-4.
	4-26	A16-5	See Response to Comment 4-8 and FEIS Response to Comment A16-01(3) regarding the TEIR/TPED requirements.
	4-27	A16-6	See Response to Comment 4-8 and FEIS Response to Comment A16-01(3) regarding the TEIR/TPED requirements.
	4-28	A16-7	See Response to Comment 4-8 and FEIS Response to Comment A16-01(3) regarding the TEIR/TPED requirements.
	4-29	A16-8	See Response to Comment 4-6 through 4-14.

Comment Letter	Comment Number	Comment Issue Area	Response
	4-30	A16-9	See Response to Comments 4-8.
	4-31	A16-10	See Response to Comments 4-9 and 4-10.
	4-32	A16-11	See Response to City of Galt Comments 4-8.
	4-33	A16-12	See Response to Comments 4-6, 4-7, and 4-12. As stated in FEIS Response to Comment A16-12, these issues are addressed in Response to Comment A16-02 and A16-03.
	4-34	A16-13	In response to the City's August 18, 2016, FEIS Response to Comment A16-13 was revised to reference Response to Comment A16-01(2).
	4-35	A16-14	Response to Comment A16-14 regarding how to characterize the content of the MOU is accurate. Section 1.6 of the FEIS includes text regarding the termination of the MOU. See also Response to Comment 4-7.
	4-36	A16-15	See Response to City of Galt Comment 4-8. See FEIS Response to Comment A16-15, which adequately summarizes the comment and refers to A16-01(2), which provides a response to the Commenter's concern regarding the document meeting the requirements for a TEIR.
	4-37	A16-16	See FEIS Response to Comment A16-16. Note the following language was added in response to the City's August 18, 2016 comment letter: "The approval of water/wastewater connections is already listed in Table 1-1. Neither an off-site mitigation agreement with the City of Galt nor a law enforcement services agreement with the Galt Police Department is listed in Table 1-1 because the Tribe currently does not have a Compact with the State. When one is entered into, it is unlikely to include a requirement for an agreement with either the City of Galt or the Galt Police Department since Alternative F, the Elk Grove Mall Site, is now the Tribe's Preferred Alternative."
	4-38	A16-18	In response to the City's previous comment letters, Section 2.2.4 of the FEIS was revised to include the information in the original comment letter, and FEIS Response to Comment A16-18 was revised accordingly.
	4-39	A16-19	In response to the City's previous comment letters, Response to Comment A16-19 was revised to include specific reference to fill material.
	4-40	A16-23	See Response to Comment 4-8. Additionally, clarification confirming the sign's illumination was added to Section 2.2.5 of the FEIS in response to the City's comment letter. However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any from an illuminated sign at the Twin Cities site.

Comment Letter	Comment Number	Comment Issue Area	Response
	4-41	A16-24	See Response to Comment 4-12
	4-42	A16-25	See Response to Comment 4-12. FEIS Response to Comment A16-25 was revised in response to the City's comments to include a reference to FEIS Response to Comment A16-75, which addresses additional water use information and continued irrigated agriculture on the Twin Cities site. However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur.
	4-43	A16-26	In response to the City's August 18, 2016 letter, information was added to Section 2.2.5 of the FEIS regarding the water tank placement: "A storage tank would be located near the back (western edge) of the property. The tank would be shorter than the proposed casino and hotel." FEIS Response to Comment A16-26 was revised accordingly. However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any impacts from a new water storage tank.
	4-44	A16-27	See Response to Comment 4-8 and 4-12.
	4-45	A16-28	See Response to Comment 4-12. No additional development is proposed on the Twin Cities site, and FEIS Response to Comment A16-03 addresses why 282 acres instead of 76 acres are proposed for trust acquisition under Alternative A. However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any development on the Twin Cities site.
	4-46	A16-30	See Response to Comment 4-13.
	4-47	A16-31	See Responses Comments 4-37 through 4-46.
	4-48	A16-32	See Response to Comment 4-9 and 4-10.
	4-49	A16-36	See Response to Comment 4-13.
	4-50	A16-37	See Response to Comment 4-13.
	4-51	A16-38	See Response to Comment 4-13.
	4-52	A16-39	See Response to Comment 4-13.
	4-53	A16-43	See Response to Comment 4-13.
	4-54	A16-46	In response to the City's August 18, 2016 letter, the relevant sentence in Section 3.10.2

Comment Letter	Comment Number	Comment Issue Area	Response
			was modified to read: "New development is required to construct the sanitary sewer collection system components associated with their projects." FEIS Response to Comment A16-46 was revised accordingly.
	4-55	A16-47	In response to the City's August 18, 2016 letter, the relevant sentence in Section 3.10.3 was modified to read: "The term of the current franchise agreement is from July 1, 2007 to February 28, 2019." FEIS Response to Comment A16-47 was revised accordingly.
	4-56	A16-48	See Response to Comment 4-9, 4-10, and 4-13. Additionally, information regarding the closest SCSD substation to the Twin Cities site was added to Section 3.10.4 of the FEIS in response to the City's August 18, 2016 comment letter. FEIS Response to Comment A16-48 was modified accordingly with the addition of the following text: "As requested by the Commenter, information regarding the closest Sacramento County Sheriff's Department substation to the Twin Cities site was added to Section 3.10.4." Please see FEIS Response to Comment A16-48 in the FEIS regarding attempts to obtain information on call response times.
	4-57	A16-49	The City of Galt's parking goal ratio was added to Section 3.10.8 of the FEIS in response to the City's August 18, 2016 comment letter. FEIS Response to Comment A16-49 was revised accordingly to read: "The Commenter requests information be added in the EIS regarding City of Galt amenities. Some of this information has been added to Section 3.10.8. This addition does not alter the conclusions of the EIS."
	4-58	A16-51	In response to the City's August 18, 2016 letter, Policy CC-1.10 was added as requested. FEIS Response to Comment A16-51 was revised accordingly.
	4-59	A16-62	See Response to Comment 4-6, 4-7, 4-9, and 4-10.
	4-60	A16-53	See Response to Comment 4-9 and 4-10.
	4-61	A16-54	FEIS Response to Comment A16-54 was slightly revised in response to the City's August 18, 2016 comment letter. However, as stated in FEIS Response to Comment A16-54, "[g]rading has already occurred at the Twin Cities site historically, as it is agricultural land, and future grading would avoid any 100-year flood plain areas (as shown on Figures 1, 2, and 3 in Appendix J of the Draft EIS)." However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any impacts from grading.

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	4-62	A16-55	See Response to Comment 4-61.
	4-63	A16-56	See Response Comment 4-12 and 4-14. As cited in FEIS Response to Comment A16-56, FEIS Response to Comment A10-11 addresses this issue fully.
	4-64	A16-58	See Response Comment 4-12 and 4-14
	4-65	A16-59	See Response Comment 4-12 and 4-14
	4-66	A16-60	See Response Comment 4-12 and 4-14. FEIS Response to Comment A16-60 revised slightly to refer to revised Response to Comment A16-26.
	4-67	A16-61	See Response Comment 4-12 and 4-14. As stated in FEIS Response to Comment A16-61 and indicated in Section 5.3.1 of the FEIS, USEPA would provide federal regulatory oversight.
	4-68	A16-62	See Response to Comments 4-7 and 4-12.
	4-69	A16-63	See Response to Comments 4-7 and 4-12. FEIS Response to Comment A16-6 revised to include citation to Section 4.14.2 of the DEIS.
	4-70	A16-64	See Response to Comments 4-7 and 4-12
	4-71	A16-65	See Response to Comments 4-7 and 4-12
	4-72	A16-66	See Response to Comments 4-7 and 4-12
	4-73	A16-67	See Response to Comments 4-12 and 4-14.
	4-74	A16-68	See Response to Comments 4-12 and 4-14. In response to the City's August 18, 2016 letter, FEIS Response to Comment A16-68 was slightly revised for consistency and to correct a typo.
	4-75	A16-69	See Response to Comments 4-12 and 4-14. Projected water demand calculations are explained in Response to Comment A16-24, as cited in Response to Comment A16-69.
	4-76	A16-70	See Response to Comments 4-12 and 4-14. As referenced in FEIS Response to Comment A16-70, water for fire protection is discussed in FEIS Response to Comment A16-24.
	4-77	A16-71	See Response to Comments 4-12 and 4-14. In response to the City's August 18, 2016 comment letter, FEIS Response to Comment A16-71 was revised to add: "See response to Comment A16-75, which specifies how much of the remaining land will remain in irrigated agriculture. The remainder of the undeveloped southern portion of the site will be dry-farmed." However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the

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			implementation of Alternative A, B, or C will occur.
	4-78	A16-72	See Response to Comments 4-12 and 4-14.
	4-79	A16-73	See Response to Comments 4-12 and 4-14.
	4-80	A16-74	See Response to Comments 4-12 and 4-14.
	4-81	A16-75	See Response to Comments 4-12 and 4-14. This comparison is given in FEIS Response to Comment A16-75.
	4-82	A16-76	See Response to Comments 4-7 and 4-12.
	4-83	A16-84	See Response to Comments 4-9 and 4-10.
	4-84	A16-86	See Response to Comment 4-7.
	4-85	A16-87	As stated in FEIS Response to Comment A16-87, the relevant sentence was modified to reference mitigation. This mitigation does not rely on the City of Galt MOU with Wilton Rancheria. See Response to City of Galt Comment 5 for more information regarding the terminated MOU. However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any increased public service costs to the City of Galt.
	4-86	A16-89	See Response to Comment 4-9 and 4-10. FEIS Response to Comment A16-02 explains why this analysis is not included in the EIS.
	4-87	A16-90	See Response to Comment 4-9 and 4-10.
	4-88	A16-91	See Response to Comment 4-9 and 4-10.
	4-89	A16-92	The analysis does comply with CEQ regulations. See Response to Comments 4-9 and 4-10 regarding the claim that an incorrect No Action Alternative has been used in the EIS.
	4-90	A16-94	See Response to Comment 4-7, 4-9, and 4-10. As explained therein, at this time the annexation of the Twin Cities site is not reasonably foreseeable and remains speculative.
	4-91	A16-95	See Response to Comment 4-7, 4-9, and 4-10.
	4-92	A16-96	See Response to Comment 4-7, 4-9, and 4-10.
	4-93	A116-97	See Response to Comment 4-7, 4-9, and 4-10.
	4-94	A16-99	See Response to Comment 4-7. In response to the City's August 18, 2016 letter, some clarifying edits and additions were made to FEIS Response to Comment A16-99.
	4-95	A16-100	See Response to Comment 4-7.

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	4-96	A16-101	See Response to Comment 4-7.
	4-97	A16-102	See Response to Comment 4-7.
	4-98	A16-104	See Response to Comment 4-12.
	4-99	A16-113	See Response to Comment 4-13 and 4-14. In response to the City's August 18, 2016 comment letter, FEIS Response to Comment A16-113 was modified based on changes made in Section 4.9 of the EIS, as well as to refer to the MOU with the County of Sacramento.
	4-100	A16-114	See Response to Comment 4-13 and 4-14.
	4-101	A16-115	See Response to Comment 4-13.
	4-102	A16-116	See Response to Comment 4-13.
	4-103	A16-117	See Response to Comment 4-13.
	4-104	A16-118	See Response to Comment 4-13.
	4-105	A16-124	In response to the City's August 18, 2016 comment letter, the second and third sentences of FEIS Response to Comment A16-124 were revised to read: "Section 4.7.1 of the Draft EIS accurately states "it is not anticipated that patrons would frequent local libraries or parks," and the Housing subsection states that "it is not anticipated that many employees of the project would require relocation in order to accept a position." Therefore, there would be little impact on other recreational amenities and public services in the City of Galt not explicitly discussed in the Section 4.10 of the Draft EIS." However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any effects to local libraries, parks, or other public services provided by the City of Galt.
	4-106	A16-125	See Response to Comment 4-7 and 4-12.
	4-107	A16-126	See Response to Comment 4-7 and 4-12.
	4-108	A16-127	See Response to Comment 4-7.
	4-109	A16-129	See Response to Comment 4-13. The applicable noise standard is the County of Sacramento's.
	4-110	A16-130	See Response to Comment 4-13. City noise standards are not applicable as the Twin Cities site is not within the incorporated boundaries of the City of Galt. However, no alternatives

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			on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any noise impacts within the City of Galt or to City of Galt residents
	4-111	A16-131	See Response to Comment 4-13. As stated in FEIS Response to Comment A16-131 and Section 4.13.1 of the EIS, the proposed facility would not be visually inconsistent with the surrounding urban development. Additionally, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any aesthetic impacts on the Twin Cities site.
	4-112	A16-132	See Response to City of Comment 4-13 and 4-111.
	4-113	A16-133	As stated in Response to Comment A16-133, "'Section 4.13.1 of the Draft EIS accurately states "the commercial nature of the casino resort proposed under Alternative A is not inconsistent with long-range plans for the Twin Cities site." As asserted by the City of Galt, this location is slated for future commercial/industrial development. The potential impact of the hotel is discussed in this Section 4.13.1 of the Draft EIS." See also Response to Comment 4-13. Additionally, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur.
	4-114	A16-134	See Response to Comment 4-13.
	4-115	A16-135	See Response to Comments 4-12, 4-13, and 4-40.
	4-116	A16-136	See Response to Comments 4-12 and 4-13.
	4-117	A16-137	See Response to Comment 4-13.
	4-118	A16-138	See Response to Comment 4-13. Additionally, in response to the City of Galt's August 18, 2016 comment letter, text was added to FEIS Response to Comment A16-138: "This much smaller proposed development is not unlike other roadside development along Hwy 99, and is therefore not considered to be a significant visual impact. This is evaluated in detail, and architectural renditions are provided, in Section 4.13." However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts that would have resulted from the implementation of Alternative A, B, or C will occur, including any aesthetic impacts within the City of Galt or to City of Galt residents.
	4-119	A16-139	See Response to Comment 4-13.

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	4-120	A16-140	See Response to Comments 4-12 and 4-13. Additionally, in response to the City of Galt's August 18, 2016 comment letter, text was added to FEIS Response to Comment A16-140: "Given that the site has been identified by the City of Galt for eventual commercial development, is located between a freeway and a major rail line, and is surrounded by land uses including a WWTP and shooting range, the aesthetic impact of Alternatives A, B, and C are correctly determined to be less than significant." However, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts, including any aesthetic impacts, that would have resulted from the implementation of Alternative A, B, or C will occur.
	4-121	A16-142	As explained in the Section 3.0 of Volume I of the FEIS, Response to Comment A16-142, the existing configuration of Highway 99/Mingo Road is adequate for current traffic. The new interchange will increase capacity, but not result in greatly increased access. As stated in the comment response, "Growth inducement can occur mostly when new or greatly increased access to an area is created, not when adequate existing access is improved (FHWA, 2012). The FHWA states that 'other factors' such as an increase in public services and development costs are greater factors in growth (FHWA, 2012)."
	4-122	A16-143	See Response to Comment 4-12. Additionally, in response to the City's August 18, 2016 comment letter, FEIS Response to Comment A16-143 was revised as follows: "The Commenter suggests the EIS does not reflect the actual full build-out of Alternative A at the Twin Cities site in the cumulative effects discussion. Refer to FEIS Response to Comments A16-19. As no development other than that described for the 76 acres is proposed, development of the remainder of the site should not be analyzed as requested by the Commenter." Additionally, no alternatives on the Twin Cities site are approved by this ROD; therefore, none of the environmental impacts, including any cumulative impacts, that would have resulted from the implementation of Alternative A, B, or C will occur.
	4-123	A16-145	See Response to Comment 4-13 and 4-14. FEIS Response to Comment A16-145 is accurate in stating that development will be generally, if not specifically, consistent.
	4-124	A16-147	See Response to Comment 4-13.
	4-125	A16-151	See Response to Comment 4-12.
	4-126	A16-152	See Response to Comment 4-14. The Commenter is correct to cite these regulations, and Response to Comment A16-152 also does.

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	4-127	A16-153	See Response to Comment 4-14.
	4-128	A16-154	See Response to Comment 4-14.
	4-129	A16-155 – A16-214	In response to the City's August 18, 2016 letter, FEIS Response to Comment A16-155 was revised and the second-to-last sentence in the response was deleted. See also Response to Comment 4-7, 4-8, 4-13, and 4-14.
	4-130	A16-231	See Response to Comment 4-12.
	4-131	A16-243	The FEIS accurately characterizes the situation. In response to the City's August 18, 2016 letter, text was revised: "As of August 2016, the BIA has not received a request from the City of Galt for a staff meeting." As of January 17, 2017, the BIA has still received no such request.
Comment Letter 5: Paul Lindsay, Elk Grove GRASP			
5	5-1	General	Alternative F, the Mall site, has been a part of the environmental analysis since February 2014, when it was included as Alternative F in the scoping report. The Mall Site was also included in the December 2015 Draft EIS and specifically identified in the public notice of availability for the Draft EIS, which was published online and in the Federal Register, the Sacramento Bee, the Galt Herald, and the Elk Grove Citizen. On February 19, 2016, BIA held a public hearing on the Draft EIS in the City of Galt at the Chabolla Community Center, which is located approximately ten miles away from the Mall site in Elk Grove. For reasons discussed in the Final EIS and this Record of Decision, Alternative F was selected as the Preferred Alternative. A revised fee-to-trust application was in fact submitted on June 30, 2016. The notice of availability of the Final EIS was also published online and in the Federal Register, the Sacramento Bee, the Galt Herald, and the Elk Grove Citizen. The NEPA-required DEIS hearing was located within a short drive of all three alternative sites selected for detailed analysis in the EIS. Notices of the Draft EIS, Draft EIS hearing, and Final EIS were placed in several local newspapers, including the local Elk Grove newspaper. These efforts to inform the general public in the area of the three alternative sites met and exceeded the requirements of NEPA. Furthermore, NEPA does not mandate the selection by the lead agency of the proposed action. To the contrary it encourages the consideration of alternatives to the proposed action early enough in the process so that those alternatives may serve to be more than just paper alternatives but represent actual alternatives to the originally proposed action.

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	5-2	Suburban Propane Storage Tanks	The Commenter appears to be quoting the cumulative aesthetics section of the FEIS, which does not go into detail about any of the developments east of the Mall site. The Suburban Propane tanks are discussed in Section 3.12.3 of the FEIS.
	5-3	Suburban Propane Storage Tanks	Refer to Response to Comment 7-22.
	5-4	Cumulative Impacts	Refer to Section 4.15 of the FEIS, which analyzes cumulative impacts. All cumulative impacts analyzed are regarding the projects as described in Section 2.0. Indeed, the 24-hour nature of the facility is noted in Section 2.2.5, which mentions that the gaming floor "would be open 24 hours a day." Refer to Response to Comment 5-2 regarding the Suburban Propane tanks.
	5-5	General Plan Update	Traffic studies and air quality modelling relevant to the alternatives proposed in the EIS are included as appendices to the Final EIS; specifically, Appendix O, Traffic Impact Study, and Appendix S, Air Quality Modeling Output Files and Calculation Tables, were both updated/revised before publication of the FEIS. A safety study was not warranted during preparation of the EIS. The FEIS uses the current available version of the Elk Grove General Plan to evaluate impacts. No General Plan update has been published or made available.
	5-6	General	The cumulative project list was developed in consultation with the City of Elk Grove, and housing projects, and other approved projects, are discussed in Section 4.15 of the FEIS, Cumulative Impacts, and Table 4.15-2, Cumulative Development in the City of Elk Grove and Southern Sacramento County. Elk Grove Regional Park is mentioned in Section 3.10.8 of the FEIS. Section 3.4.2 of the FEIS mentions that "[t]he nearest schools to the Mall site are the Florence Markofer Elementary School and Elk Grove High School, located approximately 1.2 miles north of the Mall site." Impacts to the Elizabeth Pinkerton Middle School (1.6 miles northwest), Cosumnes River College Elk Grove Center (1.6 miles northwest), and Cosumnes Oaks High School (1.8 miles northwest), would be lesser than those analyzed for the closer schools.
	5-7	General Plan Update	The General Plan information in the EIS is up to date, as the General Plan update has not been complete. Therefore, it is inaccurate for the Commenter to claim the descriptions in the FEIS are "outdated and not accurate."
Comment Letter 6: Nicholas Fonseca, Shingle Springs Band of Miwok Indians			

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6	6-1	Historical Rancheria	No environmental concerns presented. Refer to FEIS Response to Comment A14-01.
	6-2	Transportation	Refer to FEIS Responses to Comment A14-02 and A14-03.
Comment Letter 7: Cheryl Schmit, Stand Up for California!			
7	7-1	General	See responses to specific comments below. See Response to Comment 5-1.
	7-2	Development Agreements	On October 12, 2016, the Elk Grove City Council adopted an ordinance and a resolution amending the development agreement so that it no longer includes the land that comprises the Elk Grove Mall site as described in the FEIS. As such, the land is no longer encumbered by the existing development agreement. The Elk Grove Planning Commission reviewed the action for CEQA compliance and determined that it is CEQA exempt under CEQA Guidelines Section 15162, as the environmental impacts of the development were addressed in the previously certified Lent Ranch Marketplace EIR and none of the thresholds for preparing a Subsequent EIR have been met.
	7-3	Supplemental EIS	See Response to Comment 5-1. NEPA regulations do not require preparation of a Supplemental EIS as none of the thresholds to prepare a Supplemental EIS are met in this case. Consistent with the BIA NEPA Guidebook (59 IAM 3-H 5.4 and 8.5.4), according to 40 CFR 1502.9(c), "Agencies shall prepare supplements to either draft or final environmental impact statements if (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." Neither of these situations apply to the Wilton EIS. Additionally, the US Department of the Interior Manual (516 DM 4.5.A) goes on to state that "Supplements are only required if such changes in the proposed action or alternatives, new circumstances, or resultant significant effects are not adequately analyzed in the previously prepared EIS." None of these criteria are met for the preparation of a supplemental EIS. The Commenter notes that a fee-to-trust application for the Mall site was not submitted until several months after the publication of the DEIS. It is true that the Tribe submitted a

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			new application on June 30, 2016. However, Alternative F (located on the Mall site) was identified as a possible alternative in the Scoping Report, which has been available to the public on the project website www.wiltoneis.com, since February 2014. In addition, the environmental impacts of Alternative F, located on the Elk Grove Mall site, are already analyzed within the Draft EIS at the same level of detail as Alternative A, the former proposed project. Additionally, contrary to the Commenter's statement, the Draft EIS did not identify a Preferred Alternative, only a Proposed Action along with development alternatives and a no action alternative. A Preferred Alternative was identified for the first time in the Final EIS in accordance with applicable regulations. 40 CFR 1502.14(e). Alternatives considered in an EIS are chosen for reasonableness, and thus Alternative F's inclusion means that the potential for its implementation could be reasonably anticipated.
	7-4	Supplemental EIS	The Commenter contends that BIA must prepare a Supplemental EIS because it has modified the acreage of and some features of Alternative F (the Mall site) in the Final EIS. The December 2015 Draft EIS described Alternative F as being 28 acres in size and having only surface parking. This was based on the Tribe's understanding that the owner of the 28 acres and the adjacent partially-built mall property would allow the casino resort to share parking with the adjacent mall portion of the property. However, during discussions with the owner of the 28-acre property after the Draft EIS was issued, the Tribe learned that it would have to provide all of its own parking. To address this need, the Tribe proposed (1) to purchase from the owner an additional approximately eight acres of land to allow for more surface parking for the casino resort, and (2) to build on the original 28-acre parcel a parking structure that will have a total of 1,966 parking spaces. In the Final EIS, BIA concluded that the additional surface parking and the parking structure were not expected to affect the number of customers who will visit the proposed casino resort. In addition, based on additional biological and cultural studies and the Phase I Environmental Site Assessment that are in set out, respectively, in Supplemental

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			Appendices H, M, and Q of the Final EIS, the additional approximately eight acres of the Mall site are currently mostly paved with a few areas left with open soil to be used for the eventual landscaping of the property and do not create any significant changes in the environmental impacts associated with the construction and operation of the casino resort at the Elk Grove Mall site. The Commenter states the change in the size of Alternative F from 28 to approximately 36 acres and the addition of a parking garage are substantial changes in the proposed action that are relevant to environmental concerns because they go directly to the extent and intensity of development proposed. Commenter includes no analysis of such "environmental concern" other than to posit that a 29% increase in land area affected and substantial new project components clearly introduce significant new circumstances or information relevant to environmental concerns, which the Draft EIS entirely failed to address. Commenter relies on *Natural Resources Defense Council v. U.S. Forest Serv*., 421 F.3d 797, 811 (9th Cir. 2005), whose holding is summarized as follows: "Where the information in the initial EIS was so incomplete or misleading that the decision maker and the public could not make an informed comparison of the alternatives, revision of the EIS may be necessary to provide a reasonable, good faith, and objective presentation of the subjects required by NEPA.' (quoting *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir.1988))). A supplemental EIS is therefore required under 40 C.F.R. § 1502.9(c)." However, Commenter's use of this quotation from *Animal Def. Council v. Hodel* is inapt since in that case the Ninth Circuit held that appellee Secretary of the Interior Hodel and the U.S. Bureau of Reclamation's decision not to supplement its Final EIS was "reasonable because the Bureau carefully considered the new information [that came up after its FEIS was issued], considered its impact and supported its decision not to supplement the EIS with a statement of explanation." *Animal Def. Council v. Hodel,* 840 F.2d at 1439-40.

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The Commenter further contends that the history of the review process and public opposition underscore the need for a Supplemental EIS and the regulations implementing NEPA require a Supplemental EIS where the public has not had adequate opportunity to comment on a proposed action at the draft stage of the environmental review process. For this contention, Commenter relies on *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). The problem with citing to the *Half Moon Bay* decision is that there the Ninth Circuit held that the U.S. Army Corps of Engineers' choice of a second ocean disposal site for dredged materials was "clearly within the range of alternatives the public could have anticipated the Army Corps of Engineers to be considering." *Id.,* 857 F.2d at 509. Then Commenter cites two decisions for the proposition that the Ninth Circuit has struck down federal agency action when the agency has failed to provide notice of the action in question. However, neither of the decisions, *Buschmann v. Schweiker*, 676 F.2d 352 (9th Cir. 1982) and *Western Oil & Gas Association v. U.S. Environmental Protection Agency*, 633 F.2d 803 (9th Cir. 1980), is even a NEPA case. Thus, Commenter's reliance on them is misguided.

The U.S. Supreme Court has made it clear that an "agency need not supplement an EIS every time new information comes to light after [an] EIS is finalized." *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373 (1989). "To require otherwise would render agency decision-making intractable...." Id. Instead, as set out in the CEQ regulations, a supplemental EIS is required only when (a) an "agency makes substantial changes in the proposed action that are relevant to environmental concerns" or (b) there are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c). Consistent with this language, "[s]upplementation has been required when there are substantial modifications that went to the heart of the proposed action and posed new and previously unconsidered environmental questions." *Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1049 (9th Cir. 2011) (citations and internal quotations omitted).

The Commenter has not shown that adding approximately 8 acres to the size of the Mall

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			Site and adding a parking structure to accommodate cars that were no longer able to share parking with the adjacent mall meets the test for supplementation set out by the Ninth Circuit in *Russell County Sportsmen* that the modifications must "go to the heart of the proposed action and pose[ ] new and previously unconsidered environmental questions." Moreover, the facts of the situation are that BIA took adequate steps to ensure that the public knew that the Mall site (Alternative F) was a viable alternative that the agency meant to consider as part of the NEPA process. BIA's dissemination of information about the Mall site as an alternative began with its February 2014 Scoping Report that was made available on its web site, www.wiltoneis.com, and continued with its publication of Notices of Availability of the Draft EIS that mention the Mall site as an alternative in the *Federal Register* on December 29, 2015, *The Sacramento Bee* on December 28 and 30, 2015, the *Galt Herald* December 29, 2015 and the *Elk Grove Citizen* on December 30, 2015. *See* Final EIS, Appendix W (Public Notices and Media). The *Sacramento Bee* and the *Elk Grove Citizen* are newspapers that are readily accessible to citizens of Elk Grove. The Commenter states that the residents of Elk Grove did not have notice of a proposed trust acquisition in Elk Grove until June of 2016, at the earliest. This contention is not supported by the publication as described above of Notices of Availability on the Draft EIS in *The Sacramento Bee* and in the *Elk Grove Citizen* in late December, 2015. In addition, residents of Elk Grove could have been expected to read two articles in the major regional paper, *The Sacramento Bee* that were published during the comment period on the Draft EIS in late January 2016 and mid-February 2016. The first article was entitled "Half-built mall could provide outlet shopping next to large casino resort" and included the following text: ▪ "Tribe's chairman: Elk Grove location might make more sense given existing zoning;" ▪ "The Elk Grove mall site only recently arose as one of the tribe's main options after its owner, the Howard Hughes Corp., was willing to negotiate on price, Hitchcock

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			said." ▪ "With its commercial zoning and existing infrastructure, including roads and utilities, the mall site is an attractive option compared to the undeveloped farmland near Galt, the tribal chairman said. "It's a very viable alternative, for sure," Hitchcock said. Elk Grove Mayor Gary Davis wrote in a note to *The Sacramento Bee* that the plan deserves a public airing." Approximately two weeks later and still during the public comment period on the Draft EIS, on February 16, 2016, *The Sacramento Bee* published a second story entitled "Casino proposed for southern Sacramento County prompts hopes, concerns." This article included the following text: ▪ "The Galt site remains 'Alternative A' in the tribe's application for land to the federal Bureau of Indian Affairs, said Wilton Rancheria Chairman Raymond 'Chuckie' Hitchcock." ▪ " 'But the Elk Grove alternative is an A-minus or maybe even an A-plus,' he said."
	7-5	Supplemental EIS	See Responses to Comments 7-3 and 7-4. All regulations regarding public notice have been followed throughout the EIS process. The City of Elk Grove was provided notice of the publication of the Notice of Intent to prepare an EIS via a mailed copy addressed to Laura S. Gill, City Manager. Additionally, the Notice of Availability of the Draft EIS, published in the Federal Register on December 29, 2015, specifically references Alternative F. Furthermore, residents of Elk Grove did attend the hearing and submit public comments on the Elk Grove alternative during the public comment period following the publication of the DEIS. Please refer to Section 2.0 of Volume I of the Final EIS. The public, including residents of Elk Grove, has also commented during the 30-day waiting period after the publication of the FEIS. There has been ample opportunity for public comment on Alternative F.
	7-6	Supplemental	The Commenter notes that that the Draft EIS did not include the City of Elk Grove as a

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		EIS	cooperating agency before May 2016 and contends that "[a]ny municipality that is expected to be directly affected by a proposed action . . . is typically extended an invitation to participate as a cooperating agency by the BIA, as required by its own NEPA guidance." However, CEQ NEPA regulations at 40 CFR 1501.6 state only that "[u]pon request of the lead agency, any other *federal* agency that has jurisdiction by law shall become a cooperating agency." (Emphasis added.) The City of Elk Grove is not a federal agency. Moreover, the CEQ NEPA regulations at 40 CFR 1508.5 (definition of "cooperating agency") provide that a "cooperating agency" can be "any *federal* agency other than the lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment." (emphasis added). Again, the City of Elk Grove is not a federal agency. However, the CEQ definition of "cooperating agency" goes on to state that "[a] State or local agency of similar qualifications . . . *may by agreement* with the lead agency become a cooperating agency." (emphasis added.). That is exactly what happened in May 2016, when by agreement with the BIA the City of Elk Grove became a cooperating agency. Nevertheless, on February 18, 2016, over three months before it became a cooperating agency, the City provided 21 pages of very specific comments on the Draft EIS. These comments included comments from the City Manager, the planner who is the Assistant to the City Manager, the Chief of Police, the City Traffic Engineer, the City Development Services Director, the City Transit Manager, and the City Integrated Waste Manager, as well as specific comments on the section of the Draft EIS that discussed City guidance documents and zoning ordinance. Thus, it does not appear that the City of Elk Grove's participation in the comment process for the Draft EIS was hindered by its not being a cooperating agency at that time.
	7-7	Supplemental EIS	The Commenter contends that federal regulations required BIA to hold a public meeting in the City of Elk Grove. There is no specific federal regulation that requires this of BIA. However, on February 19, 2016, BIA held a formal public hearing in the City of Galt at the Chabolla Community Center, which is located approximately ten miles away from the Mall site in Elk Grove. Moreover, as the Commenter notes, the Tribe held a community

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			meeting in the City of Elk Grove a few months later in June 2016.
	7-8	Supplemental EIS	All alternatives are equally analyzed in the EIS. Reasons for elimination of other potential alternatives on the Elk Grove Mall site are presented in Section 2.9 of Volume II of the FEIS. Also, NEPA does not require that the types of development alternatives analyzed be the same for each alternative location. In regards to the socioeconomic impact of a reduced-intensity alternative at the Elk Grove Mall site, socioeconomic impacts must result in physical effects to be considered significant under NEPA. As stated in Section 2.9.6 of the FEIS, in regards to a retail alternative on the Elk Grove Mall site, "because of the market saturation, it is unlikely that this alternative would generate the necessary revenue to fulfill the purpose and need." Competition with other non-gaming establishments was not the sole reason for the elimination of this potential alternative.
	7-9	Supplemental EIS	As specifically stated in *Half Moon Bay* (as referenced by the Commenter), an agency need not circulate a supplemental draft EIS if "the alternative finally selected by [the agency] was within the range of alternatives the public could have reasonably anticipated [the agency] to be considering," and if "the public's comments on the draft EIS alternatives also apply to the chosen alternative and inform [the agency] meaningfully of the public's attitudes toward the chosen alternative." Refer also to Response to Comment 7-3 regarding the reasonableness of alternatives chosen for evaluation in an EIS, which states, "Alternatives considered in an EIS are chosen for reasonableness, and thus Alternative F's inclusion means that its implementation could be fairly anticipated." Public comments on the Draft EIS included those from residents of Elk Grove and those regarding Alternative F. As such, Alternative F was clearly reasonably anticipated, and the BIA has been informed of public attitudes toward Alternative F. See also Responses to Comments 7-4, 7-5, and 7-6.
	7-10	Supplemental EIS	See Responses to Comments 7-3 and 7-5 – 7-9. The BIA sent notice of the Draft and Final EIS to the State Clearinghouse, published it in local newspapers (*Sacramento Bee, Elk Grove Citizen,* and *Galt Herald*), sent out notices to interested parties, and held a public hearing on the Draft EIS. Notices were sent to citizens of Elk Grove, and the *Elk Grove*

Comment Letter	Comment Number	Comment Issue Area	Response
			Citizen is a newspaper that circulates in Elk Grove. Citizens of Elk Grove were in fact involved through their elected officials, as comments were provided on the Draft EIS by the City of Elk Grove.
	7-11	Mitigation	Please see FEIS Response to Comment A16-152 in Section 3.0 of Volume I of the FEIS regarding enforceability of mitigation measures. Additionally, the 2016 MOU between the City of Elk Grove and the Tribe has now been signed and the recent 2016 MOUs between the Tribe and Sacramento and the City of Elk Grove, respectively, provide an enforcement mechanism. The agreements include mitigation from the EIS, as well as mitigation above and beyond that required by the EIS to mitigate impacts of the project. Additionally, a Mitigation Monitoring and Enforcement Plan (MMEP) is included as Attachment 1 of the ROD. Section 6 of the MOU states that "the City agrees that the foregoing measures in Sections 1 through 5 will fully address and mitigate any and all direct impacts of the [project] to the City and City services." Therefore, the Commenter is incorrect that the MOU cannot adequately mitigate impacts, as the City of Elk Grove is the final authority and expert on impacts to itself. See also Response to Comment 19, regarding Supplemental Appendix H, which contains information regarding economic impacts to the City of Elk Grove. The 2016 MOU between the Tribe and the City of Elk Grove is not subject to CEQA, as explained in the Recitals of the MOU: "pursuant to the California Environmental Quality Act, California Public Resources Code sections 21000 et seq., ("CEQA") Guidelines section 15378(b), entry into this MOU does not constitute the approval of a "project" for CEQA purposes because it involves the creation of a government funding mechanism and/or other government fiscal activity.
	7-12	Mitigation	See Response to Comment 7-11.
	7-13	Mitigation	25 CFR Part 573 concerns NIGC compliance and enforcement, and 25 CFR Part 575 concerns NIGC fines, which is one kind of enforcement mechanism. See Response to Comment 7-11 regarding enforceability of mitigation generally.
	7-14	Mitigation	See Response to Comment 7-11. NEPA is a procedural statute, and is premised upon the implementation of project design and mitigation measures.

