

# PEER REVIEW

Draft Environmental Impact Statement, Scotts Valley Band of Pomo Indians Fee-to-Trust and Gaming Development Project, February 2006

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### Executive Summary

ESA performed a technical peer review of the Scotts Valley Band of Pomo Indians Fee-to-Trust and Gaming Development Project Draft Environmental Impact Statement (Draft EIS). The Bureau of Indian Affairs' (BIA) Proposed Action is to transfer 29.87 acres of land (six parcels) held in fee by the Scotts Valley Band of Pomo Indians (Tribe) into Federal trust status for the benefit of the Tribe and for economic development on the site. The Preferred Alternative includes a 225,000-square-foot casino building, a 24,000 square-foot showroom, several restaurants and bars, and a five-level parking garage.

We found that the Draft EIS has several deficiencies, including ambiguous information, technical errors, and missing references. Because of these discrepancies, the Draft EIS does not fully evaluate all of the direct and indirect effects that the Proposed Action could have on the environment. It is in our professional opinion that the Draft EIS does not meet the requirements of NEPA in its current state and a Supplemental Draft EIS must be prepared and circulated for the Proposed Action.

In the Purpose and Need, the reason given for restoring the Tribe's land base in Contra Costa County instead of Lake County (because "*a large number of Tribal members were relocated by the BIA to the Bay Area*") conflicts with the assumptions regarding the large amount of planned housing to be built on the Tribe's Lake County land (i.e., the amount of housing being built is sufficient to house a significant portion of the 181-member Tribe in Lake County, thereby removing them as Bay Area residents). The assumption that the large majority of tribal members will be permanently housed on the Lake County trust land is further fueled by the lack of mention in the Draft EIS of any proposed housing in the Bay Area. These considerations bring into question the Proposed Action's "purpose and need" assertion that the project will help alleviate the lack of employment opportunities for tribal members, which seems incongruous given that the majority of them will be living 90 miles away in Lake County.

A major critique of the Alternatives analysis also involves the Lake County trust land. It is our professional opinion that the alternative to build the Proposed Action (or a reduced version of it)

on the land owned in trust by the Tribe in Lake County was inappropriately dismissed, and should be evaluated fully in the Draft EIS.

The Environmental Background and Analysis sections also contain several discrepancies, which are described in greater detail in this review. For example, in the Land Resources sections, we found that mitigation measures contained in Chapter 5.0 deviated from the recommendations of Appendix E (the Geotechnical Report prepared for the Proposed Action), primarily in that all the necessary and recommended building measures for seismically active regions were not represented in the Land Resources mitigation measures. In the Water Resources sections and appendix, mitigation measures or analysis for a 100-year storm event were omitted in contrast to EPA requirements, and no mitigation measures are given to protect existing groundwater during project operations.

The Air Quality sections contain outdated ambient air data and omit any discussion on the regional significance of federal air quality conformity, though it is a required discussion. For Biological Resources, the Draft EIS fails to evaluate the potential effects of the Proposed Action to all federally listed species that may occur in the project area, as required by the Endangered Species Act and NEPA (specifically fisheries and other aquatic species), while the Socioeconomic Conditions sections presents unclear information on where tribal members currently reside thus precluding and omitting an comparison between surrounding residents and the Tribe. The Environmental Justice sections are unclear and incorrect in its identification the low-income and minority populations whom should be qualified as “communities of concern.”

A review of the Resource Use Patterns sections presented several concerns, including faulty analysis in the Traffic Impact Study (Appendix K), which called out what should be “significant” impacts as “potentially significant” and discrepancies between Appendix K and the Transportation/Circulation analysis in the Draft EIS. The Public Services sections contain references to several appendices that are represented as “Will Serve” letters from various local agencies; however, the majority of those letters are not ‘Will Serve’ letters, and some contain information that is in direct conflict with the Draft EIS analysis. Additionally, the Draft EIS analysis and appendices indicates that wastewater treatment plant facilities expansion and upgrades to the water mains may or will be required because of the Proposed Action, yet contrary to NEPA requirements, these actions are not included as part of the Proposed Action (and therefore are not evaluated throughout in the document). Public Services also omits criteria, methodologies, and references used for important wastewater and water supply calculations.

Finally, the Other Values section contains discrepancies between the analysis given and presented in the appendices. Specifically, a mitigation measure proposed by the Noise Study (Appendix V) is not included in Table ES-1, and Section 3.10.1 lacks any description or figure that shows the location and distance of nearby existing sensitive receptors in the vicinity of the project site. As well, Section 4.10 omits any discussion of the traffic-related noise impacts on the local roads.

The remainder of the Draft EIS contains other inaccuracies, including the exclusion of references in Section 8.0 and the lack of inclusion of page numbers with references, as required by the DOI Department Manual. The remainder of this peer review details the above-summarized issues and

several others that contribute to our professional findings that the Draft EIS is insufficient in its analysis of the Proposed Action.

## 1.0 Introduction

The following report has been prepared by ESA to provide a peer review for the Draft Environmental Impact Statement (Draft EIS), Scotts Valley Band of Pomo Indians Fee-to-Trust and Gaming Development Project (“proposed project”), located in Contra Costa County, California. Documents reviewed include the Draft EIS and Appendices A-V. The purpose of this review was to determine if the Draft EIS meets the requirements of the following statutes and regulations:

- National Environmental Policy Act (NEPA, 42 U.S.C 4321 *et seq.*)
- Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500-1508)
- Bureau of Indian Affairs (BIA) NEPA Handbook (59 IAM-3)
- Department of the Interior (DOI) Department Manual Part 516 (516 DM 1-6, 10)

## 2.0 Background

The Scotts Valley Band of Pomo Indians (“Tribe”), based in Kelseyville, is comprised of approximately 181 individuals and is governed by a seven-member elected Tribal Council guided by a Tribal Constitution and Codes. This landless Tribe, federally reinstated in 1991, has been working in conjunction with developer Alan Ginsburg to build the proposed project on lands currently held in fee status, but which would be converted to trust status under the Proposed Action (see Section 3).

An NOI to prepare the Draft EIS was listed in the Federal Register on July 20, 2004 (Volume 69, Number 138) followed by a Contra Cost County Board of Supervisors meeting on Tuesday, July 27, 2004, where the Board considered their position on the NOI. The public scoping meeting was held on August 4, 2004. The public comment period for Draft EIS began on February 17, 2006 and ends on April 28, 2006, with a public hearing being held on March 15, 2006.

## 3.0 Proposed Action

The Proposed Action is a transfer of 29.87 acres of land (six parcels) into Federal trust status for the benefit of the Tribe and for economic development on the site. The Tribe is proposing several alternatives; the Preferred Casino Alternative is to construct a 225,000-square-foot casino building with 1,940 slot machines, 55 table games, and 13 Asian card games on the main casino floor, plus a poker room with 16 tables, a “high-roller” room with 60 slots, five table games, and three Asian card games. Plans also call for construction of a 1,500-seat (24,000 square-foot) showroom, a 600-seat buffet, a 250-seat entertainment lounge, a 150-seat sports bar, and a food

court and restaurant, each seating 120. The Preferred Alternative is to be built bay-front in the City of Richmond, Contra Costa County and is expected to be open 24 hours a day. Smoking would be permitted in the casino with designated non-smoking areas. It is expected that the casino would receive approximately 14,000 patrons per day and would employ approximately 1,930 full-time employees and 342 part-time employees. Other ancillary components of the Preferred Alternative include more than 3,500 parking spaces including a five-level parking garage, a shuttle bus service, and several environmental components such as a drainage plan and provisions for wastewater treatment and disposal, water supply, fire protection/emergency medical services, and security/law enforcement.

The above-described Preferred Casino Alternative is considered Alternative A and is accompanied by four other alternatives listed below:

- Alternative B: Reduced Casino
- Alternative C: Reduced Casino and Commercial Development
- Alternative D: Retail/Office Development
- Alternative E: No Action

## **4.0 Methods**

ESA's review of the Draft EIS focused primarily on the analysis within Section 4.0, Environmental Consequences, Section 5.0, Mitigation Measures, and corresponding appendices. Particular attention was paid to accuracy of the data presented and whether the BIA has fully complied with the National Environmental Policy Act (NEPA), specifically Council on Environmental Quality (CEQ) Regulations for Implementing NEPA. ESA's review also focused on whether the technical analysis properly identifies potentially significant impacts and feasible mitigation to reduce those impacts.

## **5.0 Results**

The following peer review is organized by sequence of sections as presented in the Draft EIS. As stated above, ESA's peer review focuses on the appropriateness of the assumptions used in the issue-area analysis and mitigation measures identified to avoid or minimize significant effects on the environment.

### **5.1 Purpose and Need for the Proposed Action (Section 1.0)**

As stated on page 1-3 of the Draft EIS, the BIA supports Native American tribes in their efforts to improve their long-term economic conditions through the development of a stable, sustainable source of revenue and employment. The BIA proposes to assist the Scotts Valley Band of Pomo Indians in developing a sustainable source of income and employment through the approval of an application to convert the fee parcels into trust status, thereby allowing the construction and operation of a new casino (Proposed Action). Therefore, the purpose and need of the Proposed

Action “*is to facilitate economic development and the self-governance capability of the Tribe*” (page 1-6). The need for developing the Preferred Alternative (or other development) on the proposed trust parcels is further justified by several stated factors, including a lack of a sustained revenue stream for Tribal Government, lack of employment opportunities for Tribal members, lack of a land base to develop new economic enterprises, federal and State budget cuts to tribal assistance programs, and the low-income status of most Tribal members.

