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

May 25, 2006

Clay Gregory, Regional Director
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way, Room W-2820
Sacramento, CA 95825-1846

Subject: Draft Environmental Impact Statement (DEIS) for Scotts Valley Band of Pomo Indians Fee-to-Trust and Gaming Development Project, Contra Costa County, California (CEQ #20060046)

Dear Mr. Gregory:

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 Section 309 of the Clean Air Act.

The project proposes to take six parcels of land into Federal trust for development of a gaming facility. The parcels are located in an industrial area with a history of contamination. The DEIS does not adequately characterize the level of contamination on the project parcels being considered for Trust transfer, nor does it provide clear procedures that will be followed to address these unknowns in the future. It is also not clear who will bear the cost of remediation after the parcels are placed into Federal trust, should this be deemed necessary. This lack of information may result in the Federal government's liability for remediation costs under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or other authorities. Because of these concerns, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions").

We commend the Bureau of Indian Affairs (BIA) and the Scotts Valley Band of Pomo Indians (Tribe) for an otherwise well-prepared document, including a thorough cumulative impacts section. We also commend BIA and the Tribe for the commitment to work cooperatively with and consider input from local agencies on this project. The Tribe's commitment to hire locally and use a local labor force during project construction is praiseworthy and will help mitigate socioeconomic impacts to the local community.

We appreciate the opportunity to review this DEIS. When the Final EIS is released for public review, please send one copy to the address above (mail code: CED-2). If you have any

questions, please contact me at (415) 972-3988 or Karen Vitulano, the lead reviewer for this project. Karen can be reached at (415) 947-4178 or vitulano.karen@epa.gov.

Sincerely,

/s/

Duane James, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures:
Summary of EPA Ratings Definitions
EPA's Detailed Comments

cc: Don Arnold, Tribal Chairman, Scotts Valley Band of Pomo Indians
Shannon Ford, Tribal EPA Coordinator, Scotts Valley Band of Pomo Indians

EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE SCOTTS VALLEUY BAND OF POMO INDIANS FEE-TO-TRUST AND GAMING DEVELOPMENT PROJECT, CONTRA COSTA COUNTY, CALIFORNIA, MAY 25, 2006

Hazardous Materials Contamination

The proposed project site is located in an industrial area on parcels with a history of contamination. Despite this, the hazardous materials impact analysis in the DEIS was not treated with the same level of rigor as other resource analyses. As a result, there are many unanswered questions regarding hazardous materials on the site. These uncertainties represent risks to be considered when deciding to take contaminated lands into Federal Trust.

The DEIS indicates Phase I Environmental Site Assessments (ESA) were conducted on all site parcels (p. 3.10-6). The purpose of these ESAs was to identify environmental conditions and hazardous materials involvement that may pose a material risk to human health or to the environment or affect the proposed use of the site (p. 3.10-6, 3.10-7). We have concerns regarding (1) the evaluation criteria used in the DEIS for assessing the risks to human health, the environment, and land use, (2) the adequacy of the site characterization upon which these evaluations were based, and (3) the implementation of mitigation measures.

Evaluation criteria

The criteria and methodology used to evaluate the ESA findings were not clearly presented in the DEIS for each parcel. The DEIS references some environmental risk screening levels such as EPA's Preliminary Remediation Goals (PRGs) and the California Regional Water Quality Control Board's (RWQCB) Environmental Screening Levels (ESLs), but they are not consistently applied to each parcel nor presented explicitly as the impact assessment methodology for human health and land use. Sections of the DEIS also use hazardous contaminant levels as significance criteria without clearly differentiating that this determination refers to disposal considerations and not necessarily impacts to human health (p. 4.10-4). Mitigation measures listed in Chapter 5 utilize only hazardous waste designation criteria (p. 5-18). Without a clear differentiation of methodology and criteria used to evaluate impacts to human health and the environment, land use, and disposal considerations, the DEIS risks implying that conclusions from one analysis are applicable to another. For example, conclusions that levels of contamination are below hazardous designation levels could be misinterpreted as concluding that these levels are not a risk to human health or a concern that may warrant mitigation.

Recommendation:

The methodology and criteria for evaluating the significance of impacts from hazardous materials on the site should be clearly presented in the DEIS. Method and criteria should be differentiated for risks to human health and the environment, land use, disposal considerations, and other endpoints as appropriate. Existing data should be presented in relation to these criteria for each parcel. Mitigation measures should be formulated which consider human health and the environment as well as material disposal.