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	7-15	Transportation	The Commenter is referring to ITE's trip generation rate for "Casino/Video Lottery Establishments," while the Traffic Impact Study was referring to the "Casino/Hotel" rate. The Commenter has incorrectly reported the Casino/VLE rate as 13.43 trips per 1,000 sf gaming floor area, when it is actually 13.43 trips per 1,000 sf gross floor area. Thus, the rate of 9.84 trips per 1,000 sf gaming floor area is not directly comparably with the ITE rate. In the entry for Casino/VLEs, the ITE manual states "trip generation rates for full-service casinos and casino/hotel facilities have been omitted from this land use," which is why the Casino/VLE rate was not used (as the project under consideration is in fact a casino/hotel). Reasons for not using the ITE casino/hotel rate have been summarized by the Commenter and are stated in Appendix O of the EIS; this rationale stands. The Commenter tries to compare the ratio of weekend PM (peak hour) visitor rate to the weekend visitor daily rate and use the ratio of the two rates to conclude that the weekday PM rate is too low. However, this analysis is faulty because the total daily visitor rate is not directly related to weekday PM peak hour trip generation, as patrons arrive and leave throughout the day.
	7-16	Transportation	The Commenter is incorrect regarding the Tribe's rationale for changing its proposed action. Refer to the September 30, 2016 letter from the Wilton Rancheria to the BIA regarding the favorability of Alternative F over Alternative A, which was based on “the freeway improvements needed for Alternative A [and] the existing infrastructure on and around Alternative F,” both of which are disclosed in the Draft and Final EISs. This is not new information that needs to be analyzed in a supplemental EIS.
	7-17	Transportation	As stated in Section 2.7.2 of Volume I of the Final EIS, "a three-level parking garage would be included" under Alternative F, which, as shown in Table 2-4 of Volume I of the Final EIS, would include 1,966 spaces. As such, Alternative F would not make use of parking belonging to other establishments that may be developed as part of the adjacent mall. See also Response to Comment 2-8 regarding parking spaces.
	7-18	Public Services	In response to Stand Up for California!’s September 2016 letter, Section 4.10.6 of the EIS was revised to read: "Mitigation is provided in Section 5.10.1." This measure will ensure that the Tribe pays for the cost of extending potable water service as well as monthly service fees, which, in the absence of mitigation, would create a significant impact on the

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			Sacramento County Water Agency. Water distribution facilities already serve the Mall site; see the Water Supply subheading in Section 2.7.2 of Volume II of the FEIS, which reads "[w]ater supply demands for Alternative F would be supplied through connections to Sacramento County Water Agency (SCWA) infrastructure partially developed on the Mall site." Refer to Appendix I of Volume II of the FEIS for more information regarding preexisting infrastructure on the site.
	7-19	Public Service	The water consumption analysis does not need to be revised. There would be no new capacity required from adding 8 acres to the site, as the project components are the same. Refer to Figure 2-8 of the FEIS, which shows that the additional acreage would be used mostly for parking.
	7-20	Cumulative Effects	The City of Elk Grove, in its comment letter on the public Draft EIS, advised the BIA on cumulative projects (see Comment A8-30 in Volume I of the FEIS), which were added to Table 4.15-2 in Section 4.15 of Volume II of the FEIS. No further suggestions were included in its cooperating agency letter on the administrative Final EIS. However, the projects suggested by the Commenter have already been added to Table 4.15-2, in response to their September 2016 letter, with the exception of the "Kammerer Road Project," which is already listed under the Transportation Projects subheading of Section 4.15.2 in Volume II of the EIS. As stated therein, "[t]he cumulative impact analysis within this EIS and associated technical studies... considered the construction of the list of potential cumulative actions and projects in the vicinity and additional growth in accordance with the County, City, and Elk Grove General Plans." Therefore, even though not originally enumerated within Table 4.15-2, these projects were considered and adding them into the table would not change the conclusions of the EIS.
	7-21	Cumulative Effects	Traffic impacts have not been underestimated; refer to Response to Comment 7-15. See also Section 4.2 of Appendix O of the DEIS, which includes information about consultation with local jurisdictions to develop traffic models, which specifically mentions that "[a] modified version of SACOG's 2035 MTP/SCS travel demand forecasting model was used to develop traffic projections for study facilities outside of the City of Galt's sphere of influence. Per direction from the City of Elk Grove, a refined version of the SACOG model

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			recently developed as part of the City of Elk Grove's Southeast Policy Area Strategic Plan traffic analysis was used for this analysis. The SACOG model reflects build out of the regional transportation network and land use plan developed in the SACOG 2035 MTP/SCS, as well as build out development levels within the City of Elk Grove, which includes build out of the Laguna Ridge Specific Plan, Sterling Meadows, the Elk Grove Promenade, and Lent Ranch Marketplace development." Please refer to Section 4.15.8 of the FEIS regarding cumulative water and other impacts under Alternative F. Because other development within the City of Elk Grove is subject to City and County regulations, there would be no change to the significance levels of cumulative impacts.
	7-22	Suburban Propane Storage Facility	Text was added to Section 3.12.3 of Volume II of the Final EIS regarding the Suburban Propane and Georgia-Pacific facilities in response to the Commenter's September 2016 letter. Note, however, that the April 2, 2016 letter mentioned by the Commenter was not provided or available for review. In 2004, the California Third District Court of Appeal ruled on the issue of whether criminal sabotage was appropriately addressed and stated that: "[t]he possibility of criminal sabotage at Suburban Propane was thoroughly discussed during the administrative proceedings, and the consensus of the experts was that a criminal could not intentionally accomplish anything more than was otherwise addressed in the various worst-case scenarios... in the various reports the only scenario identified that could have potential effects at Lent Ranch would be total failure of one or both refrigerated storage tanks with formation of an unconfined vapor cloud and subsequent ignition. Dames & Moore found such an event to be virtually impossible for reasons that would be beyond the control of a criminal. Jacobus found such an event to be scientifically unviable for reasons that would be beyond the control of a criminal... It was for these reasons that the EIR stated, and the City found, the potential of criminal sabotage at

Comment Letter	Comment Number	Comment Issue Area	Response
			Suburban Propane would not create a significant risk to persons at the Lent Ranch project. Substantial evidence supports that finding." As the EIR already addressed the risks associated with criminal sabotage on the Lent Ranch Marketplace site (which includes the Elk Grove Mall site), the EIS does not need to analyze the same impacts further. Regarding the different studies, the Lent Ranch DEIR notes that "...the Quest QRA['s] focus was to define the level of risk posed by a variety of hazardous incidents as a result of an incident at Suburban Propane, while the other reports evaluated what the potential extent of hazard was associated with worst-case incidents at the facility." The DEIR goes on to state that the other studies "appear to have been completed with insufficient data; in some cases, used out-of-date modeling techniques; and appear to have made erroneous assumptions about how vapor clouds developed, BLEVEs [boiling liquid-expanding vapor cloud explosions] occurred, or how ignition of an open air flammable cloud may or may not result in an explosion." For these reasons, and as the court concluded, the EIR's conclusions stand. For more information, see South Coast Citizens for Responsible Growth v. City of Elk Grove (2004 Cal. App. Unpub. LEXIS 1208). The Commenter claims the Final EIS fails to consider reevaluation of terrorism risks after September 11, 2001; however, the ruling on potential criminal sabotage discussed above is exactly that. Based on reviewing the report provided by the Commenter as Exhibit 2, the conclusions in the EIS do not need to be changed.
	7-23	Air Quality	The Commenter suggests that BIA erred in releasing the Revised/Updated Draft Conformity Determination (Revised DCD) at the same time as releasing the Final EIS because the EPA General Conformity Training Manual [sic – should be "Module"] at 1.3.4.2 states that "[a]t a minimum, at the point in the NEPA process when the specific action is determined, the air quality analyses for conformity should be done." 40 CFR 93.150(b) of EPA's General Conformity Regulations describes the applicable requirement even more clearly when it states that "[a] Federal agency must make a determination that a Federal

Comment Letter	Comment Number	Comment Issue Area	Response
			action conforms to the applicable implementation plan in accordance with the requirements of this subpart *before the action is taken*." (emphasis added). However, the "action" at issue is not the language in the Final EIS that the Preferred Alternative under NEPA is Alternative F (the Mall site property). Rather the "action" is BIA's final action under the Indian Reorganization Act and the Indian Gaming Regulatory Act to take the Mall site property into trust as eligible for gaming. This "action" is evidenced by BIA's record of decision (ROD) and the actual taking of the property into trust. BIA has not erred and is in full compliance with Section 1.3.4.2 of the EPA General Conformity Training Module and with 40 CFR 93.150(b) because BIA completed the Final Conformity Determination before BIA signed (or will sign) the ROD and before BIA took (or will take) the Mall site property into trust. The Commenter also states that the Revised DCD "fails to comply with 40 C.F.R. § 93.160(a) because it does not describe all air quality mitigation measures for the Project … it does not outline the process for implementation and enforcement of those air quality mitigation measures [and it] only describes two mitigation measures: purchasing emissions reduction credits for nitrogen oxides ("NOx") and preferential parking for vanpools and carpools. . . . For other mitigation measures, it merely references their inclusion in Section 5.4 of the draft EIS and does not provide a description as required under 40 C.F.R. § 93.160(a). Id." As evidenced by the ERC Certificate dated September 21, 2016 attached to the Final Conformity Determination as Attachment 2, the Wilton Rancheria has already purchased the 53.75 tons of NOx ERCs. This purchase, along with the requirement of preferential parking for vanpools and carpools, will fully mitigate the operational NOx emissions from the Preferred Alternative so that the project will be in conformance with the State Implementation Plan. Refer to the Final Conformity Determination, included as Attachment 2 to the ROD. The Commenter contends that the Revised DCD "is incomplete because BIA has not obtained written commitment from the Tribe that it will purchase ERCs under 40 C.F.R. § 93.160(b) [and as] such, the final EIS and the public are unable to consider how effective the enforcement measures will be, or even if there will be any at all." Since the Tribe has

Comment Letter	Comment Number	Comment Issue Area	Response
			already purchased the 53.75 tons of ERC required by the Revised DCD, this comment is moot. Moreover, the Tribal Council of the Wilton Rancheria passed Tribal Resolution No. 2017-5 on January 17, 2017. The resolution evidences the Tribe's written commitment to provide preferential parking for vanpools and carpools during the operation of the casino project at the Mall site. A copy of this Tribal Resolution is included as Attachment 2 to the Final Conformity Determination. Since the Tribe has already purchased the 53.75 tons of NOx ERCs and has made a written commitment by Tribal Council Resolution No. 2017-5 to provide preferential parking for vanpools and carpools during the operation of the project, the Tribe has complied with 40 CFR 93.160(b) of the General Conformity Regulations that states that "[p]rior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations." Commenter also states that "BIA must ensure compliance with the Clean Air Act's conformity determination requirement prior to making a decision to take land into trust for a gaming acquisition. Because the conformity determination is not finalized before the Final EIS and does not fully comply with 40 C.F.R. Part 93, BIA must prepare a Supplemental EIS after considering public comments and issuing a final conformity determination." As discussed above, the conformity determination is not required to be finalized before the Final EIS is issued, only before the Federal "action" is taken. Since the Final Conformity Determination was completed before the ROD was (or will be) issued and before the Mall site property was (or will be) taken into trust, the BIA has fully complied with the applicable general conformity and NEPA regulations and there is no reason relating to air quality issues associated with the Mall site for a supplemental EIS to be prepared.
	7-24	Socioeconomics	Potential impacts relating to crime and social effects are thoroughly analyzed in the FEIS. See General Response 6 in Section 3.0 of Volume I of the FEIS regarding crime, as well as Section 4.7 and Appendix H of the FEIS.
Comment Letter 8: Jennifer A. MacLean, Perkins Coie			
8	8-1	General	Non-NEPA issue.

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	8-2	General	See Response to Comment 7-3, 7-4, 7-5, and 7-6 regarding the fee-to-trust application, consultation with Elk Grove, outreach to citizens, and the public's understanding that Elk Grove was an option for the project. See also Response to Comment 4-7 and 7-3 through 7-10 regarding why a Supplemental EIS is not necessary. Refer to the Section 4.7 of the FEIS for analysis of crime and social effects; Section 4.4 regarding air pollution; and Section 4.8 regarding traffic. All of the aforementioned impacts, with the incorporation of mitigation, will be reduced to a less than significant level, contrary to the Commenter's claims of "serious disruptions" and "other adverse impacts."
	8-3	General	Non-NEPA issue.
Comment Letter 9: Kathleen Martyn Goforth, U.S. Environmental Protection Agency			
9	9-1	General	Comment noted.
	9-2	Air Quality	The emission reduction credits will be retired in the San Joaquin Valley Air Pollution Control District (SJVAPCD) as mitigation. The credits will not be transferred or exported out of the SJVAPCD.
Comment Letter 10: Lisa Jimenez, Individual			
10	10-1	General	Non-NEPA issue.
Comment Letter 11: Eric Fredericks, California Department of Transportation			
11	11-1	General	Comment noted.
	11-2	Traffic	Comment noted.

ATTACHMENT III

LEGAL DESCRIPTION

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

Commencing at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said point of commencement along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the true point of beginning; Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
2) North 79°33'57" East, a distance of 6.00 feet;
3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
4) North 82°30'38" East, a distance of 51.72 feet;
5) North 07°29'22" West, a distance of 100.00 feet;
6) South 82°30'38" West, a distance of 53.51 feet;
7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
8) South 85°36'45" West, a distance of 6.00 feet;
9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
10) North 00°42'00" West, a distance of 147.80 feet;
11) North 89°18'00" East, a distance of 6.00 feet;
12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
13) North 89°18'00" East, a distance of 6.00 feet;
14) North 00°42'00" West, a distance of 50.00 feet;
15) South 89°18'00" West, a distance of 13.34 feet;
16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
17) South 87°26'33" West, a distance of 6.00 feet;
18) North 02°33'27" West, a distance of 51.58 feet;
19) North 00°42'00" West, a distance of 563.84 feet;

20) North 89°18'00" East, a distance of 6.00 feet;
21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

1) North 89°12'25" East, a distance of 86.70 feet;
2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
3) South 36°15'44" East, a distance of 86.17 feet;
4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

1) South 32°02'06" East, a distance of 66.91 feet;
2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
3) North 81°19'25" East, a distance of 19.83 feet;
4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
5) South 76°20'11" East, a distance of 12.19 feet;
6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
8) South 38°01'00" East, a distance of 346.19 feet to the point of beginning.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

APN: 134-1010-001-0000 (Portion)

ATTACHMENT IV

MITIGATION MONITORING AND ENFORCEMENT PLAN

WILTON RANCHERIA FEE-TO-TRUST AND CASINO PROJECT

MITIGATION MONITORING AND ENFORCEMENT PLAN

Mitigation Monitoring Overview

This Mitigation Monitoring and Enforcement Plan (MMEP) has been developed to guide mitigation compliance before, during, and after implementation of the Bureau of Indian Affair's (BIA's) Preferred Alternative. The mitigation measures described below in **Table 1** were developed through the analysis of potential impacts within the Final Environmental Impact Statement (EIS). As specified in **Table 1**, the compliance monitoring and evaluation will be performed by the Wilton Rancheria (Tribe), the City of Elk Grove (City), The County of Sacramento (County), the California Department of Transportation (Caltrans), the Cosumnes CSD Fire Department, the United States Fish and Wildlife Service (USFWS), and the United States Environmental Protection Agency (USEPA) as indicated in the description of each measure. The MMEP provides:

- Requirements for compliance of the mitigation measures specifically created to mitigate impacts;
- List of responsible parties; and
- Timing of mitigation measure implementation.

Where applicable, mitigation measures will be monitored and enforced pursuant to Federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as the Record of Decision (ROD). Note that numbering of mitigation measures listed in **Table 1** differs from the numbering of the mitigation measures listed in Section 6.0 of the ROD. **Table 1** includes only those mitigation measures that are applicable to Alternative F – the casino resort at the Elk Grove Mall site.

TABLE 1
MITIGATION MONITORING AND ENFORCEMENT PLAN

Mitigation Measure	Responsible for Monitoring and/or Reporting	Timing of Implementation	Verification (Date and Initials)
1. Geology and Soils			
A. If the Tribe intends to disturb one acre or more of land during construction of the project, the Tribe shall comply with the terms of the then-current NPDES Construction General Permit from USEPA to address construction site runoff during the construction phase in compliance with the CWA. Among other requirements, at least 14 days prior to commencing earth-disturbing activities, a NOI shall be filed with the USEPA. A SWPPP shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. The SWPPP shall detail BMPs to be implemented during construction and post-construction operation of the selected project alternative to reduce impacts related to soil erosion and water quality. The BMPs shall include, but are not limited to, the following: 1. Existing vegetation shall be retained where practicable. To the extent feasible, grading activities shall be limited to the immediate area required for construction and remediation. 2. Temporary erosion control measures (such as silt fences, fiber rolls, vegetated swales, a velocity dissipation structure, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed for disturbed areas. 3. To the maximum extent feasible, no disturbed surfaces shall be left without erosion control measures in place. 4. Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff. 5. Creating construction zones and grading only one area or part of a construction zone at a time shall minimize exposed areas. If practicable during the wet season, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone. Minimizing the size of construction staging areas and construction access roads to the extent feasible. 6. Disturbed areas shall be re-vegetated following construction activities. 7. Construction area entrances and exits shall be stabilized with large-diameter rock. 8. Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures. 9. A spill prevention and countermeasure plan shall be developed which identifies proper	Tribe/USEPA	Planning Phase Construction Phase	

storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site. 10. Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the CWA (33 U.S.C. 1251 to 1387). 11. Construction materials, including topsoil and chemicals, shall be stored, covered, and isolated to prevent runoff losses and contamination of surface and groundwater. 12. Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff. 13. Sanitary facilities shall be provided for construction workers. 14. Disposal facilities shall be provided for soil wastes, including excess asphalt during construction and demolition. 15. Other potential BMPs include use of wheel wash or rumble strips and sweeping of paved surfaces to remove any and all tracked soil.			
B. Construction workers shall be trained in the proper handling, use, cleanup, and disposal of chemical materials used during construction activities. Appropriate facilities to store and isolate contaminants shall be provided.	Tribe	Construction Phase	
C. Contractors involved in the project shall be trained on the potential environmental damage resulting from soil erosion prior to construction in a pre-construction meeting. Copies of the project's SWPPP shall be distributed at that time. Construction bid packages, contracts, plans, and specifications shall contain language that requires adherence to the SWPPP.	Tribe	Planning Phase Construction Phase	
2. Air Quality			
Construction			
A. The following dust suppression measures shall be implemented by the Tribe to control the production of fugitive dust (PM_{10}) and prevent wind erosion of bare and stockpiled soils: 1. Spray exposed soil with water or other suppressant twice a day or as needed to suppress dust. 2. Minimize dust emissions during transport of fill material (fill material to be gathered primarily on-site) or soil by wetting down loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, and/or covering loads. 3. Restrict traffic speeds on site to 15 miles per hour to reduce soil disturbance. 4. Provide wheel washers to remove soil that would otherwise be carried off site by vehicles to decrease deposition of soil on area roadways. 5. Cover dirt, gravel, and debris piles as needed to reduce dust and wind-blown debris. 6. Provide education for construction workers regarding incidence, risks, symptoms, treatment,	Tribe	Planning Phase Construction Phase	

and prevention of Valley Fever.			
B. The following measures shall be implemented by the Tribe to reduce emissions of criteria pollutants, greenhouse gases (GHGs), and diesel particulate matter (DPM) from construction. 1. The Tribe shall control criteria pollutants and GHG emissions by requiring all diesel-powered equipment be properly maintained and minimizing idling time to five minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation. 2. Require construction equipment with a horsepower rating of greater than 50 be equipped with at least CARB rated Tier 3 engines, and if practical and available, Tier 4 engines. The corresponding Tier 3 engines shall also be fitted with diesel particulate filters. 3. Require the use of low ROG (250 grams per liter or less) for architectural coatings to the extent practicable. 4. Environmentally preferable materials, including recycled materials, shall be used to the maximum extent practical for construction of facilities.	Tribe	Planning Phase Construction Phase	
Operational Vehicle and Area Emissions			
C. The Tribe shall reduce emissions of criteria air pollutants and GHGs during operation through one or more of the following measures, as appropriate: 1. The Tribe shall use efficient clean fuel vehicles that use alternative fuel in its vehicle fleet where practicable, which would reduce criteria pollutants and GHG emissions within the Sacramento metropolitan region. The reduction in GHG emissions would vary depending on vehicle number, type, year, and associated fuel economy. 2. The Tribe shall provide preferential parking for vanpools and carpools, which would reduce criteria pollutants by promoting the use of transportation options other than single-occupant vehicles. This would reduce running and total exhaust emissions of particulate matter, carbon monoxide (CO), nitrogen oxides (NOx), and sulfur dioxide (SO2) by 2 percent. Running exhaust emissions of GHGs would be reduced 2 percent. 3. The Tribe shall use low-flow appliances and utilize recycled water to the extent practicable. The Tribe shall use drought-tolerant landscaping and provide "Save Water" signs near water faucets. The installation of low-flow water fixtures could reduce emissions of GHG by 17-31 percent. Water-efficient landscaping could reduce GHG emissions by up to 70 percent. Reductions in indirect criteria pollutants would be expected; however, these reductions may not be in the same air basin as the project. 4. The Tribe shall control criteria pollutants, GHG, and DPM emissions during operation by requiring all diesel-powered vehicles and equipment be properly maintained and minimizing	Tribe	Planning Phase Operation Phase	

idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation. Implementation of this mitigation could reduce GHG emissions from truck refrigeration units by 26-71 percent. Reductions in criteria pollutant and DPM emissions would also be expected. 5. The Tribe shall use energy-efficient lighting, which would reduce indirect criteria pollutants and GHG emissions. Using energy-efficient lighting would reduce the project's energy usage, thus reducing the project's indirect GHG emissions. This could reduce GHG emissions by 16 to 40 percent, depending on the type of energy-efficient lighting. Reductions in indirect criteria pollutants would also be expected; however, these reductions may not be in the same air basin as the project. 6. The Tribe shall install recycling bins throughout the hotel and casino for glass, cans, and paper products. Trash and recycling receptacles shall be placed strategically outside to encourage people to recycle. The amount of GHG reduced through recycling varies depending on the project, is difficult to quantify, and based on life-cycle analysis. 7. The Tribe shall plant trees and vegetation in appropriate densities to maximize air quality benefits on-site or fund such plantings off-site. The addition of photosynthesizing plants would reduce atmospheric carbon dioxide (CO2), because plants use CO2 for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the building, thus reducing heat absorption, reducing air conditioning needs, and saving energy. However, trees and vegetation emit ROGs. 8. The Tribe shall use energy-efficient appliances and equipment in the hotel and casino. ENERGY STAR refrigerators, clothes washers, dishwashers, and ceiling fans use 15 percent, 25 percent, 40 percent, and 50 percent less electricity than standard appliances, respectively. These reductions reduce GHG and criteria pollutant emissions from power plants. 9. The Tribe shall purchase 53.75 tons of NOx Emissions Reduction Credits (ERCs) as dictated in the Final Conformity Determination, included as an attachment to the ROD. 10. Because the significant air quality effects are associated with operation of the project 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-resort or other project. With the purchase of the ERCs the project would conform to the applicable State Implementation Plan and result in a less than adverse impact to regional air quality. ERCs shall be purchased (1) in the Sacramento Nonattainment Area (as defined in Final EIS Section 3.4.2) and/or (2) in the San Joaquin Valley Air Basin and/or in another adjacent district with an equal or higher nonattainment classification (severe or extreme) meeting the requirements outlined in 40 C.F.R. 93.158(a)(2), with credits available within 50 miles of the project site given priority.			

11. As an alternative to or in combination with purchasing the above ERCs the Tribe may implement one or more of the following measures which could reduce NOx emissions to less than 25 tons per year: a. Purchase low emission buses to replace older municipal or school buses used within the Sacramento Valley Air Basin. b. Implement ride-sharing programs at the project site and/or within the Sacramento Valley Air basin. c. Use 100 percent electric vehicles at the project site. d. Purchase hybrid vehicles to replace existing governmental fleet vehicles within the Sacramento Valley Air Basin. e. Implement other feasible mitigation measures to reduce project-related NOx and ROG emissions. f. The Tribe shall provide a bus driver lounge and adopt and enforce an anti-idling ordinance for buses, which will discourage bus idling during operation of the project.			
Cumulative and Greenhouse Gas Emissions			
D. The Tribe shall purchase 31,015 MT of GHG ERCs. As an alternative to or in combination with purchasing the above GHG ERCs, the Tribe shall implement renewable energy project(s), which may include but are not limited to solar power, wind energy, and/or other form(s) of renewable energy. The reduction in emissions from implementation of renewable energy and/or the purchase of ERCs would reduce project-related GHG emissions to below 25,000 MT of CO2e. As all or part of any required or voluntary mitigation of GHG impacts, the Tribe may purchase carbon ERCs from the Climate Action Reserve, the Verified Carbon Standard, the American Carbon Registry, and/or an equivalent carbon ERCs trading markets that have the same or more stringent standards for carbon emissions reduction projects that reduce atmospheric GHGs or reflect direct GHG emissions reductions achieved by existing GHG emitters.	Tribe	Planning Phase Operation Phase	
3. Biological Resources			
Federally Listed and Other Sensitive Species			
A. A pre-construction survey for nesting migratory birds and raptors shall be conducted within 500 feet of the proposed construction areas if initiation of clearing activities is scheduled to occur during the nesting period (March 1 to September 30). The pre-construction survey shall be conducted within 14 days prior to initiation of construction activity.	Tribe	Planning Phase	
B. The qualified biologist shall document and submit the results of the pre-construction survey within 30 days following the survey. The documentation shall include a description of the	Tribe/USFWS	Planning Phase Construction Phase	

methodology including dates of field visits, the names of survey personnel, a list of references cited and persons contacted, and a map showing the location(s) of any bird nests observed on the project site. If no active nests are identified during the pre-construction survey, then no further mitigation is required. If active migratory bird nests are identified, a qualified biologist shall establish an appropriate buffer around the nest based on the species identified to ensure no disturbance will occur until a qualified biologist has determined the young have fledged. No active nests shall be disturbed without a permit or other authorization from the USFWS.			
C. The following measures shall be implemented to minimize the effects of lighting and glare on birds and other wildlife: 1. Downcast lights shall be installed with top and side shields to reduce upward and sideways illumination to reduce potential disorientation affects from non-directed shine to birds and wildlife species. 2. As many exterior and interior lights (in rooms with windows) as practicable, consistent with public safety concerns, shall be turned off during the peak bird migration hours of midnight to dawn to reduce potential collisions of migratory birds with buildings	Tribe	Planning Phase Construction Phase Operation Phase	
Mitigation for Off-Site Road Improvements			
D. Once an alternative has been selected, a formal Jurisdictional Delineation shall be conducted for all areas of potential disturbance from recommended off-site road improvements. The results of the delineation shall be verified by the USACE and a Section 404 permit shall be obtained prior to any disturbance of jurisdictional waters of the U.S. Refer to Section 5.5~~4~~.2 of the Final EIS for more details.	Tribe/USACE	Planning Phase	
E. If any previously unknown federal or state listed species or habitats are discovered during the pre-construction or construction phases of off-site road improvements, a qualified biologist shall be consulted to ensure that potential impacts are eliminated or mitigated. Refer to Section 5.5~~4~~.1 of the Final EIS for more details about species-specific mitigation measures.	Tribe	Planning Phase Construction Phase	
4. Cultural and Paleontological Resources			
A. In the event of inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the National Historic Preservation Act as amended (36 C.F.R. 800), and the BIA shall be notified. Specifically, procedures for post-review discoveries without prior planning pursuant to 36 C.F.R. 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 C.F.R. 61) can assess the significance of the find. If any find is determined to be significant by the archaeologist, then	Tribe	Construction Phase	

representatives of the Tribe shall meet with the archaeologist to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist according to current professional standards.			
B. In the event of inadvertent discovery of paleontological resources during construction-related earth-moving activities, all such finds shall be subject to Section 101 (b)(4) of NEPA (40 C.F.R. 1500 1508), and the BIA shall be notified. All work within 50 feet of the find shall be halted until a professional paleontologist can assess the significance of the find. A qualified professional paleontologist shall be retained to assess the find. If the find is determined to be significant by the paleontologist, then representatives of the BIA shall meet with the paleontologist to determine the appropriate course of action, including the development of an Evaluation Report and/or Mitigation Plan, if necessary. All significant paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional paleontologist according to current professional standards.	Tribe	Construction Phase	
C. If human remains are discovered during ground-disturbing activities on Tribal lands, all construction activities shall halt within 100 feet of the find. The Tribe, BIA, and County Coroner shall be contacted immediately, and the County Coroner shall determine whether the remains are the result of criminal activity; if possible, a human osteologist should be contacted as well. If Native American, the provisions of the Native American Grave Protection and Repatriation Act (NAGPRA) shall apply to the treatment and disposition of the remains. Construction shall not resume in the vicinity until final disposition of the remains has been determined.	Tribe	Construction Phase	
D. In the event that off-site traffic mitigation improvements are implemented, detailed plans for those improvements, including limits of construction, shall be developed. Prior to construction, cultural resources record searches and archaeological or architectural surveys shall be completed. Any buildings or structures over 50 years old that may be affected by the required improvements, once they are defined in detail, shall be identified. All significant resources shall be avoided if possible, and if not, a mitigation plan prepared by a qualified archaeologist or architectural historian shall be implemented.	Tribe	Planning Phase Construction Phase	
5. Socioeconomics			
A. The Tribe shall make in-lieu payments adequate to replace revenues lost by Sacramento County due to reduced property taxes received by the County from those land parcels taken into trust. The amount of the payments shall be adjusted to take into account payments identified in Section 6.9 of the ROD for various municipal services.	Tribe	Planning Phase Construction Phase Operation Phase	

B. Payments made pursuant to local agreements between the Tribe and local governments pursuant to Memorandums of Understanding (available in supplemental Appendix B in this Final EIS), including Sacramento County and/or the City of Elk Grove, would offset fiscal impacts and be used to provide support for public services (including, but not limited to, law enforcement), staffing, studies, infrastructure, community benefits, and utilities.	Tribe	Planning Phase Construction Phase Operation Phase	
C. The Tribe shall contribute no less than $50,000 annually to a program that treats problem gamblers. In order to maximize the effectiveness of the payments, the organization that receives the payments for problem gambling treatment must serve the Sacramento County region and be accessible to County residents.	Tribe	Operation Phase	
D. The Tribe shall prominently display (including on any automatic teller machines (ATMs) located on-site) materials describing the risk and signs of problem and pathological gambling behaviors. Materials shall also be prominently displayed (including on any ATMs located on-site) that provide available programs for those seeking treatment for problem and pathological gambling disorders, including but not limited to a toll-free hotline telephone number.	Tribe	Operation Phase	
E. The Tribe shall train employees to recognize domestic violence and sexual assault situations, display domestic violence hotline numbers, and work with local agencies in domestic violence and sexual assault prevention.	Tribe	Operation Phase	
F. The Tribe shall conduct annual customer surveys in an attempt to determine the number of problem and pathological gamblers and make this information available to state or federal gaming regulators upon request.	Tribe	Operation Phase	
G. The Tribe shall undertake responsible gaming practices that at a minimum require that employees be educated to recognize signs of problem gamblers, that employees be trained to provide information to those seeking help, and that a system for voluntary exclusion be made available.	Tribe	Operation Phase	
H. ATMs shall not be visible from gaming machines and gaming tables.	Tribe	Operation Phase	
6. Transportation			
A. The Tribe shall pay a full share of the cost of implementing recommended mitigation measures when LOS is acceptable without the addition of project trips. An exception to this general recommendation would occur in situations where the project's contribution to operation of an intersection may be relatively small, but sufficient to cause an intersection that is on the verge of operating unacceptably to operate at an unacceptable LOS. In such cases, the Tribe shall be	Tribe	Planning Phase Construction Phase	

responsible for its fair share of the costs of mitigation caused by the added project trips generated, calculated as described in the next paragraph and/or set out below in the "Cumulative" section. Where transportation infrastructure is shown as having an unacceptable LOS with the addition of traffic from the project alternatives (and caused at least in part from project traffic), the Tribe shall pay for a fair share of costs for the recommended mitigation (including right-of-way and any other environmental mitigation). In such cases, the Tribe shall be responsible for the incremental impact that the added project trips generate, calculated as a percentage of the costs involved for construction of the mitigation measure. Fair-share proportion represents the fair-share percentage calculated using the methodology presented in the California Department of Transportation (Caltrans) Guide for the Preparation of Traffic Impact Studies (2002). The Tribe shall make fair share contributions available prior to initiation of road improvement construction.			
Construction			
B. A traffic management plan shall be prepared in accordance with standards set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways. The traffic management plan shall be submitted to each affected local jurisdiction and/or agency. Also, prior to construction, the contractor shall coordinate with emergency service providers to avoid obstructing emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the details of the construction schedule, location of construction activities, duration of the construction period, and any access restrictions that could impact emergency response services. Traffic management plans shall include details regarding emergency service coordination. Copies of the traffic management plans shall be provided to all affected emergency service providers.	Tribe/City/ Cosumnes CSD Fire Department	Planning Phase Construction Phase	
C. Flagging, performed in consultation with the California Highway Patrol (CHP), Caltrans, and the SCSD, shall be provided when necessary to assist with construction traffic control.	Tribe/Caltrans	Planning Phase Construction Phase	
D. Transport of construction material shall be scheduled outside of the area-wide commute peak hours.	Tribe	Planning Phase Construction Phase	
E. Where feasible, lane closures or obstructions associated with construction of the project shall be limited to off-peak hours to reduce traffic congestion and delays.	Tribe	Planning Phase Construction Phase	
F. Roadways subject to heavy fill truck traffic shall be assessed by an independent third party	Tribe	Planning Phase	

consultant prior to the start of construction and following the completion of construction. If the third party determines that roadway deterioration has occurred as a result of casino construction, the Tribe shall pay to have the affected roadway(s) resurfaced to restore the pavement to at least pre-construction condition, unless the resurfacing is already planned to occur within a year or sooner in conjunction with other planned or proposed roadway improvements.		Construction Phase	
Operation			
G. The Tribe shall enter into agreements with Sacramento County and/or City of Elk Grove as applicable and/or set appropriate funds aside in a dedicated account to fund its fair-share contribution toward future vicinity roadway maintenance and improvements.	Tribe/City/County	Planning Phase	
H. **Promenade Parkway/Bilby Road Intersection**. The WB approach shall be widened to provide three left-turn lanes, one through lane, and one right-turn lane; and a NB right-turn overlap signal phase shall be provided during the WB left-turn phase.	Tribe	Construction Phase	
I. **Grant Line Road Widening**. Grant Line Road shall be widened to four lanes from Waterman Road to Bradshaw Road.	Tribe	Construction Phase	
J. **Kammerer Road Improvements**. The Tribe shall pay a fair-share contribution of 6 percent towards future mitigation costs for Kammerer Road improvements.	Tribe	Planning Phase	
Cumulative			
K. **Intersection Improvements**. Implement Mitigation Measures 6.H and 6.I.	Tribe	Construction Phase	
L. **Hwy 99 SB Ramps/Grant Line Road**. The SB approach shall be widened to provide one left-turn lane, one shared left/through/right lane, and two right turn lanes.	Tribe	Construction Phase	
M. **Promenade Parkway/Kammerer Road**. Signal timings at the Promenade Parkway/Kammerer Road intersection shall be optimized and the width of the raised median at the WB approach shall be reduced to provide a second left-turn lane. A NB right-turn overlap signal phase shall be provided during the WB left-turn phase.	Tribe	Construction Phase	
N. **Grant Line Road/East Stockton Boulevard**. The SB approach shall be restriped to provide one left-turn lane, one shared through/right lane, and one right-turn lane. The NB/SB signal phasing shall be converted from split to protected left-turn phasing. Traffic signal coordination with adjacent signalized intersections shall be implemented to improve progression along Grant	Tribe	Construction Phase	

Line Road during weekday PM peak period.			
O. Contribute a fair-share funding proportion towards future freeway improvement projects along Hwy 99, to be identified through coordination with Caltrans. Fair-share funding for long term improvements shall be made available prior to the need for the improvements. Funds shall be placed in an escrow account, if necessary, for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design, obtain approvals/permits for, and construct the recommended road improvement. Caltrans is currently working with the City of Elk Grove to establish a subregional mitigation fee program which would cover this portion of the Hwy 99 corridor. Because this program has yet to be adopted, the ultimate fee structure for development project contribution has yet to be confirmed. For reference purposes, the project's fair-share contribution towards future mitigation costs for Hwy 99 freeway improvements within the project vicinity would be 26 percent.	Tribe/Caltrans	Planning Phase	
Multi-Rider Transportation			
P. The Tribe shall institute a shuttle service or comparable private multi-rider transportation system to provide alternative transportation options other than single-occupant vehicles for casino patrons and/or employees.	Tribe	Planning Phase Operation Phase	
Q. The Tribe shall work cooperatively with the City of Elk Grove to implement the effective expansion of public transportation to and from the Elk Grove Mall site prior to operation.	Tribe/City	Planning Phase Construction Phase	
7. Public Services			
Off-Site Water and Wastewater Services			
A. The Tribe shall enter into a service agreement prior to project operation to reimburse the City of Elk Grove or the applicable service provider, as appropriate, for necessary new, upgraded, and/or expanded water and/or wastewater collection, distribution, or treatment facilities. This service agreement shall include, but is not limited to, fair share compensation for new, upgraded, and/or expanded water supply and wastewater conveyance facilities necessary to serve development of the selected site, including development of appropriately sized infrastructure to meet anticipated flows and revisions or addendums to existing infrastructure master plans that may require updating as a result of project operation. Such improvements shall be sized to maintain existing public services at existing levels. The service agreement shall also include provisions for monthly services charges consistent with rates paid by other commercial users.	Tribe/City	Planning Phase	

Solid Waste			
B. Construction waste shall be recycled to the fullest extent practicable by diverting green waste and recyclable building materials (including, but not limited to, metals, steel, wood, etc.) away from the solid waste stream.	Tribe	Construction Phase	
C. Environmentally preferable materials, including recycled materials, shall be used to the extent readily available and economically practicable for construction of facilities.	Tribe	Construction Phase	
D. During construction, the site shall be cleaned daily of trash and debris to the maximum extent practicable.	Tribe	Construction Phase	
E. A solid waste management plan shall be developed and adopted by the Tribe that addresses recycling, solid waste reduction, and reuse of materials on site to reduce solid waste sent to landfills. These measures shall include, but not be limited to, the installation of a trash compactor for cardboard and paper products, and periodic waste stream audits.	Tribe	Planning Phase Operation Phase	
F. Recycling bins shall be installed throughout the facilities for glass, cans, and paper products.	Tribe	Operation Phase	
G. Trash and recycling receptacles shall be placed strategically throughout the site to encourage people not to litter.	Tribe	Operation Phase	
H. Security guards shall be trained to discourage littering on site.	Tribe	Operation Phase	
Law Enforcement			
I. Parking areas shall be well lit and monitored by parking staff and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other similar criminal activity.	Tribe	Planning Phase Construction Phase Operation Phase	
J. Areas surrounding the gaming facilities shall have “No Loitering” signs in place, be well lit, and be patrolled regularly by roving security guards.	Tribe	Operation Phase	
K. The Tribe shall provide traffic control with appropriate signage and the presence of peak-hour traffic control staff during special events. This would aid in the prevention of off-site parking.	Tribe	Operation Phase	
L. The Tribe shall conduct background checks of all gaming employees and ensure that all employees meet licensure requirements established by IGRA and the Tribe’s Gaming	Tribe	Operation Phase	

Ordinance.			
M. The Tribe shall adopt a Responsible Alcoholic Beverage Policy that shall include, but not be limited to, training for staff and checking identification of patrons and refusing service to those who have had enough to drink. The Tribe shall also adopt a policy to assist in preventing the use of casino and hotel facilities by unattended minors and known gang members.	Tribe	Planning Phase Operation Phase	
N. Prior to operation, the Tribe shall enter into agreements to reimburse the City of Elk Grove for quantifiable direct and indirect costs incurred in conjunction with providing law enforcement services per the Memorandum of Understanding by and between the City of Elk Grove and Wilton Rancheria, dated September 29, 2016.	Tribe/City	Planning Phase	
Fire Protection and Emergency Services			
O. During construction, any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order. This includes, but is not limited to, vehicles, heavy equipment, and chainsaws. Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.	Tribe	Construction Phase	
P. Prior to operation, the Tribe shall enter into a MOU and/or a service agreement to reimburse the Cosumnes CSD Fire Department for additional demands caused by the operation of the facilities on trust property. The agreement shall address any required conditions and standards for emergency access and fire protection systems.	Tribe/Cosumnes CSD Fire Department	Planning Phase	
Electricity, Natural Gas, and Telecommunications			
Q. The Tribe shall contact the Utility Notification Center, which provides a free “Dig Alert” to all excavators (e.g., contractors, homeowners, and others) in the State of California. This call shall automatically notify all utility service providers at the excavator’s work site. In response, the utility service providers shall mark or stake the horizontal path of underground facilities, provide information about the facilities, and/or give clearance to dig.	Tribe	Planning Phase Construction Phase	
R. The selected HVAC system shall minimize the use of energy by means of using high efficiency variable speed chillers, high efficiency low emission steam and/or hot water boilers, variable speed hot water and chilled water pumps, variable air volume air handling units, and air-to-air heat recovery where appropriate.	Tribe	Planning Phase Construction Phase Operation Phase	

S. Energy-efficient lighting shall be installed throughout the facilities. Dual-level light switching shall be installed in support areas to allow users of the buildings to reduce lighting energy usage when the task being performed does not require all lighting to be on. Day lighting controls shall be installed near windows to reduce the artificial lighting level when natural lighting is available. Controls shall be installed for exterior lighting so it is turned off during the day.	Tribe	Planning Phase Construction Phase Operation Phase	
8. Noise			
Construction			
A. Construction using heavy equipment shall not be conducted between 10:00 p.m. and 7:00 a.m.	Tribe	Construction Phase	
B. All engine-powered equipment shall be equipped with adequate mufflers. Haul trucks shall be operated in accordance with posted speed limits. Truck engine exhaust brake use shall be limited to emergencies.	Tribe	Construction Phase	
C. Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible.	Tribe	Construction Phase	
D. All generator sets shall be provided with enclosures.	Tribe	Construction Phase	
9. Hazardous Materials			
A. Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. BMPs that are designed to reduce the potential for incidents/spills involving the hazardous materials include the following: 1. To reduce the potential for accidental release, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment. 2. Catch-pans shall be placed under equipment to catch potential spills during servicing. 3. Refueling shall be conducted only with approved pumps, hoses, and nozzles. 4. All disconnected hoses shall be placed in containers to collect residual fuel from the hose. 5. Vehicle engines shall be shut down during refueling. 6. No smoking, open flames, or welding shall be allowed in refueling or service areas. 7. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill. 8. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents. 9. Should a spill contaminate soil, the soil shall be put into containers and disposed of in	Tribe	Planning Phase Construction Phase	

accordance with local, state, and federal regulations. 10. All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure.			
B. In the event that contaminated soil and/or groundwater is encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Tribe shall consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.	Tribe	Construction Phase	
C. Hazardous materials must be stored in appropriate and approved containers in accordance with applicable regulatory agency protocols and shall be stored and used on-site at the lowest volumes required for operational purposes and efficacy.	Tribe	Construction Phase Operation Phase	
D. Potentially hazardous materials, including fuels, shall be stored away from drainages, and secondary containment shall be provided for all hazardous materials stored during construction and operation.	Tribe	Construction Phase Operation Phase	
10. Aesthetics			
A. Lighting shall consist of limiting pole-mounted lights to a maximum of 25 feet tall.	Tribe	Planning Phase Construction Phase	
B. All lighting shall be high pressure sodium or light-emitting diode (LED) with cut-off lenses and downcast illumination, unless an alternative light configuration is needed for security or emergency purposes.	Tribe	Planning Phase Construction Phase Operation Phase	
C. Placement of lights on buildings shall be designed in accordance with Unified Facilities Criteria (UFC) 3-530-01, Interior, Exterior Lighting, and Controls so as not to cast light or glare offsite. No strobe lights, spot lights, or flood lights shall be used.	Tribe	Planning Phase Construction Phase Operation Phase	
D. Shielding, such as with a horizontal shroud, shall be used in accordance with UFC 3-350-01 for all outdoor lighting so as to ensure it is downcast.	Tribe	Planning Phase Construction Phase Operation Phase	
E. All exterior glass shall be non-reflective low-glare glass.	Tribe	Planning Phase Construction Phase	

F. Screening features and natural elements shall be integrated into the landscaping design of the project to screen the view of the facilities from directly adjacent existing residences.	Tribe	Planning Phase Construction Phase	
G. Design elements shall be incorporated into the project to minimize the impact of buildings and parking lots on the viewshed. These elements include: 1. Incorporation of landscape amenities to complement buildings and parking areas, including setbacks, raised landscaped berms and plantings of trees and shrubs. 2. Use of earth tones or color shades complimentary to surrounding development in paints and coatings, and native building materials such as stone as applicable.	Tribe	Planning Phase Construction Phase	

FINAL GENERAL CONFORMITY DETERMINATION

FOR THE

PROPOSED WILTON RANCHERIA FEE-TO-TRUST AND CASINO/HOTEL PROJECT

January 18, 2017

PROPOSED WILTON RANCHERIA FEE-TO-TRUST AND CASINO/HOTEL PROJECT
FINAL GENERAL CONFORMITY DETERMINATION

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Table 1 Unmitigated Operational Emissions of Significant Criteria Pollutants 5

Attachment 1: Comments and Response to Comments on Draft Conformity Determination

Attachment 2: Tribal Council Resolution No. 2017-5

Attachment 3: Emission Reduction Credit Certificate

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 preparing 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, the Revised Draft General Conformity Determination was 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).

