



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

November 7, 2011

Dale Morris
Regional Director, Pacific Region
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Subject: Final Environmental Impact Statement (FEIS), Manzanita Band of Kumeyaay
Indians Fee-to-Trust and Casino Facility/Hotel Project, Imperial County,
California (CEQ # 20110337)

Dear Mr. Morris:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the Bureau of Indian Affairs (BIA) on December 20, 2010. We rated the DEIS as Environmental Concerns - Insufficient Information (EC-2). Our main concerns regarded deficiencies in mitigation and energy efficiency measures to address significant air quality impacts in an air basin that currently does not meet the health-based National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter (PM₁₀ and PM_{2.5}). We appreciate that the mitigation measures in the FEIS were modified to require preparation and submittal of a Dust Control Plan to the Air Pollution Control District and its implementation during the construction phase.

The FEIS still identifies energy efficiency measures as discretionary. The FEIS states that since the project is part of the larger 111 Calexico Place Project Environmental Impact Report, it will be required to comply with AB 32 – the California Global Warming Solutions Act, and that many of EPA’s recommendations will “have to be incorporated into the project” to meet these requirements (p. RTC-9). The response to comments seems to be inferring that the fact that an EIR was prepared and is serving as the impact assessment required by the Tribal State Gaming Compact means State laws such as AB 32 would apply. We recommend that clarification regarding the requirement to comply with AB 32 be included in the Record of Decision (ROD), since it is unclear how this State law will influence the project¹. It is not clear that requirements outside of those specifically identified in the compact could be enforced unless BIA includes the requirements as specific mitigation measures in the ROD or part of the project description, or

¹ including how the AB 32 requirement to provide a 25% reduction in carbon dioxide emissions would apply to a new project, in general.

unless the compact references an agreement with another entity, such as the City or County. If a tribal ordinance enacted pursuant to the compact is the enforcement authority, the ROD should identify the ordinance as the enforcement mechanism.

EPA also commented on the need to present the results of the Clean Air Act general conformity applicability analysis in the FEIS. BIA's response stated that Section 4.4 of the EIS has been revised to provide this information; however, we did not find this revision in the FEIS.

We would like to clarify a response to comment G-3.11b, which implies that stormwater pollution prevention plans (SWPPPs) are routinely reviewed by EPA as part of the construction National Pollutant Discharge Elimination System (NPDES) permit. Unless a SWPPP is specifically requested by EPA, there is no requirement to submit SWPPPs to EPA; they are required to be implemented and be present on-site.

EPA appreciates the opportunity to review this FEIS. When the ROD is available, please send a copy to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

/s/

Kathleen M. Goforth, Manager
Environmental Review Office (CED-2)

cc: Leroy Elliott, Chairman, Manzanita Band of the Kumeyaay Nation
Keith Adkins, Environmental Director, Manzanita Band of the Kumeyaay Nation
Brad Poiriez, Air Pollution Control Officer, Imperial County Air Pollution Control District