The proposed trust parcels, which are located in Contra Costa County, are not contiguous with, or even near, the original Rancheria of the Tribe (known as the Sugar Bowl Rancheria). As described on page 1-3, the original Rancheria was located in Lake County. The reason for restoring the Tribe’s land base in Contra Costa County instead of Lake County is given as being because “*a large number of Tribal members were relocated by the BIA to the Bay Area.*” It also refers to the Tribe’s Stipulated Judgment as a reason for the Tribe not reestablishing the former boundaries as the Scotts Valley Rancheria (*Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria et al. v. United States of America et al.*, Civil No. C-86-3660 WWS, N. District. Calif. Sept. 6, 1991). The language in the Stipulated Judgment that the Draft EIS refers to is the following (page 14 of Stipulated Judgment):

*“It is agreed that the plaintiff Scotts Valley and Guideville Bands will not seek, and the federal defendants will not agree, to reestablish the former boundaries of the Scotts Valley and Guideville Rancherias, and that no action taken in connection with this settlement shall be construed as reestablishing the former rancheria boundaries.”*

However, the Draft EIR omits another stipulation in the judgment (page 11 of Stipulated Judgment):

*“Federal defendants agree to accept in trust any lands within the former boundaries of the Scotts Valley and Guidiville Rancherias which is subsequently acquired by any distributee, their dependent or linear descendent, or by either the Scotts Valley or Guideville Bands;...”*

In other words, while the Stipulated Judgment does prohibit the reestablishment of the former boundaries of the Sugar Bowl Rancheria, it does not prohibit (but rather directs the federal government to accept) the establishment of trust lands *within* the former boundaries.

The BIA seems to recognize this situation through the evaluation (but dismissal) of the Lake County Fee-Land alternative (p. 2-23). Based on the description provided in the Draft EIS, it is unknown whether this fee parcel is located within the original Rancheria boundaries. Nonetheless, this alternative is dismissed because the Tribe has committed to building residential housing on the parcel (through HUD funding) as well as setback constraints associated with surrounding land use. The proposed residential use of the parcel seems to directly conflict with the statements made on page 1-3 that “*a large number of Tribal members were relocated by the BIA to the Bay Area.*” As described on page 1-6 of the EIS, a reason for restoring the Tribe’s land base in Contra Costa County “*will facilitate the provision of governmental services to the large number of tribal members still residing in the Bay Area...*”, yet the Tribe is proposing to

construct “22 residential units, a 22,500 square foot two-story apartment building, and three lots for duplex housing units” on the Lake County fee parcel. This amount of housing appears to be of sufficient size to house a significant portion of the 181-member Tribe. The Draft EIS fails to specify if the proposed housing is for current Lake County or Contra Costa County (“Bay Area”) residents.

Similarly, on page 1-6, the Draft EIS purports that “*the need for the development of this project is based on the following conditions...the lack of employment opportunities for Tribal members.*” So by extent, it should be assumed that the Proposed Action will directly employ tribal members and help eliminate the 33% unemployment rate currently experienced by the Tribe (note that no source is provided to support that statistic). However, this assertion is flawed when considered in conjunction with the Lake County Fee-Land alternative.

The Draft EIS states that the Tribe plans to build a large amount of housing and other community amenities (a Tribal retirement facility, a residential care facility, etc.) on the Lake County property, thereby eliminating it from the being a viable alternative. These residential developments are to be constructed for use by Tribal members as the land was acquired with funding from the Department of Housing and Urban Development (HUD) for these purposes and because that use would fulfill one of the Tribal Council’s missions “*to provide uses/services that assure long-term self-sufficiency of tribal members. This includes providing residential housing...*” (page 2-26). The large volume of planned residential units at this Lake County location (seemingly enough units to house a large majority of the 181-member Tribe as mentioned above) challenges the legitimacy of the purpose and need element discussed above.

The implied “purpose and need” assumption that the Proposed Action will directly employ tribal members does not satisfactorily correspond with the supposition that these tribal members will be housed in Lake County, more than 90 miles away from the site of their proposed place of employment in Contra Costa County. Yet, with no proposed housing being developed on the proposed trust parcels and the large amount of housing being planned for the Lake County property, this is the only logical conclusion.

## 5.2 Alternatives (Section 2.0)

NEPA requires that a reasonable range of alternatives be considered in an EIS that could possibly meet the purpose and need of the Proposed Action, and that reasonable alternatives considered, but eliminated, be discussed in the EIS along with their reasons for elimination.

One alternative considered but eliminated (and briefly discussed above) is that of constructing and operating the Proposed Action on land (33.5 acres) currently owned in fee (not in trust) by the Tribe in Lake County, Ca (see pages 2-23 through 2-26 for more detail), referred to as the “Lake County Fee-Land alternative” in this peer review. The grounds behind eliminating the Lake County Fee-Land alternative, as stated in this Draft EIS, are delineated but without full merit.

The Draft EIS claims that because of development setbacks and right-of-way roadway widening requirements, an estimated 35% of the 33.5 acres owned by the Tribe in Lake County would not support development. This 35% represents approximately 11.7 acres, which would leave approximately 21.8 acres for development—8.07 acres shy of the current Proposed Action. While this acreage difference might preclude development of the Preferred Alternative, the available 21.8 acres of land would support several of the reduced-project alternatives. Although the Draft EIS states that groundwater reserves “*may not be adequate to sustain the water demands that come from proposed development,*” (page 2-25) the document presents inconclusive evidence regarding groundwater yields (no long-term groundwater pump test has been conducted) and can therefore not rule out the Lake County Fee-Land alternative based on this claim.

Another reason given for eliminating the Lake County Fee-Land alternative is that the land was purchased with funding from HUD and is to be used for tribal residential development. However, no specific information is given as to the type of HUD grant the Tribe was afforded or the provisions therein. This lack of disclosure prevents the public from ascertaining whether or not commercial development could exist on the Lake County site.

It is our professional opinion that the BIA improperly dismissed the Lake County Fee-Land alternative from further analysis and that there is conflicting rationale for reestablishing the Tribe’s Rancheria within Contra Costa County. It appears that the Lake County Fee-Land alternative should be fully analyzed to meet the requirements of NEPA, which states that the BIA must evaluate a reasonable range of alternatives. We believe that a reasonable range of alternatives should include an alternative to reestablish the Rancheria within or near its previous boundaries, as allowed within the Stipulated Judgment, on lands already held in fee by the Tribe. While the proposed trust parcels in Contra Costa County are obviously the applicant’s “Proposed Action,” it does not relieve the BIA from the requirement to evaluate a full range of alternatives that meet the purpose and need “*to facilitate economic development and the self-governance capability of the Tribe*”, including those alternatives that may reduce significant impacts to the environment (which the Lake County Fee-Land alternative would have).

Finally, the Alternatives potentially omitted at least two connected activities from their descriptions: the potential expansion of the waste water treatment plant and the upgrade/installation to existing water mains that would be required by all alternatives, except for the No Action alternative. These omissions are discussed in detail in Section 5.3 in the review of the Draft EIS’s Public Services section.

## **5.3 Environmental Background and Analysis (Sections 3.0 & 4.0)**

This section provides a critical analysis of portions of Section 3.0, Description of Affected Environment, Section 4.0, Environmental Consequences, and corresponding appendices.

While subsections below will present issue-area specific critiques of Sections 3.0 and 4.0, a more general critique of Section 4.0 concerns its lack of clarity in presenting impacts. The Draft EIS does not present the project’s impacts in a clear and concise way in Section 4.0. It would greatly

aid the reader to have impacts summarized in each issue area and numbered (e.g., a Land Resources impact could be Impact 4.2.1) or otherwise organized in a more succinct fashion. Furthermore, rarely, if ever, is the reader directed to an impact's corresponding mitigation measure(s). CEQ Regulations for Implementing NEPA, Section 1502.16(h), states that environmental consequences should possess "*means to mitigate adverse environmental impacts...*;" and while the Draft EIS does provide those means Section 5.0, it is not always clear which impact corresponds to which mitigation measure. Appropriate references to mitigation measures should be placed in Section 4.0 to facilitate reader comprehension.

## **Land Resources (Sections 3.2 & 4.2)**

As provided in Section 1506.2(d) of the CEQ Guidelines for Implementing NEPA, the Draft EIS should identify possible conflicts between the Proposed Action and the objectives of Federal, regional, State, and local land use plans. The BIA should substantiate why mitigation requirements contained in Chapter 5.0 of the Draft EIS deviate from those recommendations provided in its technical appendices, specifically on page 5 of the Geotechnical Report included as Appendix E. More specifically, the Preliminary Geotechnical Report recommends that the site structures need to be designed for Seismic Zone 4 with increases for near-fault effects (e.g., Hayward Fault with 1.6 miles), consistent with California Building Code (CBC) design and construction standards. UBC (Uniform Building Code) (1997) requirements alone (pages 4.2-2) are not sufficient to ensure the safety of casino patrons should displacement along the Hayward fault occur during the life of the project. This inconsistency should be discussed in the Draft EIS.