The Notice of Availability (NOA) for the Final EIS and Revised Draft General Conformity Determination was published in the *Federal Register* on December 14, 2016 (Volume 81, pages 90379-90380), and was also published in local and regional newspapers, including *The Sacramento Bee* on December 9, 2016, *The Elk Grove Citizen* on December 14, 2016, and *The Galt Herald* on December 14, 2016. The Revised Draft General Conformity Determination was also mailed to the appropriate federal agencies, federal land managers, Native American tribes, state agencies, counties, and air districts on December 9, 2016. The public comment period on the Revised Draft General Conformity Determination ended January 17, 2017. The BIA received comment letters on the Draft General Conformity Determination from SMAQMD and USEPA (Comment Letters 1 and 2 during the comment period for the first Draft Conformity Determination). Responses to these comments are provided in **Attachment 1**, and these comments and responses were considered when preparing the Revised Draft General Conformity Determination. Additional comments were received on the Revised Draft Conformity Determination, and responses to these comments are also provided in **Attachment 1**. These comments and responses were considered when preparing this Final General Conformity Determination.

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_{10} or $PM_{2.5}$, respectively), sulfur oxides (SOx), ozone (O_3) and its precursors oxides of nitrogen (NOx) and volatile organic compounds (VOCs), and nitrogen dioxide (NO_2). 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 (NOx) 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: NOx 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. NOx 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_{10} and $PM_{2.5}$) 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_{10}, and $PM_{2.5}$ 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 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 $PM_{2.5,}$ PM_{10}, CO, and, the two ozone precursors VOCs, and NOx. Construction emissions include NOx, VOCs, PM_{10} and CO, which are generally a product of combustion, in this case from heavy equipment. $PM_{2.5}$ 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 NOx, PM_{10} 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 SOx, Pb, and NO_2. SVAB is currently designated nonattainment for $PM_{2.5}$ and severe-15 nonattainment for 8-hour ozone (VOCs and NOx). SVAB is designated as maintenance for PM_{10} following California Air Resources Board (CARB) submittal of the PM_{10} 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 set out in 40 CFR 93.153(b).

TABLE 1
UNMITIGATED OPERATIONAL EMISSIONS OF SIGNIFICANT CRITERIA POLLUTANTS[1]

Sources	VOCs	NOx	$PM_{2.5}$	CO	PM_{10}
	Tons per Year[1]				
Exempt Emissions					
Stationary Sources	0.29	1.30	4.18	0.19	0.36
Area	3.66	0.00	0.05	0.00	0.00
Total Exempt Emissions	**3.95**	**1.30**	**4.23**	**0.19**	**0.36**
Annual Emissions					
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[2]				-125.87	
Waste[3]	0.00	0.00	0.00	0.00	0.00
Water[3]	0.00	0.00	0.00	0.00	0.00
Total Annual Emission[4]	**12.72**	**54.38**	**14.11**	**92.74**	**50.32**
Applicable Conformity *De Minimis* Thresholds[5]	25.00	25.00	100.00	100.00	100.00
Exceedance of Threshold	*No*	*Yes*	*No*	*No*	*No*

[1] NOx, VOCS, CO, PM_{10}, and $PM_{2.5}$ emissions values were estimated using CalEEMod air modeling program approved by the USEPA and CARB (see Revised Appendix S of the Final EIS).
[2] 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_{10} maintenance area, which equates to a 58 percent reduction.
[3] Emissions from waste and water are negligible and round to zero.
[4] Excludes exempt emissions in accordance with 40 CFR 93.153(d)(1).
[5] The conformity determination thresholds for nonattainment and maintenance areas are set forth in 40 CFR 93.153(b).
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 $PM_{2.5}$. CO and PM_{10} 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 NOx 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_{10}, 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_{10} and $PM_{2.5}$, emissions were below the *de minimis* level of 100 tpy.

A conformity determination is required for ozone precursor NOx. This requirement is due to the Preferred Alternative being located in a nonattainment area for ozone and the total NOx emissions being greater than the *de minimis* levels shown in **Table 1**.

4.0 CONFORMITY DETERMINATION: OZONE PRECURSOR NOX

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, **S**ections 4.4 and Section 5.4 and the revised Appendix S in the Final EIS. As stated above, a general conformity determination is required for ozone precursor NOx. Conformity for NOx 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 NOx, 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 NOx 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, ERCs, if needed, must fully offset 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 either the SVAB or an adjacent air basin that meets the above criteria. The portion of the SVAB that contains the project site is designated by the USEPA as "serious-15," whereas the San Joaquin Valley Air Basin (SJVAB) is designated as "extreme"; therefore, the SJVAB meets the criterion of having a higher classification than the SVAB. The California Clean Air Act of 1988 required the CARB to assess the relative contributions of upwind emissions to downwind State ozone standard exceedances. The initial Transport Assessment was approved by CARB in 1990. The first triennial updates to the 1990 ozone transport report were approved by the CARB in August 1993, November 1996, and April 2001. The CARB 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" (CARB, 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 (CARB, 2001). Accordingly, the results of these assessments indicates that the San Joaquin valley contributes to the violations within the Broader Sacramento Area and 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 and Section 6 of the ROD. According to the Final EIS, mitigation would include an operation feature that would reduce NOx emissions by providing preferential parking for

vanpools and carpools. See Final EIS Section 5.4.2, Mitigation Measure C.2. 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 EIS 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**.** The Tribe's written commitment to provide preferred parking for vanpools and carpools is evidenced by Tribal Council Resolution No. 2017-5 (a copy of which is attached to this Final Conformity Determination as **Attachment 2**). 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, Mitigation Measure C.9 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 NO*x* 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. Subsequent to the issuance of the Final EIS, the Tribe has purchased real, surplus, permanent, quantifiable, and enforceable ERCs from a source located less than 50 miles from the site of the Preferred Alternative in Elk Grove to offset the anticipated NOx emissions presented in **Table 1**. As evidence, the Tribe has provided the BIA a copy of an ERC certificate that documents the Tribe's purchase of 53.75 tons of NOx ERCs. A copy of this certificate is attached to this Final General Conformity Determination as **Attachment 3**.

5.0 CONCLUSION

The Revised Draft General Conformity Determination was 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. Comments on the Draft and Revised Draft General Conformity Determinations are addressed in **Attachment 1** and, as applicable, in the ROD. In compliance with the mitigation measures detailed in the Final EIS for the Preferred Alternative (Alternative F), the Tribe has made a written commitment to provide preferred parking for vanpool and carpools by Tribal Council Resolution No. 2017-5 (**Attachment 2**) and has also purchased 53.75 tons of NOx ERCs, evidenced by ERC certificate N-1395-2, issued by the San Joaquin Valley Air Pollution Control District (SJVAPCD) on September 21, 2016 (**Attachment 3**). This preferential parking and this amount of ERCs will be sufficient to offset the operational effects of NOx in accordance with the federally approved SIP for the SVAB and the applicable general conformity requirements, as described in **Section 4.1**.

Based on the information and analysis presented above, including the Tribe's written commitment to provide preferred parking for vanpools and carpools (**Attachment 2**) and its purchase of 53.75 tons of NOx ERCs (**Attachment 3**), the Preferred Alternative complies with the federally approved SIP for the SVAB and the applicable general conformity requirements. This document represents the BIA's Final Conformity Determination pursuant to 40 CFR 93.150(b).

6.0 REFERENCES

California Air Resources Board (CARB). 2001 (April). Ozone Transport: 2001 Review. Available online: https://www.arb.ca.gov/aqd/transport/assessments/assessments.htm. In order to download and access the Word document, it is then necessary to click on the word "summary" in the last sentence of the third paragraph. Accessed September 9, 2016 and January 3, 2017.

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: January 2017.

CARB. 2008 (December). Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan. Available online at: http://www.arb.ca.gov/planning/sip/planarea/sacsip/sacplanozone2009.pdf. Accessed: February 2015.

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.

CARB. 2015 (February). Sacramento Metro Region Air Quality Management Plans. Available online at: http://www.arb.ca.gov/planning/sip/planarea/sacsip/sacmetsip.htm. Accessed: February 2015.

ATTACHMENT 1

COMMENTS AND RESPONSE TO COMMENTS ON DRAFT CONFORMITY DETERMINATION

Attachment 1

RESPONSE TO COMMENTS ON THE DRAFT GENERAL CONFORMITY REVIEW AND DETERMINATION AND THE REVISED DRAFT CONFORMITY DETERMINATION FOR THE WIILTON RANCHERIA FEE-TO-TRUST AND CASINO PROJECT

JANUARY 2017

On December 29, 2015, the Bureau of Indian Affairs (BIA) made public a draft general review and conformity determination (DCD) for Alternative A of the Wilton Rancheria Fee-to-Trust and Casino Project Draft Environmental Impact Statement (Draft EIS), initiating a 30-day public review and comment period in accordance with 40 CFR 93.156(b). The BIA received the following comment letters:

Comment Letter 1: Sacramento Metropolitan Air Quality Management District (SMAQMD), February 10, 2016
Comment Letter 2: U.S. Environmental Protection Agency (USEPA), February 25, 2016

On December 14, 2016, the BIA made public a Revised DCD for Alternative F, which it had chosen as its Preferred Alternative in its Final EIS released the same day. This initiated a 30-day public review and comment period in accordance with 40 CFR 93.156(b).

Comment Letter 3: Sacramento Metropolitan Air Quality Management District (SMAQMD), January 6, 2017
Comment Letter 4: Stand Up for California!, January 13, 2017
Comment Letter 5: U.S. Environmental Protection Agency (USEPA), January 17, 2017

The comment letters are presented immediately after the responses.

Comment Letter 1 – Sacramento Metropolitan Air Quality Management District

Response to Comment

The Commenter suggests the Draft Conformity Determination requires revisions. The Draft Conformity Determination has been revised to reflect the selection of Alternative F as the Preferred Alternative as well as (1) updated air emission modeling data; and (2) a change in emission reduction credits (ERCs) purchasing.

Although there are particulate matter (PM_{10}) and carbon monoxide (CO) federal maintenance areas in Sacramento County, the Twin Cities site is not within the maintenance areas. However, some project-

related vehicle emissions may occur with the maintenance areas. These emissions were anticipated, with great level of confidence based on experience with modelling CAP (cap-and-trade) emissions, to be below *de minimis* levels. An analysis of PM_{10} and CO for Alternative F is included in Section 3.0 of the Final Conformity Determination. As anticipated, the results of the CO and PM_{10} analysis indicated that project-related emissions in the maintenance areas would not exceed *de minimis* thresholds; therefore, no Conformity Determination is required for CO or PM_{10} for the Twin Cities site or for the Elk Grove Mall site.

The Draft Conformity Determination for the Twin Cities site and the Revised Draft Conformity Determination for the Mall site identify the purchase of ERCs as the method to mitigate project emissions to zero. The Tribe has purchased credits in another adjacent district with an equal of 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. ERCs purchased from the SJVAB meet the requirements to show conformity outlined in 40 CFR 93.158(a)(2), in that the San Joaquin Valley Air Basin contributes and has contributed to the past to violations of the Broader Sacramento Area (which includes the Preferred Alternative Elk Grove Mall site) for ozone levels. The California Clean Air Act of 1988 required the CARB to assess the relative contributions of upwind emissions to downwind State ozone standard exceedances. The initial Transport Assessment was approved by CARB in 1990. The first triennial updates to the 1990 ozone transport report were approved by the CARB in August 1993, November 1996, and April 2001. The CARB 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" (CARB, 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 (CARB, 2001). Accordingly, the results of these assessments indicates that the San Joaquin valley contributes to the violations within the Broader Sacramento Area. Section 4.0 of the Final Conformity Determination has been revised to reflect this information.

Appropriate changes were made to the Revised Draft Conformity Determination mitigation requirements outlined in Section 93.160 of the Clean Air Act, as referenced by SMAQMD. See Attachment 2 to the Final Conformity Determination for the certificate of purchase of ERCs.

Comment Letter 2 – U.S. Environmental Protection Agency

The Commenter makes several recommendations regarding the Draft Conformity Determination. As discussed above, the Revised Draft General Determination has been revised based on updated emission model runs and the change in the Tribe's Preferred Alternative. See Response to Comment Letter 1 (above) regarding mitigation with credits from an air district other than SMAQMD. Fill import emissions for the Twin Cities site are no longer relevant as the Revised Draft Conformity Determination and the Final Conformity Determination are for Alternative F, located on the Elk Grove Mall site.

Comment Letter 3 – Sacramento Metropolitan Air Quality Management District

Response to Comment

The Commenter, while acknowledging SMAQMD's lack of regulatory authority over Federal and/or tribal projects and that neither the Bureau of Indian Affairs or the Tribe has an obligation to SMAQMD, suggests purchasing NO_x offsets by a fee payment of $88,380.92 to SMAQMD to account for construction emissions above state and SMAQMD standards but below Federal standards. Comment noted.

Comment Letter 4 – Stand Up for California!

Response to Comment

The Commenter suggests that BIA erred in releasing the Revised/Updated Draft Conformity Determination (Revised DCD) at the same time as releasing the Final EIS because the EPA General Conformity Training Manual [sic – should be "Module"] at 1.3.4.2 states that "[a]t a minimum, at the point in the NEPA process when the specific action is determined, the air quality analyses for conformity should be done." 40 CFR 93.150(b) of EPA's General Conformity Regulations describes the applicable requirement even more clearly when it states that "[a] Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart *before the action is taken*." (emphasis added). However, the "action" at issue is not the language in the Final EIS that the Preferred Alternative under NEPA is Alternative F (the Mall site property). Rather the "action" is BIA's final decision under the Indian Reorganization Act and the Indian Gaming Regulatory Act to take the Mall site property into trust as eligible for gaming. This "action" is evidenced by BIA's record of decision (ROD) and the actual taking of the property into trust. BIA has not erred and is in full compliance with Section 1.3.4.2 of the EPA General Conformity Training Module and with 40 CFR 93.150(b) because BIA completed the Final Conformity Determination before BIA signed (or will sign) the ROD and before BIA took (or will take) the Mall site property into trust.

The Commenter also states that the Revised DCD "fails to comply with 40 C.F.R. § 93.160(a) because it does not describe all air quality mitigation measures for the Project … it does not outline the process for implementation and enforcement of those air quality mitigation measures [and it] only describes two mitigation measures: purchasing emissions reduction credits for nitrogen oxides ("NOx") and preferential parking for vanpools and carpools. . . . For other mitigation measures, it merely references their inclusion in Section 5.4 of the draft EIS and does not provide a description as required under 40 C.F.R. § 93.160(a). Id." As evidenced by the ERC Certificate dated September 21, 2016 attached to the Final Conformity Determination as Attachment 2, the Wilton Rancheria has already purchased the 53.75 tons of NOx ERCs. This purchase, along with the requirement of preferential parking for vanpools and carpools, will fully mitigate the operational NOx emissions from the Preferred Alternative so that the project will be in

conformance with the State Implementation Plan. Refer to the Final Conformity Determination, included as Attachment 2 to the ROD.

The Commenter contends that the Revised DCD "is incomplete because BIA has not obtained written commitment from the Tribe that it will purchase ERCs under 40 C.F.R. § 93.160(b) [and as] such, the final EIS and the public are unable to consider how effective the enforcement measures will be, or even if there will be any at all." Since the Tribe has already purchased the 53.75 tons of ERC required by the Revised DCD, this comment is moot. Moreover, the Tribal Council of the Wilton Rancheria passed Tribal Resolution No. 2017-5 on January 17, 2017. The resolution evidences the Tribe's written commitment to provide preferential parking for vanpools and carpools during the operation of the casino project at the Mall site. A copy of this Tribal Resolution is included as Attachment 2 to the Final Conformity Determination. Since the Tribe has already purchased the 53.75 tons of NOx ERCs and has made a written commitment by Tribal Council Resolution No. 2017-5 to provide preferential parking for vanpools and carpools during the operation of the project, the Tribe has complied with 40 CFR 93.160(b) of the General Conformity Regulations that states that "[p]rior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations."

Commenter also states that "BIA must ensure compliance with the Clean Air Act's conformity determination requirement prior to making a decision to take land into trust for a gaming acquisition. Because the conformity determination is not finalized before the Final EIS and does not fully comply with 40 C.F.R. Part 93, BIA must prepare a Supplemental EIS after considering public comments and issuing a final conformity determination." As discussed above, the conformity determination is not required to be finalized before the Final EIS is issued, only before the Federal "action" is taken. Since the Final Conformity Determination was completed before the ROD was (or will be) issued and before the Mall site property was (or will be) taken into trust, the BIA has fully complied with the applicable general conformity and NEPA regulations and there is no reason relating to air quality issues associated with the Mall site for a supplemental EIS to be prepared.

Comment Letter 5: U.S. Environmental Protection Agency

Response to Comment

The Commenter summarizes past review of the project and recommends documentation of discussions or correspondence with San Joaquin Valley Air Pollution Control District (SJVAPCD) indicating their understanding that the ERCs will be used outside of the San Joaquin Valley. However, the emission reduction credits will be retired in the SJVAPCD as mitigation; the credits will not be transferred or exported out of the SJVAPCD.

SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

Larry Greene
AIR POLLUTION CONTROL OFFICER

February 10, 2016

Ms. Amy Dutschke, Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

DEIS Comments, Wilton Rancheria Fee-to-Trust and Casino Project (SAC201301478)

Dear Ms. Dutschke:

The Sacramento Metropolitan Air Quality Management District (SMAQMD) is obligated by State law[1] to represent the citizens of Sacramento in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality. Since Sacramento County does not attain the Federal or State ozone standards, and an overwhelming percentage of ozone precursor emissions come from mobile sources, the SMAQMD reviews proposed land use and transportation projects to encourage reductions in mobile source emissions as an air quality improvement strategy.

SMAQMD is also required to prepare and implement the Sacramento Metro Area's portion of the California State Implementation Plan (SIP) for the Federal ozone standard. The SIP provides specific emission inventories, photochemical modeling, reasonably available control measure, provisions for transportation control strategies and measures, rate of progress and reasonable further progress demonstrations, attainment demonstration, transportation conformity motor vehicle emissions budgets, and contingency measures to meet the Federal ozone standard.

In this context, SMAQMD is providing the following comments on the draft environmental impact statement (DEIS) and draft general conformity determination (DGCD) for the Wilton Rancheria Fee-to-Trust and Casino Project.

Draft Environmental Impact Statement

1. Stationary source emissions (for example, boilers and emergency generators) should be included in the air quality analysis. The current analysis does not include these emissions.

[1] California Health and Safety Code §40961

2. Stationary source emissions that will not require an air permit need to be included in the general conformity determination analysis.
3. Emissions from construction activities are proposed to be mitigated to a less than significant level with the use of tier 3 or newer engines, and diesel particulate filters on all engines. It may not be technically feasible to require diesel particulate filters on every engine working on the project. A contingency should be included in the mitigation to account for this possible situation, or the project could be constructed using only Tier 4 Final engines, which include particulate control devices.
4. The SMAQMD's construction threshold of significance for nitrogen oxide emissions (NO_X) is included in the DEIS (Table 4.4-3), but the analysis does not clearly demonstrate if the proposed mitigation will reduce emissions to that threshold, or if additional mitigation would be necessary. The SMAQMD routinely works with other Federal agencies (Army Corps, Bureau of Reclamation) on mitigating construction emissions to the local threshold, and could offer assistance on this project as well.
5. Operational emissions from energy, water and wastewater from the casino are not currently included in the air quality modeling.
6. Multiple measures to reduce operational emissions of ozone precursors are listed in Section 5.4.2 of the DEIS. SMAQMD recommends the Bureau commit to implement the measures and estimate emission reductions that could be realized from implementation. This could reduce the amount of emission reduction credits needed for mitigation. Also, mitigation measures implemented in the Sacramento Federal Ozone Non-attainment Area assist SMAQMD in meeting the Federal and State ozone standards.
7. Section 4.8 of the DEIS on transportation states the project will not impact existing or planned walking, biking or transit facilities or plans. SMAQMD promotes sustainable modes of transportation for land use projects. Since the project will create a large amount of vehicle trips, the SMAQMD encourages the Bureau to explore ways to incorporate walking, biking and transit infrastructure into the project not only to reduce vehicle trips and emissions from the project, but also to provide full transportation options to the customers and employees of the project. Other Tribal projects in the Sacramento Federal Ozone Non-attainment Area (Cache Creek, Thunder Valley) offer shuttle services and also work with local transportation agencies to provide transit service to the casinos.

Draft General Conformity Determination

1. Particulate matter (PM10) and carbon monoxide (CO) emissions should be included in the conformity applicability analysis since SMAQMD is a Federal maintenance area for both pollutants.
2. The Bureau recognizes the need to mitigate operational ozone precursor emissions from the project to zero in order to make a positive conformity determination in accordance with Section 93.158 (a)(2) of the General Conformity Regulation[2]. The draft general conformity determination identifies the purchase of emission reduction credits (ERCs) as the method to mitigate the emissions to zero.
    a. There is currently not an adequate amount of NO_X ERCs available in the Sacramento Federal Ozone Non-attainment Area to meet the needs of the project.
    b. If the Bureau is considering purchasing ERCs in the San Joaquin Valley (SJV), the Bureau must demonstrate that ozone emissions from the SJV contribute to the Sacramento Federal Ozone Non-attainment Area's violations.
    c. SMAQMD requests the Bureau consider limiting SJV ERCs to those within 50 miles of the project site.

3. Section 93.160 of the General Conformity Regulation[3] outlines the air quality mitigation requirements that must be met prior to the Bureau making a positive conformity determination for the project:
    a. Mitigation measures must be specifically identified;
    b. A process for implementation and enforcement must be described, including an implementation schedule with explicit timelines; and

[2] Code of Federal Regulations, Title 40, Chapter I, Subchapter C, Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans, Section 93.158 (a)(2) For precursors of ozone, nitrogen dioxide, or PM, the total of direct and indirect emissions from the action are fully offset 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 to violations in the past, in the area with the Federal action) through a revision to the applicable SIP or a similarly enforceable measure that effects emissions reductions so that there is no net increase in emissions of that pollutant.

[3] Code of Federal Regulations, Title 40, Chapter I, Subchapter C, Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans

c. Written commitments from the persons/agencies providing mitigation must be obtained and provided.

These elements are not currently included in the draft general conformity determination.

General Comments

I appreciate the Bureau providing the draft project documents to the SMAQMD for review and meeting with my staff to discuss the air quality components of the project.

In summary, SMAQMD wants to ensure that air quality impacts from the project are fully disclosed and mitigated. Stationary source emissions and operational emissions from casino energy, water and wastewater use need to be included in the EIS and general conformity analysis. Construction emissions should be compared to the SMAQMD's NO_X threshold and additional mitigation included to reduce the air quality impacts from construction. Operational emissions of ozone precursors and greenhouse gases should be reduced from the project by incorporating sustainable transportation modes and other measures listed in the EIS, which would also reduce the amount of ERCs needed to mitigate the emissions off-site. To meet the General Conformity Regulation, the SMAQMD provides specific requests related to disclosure and purchasing ERCs.

I'm requesting the Bureau provide the final environmental impact statement and final general conformity determination once the documents are available.

You may contact Karen Huss of my staff (916-874-4881 or khuss@airquality.org) if you have questions regarding the SMAQMD's comments or would like to have further discussions on air quality analysis, emission reduction credits, or existing mitigation programs.

Sincerely,

Larry F. Greene
Executive Director/Air Pollution Control Officer

Cc: County of Sacramento
City of Elk Grove
City of Galt

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

Reg Dir ald
Dep RD Trust
Dep RD IS
Route DCCEMS
Response Required
Due Date
Memo Ltr
Fax

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 ft^2 and 302 rooms under Alternative A, and 229,680 ft^2 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 (NOx) 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 Impacts[3]. 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 NOx. 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 on 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.

SACRAMENTO METROPOLITAN
AIR QUALITY
MANAGEMENT DISTRICT

Larry Greene
AIR POLLUTION CONTROL OFFICER

January 6, 2017

Ms. Amy Dutschke, Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

FEIS/Revised DCD Comments, Wilton Rancheria Fee-to-Trust and Casino Project (SAC201301478)

Dear Ms. Dutschke:

As you know, the Sacramento Metropolitan Air Quality Management District (SMAQMD) is obligated by State law[1] to represent the citizens of Sacramento in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality.

I appreciate the cooperation the Bureau of Indian Affairs (Bureau) and the Wilton Rancheria Tribe (Tribe) has shown in meeting with the SMAQMD staff, discussing analysis and mitigation strategies, and responding to SMAQMD comments on the Draft Environmental Impact Statement and Draft General Conformity Determination for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project.

Acknowledging that SMAQMD has no regulatory authority in this Federal, Tribal project, and the Bureau and Tribe have no obligation to the SMAQMD; I am requesting the Bureau and Tribe consider the construction NOx emissions impacts on the State ground level ozone standards and the related health impacts of not attaining those standards.

Ground level ozone is formed when volatile organic compounds (VOCs) and oxides of nitrogen (NOx) react with the sun's ultraviolet rays. The primary source of VOCs and NOx is mobile sources, including cars, trucks, buses, construction equipment and agricultural equipment. Ground level ozone reaches its highest level during the afternoon and early evening hours. High levels occur most often during the summer months. Breathing ozone can cause the muscles in the airways to constrict, trapping air in the alveoli (air sacs). This reduces the volume of air that the lungs breathe in and leads to wheezing and shortness of breath. Ozone inflames and damages the airways and can cause pain when taking a deep breath. It makes the lungs more susceptible to infection, aggravates lung diseases such as asthma, emphysema, and chronic bronchitis and can cause chronic obstructive pulmonary disease (COPD). Long-term exposures to higher concentrations of ozone may lead to

[1] California Health and Safety Code §40961

permanent lung damage, such as abnormal lung development in children. SMAQMD is required by State and Federal law to reduce ground level ozone in Sacramento County for the health of all that live, work and recreate within its boundaries, including Tribal land. SMAQMD also recognizes that air pollution knows no geopolitical boundaries.

Because the State ground level ozone standards are more stringent and health protective than the Federal ozone standards the SMAQMD has developed thresholds of significance for ozone precursors that are more stringent than the Federal de minimis thresholds. The 85 pounds per day SMAQMD NOx construction threshold equates to 15 tons per year of NOx, while the Federal de minimis threshold is 25 tons per year of NOx.

The Bureau and Tribe have committed to mitigating construction NOx emissions by requiring the construction fleet to include Tier 3 or newer off-road engines. With that measure, the analysis finds the NOx emissions are below the Federal de minimis level of 25 tons per year of NOx and nothing more is required for mitigation of air quality impacts. However, SMAQMD is requesting the Bureau and Tribe consider additional construction NOx mitigation by reducing emissions to SMAQMD's NOx threshold, providing even greater health benefits than simply meeting the Federal de minimis threshold and assisting the SMAQMD in meeting the State ground level ozone standards.

SMAQMD staff's review of the summer CalEEMod report for Alternative F (the preferred alternative) indicates approximately 4.61 tons of construction NOx emissions above the SMAQMD's thresholds of significance. The 4.61 tons could be mitigated with a fee payment in the amount of $88,380.92. The SMAQMD uses mitigation fees from construction activities to fund emission reduction projects within its jurisdiction.

Your thoughtful consideration of this request for additional mitigation is appreciated. Please contact Karen Huss at 916-874-4881 or khuss@airquality.org if you would like to discuss this further.

Sincerely,

Larry F. Greene
Executive Director/Air Pollution Control Officer

Cc: County of Sacramento
City of Galt
City of Elk Grove
US EPA

Stand Up For California!
"Citizens making a difference"

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

January 13, 2017

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

RE: FEIS Comments, Wilton Rancheria Fee-to-Trust and Casino Project

Dear Ms. Dutschke:

The following comments are being submitted on behalf of Stand Up For California! (Stand Up), Elk Grove GRASP, the Committee to Uphold Elk Grove Values, and concerned citizens of Elk Grove, regarding the Bureau of Indian Affairs' (BIA) Final Environmental Impact Statement (FEIS) for the Wilton Rancheria's (Rancheria) Fee-to-Trust and Casino Project (Project).

First and foremost, we strenuously object to what is clearly a rush to take the Elk Grove site into trust before the Trump administration takes office. We note in particular that, three years after BIA first initiated its review of this Project, the *first* notice to the general public published by BIA that the proposed action and preferred alternative had changed from the Galt site to the Elk Grove site was the December 14, 2016 Federal Register notice of the availability of the FEIS for public review and comment.[1] In addition, we reiterate our objections to the supervision of BIA's consideration of the Project by Ms. Dutschke, whose family ties to membership of the Wilton Rancheria present a clear conflict of interest, and necessarily taint any final decision. Given that all indications are that BIA has already pre-determined a final decision to take the Elk Grove site into trust, it is not surprising that the FEIS continues to suffer from multiple deficiencies, as we have described in previous comment letters.[2]

[1] 81 Fed. Reg. 90379 (Dec. 14, 2016).
[2] We reiterate and incorporate by reference in their entirety our comments submitted by letters dated January 6, 2014 (scoping comments); February 9, 2016 (DEIS comments and February 12, 2016 amendment thereto); February 12, 2016 (comments regarding authority for gaming); September 27, 2016 (comments regarding change in proposed action); December 21, 2016 (comments regarding title encumbrances on Elk Grove site); December 29, 2016

I. The FEIS fails to consider that the Elk Grove site continues to be encumbered by development agreements.

As we have previously explained, the proposed casino site is encumbered by development agreements approved by the City of Elk Grove, precluding acquisition in trust. In 2005 and 2014, the City approved, by ordinance, executed and recorded development agreements with respect to Parcel Number 134-1010-001-0000 (Portion). Although the FEIS fails to consider their effect, BIA is aware of those development agreements, having previously informed the parties that the United States could not acquire Parcel Number 134-1010-001-0000 (Portion) in trust for the proposed purpose until the encumbrances associated with those agreements were removed. Schedule B to the November 17, 2016 notice of application also identifies those encumbrances as exceptions number 13, 14 and 27.

The development agreements expressly reserve to Elk Grove the right, subject to the vested rights, to:

- grant or deny land use approvals;
- approve, disapprove or revise maps;
- adopt, increase, and impose regular taxes, utility charges, and permit processing fees applicable on a city-wide basis;
- adopt and apply regulations necessary to protect public health and safety;
- adopt increase or decrease fees, charges, assessments, or special taxes;
- adopt and apply regulations relating to the temporary use of land, control of traffic, regulation of sewers, water, and similar subjects and abatement of public nuisances;
- adopt and apply City engineering design standards and construction specification;
- adopt and apply certain building standards code;
- adopt laws not in conflict with the terms and conditions for development established in prior approvals; and
- exercise the City's power of eminent domain with respect to any part of the property.

These encumbrances are not only inconsistent with the federal title standards, they prevent the land from qualifying as "Indian lands" eligible for gaming under the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2703(4). These rights, which are recorded on the deed, establish that the City of Elk Grove has governmental jurisdiction over the site. The City can impose taxes; the City adopts regulations to protect public health and safety; the City will regulate building codes, engineering design standards, etc.; and the City will regulate land use, sewers, traffic, etc. BIA

(seeking assurances that Elk Grove site will not be taken into trust before judicial review is possible); and January 6, 2017 (regarding history of Wilton Rancheria and lack of authority to take land into trust for gaming).

has previously denied gaming determinations based on development agreements that accord local governments some authority over the proposed gaming sites. *See e.g.*, Letter to Michael Toledo from Assistant Secretary L. Echo Hawk Regarding Trust Application of Pueblo of Jemez (Dec. 1, 2011). Here, the authority is part of the deed itself. The land cannot qualify as "Indian lands" under IGRA.

On November 9, 2016, the City recorded an amendment to the development agreement, which made it appear that these encumbrances had been removed from an approximately 35.92-acre parcel of land. That recordation was premature and of no legal effect.

Under California law, a city must enact an ordinance approving the execution of a development agreement, which is then recorded as an encumbrance on the title to the property.[3] A city must approve amendments to a development agreement by ordinance, as well. California law requires cities to wait for 30 days before any ordinance goes into effect. The purpose of that delay is to allow aggrieved parties to exercise their rights under Section 9 Article II of the California Constitution (i.e., the referendum right) and/or to file claims arising under State law, including the California Environmental Quality Act. Specifically, with respect to the referendum power, Government Code section 36937 and Elections Code section 9235.2 provide that an ordinance approving or amending a development agreement will not take effect for 30 days, during which time the voters of a jurisdiction are entitled to exercise their right of referendum by presenting a petition protesting the ordinance. *See* Government Code sections 65867.5(a) and 65868 and Elections Code sections 9235 and following.

The City failed to comply with applicable state laws. On October 26, 2016, the City approved an amendment to the development agreement encumbering Parcel Number 134-1010-001-0000 (Portion) by removing the parcel from the existing development agreement. Although State law imposes a 30-day waiting period before an ordinance goes into effect, the City executed the amendment to the development agreement prior to that date and recorded the amendment on November 9, 2016. The City therefore did not have authority to execute the amendment to the development agreement when it did, nor record that amendment.

On November 21, 2016, approximately 14,800 citizens filed with the City Clerk's office a referendum petition protesting the ordinance authorizing the amendment. That petition was verified by the City Clerk on January 6, 2017, and thus the ordinance will not go into effect until such time as a majority of the voters in Elk Grove approve that ordinance. Accordingly, the City was without authority to execute and record the amendment, and the land continues to be encumbered by the development agreement.[4] These encumbrances will remain in place at least until a special election can be held, at the earliest in April 2017.

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[3] A development agreement is an agreement between a local jurisdiction and an owner of legal or equitable interest in property that addresses the development of the property it affects. It must specify the duration of the agreement, the permitted uses of property, the density or intensity of use, the maximum height and size of proposed building, and provisions for reservation or dedication of land for public purposes. A development agreement is a legislative act that must be approved by ordinance and is subject to referendum. After a development agreement is approved by ordinance and the City accordingly is enabled to enter into it, the agreement may be executed and recorded with the county recorder, as it was in this case.

[4] In addition, on November 23, 2016, the undersigned filed in state court a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief challenging the City's ordinance under the California

The Department nonetheless appears to be determined to take the Elk Grove site into trust before the Trump Administration takes office on January 20, 2017, despite these encumbrances.[5] The FEIS, however, entirely fails to analyze the effects of taking the Elk Grove site into trust subject to these encumbrances. Instead, the FEIS assumes that by taking the land into trust, state and local jurisdiction will be displaced, allowing the Rancheria to build and operate a casino. As we have explained, however, the land will not be eligible for gaming as long as the encumbrances are in place, precluding the operation of a casino. Moreover, the encumbrances on title are a property interest held by the City of Elk Grove, not the Rancheria. Even if BIA is authorized, despite the encumbrances, to take into trust the Rancheria's property interests in the Elk Grove site, it cannot take into trust the City's property interests. The City will therefore retain all of the powers it reserved in the development agreement, a result that the FEIS does not consider at all. In short, as long as the encumbrances remain in place, the FEIS does not in any way fulfill BIA's duty under NEPA to evaluate the effects of taking the Elk Grove site into trust.

II. BIA must prepare a supplemental EIS to address the change in the proposed action.

As we have previously explained, BIA cannot rely on the draft EIS it prepared to evaluate the Rancheria's trust application for 282 acres of land in Galt to support acquiring trust land in Elk Grove. Those concerns remain. Proceeding without a supplemental EIS will violate NEPA regulations and thwart public notice and opportunity to comment, one of NEPA's two key purposes.

A. NEPA regulations require BIA to prepare a supplemental EIS.

NEPA requires federal agencies to prepare a supplemental EIS if: (i) an agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c).

The federal action that has been under BIA's review for almost three years is the proposed trust acquisition of land in Galt. BIA's December 2013 Notice expressly states that the Rancheria has applied to have "approximately 282 acres of fee land … located within the City of Galt Sphere of Influence Area" acquired "in trust in Sacramento County, California, for the construction and operation of a gaming facility." 78 Fed. Reg. 72928-01 (Dec. 4, 2013). The Notice identifies the parcels (Parcel Numbers148-0010-018, 148-0041-009, 148-0041-006, 148-0041-004, 148-0041-001, 148-0031-007, and 148-0010-060). *Id.*

Environmental Quality Act (CEQA), alleging that approval of the amendment authorizing the removal of Parcel Number 134-1010-001-0000 (Portion) from the development agreement was a discretionary decision subject to review under that Act. Petitioners allege that by entering into the amendment without an effective ordinance in place and recording that amendment, the City violated statutory law and the right to referend. The City has since recorded an acknowledgment that the proposed trust land is still encumbered by the 2014 development agreement—an implicit concession of its illegal action—but the Department appears to be moving forward with the application despite these state proceedings.

[5] The Department has refused to allow a short delay before taking the land into trust to allow the undersigned to seek preliminary judicial relief after a final decision. *See* Exhibit 1, Email from Eric Shepard, Associate Solicitor, to Paul Smyth, counsel for Stand Up (January 9, 2017). The undersigned subsequently have sought emergency preliminary relief in federal court to enjoin the immediate transfer of the land into trust upon the Department's final decision.

The Notice does not identify land in Elk Grove as an alternate application of the Rancheria's. There is no question that the acquisition of land in the City of Elk Grove is a "substantial change[] in the proposed action" from the acquisition of 282 acres of land in the City of Galt that BIA provided notice of in 2013. The change is clearly relevant to environmental concerns. The change in location will obviously have different environmental impacts. Likewise, the Rancheria's application change is also a "significant new circumstance[]" that directly affects environmental concerns. BIA only provided limited notice in November that the Rancheria had submitted a new application to take the Elk Grove site into trust. BIA did not give the general public notice of this until December, when it published in the Federal Register its notice of availability of the FEIS. Proceeding directly to a final EIS, as it appears BIA is planning to do, will violate NEPA.

