

# *Stand Up For California!*

## “Citizens making a difference”

[www.standupca.org](http://www.standupca.org)

P. O. Box 355  
Penryn, CA. 95663

September 27, 2016

Mr. John Rydzik  
Chief, Division of Environmental,  
Cultural Resource Management and Safety  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, California 95825

**RE: Objection to the Bureau of Indian Affairs’ Consideration of the Wilton Rancheria’s  
New Fee-to-Trust Application for Land in Elk Grove**

Dear Mr. Rydzik:

The following comments are being submitted on behalf of Stand Up For California! (Stand Up), Elk Grove GRASP, and concerned citizens of Elk Grove, regarding the Wilton Rancheria’s (Rancheria) apparent decision to abandon its application to the Bureau of Indian Affairs (BIA) to acquire in trust a 282-acre parcel north of the City of Galt. It appears that the Rancheria has changed its proposed trust land to a site in the City of Elk Grove and has asked BIA to designate that site as the preferred alternative in the final environmental impact statement (EIS) BIA prepared in conjunction with the Rancheria’s application for land in Galt.

Stand Up, Elk Grove GRASP, and the citizens of Elk Grove are unable to say with certainty what the Rancheria has proposed or precisely what BIA is apparently now considering because BIA has not provided notice to the affected community of the change in the proposed action, the precise parcel of land involved, the environmental review process, nor any other information the community is entitled to under federal laws governing BIA’s consideration of such applications. It appears that BIA intends to rely on the draft EIS it prepared for the Galt application to support the Elk Grove trust request, despite the fact that the application is now for an entirely different site.<sup>1</sup>

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<sup>1</sup> The website providing the draft EIS to the public does not address the new trust request. Rather, it identifies the final EIS under the heading “future documents.” See <http://www.wiltoneis.com/draft-eis/>. Stand Up contacted BIA on July 4, 2016 to seek clarification of BIA’s review process and in an email dated July 5, 2016, BIA informed

BIA cannot proceed in this fashion. First, BIA cannot acquire the Elk Grove site in trust at all because the land is encumbered by a development agreement. This legal obstacle has not been addressed in the draft EIS, or resolved at the local level. At the federal level, BIA cannot rely on a draft EIS it created for a different trust request to support a decision to acquire land in Elk Grove. Not only would that approach violate National Environmental Policy Act (NEPA) regulations, it would defeat one of NEPA's two key purposes—the opportunity for public notice and meaningful participation. In addition, the analysis in the draft EIS of the Elk Grove alternative is not sufficient. This letter addresses these three key concerns.

**I. The Elk Grove site is encumbered by a development agreement and cannot be acquired in trust.**

BIA cannot select the Elk Grove site as its preferred alternative in a final EIS because it cannot acquire the land in trust. Title to the Elk Grove site is encumbered by a development agreement—recorded as a covenant running with the land—that commits the owner, currently the Howard Hughes Corporation, to develop an outlet mall and a second phase of development. Even if the Howard Hughes Corporation could sell the land to the Rancheria, the City's approval of a development agreement by ordinance is a legislative act. Federal title requirements, do not permit the United States to acquire title to lands where there are adverse or unacceptable encumbrances or “clouds” on the title of the nature the City's approval creates. *See* 40 U.S.C. §255. The federal title standards, in fact, require agencies to ascertain the interest or claim of any entity in the land and whether that interest will interfere with the contemplated use of the land. The obligation to comply with the terms of the development agreement clearly interferes with the contemplated use of the land as trust land for casino development.

Before BIA can take any federal action with respect to the Rancheria's proposed acquisition, Elk Grove must pass another ordinance excising the property the Rancheria wants to develop from the development agreement. It appears that BIA recognizes this limitation; staff for the City stated that BIA would not take the land into trust as long as it was encumbered by the development agreement. Before the City Council can vote on the issue, therefore, it is legally obligated to review the action under the California Environmental Quality Act (CEQA). It is “reasonably foreseeable” that voting to excise the northern portion of the site from the development agreement will result in the development of the \$500 million casino and hotel—especially since the very purpose of that legislative act is to allow the acquisition of that land in trust so that the casino can be developed. Indeed, that is the *only* justification presented for the vote in the first place. *See* Planning Commission Staff Report (Sept. 15, 2016) at 1 and 3.

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Stand Up that “the BIA is going to further address the draft EIS Alternative Elk Grove site in the FEIS. The public will have the opportunity to review and comment on the FEIS.”

In addition, any such vote is subject to public referendum. This is a highly controversial project in Elk Grove, particularly because of the last-minute, post-draft EIS switch in proposed actions.