Land Resources mitigation measures presented some concerns as well. Shallow groundwater depths (less than 2 feet below the ground surface) necessitate the installation of a sealed foundation as opposed to the long-term dewatering proposed as part of the project (page 5-4, Section 5.2.1). Furthermore, no discussion is provided as to where the proposed foundation dewatering system would discharge groundwater and the potential for this discharge to contaminate the San Francisco Bay. Additionally, although the mitigation requirements (Section 5.2.1) contained in Chapter 5.0 of the Draft EIS for erosion are extensive, the BIA has provided no monitoring requirements, performance standards, or implementation schedule to verify compliance with the stated measures.

As provided on page 3.2.-2 of the Draft EIS, onsite soils are comprised of levee deposits, artificial fill, and basin deposits and are underlain by Bay Mud, which is characterized as a bluish-gray silty clay that contains stratified layers of shells and peat and courser materials, such as sand and gravel and extends to depths greater than 40 meters (more than 130 feet) onsite. It is acknowledged that Bay Mud can present a variety of engineering challenges due to its inherently low strength, compressibility, and saturated conditions. Due to the extensive depths of the Bay Mud in the vicinity of the project, the Geotechnical Report (Appendix E) recommends that moderate to heavily loaded structures will require the placement of pile foundations to a minimum depth of 50 feet. However, mitigation provided in the Draft EIS in Section 5.2.1 fails to acknowledge that a depth of 50 feet represents the minimum and that, in reality, deeper piles may be required to minimize hazards associated with Bay Mud. In addition, the Draft EIS mitigation

should indicate that as part of final engineering design, additional exploratory drilling should be conducted along the west end of the property to confirm both the vertical and horizontal extent of sand and gravel lenses.

## **Water Resources (Sections 3.3 & 4.3)**

The project site is located within the San Pablo Basin. Drainage in the basin is towards San Pablo Bay, while major drainages in the project area are Wildcat and San Pablo Creeks, just south of the project site, and Rheem Creek, north of the project site.

### ***Drainage***

The Draft EIS addresses potential impacts potentially caused by the project to water resources due to the effects of storm water runoff. The Proposed Action proposes to mitigate these impacts by filtering surface runoff prior to release into the natural channel onsite (see Section 5.2.2). Runoff would be directed into vegetative swales or through inlets into storm drain pipes. Prior to release in open channels, runoff would be passed through a sediment/grease trap to remove suspended solids (trash, soil, grease, oil, etc.) that could degrade water quality. The vegetative swales would also filter the runoff prior to release into the site drainage channels by capturing sediment and other contaminants. An onsite detention basin, designed for a 10-year storm event, would also be constructed.

According to Appendix F of the Draft EIS, Preliminary Drainage Study, the 10-year design storm was used as the principal design storm for analyzing and sizing the detention basin. No rationale was provided as to why only the 10-year design was chosen. In accordance with U.S. Environmental Protection Agency (EPA) guidelines, a typical storm water basin is designed to control multiple design storms (e.g., 2- and/or 10-year storms) and safely pass the 100-year storm event. Appendix F does not provide any information as to whether the detention basin would safely pass the 100-year storm event.

Nothing is mentioned in the Draft EIS concerning the dimensions of the detention basin. Because storm water quality control is achieved through pollutant removal in the basin, removal efficiency is primarily dependent on the length of time that runoff remains in the basin. No mention in the Draft EIS was made concerning hydraulic retention time, which must be calculated to determine the dimensions of the basin. Additionally, EPA recommends that basins be wedge-shaped (proposed basin is irregularly shaped) and that shoreline slopes be between 5:1 and 10:1 (proposed basin would have 4:1 side slopes) to allow easy access for maintenance. It appears that the BIA has not consulted federal recommendations for design specifications.

Additionally, County guidelines have also not been consulted in conflict with CEQ Regulations, Section 1502.16, which states that the environmental consequences section of an EIS shall include discussion of “*possible conflicts between the proposed action and the objectives of Federal, regional, state, and local land use plans, policies, and controls for the area concerned.*” The County Flood Control District currently has guidelines that generally require detention basins to be sized according to the watershed area as well as for the 100-year storm event. In addition,

adequate access for maintenance of the basin should be provided. Typically, access should be along the entire perimeter and along the basin side slopes approximately 18-inches above the basin floor. These guidelines should be used to designing the detention basin. The Proposed Action is currently located in unformed Drainage Area 82 and the detention basin and any future storm drain infrastructure should be designed to accommodate the future development of the watershed. The Draft EIS should address project participation in any future formed drainage area or assessment district for the area. Even though this is a federal project, the proponent should be a good neighbor and conform to County standards.

### **Surface Water Quality**

The following errors should be rectified in order to supply the public with accurate information regarding storm water quality.

- Page 3.3-9 of the Draft EIS states the region's surface water is diverted from the Mokelumne River watershed and transferred through a network of canals; however, water from the Mokelumne River watershed is delivered via the Mokelumne Aqueduct.
- Page 5-5 of the Draft EIS states that the Storm Water Pollution Prevention Plan shall include measure listed under Mitigation Measure C for Section 4.2, Land Resources. Section 4.2 does not contain any Mitigation Measure C.

### **Groundwater**

The Draft EIS states that shallow groundwater occurs onsite. Mitigation Measure C in Section 5.2.1, Land Resources, contains several construction and operation measures that indirectly apply to groundwater quality. However, no mitigation is offered to protect groundwater directly during operations.

### **Air Quality (Sections 3.4 & 4.4)**

Section 3.4 of the Draft EIS contains some errors and outdated information regarding ambient air quality standards and attainment status. Specifically, errors in Table 3.4-1 include the following:

- The 1-hour Ozone NAAQS was revoked on June 15, 2005
- The 8-hour Ozone CAAQS is 0.070 ppm (137  $\mu\text{g}/\text{m}^3$ )
- The 24-hour  $\text{SO}_2$  CAAQS is 0.04 ppm (105  $\mu\text{g}/\text{m}^3$ )
- There is no longer an Annual Geometric Mean standard for PM10
- The Annual Arithmetic Mean PM10 CAAQS is 20  $\mu\text{g}/\text{m}^3$
- The Annual Arithmetic Mean PM2.5 CAAQS is 12  $\mu\text{g}/\text{m}^3$
- There is no 30-day NAAQS for Pb

- A better source for these updated standards is from the Bay Area Air Quality Management District at [http://www.baaqmd.gov/pln/air\\_quality/ambient\\_air\\_quality.asp](http://www.baaqmd.gov/pln/air_quality/ambient_air_quality.asp)

The discussion in 3.4.2 subsection titled “Federal Attainment Status” contains incorrect information on the federal 1-hour standard for ozone (specifically that it was revoked on June 15, 2005). Similarly, Table 3.4-2 contains incorrect information on the 1-hour ozone standard (the PM2.5 status should be changed to “Attainment”).

The discussion in 3.4.2 subsection titled “Federal Air Quality Conformity” is incomplete. Federal conformity requires that a project also be assessed for regional significance. Even if a project’s emissions are below the *de minimis* thresholds, the test for regional significance must be made before it can be determined that a conformity analysis is not required. Also, the last paragraph in that subsection states, in part, “*Contra Costa County is in an area that is designated unclassified for PM10 and CO.*” Table 3.4-2 describes the area as attainment for PM10 and CO. This discrepancy should be resolved.

The discussion in 3.4.3 subsection titled “*Inhalable Particulate Matter*” presents incorrect federal and state standards as noted above, and the footnotes in Table 3.4-5 presents these same incorrect federal and state standards as noted above.

The discussion in 3.4.4 subsection titled “*Odors*” seems to imply that a single site visit is the basis for concluding there are no odor issues in the vicinity of the site; however, a review of odor complaints on file with the City, County, and/or BAAQMD would provide more valuable information.

The discussion in 3.4.4 subsection titled “*Sensitive Receptors*” does not define what are considered sensitive receptors. Also, the statement that “[n]o sensitive receptors are present in the direct vicinity of the project site” is vague (i.e., “direct vicinity” is not defined) and conflicts with a statement in the last paragraph of Section 4.4.3 which says there are “*sensitive receptors within a 0.5-mile radius.*”

General comments regarding the air quality impact analysis (Section 4.4) and the URBEMIS and carbon monoxide (CO) screening analysis include the following: 1) Use of out-of-date modeling tools, 2) the need to update analysis given delays in project construction and operation, 3) corrections to data results reported, 4) the need to include further details concerning CO screening, 5) the need to address diesel particulate matter (DPM) emissions, 6) the need to address regional significance under federal conformity, 7) other significance thresholds, 8) sources not considered, and 9) cumulative analysis discussion. These are discussed in more detail below.

1. The analysis to estimate construction and operational emissions utilized the URBEMIS model (version 7.4.2) which was issued in May of 2003. The current version of URBEMIS is 8.7 (dated April 29, 2005). Limited sensitivity analysis shows that using this latest version would greatly change operational emissions. These changes may

include the addition of architectural coating emissions from operations and changes in emission factors for on-road vehicles.