BIA appears to be relying on the principle that an agency can select an alternative different from the preferred alternative without preparing a supplemental EIS. That principle, however, applies when the proposed action itself is not limited to one specific action. For example, when a proposed action is a transmission line connecting points A and B, there can be several possible routes that would satisfy that action. Accordingly, an EIS will list several alternatives and can readily select an alternative that was not initially the preferred alternative because the notice itself makes that possibility clear. The same is true of highway proposals.

This scenario is entirely different. Because the 2013 Notice of Intent identified the proposed acquisition of land in Galt and only that proposal, no one could have anticipated that the Rancheria would change its application to another location. *cf. California v. Block*, 690 F.2d 753, 772 (9th Cir.1982) (concluding that supplemental analysis is required when the selected alternative "could not fairly be anticipated by reviewing the draft EIS alternatives"). Indeed, the Secretary cannot acquire land in trust unless the applicant owns the land. One reasonably assumes that when a tribe files a trust application, it either owns the land or has an option to own the land. That was clearly not true of the Elk Grove alternative considered in the draft EIS. The draft EIS specifically stated that "an agreement is not currently in place for the purchase of the Mall site by the Tribe." DEIS 2.10.2, 2-34. Thus, the fact that the draft EIS evaluated the acquisition a 28-acre parcel of land at the Elk Grove Mall, *see* DEIS 2.7, 2-25, does not satisfy NEPA.

In addition, the Elk Grove alternative has changed substantially from what was evaluated in the DEIS. Alternative F in the DEIS described a 28-acre site. The proposed action now includes 36 acres, a *29% increase* in the area proposed to be put in trust. Other changes in the project components are also described, including a new three-story parking garage. The notice of availability and FEIS make conclusory statements that these changes not significant, but these are substantial changes in the proposed action that are relevant to environmental concerns because they go directly to the extent and intensity of development proposed. The 29% increase in land area affected and substantial new project components clearly introduce significant new circumstances or information relevant to environmental concerns, which the draft EIS entirely failed to address. *See Natural Resources Defense Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) ("Where the information in the initial EIS was so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives, revision of the EIS may be necessary to provide a reasonable, good faith, and objective presentation of the subjects required by NEPA." (quoting *Animal Def. Council v. Hodel*, 840

F.2d 1432, 1439 (9th Cir.1988))). A supplemental EIS is therefore required under 40 C.F.R. § 1502.9(c).

B. The history of the review process and public opposition underscore the need for a supplemental EIS.

The regulations implementing NEPA require a supplemental EIS in circumstances such as these precisely because the public notice and participation requirements of NEPA are not satisfied when the public did not have adequate notice of the action under consideration. If the public has not had adequate opportunity to comment on a proposed action at the draft stage of the environmental review process, a supplemental EIS is required. *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). Indeed, the Ninth Circuit has struck down federal agency action when the agency has failed to provide notice of the action in question. *Buschmann v. Schweiker*, 676 F.2d 352 (9th Cir. 1982) and *Western Oil & Gas Association v. U.S. Environmental Protection Agency*, 633 F.2d 803 (9th Cir. 1980).

The residents of Elk Grove obviously did not have notice of a proposed trust acquisition in Elk Grove until June of 2016, at the earliest, as the history of the review process establishes. As set forth above, when BIA published its Notice of Intent, it described a trust acquisition in Galt. *See* 78 Fed. Reg. 72,928-01 (Dec. 4, 2013). BIA offered a 30-day public comment period, which ran from December 6, 2013, to January 6, 2014, and a December 19, 2013 scoping meeting in Galt. No one from the City of Elk Grove attended the scoping meeting, including the City of Elk Grove. Nor did anyone from Elk Grove provided comments in response to the scoping notice. Similarly, when BIA issued a Notice of Availability for the draft EIS on the proposed Galt acquisition, *see* 80 Fed. Reg. 81,352 (Dec. 29, 2015), it appears that no citizens from Elk Grove responded raising issues related to the Elk Grove alternative.

Significantly, the draft EIS does not include the City of Elk Grove among the governmental entities that were invited to be cooperating agencies. Any municipality that is expected to be directly affected by a proposed action—particularly one that results in the loss of jurisdictional and regulatory control and a reduction in its tax base—is typically extended an invitation to participate as a cooperating agency by the BIA, as required by its own NEPA guidance. Indeed, the trust regulations require notice to the City.[6] The City itself did not request to become a cooperating agency until May 13, 2016, a request granted by the BIA on May 19, 2016.

In fact, the change in the preferred project is of great public concern. At a public meeting held by the Rancheria in July (not by BIA, as federal regulations require), over 300 local residents showed up to express their concerns about the Rancheria's announcement. Many of the comments focused on the fact that the Rancheria was changing its application and that the commenters did not know of the change nor have an opportunity to participate in the process. As

[6] It was not until February 18, 2016, that the City of Elk Grove participated in any fashion. Even then, the City stated that "[w]hile there is not an application at this time to take the Alternative F site into trust, our understanding is that this is still the appropriate time to comment on the Alternative F site." FEIS Comment letter A8. The City appears to have based these comments on preliminary discussions with the Rancheria regarding its interest in the Elk Grove site.

previously noted, the draft EIS specifically stated that no agreement was currently in place for the purchase of the Mall site by the Rancheria. DEIS at 2-34.

Furthermore, the Elk Grove alternative is the only site for which multiple alternatives, including a reduced intensity casino and/or commercial retail development, were not considered. These alternatives were rejected for the Elk Grove site for nonsensical reasons, resulting in both an inadequate range of alternatives, and a clear signal that the Elk Grove site was not being seriously considered.[7] Significantly, many of the deficiencies in the analysis of the Elk Grove site, detailed below, are not correspondingly found in the analysis of the Galt site—a clear indication that BIA initially assumed the Tribe's Proposed Action to take the Galt site into trust would be its final decision, and gave the Elk Grove site short shrift in the draft EIS.

The lack of participation from Elk Grove residents until July of 2016 stands in contrast to the participation from those living in Galt. The obvious reason for that lack of participation is that the residents of Elk Grove did not know that a site in Elk Grove was under consideration and accordingly, they did not participate. After spending more than three years processing the Rancheria's proposed casino project in Galt, the BIA is now determined to take the Elk Grove site into trust with only 30 days notice to the general public. That is the very definition of a bait-and-switch.

"[A]n agency's failure to disclose a proposed action before the issuance of a final EIS defeats NEPA's goal of encouraging public participation in the development of information during the decision making process." *See Half Moon Bay*, 857 F.2d at 508. This case is a perfect example of this legal violation.

C. A supplemental EIS would allow BIA to correct its public participation missteps.

BIA's actions here meet neither the letter nor the spirit of NEPA. Pursuant to CEQ's NEPA regulations:

> Federal agencies shall to the fullest extent possible:
> (a) Interpret and administer the policies, regulations, and public laws of the United *States in accordance with the policies set forth* in the Act and *in these regulations*.
> (b) Implement procedures *to make the NEPA process more useful to* decisionmakers and *the public*;
> …

[7] A reduced-intensity development was eliminated from consideration on the grounds that the environmental effects of the Mall site were likely relatively low since the site is already developed. DEIS at 2-31. This entirely ignores the difference in socioeconomic and other effects that would result from a reduced intensity casino or retail development. A non-gaming alternative was eliminated on the grounds that competitive effects would affect other retailers. *Id.* The existence of socioeconomic effects, by itself, is obviously not a logical basis to exclude an alternative. All of the action alternatives evaluated in the draft EIS have socioeconomic effects. In particular, competitive effects on other gaming providers were not considered a basis to exclude gaming alternatives, and there is no legitimate reason to reject a viable alternative simply to protect non-gaming businesses from competition.

> (d) *Encourage and facilitate public involvement* in decisions which affect the quality of the human environment.

40 C.F.R. § 1500.2 (emphases added). Federal agencies are also required to:

> (a) *Make diligent efforts to involve the public* in preparing and implementing their NEPA procedures.
> (b) *Provide public notice* of NEPA-related hearings, public meetings, and the availability of environmental documents *so as to inform those persons and agencies who may be interested or affected.*
> …
> (3) In the case of an action with effects primarily of local concern the notice may include:
> …
> (iii) *Following the affected State's public notice procedures for comparable actions*.
> (iv) *Publication in local newspapers* (in papers of general circulation rather than legal papers).
> (v) Notice through *other local media*.
> (vi) Notice to *potentially interested community organizations* including small business associations.
> (vii) Publication in *newsletters that may be expected to reach potentially interested persons*.
> (viii) Direct mailing to *owners and occupants of nearby or affected property*.
> …
> (c) *Hold or sponsor public hearings or public meetings whenever appropriate* or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:
> (1) *Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing*.
> …
> (d) *Solicit appropriate information from the public*.

40 C.F.R. § 1506.6 (emphases added).

BIA implemented none of these actions with respect to Elk Grove. Instead, BIA's actions have had the practical effect of blindsiding the people of Elk Grove. In addition, the City of Elk Grove should have been invited to be a cooperating agency from the start, *see* 40 C.F.R. § 1501.7(a)(1), which would also have allowed time for the involvement of citizens through their elected officials. The fact that over 14,000 citizens signed a petition to referend the City ordinance allowing the land to be put into trust is a measure of the magnitude of the lack of notice and cooperative communication among and between the BIA, the City, and the citizens of Elk Grove. A supplemental EIS, along with additional public participation measures, would help correct these violations of the letter and spirit of NEPA and its implementing regulations.

III. The analysis in the FEIS of the Elk Grove alternative is inadequate.

A. The mitigation discussion is inadequate.

As we previously explained, there are fundamental flaws in the treatment of mitigation in the EIS. These flaws remain unaddressed in the FEIS. One overarching deficiency is the unsupportable presumption that project design parameters and recommended mitigation measures are enforceable. The EIS assumes that all design parameters and mitigation measures are enforceable because they are either inherent in the project design; subject to the terms of the Rancheria's Memorandums of Understanding (MOUs) with the City of Elk Grove and Sacramento County[8] (or other agreements yet to be negotiated); and/or required under federal or state law. In fact, once the land is taken into trust, the Rancheria is under no obligation to build the project as proposed, nor is it required to implement the mitigation measures described.

While mitigation measures that might be required under federal law would indeed be enforceable, no federal approvals have yet been issued. The exact nature of the mitigation that might be required in such federal approvals or permits is therefore uncertain. Nor would such federal permits or approvals include all of the mitigation measures relied upon by the final EIS. State law, of course, would generally not apply once the proposed site is taken into trust. To the extent Tribal law is relied upon, it is subject to unilateral change by the Rancheria itself, and therefore cannot be considered an independent source of authority to enforce mitigation requirements. Tribal sovereign immunity is a significant limitation on enforcement actions, the effect of which has not been considered in the EIS.

More fundamentally, the EIS is premised on the enforceability of design parameters of the proposed project, yet there is no explanation of how that is true. It is irrelevant that certain parameters and mitigation measures are described as part of the project design, if there is no mechanism to require the Rancheria to adhere to the project design for the alternative chosen. Once the land is taken into trust, there is nothing preventing the Rancheria from changing its proposed design. The EIS does not explain how the Rancheria would, or even could, be required by BIA to build the alternative chosen in the Record of Decision (ROD). Without such an explanation, it is entirely uncertain what the actual effects of the proposed federal actions will be, and there is no way to comment on the adequacy or effectiveness of any proposed enforcement mechanism. *See* Council on Environmental Quality, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," 46 Fed. Reg. 18,026, 18,032-33 (March

[8] With very little public notice, the City of Elk Grove and the Sacramento County recently entered into Memorandums of Understanding (MOU) with the Rancheria regarding the mitigation of impacts resulting from the casino project in Elk Grove. *See* FEIS App. B. Those MOUs cannot be assumed to adequately mitigate impacts, given the deficiencies in mitigation identified in these comments; each MOU is explicitly based on the evaluation of impacts and mitigation in the DEIS. *See* 2016 Elk Grove MOU at 3; 2016 County MOU at 3. In addition, approval of the MOUs is subject to the California Environmental Quality Act, and the City and County have not complied with the requirements of that Act.

23, 1981) ("the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies.") (citing 40 C.F.R. §§ 1502.16(h), 1505.2).

The FEIS offers inadequate explanations of enforceability and its likelihood. *See* Response to Comment A16-152. BIA asserts that it will include an enforceable mitigation monitoring and reporting plan in the ROD, but this does not alleviate its responsibility to identify the specific mechanisms it proposes for enforcement, to evaluate the likely effectiveness of those mechanisms, and to allow public review and comment on that analysis. BIA also asserts that mitigation monitoring will be available "through tribal environmental laws that would be developed for trust land," but as previously noted, tribal law is subject to unilateral change by the tribe itself, tribal sovereign immunity is a substantial bar to third-party enforcement (which the EIS does not consider), and in any case, no specific laws are identified or evaluated for effectiveness.[9]

Similarly, there is no explanation of how the NIGC regulations at 25 C.F.R. Parts 522, 571, 573, 575, 577 (sic; Part 577 is reserved), and 559—none of which even mention mitigation—could be used to make enforceable the mitigation measures identified in the FEIS, or the likelihood of their effectiveness. Certain provisions of these regulations speak of a tribe's obligations to operate and maintain gaming facilities in a manner that is protective of environmental and public health and safety, *see, e.g., id.* §§ 222.2(i); 222.4(b)(7); 573.4(a)(12); but such generic statements do not meet the requirement under NEPA to identify specific enforcement mechanisms and to evaluate their likely effectiveness. Furthermore, each of these provisions is in terms of *the tribe's own gaming ordinance/resolution and enforcement*. Indeed, the most detailed of these general statements in the NIGC's regulations speaks of a tribe's obligation to *self-certify* enforcement of applicable laws *by the tribe itself*. *See* 25 C.F.R. § 559.4. As previously noted, reliance on self-enforcement by the tribe is inherently problematic, and in any case, the FEIS identifies no tribal laws that might apply, nor evaluates their likely effectiveness.

In the end, BIA seems to assume that anything it puts in the ROD is enforceable—but once the land is in trust (which BIA asserts must be accomplished immediately upon a final decision, pursuant to 25 C.F.R. § 151.12) the ROD does not provide any authority for BIA to take the land out of trust if mitigation measures are not complied with, or to otherwise take actions to ensure that such measures are implemented. BIA has never interpreted a trust acquisition decision to include the power to condition the acquisition or continuing trust status of land upon compliance with continuing conditions. Indeed, any such interpretation by BIA that the ongoing trust status of land is contingent upon compliance with conditions imposed by BIA would raise serious concerns under the Federal trust responsibility to Indian tribes.

BIA's conclusions in the EIS regarding the significance of numerous impacts, therefore, are inextricably bound to the assumption that the described project design and mitigation measures will be implemented. These conclusions are unsupported if those parameters and mitigation measures are not enforceable, because there is otherwise no reason to believe that they will in fact be implemented. Without some reasonable assurance of enforceability, the actual impact of

[9] If no such tribal laws currently exist, that fact must be disclosed and evaluated under 40 C.F.R. § 1502.22.

the proposed project cannot be accurately predicted, analyzed, or commented on. The public has had no opportunity to comment on the adequacy and effectiveness of specific proposed methods of enforcement for each mitigation measure. Without a thorough analysis of this issue—including evaluation of any unavailable or incomplete information, as required by 40 C.F.R. § 1502.22—the FEIS is fundamentally deficient, and must be supplemented and recirculated for public comment before a final decision.

B. Transportation impacts are underestimated.

The FEIS completely ignores our September 27, 2016 comments regarding the fundamental deficiencies in the traffic impacts analysis. A traffic impacts analysis is only as good as the assumptions that go into it. A critical parameter of the Traffic Impact Study (App. O) is the trip generation rates, yet the rate chosen for the Weekday PM peak period (when overall traffic is highest) is far too low to be accurate. The traffic study uses the rate observed at a single casino (Thunder Valley Casino), which the study asserts is a reasonable comparison. The standard Institute of Transportation Engineers (ITE) rate for casinos (which is based on multiple studies) is 13.43 (trips per 1,000 sf gaming floor area), but the rate chosen—9.84— is substantially lower, and therefore will considerably underestimate peak traffic (for perspective, the standard ITE rate is *36.5%* higher than the rate employed). The standard ITE rate was rejected on the grounds that the ITE rate is based on much larger, more urban hotel/casinos "of the nature commonly found in Las Vegas and Reno" and is therefore "generally not applicable to this smaller, more rural project." App. O at 57. This is incorrect. The standard ITE rate is for facilities that expressly "do not include full-service casinos or casino/hotel facilities such as those located in Las Vegas, Nevada or Atlantic City, New Jersey." ITE, *Trip Generation* (9th ed.) at 888. To the contrary, the standard ITE rate is based on much smaller casinos, located in rural regions, that are directly comparable to the proposed project. *Id.* Without a valid basis for rejection, the standard ITE rate should be employed to reevaluate the traffic impacts of the proposed project.

Even assuming, as the Traffic Impact Study does, that the Thunder Valley Casino is a reasonable comparison, the Weekday PM trip generation rate is still too low. The EIS argues that the Thunder Valley trip generation rates are reasonable because the rates "are consistent with the daily customer and employee totals projected for the proposed project." FEIS at 4.8-1; App. O at 59. However, the ratio of projected weekday to weekend patrons suggests that the Weekday PM rate should be at least 11.6—in other words, at least 17.8% higher than the rate employed.[10] The Traffic Impact Study therefore severely underestimates traffic impacts.

Finally, the FEIS confirms that the Tribe changed its proposed action from Alternative A to Alternative F based on new information that the necessary improvements to accommodate traffic impacts at the Alternative A site would cost substantially more than previously thought and involve further delay. FEIS at 2-36. Such new information has not been analyzed in the EIS, nor made available to the public for review and comment. More importantly, it correspondingly calls

[10] Under Alternative F, the casino is projected to serve 8,100-9,000 patrons each day per weekday, and 12,900-14,200 on weekends. FEIS at 2-30. Given the resulting weekday-to-weekend ratio of 1:1.6 and the Weekend PM rate of 18.4 chosen for the Traffic Impact Study, the corresponding Weekday PM rate should be approximately 11.6.

into question the evaluation of traffic impacts under Alternative F and their costs. The basis for the Tribe's about-face should be disclosed to the public and analyzed in a supplemental EIS.[11]

In addition, the Galt alternative includes 3,500 parking spaces and a transit facility. The Elk Grove alternative has only 1,690 on-site surface parking spaces, with additional parking provided by the adjacent mall, and site access would be provided at existing intersections along Promenade Parkway. The EIS does not take into account the impacts to the proposed outlet mall of a reduction of almost 2,000 parking spaces available to mall patrons, nor the impacts of mixing casino traffic with families and children visiting the mall and theaters.

C. The public services analysis is inadequate.

The FEIS continues to have insufficient analysis with regard to Public Services. In particular, Section 4.10.6 of the EIS analyzes water supply for Alternative F. It concludes that "[a] significant effect would occur to water supply distribution facilities as a result of the need to provide service to Alternative F." Despite identifying this significant effect, the FEIS discussion is brief and conclusory, stating that "mitigation measures" in Section 5.10.1 will "ensure that an adequate water supply is available for the operation of Alternative F." In fact, Section 5.10.1 contains just one mitigation measure (not multiple), which states only that the Tribe will enter into a service agreement to reimburse the applicable service provider for necessary new or upgraded facilities. This general mitigation measure is recommended for several of the alternatives and is not specific to Alternative F. It is unclear how this alone will ensure adequate water supply distribution facilities and mitigate the significant effect identified in the FEIS.

The FEIS estimates daily water consumption for Alternative F to be approximately 260,000 gpd; however, it is unclear whether this estimate should be revised in light of the new project. FEIS at 4.10.6. The FEIS states that the Sacramento County Water Agency (SCWA) "has the capacity to meet anticipated demand for domestic water use under Alternative F." *Id.* But the FEIS does not analyze SCWA's distribution system in relation to the service area. Moreover, the FEIS does not address any increased capacity required by new proposed project for the acquisition of nearly 36 acres instead of 28. This is especially important considering the severe drought conditions in California.[12] For these reasons, the FEIS discussion relating to water supply for Alternative F is insufficient and warrants further detail and analysis.

D. The cumulative effects analysis is incomplete.

Cumulative effects are effects "on the environment which result from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7. The cumulative setting includes past, present, and

[11] If such information is not available, it must be evaluated under 40 C.F.R. § 1502.22.

[12] The FEIS asserts that "[h]istoric drought conditions are taken into account in Appendix K (groundwater supply report) of the Draft EIS." Response to comment O8-11. Appendix K, however, only addresses *average* drought duration, and therefore does not in any way address the historic drought California is currently experiencing. Whether recent heavy precipitation has alleviated the current drought remains to be seen, and is not evaluated in the FEIS.

reasonably foreseeable future actions not part of the Proposed Action, but related to cumulative effects.

The FEIS continues to omit the Kammerer Road Project in the list development projects in the cumulative setting in the City of Elk Grove. Table 4.15-2. In addition, the FEIS fails to consider numerous amendments to Elk Grove's General Plan, nor does it consider that the process to update the General Plan has been underway since 2015, and is now in its final stages.[13] Changes to the General Plan are thus specifically foreseeable, and changes in the cumulative setting resulting from those changes are therefore reasonably foreseeable, yet the FEIS contains no analysis of these effects.

As noted above, traffic impacts have been severely underestimated, and "[a] significant effect would occur to water supply distribution facilities as a result of the need to provide service to Alternative F." FEIS at 4.10-25. Unidentified projects that should have been included in the cumulative setting, which are currently under development and reasonably foreseeable, will further impact traffic, water supply, and other factors in Elk Grove. Accordingly, the FEIS's cumulative impact analysis is woefully inadequate and must incorporate a more complete range of current and foreseeable projects within the City of Elk Grove and must include future projects based on the City's current efforts to expand its sphere of influence.

E. The FEIS ignores new information regarding the public safety risks associated with the nearby Suburban Propane Storage facility.

We previously commented that, in an April 2, 2016 letter to the Sacramento Local Agency Formation Commission (LAFCo) opposing the City of Elk Grove's application for amendments to expand its sphere of influence for the Kammerer/Highway 99 Project and the new proposed sports complex, Suburban Propane outlined serious concerns related to the projects' proximity to its propane storage tanks, which hold 24 million gallons of refrigerated propane. While Suburban Propane noted its superb safety history, it also informed LAFCo of a past, unsophisticated and foiled, terrorist plot. At trial, the director of the Chemical-Biological National Security Program at Lawrence Livermore Laboratory, one of the world's foremost experts on explosions, testified that if the plot had been successful, a "gigantic fireball" would have caused injuries and damage up to 1.2 miles away, including fatal injuries to roughly 50 percent of the people in the blast radius, and fatalities and injuries up to 0.8 miles from the explosion. In addition, the initial blast would likely have caused two smaller on-site pressurized propane loading tanks to explode, rupturing the formaldehyde storage tank at another nearby industrial facility, creating in turn a toxic cloud that would be potentially deadly to anyone encountering it, and which would travel for almost a mile with the prevailing wind.[14] Terrorism concerns have only increased since that time, and Suburban points out that increased development near the storage tanks potentially puts many people at risk. Terrorism risks are not easily quantified, but this is precisely the type of incomplete or unavailable information that must be evaluated pursuant to 40 C.F.R. § 1502.22 (Incomplete or unavailable information).

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[13] *See* http://www.elkgrovecity.org/city_hall/departments_divisions/planning/a_brighter_future/.
[14] *See* Sacramento Business Journal, *Elk Grove project ignores nearby propane risk* (Dec. 9, 2001), available at: http://www.bizjournals.com/sacramento/stories/2001/12/10/editorial4.html.

As described in its letter, numerous studies have evaluated the accident potential at the Suburban Propane, Elk Grove Propane Storage Facility. The most reliable and unbiased studies agree that the hazards associated with an unconfined vapor cloud explosion and boiling liquid expanding vapor explosions present serious safety risks to any potential off-site population within one mile of the facility. Among the locations Suburban notes as in the danger zone is the Lent Ranch area. The draft EIS noted, "Lent Ranch and the Marketplace at Elk Grove are located in the immediate vicinity of the Mall site," yet the draft EIS did not mention or address Alternative F's location in relation to Suburban Propane's storage tanks or the past demonstrated and future dangers that proximity to the site may represent. In fact, the Mall site is located approximately half a mile from the Elk Grove Storage Facility. Accordingly, we requested in our September 27, 2016 comment letter that the propane storage facility and any associated or potential environmental or public safety concerns should be addressed and analyzed in a supplemental EIS.

The FEIS, in section 3.12.3, acknowledges this issue, but declines to analyze this risk on the basis of a February 2001 Environmental Impact Report (EIR) by the City of Elk Grove that concluded that the risk levels posed by the Suburban Propane facilities "are viewed as acceptable and impacts are considered to be less-than-significant," and a 2004 state appellate court decision that the EIR's findings were adequately supported by the evidence. The FEIS, however, fails to consider new information available after February 2001, including the reevaluation of terrorism risks after the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon; information in Suburban Propane's April 2, 2016 letter, and the 2003 risk evaluation report identified in that letter; and the February 2015 report prepared by Northwest Citizen Science Initiative regarding the Portland Propane Terminal,[15] which discusses the risks posed by large propane storage facilities in urban areas, including specifically the Suburban Propane facility. To comply with NEPA, BIA must evaluate this significant new information in a supplemental EIS because it is relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c).

F. Air quality impacts are inadequately addressed.

The Updated Draft General Conformity Determination ("Updated Draft CD") fails to meet the regulatory requirements for a Clean Air Act conformity determination under 40 C.F.R. Part 93. Additionally, the Updated Draft CD does not address the comments submitted by Stand Up for California! ("Stand Up") on the Draft General Conformity Determination on September 27, 2016. As Stand Up commented on the Draft CD, "it is impossible to assess the air quality impacts of the project prior to the completion of the conformity determination." For the following reasons, BIA must prepare and make available for public comment a supplemental EIS after completing a final conformity determination.

BIA improperly released the Updated Draft CD simultaneously with the Final EIS for public comment. In its September 27, 2016 comments, Stand Up reminded BIA that they must finalize the conformity determination, including an opportunity for public comment, before releasing the

[15] *See* Exhibit 2; available at: http://sustainable-economy.org/wp-content/uploads/2015/02/Portland-Propane-Terminal-NWCSI-3rd-rev-ed-Feb-27-2015.pdf. The report concludes that the risks posed by a terrorist attack targeting smaller pressurized propane tanks near the main storage tanks is much greater than the risks of an attack targeting the main storage tanks directly; the pressurized tanks are more easily exploded, and could in turn explode the main tanks more effectively, in a domino-style effect. *Id.* at 17.

Final EIS. *See* EPA, General Conformity Training Manual at 1.3.4.2 ("At a minimum, at the point in the NEPA process when the specific action is determined, the air quality analyses for conformity should be done."). Without a finalized conformity determination before the public comment period on the final EIS, the public and agency decision makers cannot sufficiently analyze the environmental consequences of the Project.

The Updated Draft CD fails to comply with 40 C.F.R. § 93.160(a) because it does not describe all air quality mitigation measures for the Project and it does not outline the process for implementation and enforcement of those air quality mitigation measures. The Updated Draft CD only describes two mitigation measures: purchasing emissions reduction credits for nitrogen oxides ("NOx") and preferential parking for vanpools and carpools. Updated Draft CD, § 4.2. For other mitigation measures, it merely references their inclusion in Section 5.4 of the draft EIS and does not provide a description as required under 40 C.F.R. § 93.160(a). *Id*.

As Stand Up commented on the Draft CD, the only semblance of an implementation timeline provided for a mitigation measure in the Updated Draft CD is that ERCs will be purchased prior to operation of the Project. This still does not constitute an "explicit timeline" and there are no other timelines or deadlines for the other mitigation measures in the Updated Draft CD. *See* 40 C.F.R. § 93.160(a).

Like the Draft CD, the Updated Draft CD does not contain any information on the process for enforcing mitigation measures, including the purchase of ERCs. A description of enforcement measures is required under 40 C.F.R. § 93.160(a). The Updated Draft CD merely recommends that the Tribe commits to purchasing the required ERCs. Even though the Updated Draft CD states that the Tribe will provide the "documentation necessary to support the emissions reductions through offset purchase," it does not establish any specific procedures or requirements for doing so, nor it explain how the purchase will be enforceable. Additionally, the Updated Draft CD is incomplete because BIA has not obtained written commitment from the Tribe that it will purchase ERCs under 40 C.F.R. § 93.160(b). As such, the final EIS and the public are unable to consider how effective the enforcement measures will be, or even if there will be any at all.

BIA must ensure compliance with the Clean Air Act's conformity determination requirement prior to making a decision to take land into trust for a gaming acquisition. Because the conformity determination is not finalized before the final EIS and does not fully comply with 40 C.F.R. Part 93, BIA must prepare a supplemental EIS after considering public comments and issuing a final conformity determination.

G. Socioeconomic impacts are inadequately analyzed.

Finally, the FEIS also fails to give any estimate of the possible range of increases in societal problems that may result from the proposed casino, including problem gambling, divorce, suicide, prostitution, bankruptcy, and demand for social services. An estimate is provided (for Alternative A only) of the anticipated increase in calls for law enforcement service and

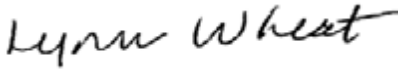
percentage that would result in arrests,[16] but there is no quantification of the different types of additional crimes that would result, including DUIs, a particular concern given that the Project is within walking distance of three schools. The FEIS should therefore evaluate the possible range of social costs of different types that would be borne by the local community as a whole, as well as by more vulnerable segments of our community. We note in particular that the target market for the Project is disproportionately senior citizens and the Asian community. In addition, we note that the Rancheria's contractual arrangement with Boyd Gaming of Las Vegas, Nevada typically provides for compensation of 30% of gross revenues—given projected revenues of $449 million annually, that would mean over $130 million leaving the local economy annually, an impact completely ignored in the FEIS's economic impact statement.

CONCLUSION

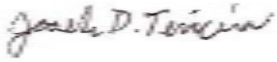
For the foregoing reasons, the FEIS is deficient and cannot support a decision to take the Elk Grove site into trust. The BIA must prepare a supplemental EIS for additional public review and comment before any final decision.

Sincerely,

Cheryl Schmit
Director, Stand Up for California!



Lynn Wheat
Elk Grove GRASP



Joe Teixeira
Committee to Protect Elk Grove Values

[16] *See* DEIS App. N (Socioeconomic Analysis) at 40. The report speculates that the other alternatives "may experience similar impacts relative to their proposed size and gaming positions." The City of Galt, however, estimated more than twice as many service calls and arrests based on data for comparable casinos in California. BIA declined to consider this information, however, on the grounds that because Galt "did not cite the published source of its information, the figures described by the Commenter could not be verified." Response to Comment A16-234. BIA admits, however, that often that information is available only by direct inquiry to the relevant law enforcement agencies, a relatively easy task. BIA's failure to verify the information and consider it is therefore a violation of 40 C.F.R. § 1502.22 (Incomplete or unavailable information).

Patty Johnson

Enc.

cc:
Mr. John Rydzik
Chief, Division of Environmental,
Cultural Resource Management and Safety
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825
John.Rydzik@bia.gov

From:	Shepard, Eric
To:	Smyth, Paul (WDC)
Cc:	Lawrence Roberts; Amy Dutschke
Subject:	Re Wilton ranceria Application - City of Elk Grove - Notice of Sufficiency of Referendum Petition
Date:	Monday, January 09, 2017 4:39:18 PM
Attachments:	2016.12.29 Stand Up letter to Larry Roberts and Hilary Tompkins (3).pdf

Paul,

Thank you for your email and comments. As you are aware, the comment period on the Wilton Final Environmental Impact Statement has not closed. The Department has not yet made a decision whether to acquire the Elk Grove Mall Site in trust and therefore your request is premature. However, the Department's land-into-trust regulations on this point are clear. The Department "shall . . . [i]mmediately acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements." 25 C.F.R. 151.12(c)(2)(iii). In addition, as to the question of harm, if a court determines that the Department erred in making a land-into-trust decision, the Department has stated that it will comply with a final court order and any judicial remedy that is imposed. 78 Fed. Reg. 67928, 67934 (Nov. 13, 2013).

Thank you,
Eric

---------- Forwarded message ----------
From: **Smyth, Paul (Perkins Coie)** <PSmyth@perkinscoie.com>
Date: Fri, Jan 6, 2017 at 4:08 PM
Subject: Re Wilton ranceria Application - City of Elk Grove - Notice of Sufficiency of Referendum Petition
To: "larry.roberts@ios.doi.gov" <larry.roberts@ios.doi.gov>, "Tompkins, Hilary" <hilary.tompkins@sol.doi.gov>, "amy.dutschke@bia.gov" <amy.dutschke@bia.gov>
Cc: "karen.koch@sol.doi.gov" <karen.koch@sol.doi.gov>, "Caminiti, Mariagrazia" <marigrace.caminiti@sol.doi.gov>, "sarah.walters@ios.doi.gov" <sarah.walters@ios.doi.gov>

Dear Assistant Secretary Roberts, Solicitor Tompkins and Regional Director Dutschke,

I am following up on the attached letter sent December 29, 2017, to Mr. Roberts and Ms. Tompkins on behalf of my client Stand Up For California!, et al., seeking assurances that if Mr. Roberts makes an affirmative decision to take land into trust for the Wilton Rancheria, not to effectuate the transfer of the land before Stand Up! has the opportunity to seek emergency judicial relief. Since the letter was sent the City of Elk Grove has found sufficient the petition by my clients and others to seek a referendum on the removal of the development restrictions that now exist on the subject property. See e-mail below. Thus, the restrictions remain in place pending the referendum. Transferring the land into trust before the referendum would make the referendum moot to the detriment of my clients.

We request written confirmation before close of business, Monday January 9, 2017, that the Secretary or any department official, upon any decision to accept the Wilton Rancheria's application, will not transfer title to land in trust until the referendum occurs or we will be forced to seek emergency relief in the Court

to protect the interests of my clients in the referendum.

Thanks for your attention to my request.

Paul B. Smyth

From: Jason Lindgren [mailto:jlindgren@elkgrovecity.org]
Sent: Friday, January 06, 2017 11:00 AM
To: Ashlee N. Titus <atitus@bmhlaw.com>
Subject: City of Elk Grove - Notice of Sufficiency of Referendum Petition

Good Afternoon,

The referendum petition entitled "Referendum Against an Ordinance passed by the City Council; Ordinance No. 23-2016. An Ordinance of the City Council of the City of Elk Grove adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.," filed with the Office of the City Clerk on November 21, 2016 has been deemed sufficient.

I will be requesting certification of the results of the examination of the referendum petition to the City Council of the City of Elk Grove at the regular meeting of January 11, 2017.

The agenda and related staff reports for the January 11, 2017 regular meeting are anticipated to post today (Friday, January 6, 2017) at 2 p.m., and can be found at the following location on the City website: http://www.elkgrovecity.org/city_hall/city_government/city_council/council_meetings/agendas_minutes/

(click on the link to the agenda, and the staff reports are linked under each item number – Item 10.1 is the requested action to certify the petition)

If you have any questions or concerns regarding this matter, feel free to contact me, 478-2286, jlindgren@elkgrovecity.org.

Regards,

Jason Lindgren

City Clerk

City of Elk Grove

8401 Laguna Palms Way

Elk Grove, CA 95758

916.478.2286 (office)

916.627.4400 (fax)

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Portland Propane Terminal

Prepared By

Northwest Citizen Science Initiative*

(Hayden Island Group)

3rd Revised Edition, February 27, 2015

Abstract

In 2014, Pembina Pipeline Corporation (PPC) inked an agreement with the Port of Portland, Oregon, to build a West Coast shipping terminal to export Canadian propane. Why Portland? The simple answer: lower regulatory hurdles; if Canadian propane bound for overseas markets is transported by rail to US shipping terminals, it is largely free of export restrictions and Federal permits are not required. However, the project has already hit a snag due to the existence of a protected natural shoreline. The proposed terminal location is close to and equidistant from Portland's northern suburbs and downtown Vancouver, Washington.

Nationally, the planning and building of energy export terminals is happening at a rate that far-outstrips the ability of city councils and planning departments to keep up. Moreover, the PPC project is far from green... and according to the city, the terminal would increase Portland's CO_2 emissions by about 0.7%. The PPC terminal also offers few direct jobs, would close public waterways for days each month, and unnecessarily endanger the lives of a significant portion of the Portland and Vancouver populations.

In this paper we discuss ways in which propane transportation and storage on such a large scale is highly vulnerable and not inherently safe. Particularly in view of the expected 25+ year lifetime of the facility, we demonstrate that the PPC propane export terminal project presents an unacceptable risk, and high potential for serious impact on our entire Portland/Vancouver urban area. It also far exceeds any industrial factor originally envisioned for Portland's industrial zoning. We will comment on the environmental impact statement and environmental impact report (EIS/EIR) for a California LNG project that is similar in many ways to the PPC proposal, but which was canceled due to the improbability of mitigation of various environmental issues: everything from high density housing less than two miles away, to seismic liquefaction risk, and the pressurized storage of up to 6-million gallons of liquid propane on site. This EIS/EIR is representative of the level of planning detail that we believe should be required before large, high-impact projects get official go-ahead approval.

Simulation results obtained using well validated EPA/NOAA models for various accident and incident scenarios, whether manmade or due to natural causes, or whether due to deliberate acts of terrorism, are discussed. The results, which as presented in the form of easy-to-understand maps, demonstrate that Portland's industrial zoning is outdated, and that the thinking of our civic leaders who would support the construction of a large scale propane export terminal so close to where we Portlanders live our lives, is obsolete, and due to its role in expanding the use of fossil fuels, is at odds with Portland's widely promoted image as America's Greenest City.

We believe that our propane accident model results are of sufficient confidence to support a conclusion that a propane export terminal less than 10 miles beyond the Portland and Vancouver urban boundaries is contraindicated, and must be rejected if our cities are to live long and prosper.

We will also briefly consider some legal ramifications embedding a large propane export facility inside a busy urban area.

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*Northwest Citizen Science Initiative (NWCSI) is an association of civic leaders, scientists, engineers, legal scholars, and environmental researchers that promote thorough, valid, and reliable methods for the scientific study and enhancement of all of Nature's systems of livability and sustainability across the Pacific Northwest.

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Statement of Copyright:

Modeling Software Authority Statement

The ALOHA (Areal Locations of Hazardous Atmospheres) program used to produce the propane threat zone maps presented in this paper originated in the 1970s as a simple tool for modeling and estimating the dispersion of gas plumes in the atmosphere. Over the years since t hen, it has evolved into a tool used for a wide range of response, planning, and academic purposes. It is currently distributed to thousands of users in government and industry (in the USA it is distributed by the National Safety Council).

ALOHA, now at version 5.4.4, is maintained by the Hazardous Materials Division of National Oceanic and Atmospheric Administration (NOAA), and is widely used by Fire Departments and first responders for Emergency Chemical Release Modeling.[1] The following is a list of the credentials of the ALOHA project team members and external review team (as of February 2006) who added new features related to fire and explosions (pool fire, BLEVE—boiling liquid expanding vapor explosion—, flare or jet fire, flammable explosive vapor cloud):[2]

ALOHA Project Team Credentials:

Jerry Muhasky PhD (Mathematics). More than ten years' experience in design of large environmental software programs. Lead programmer for ALOHA version 5.

Bill Lehr PhD (Physics). Over twenty years' experience in software model development in the environmental field. Dr. Lehr was lead scientist for the source strength component of ALOHA, version 5.

Jon Reinsch. Experienced software developer and was lead programmer for the NOAA/EPA RMPCOMP project.

Gennady Kachook. Experienced programmer and has worked on several environmental modeling programs.