Site Characterization

The DEIS does not provide a complete characterization of contamination at the site. Questions remain for the following parcels:

81 Parr Boulevard (parcels 1 and 2) - The DEIS states that no obvious signs of hazardous materials involvement are present on parcels #1 and #2 (p. 4.10-4). However, the DEIS documents substantial hazardous materials involvement on these parcels from the former American Refining Company which illegally processed photographic hazardous wastes there. While this operation is believed to have been concentrated on the western portion of the parcel which was sold to the County for Richmond Parkway, the DEIS does not provide sufficient information to conclude that contamination is not present on the project parcel. The DEIS references cyanide and silver in the electroplating solution that was treated on the site, but does not provide a clear picture of the levels or distribution of soil contaminated with these elements. The laboratory data in Appendix M for American Refining Company shows lead and silver concentrations exceeding hazardous soluble levels (soluble threshold limit concentration or STLC). It is not clear where these soils are located in relation to the project site or if they are still onsite. The DEIS also does not mention any solvents that might have been a part of these solutions, or discuss the potential for hazardous levels of other metals.

The ESA also states that Al/Cal Piggyback Services operated a vehicle repair shop on the site that used and generated hazardous waste (Appendix M, p. 4). While no unauthorized releases were reported, there is insufficient information to conclude that no contamination is present. In addition, the site inspection indicated run-on of stormwater from 155 Parr Blvd crossing the north portion of the property (Appendix M, p. 5). Simpson Filtration occupied the site from 1988 through 1992 but the DEIS does not identify or address this facility's operations.

155 Parr Boulevard (parcel # 3 and #4) - A limited Phase II investigation revealed levels of petroleum compounds and metals in excess of some regulatory screening levels (p. 3.10-12). No testing was done for solvents, although an occupant of parcel #4 produced liquid wastes with halogenated organic compounds. If volatile solvents are present in soil or groundwater, they can present a vapor intrusion hazard.

The DEIS also states that metal concentrations may be attributed to fill materials originating off-site. This unknown source of fill adds to the uncertainty regarding what other contaminants could be present. The DEIS states that further testing for metals will be necessary in order to determine if metals will render the soils a hazardous waste (p. 4.10-4 – 4.10-5). As mentioned above, the DEIS should make clear that this determination refers only to proper disposal and does not address potential impacts to human health or the environment.

177 Parr Boulevard (parcel #5) – The DEIS states that closure letters from Contra Costa County and the Regional Water Quality Control Board were present in Appendix P (p. 3.10-14) but these letters were not found in the appendix.

Recommendation:

The Final Environmental Impact Statement (FEIS) should include a more thorough characterization of the site with regard to hazardous materials contamination. The data generated should be evaluated using clearly specified methods and criteria to help determine if previous land uses will affect human health or land use at the site. Clear cleanup goals should be specified and coordinated with any land use restrictions that are contemplated for the site.

For example, if land use will be unrestricted once the parcels are in Federal Trust, EPA recommends the parcels be remediated to at least EPA's Residential PRGs or R WQCB's Residential ESLs to substantiate any conclusions in the FEIS that impacts to human health are not significant. If contamination exceeding those levels will be left onsite, institutional controls such as deed restrictions may be needed to ensure that residential uses do not occur in the future.

Mitigation Measures

Mitigation Measure B (p. 5-18) states that in the event that contaminated soil and/or groundwater or other hazardous materials are encountered during construction, all work shall be halted until a qualified individual can assess the extent of contamination, and if determined to be significant, the Tribe shall consult with USEPA to determine the appropriate course of action, including the development of a sampling plan and remediation plan if necessary. It is not clear how the presence of contamination will be determined, especially since contamination with metals may not present scent or visual clues. It is also not clear who will be responsible for soil/groundwater remediation costs if they are deemed necessary, or whether this will occur before or after lands are brought into Federal Trust.

Recommendation:

In addition to a better site characterization mentioned above, the FEIS should identify the procedure that will be used to identify additional contamination encountered in the field. The FEIS should identify the responsible party for any necessary cleanup costs, which can be substantial.