**II. BIA must prepare a supplemental EIS to address the change in the proposed action.**

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. Doing so 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 Numbers 148-0010-018, 148-0041-009, 148-0041-006, 148-0041-004, 148-0041-001, 148-0031-007, and 148-0010-060). *Id.*

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. 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 an 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 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 evaluates the acquisition a 28-acre parcel of land at the Elk Grove Mall, *see* DEIS 2.7, 2-25, does not satisfy NEPA.

**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. United States 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. 72928-01 (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.<sup>2</sup>

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 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.

Apart from the lack of notice, it appears that the Rancheria is actually interested in acquiring approximately 36 acres of land in Elk Grove, not the 28-acre alternative considered in the draft EIS. The addition of 8 acres of land obviously introduces significant new circumstances or information relevant to environmental concerns. The current draft EIS fails to address over twenty percent of the area of the new proposed project. *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))).

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.<sup>3</sup> 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

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<sup>2</sup> 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." The City appears to have based these comments on preliminary discussions with the Rancheria regarding its interest in the Elk Grove site.

<sup>3</sup> 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.

indication that BIA 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.<sup>4</sup> There was no trust application for Elk Grove land and there still isn't, apparently because the Rancheria cannot acquire any interest in the Elk Grove site without the City first approving the release of the proposed site from a development agreement covering the area.<sup>5</sup>

"[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.

## **II. The analysis in the draft EIS of the Elk Grove site is inadequate.**

### **A. The mitigation discussion is inadequate.**

In addition to the legal vulnerabilities discussed above, there are fundamental flaws in the draft EIS. One overarching deficiency is the unsupported presumption that project design parameters and recommended mitigation measures are enforceable. The draft 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 Memorandum of Understanding (MOU) with the City of Elk Grove and Sacramento County (or other agreements yet to be negotiated<sup>6</sup>);

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<sup>4</sup> In fact, it is not clear precisely what land is involved. The Tribe's June 9, 2016, press release indicates that the new proposed action is for the trust acquisition of a 35.9-acre parcel, at or near the site designated as Alternative F. The new proposed project site is not the same as the Alternative F analyzed in the FEIS.

<sup>5</sup> In 2007, Elk Grove approved a development agreement for the Elk Grove mall site, then proposed as a lifestyle center. In 2014, developer Howard Hughes Corp. proposed an outlet mall concept for the site and entered into a new development agreement covering the entire site. Although the agreement describes the first phase of actual development only, including the outlet mall itself, it did not describe what would be built in the area the Rancheria has proposed as its casino. The City must release Hughes Corp. from the development agreement before the Rancheria can proceed.

<sup>6</sup> With very little public notice, the City of Elk Grove recently revealed that it has negotiated, and is now considering approving, a Memorandum of Understanding (MOU) with the Rancheria regarding the mitigation of impacts resulting from the casino project in Elk Grove. As explained further in these comments, the economic impacts on Elk Grove have not been adequately accounted for, and thus the proposed MOU cannot be assumed to adequately mitigate those impacts. In addition, approval of the MOU is subject to the California Environmental Quality Act, and the City has not complied with the requirements of that Act.

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 draft EIS. The MOU, to the extent it is enforceable, provides a framework for future negotiations regarding mitigation measures, but it does not guarantee that an enforceable agreement will result from those negotiations, much less that the mitigation measures described in the draft EIS will be included in any such agreement.

More fundamentally, the draft 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 draft 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.

BIA's conclusions in the draft 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 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 draft EIS is fundamentally deficient, and must be supplemented and recirculated for public comment before a final EIS can be issued.

**B. Transportation impacts are underestimated.**

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 draft 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.” DEIS 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.<sup>7</sup> The Traffic Impact Study therefore severely underestimates traffic impacts.

Finally, press reports suggest 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. Such new information has not been analyzed in the draft EIS, nor made available to the public for review and comment. More importantly, it correspondingly calls 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.

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<sup>7</sup> 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. DEIS at 2-25. Given the resulting 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.



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 draft EIS does not appear to take into account the impacts to the proposed outlet mall of a reduction of almost 2,000 parking spaces available to mall patrons.

**C. The public services analysis is inadequate.**

The draft EIS contains insufficient analysis with regard to Public Services. In particular, Section 4.10.6 of the draft 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.” DEIS at 4.10-24. Despite identifying this significant effect, the draft EIS 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.” *Id.* at 4.10-24 to 4.10-25. 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. Draft EIS at 5-26. This general mitigation measure is recommended for several of the alternatives and is not specific to Alternative F. *Id.* It is unclear how this alone will ensure adequate water supply distribution facilities and mitigate the significant effect identified in the draft EIS.