Debra Simecek-Beatty. Environmental modeling specialist and has worked on several large modeling projects.

Robert Jones PhD (Chemistry). Has been lead researcher on many ALOHA updates.

---

[1] Jones, Robert, et al. ALOHA (Areal Locations of Hazardous Atmospheres) 5.4.4 Technical Documentation. NOAA Technical Memorandum NOS OR&R 43. November 2013. http://response.restoration.noaa.gov/sites/default/files/ALOHA_Tech_Doc.pdf Retrieved Feb 20, 2015.

[2] "Technical documentation and software quality assurance for project-Eagle-ALOHA: A project to add fire and explosive capability to ALPHA." Feb 2006. Office of Repsponse and Restoration. Noational Oceanic and Atmospheric Administration (NOAA); Environmeutal Protection Agency (EPA); Pipelines and Hazardous Materials Safety Administration, Department of Transportation. http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/Final%20techdoc%20and%20QA.pdf Retrieved Feb 20, 2015.

ALOHA 5.0+ External Review Team:

James Belke	Environmental Protection Agency
Don Ermak	Lawrence Livermore National Laboratory
Martin Goodrich Baker	Engineering and Risk Consultants
Greg Jackson	University of Maryland
Tom Spicer	University of Arkansas
Doug Walton	National Institute of Science and Technology
Kin Wong	Department of Transportation

The following is a check list of relevant features of ALOHA (our emphasis):[3]

ALOHA 5.0+ Features:

- Quality Control. Significant effort has been put into checking user inputs for reasonableness and for providing guidance on how to select input correctly. Numerous warnings and help messages appear on the screen throughout the model.
- Useable accuracy. Even though approximations are necessary, every effort is made to ensure that the result is as accurate as possible. When compared to the results from sophisticated, specialized models or field measurements, ALOHA generally will deviate in a conservative direction, (i.e., predict higher concentrations and larger affected areas).
- Contingency planning. ALOHA 5.0 can be used for site characterization of industrial settings. Dimensions of permanent tanks, pipes, and other fixtures can be described and saved as text or ALOHA-runnable files. Different accident scenarios can then be played to derive worst-case possibilities.
- Neutral or heavy gas models. ALOHA 5.0 is able to model heavy gases and neutral gases.
- Pressurized and refrigerated tank releases. ALOHA 5.0 will model the emission of gas from pressurized tanks or refrigerated tanks with liquefied gases. Flashing (sudden change from liquid to gas inside the tank), choked flow (blocking of the gas in an exit nozzle), and pooling of the cryogenic liquid are considered.

ALOHA Special Training Requirements/Certification:

There are no special additional requirements or certification required to use the new fire and explosion option scenarios in ALOHA 5.0+. However, since some terminology peculiar to the new scenarios will be different from those involving the toxic gas modeling, it is recommended that anyone new to fire and explosives forecasting review the user documentation and become familiar with the example problems. In particular, the modeled hazards now include overpressure and thermal radiation risk, in addition to toxic chemical concentrations.

[3] Reynolds, R. Michael. "ALOHA (Areal Locations of Hazardous Atmospheres) 5.0 Theoretical Description." NOAA Technical Memorandum NOS ORCA-65 (August 1992). Pages 2-3. http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/ALOHA-Theoretical-Description.pdf Retrieved Feb 20, 2015.

Introduction

On Aug 28, 2014, Canadian fossil fuel company Pembina Pipeline Corporation (PPC) publicly announced that it had entered into an agreement with the Port of Portland, Oregon, for the building of a new West Coast propane export terminal.[4] The stated use of the terminal is to receive propane produced in the western provinces of Canada, and export it to international markets. The agreement includes the provision of a marine berth with rail access. The chosen location, adjacent to the Port of Portland's Terminal 6 facility, has already hit a snag due to the existence of a protected environmental zone along the river shoreline adjacent to the planned location of the propane terminal. This protection was created in 1989 to protect wildlife habitat, prevent erosion and preserve the Columbia's visual appeal.[5] The protection includes a ban on transporting hazardous materials through the zone except by rail or on designated roads; however PPC needs to use a pipeline to cross the zone.

PPC intends the export terminal project to "initially" develop a 37,000 barrel (1.16 million US gallons) per day capacity with an expected capital investment of US$500 million and with an anticipated in-service date of early 2018.[6] The site of the proposed terminal is just 2¾ miles equidistant from downtown Vancouver, WA; downtown St. Johns in Portland; and the Interstate 5 Bridge across the Columbia River. Within the 24 square miles defined by this perimeter, exist many other valuable assets including the Port of Portland's Rivergate Industrial District and marine terminals; the entire Port of Vancouver; the Smith and Bybee Wetlands Natural Area; the BNSF rail bridge across the Columbia River: West Hayden Island; the Hayden Island manufactured homes community and business center; the Portland suburbs of Cathedral Park, St Johns, and Portsmouth; several of Portland's floating home communities; the BNSF rail bridge across the Columbia River; and of particular mention, the under construction Columbia Waterfront project ("The Waterfront in Vancouver, Washington"), which is in the process of developing 32 acres of long neglected riverfront land to extend Vancouver's urban core back to its riverfront roots.

While the number of accidents and incidents involving propane and other volatile energy fuels being extracted, transported and stored has not increased generally, the *severity* of incidents and accidents seems to have increased. Part of the reason may be that oil companies are having trouble building additional pipelines, so they've taken to the road.[7] They've also taken to the rails, with trains that are longer (mile-long unit trains consisting of 100 tanker cars are now standard). Compared to two decades ago, storage tanks are larger, there are many more trains,

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[4] http://www.pembina.com/media-centre/news-releases/news-details/?nid=135242. Retrieved Sep 02, 2014.
[5] House, Kelly. "Portland Propane Export Project Hits Environmental Snag." Retrieved from Oregon Live, Jan 05, 2015 http://www.oregonlive.com/environment/index.ssf/2014/12/portland_propane_export_projec.html
[6] PR Newswire. "Pembina Chooses Portland, Oregon for New West Coast Propane Export Terminal." http://www.prnewswire.com/news-releases/pembina-chooses-portland-oregon-for-new-west-coast-propane-export-terminal-273541321.html Retrieved Jan 05, 2015.
[7] Krauss. Clifford; Mouawad, Jad. The New York Times. "Accidents Surge as Oil Industry Takes the Train." http://www.nytimes.com/2014/01/26/business/energy-environment/accidents-surge-as-oil-industry-takes-the-train.html?_r=0 Retrieved Jan 07. 2015

and loads tend to be a lot more volatile (particularly with the propane-rich Bakken oil[8]). Other factors are profit pressure, many new (rookie) workers in an expanding workforce, and liability caps.

Therefore, if we factor in the humongous scale of the PPC proposal, together with PPC's stated intention to expand the facility in the future to even larger volumes; it is difficult to see how, for Portland, a "bridge-fuel" like propane (much of which actually goes to manufacture propylene, rather than be burnt as a fuel) is a bridge to anywhere except perdition. This paper discusses ways in which energy transportation and storage on such a large scale in Portland is highly vulnerable in a number of ways. Particularly in view of the expected 25+ year lifetime of the facility, we will show that it presents an unacceptable risk, and that even a minor accidental fire in one part of a propane facility can escalate to larger fires, and explosions, in other parts of the facility (domino effect), with the potential for very dire consequences and impact on our entire Portland and Vancouver urban area. Indeed, the potential for harm to our area is great, and clearly exceeds any industrial factor originally envisioned for Portland's industrial zoning.

The propane threat zone estimates discussed in this paper have been computed with the best available information we currently have from the City of Portland, Port of Portland, and PPC, and in an ongoing absence of any meaningful analysis from any of those entities. We believe the analysis benchmark that PPC should be held to before any "overlay" of the beachfront environmental zone can be even considered by Portland's Bureau of Planning and Sustainability, is the 825-page "*Draft Environmental Impact Statement/Environmental Impact Report Volume 1-2*" dated Oct 2005, submitted by the Port of Long Beach, CA, in support of their (ultimately unsuccessful[9]) application for approval of *The Long Beach LNG Import Project*.[10] The Executive Summary and the contents pages from this monumental document are provided in Appendices C and D, respectively, as an example of what, in the US, is considered normal practice for energy terminal and pipeline projects. To give an idea of the depth of this document, the word "security" appears 335 times in its pages, yet, "mitigate" and "mitigation" only appear a total of 220 times. Some of the other words used frequently are: "terrorist" 217x; "terrorism" 13x; "threat" 73x; "quake" 184x; "seismic" 102x; "liquefaction" 37x. Interestingly, "propane" is mentioned 76 times, "explosion" 109x; "explod" 7x; a 20-foot high full-enclosure concrete wall is mentioned 16x; and boiling liquid vapor explosions are mentioned 19x (the site planned to use two 85-ft diameter pressurized spheres near the LNG tanks, to store "hot gas" impurity components

[8] Stern, Marcus; Jones, Sebastian. "Too Much Propane Could Be a Factor in Exploding Oil Trains." Bloomberg News, Mar 5, 2014. http://www.bloomberg.com/news/2014-03-05/too-much-propane-could-be-a-factor-in-exploding-oil-trains.html Retrieved Jan 03, 2015.

[9] Gary Polakovic "Long Beach energy project halted: The city cancels plans for a liquefied natural gas terminal. Many had voiced safety concerns." LA Times, Jan 23, 2007. http://articles.latimes.com/2007/jan/23/local/me-lng23 Retrieved Feb 24, 2015.

[10] http://www.energy.ca.gov/lng/documents/long_beach/LongBeachImport/Draft%20POLB%20EIR-EIS%20Vol.1-2%20Full%20Text%20document%20without%20figures.pdf Retrieved Feb 24, 2015.

propane and ethane from the LNG. "Sabotage" is mentioned 5x; "vapor cloud" 117x; and "vapor cloud explosion" 134x.

Propane, being a relatively new energy commodity (from the POV of high-volume terminal construction for export), whether for overseas energy production or chemical feed stock), largely had to follow the existing LNG safety regulations surrounding refrigerated storage tanks.[11] Indeed, as stated in the Long Beach document mentioned above, the hazards common to both propane and LNG refrigerated tanks are *torch fires* (gas and liquefied gas releases), *flash fires* (liquefied gas releases), *pool fires* (liquefied gas releases), *vapor cloud explosions* (gas and liquefied gas releases). The same document states that Propane is much more hazardous due to its propensity for *boiling liquid vapor explosions* (BLEVEs), when it is stored and/or transported in rail tankers, tanker trucks, bullet tanks, and other above-ground pressurized storage tanks.

The Need for Urban Resilience

For the cities of Portland and Vancouver to flourish and live long, we must make them as safe and as resilient as we know how. This means avoiding or eliminating the potential for serious disasters, especially man-made. Dr. Judith Rodin, in her major new book, *The Resilience Dividend*,[12] describes the concept of resiliency of cities, and not only how they can recover after a major catastrophic event, but also how to make decisions to avoid such events in the first place. Former investment banker Mark R. Tercek, now president and CEO of The Nature Conservancy, said of her work, "Judith Rodin details connections between human, environmental and economic systems, and offers a strategy to proactively address the threats they face." Tercek's book, co-authored with biologist Johnathan S. Adams, *Nature's Fortune*,[13] makes the case that investing in nature—the green infrastructure—makes for good business, and is the smartest investment we can make.

Our civic regulatory process already eliminates or mitigates a lot of potential for disaster through our building and zoning codes. Unfortunately zoning alone cannot create resiliency because it does not balance all aspects of our communities. Moreover, due to globalization, we are seeing a scale and rate of industrialization, particularly in the fossil fuels energy space, that puts an unprecedented amount of pressure on our city administrators and planners to follow the dollar. Moreover, we are asked to believe that the recent energy boom—which has been advancing with little regard to our environment—will enhance our lives, solve all of our problems, and produce thousands of family wage jobs (the truth, at least as far as the PPC propane terminal is concerned, is much closer to half a job per acre, and no more than 30–40 direct jobs total). We are also asked to accept that any consequent loss of wild habitat and

[11] Not all propane import/export terminals use refrigerated storage. For example, the Cosmo Oil propane and LPG terminal that blew up on March 11, 2011 in Tokyo Bay, at that time used only pressurized storage.
[12] Dr. Judith Rodin chair of the Rockefeller Foundation, and author of *The Resilience Dividend: Being Strong in a World Where Things Go Wrong*. Public Affairs, New York, 2014.
[13] Tercek, Mark R.; Adams Jonathan S. *Nature's Fortune: How Business and Society Thrive By Investing in Nature*. Basic Books, New York, 2013.

recreational areas, loss of air and water quality due to heavy industrialization within our city boundary is a worthwhile tradeoff. Moreover, given the potential for a credible large scale propane accident or incident at the planned terminal, and given the high probability of a long and protracted recovery from such a calamity (were a recovery even possible), it cannot be offset by a promise of good housekeeping. The handling of humongous quantities of an extremely dangerous chemical amidst our two cities, Portland and Vancouver must, therefore, be avoided at all costs. Only by saying no to large-scale propane facilities in Portland can we avoid the unthinkable. History records that despite best efforts, accidents and incidents happen. Only by making Portland as resilient as we know how, can we reap what Dr. Judith Rodin calls "the resilience dividend."

Why Portland?

Why did Canadian company Pembina Pipeline choose Portland? Put simply, the answer is lower regulatory hurdles. Due primarily to the North American Free Trade Agreement (NAFTA), and quirky US export laws that were crafted in the days of oil shortages, we have a situation where imported Canadian natural gas liquids are largely free of export restrictions, a status shared by propane imported from Canada by train (but not by pipeline).[14] Although PPC denies that this is the reason, a partial acknowledgement came from Port of Portland Executive Director Bill Wyatt, who told Oregon Live[15] that propane is not regulated in the same way as natural gas or domestic oil. He added that although PPC must obtain building permits from the City of Portland, an air quality permit for the Oregon DEQ, and maybe also a water quality permit from the state, Federal permits are not required. However, he did say that Portland also has the advantage of competing railroad companies, not to mention the port's experience with export terminals.

Nationally, these types of projects are happening at a rate that far-outstrips the ability of city councils and planning commissions to keep up. At the same time, a burgeoning population is putting an unprecedented pressure on our urban boundaries, and also on the industrial zoning which, once upon a time, was thought to be a safe distance from current (and future) residential areas. These populations would be much better served by new clean-tech industries (e.g., computer software and film animation) that are much cleaner, safer, and more easily integrated into our modern city environment than traditional heavy industries. The bottom line is that large energy facilities (such as the one that PPC wants to build in Portland) have no place within or close to our cities!

That the PPC proposal has progressed so far as to identify a site for a large propane export facility so close to where people live and play is a complete mystery. The first responsibility of

[14] Irwin, Conway (Nov 20, 2013) "The US's Absurd Oil & Gas Export Laws." http://breakingenergy.com/2013/11/20/the-usss-absurd-oil-gas-export-laws/ Retrieved Jan 05, 2015.
[15] Francis, Mike. Oregon Live (Sept 02, 2014) "Pembina Pipeline's Portland propane project faces lower hurdles than other terminals." http://www.oregonlive.com/business/index.ssf/2014/09/pembina_pipelines_portland_pro.html Retrieved Jan 05, 2015.

government is the protection, health, and welfare of the population, not participation in an industry that is not as green as some would lead us to believe;[16] that would use vast amounts of our resources (8,000 MWh of electricity per month; which would increase Portland's CO_2 emissions by about 0.7%,[17] and which would raise a large question about awards recently received by the city[18] in recognition of its Climate Action Plan to reduce greenhouse gas emissions by 80 percent from 1990 levels by 2050[19]), by PPC's own admission would offer very few direct jobs (30–40), would close public waterways used by the gas carrier ships for days each month, and unnecessarily endanger the lives of a significant proportion of the Portland and Vancouver population. Therefore we need to ask: Where are our city officials? To whom are they answering?

When information about PPC's desire to build a propane export terminal became public, Portlanders were surprised to hear that the city and the port had already been in secret negotiations with PPC for six months. An agreement that the Port of Portland would provide a space at Terminal 6 for construction of a facility that would include refrigerated storage for 30 million gallons of liquid propane was already in place! Amid claims from port personnel to the contrary, neither Audubon Society nor Sierra Club, nor Columbia Riverkeeper had received any communication from the port, or the city, informing them of the proposal. There was no public disclosure until after the agreement with PPC was already inked. At that point, PPC met with Hayden Island residents and hinted that the project was being fast tracked, also mentioning that if Portland did not want the terminal, PPC would withdraw and move on.[20] Cleary the project was being pushed through without the protective umbrella of public discussion and public process; a process more important than usual, given Portland's lack of experience with large propane projects (and PPC too, since this is also PPC's very first propane export terminal). Pembina intends to build two steel, double-walled tank-within-a-tank insulated tanks, totaling 33.6 million gallons. The design is probably similar to two the 12.5 million gallon double steel wall tanks built for Suburban Propane, in Elk Grove, CA. (figure 1). Unlike Elk Grove, Pembina tanks would be of unequal size (see artist's rendering in figure 2), the largest of which would be some 130 feet tall. The propane in such tanks is stored as a refrigerated liquid, cooled to approximately -44 °F to allow storage at close to atmospheric pressure.

[16] Warrick, Joby; Washington Post. "Methane plume over western US illustrates climate cost of gas leaks." http://www.theguardian.com/environment/2015/jan/04/leaking-methane-gas-plume-us Retrieved Jan 07, 2015

[17] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*. Dec 12, 2014. Page 29. http://www.portlandoregon.gov/bps/article/512520 Retrieved Jan 07, 2015.

[18] House, Kelly; Oregon Live. "Portland wins presidential award for climate change work." http://www.oregonlive.com/portland/index.ssf/2014/12/portland_wins_presidential_awa.html Retrieved Jan 02, 2015 .

[19] City of Portland and Multnomah County: Climate Action Plan 2009 https://www.portlandoregon.gov/bps/49989 Retrieved Jan 07, 2015.

[20] Hayden Island Neighborhood Network (HINooN) meeting, Oct 09, 2014.

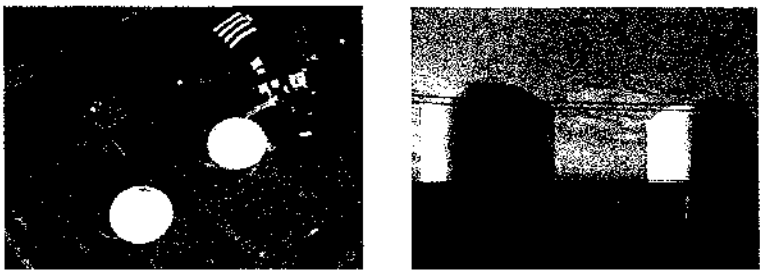

Figure 1: Suburban Propane's two 12-million gallon double steel wall refrigerated propane tanks, separated from four 60,000 gallon pressurized tanks (LH picture, top right), by an earthen berm. Elk Grove, CA

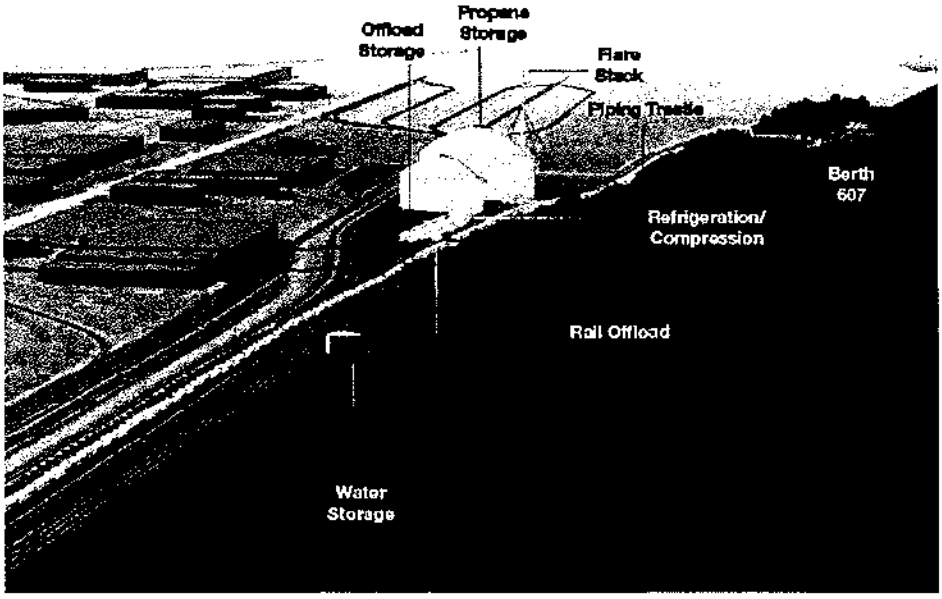

Figure 2: The two double-walled steel refrigerated storage tanks proposed by Pembina for Terminal 6, Portland, OR are of unequal size. The larger tank is 130 feet tall, dwarfing nearby trees. Shown, in front of the storage tanks, are eight 125,000 gallon pressurized bullet transfer tanks. Also shown, stretching diagonally across the picture is a 100 car unit propane train. Propane storage, plumbing, and transportation are shown with yellow highlighting.

The Elk Grove tanks appear to be similar to a design that has been replicated many times already in the LNG industry, including the Everett LNG Terminal, the CMS Energy's Lake Charles Terminal; the El Paso Corporation's Elba Island LNG Terminal, near Savannah, GA (phase IIA tank 42 million US gallons, diameter 258 feet, height 123 feet; phase IIIB tank 48 million US gallons).[21]

[21] Quillen, Doug (ChevronTexaco Corp.) "LNG Safety Myths and Legends." Conference on Natural Gas Technology Investment in a Healthy U.S. Energy Future, May 14–15, 2002, Houston, TX. http://www.netl.doe.gov/publications/proceedings/02/ngt/quillen.pdf

To date there have been no accidents with very large refrigerated LNG or propane tanks, although there have been threats to their safety (see *A clear and Present Danger* section, below). Whether such tanks can remain accident free remains to be seen, especially since no large-scale accident tests have ever been conducted on them. Safety margins are therefore largely theoretical, relying on simulations, and accident data from much smaller tanks.

On the other hand, accidents involving *pressurized* liquid propane storage and transportation are in the news almost every week. One of the most cited propane transportation accidents occurred in Murdock, IL, Sep 02, 1983. However, even though it involved a much smaller quantity of propane than held by the large refrigerated tanks mentioned above, the magnitude of the event shocked those who witnessed it. All-told, this accident involved 60,000 gallons of propane, and 50,000 gallons of isobutane, in four tanker cars. Police evacuated a one-mile radius. Things became dangerous when a 30,000 gallon propane BLEVE (Boiling Liquid Expanding Vapor Explosion) was set off by a fire in a nearby 30,000 gallon ruptured propane tanker car. As a result of the BLEVE, a 6-ton tanker car fragment was rocketed ¾ mile (3,640 feet) from the explosion. Shocked at the power of the blast, a TV news crew retreated back 2½ miles. Later in the day, the flames triggered a second large BLEVE, this time in one of the isobutane tanks.[22]

Propane 101

Propane is considered by the energy industry to be a cost effective and statistically safe fuel. However, due to the large size of transportation units nowadays (a unit train consists of a hundred DOT tanker cars of 30,000 gallons each, for a total of three-million gallons), the increasingly large scale of storage facilities, and the business pressure on suppliers to get this material to market quickly at minimal cost, there have been many incidents and accidents.

Ambient-temperature storage of liquid propane at a propane terminal is typically achieved with a row of high-pressure bullet tanks. Formerly these were sized in the 30,000 to 60,000 gallon range, but nowadays 90,000 to 125,000 gallons is now becoming more common. Likewise, -44 °F refrigerated bulk propane storage which several years ago was in the 12-million gallon ballpark, now ranges to 48-million US gallons per tank and more. As a result of these developments we cannot avoid the fact that propane storage and transfer facilities tend to house very significant amounts of chemical energy, some 4.6 quadrillion Joules (4.6 PJ), in the case of a 48-million gallons of refrigerated liquid propane.

When propane burns, its chemical energy is transformed into thermo-mechanical energy. A trade-off exists between the thermal and mechanical effects. How much we obtain of one or the other depends on factors such as the rapidity and degree of the conversion of the propane into a vapor, and the timing of the ignition event. The lower and upper explosive limits (known as LEL and UEL) define the flammability range, respectively 2.1% and 9.5% (by volume) for propane

[22] Brockhoff, Lars H. Institute for Systems Engineering and Informatics. EUR 14549 EN. "Collection of Transport Accidents. Involving Dangerous Goods." 1992

vapor. Before a fire or explosion can occur, three conditions must be met simultaneously: LEL < fuel < UEL (i.e., a fuel mixture that is not too lean or too rich); air (which supplies oxygen); and a source of ignition (such as a flame or a spark). When sufficient oxygen is present, propane burns completely to carbon dioxide and water. The chemical reaction is $C_3H_8 + 7O_2 = 3CO_2 + 4H_2O$ + heat. Unlike natural gas, propane is heavier than air (around 1.5 times as dense). A poorly mixed cloud of vapor in air may burn as a ***deflagration***, at a relatively slow speed governed by the speed of diffusion of propane molecules through the cloud; whereas in a finely mixed vapor cloud we may get a ***detonation***, which propagates through the cloud driven by a pressure wave that travels at the speed of sound. ***Vapor Cloud Explosions*** (VCE), whether due to deflagration, or to detonation, can generate ***overpressure waves*** that have sharp onsets as well as significant overpressures.

Depending on circumstances, other "classical" types of fires are possible, such as flash fires (a non-explosive combustion of a vapor cloud), and/or jet fires (with any remaining puddles of liquid propane burning as a relatively slow-moving pool fire). Depending on circumstances, there is the potential for the generation of fireballs that are intensely luminous in the infrared range, together with the ejection of showers of "missiles" consisting of sharp tank wall fragments and other debris. This is the Boiling Liquid Expanding Vapor Explosion, or BLEVE, which in the context of propane is applicable mainly to pressurized storage tanks. Introduced in the previous section, BLEVEs generally start when a fire heats the outer wall of the tank. If the heating occurs faster than the relief valve can vent, the pressure inside the tank rises until through the combined effects of pressure and heat-caused weakening of the metal tank wall, the tank ruptures, typically with great force. The heated contents flash-boils, instantly mixes with the air, and the resulting vapor cloud quickly ignites to create a fireball. The bursting of the tank typically ejects fragments at high velocity (10--200 m/s) in all directions; 99% of the fragments landing within a radius of 30x the fireball radius. Frequently, a major part of the tank will rocket to even larger distances, accelerated by the rapid burning of any remaining contents. Typically 100% of the propane is quickly consumed in the fireball, which due to its high luminosity at infrared wavelengths can cause significant radiant heat damage at surprisingly large distances. Another effect of the propane BLEVE is a transient spike in local atmospheric pressure, which spreads out radially from the source of ignition. The magnitude of such an overpressure wave depends on the ignition source and its strength (whether spark, flame, or detonation). If the wave is strong enough to cause injuries or property damage, it is known as a blast wave.

Before leaving this comparison of combustion scenarios, it is worth emphasizing that BLEVEs are generally not applicable to refrigerated propane storage, due to the amount of heat it would take to boil the frigid liquid, by which time it would likely all have vented. Having said that, we need to point out that there are mechanisms involving large-scale mechanical disruption of the walls of a refrigerated storage tank, which can relatively quickly atomize a significant fraction of the liquid into a vapor mixed with air, from whence various VCE scenarios can be considered.

It is useful as well as informative, to define threat zones as contours (often given a color) of decreasing severity with distance from a deflagration or explosion. We define a zone as an area over which a given type of accident or incident can produce some similar level of undesirable consequences. For example, an orange *thermal threat zone* is defined as the area between two radiant flux contours where second-degree burns occur in less than 60 seconds (such as may occur if the infrared radiant flux exceeds 5 kW/m^2). A red *blast threat zone* is defined likewise as the area between two overpressure contours, where there is significant risk of ear and lung damage or the collapse of unreinforced buildings (such as may be caused by an 8 psi overpressure blast wave). A *shrapnel threat zone* may be defined as the area that captures 50% or 99% of the fragments from a tank explosion, in other words the area over which there is significant risk of injuries caused by flying debris or rocketing tank fragments accelerated by the blast (such as often occur in a BLEVE). In the propane BLEVEs (with ignition) discussed in this paper, at a radial distance approximately equal to the orange thermal threat zone (5 kW/m^2), the overpressure may be as high as 8.0 psi. Proceeding outwards towards lower threat, 3.5 psi is enough to rupture lungs and cause serious injury. Further out still, 1.0 psi is enough to rupture eardrums; 0.7 psi is enough to cause glass to shatter. Even a relatively small sudden overpressure (0.1 psi) may be enough to cause the breakage of small windows under strain.[23]

Due to the high flammability of propane vapor (i.e., propane in the gaseous state mixed with air in a concentration range between the LEL and UEL), care must be exercised in its handling. Of the two different approaches to propane storage, pressurized storage at ambient temperature is the cheapest although the most dangerous. Refrigerated storage, which uses a temperature of -44 °F at essentially atmospheric pressure, is the safest. However, all refrigerated propane facilities use high pressure bullet storage tanks for propane transfers to or from other high pressure storage or transportation tanks, and PPC's planned Portland propane terminal is no exception. PPC plans to have eight 125,000-gallon high-pressure bullet tanks, with a total storage capacity of one million gallons of propane. Inexplicably, such tanks are typically installed in close proximity to one-another. At Elk Grove they are spaced, broadside, about 10 feet apart). PPC's widely publicized site layout map does not significantly deviate from this practice. As will be discussed, these relatively small high pressure tanks are the Achilles' heel of propane facilities, especially wherever security is lax, representing in PPC's case a credible danger, not only to surrounding areas as far away as the major residential part of St Johns, the Port of Portland's Rivergate area, the Port of Vancouver, the 240 MW natural gas fired River Road Generating Plant owned by Clark Public Utilities, the Smith and Bybee Wetlands Natural Area, West Hayden Island, and the BNSF rail bridge across the Columbia River, but also to the big refrigerated tank (or tanks) that PPC plans to build little more than a stone's throw from the bullet tanks.

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[23]Renjith, V. R., 2010, PhD thesis. "Consequence Modelling, Vulnerability Assessment, and Fuzzy Fault Tree Analysis of Hazardous Storages in an Industrial Area." Cochin University of Science and Technology, Kochi, Kerala, India. Chapter 3, Hazard Consequence Modeling. http://dspace.cusat.ac.in/jspui/bitstream/123456789/5059/1/Consequence%20modelling%20vulnerability%20assessment%20and%20fuzzy%20fault%20tree.pdf Retrieved Feb 09, 2015

A Clear and Present Danger

The safety score for large refrigerated propane tanks would still be in the "excellent," range, had it not been for one terrorist incident. If the terrorists had succeeded, the score would have been "fail." As a result of the FBI's success in neutralizing the plot, the score is "needs improvement." Besides terrorist plots (who according to several studies, have at their disposal high explosives and trucks to carry them, commercial aircraft, drones, and shoulder-launched rocket-propelled grenades), there are a lot of other potential dangers for such tanks, ranging from earthquake risks (shaking and/or liquefaction leading to wall and roof collapse), to design errors, to, to accidents in other parts of propane facilities that could spread and multiply domino-fashion, to the big tank. Large tanks are only as safe as the integrity of their walls. Everything on the above list is capable of creating a fast-acting high-impact kinetic energy event which, at worst, could collapse the tank expelling its entire contents as droplets that evaporate into vapor cloud that detonates, or at best only causes a tank wall breech and consequent slower loss of contents that results in a very large pool fire, or some combination of both scenarios. The heat energy required to vaporize the refrigerated propane is a negligible fraction of the heat released when the first gallon of propane vaporizes and catches fire, so the process is completely self-driving.

Whatever causes an initial BLEVE at a propane facility, whether it be in a pressurized bullet transfer tank, or an incoming DOT rail tanker car, there is every possibility that it could quickly spread, domino fashion, from one pressurized tank to another, especially if they are closely spaced (in PPC's plan it could spread over a total of eight 125,000 gallon pressurized transfer tanks, a number which expands hugely if all one hundred 30,000 gallon tanker cars of an incoming unit train became involved). The resulting boiling liquid expanding vapor explosions (BLEVEs) could soon release enough thermo-mechanical energy in the form of radiant heat and overpressure blast damage, also generating a shrapnel-field of high-velocity missile-like tank fragments. This could not only quickly disrupt and overwhelm any remaining bullet tanks, but do so with enough force to disrupt the walls of the nearby much larger refrigerated storage tanks, from whence it is likely that the propane liquid would partly spill, and partly disperse to mix with the air as a vapor cloud, which gives us the possibilities of a fire or a detonation. If a detonation, the result would be what is known as a vapor cloud explosion (VCE). Several very serious chain reaction incidents similar to this have been reported in the past few years (check YouTube). Since it is not possible to protect large propane storage facilities from every conceivable catastrophe, the PPC facility planned for the Port of Portland's Terminal-6, would effectively plant the potential for a hugely destructive explosion near the OR/WA state line, within the Portland/Vancouver urban area.

The tank sizes at smaller propane facilities (which typically store propane as a liquid at ambient temperature and a pressure of 250 psi) use pressurized bullet tanks in the range 30,000 to 125,000 gallons per tank. Larger propane facilities also include refrigerated tanks (typically 12-million to 48-million gallons) that store liquid propane at -44 °F, essentially at atmospheric

pressure. As recently revealed by Portland's Bureau of Planning and Sustainability,[24] the propane facility that PPC is planning to build in Portland consists of two large storage tanks with a total capacity of 33.6-million gallons of liquid propane refrigerated to -44 °F, together with eight 125,000 gallon pressurized transfer tanks. This facility has the ability to process one incoming unit train (100 tanker cars each holding 30,000 gallons) every two days. From when propane arrives by rail to when it leaves by ship, there are at least four risk-prone transfers of propane from one type of container to another:

30,000 gallon pressurized liquid propane rail tanker cars
↓
Eight 125,000 gallon pressurized liquid propane transfer tanks
↓
Refrigeration unit
↓
Refrigerated liquid propane storage, 33.6-million gallons at -44 °F
↓
Refrigerated liquid propane storage at -44 °F
onboard a gas carrier ship for overseas markets.

However, the risks extend well beyond these necessary transfers; the storage tanks themselves also pose a risk. Either way, most of the risk ultimately comes down to the flammability of propane as a vapor mixed with air (vapor cloud), and its high energy content. Whether due to accident, or deliberate criminal act, or through natural causes, the principal chemical mechanisms are the same. Moreover, while propane may be more difficult to ignite than other fuels, once it starts burning it is difficult to stop. Irrespective of whether a vapor cloud originates as the result of a BLEVE (typically from a fire-heated pressurized tank in which the relief valve is insufficient or faulty), or whether it is the result of a sudden mechanical disruption of a (typically larger) -44 °F refrigerated tank, the end result is the same, a vapor cloud explosion or VCE.

The heat radiation and overpressure blast wave yield of propane VCEs depends a lot on details such as how much propane is available to feed it, how much pressure is built up before a tank rupture (BLEVE), or the hydrodynamic details of impacts and the high-explosive-driven shock waves (deliberate criminal acts), in other words on how fast the liquid disperses into droplets, and how much these droplets vaporize and mix with the air before ignition from flame or spark. Large refrigerated tanks are more difficult to explode, but propane facilities tend to also have large numbers of pressurized storage tanks and rail tanker cars in close proximity to the refrigerated tank, creating the potential for scenarios where an accident or incident with one of

[24] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*, December 12, 2014. http://www.portlandoregon.gov/bps/article/512520 Retrieved Jan 07, 2015.

these smaller tanks can spread domino fashion, multiplying the damage through heat, and showers of missile-like, razor sharp flying tank fragments. Compared to an overpressure BLEVE of a smaller pressurized tank, the consequences of disruption of the typically nearby typically much larger refrigerated tank is potentially much more dire, even if only part of the large tank contents is ejected. Reports of suitable methods to do this abound in news reports of terrorism, so it does not take much imagination to extrapolate to the use of an aircraft collision with the tank, or the use of a large quantity of high explosives (e.g., a car or truck bomb driven into the facility and parked close to a tank), or rocket-propelled munitions such as shoulder launched armor-piercing grenades. The terrorism threat is a clear and present danger, and cannot be overlooked, as exemplified by the plot, foiled by the FBI in December 1999, of two militiamen who conspired to blow up the two 12-million gallon refrigerated propane tanks at the Suburban Propane facility in Elk Grove, near Sacramento, California. One of the conspirators was knowledgeable in bomb making, and a large amount of explosives were found in his possession.

Company officials downplayed the matter, saying that the type of threat envisioned by the militiamen could not detonate the refrigerated propane tanks because they are non-pressurized. The company surmised that the liquid propane would pool within the protective dirt berms, where it could, they said, only ignite after it had considerable time to warm up, vaporize, and mix with the air. "You could have one hell of a fire, but it would all be contained right there within the berms," said John Fletcher, outside legal counsel for Suburban Propane.

The Suburban company view of the incident loses credibility when we factor in that the facility also has four 60,000 gallon pressurized propane tanks, which may well have been the primary target, and that the militiamen's intention may have been to focus on destroying these, thereby releasing enough blast energy, heat radiation and flying tank fragments to trigger the rapid destruction of the secondary target, the large refrigerated tanks located in clear line of sight just 220 feet away. In our measured opinion, the consequences of a truck bomb driven through the front gate and exploding next to the neat array of pressurized tanks (see figure 2), would have been to create an increasing cascade of BLEVE type explosions, domino style, which through the combined effects of blast, heat, and bullet tank fragmentation would have destroyed the earthen berm and have initiated the destruction of the large tanks, with a significant proportion of the propane mixing with the air to create a large vapor cloud explosion and/or fireball, potentially damaging a radius up to 4½ as large as that due to the smaller pressurized tanks alone. Figure 3 shows a map of the Elk Grove site overlaid with data from an ALOHA simulation (see appendix A) of a BLEVE of just one of the 60,000 gallon pressurized storage tanks. The resulting modeled fireball engulfs almost the entire facility. There are three radiant-heat threat zones, red, orange, and yellow, with red the most serious.