2. The URBEMIS analysis assumed that construction would begin in June of 2005, lasting 18 months, and operations would begin in December of 2006. Given project delays, a revised construction and operation schedule should be analyzed to account for changes in equipment and vehicle emissions factors. To note, emission factors tend to decrease as newer and more efficient engines are brought in service, so the current analysis is likely to be conservative in this sense. Secondly, default construction equipment assumptions from the URBEMIS 2002 model were used to calculate the air pollutant emissions generated from project construction. The default assumptions tend to be overly conservative in that it provides for more construction equipment and more usage of construction equipment than is likely needed. If available, site-specific equipment and equipment usage should be used. Other default assumptions such as 30-mile haul distance for disposal of demolition materials (and the 10-mile round trip distance for soil import and export) should be checked against the actual location of properly licensed landfill disposal sites (and soil borrow/disposal sites) to ensure that emissions are not significantly underestimated.
3. Several differences are noted between the URBEMIS results provided in Appendix R and those summarized in Section 4.4. These differences are as follows: In Table 4.4-3 the unmitigated PM10 emissions for Alternative A during 2006 should be 10.68 tons per year instead of 2.73 tons per year, thus changing the total construction related PM10 emissions for Alternative A to 19.02 tons per year. This correction should also be accounted for in the text of the document. Secondly, the operational emissions for Alternative B (Table 4.4-6) appear to be in error. Based on URBEMIS information provided, the unmitigated ROG, NOx, and PM10 emissions should be 5.85, 8.07, and 5.74 tons per year, respectively. Also the mitigated emissions should be 5.69, 7.85, and 5.59 tons per year, respectively. These table errors also appear in corresponding Draft EIS text.
4. Appendix R of the Draft EIS presents the URBEMIS modeling data. However, similar data was not presented for the CO screening analysis. At a minimum, the CO screening analysis should document the data used to determine the baseline and project CO concentrations at the seven analyzed intersections. This data should include (but not be limited to) vehicle speed, vehicle CO emission factor, receptor distance from edge, number of lanes within the primary and secondary roadways, whether roadway is at grade, depressed, or elevated, roadway peak hourly traffic volumes, and CO background concentrations. Although some of this data is within the traffic section of the document, this data should be included in Section 4.4 and/or Appendix R as it is pertinent to the CO screening analysis.
5. In August 1998, the California Air Resources Board (CARB) identified Diesel Particulate Matter (DPM) as a Toxic Air Contaminant. The California Office of

Environmental Health Hazard Assessment, which is a branch of California EPA, established toxicity values for DPM, both as a carcinogen and a non-carcinogen. The emissions of DPM from construction and operations are not addressed in the Draft EIS, but should be either through a health risk assessment or an assessment of its significance.

6. Although the construction and operational emissions do not exceed the Federal General Conformity *de minimis* thresholds, the analysis fails to assess the “regional significance” of the project’s emissions by comparison to the regional emission inventory. This step is required even when a project’s emissions are below the *de minimis* thresholds, and must be completed before a determination can be made that the project does not require a conformity determination.
7. For construction activities, the BAAQMD considers that a set of control measures (based on the size of the project) would reduce the fugitive dust emissions from construction activities to a less-than-significant impact. Section 5.2.3 (Air Quality mitigations) of the Draft EIS commits to all of the BAAQMD control measures that would apply to this project (jurisdictional issues aside), but these measures are not mentioned in the text of Section 4.4. The Draft EIS should clearly state that the dust abatement mitigations are adopted from BAAQMD CEQA guideline to reduce the contribution of project construction to local PM10 concentrations. Additional mitigation measures (such as limiting construction equipment idling time) related to combustion emissions should also be considered.

For operational emissions, BAAQMD’s CEQA Guidelines establish quantitative thresholds of significance of 80 pounds per day and/or 15 tons per year for total emissions of ROG, NOx, and PM10. The Draft EIS should explain why the General Conformity Rule was used exclusively when other, more site-specific standards are available for the analysis.

8. The Draft EIS mentions that emissions from natural gas combustion would be negligible (less than 2%) relative to total operational emissions. This statement cannot be verified because the Draft EIS omits what types of sources will use natural gas, the total estimated quantity of gas combusted, and the estimated emissions. In addition, to the Proposed Action includes a stand-by diesel generators for emergency power in the event of a power failure. Routine testing of these emergency generators produce DPM and other combustion emissions, and those emissions should be quantified in the Draft EIS.
9. NEPA specifically requires an assessment of the project-level and cumulative effects of a proposed action in relation to appropriate federal, state, regional and/or local standards to determine whether an impact is significant. This includes evaluating any potential overlap in construction with initial casino/hotel operations. According to the BAAQMD CEQA Guidelines, a project’s contribution to cumulative impacts should be

considered significant if the project's impact individually would be significant (i.e., exceeds the BAAQMD's quantitative thresholds). For a project that would not result in a significant impact individually, the project's contribution to any cumulative impact would be considered less than significant if the project is consistent with the local General Plan and the local General Plan is consistent with the applicable regional air quality plan. In this case, the applicable regional air quality plan would be the 2000 Bay Area Clean Air Plan. The Draft EIS does not address cumulative impacts and any overlapping of construction and operational emissions, though it should.

## **Biological Resources (Sections 3.5 & 4.5)**

The Biological Resource section fails to evaluate the potential effects of the Proposed Action to all federally listed species that may occur in the project area, as required by the Endangered Species Act and NEPA. Appendix G (Biological Resources Assessment) includes an outdated (2004) species list for the project site (the list should be less than 6 months old per the requirements of the Endangered Species Act); species from this list are also omitted with no justification from the species table presented on pages 3.5-7 through 3.5-17. A draft U.S. Fish and Wildlife Service (USFWS) species list for the Richmond Quadrangle (April 11, 2006) includes the following species:

### **Listed Species**

#### **Invertebrates**

*Speyeria callippe callippe* - callippe silverspot butterfly (E)

#### **Fish**

*Eucyclogobius newberryi* - tidewater goby (E)

*Hypomesus transpacificus* - Critical habitat, delta smelt (X)

*Hypomesus transpacificus* - delta smelt (T)

*Oncorhynchus kisutch* - coho salmon - central CA coast (E)

*Oncorhynchus mykiss* - Central California Coastal steelhead (T)

*Oncorhynchus mykiss* - Central Valley steelhead (T)

*Oncorhynchus tshawytscha* - Central Valley spring-run chinook salmon (T)

*Oncorhynchus tshawytscha* - Critical habitat, winter-run chinook salmon (X)

*Oncorhynchus tshawytscha* - winter-run chinook salmon, Sacramento River (E)

#### **Amphibians**

*Rana aurora draytonii* - California red-legged frog (T)

#### **Reptiles**

*Masticophis lateralis euryxanthus* - Alameda whipsnake [=striped racer] (T)

#### **Birds**

*Charadrius alexandrinus nivosus* - western snowy plover (T)

*Haliaeetus leucocephalus* - bald eagle (T)

*Pelecanus occidentalis californicus* - California brown pelican (E)

*Rallus longirostris obsoletus* - California clapper rail (E)

*Sterna antillarum* (=albifrons) *browni* - California least tern (E)

#### **Mammals**

*Reithrodontomys raviventris* - salt marsh harvest mouse (E)

#### **Plants**

*Arctostaphylos pallida* - pallid manzanita (=Alameda or Oakland Hills manzanita) (T)

*Holocarpha macradenia* - Critical habitat, Santa Cruz tarplant (X)

*Holocarpha macradenia* - Santa Cruz tarplant (T)

#### **Proposed Species**

##### **Reptiles**

*Masticophis lateralis euryxanthus* - Critical habitat, Alameda whipsnake (PX)

#### **Candidate Species**

##### **Fish**

*Oncorhynchus tshawytscha* - Central Valley fall/late fall-run chinook salmon (C)

*Oncorhynchus tshawytscha* - Critical habitat, Central Valley fall/late fall-run chinook (C)

Of the above species, only the California clapper rail and salt marsh harvest mouse are even mentioned in the Draft EIS. While the project site may not contain habitat for the majority of the above species, they should at least be addressed in Table 3.5-1 as to their status and reason why the project may or may not affect them. This requirement is a fundamental to NEPA and the Endangered Species Act. The BIA must informally consult with USFWS to ensure that the Proposed Action will not have an adverse affect (or incidental take) on federally listed species. It appears that either no consultation has taken place, or that the BIA has failed to act on the consultation and has not addressed the potential effects of the project upon the above listed species. It is our professional opinion that without including an evaluation of potential effects to the above listed species (and other federally listed species specified by the USFWS in an official species list provided through informal consultation), it is impossible to make a finding of significance in terms of the project's potential to adversely affected federally listed species.

The entire impact analysis within Section 4.5 focuses on the potential direct effects of site development. NEPA and the Endangered Species Act require the lead agency (BIA) to evaluate the potential indirect impacts as well. These indirect impacts may include impacts to water quality and quantity within San Pablo Bay and the surrounding marshland. The Draft EIS fails to evaluate the potential effects of the Proposed Action on fisheries and other aquatic species. It also fails to evaluate the potential effects of the Proposed Action on the Pacific Groundfish Fishery and Coastal Chinook Fishery, as required by the Magnuson-Stevens Fishery Conservation and Management Act. It is our professional opinion that these are fatal omissions to the Draft EIS and a Record of Decision (ROD) could not be executed for the project without an evaluation of impacts to these resources.