The draft EIS estimates daily water consumption for Alternative F to be approximately 260,000 gpd, DEIS at 4.10-24; however, it is unclear whether this estimate should be revised in light of the new project. The draft EIS 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 draft EIS does not analyze SCWA’s distribution system in relation to the service area. Moreover, the draft EIS 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. For these reasons, the draft EIS discussion relating to water supply for Alternative F is insufficient and warrants further detail and analysis.

**E. 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 reasonably foreseeable future actions not part of the Proposed Action, but related to cumulative effects.

The draft EIS lists six projects in the cumulative setting in the City of Elk Grove: Waterman Park, Fieldstone South, Lent Ranch Special Planning Area, the Marketplace at Elk Grove, Laguna Ridge Specific Plan, and Capital Reserve Project. DEIS, 4.15-5, Table 4.15-2. The City of Elk Grove's website includes other "Current Development Projects" in the City not identified in the draft EIS: East Franklin Specific Plan, The Outlet Collection at Elk Grove, Kammerer Road Project, and the Ridge Shopping Center and Costco.<sup>8</sup> In its comments on the draft EIS, the City of Elk Grove noted the absence of the Sterling Meadows Project and the Southeast Policy Area. Also in the planning phase is a new City Civic Center and Community Park. The new facility will be developed on more than 76 acres of land in the City. This development will include an aquatic center, senior center/community center, veterans hall, children's museum, library, and a botanical garden/nature preserve. Planning for the project began in 2006.<sup>9</sup>

Also not identified in the draft EIS are foreseeable future projects that will occur as Elk Grove continues its efforts to expand its sphere of influence in pursuit of continued growth and development. One such project is the Elk Grove Multi-Sport Park Complex. This project will include 16 Multi-sport fields, 12 full-size soccer fields, 4 training fields, field lighting, playground, running path, landscaping and restrooms.<sup>10</sup> To facilitate this development, the City of Elk Grove has applied for a Sphere of Influence Amendment to the Sacramento Local Agency Formation Commission.<sup>11</sup>

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." DEIS at 4.10-24. 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 draft EIS'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.

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<sup>8</sup> See [http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/planning/current\\_development\\_projects](http://www.elkgrovecity.org/city_hall/departments_divisions/planning/current_development_projects) (last visited August 24, 2016).

<sup>9</sup> See [http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/planning/city\\_special\\_projects/civic\\_center\\_and\\_community\\_park](http://www.elkgrovecity.org/city_hall/departments_divisions/planning/city_special_projects/civic_center_and_community_park) (last visited August 24, 2016).

<sup>10</sup> See [http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/public\\_works/capital\\_improvements/multi\\_sport\\_park\\_complex](http://www.elkgrovecity.org/city_hall/departments_divisions/public_works/capital_improvements/multi_sport_park_complex) (last visited August 24, 2016).

<sup>11</sup> See [http://www.elkgrovecity.org/UserFiles/Servers/Server\\_109585/File/Departments/Public%20Works/Multi-Sport%20Complex/SOIA%20Application%20-%202015-07-17.pdf](http://www.elkgrovecity.org/UserFiles/Servers/Server_109585/File/Departments/Public%20Works/Multi-Sport%20Complex/SOIA%20Application%20-%202015-07-17.pdf)

**F. The public safety risks associated with the nearby Suburban Propane Storage Facility are ignored in the draft EIS.**

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.<sup>12</sup> 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).

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 notes, "Lent Ranch and the Marketplace at Elk Grove are located in the immediate vicinity of the Mall site . . ." The draft EIS does 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, the propane storage facility and any associated or potential environmental or public safety concerns should be addressed and analyzed in a supplemental EIS.

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<sup>12</sup> 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> .

**G. Air quality impacts are inadequately addressed.**

As described in Section 4.4.7, Alternative F requires a Clean Air Act conformity determination, based on exceedances of de minimis levels of emissions associated with operations. The conformity determination, however, is not complete. The draft EIS states that the conformity determination “will be conducted prior to federal action,” and references Appendix T to the draft EIS (“Draft General Conformity Determination”). This conformity analysis, including the process for public comment on the draft and EPA review, should be completed before the final EIS is published so as to enable an analysis of environmental consequences sufficient to inform the public and agency decision makers. 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.”). Because the conformity determination is incomplete, the public cannot know and comment on how the Project will address those operational emissions found to exceed de minimis levels. We know only that it is anticipated that conformity will be shown through the purchase of emission reduction credits. DEIS § 5.4; see also 40 C.F.R. § 93.158 (a)(2).