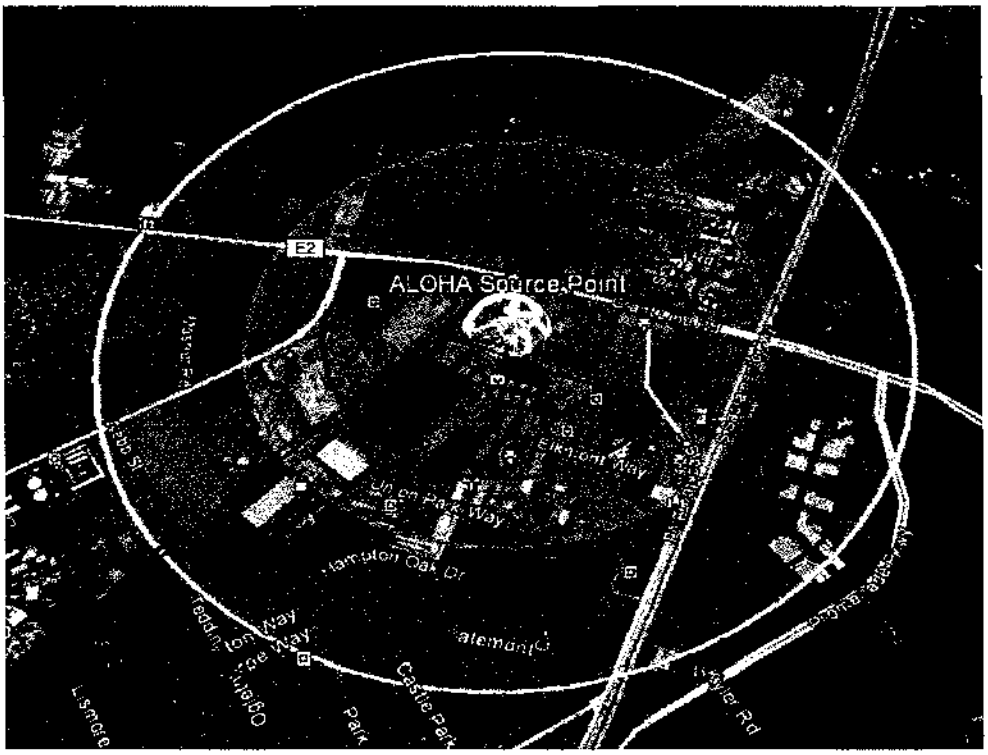

Figure 3: A Google Earth overlay showing one credible scenario had the terrorist plot that targeted the Suburban Propane facility in Elk Grove, California, not been neutralized by the FBI in 1999. It shows thermal threat zones modeled for a boiling liquid expanding vapor explosion in just one of four 60,000 gallon pressurized propane bullet tanks at the facility. The resulting fireball would have engulfed most of the facility, and the thermal radiation effects would have extended ¾ of a mile. If you look to the RH edge of the fireball, below the "e" in "Source," one of the facility's two 12-million gallon refrigerated propane storage tanks can be seen on the RH edge of the fireball which would have engulfed most of the site. In a scenario that caused all four bullet tanks to explode nearly simultaneously, the model predicts that the threat zones would extend up to 50% further. Not shown in this figure are the additional effects of overpressure blast wave, and the missile ejection of shrapnel (tank fragments and other debris), which could credibly puncture the large tanks, leading to potentially even larger consequences, which at the very least could cause a large pool fire and deflagration extending well beyond the boundary of the facility. Ironically, the Elk Grove fire station is within the yellow threat zone (the red dot toward the top RH corner of this map). (Fireball diameter 308 yards; Red zone radius: ⅜ mile [10 kW/m^2] potentially lethal in less than 60 seconds; Orange zone radius: ½ mile [5 kW/m^2] 2nd-degree burns in less than 60 seconds; Yellow zone radius: ⅞ mile [2 kW/m^2] pain in less than 60 seconds)

The other effects of this BLEVE, the potential destructive power of high-speed hazardous tank fragments, and the blast force from, are not modeled by ALOHA. However, there is plenty of data collected from many such accidents to justify our expectation that these effects would be considerable, especially the fragments, and especially at close range. Indeed, due to the danger of showers of these flying fragments, many authorities now recommend an evacuation zone of 30- to 40-times the radius of a BLEVE fireball, which is at least 2.6 miles in our Elk Grove example. In other words, at least three times the radius of the yellow threat zone shown in figure 3.

Not unexpectedly, the credible viewpoint concerning the foiled terrorist plot at the Elk Grove Suburban Propane facility came from the Elk Grove Fire Department and Lawrence Livermore Laboratory scientists, who in opposition to the official company position on the matter, said that destruction and fires could have occurred at considerable distances from the plant. Indeed, Fire Chief Mark Meaker of the Elk Grove Fire Department said, "Our experts have determined there would have been significant off-site consequences."[25] He added that a major explosion and fire likely would have blown the earthen berms out and led to a vapor cloud and/or pool fire that could affect nearby residents, schools and businesses, and depending on the size of the blast, residents could be endangered by heat from a large fireball, flying projectiles "like portions of tank shells flying through the air," and a pressure wave that would emanate from the blast. "In close, there would be a high level of destruction," said Meaker, adding that office buildings and warehouses stand within 200 yards (182 meters) of the plant, with the nearest residential neighborhood, just 0.6 of a mile (.96 km) from the plant. At any given time, Meaker estimated 2,000 people are within a mile of the plant.[26]

In particular, the director of the Chemical-Biological National Security Program at Lawrence Livermore Laboratory, one of the world's foremost experts on explosions, said that,

> ... if the two accused men had been successful in the terrorist plot, a "gigantic fireball" would have been created, causing injuries and damage up to 1.2 miles away. This would, he said, have caused fatal injuries to roughly 50 percent of the people in the blast radius, while many others outside would be severely injured by debris. There would have been fatalities and injuries up to 0.8 miles from the explosion. Then, he said, the initial blast would likely have caused the two smaller on-site pressurized propane loading tanks to explode, rupturing the formaldehyde storage tank at another nearby industrial facility. This would have caused, he said, a toxic cloud that would travel for almost a mile with the prevailing wind, causing life-threatening symptoms to anyone encountering it.[27]

What makes the Elk Grove incident and the testimonies of the fire chief and scientists particularly credible is that after the arrests of the terrorists, company officials added numerous security devices to protect the facility, including a trench designed to stop a car bomb attack at the perimeter.

According to statistics released by the FBI, between 1991 and 2001, 74 terrorist incidents were recorded in the United States, while during this same time frame, an additional 62 terrorist acts being plotted in the United States were prevented by U.S. law enforcement.[28] Elk Grove was

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[25] Industrial Fire World. "Targets of Opportunity." http://www.fireworld.com/Archives/tabid/93/articleType/ArticleView/articleId/86841/Targets-of-Opportunity.aspx Retrieved Jan 03, 2015.

[26] CNN Dec 04, 1999, "Police: California men planned to bomb propane tanks." http://www.cnn.com/1999/US/12/04/bomb.plot.02/index.html Retrieved Jan 03, 2015

[27] Jaffe, Dong, "Elk Grove project ignores nearby propane risk." Sacramento Business Journal, Dec 08, 2001. http://www.bizjournals.com/sacramento/stories/2001/12/10/editorial4.html?page=all Accessed Jan 02, 2015.

[28] http://www.fbi.gov/stats-services/publications/terror/terrorism-2000-2001 Accessed Jan 02, 2015.

one of those that were prevented, and the only one (so far) to target a propane energy storage facility. Elk Grove was not the only prevented terror plot that planned to use explosives. There was also the March 2000 plot to blow up the Federal building in Houston, TX, and in December 1999 law enforcement thwarted a plot to blow up power plants in Florida and Georgia. Of the 74 successful terrorist incidents listed for these years, 4 used hijacked U.S. commercial aircraft as missiles, a majority used arson, and there were several incendiary attacks. FBI data for all terrorism 1980–2001 (including incidents, suspected incidents and prevented incidents) shows 324 bombings (67%), 33 arson (7%), 19 sabotage/malicious destruction (4%), 6 WMD (1%), 6 hijackings/aircraft attacks (1%), 2 rocket attacks (0.4%). Further terrorist incidents have occurred in the United States since September 11, 2001, and although nothing before or since 9/11 compares in scale, lives lost, or scope, the thwarted terrorist plot at Elk Grove can remind us that as a result of the energy boom and the building of many large propane and LNG storage facilities around the country, such tanks pose a "clear and present danger" to public safety.

Potential Hazard 1: Bullet Tanks & Domino-Effect BLEVE Cascades

Pressurized, ambient-temperature liquid propane storage tanks are particularly susceptible to a process called a Boiling Liquid Expanding Vapor Explosion or BLEVE, one of the most severe accidents that can occur in the fuel process industry or in the transportation of hazardous materials.[29] Such tanks come in all sizes from fractions of a gallon to 125,000 gallons, with 30,000 gallons being the most common for transportation by rail and road. Although such tanks are quite robust against normal wear and tear, if a tank becomes engulfed by a fire, which typically over a few hours, raises the temperature of the tank and its contents to the point where the relief valve can no longer cope (earlier if the valve is faulty), the internal pressure in the tank will rise until the tank ruptures, causing instant boiling of the superheated liquid contents, which quickly and turbulently mix with outside air, forming a rapidly expanding vapor cloud. Indeed, since pressurized tanks store propane at temperatures well above its atmospheric boiling point of -43.7 °F, any event that causes a serious breach of the tank wall, can trigger a BLEVE.

If a suitable source of ignition is present (the initial fire will do admirably), moments later the cloud of vapor will experience ignition, adding the thermo-mechanical chemical energy of a Vapor Cloud Explosion, or VCE, to the mechanical energy of the original BLEVE tank burst. This gives rise to the visually most striking feature of typical propane BLEVE, the fireball. A fireball will quickly expand in a roughly spherical shape until all of the propane that burst out of the tank is consumed by it. The point where the firehall stops expanding, its volume is proportional to the mass of propane burnt, and the radius is proportional to its cube root. Propane fireballs have extremely high peak luminosity at infrared wavelengths. These effects are

[29] Casal, J., et al. "Modeling and Understanding BLEVEs" Ch. 22 in Petrochemistry Handbook. http://aeynmont.free.fr/SACH-BOOKS/Petrochemistry/Handbook%20of%20Hazardous%20Materials%20Spills%20Technology/Part%20V.%20Spill%20Modeling/22.%20Modeling%20and%20Understanding%20BLEVEs.pdf Retrieved Jan 01,2015

amenable to mathematical modeling, allowing the quantification of thermal radiation threat zones:

Thermal Threat Zones[24]

Red	(> 10.0 kW/m^2)	=	Potentially lethal within 60 sec.
Orange	(> 5.0 kW/m^2,)	=	Second-degree burns within 60 sec.
Yellow	(> 2.0 kW/m^2)	=	Pain within 60 seconds.

Apart from heat damage due to heat radiation from the fireball, BLEVEs often produce an overpressure, which if it is strong enough to causes injury or damage to structures, is termed a blast wave or shock wave:

Overpressure and Blast Threat Zones[30]

Red	(> 8.0 psi)	=	Destruction of buildings. High risk of lethal injury. Eardrum rupture in 60% of subjects.
Orange	(>3.5 psi)	=	Damage to buildings. Serious injury likely. Rupture of lungs. Rupture of eardrums in 12% of subjects.
Yellow	(> 1.0 psi)	=	Eardrum rupture in 1% of subjects. Glass shatters.

BLEVEs typically also project flying tank fragments at high velocity in all directions. There are many propane industry studies which show that a fireball resulting from tank failure worries fire officials less than the projectiles which are sent out at high velocity in all directions from such a blast.[31] One study by the National Propane Gas Association found in 13 induced BLEVEs, that "rocket-type projectiles" or "shrapnel" from tanks as small as 80 to 100 gallons "can reach distances of up to 30 times the fireball radius."[32] These fragments are generally not evenly distributed, and due to various factors, can be launched in any direction, with severe fragment risk up to 15 times the fireball radius, and almost all fragments inside 30 times the fireball radius.[33] Many authorities suggest, therefore, that the evacuation radius should be 30 times the fireball radius. Indeed, it is the typical shower of sharp-edged tank fragments projected at high velocity (up to 200 m/s or 450 mph) in all directions from propane BLEVEs that makes them particularly dangerous to other propane storage tanks, often resulting in a kind of "power amplifier" domino effect.

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[30] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Pages 5, 7, 10, 14, 18. mroberts@abs-group.com http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/roberts.pdf

[31] Industrial Fire World, "Targets of Opportunity." http://www.fireworld.com/Archives/tabid/93/articleType/ArticleView/articleId/86841/Targets-of-Opportunity.aspx Retrieved Jan 03, 2015.

[32] Hilderbrand, Michael S.; Noll, Gregory S., National Propane Gas Association (U.S.) "Propane Emergencies" 2nd. Ed., 2007, p. 136.

[33] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Pages 10, 18. mroberts@abs-group.com http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/roberts.pdf

It was recently reported on the SmartNews section of the Smithsonian website that with just 29 dominoes, you could knock down the Empire State Building.[34] In a video on the website, Toronto professor Stephen Morris, demonstrate that a toppling domino can knock down another domino that is 1.5-times larger. Therefore, starting with a domino 5 mm tall, the 29th domino would be $1.5^{(29-1)}$ = 85,222-times taller, or about 1398 feet, toppling with enough kinetic energy to knock down The Empire State.

What this demonstrates is the potential for BLEVEs to propagate like a row of toppling dominoes, successively releasing increasing amounts of energy. When one pressurized propane tank (say, a typical bullet tank), is heated by a fire (either accidentally or deliberately set), to the point, as previously described, where the tank bursts, losing its contents as a boiling liquid that immediately flashes to a rapidly expanding vapor, that through contact with the fire, will instantly detonate, liberating a lot more energy than expended in the trigger event. A similar sequence of events can also be triggered by an amount of high-explosives. The result is that any propane tank BLEVE can threaten an adjacent tank with the "triple aggression" of fragment, blast, and fireball, causing it to immediately BLEVE too, and this can cascade, domino-fashion down a row of tanks.[35] The closer the bullet tanks are together, the faster this chain reaction occurs, potentially causing all of the bullet tanks to explode in a short space of time. How quickly this happens determines the degree to which the power of the original BLEVE is multiplied, in a trade-off of intensity and duration of the number and velocity of shrapnel and missile-like tank fragments, the intensity of the blast wave, and the size and thermal power of the ensuing fireball. Due to their important role in spreading the effects of an incident or accident from one tank to others, the three quantities, fragments, overpressure (blast), and heat flux (fireball), are known as escalation vectors.[36]

The major risk from a pressurized propane tank BLEVE explosion to nearby refrigerated propane storage is fragment impact. The important parameters are velocity, shape and mass of the fragments, and the trajectory distance and time. BLEVE fragment ejection velocities are in the range of 10–100 m/s. When such a fragment (particularly at the higher end of the velocity range) impacts on and penetrates an (assumed large) refrigerated storage tank, *a hydrodynamic ram is generated in the liquid which may cause the tank to burst.* This produces a sequence of events[37] in which liquid propane is ejected as jet at a velocity high enough that with the arrival of a strong overpressure blast wave vector may experience primary break-up (atomizing into a mist

[34] Schultz, Colin. Smithsonian. "Just Twenty-Nine Dominoes Could Knock Down the Empire State Building." http://www.smithsonianmag.com/smart-news/just-twenty-nine-dominoes-could-knock-down-the-empire-state-building-22329441/?no-ist Original idea by Lorne Whitehead, who called it the domino amplifier effect. American Journal of Physics, vol. 51, p. 182 (1983).

[35] Heymes, Frederic, et al. "On the Effects of a Triple Aggression (Fragment, Blast, Fireball) on an LPG Storage." Chemical Engineering Transactions, vol. 36, 2014, pp. 355-360. http://www.aidic.it/cet/14/36/060.pdf Retrieved Jan 11, 2015.

[36] Heymes, Frederic, et al. "On the Effects of a Triple Aggression (Fragment, Blast, Fireball) on an LPG Storage." Chemical Engineering Transactions, vol. 36, 2014, pp. 355-360. http://www.aidic.it/cet/14/36/060.pdf Retrieved Jan 11, 2015. p. 356.

[37] Ibid. Section 2.1, p. 356.

of micron-sized droplets) and partial evaporation. If the onslaught from outside the tank is sufficiently aggressive, the tank contents may flash boil and/or result in a two phase flow and vapor cloud. The Depending on circumstances and timing, in addition to the possibility of total loss of containment, there may be a vapor cloud explosion (VCE), jet fires, pool fires, and structure fires, in any combination.[38]

Relating this to the published configuratiou of PPC's proposed propane export terminal at Terminal 6 in Portland,[39] eight 125,000 gallon high pressure transfer tanks, stationed close to one another, totaling 1-million gallons could be set off by a BLEVE in several derailed and burning DOT-112 tanker cars[40] (for example), which once started, could start quickly exploding, domino-fashion, causing enough damage to the much larger refrigerated tank(s) (33.6-million gallons) to cause an even more destructive event. Figure 4 shows simulated thermal radiation threat zones (fireball, red 10 kW/m^2, orange 5.0 kW/m^2, and yellow 2.0 kW/m^2), corresponding overpressure blast wave threat zones (light blue 8.0 psi, blue 3.5 psi, and purple 1.0 psi) and a 6.7 miles radius tank fragment missile threat zone[41] (turquoise blue) due to a 1-million gallon worst-case near simultaneous BLEVE of all eight of PPC's planned pressurized transfer tanks (see appendix A for the model data). The missile fragment threat covers 149 square miles. Figure 5 shows the blast zones for a BLEVE in just one of the 125,000 gallon bullet transfer tanks, something that could be initiated by a fire in an adjacent bullet tank, itself punctured by shrapnel from a fire and BLEVEs in a nearby fully loaded DOT-112 unit train. The threat zone radii in the 125,000 case are half as big as those for the 1-million gallon case, giving a 3.3 miles radius tank fragment missile threat zone.

In light of these results, it is the measured opinion of the authors of this white paper that a massive BLEVE in the transfer tanks could cause massive mechanical-, thermal-, and overpressure-driven disruption a nearby unit train and of one or both of the refrigerated storage tanks. The net result would be a complex deflagration involving one or both of the large

[38] Ibid. Section 3.1, p. 357.

[39] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*, Dec 12, 2014. http://www.portlandoregon.gov/bps/article/512520

[40] A new, "safe" DOT-112 tank car derailed and exploded on Oct. 19, 2013 in Gainford, Alberta, leaving several "unsafe" DOT-111 tanker cars, still coupled together, lying safely on their sides. Following a siding derailment of 13 cars, including four DOT-111 tank cars containing crude oil, nine DOT-112 tank cars containing LPG, two LPG cars were punctured and caught fire. A third LPG car released product from its safety relief valve, which ignited. About 600 feet of track was destroyed, and a house located nearby was damaged by the fire. This was a relatively slow-speed derailment (between15 and 25 mph), caused by rail defects. One DOT-112 car was punctured in the underbelly by the coupler from another car. This caused it to release its load (of LPG) and explode. Despite double shelf couplers designed to keep the cars coupled during derailments, the DOT-112 cars uncoupled during the derailment and apparently jackknifed across the track, making them vulnerable to secondary impacts from following cars. http://www.tsb.gc.ca/eng/medias-media/communiques/rail/2015/r13e0142-20150224.asp Retieved Feb 25, 2015.

[41] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Page 10. mroberts@abs-gronp.com
http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/Roberts%20abstract.pdf

refrigerated tanks, combining the worst effects of BLEVEs, and most of the other effects already mentioned.

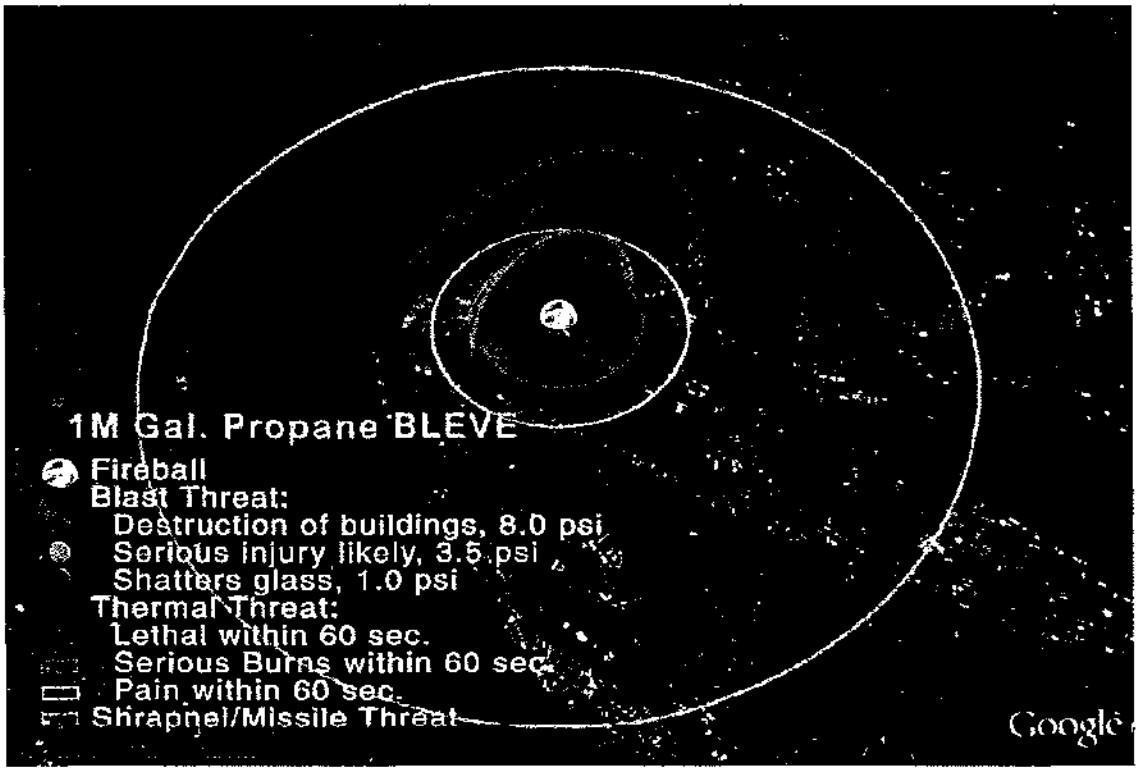

Figure 4: A Google Earth overlay showing thermal radiation and missile fragment threat zones modeled for a worst case boiling liquid expanding vapor explosion of one-million gallons of propane stored in pressurized tanks at Terminal 6 in North Portland. The black lines on the map represent the rail network.

Thermal Threat Zones: Fireball diameter 787 yards. Red zone: 1682 yards radius [10 kW/m^2] potentially lethal in less than 60 seconds; Orange zone: 1.3 miles radius [5 kW/m^2] 2nd-degree burns in less than 60 seconds; Yellow zone: 2.1 miles radius [2 kW/m^2] pain in less than 60 seconds.

Overpressure Blast Zones (shown in cut-away view): Blue zone: 1.3 miles radius [8.0 psi] destruction of buildings; Green zone: 1.5 miles radius [3.5 psi] serious injury likely; Magenta zone: 2.9 miles radius [1.0 psi] shatters glass.

Shrapnel Zone: Turquoise zone: Tank fragment missile threat zone: 30 x fireball radius = 6.7 miles radius, which is also the recommended evacuation radius to avoid tank fragment missiles. Areas included within the missile threat zone are all of downtown Portland, all of North Portland, PDX airport, the eastern half of Sauvie Island, all of Hayden Island, most of Vancouver, and all of the marine terminals of the ports of Portland and Vancouver.

Potential Hazard 2: Terrorist Attack Scenarios

Typical actions by terrorists include the commandeering of commercial aircraft, but also drive-up vehicle-borne improvised explosive devices (truck bombs), the use of explosive projectiles such as shoulder-launched armor piercing rocket-propelled grenades, or the hand-placing of satchel or

shaped charges. Shaped charges are specifically designed to leverage previously-mentioned hydrodynamic effects for best focus and maximum destructive power with the least amount of explosive material. Any or all of these can lead to the scenarios described in the *Potential Hazards 1* section, above.

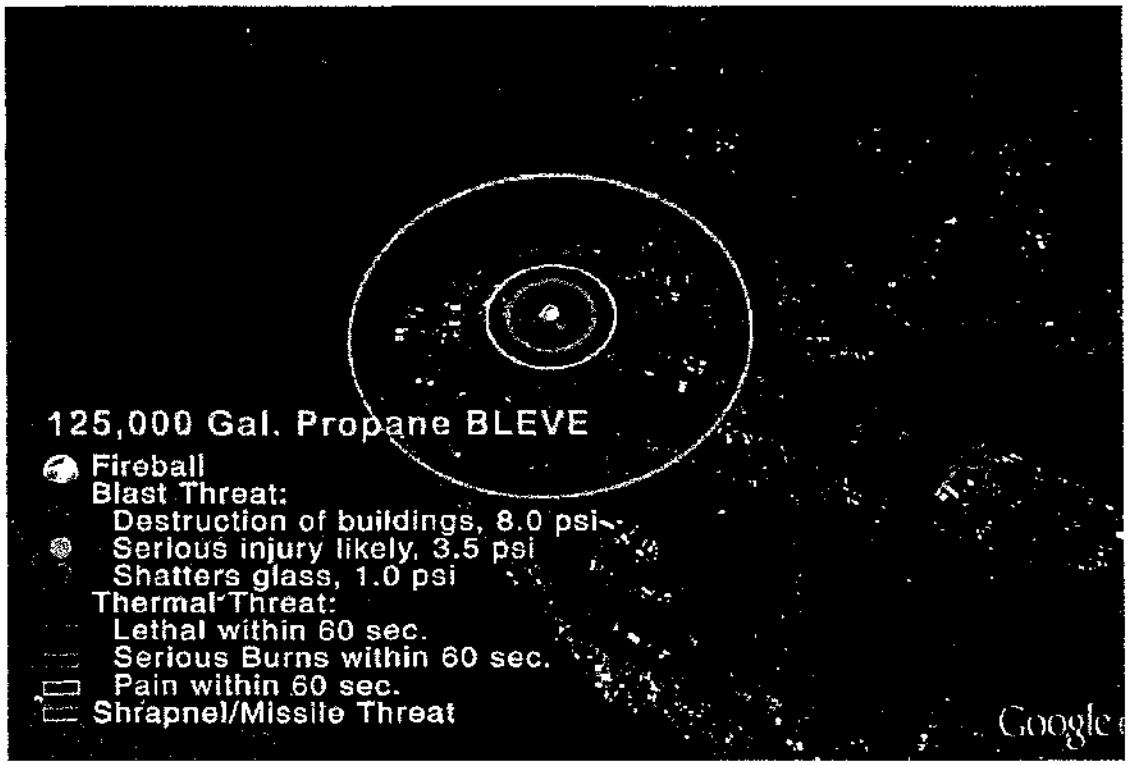

Figure 5: A Google Earth overlay showing thermal radiation and missile fragment threat zones modeled for a worst case boiling liquid expanding vapor explosion of 125,000 gallons of propane stored in pressurized tanks at Terminal 6 in North Portland. Shown at the same scale as figure 4.
Thermal Threat Zones: Fireball diameter 393 yards, Red zone: 841 yards radius [10 kW/m^2] potentially lethal in less than 60 seconds; Orange zone: 0.65 miles radius [5 kW/m^2] 2nd-degree burns in less than 60 seconds; Yellow zone: 1.05 miles radius [2 kW/m^2] pain in less than 60 seconds.
Overpressure Blast Zones: Blue zone: 0.65 miles radius [8.0 psi] destruction of buildings; Green zone: 0.75 miles radius [3.5 psi] serious injury likely; Magenta zone: 1.45 miles radius [1.0 psi] shatters glass.
Shrapnel Zone: Turquoise zone: Tank fragment missile threat zone: 30 x fireball radius = 3.35 miles radius, which is also the recommended evacuation radius to avoid tank fragment missiles. Areas included within the missile threat zone are all of downtown Vancouver, all of the Portland St Johns neighborhood, part of the Portland Portsmouth neighborhood, the eastern edge of Sauvie Island, most of Hayden Island, and all of the marine terminals of the ports of Portland and Vancouver.

Potential Hazard 3: The Big One—A Magnitude 9 "Megathrust" Quake

The proposed site of PPC's propane export terminal, adjacent to The Port of Portland's Terminal 6, lies in the Portland basin, a well-documented area of seismic activity. Three seismic sources

have been determined:

1) Interplate earthquakes along the Cascadian Subduction Zone located near the Pacific coast.
2) Relatively deep intraplate subduction zone earthquakes located as far inland as Portland.
3) Relatively shallow crustal earthquakes in the Portland metropolitan area.

The maximum credible events associated with these sources are postulated to be in the range of Magnitude 8.5-9.0, 7.0-7.5, and 6.5-7.0, respectively.[42] Indeed, the City of Portland's Bureau of Planning and Sustainability (BPS), with input from the Port of Portland, has already authored a statement that "an earthquake [at the proposed PPC propane export facility] is one of the biggest risks to create a spill or explosion."[43] Oddly enough, this statement was offered by the Port of Portland in *support* of a proposed zoning change to the protected riverfront at Terminal 6, without which PPC's terminal cannot go ahead. It is then revealed in the same document that the port has established a risk level target of a 1% in 50 years probability of earthquake-induced collapse. In other words, approximately 0.5% risk of a collapse over the expected 25 year service life of the facility, even after all required mitigations have been incorporated into the structural design of the refrigerated storage tanks, such as the "ground improvement and/or deep foundations…. a combination of stone columns and jet grouting ground improvements …." that were completed within the last five years for another marine facility just downstream. Deep foundations such as driven pipe piles are currently being considered as an alternative to support the tank."[44] To our knowledge, there has been insufficient investigatory work by engineering geologists and geotechnical engineers to map and understand the geological limitations of the planned terminal location just east of Terminal 6, a site at which the basalt bedrock may be unusually deep.[45] At a recent public meeting on Hayden Island, a Pembina representative said that their geotechnical exploration of the site reached to 165 ft, and that they had no intention of going deeper, did not need to know the bedrock depth, and intended to run several concrete-filled caisson pilings to 160 ft. On the face of it, this seems inadequate, because industry sources I have consulted recommend drilling at least 20 ft deeper than your intended pilling depth. The proposed tank design uses two large aboveground double-wall insulated steel storage tanks that together store 33.6-million gallons of refrigerated propane at -44 °F. Also in the BPS document is a statement that the geology of the site and the potential for a megathrust quake (Magnitude 9) from the Cascadia Subduction Zone (which would originate near the Oregon coast), and a Magnitude 7 Portland Hills Fault quake (which would originate less than 5 km away) appear to agree with current geological knowledge of the region, and may in fact overstate the Portland Hills Fault potential

[42] Dickenson Stephen E., et al. Assessment and Mitigation of Liquefaction Hazards to Bridge Approach Embankments in Oregon. Final Report, SPR 371. Oregon DOT Research Group, and Federal Highway Administration. Nov 2002. p. 139.

[43] Bureau of Planning and Sustainability, City of Portland, Oregon. "Terminal 6 Environmental Overlay Zone Code Amendment and Environmental Overlay Zone Map Amendment – Part 1: Environmental Overlay Zone Code Amendment." *Proposed Draft*, Dec 12, 2014. http://www.portlandoregon.gov/bps/article/512520 p.18. Seismic Risks

[44] Ibid. p. 18.

[45] Professor Scott Burns, Oregon State University, private communication.

by 0.5.[46] The BPS document also briefly mentions that the major seismic hazards for a large storage tank at Terminal 6 include soil liquefaction, lateral spreading and seiches.

A more detailed review of the seismic risks in the Portland basin and related areas[47] describes the high likelihood of prolonged ground shaking (the geological estimate is five minutes), causing the destructive effects of *primary* seismic effects: soil liquefaction (loss of strength of the soil), lateral spreading (surface soil moves permanently laterally, damaging structures such as buildings, tanks, and tank supports; an effect that could be exacerbated by slope failure of the Terminal 6 dredged shipping channel), co-seismic settlement (the ground surface is permanently lowered, and potentially becomes uneven), and bearing capacity failures (foundation soil cannot support structures it was intended to support). The alluvial soils in the Portland Basin, and in particular those surrounding the Portland peninsular, and associated with the wetlands at the confluence of the Willamette and Columbia rivers, are particularly at risk to this sequence of events. Portland's rivers, sloughs, lakes and wetlands makes for a high water table, which when coupled with an unusually large distance to bedrock, makes these water-saturated soils very vulnerable to the previously mentioned effects of ground shaking. Possible *secondary* seismic hazards relevant to the Portland basin area include: seiches (earthquake-induced standing waves in narrow bodies of water), fire, and hazardous material releases, such as liquid fuel overtopping tanks by ground-shaking-induced sloshing.

Due to the particular dangers of liquefaction to large tank structures, and as discussed above, the BPS zoning change proposal document rightly pays special attention to its mitigation in the design of the tank and its foundations. However, given that a Magnitude 9 earthquake in the Cascadia Subduction Zone could bump Portland into 6th place in the USGS list of the most powerful earthquakes ever recorded worldwide,[48] such mitigation may be woefully inadequate. With 100 times the ground movement and 1,000 times the energy of a much more common Magnitude 7 earthquake, a Magnitude 9 quake is a very powerful event. Strengthening a 30-million gallon tank against this seems hardly feasible. Scientists agree that such a large quake is overdue. Earthquake-induced failure of such a tank would only add insult to Portland and Vancouver's already massive earthquake injury.

Until proven otherwise, we must assume that the intensity of earthquake-driven liquefaction of the ground around Terminal 6 is likely to result in collapse and loss of contents of the planned large refrigerated tank structures. Given a nearby source of ignition, a massive pool fire is only one possible outcome. Another (and the one we've chosen to use here) is a very large, toxic, wind-driven heavy vapor cloud (12,600 ppm = 60% LEL) containing many flame pockets ignited

[46] Professor Scott Burns, Oregon State University, private communication.
[47] Wang, Yumei, et al. "Earthquake Risk Study for Oregon's Critical Energy Infrastructure Hub." Final Report to Oregon Department of Energy & Oregon Public Utility Commission. Oregon Department of Geology and Mineral Industries. Aug 2012. p. 39.
[48] Largest Earthquakes in the World Since 1900. The current list is: 9.5, 9.2, 9.1, 9.0, 9.0, 8.8, 8.8, 8.7, 8.6, 8.6, 8.6, 8.6, 8.5, 8.5, 8.5, 8.5, 8.5. http://earthquake.usgs.gov/earthquakes/world/10_largest_world.php Retrieved Jan 12, 2015.

by various sources of ignition across miles of the Portland or Vancouver metropolitan areas. The potential for the compounding effects of water inundation of Terminal 6 due to dam loss caused by the earthquake-induced movement of recently discovered fault lines along the Columbia River, have yet to be determined. As Ian Madin, chief scientist with the Oregon Department of Geology and Mineral Industries (DOGAMI) told the Oregonian, "None of the dams were designed with this kind of fault in the analysis." He added that the Bonneville Power Administration is spending millions to secure transformers and other links in their power system, which speaks for itself.[49]

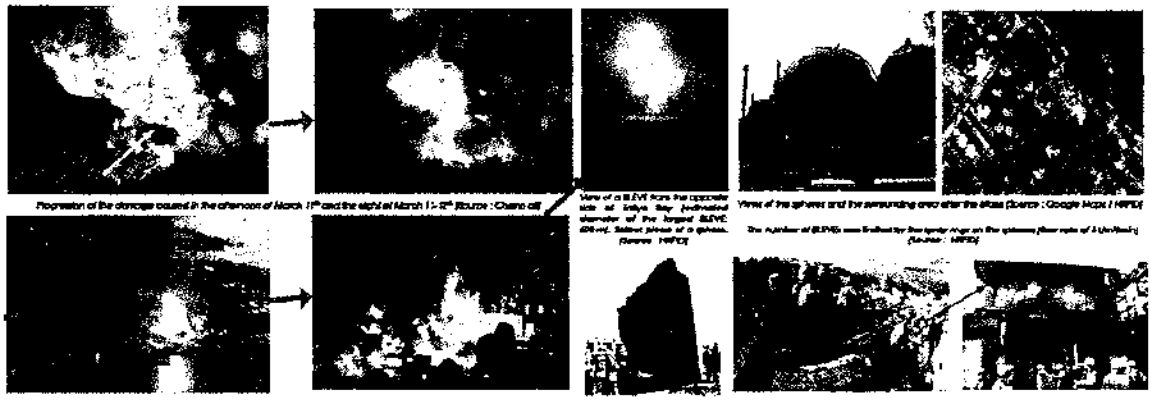

Figure 6: Cosmo Oil's LPG terminal in Tokyo Bay is built on harbor fill consisting mainly of water-saturated sandy alluvial soils (LPG is a mixture of gases, including propane). This high seismic risk location and facility has many similarities to the site of Portland's proposed propane export terminal. On March 11, 2011, an earthquake similar in magnitude to Portland's expected "big one" caused structural failure and tank collapse due to soil liquefaction. A lethal domino cascade ensued, which over a period of three hours, included a large vapor cloud explosion, and five BLEVEs the largest of which had a fireball diameter of almost 2,000 feet. All told, seventeen LPG tanks were destroyed. Damage included thermal radiation, overpressure blast, and rocketing tank fragments and other debris. Cleanup took two years.

A seismic scenario, very similar to the one being discussed for Portland, developed at the Cosmo Oil LPG terminal in Tokyo Bay as a result of the Great Tohoku earthquake March 11, 2011.[50] This quake registered as Magnitude 9 (Shindo 5-), with Magnitude 7 aftershocks. Built on sandy soil reclaimed from Tokyo harbor, the Cosmo facility was placed in jeopardy by earthquake-induced soil-liquefaction. Over a period of about three hours, this led to a series of propane or LPG tank collapses, a large vapor cloud explosion (VCE), a sustained fire, and a string of BLEVEs (see figure 6). The lethal domino cascade included five BLEVEs. The largest of these produced a 600 m diameter (1968 feet) fireball, from which we may infer an LPG volume of around 500,000 gallons! All told, a total of seventeen high-pressure storage tanks were destroyed. Fortunately there was no very large (tens of millions of gallons) refrigerated storage

[49] Rojas-Burke, Joe, The Oregonian. (Aug 29, 2011) "Hidden Earthquake Faults Revealed at Mount Hood, Oregon." http://www.oregonlive.com/pacific-northwest-news/index.ssf/2011/08/hidden_earthquake_faults_revealed_at_mount_hood_oregon.html Retrieved Jan 05, 2015.

[50] This was the same earthquake that preceded the tsunami inundation and meltdown of three of the four cores at the Fukushima Daiichi nuclear reactor complex.

tank on site. In total, the incident consumed 5,272 tonnes of propane/LPG, equivalent to around 2.8 million US gallons. Nearby pipes and buildings were destroyed. Heat radiation caused leaks in several nearby bitumen storage tanks; roads and buildings at the site were also damaged by soil liquefaction. Shock waves and rocketing debris from the explosions ignited fires in nearby petrochemical facilities. Vehicles and boats were destroyed, homes were damaged (windows and roofs), and nearby vehicles and homes were covered in fire debris. The damage cost was € 100 millions (multiples of US$ 113 million), and repairs to the facility took two years. The technical lessons learned from this disaster include reinforcing the tank bases, wider tank spacing, and improvements in safety equipment to limit domino effects.[51] *See* appendix A for a complete chronology.

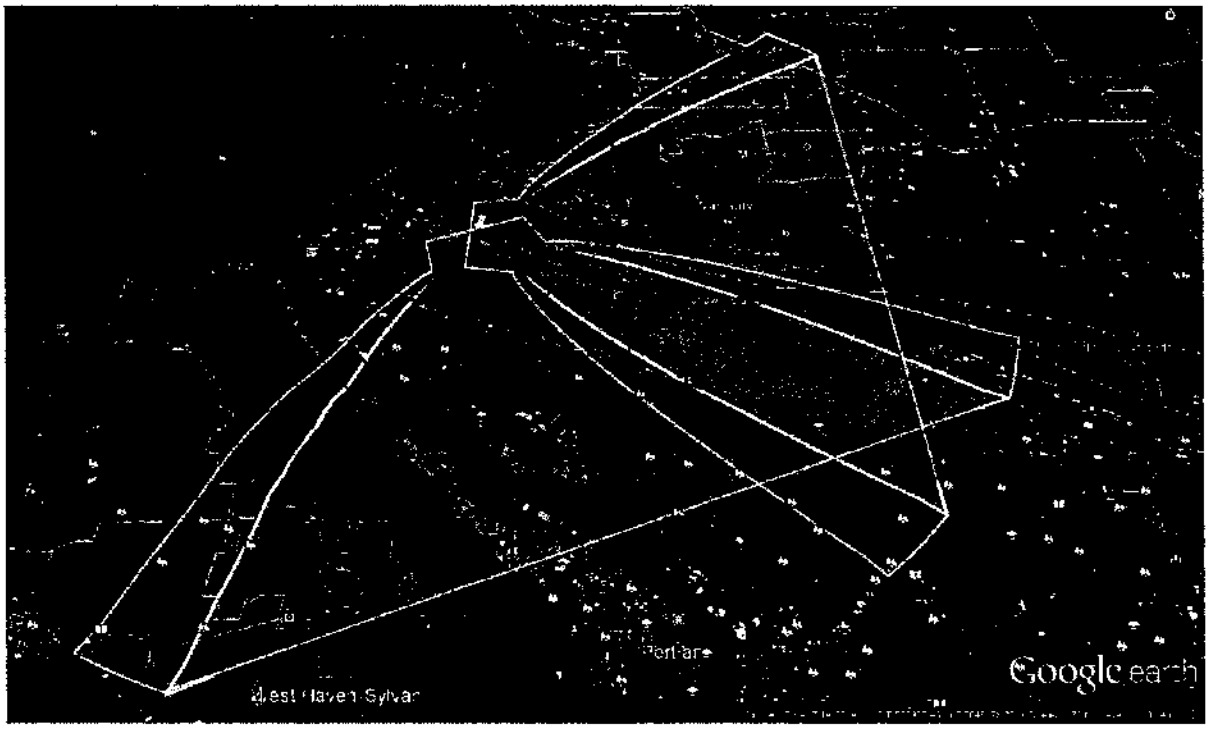

Figure 6: The Impact on Portland and Vancouver of an earthquake scenario in which a large refrigerated propane storage tank collapses at Terminal 6. We assume that cold liquid propane is ejected and/or flows at the rate of 560,000 gallons per second for one minute. The escaping liquid may flash boil and/or result in two-phase (liquid/vapor) flow. The simulation assumes that 100% of the propane evaporates into a large vapor cloud, which is blown by the wind, assumed to be 10 mph from the NW, and covers much of Portland. Overlaid on the same map is the result of a 10 mph wind from W, which covers much of Vancouver. The straight edges do not mark the edge of the vapor cloud, but simply the extent of the simulation; the cloud will therefore extend much further, with a roughly oval outline. The red threat zone extends further than 5.8 miles (12,600 ppm = 60% LEL = Flame Pockets), and the yellow threat zone extends even further (2,100 ppm = 10% LEL).