## **Socioeconomic Conditions (Sections 3.7 & 4.7) and Environmental Justice (Sections 3.11 & 4.11)**

### ***Socioeconomic Conditions***

The existing Socioeconomic Conditions section (Section 3.7) of the Draft EIS provides a minimally adequate representation of the Proposed Action's affected populations and socioeconomic environment. The structure of the report implicitly presents the Tribe as the project's primary affected population. It is unclear where the tribal members currently reside and the extent of their current role and participation in the local or regional community. It is also arguable that the broader local community of North Richmond residents should be identified as an affected population. However, the Draft EIS does not specifically identify and analyze this community—despite the additional information on local resident's income and racial composition provided for the Environmental Justice analysis. Instead, the Draft EIS evaluates the City of Richmond as a whole. The lack of information in the socioeconomic section on the project's surrounding neighborhood's character, land use, and residents does not facilitate comparisons between the Tribe and local population that will be most directly impacted by the Proposed Action.

Similarly, comparison in the past and projected growth rates between the region, county, and City of Richmond is difficult due to the presentation of the population data as non-annualized growth estimates often for different future time periods.

The existing condition discussion is also misleading in its assertion that 95.5% of tribal members are “*low-income*” (p.g. 3.7-1). Based on the income distribution data in Table 3.7-1, low-income tribal members consist of adults with annual incomes less than \$50,000. In contrast, for the Draft EIS's Environmental Justice analysis “*low-income*” is implicitly defined as corresponding to the U.S. Census poverty level. As discussed below, the most current poverty thresholds (2002) for a *two* parent household with two children is \$18,849—a threshold at least 62% lower than that applied to *individual* tribal members. This inconsistency in the low income definitions results in a major understatement of the local low-income population's size.

### **Socioeconomic Impacts**

Both the Draft EIS and the supporting Economic Impact analyses (Appendix S) provide little information on the proposed casino's expected source of revenues, customers, and future visitation levels. Presumably this information is presented in the Market Study and Financial Projections also conducted by KlosRobinson Q.E.D. for the Tribe. The casino's future attendance can be deduced to be approximately 9.52 million based on the per patron government service costs (page 4.7-7). The casino's future income is reported to be \$242.4 million in the discussion of tribal attitude impacts. Better presentation and additional information clarifying these basic and important underlying aspects of the Proposed Action would help better understand the reasonableness of the impact findings.

Although the limited information provided may be sufficient for minimum requirements of NEPA compliance, the lack of specificity on many issues hinders readers from fully evaluating the

Proposed Action's impacts. For example, the Draft EIS reports the new income from the casino "to be managed by the Tribe" (page 4.7-6) before debt service will be \$242.4 million. Yet it is net income (and more precisely profits to the Tribe) that will best represent the Proposed Action's financial benefits to the Tribe. While proprietary concerns often are claimed to limit such information, additional general information on the future management, source of capital, and likely compact payments to the state of California could be provided to give a more realistic understanding of the economic implications of the alternatives. The Scotts Valley Band does not currently have the capital or management necessary to develop and operate the Proposed Action. Therefore, more information on the actual likely future operations and management would help to more meaningfully represent the future fiscal benefits to the Tribe and local community.

Similarly, the economic analysis is unclear about the assumptions and justifications underlying its substitution effects. The reasonableness of the relatively low 12% substitution effect cannot be readily evaluated without additional market demand information. In addition, for the smaller casino alternative (Alternative B), a greater 38% substitution effect was applied presumably partly due to the additional assumption "that a large Indian Casino would also be developed at San Pablo." It is unclear whether this assumption includes the proposed new Guidiville Tribe casino in Richmond at Point Molate, or instead the expansion of the existing San Pablo casino operated by the Lytton Band of Pomo Indians. In any case, the greater substitution effect reduces the economic benefits of the non-proposed alternatives. However, the differences in the competing casino assumptions and lack of information on the rationale behind the substitution assumptions make it more difficult to fairly compare the impacts amongst the different alternatives. Furthermore, it is unclear to what extent that development of another major casino in Richmond or San Pablo would reduce the project's future revenues and beneficial economic impacts.

In general, the socioeconomic impact analysis of the alternatives is highly repetitive with little analysis comparing of the magnitude of impacts between the alternatives. A summary table of the impacts would greatly aid the reader's ability to compare the similarities and differences amongst the alternatives.

The Draft EIS's analysis of the potential social cost of gambling is located somewhat confusingly within the affected environment's description of the socioeconomic conditions. Nonetheless, the section provides an informative description of the current issues and research on problem gambling social impacts. In its assessment of the primary effects of "problem gambling," it reported the NGISC (National Gambling Impact Study Commission) finding that:

*"NORC [National Opinion Research Center] estimated that the annual average costs of job losses, unemployment benefits, welfare benefits, poor physical and mental health, and problem or pathological gambling treatment is approximately \$1,200 per pathological gambler per year and approximately \$715 per problem gambler per year (NGISC, 1999:4-14)."*

The problem gambling assessment continues by evaluating the secondary effects of gambling and appears to accept the NPSGSC (National Public Sector Gaming Study Commission) study

conclusions that “*there is no link between gambling, particularly casino-style gambling, and crime*” and US Department of Treasury findings that there are “*no connection between state bankruptcy rates and either the extent of or introduction of casino gambling.*” This section of the Draft EIS’s actual conclusions are confusing and the subsequent findings on the social cost of Proposed Action-related problem gambling (presented later in Chapter 4, Environmental Consequences) lacks a clear argument for its assertion that the proposed mitigation will be adequate to ensure no significant social costs result. The adequacy and efficacy of the proposed mitigation measures are questionable—especially given the reported NRC (National Research Council of the National Academy of Sciences) incidence and NORC treatment cost estimates. Inclusion of these statistics and given the casino’s projected high annual visitation and revenues begs the question of the projected incidence of related problem gambling costs.

The proposed mitigation measures have been widely and generally applied by other casino developments. Furthermore, there remains an as yet unresolved debate in the public health community on the causal link between the prevalence of casinos and gambling addiction. However, unlike most other recent Indian casino projects in Northern California, the Proposed Action’s casino would be located in the midst of low-income and minority communities. As a result, it may be argued that these populations would be particularly susceptible and vulnerable to adverse social impacts from problem gambling due to their limited discretionary income and few alternative local entertainment options and employment opportunities.

The Draft EIS states that as mitigation for such social impacts, the Tribe is committed to fund local organizations addressing problem gambling by an amount well in excess of the typical mitigation paid by other similar casino developments (an amount estimated to typically be \$10,000). However, the Draft EIS does not specify the amount, the likely service organizations to be supported, or any other information on this proposed mitigation. Ideally, greater detail on, and commitment to, service need-assessment and evaluation of the mitigation measures future performance would better enable the public to understand the nature and magnitude of the mitigation offered and its adequacy. Such additional information and analysis of these issues and associated public health factors would improve the Draft EIS’s ability to assert the need and adequacy of the proposed mitigation measures to reduce future Proposed Action related gambling impacts. That information and analysis would thereby significantly improve reviewer’s abilities to meaningfully evaluate, analyze, and compare the future casino development impacts and provide a “*clear basis for choice among options,*” per CEQ Regulations for Implementing NEPA, Section 1502.14.

## ***Environmental Justice***

### **Low-Income Populations**

The Environmental Justice impact analysis section (Section 4.11) concludes that “*there are no low-income populations greater than 50% within the affected area*” (page 4.11-1). While the analysis seems to implicitly assume that the US Census poverty level defines the limits for low income populations, the Draft EIS does not clearly state its criteria or assumptions determining low-income populations. The CEQ’s Environmental Justice guidance does not clearly set the

demarcations at the Census poverty thresholds but states: “*Low-income populations in an affected area should be identified with the annual statistical poverty thresholds from the Bureau of the Census’ Current Population Reports, Series P-60 on Income and Poverty.*”

Poverty level thresholds vary according to a household’s size and composition. The most current poverty thresholds (2002) are \$18,849 for a two parent household with two children (a useful illustrative statistic omitted by the Draft EIS’s Environmental Justice analysis). The Census’s poverty thresholds provide one national measurement of income that is not adjusted for regional costs of living. Amongst its poverty statistical data, the US Census also reports population data income ratios from 50% to 200% of the poverty threshold in its published series PCT50 “Age by Ration of Income in 1999 to Poverty level” for Census Summary File 3. For many federal and state programs, eligibility levels are significantly higher than the poverty level (e.g., WIC program food stamps and food stamps in California the eligibility criteria is 185% of the poverty level).

The Metropolitan’s Transportation Commission (MTC) “2001 Regional Transportation Plan Equity Analysis and Environmental Justice Report” is one of the most substantial recent Environmental Justice analyses and has been used by several other Bay Area agencies as a model. In its definition of Low-Income Communities MTC report states:

*“Low-income is defined as a person whose household income is at or below the US Department of Health and Human Services Poverty Guidelines. For the purposes of this exercise [i.e. 2001 Regional Transportation Plan Equity Analysis] the definition of low-income to households was established as households at or below 200% of poverty. This level was used to reflect the relatively high cost of living in the Bay Area. Zones where 30% of the total population or greater is low-income were included in the Equity analysis.”*

In addition to not clearly defining the term “low-income,” the Draft EIS also misapplies a 50% threshold to the low-income communities—CEQ only mentions a 50% threshold in the context of identifying minority populations. Adoption of the MTC guidelines would drastically change the findings identifying the affected low-income population.