The conformity regulations specify that, although emission credits can be used to offset a project’s associated emissions, the conformity determination must specify the “process for implementation and enforcement of such measures”. See 40 C.F.R. § 93.160(a). The Draft Conformity Determination fails to describe how either of these requirements would be met, indicating only that purchases will be made prior to operation of the casino. Appendix T at 6-7. Moreover, a conformity determination cannot be made until the Tribe commits in writing to implement the offset credit program. See 40 C.F.R. § 93.160(b). The Draft Conformity Determination merely asserts the Tribe’s willingness to commit to offsets “in compliance with the mitigation measures detailed in the EIS and future Record of Decision.” Appendix T at 7. As previously explained, however, the draft EIS does not explain how the recommended mitigation measures will be enforceable, and consequently is not able to evaluate the likely effectiveness of those measures.

It is impossible to assess the air quality impacts of the project prior to the completion of the conformity determination. For that reason, a supplemental EIS must be prepared after the final conformity regulation has been prepared and made available for public comment. The BIA has the affirmative responsibility to ensure compliance with the Clean Air Act’s conformity determination before any final decision to take land into trust for a gaming acquisition.

**H. Socioeconomic impacts are inadequately analyzed.**

First and foremost, the Economic Impact Statement is facially deficient because it does not evaluate the economic impacts to the City of Elk Grove. The study evaluated the impacts to the counties of Sacramento and San Joaquin for all alternatives, but only for the Twin Cities site did

it also evaluate the impacts to the local municipality (the City of Galt). This is but one more example of how the BIA assumed the Tribe's Proposed Action (taking the Galt site into trust) would be its final decision, and gave short shrift to evaluating the Elk Grove site. The draft EIS addresses economic impacts specific to Elk Grove only by asserting that fiscal impacts to tax revenues would be similar to those that would accrue to the City of Galt under Alternative A (i.e., neutral to negative, without mitigation)—but even so, the draft EIS itself admits that the impacts to Elk Grove would be greater, although it makes no attempt to quantify the increase. DEIS at 4.7-53. The draft EIS does not address the likely differences in other economic impacts to Elk Grove at all. Substitution effects, in particular, can be expected to be significantly higher, given that Elk Grove is substantially larger than Galt, and especially given the draft EIS' acknowledgment that the retail market in Elk Grove is saturated, and non-gaming commercial retail activity at the Elk Grove site can be expected to negatively affect local retail businesses. DEIS at 2-31. It is essential that the economic impact study be completed with an evaluation of impacts to Elk Grove, and that a Supplemental EIS incorporating this new information be issued for public review and comment.

In addition, the economic impacts analysis for Elk Grove must include retail development of the Mall site as part of the baseline for comparison—which would reveal substantially higher negative economic impacts to Elk Grove under Alternative F, including substantially lower tax revenues. The failure to include the foreseeable development of the Mall site ignores the fact that the Mall site has already been partially developed as part of a larger shopping mall development project (which is currently proceeding). Under the No Action Alternative, the draft EIS assumes that development of the Mall site is not reasonably foreseeable, even though it acknowledges that the Mall site's partial development "would likely be completed" and "would likely be centered in typical commercial and retail uses." DEIS at 2-30. The draft EIS asserts that "the precise timing and extent of such development is not currently reasonably foreseeable," but this ignores the fact that development of the Mall site is currently subject to a development agreement between the outlet mall developer and the City of Elk Grove, and this agreement calls for development to begin by 2018.<sup>13</sup> Furthermore, any remaining uncertainty with regard to such future development is not grounds for assuming it will not occur at all, but rather is simply incomplete or unavailable information that must be evaluated pursuant to 40 C.F.R. § 1502.22 (Incomplete or unavailable information). There is no reason why impacts could not be evaluated for a range of reasonable timing scenarios to inform the City, the public, and BIA as to the likely impacts.

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<sup>13</sup> The draft EIS nowhere even mentions that the Outlet Collection at Elk Grove project is subject to the Development Agreement and Amended and Restated Amendment regarding the Regional Mall, Fees, and Infrastructure. The failure to acknowledge and evaluate the significance of this agreement is a serious flaw in the draft EIS, which by itself requires a supplemental EIS.

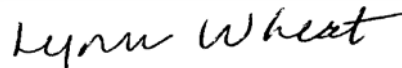
September 27, 2016  
Mr. John Rydzik  
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Finally, the draft EIS also fails to give any estimate of the possible range of increases in societal problems that may result from the proposed casino, including problem gambling, divorce, suicide, prostitution, bankruptcy, and demand for social services. An estimate is provided of the anticipated increase in calls for law enforcement service and percentage that would result in arrests, but there is no quantification of the different types of additional crimes that would result. The draft EIS should therefore evaluate the possible range of social costs of different types that would be borne by the local community.

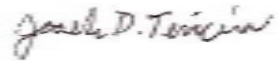
Sincerely,



Cheryl Schmit  
Director, Stand Up for California!



Lynn Wheat  
Elk Grove GRASP



Joe Teixeira<sup>14</sup>

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<sup>14</sup> On behalf of over 20 concerned citizens of Elk Grove