[51] Overview of the Industrial Accidents Caused by the Great Tohoku Earthquake and Tsunami, Japan, March 11, 2011. ARIA. French Ministry of Ecology, Sustainable Development and Energy. Retrieved Feb 11, 2015. http://www.aria.developpement-durable.gouv.fr/wp-content/files_mf/Overview_japan_mars_2013_GB.pdf

Figure 6 shows an earthquake scenario in which large refrigerated propane storage tank(s) collapse at Terminal 6. For the purposes of the simulation, we created a 120 ft. diameter hole in a single 33.6-million gallon tank, through which the cold liquid propane is ejected and/or flows at the rate of 560,000 gallons per second for one minute. The ALOHA software reports that the escaping liquid may flash boil and/or result in two-phase (liquid/vapor) flow. In any case we assume that 100% of the propane evaporates into a large vapor cloud, which is blown by the wind, assumed to be 10 mph from the NW, and covers much of Portland. Overlaid on the same map is the result of a 10 mph wind from W, which covers much of Vancouver. The straight edges do not mark the edge of the vapor cloud, but simply the extent of the simulation; the cloud will therefore extend much further, with a roughly oval outline. The red threat zone extends further than 5.8 miles (12,600 ppm = 60% LEL = Flame Pockets), and the yellow threat zone extends even further (2,100 ppm = 10% LEL).

Legal Ramifications

Finally, we will place the proposed PPC propane export terminal under the legal microscope by using a Rest.2d Torts approach to examine the legal ramifications of siting any such large energy storage and handling facility in the center of the extended Portland/Vancouver urban area, in a geological zone subject to Magnitude 9 "megathrust" earthquakes, and earthquake-induced ground liquefaction and dam bursts, with such an earthquake in fact overdue. Specifically, Restatement (Second) of Torts, § 520 (commonly referred to as Rest.2d Torts § 520), which has been adopted by California and some other states, provides a framework for examining an activity or process to determine if it presents an unavoidable risk of serious harm to others, or their property, despite reasonable care exercised by the actor to prevent that harm. Section 520, Restatement Second of Torts enumerates the factors to be considered in determining if the risk is so unusual, either because of its magnitude or because of the circumstances surrounding it, that such an activity is "abnormally dangerous" or "ultrahazardous,"52and therefore subject to strict liability.

Given the huge potential for devastation in Portland or Vancouver (depending on wind direction) out to at least seven miles from the facility, a 1-in-200 risk is much too high. Indeed, simulation tests we have run demonstrate a credible potential for an event so destructive that the establishment of any large energy storage facility within the urban boundary of Portland, that endangers all of Portland and Vancouver qualifies as ultrahazardous, defined in Wex[53] as, "An activity or process that presents an unavoidable risk of serious harm to the other people or others' property, for which the actor may be held strictly liable for the harm, even if the actor has exercised reasonable care to prevent that harm." Oregon may well need to follow California in adopting a Rest.2d Torts approach for determining whether such ultrahazardous activities are

[52] Ultrahazardous activity. http://www.law.cornell.edu/wex/ultrahazardous_activity

[53] Wex is the Cornell University Legal Information Institute's community-built, freely available legal dictionary and encyclopedia. http://www.law.cornell.edu/wex

"abnormally dangerous," setting forth six factors which are to be considered in determining liability. These are:

> "(a) existence of a high degree of risk of some harm to the person, land or chattels of others;
> "(b) likelihood that the harm that results from it will be great;
> "(c) inability to eliminate the risk by the exercise of reasonable care;
> "(d) extent to which the activity is not a matter of common usage;
> "(e) inappropriateness of the activity to the place where it is carried on; and
> "(f) extent to which its value to the community is outweighed by its dangerous attributes."

We comment on these factors, as follows:

(a) Portland's adoption of a 1% risk of tank collapse in 50 years is a high degree of risk.
(b) The potential harm from credible tank collapse and transfer tank BLEVE scenarios is great, and worst-case Portland and/or Vancouver would likely never fully recover.
(c) Residents cannot avoid the risk by any reasonable exercise of care, other than leaving.
(d) Large propane facilities are not commonly embedded in cities.
(e) Large propane facilities are inappropriate inside or close to urban boundaries.
(f) Recognizing that Portland is considered to be well overdue for a big earthquake, and considering that propane tanks have been terrorist targets, the credible magnitude of loss for such incidents pales in comparison to the 50 direct jobs and several million dollars of taxes that Portland would receive from such a facility.

Some Rejected Energy Storage Proposals

- The Long Beach LNG Import Terminal Project, CA (onshore)
  Withdrawn after 4 years of scrutiny of project (LA Times Jan 23, 2007).
  Population density (< 2 miles from houses, >60/sq. mi; 3,033 households within a 2 mi radius). Seismic concerns. Flaws in the draft environmental study.

- Calpine LNG Project, Humbolt Bay, CA (onshore)
  Withdrawn (LA Times Mar 18, 2004)
  Population density (1 mile to pop. density >60/sq. mi).

- Shell/Betchel LNG Project, Vallejo, CA (onshore)
  Withdrawn Jan 30, 2003.
  Population density (1 mile to pop. density >60/sq. mi).

- Conoco LNG Project, El Paso, TX
  Permit denied.
  Population density (< 1 mile to pop. density >60/sq. mi).

- Broadwater Energy LNG Export Terminal, Long Island Sound, NJ
  Permit denied.
  Environmental issues.

Conclusion

The scale of potential disasters due to a large propane facility inside the combined Portland/Vancouver urban area more than outweighs any theoretical estimate of its improbability. We believe that our region would not properly recover from such events for decades, if ever.

To avoid this present danger, the solution is clear: We must not make the requested zoning change. We must not allow the thin end of an industrial wedge through our environmental protections, because it will set a bad precedent.

Accident data shows that the largest propane risk areas are pressurized storage, pressurized transport, and transfer. This includes any units trains incoming to the site (derailments), the movement of the tanker cars at the site (shunting derailments), and the transfer of liquid propane from one container to another (accidents with pipes, valves, hoses, and other equipment). Such dangers at the proposed site are exacerbated by the relatively close proximity of the pressurized tanks to each other, and also due to the high probability of domino amplification effects. Moreover, the proposed large refrigerated tanks, no more than a stone's throw from the pressurized transfer tanks, are likely to become involved due to the secondary effect of rocketing high-speed sharp tank fragments, generated from one or more BLEVEs in the pressurized tanks. These fragments, also known as shrapnel, travel at speeds up to 400 mph, and are capable of slicing through both walls of the refrigerated tanks, and any remaining intact pressurized tanks, which aided by hydrodynamic forces, are likely to cause loss of contents. The ballistic range of such fragments is typically many miles, which would place large parts of suburban Portland and Vancouver in jeopardy. The magnitude of credible incident and accident scenarios (similar to many of the events which seem to be ever present in our news feeds, including the finding, just days ago, that a recent multiple BLEVE in derailed DOT-112 tanker cars was primarily caused by a design oversight that is present in all DOT-112s) is sufficiently high that we conclude that planners must remotely locate such large energy storage facilities. The need to be far away from our cities and towns, and also fragile natural areas such as West Hayden Island, and the Smith and Bybee lakes; beyond the threat zones of any credible disaster (at least ten or twenty miles).

Federal and state regulators must also require that these facilities are themselves better protected from human error and any malicious intention, by the best means available. If necessary we must enact laws to ban the siting of large energy facilities inside or close to our urban areas.

Portlanders are heavily invested in Portland. Committed to finding sustainable solutions, and supporting a burgeoning artisan economy, Portlanders enjoy a unique lifestyle. Yet, while dreaming of award-winning green and self-sufficient sustainability, they achieve home ownership, and safe bicycle lanes and bridges. They also dream of one day having a functional light rail system, and of transforming Portland's major employers, the large semiconductor, electronics, sports equipment, and film companies into clean-tech success stories.

Therefore, for the city to take our "savings" and risk them on a bet that there will never be a serious propane train or tank incident or accident at Portland's Terminal 6, in the next 25 to 50 years, is like a financial services bank taking our "investment" and reinvesting it on the tables in Las Vegas.

Banks are not allowed to do this.
City councils should not be allowed to do this either!

Sure it's true that some desperate companies have done this with investor funds, but Portland is not that desperate! Propane accidents are rarely small, so why situate a propane terminal smack in the middle of our Portland/Vancouver urban area? Why do this when it would be easy to use the same railway that would bring the propane to Portland, to take it somewhere else, at least 20 miles from where people live, work, and play? Why dash the dreams of Portlanders with a short-sighted project that will only produce 30-40 direct jobs (less than half a job per acre), that will trash Portland's greenest city status, and that will increase US unemployment by creating stronger overseas competitors who will increase their share of the global market.

Moreover, when we consider the results of EPA/NOAA/FEMA modeling, that heat threat, blast waves, and shrapnel from even a modest propane deflagration could wipe out and/or injure all of North Portland and downtown Vancouver, Terminal 6, and all of the Rivergate facility, up to a six mile radius, Portland needs to say, "No thank you, we wish to be green!" and promote green trade and industries. Only through means such as these will our cities more surely live to ripe, resilient old age.

Appendix A: Models and Data Used in Estimating Threat Zones

1) Elk Grove Propane Facility Data

I) Pressurized liquid propane transfer bullet tanks:

Number of tanks: 4
Storage capacity (each tank): 60,000 gallons
Tank size: Diameter 12 ft.; Length 91 ft.,
Tank Mounting: Horizontally, 5 ft. off ground. Spacing 10 ft. broadside

ALOHA Model Data (Bullet tank BLEVE):

Location (Lat., Long.): 38.3824314392 N, 121.356808023 W
Surroundings: Unsheltered
Chemical: Liquid Propane
Chemical stored at: 65 degrees F
Ground Roughness: Urban or Forest
Cloud Cover: Partly Cloudy
Tank Size & Orientation: Hor. Cylinder, 12 ft. dia., 91 ft. length, 76,988 gallons
Tank filled: 60,000 gallons (77.9%)
Propane mass: 114,998 kg
Scenario: Tank containing a pressurized flammable liquid.
Type of Tank Failure: BLEVE, tank explodes and propane burns in a fireball.
Potential Hazards from BLEVE: Thermal radiation from fireball and pool fire.
Not modeled by ALHOA: Hazardous fragments.
Downwind toxic effects of fire byproducts.

Threat Modeled: **Thermal radiation from fireball**
Fireball Diameter: 308 yards diameter
% propane mass in fireball: 100%

Red:	691 yards radius	(10.0 kW/(sq m) = potentially lethal within 60 sec.
Orange:	976 yards radius	(5.0 kW/(sq m) = 2nd degree burns within 60 sec.
Yellow:	1520 yards radius	(2.0 kW/(sq m) = pain within 60 sec.

II) Refrigerated liquid propane storage tanks:

Number of tanks: 2
Storage capacity (each tank): 12-million gallons
Tank size: Diameter 146 ft.; Height 122 ft.
Tank construction: Double steel wall
Storage temperature: -44 °F

2) Proposed Portland Propane Terminal Data

Ia) Pressurized liquid propane transfer bullet tanks:

Number of tanks: 1
Storage capacity (each tank): 125,000 gallons
Tank size: Diameter 20 ft. (est.); Length 62 ft. (est.),
Tank Mounting: Horizontally, 5 ft. off ground (est.),
Separated broadside by 10 ft. (est.),
and in pairs by 30 ft. (est.).

ALOHA Model Data (Bullet tank BLEVE):

Location (Lat., Long.) 45.6276169997 N, 122.733791252 W
Surroundings: Unsheltered
Chemical: Liquid Propane
Chemical stored at: 65 degrees F
Ground Roughness: Urban or Forest
Cloud Cover: Partly Cloudy
Tank Size & Orientation: Hor. Cylinder, 20 ft. dia., 62 ft. length
Tank filled: 125,000 gallons (86%)
Propane mass: 238,638 kg
Scenario: Tank containing a pressurized flammable liquid.
Type of Tank Failure: BLEVE, tank explodes and propane burns in a fireball.
Potential Hazards from BLEVE: Thermal radiation from fireball and pool fire.
Not modeled by ALHOA: Hazardous fragments.
Downwind toxic effects of fire byproducts.

Threat Modeled: **Thermal radiation from fireball**
Fireball Diameter: 393 yards diameter
% propane mass in fireball: 100%

Red:	0.48 miles radius	(10.0 kW/(sq m) = potentially lethal within 60 sec.
Orange:	0.65 miles radius	(5.0 kW/(sq m) = 2nd degree burns within 60 sec.
Yellow:	1.05 miles radius	(2.0 kW/(sq m) = pain within 60 sec.

Threat Modeled: **Overpressure (Blast Force) Threat Zone**
Type of Ignition of Vapor Cloud: Detonation
Model: Heavy Gas

Red:	0.65 miles radius	(8.0 psi = destruction of buildings)
Orange:	0.76 miles radius	(3.5 psi = serious injury likely)
Yellow:	1.4 miles radius	(1.0 psi = shatters glass)

Ib) Pressurized liquid propane transfer bullet tanks:

Number of tanks: 8
Storage capacity (each tank): 125,000 gallons
Tank size: Diameter 20 ft. (est.); Length 62 ft. (est.),
Tank Mounting: Horizontally, 5 ft. off ground (est.),
Separated broadside by 10 ft. (est.),
and in pairs by 30 ft. (est.).

ALOHA Model Data (Bullet tank BLEVE):

Location (Lat., Long.) 45.6276169997 N, 122.733791252 W
Surroundings: Unsheltered
Chemical: Liquid Propane
Chemical stored at: 65 degrees F
Ground Roughness: Urban or Forest
Cloud Cover: Partly Cloudy
Tank Size & Orientation: Hor. Cylinder, 20 ft. dia., 496 ft. length
Tank filled: 1,000,000 gallons (86%) (simulating 8 tanks as one)
Propane mass: 1,909,103 kg
Scenario: Tank containing a pressurized flammable liquid.
Type of Tank Failure: BLEVE, tank explodes and propane burns in a fireball.
Potential Hazards from BLEVE: Thermal radiation from fireball and pool fire.
Not modeled by ALHOA: Hazardous fragments.
Downwind toxic effects of fire byproducts.

Threat Modeled: **Thermal radiation from fireball**
Fireball Diameter: 787 yards diameter
% propane mass in fireball: 100%

Red:	1682 yards radius	(10.0 kW/(sq m) = potentially lethal within 60 sec.
Orange:	1.3 miles radius	(5.0 kW/(sq m) = 2nd degree burns within 60 sec.
Yellow:	2.1 miles radius	(2.0 kW/(sq m) = pain within 60 sec.

Threat Modeled: **Overpressure (Blast Force) Threat Zone**
Type of Ignition of Vapor Cloud: Detonation
Model: Heavy Gas

Red:	1.3 miles radius	(8.0 psi = destruction of buildings)
Orange:	1.5 miles radius	(3.5 psi = serious injury likely)
Yellow:	2.9 miles radius	(1.0 psi = shatters glass)

II) Refrigerated liquid propane storage tanks:

Number of tanks: 2
Storage capacity (combined) 33.6-million gallons
Individual tank sizes: Diameter (1) 190 ft., (2) 140 ft. (est.); Height 120 ft. (est.)
Tank construction: Unknown.
Storage temperature: -44 °F

ALOHA Model Data (Refrigerated tank loses contents):

Ambient Boiling Point: -43.7° F
Vapor Pressure at Ambient Temperature: greater than 1 atm
Ambient Saturation Concentration: 1,000,000 ppm or 100.0%
Wind: 10 miles/hour from W (or NW) at 3 meters
Ground Roughness: urban or forest
Cloud Cover: 5 tenths
Air Temperature: 65° F Stability Class: D
No Inversion Height Relative Humidity: 50%
Direct Source: 560,000 gallons/sec Source Height: 0
Source State: Liquid
Source Temperature: -44 ° F
Release Duration: 60 minutes
Release Rate: 163,000,000 pounds/min
Total Amount Released: 9.80e+009 pounds
Note: This chemical may flash boil and/or result in two phase flow.

Threat Modeled: **Flammable BLEVE-generated Vapor Cloud**
Model Run: Heavy Gas
Red: greater than 6 miles (12600 ppm = 60% LEL = Flame Pockets)
Yellow: greater than 6 miles (2100 ppm = 10% LEL)

3) Cosmo Oil Refinery, Port of Chiba, Tokyo Bay, March 11, 2011

Site Overview

- Refinery within an integrated petrochemical complex (area: 1.17 km^2)
- Built in 1963. Capacity: 220,000 bpd
- 382 employees (2,500 for the petrochemical complex)

Earthquake Data

- Magnitude 9 (Shindo 5-), max. 7.2 magnitude aftershock

Seismic Protection

- Equipment and storage facilities built to seismic standards (liquefaction-resistant foundations). Automatic shutdown of facilities (acceleration > 0.2 m/s^2)

Accident chronology

14.46: Foreshocks (acceleration: 0.11 m/s^2).

14.52: Aftershocks off coast of Tokyo (0.4 m/s^2). Automatic shutdown of facilities. The legs on propane tank No. 364 (still filled with water from a hydraulic proof test 12 days earlier) crack but do not break. Emergency response unit deployed.

15.15: A new aftershock (0.99 m/s^2) causes the cross-bracings of the legs of tank No. 364 to break. One minute later, the tank collapses, crushing nearby pipes.

15.45: LPG begins leaking from the pipelines leading to the tank farm. The automatic safety valve is unresponsive (bypassed in open position following a malfunction on the pneumatic system a few days earlier). Fire brigade alerted.

15.48: A hot spot (nearby steam cracking unit?) ignites the LPG cloud. Fire breaks out among the LPG tanks despite the cooling rings being turned on.

17.04: First tank BLEVE. Utilities (electricity, air) downed throughout the area.

17.54: Second BLEVE. The pipes throughout the farm do not automatically shut down due to the lack of power and the considerable thermal flows render manual shutoff impossible. The decision is taken to let the fire in the tank farm burn itself out and protect the nearby facilities from the flames. A series of three other BLEVEs occurs during the night (2,000 m^3 and five LPG spheres explode). One thousand local residents are evacuated for 8 hours. The fire is brought under control at 10.10 on March 21st, 2011

Casualties

- Six employees injured, one with serious burns (three Cosmo employees, three from neighbouring sites)

Damage caused by the earthquake

- [All] seventeen [LPG] tanks destroyed, of which five exploded (BLEVE, including a 600 m fireball). Nearby pipes and buildings destroyed: 5,227 tonnes of LPG burnt.

- Leaks on several bitumen storage tanks due to the heat waves [and debris impact][54]
- Roads and buildings on the site damaged by soil liquefaction
- The shock waves and debris from the explosions ignited fires in the petrochemical facilities (steam cracking unit) operated by Maruzen and JMC
- Vehicles and boats destroyed. Homes damaged (windows, roofs).
- Surrounding vehicles and homes covered with fire debris

Damage Cost

- € 100 millions

Chronology of Resumption of Operations

18-31 March 2011: Existing stocks of diesel, kerosene and petrol are shipped

Early May 2011: Bitumen around damaged storage tank cleaned up. Refined petroleum products arrive via tanker. Diesel, kerosene and petrol shipped out in tanker trucks

17 December 2011: Authorization to restart the LPG facilities at pressures > 10 bar granted following compliance inspection (operations suspended by the government since 06/2011).

12 January 2012: Refining facilities partially brought back into operation

30 March-20 April 2012: The 2 crude-oil distillation units are brought back into operation

Spring 2013: End of LPG tank farm repairs. Operation at full capacity

Technical Lessons

- Redesign of the LPG tank farm (reinforced base, wider spacing, doubled coolant flow rate). Improvement in pipe flexibility and change in pipework to limit domino effects
- Reinforcement of zone-based automatic network cutoff system

Organizational Lessons

- Overhaul of tank hydraulic proof testing procedure (fast draining). Better communication between engineering and operations teams
- Safety-awareness training for employees. Heightened inspections

[54] Krausmann, Elizabeth; Cruz, Anaa Maria. "Impact of the 11 March 2011, Great East Japan earthquake and tsunami on the chemical industry." Nat Hazards (2013) 67:811-828. Page 820.

Appendix B: ALOHA Threat-Modeling Software and Disclaimer

The propane threat zone estimates discussed in this paper have been computed with the best available information we currently have from the City of Portland, Port of Portland, and PPC, and in an ongoing absence of any meaningful analysis from any of those entities. The primary authorities for this analysis are:
a) the ALOHA (Arial Locations of Hazardous Atmospheres), atmospheric dispersion modeling software maintained by the Hazardous Materials Division of National Oceanic and Atmospheric Administration (NOAA), widely used by Fire Departments and first responders for Emergency Chemical Release Modeling.
b) The many published industry and scientific references cited in the paper.

ALOHA models the dispersion of a gas in the atmosphere and displays a map view of the area (footprint) in which it predicts gas concentrations typically representative of hazardous levels (Levels of Concern, or LOC). The footprint represents the area within which the concentration of a gas is predicted to exceed a LOC at some time during the release. ALOHA uses simplified heavy gas dispersion calculations that are based on the DEGADIS model, and are therefore unreliable under very low wind speeds, very stable atmospheric conditions, wind shifts and terrain steering effects, or concentration patchiness, particularly near the spill source.

ALOHA models source strength and type (direct, puddle, tank release), uses air dispersion models to calculate concentration threat zones, models and calculates overpressure blast effects from vapor cloud explosions. It also uses thermal (infrared) radiation and flammable area models to calculate the emissivity, view factor, transmissivity and duration of BLEVE fireballs; the emissivity and view factor of jet fires; the emissivity, view factor, and pool dynamics of pool fires; and the flammable area of flash fires.

ALOHA does not model hazardous missile fragments, does not model the downwind toxic effects of fire byproducts, and does not account for the effects of fires or chemical reactions, particulates, chemical mixtures, and terrain.[55] The missile fragment threat zones were modeled using the lower limit of the industry's widely accepted range of 30- to 40-times the fireball radius.[56]

Google Earth was used to display ALOHA thermal and overpressure KML data on 3-D location maps. KML uses a tag-based structure with nested elements and attributes and is based on the XML standard. A big advantage of KML for the current purpose is that the threat data are automatically scaled and merged with Google Earth's maps, allowing seamless and accurate

[55] Jones, Robert, et al. ALOHA (Areal Locations of Hazardous Atmospheres) 5.4.4 Technical Documentation. NOAA Technical Memorandum NOS OR&R 43. November 2013.
[56] Roberts, Michael W., EQE International, Inc. "Analysis of Boiling Liquid Expanding Vapor Explosion (BLEVE) Events at DOE Sites." Page 10. mroberts@abs-group.com
http://www.efcog.org/wg/sa/docs/minutes/archive/2000%20Conference/papers_pdf/Roberts%20abstract.pdf

viewing from any perspective. Shrapnel threat zones, computed as 30x the ALOHA fireball radius, were generated using a KML circle generator,[57] and the XML tags were manually edited to adjust circle line-width and color.

The latest version of ALOHA (V5.4) released in February 2006 added the ability to model the hazards associated with fires and explosions. With this major update, users can now estimate the hazards associated with jet fires (flares), pool fires, vapor cloud explosions (VCE), BLEVEs (Boiling Liquid Expanding Vapor Explosions), and flammable regions (flash fires) as well as toxic threats. The ALOHA user manuals were completely updated to include extensive material associated with fires and explosion.[58,59]

WARNING

The data computed here are for general reference and educational purposes only and *must not* be relied upon as a sole source to determine worst case or typical results of damage to propane storage vessels and loss and possible ignition of contents, or where matters of life and health and safety are concerned. This paper's authors have taken all care to ensure the accuracy of the results, but do not warrant or guarantee the accuracy or the sufficiency of the information provided and do not assume any responsibility for its use. Sufficient data has been provided for anyone to use the same software to reproduce the same general results.

[57] KML circle generator: http://www.thesamestory.com/kmlcircle/

[58] "Technical documentation and software quality assurance for project-Eagle-ALOHA: A project to add fire and explosive capability to ALPHA." Feb 2006. Office of Repsponse and Restoration, Noational Oceanic and Atmospheric Administration (NOAA); Environmental Protection Agency (EPA); Pipelines and Hazardous Materials Safety Administration, Department of Transportation. http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/Final%20techdoc%20and%20QA.pdf Retrieved Feb 20, 2015.

[59] Reynolds. R. Michael. "ALOHA (Areal Locations of Hazardous Atmospheres) 5.0 Theoretical Description." NOAA Technical Memorandum NOS ORCA-65 (August 1992). http://www.deq.state.ok.us/LPDnew/saratitleiii/AlohaTrainingManuals/ALOHA-Theoretical-Description.pdf Retrieved Feb 20, 2015.

Appendix C: ES for the Long Beach LNG Terminal Draft EIS/EIR

[footnotes and tables removed]

On January 26, 2004, Sound Energy Solutions (SES) filed an application with the Federal Energy Regulatory Commission (Commission or FERC) under section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations. SES seeks authorization from the FERC to site, construct, and operate a liquefied natural gas (LNG) receiving terminal and associated facilities in the Port of Long Beach (POLB or Port) in Long Beach, California as a place of entry for the importation of LNG. The FERC is the federal agency responsible for authorizing sites for onshore LNG import facilities. As such, the FERC is the lead federal agency for the preparation of the environmental impact statement (EIS). The FERC will use the document to consider the environmental impact that could result if it issues SES an Order Granting Authorization under section 3 of the NGA.

The Board of Harbor Commissioners (BHC) has authority over the City's Harbor District, commonly known as the POLB or Port. The City of Long Beach owns the land within the Harbor District in trust for the people of the State of California. SES would have to obtain a lease from the City of Long Beach to build and operate its proposed Long Beach LNG Import Project. SES submitted an application to the POLB for a Harbor Development Permit on July 25, 2003, seeking approval for a development project within the Port. The application was designated POLB Application No. HDP 03-079. The POLB is the lead agency in California for preparing the environmental impact report (EIR). The BHC will use the document to determine the project's consistency with the certified Port Master Plan (PMP) and the California Coastal Act of 1976 as well as to consider the environmental impact that could result if it issues Harbor Development Permits for the project.

The environmental staffs of the FERC and the POLB (Agency Staffs) have jointly prepared this draft EIS/EIR to assess the environmental impacts associated with the construction and operation of the Long Beach LNG Import Project. The document was prepared in accordance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA [Title 40 Code of Federal Regulations (CFR) Parts 1500-1508], the FERC's regulations implementing NEPA (Title 18 CFR Part 380), the California Environmental Quality Act (CEQA), and the guidelines for the implementation of the CEQA (California Code of Regulations Title 14, section 15000 et seq.). The purpose of this document is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and to recommend all feasible mitigation measures.

The U.S. Army Corps of Engineers (ACOE) has jurisdictional authority pursuant to section 404 of the Clean Water Act [33 United States Code (USC) 1344], which governs the discharge of dredged or fill material into waters of the United States, and section 10 of the Rivers and Harbors Act (33 USC 403), which regulates any work or structures that potentially affect the navigable capacity of a waterbody. Because the ACOE must comply with the requirements of NEPA before issuing permits under sections 404 and 10, it has elected to act as a cooperating agency with the FERC and the POLB in preparing this EIS/EIR. The ACOE would adopt the EIS/EIR per Title 40 CFR Part 1506.3 if, after an independent review of the document, it concludes that its comments and suggestions have been satisfied.

The U.S. Coast Guard (Coast Guard) within the U.S. Department of Homeland Security exercises regulatory authority over LNG facilities that affect the safety and security of port areas and navigable waterways under Executive Order 10173; the Magnuson Act (50 USC section 191); the Ports and Waterways Safety Act of 1972, as amended (33 USC section 1221, et seq.); and the Maritime Transportation Security Act of 2002 (46 USC section 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval and compliance verification as provided in Title 33 CFR Part 105, and siting as it pertains to the management of vessel traffic in and around the LNG facility. As required by its regulations, the Coast

Guard is responsible for issuing a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG marine traffic. The Coast Guard has elected to act as a cooperating agency in the preparation of this EIS/EIR and plans to adopt the document if it adequately covers the impacts associated with issuance of the LOR.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation has authority to promulgate and enforce safety regulations and standards for the transportation and storage of LNG in or affecting interstate or foreign commerce under the pipeline safety laws (49 USC Chapter 601). This authority extends to the siting, design, installation, construction, initial inspection, initial testing, and operation and maintenance of LNG facilities. The PHMSA's operation and maintenance responsibilities include fire prevention and security planning for LNG facilities under Title 49 CFR Part 193. The PHMSA is participating in the NEPA analysis under the terms of an interagency agreement between the PHMSA, the FERC, and the Coast Guard.

PROPOSED ACTION

LNG is natural gas that has been cooled to a temperature of about -260 degrees Fahrenheit so that it becomes a liquid. Because LNG is more compact than the gaseous equivalent, it can be transported long distances across oceans using specially designed ships. SES proposes to ship LNG from a variety of Asian and other foreign sources to provide a new, stable source of natural gas to serve the needs of southern California, particularly the Los Angeles Basin (LA Basin). The LNG would be unloaded from the ships, stored in tanks at the terminal, and then re-gasified (vaporized) and transported via a new 2.3- mile-long, 36-inch-diameter natural gas pipeline to Southern California Gas Company's (SoCal Gas) existing Line 765. A portion of the LNG would he distributed via trailer trucks to LNG vehicle fueling stations throughout southern California to fuel LNG-powered vehicles.

Natural gas is a mixture of hydrocarbon compounds, principally methane. It also contains small amounts of heavier hydrocarbons, such as propane, ethane (C_2), and butane, which have a higher heating value than methane. A portion of these components may need to be removed from the LNG that would be stored on the terminal site in order for the natural gas to meet the British thermal units (Btu) and gas quality specifications of SoCal Gas as well as the specifications for LNG vehicle fuel established by the California Air Resources Board (CARB). The components that are removed are called natural gas liquids (NGL). SES has stated that it would accept only lean LNG [i.e., LNG containing fewer heavy (non-methane) hydrocarbons than regular LNG] from its suppliers. However, up to 10,000 million Btu per day of C_2 recovered from the LNG would be vaporized and distributed to ConocoPhillips' existing Los Angeles Refinery Carson Plant (LARC) via a new 4.6-mile-long, 10-inch-diameter pipeline.

Specifically, SES' proposal would involve construction and operation of LNG terminal and pipeline facilities as described below.

The LNG terminal facilities would include:

- An LNG ship berth and unloading facility with unloading arms, mooring and breasting dolphins, and a fendering system;
- Two LNG storage tanks, each with a gross volume of 160,000 cubic meters (1,006,000 barrels) surrounded by a security barrier wall;
- 20 electric-powered booster pumps;
- Four shell and tube vaporizers using a primary, closed-loop water system;
- Three boil-off gas compressors, a condensing system, an NGL recovery system, and an export C2 heater;
- An LNG trailer truck loading facility with a small LNG storage tank;
- A natural gas meter station and odorization system;
- Utilities, buildings, and service facilities; and
- Associated hazard detection, control, and prevention systems; site security facilities; cryogenic piping; and insulation, electrical, and instrumentation systems.

The pipeline facilities would include:

- A 2.3-mile-long, 36-inch-diameter pipeline and associated aboveground facilities to transport natural gas from the LNG terminal to the existing SoCal Gas system; and
- A 4.6-mile-long, 10-inch-diameter pipeline and associated aboveground facilities to transport vaporized C2 from the LNG terminal to the existing ConocoPhillips LARC.

PUBLIC INVOLVEMENT AND AREAS OF CONCERN

On June 30, 2003, SES filed a request with the FERC to implement the Commission's Pre-Filing Process for the Long Beach LNG Import Project. At that time, SES was in the preliminary design stage of the project and no formal application had been filed with the FERC. On July 11, 2003, the FERC granted SES' request and established a pre-filing docket number (PF03-6-000) to place information filed by SES and related documents issued by the FERC into the public record. The purpose of the Pre-Filing Process is to encourage the early involvement of interested stakeholders, facilitate interagency cooperation, and identify and resolve issues before an application is filed with the FERC. After receipt of SES' Harbor Development Permit application on July 25, 2003, the POLB agreed to conduct its CEQA review of the project in conjunction with the Commission's Pre-Filing Process.

As part of the Pre-Filing Process, the FERC and the POLB worked with SES to develop a public outreach plan for issue identification and stakeholder participation. As part of the outreach plan, SES met with local associations, neighborhood groups, and other non-governmental organizations to inform them about the project and address issues and concerns. In coordination with the FERC and the POLB, SES also consulted with key federal and state agencies to identify their issues and concerns.

On September 4, 2003, SES sponsored two public workshops in the Long Beach area. The purpose of the workshops was to inform agencies and the general public about LNG and the proposed project and to provide them an opportunity to ask questions and express their concerns. The FERC and the POLB participated in these workshops and provided information on the joint environmental review process. Invitations to the public workshops were sent to federal, state, and local agencies; elected officials; environmental groups; affected landowners; and tenants of the POLB. Notices of the public workshops were published in the local newspapers.

Between September 22, 2003 and November 3, 2004, the FERC and/or the POLB issued three separate notices that described the proposed project and invited written comments on the environmental issues to be addressed in the EIS/EIR. The September 22, 2003 notice also announced a joint NEPA/CEQA public scoping meeting that was held in Long Beach on October 9, 2003. All three notices were mailed to federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; POLB tenants; and local libraries and newspapers. Announcements of the public scoping meeting were published in the local newspapers. Each notice opened a formal scoping period for the project.

A transcript of the public scoping meeting and all written comments are part of the public record for the Long Beach LNG Import Project and are available for viewing on the FERC Internet website (http://www.ferc.gov).[2] The environmental scoping comments received during the public scoping periods raised issues related to the alternatives analysis, geologic hazards, contaminated soils and sediments, land use, socioeconomics, traffic, air quality, cumulative impacts, and reliability and safety.

This draft EIS/EIR was filed with the U.S. Environmental Protection Agency (EPA), submitted to the California State Clearinghouse, and mailed to federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; POLB tenants; intervenors[3] in the FERC's proceeding; local libraries and newspapers; and other interested parties (i.e., miscellaneous individuals who provided scoping comments or asked to be on the mailing list). A formal notice indicating that the draft EIS/EIR is available for review and comment was published in the Federal Register, posted in the Los Angeles County Clerk's office in California, and sent to the remaining individuals on the mailing list. The public has at least 45 days after the date of publication in the Federal

Register to review and comment on the draft EIS/EIR both in the form of written comments and at public meetings to be held in Long Beach. All comments received on the draft EIS/EIR related to environmental issues will be addressed in the final EIS/EIR.

ENVIRONMENTAL ISSUES

The environmental issues associated with construction and operation of the Long Beach LNG Import Project are analyzed in this EIS/EIR using information provided by SES and further developed from data requests; field investigations; scoping; literature research; alternatives analysis; contacts with federal, state, and local agencies; and input from public groups and organizations. The Agency Staffs' analysis indicates that the project would result in certain adverse environmental impacts. As part of the environmental analysis, specific mitigation measures were identified that are feasible and that, when implemented, would reduce potential adverse impacts of project construction and operation. Table ES-1 at the end of this Executive Summary summarizes the significant impacts of the project and the mitigation measures recommended by the Agency Staffs to reduce the impacts. These impacts are described in detail in section 4.0. A brief summary by resource is provided below.

Geology

The project area is underlain by fill materials, alluvial and marine sediments, sedimentary rocks, and metamorphic basement rocks. Construction of the LNG terminal, electric distribution facilities, and pipelines would occur primarily within near-surface non-native fill deposits and unconsolidated soils and sediments. Therefore, construction and operation of the Long Beach LNG Import Project would not materially alter the geologic conditions of the area or worsen existing unfavorable geologic conditions. All active and abandoned petroleum production wells would be identified in the field just prior to the commencement of construction.

The potential for tsunamis or surface rupture to affect the project facilities is very low and, therefore, no specific mitigation is proposed. Geologic hazards present in the project area are related to seismic activity and historical subsidence associated with petroleum production in the area. Seismic activity could potentially damage the LNG terminal site facilities, shoreline structures, and pipeline and electric distribution facilities through strong shaking or secondary ground deformation such as liquefaction, shaking-induced settlement, or lateral spreading.

SES conducted a detailed analysis that resulted in seismic design criteria that meet the POLB requirements and exceed the Office of Pipeline Safety and the FERC requirements as specified in National Fire Protection Association 59A (2001). This analysis indicates that an earthquake of Richter magnitude M9.0 on the Palos Verde fault or M7.5 on the THUMS-Huntington Beach fault would be necessary to generate ground motions strong enough to rupture the LNG storage tanks and release their contents. These events have estimated return intervals of approximately 15,000 years and, therefore, are extremely unlikely to occur during the 50-year life of the project.

The Agency Staffs reviewed the current engineering designs for the LNG storage tanks and other critical terminal structures. These designs are of sufficient detail to demonstrate that the project facilities would withstand the seismic hazards that could affect the site when they are constructed to the specifications of the plans. SES would ensure that final engineering designs also meet or exceed applicable seismic standards, and would provide the final plans to the FERC and the POLB for review and approval before construction. The POLB would construct the shoreline structures to meet the stringent seismic design criteria developed for the site, and stone columns would be installed between the shoreline structures and the LNG storage tanks, thereby providing the required lateral support to limit displacement and minimize stress and strain levels well within the design limits of the LNG storage tanks and other heavy load structures in the event of an earthquake.

Regional subsidence due to ongoing hydrocarbon production is effectively monitored and controlled and, therefore, would not affect construction or operation of the project.

Soils and Sediments

Because of the highly developed, industrial nature of the area and the presence of mostly fill materials under the majority of the project facilities, the project would not reduce soil productivity by compaction or soil mixing. However, construction of the project facilities would temporarily expose the fill materials on the affected portion of Terminal Island and the native soils at the end of the pipeline routes to the effects of wind, rain, and runoff, which could cause erosion and sedimentation in the area. Erosion control measures proposed for the Long Beach LNG Import Project are detailed in SES' Sediment Control Plan that is included in its Storm Water Pollution Prevention Plan (SWPPP).

Existing soils at the LNG terminal site are not capable of adequately supporting the LNG storage tanks or other heavy load structures. As a result, SES proposes to install deep-driven pile foundations beneath the LNG storage tanks and other heavy load structures to meet the stringent static-settlement criteria for the structures at the LNG terminal. Other soil improvements at the site would include the installation of approximately 3,380 stone columns to depths of 60 to 80 feet below ground surface between the shoreline structures and the security barrier wall and an additional approximately 2,000 stone columns to a depth of 60 feet below ground surface between the security barrier wall and the LNG storage tanks. In addition to excavation for the soil improvements, construction of the project would involve excavation for the LNG spill impoundment systems and other utilities and foundations at the LNG terminal site, and trenching for the pipeline and electric distribution facilities. Contaminated soil and other hazardous materials could be encountered during any of these activities. If hazardous substances are encountered during construction, SES would notify the POLB. SES, in consultation with the POLB, would comply with all applicable environmental regulations. Before construction, SES and the pipeline contractor(s) would submit work plans that outline appropriate environmental site investigation and remediation activities to the appropriate agencies for approval. The work plans would include a site specific Health and Safety Plan, Sampling and Analysis Plan, Project Contractor Quality Control Plan, and an Environmental Protection Plan that would also include a Waste Management Plan.