### **Minority Populations**

While the Environmental Justice analysis correctly identifies the term “minority” (page 4.11-1), it omits the additional CEQ guidance that states “*A minority population also exists if there is more than one minority group present and the minority percentage, as calculated by aggregating all minority persons, meets on of the above-stated thresholds*” (page 26, CEQ).

Putting aside the County’s very different racial composition, which would seem in and of itself to suggest the local area has a “meaningfully greater” minority population (i.e., as observed by North Richmond MAC), the omitted additional CEQ guidance would clearly qualify all of the census tracts identified in Table 3.11-1 as minority populations except for Tract 3690.02. This finding would presumably change the level of Environmental Justice impact analysis that should subsequently be performed.

## **Impact Analysis Findings**

These above discrepancies and errors to the affected population would suggest more thorough Environmental Justice analysis should be performed. Due to the vague and untested state of Environmental Justice precedent, it is not clear that significant adverse Environmental Justice impact findings can be attributed to the project. However, by dismissing “communities of concern” in the Draft EIS, the extent and magnitude of the disparity in the future financial and economic benefits between the Tribe and the local community are understated and less apparent.

## ***Summary of Peer Review Findings for Socioeconomic Conditions and Environmental Justice***

The socioeconomic conditions analysis has numerous deficiencies, mostly in a lack of clarity and supporting information. The affected environment for socioeconomic conditions does not identify the surrounding North Richmond residential communities as a specific affected population (despite their inclusion in the subsequent Environmental Justice analysis) and is seemingly inconsistent in its identification of low-income populations. The limited information on the future casino’s customers, market, revenues, and underlying assumptions (such as future competing casino development) makes it hard to evaluate the reasonableness of the analysis findings or make comparisons amongst the alternatives, which is not in keeping with CEQ Regulations for Implementing NEPA, Section 1502.14.

The assessment of the social impacts of problem gambling is also unclear and limited. As a result, the likely magnitude of the potential social costs and the adequacy of the proposed mitigation can not be readily assessed by reviewers.

The environmental justice affected environment section (Section 3.11) of the Draft EIS is unclear and incorrect in its identification the low-income and minority populations whom should be qualified as “communities of concern.” While the data provided in the Section 3.11 appears adequate, the affected populations are not clearly identified until impact analysis in Section 4.11. The analysis in Section 4.11 dismisses most of the census tract populations as either low income or minority community of concern for not passing a 50% threshold. This dismissal reads as more plausibly occurring without the income and population statistics.

## **Resource Use Patterns (Sections 3.8 & 4.8)**

### ***Transportation/Circulation***

ESA conducted a review of the Traffic Impact Study prepared by Abrams Associates in February 2005 (Appendix K) because it served as the basis for the Draft EIS Transportation/Circulation section and contains more details of approach, assumptions, methodology, etc., than the Draft EIS itself; text in the Abrams report was cross-referenced to the Draft EIS, and page references in the comments below are from the Draft EIS, unless otherwise indicated.

## Mitigation Measures (Section 5.0)

- Based on standard practice for determination of impacts (i.e., degradation of LOS conditions to worse than the standard of significance), the Proposed Action's impact at the intersection of Richmond Parkway/Parr Boulevard during the AM and PM peak hours (Table 10, page 47, of the Traffic Impact Study) would be significant, not "potentially" significant as described on page 45 of the Traffic Impacts Study.
- Under cumulative (2025) conditions, because LOS conditions would be worse than the standard of significance at intersections on Richmond Parkway, it is appropriate that the Proposed Action's mitigation would be payment of a proportionate share of the costs for the improvement (as described in Section 5.0, Mitigation Measures). Based on standard practice, the proportionate share should be determined on the basis of the Proposed Action's percent contribution to the increase in traffic volumes (i.e., the percent of the difference between existing to cumulative volumes), not its percent contribution to the total cumulative traffic volumes. The Draft EIS seems to state that it assumes the "*proportionate share is derived from the percentage that the added project trips contribute to the new total trips ...*" (page 5-10) (emphasis added), but it is still unclear exactly what would be the basis used to allocate the project's proportionate share of costs.

## Other Concerns

- Presentation of LOS results for side-street stop-sign-controlled intersections (page 3.8-17, Table 3.8-6) gives no indication of whether the LOS is for the worst controlled movement or for the overall intersection. The Draft EIS omits the technical appendix for the Traffic Impact Study, which contains the LOS calculation sheets. The LOS must be reported for the worst controlled movement at these types of unsignalized intersections, and if the LOS reported in the Draft EIS is in fact for the overall intersection, then the LOS is underreported. CEQ Regulations for Implementing NEPA, Section 1502.24, require that "*professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements,*" be observed and that the EIS "*shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.*"
- On page 4.8-3, the Draft EIS omits the source for the statement, "*it is likely that the pass-by traffic for the casino component of the project would be between 5 and 10 percent,*" which raises some questions. How did the casino traffic studies cited on page 4.8-2 determine a pass-by percent? Also, why is 10% pass-by assumed for the pending retail project (page 28 of the Traffic Impact Study), but 34% pass-by was used for retail and restaurant uses of Project Alternatives C and D (page 44 of the Traffic Impact Study)? These discrepancies should be corrected or explained to ensure professional integrity of the document, per CEQ Regulations for Implementing NEPA, Section 1502.24.

- The text on page 4.8-3 states that the project’s highest trip generation would occur on weekends, and then refers to an analysis that indicates that the weekday PM peak hour is the most critical time period for determining project impacts. The Draft EIS presents a weekend peak-hour trip generation rate of 5.66 trips per 1,000 square feet, which is about 37% higher than the trip rate for the weekday PM peak hour (4.14 trips per 1,000 square feet). The Draft EIS does not, however, present existing weekend peak-hour traffic volumes at the study intersections. Unless weekday PM peak-hour volumes are more than 37% higher than weekend peak-hour volumes, it’s possible that Baseline Plus Project volumes could be higher (and project impacts worse) during the weekend peak hour than during the weekday PM peak hour. The Draft EIS should include information on weekend evaluation of potential project impacts at area intersection in its discussion, as those numbers could considerably change the document’s analysis of Transportation/Circulation impacts, or explain its omission for the document.
- Compared to the Traffic Impact Study, which clearly shows the Proposed Action’s significant impact at the intersection of Richmond Parkway/Parr Boulevard and the required measure to mitigate that impact, Section 4.8 of the Environmental Consequences section of the Draft EIS seemingly conceals that significant impact by describing 2006 Baseline and Baseline Plus Project Alternative LOS (pages 4.8-9 to 4.8-11) with the above-cited required mitigation measure in-place. The LOS and delay value for Richmond Parkway/Parr Boulevard under Alternative A conditions in Table 4.8-5 (page 4.8-10) represent the “with mitigation” conditions presented in Table 10 in the Traffic Impact Study (page 47). However, as stated above, as described in Section 5.0, Mitigation Measures, the Tribe would be responsible for the full costs of the measure required to improve the LOS to an acceptable level under “With Project” conditions at this intersection. The Draft EIS needs to clearly present impacts by stating in the impact discussion that the Proposed Action would cause a significant traffic impact (with text reference to the required mitigation measure in Chapter 5.0).
- The assumption that various roadway improvements will be in-place under 2025 cumulative conditions (page 61 of the Traffic Impact Study) is questionable given their current status (e.g., unfunded, and not listed in the County Transportation Plan).

The Draft EIS states that the traffic analysis was prepared based on CCTA Technical Procedures (page 4.8-1), but those Procedures state “*if a jurisdiction elects to use another method for calculating LOS, it must be used **in addition** to the adopted methodology described in this section*”. The Draft EIS does not use (or even present) CCTA LOS results, and there is no way for reviewers to see whether the delay-based LOS results are similar to CCTA-based results. In addition, the Draft EIS does not describe the verification process mentioned on page 3.8-8.

## **Public Services (Sections 3.9 & 4.9)**

The Draft EIS does not adequately address all public service elements and claims less-than-significant impacts with inadequate evidence to support those claims. Several items are of special note; first is that Appendices A, C, and D referred to in the public services section are not, in fact,

“Will Serve” letters as the document asserts; they are merely acknowledgements of the Proposed Action and lack any specific commitment to serve the project’s needs without further review of the project and/or a negotiated contract with the Tribe. Secondly, several sources cited throughout Section 4.9 are either not referenced in Section 8.0, References, or are mis-dated (it is unclear if the mis-date is in Section 4.9 or Section 8.0). CEQ Regulations for Implementing NEPA, Section 1502.21, Incorporation by Reference, state that “[n]o material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.” The errors in this document do not allow reasonable availability of these sources to the reviewer, most of which support important claims. Below is a table listing some notable reference errors in Section 4.9.

Citation	Affected Pages*	Issue
Karl, pers. comm., 2005	4.9-5, 4.9-6, 4.9-16, 4.9-17, 4.9-25, 4.9-26, 4.9-34, 4.9-35	No reference available in Section 8.0
Yolo County Sheriff, 2004	4.9-9	No reference available in Section 8.0
Placer County Sheriff, 2004	4.9-9	No reference available in Section 8.0
Lori Hill, pers. comm., 2004	4.9-11, 4.9-20, 4.9-38	No reference available in Section 8.0
AES, 2002	4.9-2, 4.9-21, 4.9-30	No reference available in Section 8.0
AES, 2005	4.9-14, 4.9-15, 4.9-19, 4.9-21, 4.9-23, 4.9-27, 4.9-30, 4.9-32, 4.9-33	No reference available in Section 8.0
Group West, 2004	4.9-19, 4.9-27, 4.9-36	No reference available in Section 8.0
SCE, 2004	4.9-19, 4.9-27, 4.9-36	No reference available in Section 8.0
WCWD, 2001	4.9-1	Reference dated 2004 in Section 8.0
WCWD, 2003	4.9-22	Reference dated 2004 in Section 8.0
Ryan, 2004	4.9-4, 4.9-15, 4.9-24, 4.9-33	Reference dated 2005 in Section 8.0
CIWMB, 2004	4.9-6, 4.9-17, 4.9-26, 4.9-35	Reference dated 2005 in Section 8.0
Contra Costa County Sheriff, 2004	4.9-11, 4.9-20, 4.9-29, 4.9-37	Reference dated 2005 in Section 8.0 and labeled “Contra Costa County Office of the Sheriff”
Winnicki, 2004	4.9-3	Reference dated 2005 in Section 8.0

NOTE: \* Not all affected pages are listed.

To summarize, it is our professional opinion that the Public Services section of the Draft EIS does not fully meet the requirements of NEPA, as is detailed below.

### **Wastewater**

The Draft EIS states that “WCWD is reviewing project plans to determine appropriate measures to serve the project. Details of this request can be found in Appendix A,” (page 4.9-3). It can be assumed from this statement that no formal assessment has been made regarding the potential impacts to West County Wastewater District (WCWD) and its facilities due to project implementation, though one is underway. Appendix A (a letter from WCWD to the Tribe) does not support this assertion that WCWD is currently reviewing the project plans. While the letter does make mention of a preliminary design review, it states that “WCWD will determine whether it has and will allocate sufficient capacity to serve the Project” only after “receipt of a complete application for service and the then-applicable application processing fee,” implying that no review has been done, is underway, or will be done until an application is submitted. This discrepancy between WCWD’s letter and information presented in Section 4.9 should be addressed.

Furthermore, Appendix A is presented as a “Will Serve Letter” from WCWD, which it is not. The letter clearly states that it “is not an offer, promise or commitment to serve the Project or to reserve or allocate sufficient capacity to do so,” and that “conditions cannot currently be

*established.*” A “Will Serve” letter typically states that certain goods and service will be provided or addressed by a specific district, organization, or other entity and is generally considered necessary for a project of this magnitude.

The Draft EIS purports that project flows would not constitute a “*significant increase in daily flows because they would not exceed existing WCWD wastewater capacity,*” (page 4.9-3); however, WCWD’s letter to the Tribe (Appendix A) does not support this assertion, and in fact offers a differing view, stating that “*sewage capacity is becoming increasingly scarce.*” CEQ Regulations for Implementing NEPA, Section 1502.16, state that “*the [environmental consequences] discussion will include the environmental impacts of the alternatives.*” Because of the discrepancies between Appendix A and Section 4.9 regarding wastewater, and because the Tribe has failed to elicit a commitment from WCWD to serve the project, and because WCWD is not confident about the current and future sewage capacity, the Proposed Action’s direct and indirect effects on local wastewater service is unaccounted for in this Draft EIS.

Regarding the calculation for wastewater flow, on page 4.9-1, the wastewater analysis relies on information that is “*based on assumed flows from other similar casinos in Northern California.*” However, it is not disclosed how these assumed flows are derived except to say that “*it has been observed....*” What are the criteria used for these assumptions and observations that are intended to legitimize statistics regarding occupancy rates?

Wastewater flow calculations presented in Table 4.9-1 are shown in full in Appendix T. But similarly to the above-mentioned lack of criteria, no official or known authoritative sources are given for the numbers used in the calculations. Per CEQ Regulations for Implementing NEPA, Section 1502.24, “*Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.*” The only source give is a 2005 AES document that is not listed in the references, therefore, the reviewer is precluded from investigating further these important calculations.

While Alternatives B through D present lower wastewater demands, they are nonetheless not properly evaluated per NEPA by not including an impact analysis based on a project design review from WCWD nor obtaining a proper commitment from WCWD to serve the project (see above).

Mitigation measure 5.2.8(A) states that the “*Tribe shall be responsible for funding and constructing...wastewater line upgrades to serve the project site.*” However, that measure falls short of measures that WCWD maintains are necessary for the proposed project. The following excerpt from Appendix A states additional mitigation measure that would apply “*without limitation:*”

*“(1) a binding enforceable commitment by the Project proponents to abide by all applicable Federal, state, local and WCWD laws, rules, regulations and ordinances that pertain to the discharge of sewage from the Project: (2) a waiver of the Tribe’s sovereign*

*immunity in a form and content acceptable to the WCWD; (3) the then availability of sufficient capacity and ability to serve the Project; (4) payment for and or construction of any offsite or onsite wastewater collection, treatment and disposal facilities the WCWD determines are necessitated by the Project; (5) payment of all applicable connection fees and sewer use charges and (6) such other conditions as the WCWD reasonably imposes.”*

CEQ Regulations for Implementing NEPA, Section 1502.14(f) state that an EIS shall include “*appropriate mitigation measures not already included in the proposed action or alternatives.*” It is reasonably arguable that the mitigation presented for wastewater is not appropriate as it greatly deviates from that required by the wastewater collection agency that would serve the project. From another perspective, without knowing the extent of the additional facilities that will need to be constructed to provide for wastewater collection for the Proposed Action, one could argue that the Alternatives descriptions themselves are incomplete as construction of additional facilities would be an interconnected activity to the Proposed Action and therefore should be viewed as an element of the Alternatives and analyzed throughout the document under NEPA.

### ***Water Supply***

For Alternatives A–D, an upgrade/installation to existing water mains would need to occur that would take place from Parr Boulevard and 3<sup>rd</sup> Street and end near the intersection of Parr Boulevard and Richmond Parkway. This “*necessary*” (page 4.9-4) upgrade/installation would span approximately 1/3 mile of public roads. Although the document does not discuss impacts due to this installation/upgrade, it does offer Mitigation Measure 5.2.8(A), which states that the Tribe “*shall be responsible for funding and constructing water...line upgrades to serve the project.*” However, because the installation/upgrade would be necessary for the project (Alternatives A–D), NEPA requires it be included as part of the Proposed Action and evaluated throughout the document as such because it is an interrelated action.

This connected action to the Proposed Action will likely require permits, temporarily affect traffic, and pose temporary safety risks during construction on the 1/3-mile portion of Parr Boulevard. If the Lead Agency feels that the necessary water main upgrade/installation is not a connected action to the Proposed Action, then the document needs to include information on why it was excluded for evaluation in this Draft EIS and in what subsequent document it will be evaluated. So when on page 4.9-4, the Draft EIS asserts that there are no significant effects to “*on-site water distribution facilities;*” this statement may be true, but there will be an impact to the surrounding offsite area due to this installation/upgrade.

Furthermore, page 4.9-3 of the Draft EIS uses the quantity of 5,000 gpd per acre for irrigation purposes for landscaped areas of Alternative A; however, no criteria is given to legitimize this number nor is any source cited. Per CEQ Regulations for Implementing NEPA, Section 1502.24, as quoted above, a methodology needs to be provided to ensure scientific integrity of an EIS.

## **Solid Waste**

An in-text citation for a personal communication with Karl (2005) mentioned on pages 4.9-5 and -6 does not have a corresponding reference in Section 8.0, References. This citation is used to source important statements such as “*demolition material [from project construction] would account for a negligible increase in the daily waste disposal stream of the landfill,*” (page 4.9-5) and “*waste generated from Alternative A... would represent a negligible addition to the landfill,*” (page 4.9-6).

Additionally, no “Will Serve” letters from Potrero Hills Landfill (for operational waste disposal) or West Contra Costa Sanitary Landfill (for construction waste disposal) were made available in lieu of, or in addition to, a proper reference stating that the landfills can and will accept waste from the proposed project. Without either “Will Serve” letters or a proper reference, the public cannot be expected to properly review solid waste impacts in the Draft EIS.

## **Public Health and Safety**

The “Will Serve” letter from the County Sheriff’s Department does not guarantee service or make any commitments to the Tribe for the Proposed Action but relies on potential pending negotiations of a contract between the Tribe and the sheriff’s department to allow for future service. The terms of that potential contract are essential to the analysis of the document, which, after puzzling calculations comparing transient casino patrons to permanent local residents, specifically states that an additional three to four deputies would be required to serve the proposed project under Alternative A. However, the mitigation measure for this Alternative (5.2.8(R), page 5-15) uses the language “*up to four deputies,*” instead of “three or four”. The disparity between the two recommendations leaves room for inadequate law enforcement should this project be approved; therefore, the language in the mitigation measure needs to be changed to correspond with the document’s analysis in order to properly mitigate adverse environmental impacts.

The Draft EIS asserts that the “*demand for public safety services would be less from casino patrons than it would be from a permanent residential population,*” (page 4.9-8) but no source or criteria is given to support that claim. Per CEQ Regulations for Implementing NEPA, Section 1502.24, “*any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.*” The accuracy of this claim withstanding does not preclude the Draft EIS from citing a source for this conclusion.