Spills or leaks of fuels, lubricants, or other hazardous substances during construction and/or operation of the project could also have an impact on soils. This potential impact is expected to be minor, however, because of the typically low frequency, volume, and extent of spills or leaks, and because of the hazard detection system and other safety controls designed to prevent or contain spills and leaks at the LNG terminal site. Implementation of SES' Spill Procedure included in its SWPPP would further reduce the likelihood of a significant spill or leak occurring during construction or operation of the project, and would reduce the impact of any spill or leak that may occur.

Disturbance of the West Basin sediments during in-water activities would temporarily resuspend sediments in the water column, which could cause turbidity. An increase in sediment and turbidity levels could adversely affect water quality and aquatic organisms. Resuspension of contaminated sediments could also impact marine organisms in the area. The POLB has recently negotiated a consent agreement with the California Department of Toxic Substances Control (DTSC) for its concurrence with the Installation Restoration Site 7 (West Basin) sediment remediation. Accordingly, the dredging associated with the project would be done only with the concurrence of the DTSC. Turbidity levels would return to baseline conditions after dredging operations were completed. Disposal suitability issues would be addressed in compliance with the EPA/ACOE *Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. – Testing Manual*. Disturbance of the West Basin sediments could also encounter ordnance. Any ordnance found during dredging for the proposed project would be handled in accordance with federal regulations and the POLB's procedures.

Water Resources

Activities associated with construction of the proposed project facilities, including hydrostatic test water appropriation, the installation of deep-driven pile foundations and stone columns at the LNG terminal site, the horizontal directional drills (HDDs) of the Cerritos Channel, site excavation and dewatering, and accidental spills or leaks of hazardous materials could adversely affect groundwater quality within the project area. SES would minimize the potential for these impacts by negotiating project

water requirements with the City of Long Beach for appropriate fees and mitigation measures; driving, rather than excavating, the foundation piles at the LNG terminal site and installing a cement plug at the base of each stone column in order to prevent the creation of an opening where potential cross-contamination could occur; implementing its HDD Plan; identifying and protecting all underground piping in the construction area; evaluating all dewatered material for contamination prior to removal in accordance with the Health and Safety Plan and Sampling and Analysis Plan; and implementing its Spill Procedure to address preventive and mitigative measures that would be used to minimize the potential impact of a hazardous spill during construction of the project facilities.

Potential operational impacts on groundwater include an accidental spill or leak of hazardous materials during operation of the project facilities and water requirements for the LNG terminal vaporization process, firewater system, and miscellaneous potable water needs. The measures in SES' Spill Procedure would reduce the potential impacts on groundwater associated with a hazardous spill or leak during project operation. All of the operational water required for the LNG terminal would be obtained from the POLB and the City of Long Beach municipal water system. SES would negotiate with the City of Long Beach or a local supplier to determine appropriate fees and to ensure that the project would have no impact on water availability in the area.

Activities associated with construction of the project facilities, including reinforcement of the shoreline structures, construction of the LNG ship berth and unloading facility and associated dredging, the HDDs of the Cerritos Channel, installation of the C_2 pipeline over the Dominguez Channel, hydrostatic test water discharge, storm water runoff, and accidental spills or leaks of hazardous materials could adversely affect surface water quality and/or water circulation within Long Beach Harbor. Adherence to the measures of all applicable permits, implementation of the POLB's Dredge and Disposal Plan and SES' HDD Plan and Spill Procedure, as well as disposal of all sediments at approved sites would minimize impacts on water quality. In addition, the Agency Staffs will recommend to their respective Commissions that SES revise its HDD Plan to describe the procedures that would be followed if an existing submerged pipeline is encountered during the HDD operations.

Operational impacts on water quality include the potential to contribute additional pollutants to the waterbody via accidental spills or leaks of hazardous materials, storm water runoff, or an LNG spill. There would be no intake or discharge of sea water during operation of the project facilities. Implementation of SES' Spill Procedure included in its SWPPP would reduce the likelihood of a significant spill or leak occurring during operation of the project, and would reduce the impact of any spill or leak that may occur. In accordance with its SWPPP, best management practices (BMPs) consisting of permanent features and operational practices designed or implemented to minimize the discharge of pollutants in storm water or non-storm water flows from the LNG terminal site would be implemented to reduce the potential operation-related impacts on surface water resources.

Biological Resources

Due to the highly developed nature of the POLB and the lack of vegetative habitats, the terrestrial environment in the project area supports few wildlife species. Individuals in the area are acclimated to the industrial nature of the POLB, routinely experience disturbance associated with Port activities, and would likely relocate into adjacent habitats. The project would not have a measurable impact on the local population of any species.

Activities associated with dredging could potentially affect marine organisms by destroying the benthic infauna of the dredged sediments and temporarily displacing mobile organisms, such as fish. In addition to the direct disturbances to the bottom substrates, dredging activities would temporarily increase turbidity and the presence of suspended sediments in the water column, which could indirectly affect marine organisms. However, monitoring of larger dredging projects within San Pedro Bay has shown that turbidity associated with dredging is short term and localized and that compliance with the requirements of the Regional Water Quality Control Board's Waste Discharge Requirements and the ACOE's section 404 permit results in minimal turbidity. The short-term loss of benthic organisms in a small portion of the

harbor is generally recognized as an insignificant impact on aquatic resources and benthic communities would be expected to repopulate following the completion of construction activities.

Activities associated with the reinforcement of the shoreline structures and construction of the LNG ship berth and unloading facility could directly affect benthic and fish species during the removal or installation of any in-water structures (e.g., pilings, underwater rock buttress). Individuals of non-mobile species attached to hard substrates that are removed or covered would suffer mortality. However, these species are relatively widespread throughout the harbor and would recolonize new hard substrates within 2 to 3 years.

Noise could impact marine organisms that occur in the project area within Long Beach Harbor. Project vessels operating within Long Beach Harbor could create sounds that lead to responses in fish. Additionally, specific construction activities (e.g., driving steel piles) could also generate underwater sound pressure waves that potentially kill, injure, or cause a behavioral change in fish in the immediate vicinity of the construction activities. Given the abundance of fish in the harbor despite continuous maritime activity, marine organisms found in the project area have generally adapted to these conditions.

There is also the potential for spills, leaks, or accidental releases of potentially hazardous materials to occur during construction of the proposed project. SES' Spill Procedure specifies BMPs that would minimize the chances of a spill and, if a spill were to occur, minimize the chances of the spill reaching a waterbody and affecting marine organisms.

Dredging and construction activities associated with the Long Beach LNG Import Project would affect water-associated birds through disruptive noise and/or temporary loss or degradation of foraging habitats in the marine waters of the West Basin. Birds found in the area are acclimated to these types of activities and would use similar habitats in adjacent areas.

Consultation with the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) identified the proposed project area as designated essential fish habitat (EFH) for the Coastal Pelagics and Pacific Groundfish Management Plans. Fourteen of the 86 species managed under these two plans are known to occur in Long Beach Harbor and could be affected by the proposed project. Although disturbance of an estimated 11.9 acres of sea floor and the temporary resuspension of sediments into the water column during dredging activities could potentially adversely affect EFH (resulting in avoidance by adults and some loss of larval northern anchovy in the immediate vicinity of the dredging activity), implementation of the control measures and management practices proposed by SES or required by the regulatory agencies would serve to avoid or minimize impacts on EFH. Additionally, construction impacts would be temporary and turbidity levels would return to baseline conditions following construction.

Seven species listed as federally threatened or endangered potentially occur in the project area. The California brown pelican, California least tern, and leatherback sea turtle are federally listed endangered species and the western snowy plover, green sea turtle, olive Ridley sea turtle, and loggerhead sea turtle are federally listed threatened species. Both the U.S. Fish and Wildlife Service and NOAA Fisheries provided comments indicating that federally listed threatened or endangered species would not likely be adversely affected by the proposed project and the FERC staff concurs with these determinations. Three state-listed endangered species, the American peregrine falcon, the California brown pelican, and the California least tern, have been identified as potentially occurring in the proposed project area. The California brown pelican and the California least tern are also federally listed species and, as discussed above, would not likely be adversely affected by the project. Construction and operation of the Long Beach LNG Import Project could disturb the American peregrine falcon through temporary loss or degradation of foraging habitat and disruptive noise from construction and operation of the project facilities. However, peregrine falcons in the project area have become acclimated to POLB operations, including construction and dredging activities as evidenced by their continued use of the local bridges for nesting. In addition, the proposed project would not result in the permanent loss or degradation of existing foraging habitat or significantly increase existing noise levels during construction and operation.

Land Use, Hazardous Waste, Recreation, and Visual Resources

A total of 88.0 acres of land would be affected during construction of the Long Beach LNG Import Project (56.9 acres for the LNG terminal facilities, 30.1 acres for the pipeline facilities, and 1.0 acre for the electric distribution facilities). Of the 88.0 acres of land affected by construction of the project, 37.0 acres would be permanently affected during operation of the project facilities (32.1 acres associated with the LNG terminal, 3.9 acres associated with the pipelines, and 1.0 acre associated with the electric distribution facilities). The LNG terminal would be an industrial use that generally conforms to the overall goals of the current PMP, local zoning ordinances, and relevant regional plans and would be consistent with existing surrounding uses. However, an amendment to the PMP would be necessary to accommodate the LNG facility because LNG is not an expressly identified "hazardous cargo" as permitted within Terminal Island Planning District 4. The pipeline and electric distribution facilities would be an industrial/utility use that is consistent with existing surrounding uses and conforms to the overall goals of the current PMP, local zoning ordinances, and relevant regional plans.

All of the land and marine uses immediately adjacent to and within 1 mile of the proposed project facilities are associated with the industrial activities of the ports of Long Beach and Los Angeles or the Cities of Long Beach, Los Angeles, and Carson. No permanent residences are located within the POLB or the Port of Los Angeles. The closest potential residences are in a recreational vehicle park about 1.3 miles east-northeast of the LNG terminal site and possibly live-aboard boats at two marinas in the East Basin of the Cerritos Channel between 1.2 and 1.6 miles northwest of the LNG terminal.

The Long Beach Naval Shipyard and Station are listed as hazardous waste sites. The Navy also documented soil contamination in the area during closure of its Long Beach Complex. Several other hazardous waste sites were identified within 0.25 mile of the pipeline routes and electric distribution facilities. Because none of these sites would be crossed by the proposed facilities, Phase I Environmental Assessments were not conducted.

Although the Long Beach area provides several opportunities for recreational activities, the immediate area surrounding the LNG terminal site, pipelines, and electric distribution facilities does not provide for recreational activities due to the industrial nature of the Port and the adjacent area to the north. Construction and operation of the Long Beach LNG Import Project would not threaten the viability of a recreational resource, prohibit access to recreational resources, or cause termination of a recreational use.

Construction and operation of the LNG terminal facilities would have a permanent but not significant impact on visual resources. Although there are a substantial number of potential mobile and stationary viewers and visibility is high in some locations, the LNG facilities would be seen in the context of the existing industrial facilities at the POLB and would not adversely affect the viewshed from sensitive locations or change the character of the landscape in terms of either physical characteristics or land uses. Construction and operation of the pipeline and electric distribution facilities would not result in significant impacts on visual resources.

Socioeconomics

Construction of the project would result in a temporary increase in population and the demands on temporary housing, public services, and utilities and service systems. Due to the temporary and limited nature of these impacts they are not considered significant. Of the 60 full-time workers SES would hire to operate the project facilities, about 54 workers are expected to be from the local area. Therefore, operation of the project would not have a significant impact on population or the demand for housing. Because LNG would be a new product to the POLB, it would also be new to the local fire and emergency response services. SES is working with local emergency providers to develop procedures to handle potential fire emergencies and is working with the Long Beach City Fire Department (LBFD) to provide hazard control and firefighting training that is specific to LNG and LNG vessels. SES has also committed to funding all necessary security/emergency management equipment and personnel costs that would be imposed on state and local agencies as a result of the project and would prepare a comprehensive plan that identifies the mechanisms for funding these costs. These measures should adequately equip the LBFD to handle any

type of emergency at the proposed LNG terminal. Construction and operation of the project would have a beneficial impact on local tax revenues.

Transportation

The duration of construction for the LNG terminal is estimated to be 48 months. During this time, traffic would be generated by trucks transporting materials and equipment to and from the laydown area and project site as well as trucks transporting materials directly to the project site. Driveway access to the laydown area is located along Pier S Avenue. Also, construction worker trips would occur during the construction period. These worker trips would total approximately 808 trips (404 in and 404 out) into the area. All construction workers would park adjacent to the laydown area. The construction workers would then be transported via buses to the project site. The transporting of these workers would generate a total of 46 daily bus trips (23 in and 23 out). The transporting of construction equipment and materials would generate approximately 676 daily truck trips (338 in and 338 out) during the most active construction period. These project construction worker and truck and material haul trips would result in a temporary, short-term significant impact at the intersections of Navy Way and Seaside Avenue (evening only) and Henry Ford Avenue and Anaheim Street (evening only). The Agency Staffs will recommend to their respective Commissions that SES require the construction workforce to work 6 a.m. to 2:30 p.m. instead of 7 a.m. to 3:30 p.m. Improvements at the Henry Ford Avenue/Anaheim Street intersection would be implemented if required by the Los Angeles Department of Transportation. Operation of the project would not result in a significant impact on traffic.

The Long Beach LNG Import Project would generate a maximum of 120 ship calls and 240 ship movements within the POLB each year. This would typically mean the addition of one ship movement per day on up to 240 days of the year or possibly two ship movements in the event of a rapid discharge call with arrival, discharge, and departure occurring during one calendar day. The increase in ship traffic associated with the LNG terminal could cause vessel traffic congestion within the harbor and/or conflicts with other commercial interests if an LNG ship arrival or departure delays the movement of another vessel, either due to scheduling or traffic management resulting in slow speed or waiting time. Delays experienced by other ships are expected to be temporary and of short duration. In addition, SES would participate with the Coast Guard in the development of procedures to reduce impacts on marine transportation, including implementation of an LNG Vessel Operation and Emergency Contingency Plan that would provide the basis for operation of LNG ships within the POLB.

Cultural Resources

The FERC and the POLB, in consultation with the State Historic Preservation Office, have determined that there would be no impact on any properties listed, or eligible for listing, on the National Register of Historic Places or the California Register of Historical Resources or on any unique archaeological resources for the proposed project; therefore, no mitigation would be required. SES prepared an Unanticipated Discovery Plan to be used during construction. The plan describes the procedures that would be employed in the event previously unidentified cultural resources or human remains are encountered during construction. SES' continued cooperation with Native American tribes who were identified by the California Native American Heritage Commission as potentially having knowledge of cultural resources in the project area should address any tribal issues associated with the proposed project.

Air Quality

Construction emissions associated with the Long Beach LNG Import Project would be caused by tailpipe emissions from worker vehicles and supply trucks, as well as construction equipment and fugitive dust. The South Coast Air Quality Management District (SCAQMD) significance thresholds would be exceeded for all criteria pollutants except sulfur oxides (SO_x) on a peak daily and quarterly basis. The exceedances are considered a significant impact. To reduce project construction emissions from onsite diesel-fueled combustion equipment, SES' contract specifications would require that all off-road diesel fueled equipment powered by compression ignition engines meet or exceed the various emission

standards in accordance with table 1 of Title 40 CFR Part 89.112. For all other equipment, contract specifications would require that the newest equipment in the construction contractors' fleets be used to take advantage of the general reduction in emission factors that occurs with each model year. SES would also adhere to the POLB's air quality requirements and construction standards some of which include the use of electric-powered dredges for all hydraulic dredges and ultra-low sulfur or emulsified diesel in all other types of dredges, construction phasing to minimize concurrent use of construction equipment, turning equipment off when not in use, watering specifications, restrictions on soil excavation and hauling in windy conditions, suspension of construction activities during Stage II smog alerts, and speed limit restrictions. In addition to SES' proposed control measures, the Agency Staffs will recommend to their respective Commissions that SES require all contractors to use ultra-low sulfur or CARB-approved alternative diesel fuel in all diesel-powered equipment used onsite during construction.

The construction workforce would be relatively small (peak of about 404 workers) and would primarily consist of workers from within the Los Angeles and Orange County labor pool. The workers would commute to the temporary laydown and worker parking area on Ocean Boulevard and would then be transported to the site via buses. Materials and equipment would be shipped to the site by road, rail, or barge or to the temporary laydown area on Ocean Boulevard. The Agency Staffs will recommend to their respective Commissions that SES use alternative-fuel buses to transport workers to and from the temporary laydown and worker parking area.

Although implementation of SES' control measures and the mitigation measures recommended by the Agency Staffs would reduce emissions during the construction phase, the impacts of the project on air quality during construction are still expected to remain significant. Construction impacts would, however, be temporary and intermittent and cease at the end of the construction phase.

Operational emission sources associated with the project would include marine vessels, vaporization equipment, fugitive process emissions, on-road vehicles, and emergency generator and firewater pumps. The project's operational emissions would exceed the SCAQMD daily emission thresholds for nitrogen oxides (NO_x), reactive organic compounds (ROC), particulate matter having an aerodynamic diameter of 10 microns or less (PM_{10}), and SO_x. Therefore, the project would be significant for ozone, PM_{10}, and SO_x. The project would not be significant for carbon monoxide. SES proposes to minimize criteria pollutant emissions associated with operation of the Long Beach LNG Import Project through the following control measures: Lowest Achievable Emission Rate/Best Available Control Technology would be applied as needed to the stationary sources; LNG trailer trucks would be LNG fueled and their engines would be turned off during onsite loading; LNG ships would generate power from combustion of boil-off LNG rather than fuel oil if they are equipped to do so; fugitive ROC emissions from various points in the terminal would be minimized by design elements and through the implementation of a comprehensive leak detection and repair program; and operational personnel would be encouraged to rideshare and use mass transit.

SES would also ensure that all diesel-powered, non-road mobile terminal equipment would meet the emissions standards set forth in the EPA's Control of Emissions of Air Pollution From Non-Road Diesel Engines and Fuel and require ships calling at the terminal that do not use LNG boil-off gas in the main engines for power during unloading to use fuels such as the CARB's #2 diesel, gas-to-liquid diesel, biofuels, or a marine distillate fuel, in the ship's auxiliary power generator motors, or use exhaust treatment technology. Because the SCAQMD significance thresholds would be exceeded for NO_x, ROC, PM_{10}, and SO_x even after implementation of SES' control measures, the project's operational impact on air quality would be considered significant. Given the nature of the project operations, especially vessel operations, the Agency Staffs have determined that there are no additional feasible measures that would further reduce air emissions.

The proposed project would comply with all applicable regulations in the 2003 Air Quality Management Plan (AQMP). The AQMP includes control measures that are intended to be implemented

by federal and state governments to reduce emissions from ships and on-road trucks in order to bring the South Coast Air Basin (SCAB) into conformity with federal ambient air quality standards.

The FERC is required to conduct a conformity analysis for the Long Beach LNG Import Project to determine if the emissions associated with the project would conform to the State Implementation Plan (SIP) and would not reduce air quality in the SCAB. This draft EIS/EIR includes a draft conformity analysis; however, documentation supporting conformity with the applicable SIP and AQMP in accordance with Title 40 CFR Part 93.158 has not been filed with the FERC. Until this information is provided by SES, the Long Beach LNG Import Project is deemed to not conform to the applicable SIP and AQMP. The FERC staff recommends that SES completes a full air quality analysis and identify any mitigation requirements necessary for a finding of conformity and file this information with the FERC before the end of the draft EIS/EIR comment period for review and analysis in the final EIS/EIR.

In accordance with SCAQMD Rule 1401, a Health Risk Assessment of toxic air contaminant emissions on humans was conducted for the water heaters associated with the vaporization equipment, the unloading of the LNG ships at berth (vessel activities during that period are referred to as hotelling), movement of the LNG ships within the SCAQMD's boundary, tugboats, pilot boats, Coast Guard escort boats, and idling emissions from the LNG trailer trucks that would load at the terminal. Although the proposed project would not exceed cancer risk level significance thresholds established by the SCAQMD for toxic air pollutant health impacts, the SCAB and Port areas in particular are assumed, on the basis of the SCAQMD's Multiple Air Toxics Exposure Study in the SCAB, to suffer significant impacts related to toxic air pollutants and associated cancer risk levels. Therefore, toxic air pollutants resulting from the project would likely contribute to an existing cumulatively significant air quality impact in the SCAB.

Noise

The noise associated with construction activities would be intermittent because equipment would be operated on an as-needed basis. Construction activities at the LNG terminal and along the routes of the pipelines and electric distribution facilities would generate short-term increases in sound levels during daylight hours when construction activities would occur. The strongest source of sound during construction would be noise associated with installing deep-driven pile foundations beneath the LNG storage tanks and other heavy load structures to meet the stringent static-settlement criteria for the LNG storage tanks and other heavy load structures at the LNG terminal. Although the noise levels at the property boundary during this activity would be higher than existing noise levels, the impacts would be short term and would be contained within the industrial area immediately surrounding the LNG terminal site within the POLB.

The major noise-producing equipment associated with operation of the LNG terminal would be the boil-off gas compressors, primary and secondary booster pumps, water pumps and heaters, instrument air compressors, and fans for the heaters. Noise control measures included in the design of the LNG terminal facilities consist of buildings, barrier walls, and tanks to provide the appropriate level of noise screening. The predicted operational noise level is below the FERC limit of 55 decibels of the A-weighted scale (dBA) day-night sound level (L_{dn}) at the nearest noise-sensitive area (NSA). The predicted property boundary noise level is below the City of Long Beach noise limit of 70 dBA. To ensure that the actual noise resulting from the operation of the LNG terminal is below the FERC limit of 55 dBA L_{dn} at any nearby NSAs and the City of Long Beach property boundary noise limit of 70 dBA, the Agency Staffs will recommend to their respective Commissions that SES conduct a noise survey to verify that the noise from the LNG terminal when operating at full capacity does not exceed these limits.

Reliability and Safety

The safety of both the proposed LNG import terminal facility and the related LNG vessel transit was evaluated. With respect to the onshore facility, the FERC staff completed a cryogenic design and technical review of the proposed terminal design and safety systems. As a result of the technical review of the information provided by SES in its application materials, a number of concerns were identified by the FERC staff relating to the reliability, operability, and safety of the facility. In response to staff's

questions. SES provided written answers prior to a site visit and cryogenic design and technical review conference for the proposed project that was held in Long Beach in July 2004. Specific recommendations have been identified for outstanding issues that require resolution. Follow up on those items requiring additional action would need to be documented in reports to be filed with the FERC.

The FERC staff calculated thermal radiation distances for incident flux levels ranging from 1,600 to 10,000 Btu per square foot per hour (Btu/ft2-hr) for LNG storage tank and trailer truck loading LNG storage tank fires. An incident flux level of 1,600 Btu/ft2-hr is considered hazardous for persons located outdoors and unprotected, a level of 3,000 Btu/ft2-hr is considered an acceptable level for wooden structures, and a level of 10,000 Btu/ft2-hr would cause clothing and wood to ignite and is considered sufficient to damage process equipment. It was determined that the exclusion zone distance for the 10,000 Btu/ft2-hr incident flux would not extend beyond the property line. The LNG storage tank thermal radiation exclusion zone distance for the 1,600 and 3,000 Btu/ft2-hr incident flux would extend outside the terminal site to the east onto Pier T property. For the trailer truck loading storage tank, the thermal radiation exclusion zone distance for the 1,600 and 3,000 Btu/ft2-hr incident flux also would extend outside the terminal site to the east onto Pier T property. Although no prohibited activities or buildings currently exist within these exclusion zones, according to Title 49 CFR Part 193, either a government agency or SES must be able to exercise legal control over activities in these areas for as long as the facility is in operation. The POLB owns the land surrounding the LNG terminal site but leases parcels to other tenants. In its application, SES stated that it is currently negotiating with the POLB and adjacent tenants for restrictive covenants to limit the use of the areas impacted. The FERC staff recommends that SES provide in its comments on the draft EIS/EIR, or in a separate document submitted at the same time, evidence of its ability to exercise legal control over the activities that occur within the portions of the thermal radiation exclusion zones that fall outside the terminal property line that can be built upon.

The FERC staff also conducted flammable vapor dispersion analyses and determined that design spills for the storage tanks, process area, and trailer truck loading area would not extend beyond the terminal property line.

Thermal radiation and flammable vapor hazard distances were also calculated for an accident or an attack on an LNG vessel. For 2.5-meter and 3-meter diameter holes in an LNG cargo tank, the FERC staff estimated distances to range from 4,372 to 4,867 feet for a thermal radiation level of 1,600 Btu/ft2-hr.

In addition to the analysis conducted by the FERC staff, the POLB commissioned a study by Quest Consultants, Inc. (Quest) to identify the worst-case hazards that would result from a release of LNG or other hydrocarbons in or near SES' proposed LNG import terminal. Using a detailed methodology, Quest identified potential accidental and intentional release events involving the LNG terminal and LNG ships. Quest's final report is titled *Hazards Analysis of a Proposed LNG Import Terminal in the Port of Long Beach, California* (POLB Quest Study) and is included in its entirety in appendix F.

The POLB staff reviewed each of the release events identified by Quest using probability definitions developed by the Los Angeles County Fire Department (LACFD). Using the LACFD criteria, an event is considered possible if it could occur once every 100 to 10,000 years. Based on the chances of their occurrence, the release events that are considered possible per the LACFD criteria are a release from process equipment within the LNG terminal and a release from an LNG ship following a collision with the breakwater or with another ship outside the breakwater.

There are no residential, visitor-serving, or recreation populations and essentially no exposed Port workers within the thermal radiation exclusion zone for the 1,600 Btu/ft2-hr incident flux for a release from a rupture of process equipment at any location. Furthermore, the thermal radiation exclusion zone for the 10,000 Btu/ft2-hr incident flux for a release from a process equipment rupture would not impact the adjacent industrial facilities.

The analyses in the draft EIS/EIR and the POLB Quest Study have shown that based on the extensive operational experience of LNG shipping, the structural design of an LNG vessel, and the operational

controls imposed by the ship's master, the Coast Guard, and local pilots, the likelihood of a cargo containment failure and subsequent LNG spill from a vessel casualty – collision, grounding, or allision – is very small.

Unlike accidental causes, historical experience provides little guidance in estimating the probability of a terrorist attack on an LNG vessel or onshore storage facility. For a new LNG import terminal proposal that would store a large volume of flammable fluid near populated areas, the perceived threat of a terrorist attack is a primary concern of the local population. However, the POLB Quest Study reported that the historical probability of a successful terrorist event would be less than seven chances in a million per year. In addition, the multi-tiered security system that would be in place for an LNG import facility in the POLB would reduce the probability of a successful terrorist event.

Some commenters have expressed concern that the local community would have to bear some of the cost of ensuring the security of the LNG facility and the LNG vessels while in transit and unloading at the dock. The potential costs will not be known until the specific security needs have been identified, and the responsibilities of federal, state, and local agencies have been established in the Coast Guard's Waterway Suitability Assessment (WSA). SES has committed to funding all necessary security/ emergency management equipment and personnel costs that would be imposed on state and local agencies as a result of the project and would prepare a comprehensive plan that identifies the mechanisms for funding these costs. In addition, section 311 of the Energy Policy Act of 2005 stipulates that the FERC must require the LNG operator to develop an Emergency Response Plan that includes a Cost-Sharing Plan before any final approval to begin construction. The Cost-Sharing Plan shall include a description of any direct cost reimbursements to any state and local agencies with responsibility for security and safety at the LNG terminal and near vessels that serve the facility. To allow the FERC and the POLB the opportunity to review the plan, the Agency Staffs will recommend to their respective Commissions that SES submit the plan concurrent with the submission of the Follow-on WSA.

Cumulative Impacts

When the impacts of the Long Beach LNG Import Project are considered additively with the impacts of other past, present, or reasonably foreseeable future actions, there is some potential for cumulative effect on water resources, socioeconomics, land transportation, air quality, and noise. For the Long Beach LNG Import Project, control measures have been developed and additional mitigation measures have been recommended by the Agency Staffs to minimize or avoid adverse impacts on these resources. However, the cumulative projects represent additions of potentially significant and unavoidable emissions to the SCAB. In addition, even though project-specific toxic air pollutant health impacts would not be significant, it is likely that the incremental increase in the cancer risk level for toxic air pollutants as a result of the proposed project would contribute to an existing cumulatively significant health impact in the SCAB.

Growth-inducing Impacts

The potential growth-inducing impacts of the Long Beach LNG Import Project would be an increase in development and population in the area associated with a new source of natural gas. Most of the natural gas that would be supplied by the LNG terminal would be transported into the SoCal Gas system and would be used to meet existing and future natural gas demand in the LA Basin. The demand for energy is a result of, rather than a precursor to, development in the region. Currently, imports from out of state represent approximately 87 percent of supply and are anticipated to rise to 88 percent by 2013, meaning that additional external supplies will be needed to keep up with demand. Given the shortand mid-term demand for natural gas and the need to reduce potential supply interruptions, the California Energy Commission has identified the need for California to develop new natural gas infrastructure to access a diversity of fuel supply sources and to remove constraints on the delivery of natural gas. The LNG that would be made available for vehicle fuel would be used to meet existing and projected future demand and provide a new source of fuel to facilitate conversion of diesel or gasoline-fueled vehicles to LNG, which could reduce air emissions in the area. Given the large local labor pool in Los Angeles and Orange

Counties, no substantive influx of workers would occur during construction and operation of the Long Beach LNG Import Project.

ALTERNATIVES CONSIDERED

The No Action or No Project Alternative was considered. While the No Action or No Project Alternative would eliminate the environmental impacts identified in this EIS/EIR, none of the objectives of the proposed project would be met. Specifically, SES would not be able to provide a new and stable supply of natural gas and LNG vehicle fuel to southern California. It is purely speculative to predict the actions that could be taken by other suppliers or users of natural gas and LNG in the region as well as the resulting effects of those actions. Because the demand for energy in southern California is predicted to increase, customers would likely have fewer and potentially more expensive options for obtaining natural gas and LNG supplies in the near future. This might lead to alternative proposals to develop natural gas delivery or storage infrastructure, increased conservation or reduced use of natural gas, and/or the use of other sources of energy.

It is possible that the infrastructure currently supplying natural gas and LNG to the proposed market area could be developed in other ways unforeseen at this point. This might include constructing or expanding regional pipelines as well as LNG import and storage systems. Any construction or expansion work would result in specific environmental impacts that could be less than, similar to, or greater than those associated with the Long Beach LNG Import Project. Increased costs could potentially result in customers conserving or reducing use of natural gas. Although it is possible that additional conservation may have some effect on the demand for natural gas, conservation efforts are not expected to significantly reduce the long-term requirements for natural gas or effectively exert downward pressures on gas prices.

Denying SES' applications could force potential natural gas customers to seek regulatory approval to use other forms of energy. California regulators are promoting renewable energy programs to help reduce the demand for fossil fuels. While renewable energy programs can contribute as an energy source for electricity, they cannot at this time reliably replace the need for natural gas or provide sufficient energy to keep pace with demand.

Alternatives involving the use of other existing or proposed LNG or natural gas facilities to meet the stated objectives of the proposed project were evaluated. None of the pipeline system alternatives could provide a stable source of LNG for vehicle fuel or the storage of up to 320,000 cubic meters of LNG to address fluctuating energy supply and demand (two of the three stated objectives of the Long Beach LNG Import Project). Several of the proposed LNG import systems (either offshore California or in Mexico) could provide a new source of natural gas to southern California markets; however, none of these system alternatives could meet the proposed project's stated objective of providing a stable source of LNG for vehicle fuel. Furthermore, each of the system alternatives could result in its own set of significant environmental impacts that could be greater than those associated with the proposed project.

Alternative sites for an LNG import terminal were evaluated. The examination of alternative sites for an LNG import terminal involved a comprehensive, step-wise process that considered environmental, engineering, economic, safety, and regulatory factors. The alternative sites evaluated for an LNG terminal were not found to avoid or substantially lessen any significant environmental effects of the proposed project and/or could not meet all or most of the project objectives.

An evaluation of alternative routes for the natural gas and C_2 pipelines was also conducted. The alternatives were not found to avoid or substantially lessen impacts associated with the corresponding segment of the proposed routes and/or were infeasible due to the number of existing utilities already in place along the alignments and the lack of adequate space to install the facilities.

Reduced dredge/fill alternatives and alternative ship berth configurations, dredge disposal alternatives, and alternative dredging methods were evaluated to avoid or minimize impacts on water quality or biological resources associated with the in-water work needed for construction of the LNG ship berth and unloading facility and strengthening the shoreline structures. None of these alternatives were

found to be feasible or would avoid or substantially lessen any significant environmental effects of the proposed project.

Vaporizer alternatives were also evaluated. The shell and tube vaporizer, which is the proposed vaporizer for the Long Beach LNG Import Project, was found to be efficient, readily able to be integrated with the NGL extraction system, and to utilize proven vaporizer technology. Shell and tube vaporizers are also the most compact LNG vaporizers available, an important consideration given the size of the LNG terminal site. New vaporization processes that primarily utilize air exchangers as a heat source were also evaluated because they would have lower fuel gas requirements than conventional combustion vaporizers. Reduced fuel use would lead to a corresponding reduction in air emissions and operating costs. The space requirements of these new vaporization processes, however, appear to make this approach technically infeasible at the proposed site.

ENVIRONMENTALLY PREFERABLE/SUPERIOR ALTERNATIVE

The Agency Staffs will recommend to their respective Commissions that SES' proposed project is the environmentally preferable/superior alternative that can meet the project objectives.

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Appendix D: TOC Long Beach LNG Import Terminal Project Draft EIS/EIR

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Long Beach LNG Import Project

Draft Environmental Impact Statement/
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

January 17, 2017

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 Final Environmental Impact Statement, Sacramento County, California (CEQ# 20160300)

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.

EPA reviewed the Draft Environmental Impact Statement and provided comments to the Bureau of Indian Affairs (BIA) on February 22, 2016, rating the Proposed Action and all other action alternatives as *Environmental Concerns – Insufficient Information* (EC-2). Our concerns regarded 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 (NAAQS). We noted that 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, and if the project proponent would 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 NAAQS violations in the project area.

As a cooperating agency for the project, EPA reviewed the Administrative FEIS and provided comments to BIA on August 22, 2016. We commended BIA for designating Alternative F as the Preferred Alternative, as we recommended, which would result in the least adverse environmental impacts since the Elk Grove site is already partially developed and infrastructure is already in place. We also noted BIA's proposal to obtain emission reduction credits within 50 miles of the project site.

In our AFEIS comments, we reiterated that, if BIA planned to use out-of-area offsets, the General Conformity Determination should demonstrate that the nearby nonattainment area of equal or higher classification contributes, or has contributed in the past, to the violations of the NAAQS. We have reviewed the Final EIS and note that the updated draft General Conformity Determination cites several studies by the California Air Resource Board (CARB), including the initial Transport Assessment approved by CARB in 1990 and the first triennial updates to the 1990 ozone transport report approved by CARB in August 1993, November 1996, and April 2001. According to the April 2001 update, CARB determined that the San Joaquin Valley is classified as having various levels of impact to the greater Sacramento air basin, ranging from significant to inconsequential, depending on the day of the

year. Accordingly, the results of these assessments indicate that the San Joaquin Valley contributes to NAAQS violations within the broader Sacramento area and that purchase of emission reduction credits from San Joaquin Valley would meet the requirements to show conformity. As a final step in documenting compliance with conformity, we recommend that BIA document discussions or correspondence with the San Joaquin Valley Air Pollution Control District indicating their understanding that the emission reduction credits will be used outside of the San Joaquin Valley.

EPA appreciates the opportunity to review this FEIS. 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

cc: Karen Huss, Sacramento Metropolitan Air Quality Management District
Raymond Hitchcock, Chairman, Wilton Rancheria
Steve Hutchason, Environmental Director, Wilton Rancheria

ATTACHMENT 2

TRIBAL COUNCIL RESOLUTION NO. 2017-5

Wilton Rancheria

9728 Kent Street, Elk Grove, CA 95624

Tribal Council Resolution No. 2017-5

WHEREAS, Wilton Rancheria ("Tribe") is a federally-recognized Indian tribe eligible for all rights and privileges afforded to recognized Native American tribes; and

WHEREAS, Wilton Rancheria adopted the Constitution of Wilton Rancheria ("Constitution") on November 12, 2011; and

WHEREAS, Article VI, Section 2(a) of the Constitution provides that the Tribal Council has the power to make all laws, including resolutions, codes, and statutes; and

WHEREAS, Article VI, Section 2(f) of the Constitution provides that the Tribal Council has the power to authorize expenditures by law and appropriate funds in an annual budget; and

WHEREAS, Section 1-201(A) of the Tribal Council Organization Act of 2012, 4 WRC § 1-101, et seq., provides that the Spokesperson of the Tribal Council is authorized to sign all official acts of the Tribal Council; and

WHEREAS, the Tribe presently has no lands in trust status and intends to establish a permanent land base for economic development; and

WHEREAS, the Tribal Council has determined to locate a class III gaming facility (the "Project") on an approximately 35.92-acre parcel of land located in the City of Elk Grove, Sacramento County, California (the "Application Site"); and

WHEREAS, the Tribe has submitted an application to the Bureau of Indian Affairs ("BIA") to enable the Tribe to have the Application Site taken into trust for the benefit of the Tribe and be declared eligible for Class III gaming; and

WHEREAS, on December 14, 2016, the BIA published a Notice of Availability that the Final Environmental Impact Statement ("FEIS") was available for public comment, that the BIA had chosen Alternative F in the FEIS, the Application Site, as the agency's "Preferred Alternative" under the process required by the National Environmental Policy Act ("NEPA") and its implementing regulations; and

WHEREAS, the BIA published notices in one or more newspapers of general circulation that an updated or revised Draft Conformity Determination (the "Revised DCD") was available for public comment; and

WHEREAS, the Revised DCD required the Tribe, among other things, to provide preferential parking for vanpools and carpools during the operation of the Project at the Application Site.

NOW BE IT THEREFORE RESOLVED, the Tribal Council hereby does formally commit to providing preferential parking for vanpools and carpools during the operation of the Project at the Application Site as required by the Draft DCD.

CERTIFICATION

It is hereby certified that the foregoing Resolution was adopted by an affirmative vote of 7 for, 0 against, and 0 abstaining, presented for approval on January 17, 2017, pursuant to the authority contained within Constitution of Wilton Rancheria.

Dated this 17th day of January 2017.

Jesus Tarango
Tribal Council Spokesperson

Attest:

Cammeron Hodson
Vice-Chairperson

ATTACHMENT 3

EMISSION REDUCTION CREDIT CERTIFICATE

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING

Northern Regional Office • 4800 Enterprise Way • Modesto, CA 95356-8718

Emission Reduction Credit Certificate
N-1395-2

ISSUED TO: WILTON RANCHERIA

ISSUED DATE: September 21, 2016

LOCATION OF REDUCTION: 500 E LOUISE AVE
LATHROP, CA 95330

For NOx Reduction In The Amount Of:

Quarter 1	Quarter 2	Quarter 3	Quarter 4
26,875 lbs	26,875 lbs	26,875 lbs	26,875 lbs

Method Of Reduction

[ ] Shutdown of Entire Stationary Source
[X] Shutdown of Emissions Units
[ ] Other

Shutdown of glass furnace

Use of these credits outside the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) is not allowed without express written authorization by the SJVUAPCD.

Seyed Sadredin, Executive Director / APCO

Arnaud Marjollet, Director of Permit Services

Sep 21 2016 4:32PM – GONZALEV