Mitigation Measures 5.2.8(P) through (U), (AA), and (BB) all use negotiations with the County to determine the “contributions” from the Tribe for various additional services that will be needed for the Proposed Action (Alternatives A–D). These mitigation measures lack any specific payment information and hold no guarantee that an agreement will be met to ensure that the project’s adverse effects are properly mitigated. The incorrectly titled “Will Serve” letters from the Contra Costa County Fire Protection District (Appendix C) and the County Sheriff’s Department (Appendix E) also do not guarantee successful negotiations; therefore, the public cannot be assured that that these necessary services will be made available upon project completion.

## Other Values (Sections 3.10 & 4.10)

This section omits information crucial for ascertaining direct and indirect effects on the environment as well as containing several errors, discrepancies, and confusing information. It is our professional opinion that the Other Values section of the Draft EIS does not fully meet the requirements of NEPA, as is detailed below.

### Noise

The Executive Summary omits some important information. Table ES-1 (page xxix) presents a summary of the potential environmental effects, mitigation measure, and significance for the Proposed Action. The “Environmental Effect” discussion (column 1) for alternatives AB, AC, and AD does not include a potentially significant impact for construction noise, as in alternative AA. Also, the Noise Study done for the Draft EIS (Appendix V, page 7) describes an additional Mitigation Measure (“B”) that should be included for alternatives AA, AB, AC, and AD:

*“Construction noise effects may be minimized by requiring that all powered equipment comply with applicable local, state and federal regulations, and that all such equipment shall be fitted with adequate mufflers according to the manufacturer’s specifications.”*

However, this mitigation measure proposed by the Draft EIS’s Noise Study is not included in Table ES-1. This discrepancy should be either corrected or explained.

Section 3.10.1, Noise, lacks any description or figure that shows the location and distance of nearby existing sensitive receptors in the vicinity of the project site. This description is necessary to determine the direct affect of project construction and operation noise on nearby sensitive receptors, per CEQ Regulations for Implementing NEPA, Section 1502.16 (a) (see the discussion for Section 4.12 below).

Section 4.10 relating to noise omits some important information and analysis. The most obvious omission in Section 4.10 is the absence of any discussion of the traffic-related noise impacts on the local roads. According to Table 4.8-2 (page 4.8-4) there will be 14,000 trips a day to the casino and according to Figure 4.8-3, approximately 10% of these trips would use local roads. Unfortunately Section 4.10 does not consider the 10% of these trips that would use the local roads. In fact, far more than 10% of the trips may arrive at the casino using local roads because local roads may be or may “seem” more direct than using the Richmond Parkway. The fact that “it is expected that all patrons will be directed to use Richmond Parkway to reach the site and that patrons approaching from the greater Bay Area to the south will be directed to take the I-580 freeway” (page 4.8-4) is not compelling evidence that 90% of all traffic will use the Richmond Parkway. No methodology is given to support that statement. Figure 4.8-3 addresses this issue in the vaguest way possible with box hexagons showing 6% and 4% of the traffic using local roads. But Figure 4.8-3 does not identify which local roads would be used, and there is no analysis of the noise from traffic on these local roads. It is not enough to expect that all patrons will be directed to use Richmond Parkway, the Draft EIS needs to analyze the noise impacts of the patrons that do not use Richmond Parkway. How will this traffic affect noise levels, especially

during the night and how much sleep disturbance will this additional noise from nighttime traffic cause in the local neighborhoods?

This analysis is important for noise impacts because: (1) there are residences living on these streets, (2) these streets currently may have low traffic volumes so that even minor traffic could significantly increase the noise levels, and (3) some of the traffic could occur at night. Nighttime noise is “penalized” 10 decibels in calculating 24-hour DNL or CNEL levels because noise at night is the most annoying noise. Nighttime noise can cause sleep disturbance, especially if the noise is on local roads adjacent to homes.

It is unfortunate that the Draft EIS did not deal with the local roads because local roads are where the noise impacts will be most felt. Traffic leaving the casinos between 10 pm and 7 am and traveling on local roads would have the greatest noise effect. The Draft EIS only deals with traffic noise on the major roads that are not adjacent to homes—the Draft EIS acknowledged that there would be an increase in noise but then discounts that fact because there are no residences adjacent to the Richmond Parkway. The Draft EIS needs to analyze noise on roads that are adjacent to residences. These roads could include San Pablo Blvd., Gertrudude, 3rd Street, 24th Street, Cutting, El Portal, Brookside, Rumrill, and more. Without this analysis, direct noise effects to local residents cannot be fully addressed.

Compared to many casinos, this casino location has a high potential for very annoying traffic-related noise on local roads. As can be seen on Figure 1-2 in the Draft EIS, the most direct route to the casino is through local neighborhoods. The effects of traffic and traffic-related noise on local neighborhoods are obvious adverse impacts of developing a casino at this location and unfortunately the Draft EIS has no analysis of traffic-related noise on local neighborhoods.

Additional information that should be added to the Draft EIS is as follows. Tables 4.10-2, 4.10-4, 4.10-6, and 4.10-8 should include an additional column that shows the incremental change in noise levels of the respective alternative versus existing levels. This column would clearly depict whether the incremental noise increase would exceed the FICON thresholds shown in Table 3.10-5.

Also, as discussed for Section 3.10 above, there is no description or figure that shows the location and distance of nearby sensitive receptors in the vicinity of the project (see the discussion for Section 4.12 below).

Lastly, Section 5.2.9, concerning noise mitigation measures, contains an exclusion. The additional Mitigation Measure (“B”) described in the Executive Summary revisions above should also be added to page 5-17 of Section 5.2.9.

### ***Hazardous Materials***

The Draft EIS contained discrepancies within the hazardous materials appendices (M–Q) and between their analysis and findings and the analysis and mitigation measures presented in Sections 4.10 and 5.0.

- Appendix O, 155 Parr Phase II ESA, of the Draft EIS presents some conflicting information in its “Conclusions and Recommendations” section (page 10). The appendix states that “*Concentrations of TPH- and metals in groundwater exceeding regulatory screening levels were present in Wells MW-1 and MW-3,*” but then shortly thereafter states that “*Low concentrations of TBH and BTEX constituents that were detected in the monitoring wells did not exceed regulatory screening levels.*” These statements are obviously in disagreement with one another and should be reconciled as their accuracy could change the outcome of the findings that “*no further investigation or remedial action appears warranted at this time.*”
- Appendix Q, 2701 Goodrick Phase I ESA, Section 5.0, Findings and Conclusions, presents information on one “*five gallon pail of degreaser*” that is located on the project site, as does Section 3.10 of the Draft EIS (page 3.10-15). However, the pail is not mentioned in hazardous materials in Section 4.10 nor is it accounted for in the prescribed hazardous material mitigation measures (Section 5.2.9 (B–M)), despite Appendix Q’s recommendation that it be “*properly removed from the project site and properly disposed of.*”

### **Visual Resources**

Because of the size of the project (Alternative A) and its lack of similarity to surrounding structures, it will impact the visual resources in the area. The Draft EIS declares as much by stating that “*...Alternative A is inconsistent with the type of development envisioned for the area...*” (page 4.10-8). Alternatives B and C pose a lesser impact due to their reduced size; however still possessing a casino element keeps them inconsistent with the development around them, community character, and what is envisioned for the area by Contra Costa County.

In regards to a lighting impact, the Draft EIS does not specify a particular type of lamp to be used for outdoor lighting on the project. In the best interest of preserving the night sky and minimizing impact to residents and passersby, the Draft EIS should specify that all outdoor lights used for the project will be low-pressure sodium lamps, which shall help preserve the night sky as well as reduce energy consumption. CEQ Regulations for Implementing NEPA, Section 1502.16 (e), state that the environmental consequences section of an EIS should discuss “*energy requirements and conservation potential of various alternatives and mitigation measures.*”

### **Cumulative Effects (Section 4.12)**

#### **Noise**

Section 4.12, Cumulative Effects, contains notable omissions. Table 4.12-19 should have a column with 2006 noise levels because these values are used in Table 4.12-20. This section (page 4.12-53) provides a description of the nearest sensitive receptor in the project vicinity, which should also be included in Sections 3.10 and 4.10:

*“Since all land uses surrounding the project site consists of commercial or heavy industrial development, it is expected that any noise generated on site will not be*

*discernable at the nearest sensitive receptor located approximately three quarters of a mile away to the east and the south.”*

## **5.4 Mitigation Measures (Section 5.0)**

A general critique of this section is that mitigation measures aren't numbered in a concise and user-friendly fashion. It would greatly aid the reader to have mitigation measures numbered (e.g., a Land Resources mitigation Measure could be MM 4.2.1) or otherwise organized in a more succinct fashion. See Section 5.5 above for specific concerns and errors relating to mitigation measures per issue area.

## **5.5 References (Section 8.0)**

CEQ Regulations for Implementing NEPA, Section 1502.21, Incorporation by Reference, state that “[n]o material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.” As is stated previously in this peer review, the Draft EIS fails to provide correct references and/or citations throughout the document and in Section 8.0; thereby not allowing reviewers to check these references, many of which support important analytical information. Additionally, Chapter 4, Section 4.12 of the DOI Department Manual Part 516 (516 DM 1-6, 10), states that “[c]itations of specific topics will include the pertinent page numbers.” However, references in the Draft EIS do not include page numbers in either Section 8.0 or their in-text citations. Because of the errors and omission concerning references, it is our professional opinion that the References section of the Draft EIS does not meet the requirements of NEPA.