The FEIS should also clearly identify how the need for remediation will be determined. The methods and criteria for determining the need for remediation should be consistent with (1) evaluation criteria and any land use restrictions, and (2) EPA risk management policies. EPA risk management policies generally reflect the requirements for protection of human health and the environment presented in the National Oil and Hazardous Substance Pollution Contingency Plan, or NCP (40 CFR Part 300). EPA' s PRGs and the San Francisco RWQCB ESLs are based on those policies and can be useful screening criteria for evaluating the potential for adverse human health impacts. These policies are also reflected in EPA' s January 1996 Eco Updates, Ecotox Thresholds

(http://www.epa.gov/oswer/riskassessment/ecoup/pdf/v3no2.pdf), which provides an overview of some screening levels that can be useful for evaluating the potential for ecological effects.

Air Quality

General

Some information regarding the Bay Area Air Quality Management District (BAAQMD) could be clarified in the FEIS. EPA offers the following suggestions.

Recommendation:

The current language regarding the BAAQMD submitting a redesignation request and maintenance plan for the federal 1-hour standard should be deleted (last two sentences of the 2nd paragraph on page 3.4-7). The text should state that the 2004 ozone strategy will address State air quality planning requirements (remove "national and").

Consider adding the following two paragraphs as background information:
"On April 22, 2005, EPA made a finding that the SF Bay Area had attained the federal 1-hour ozone standard. Subsequently, as part of the transition to the federal 8-hour ozone standard, the federal 1-hour standard was revoked.

The SF Bay Area is classified as a marginal non-attainment area under the federal 8-hour ozone standard, and is required to attain the standard by June 15, 2007. Under federal regulations, marginal areas are not required to submit an attainment plan. An area that attains the standard may submit a request for redesignation along with a maintenance plan."

Air toxics/construction mitigation

The FEIS should include a discussion of air toxics including Diesel Particulate Matter (DPM). Diesel exhaust is classified by EPA as a "likely" human carcinogen at environmental exposure levels. Exposure to diesel exhaust may contribute to respiratory irritation and lung damage.

EPA commends BIA and the Tribe for the air mitigation measures listed on page 5-6 and for quantifying estimates of pollutant reduction that these measures are expected to achieve. These measures only address PM-10 however. Mitigation measures should be included that also address air toxics such as DPM and ozone precursors since the site is located in a nonattainment area. These measures should be included in the Record of Decision (ROD).

Recommendation:

Include a discussion of air toxics in the FEIS. In addition, include the following additional mitigation measures for air quality in the FEIS and quantify additional

pollutant reduction estimates that could be expected from their implementation:

- Prepare an inventory of all equipment prior to construction and identify the suitability of add-on emission controls for each piece of equipment before groundbreaking. Control technologies such as particle traps control approximately 80 percent of DPM. Specialized catalytic converters (oxidation catalysts) control approximately 20 percent of DPM, 40 percent of carbon monoxide emissions, and 50 percent of hydrocarbon emissions.
- Ensure that diesel-powered construction equipment is properly tuned and maintained, and shut off when not in direct use. Employ periodic, unscheduled inspections to limit unnecessary idling and to ensure that construction equipment is properly maintained, tuned, and modified consistent with established specifications.
- Prohibit engine tampering to increase horsepower, except when meeting manufacturer's recommendations.
- Locate diesel engines, motors, and equipment staging areas as far as possible from residential areas and sensitive receptors (schools, daycare centers, and hospitals).
- Require the use of low sulfur diesel fuel (<15 parts per million sulfur) for diesel construction equipment, if available.
- Reduce construction-related trips of workers and equipment, including trucks. Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.
- Lease or buy newer, cleaner equipment (1996 or newer model), using a minimum of 75 percent of the equipment's total horsepower.
- Use lower-emitting engines and fuels, including electric, liquified gas, hydrogen fuel cells, and/or alternative diesel formulations.

To the extent that air toxic emissions may potentially affect low-income and minority populations, their involvement in developing mitigation measures is warranted and appropriate. See also comments under environmental justice.

Operational ozone precursor and PM10 mitigation

Pedestrian and bicycle improvements are identified in the recommended mitigation measures on page 5-7, under Item T: Provide direct, safe, attractive pedestrian access from project to transit stops, and Item U: Provide bicycle lanes and paths, connected to community-wide network. These measures conflict with the statement in the DEIS that there is no clear method of improving roadways to better accommodate pedestrian and bicycle users (p. 4.8-12). The DEIS states that it will not participate in the West County Mitigation Fee or the North Richmond Area of Benefit fee for transportation improvements. The latter currently has four projects identified. The DEIS does not identify these projects or their relation to the proposed project.

Recommendations:

The FEIS should resolve the above conflict regarding pedestrian and bicycle access improvements. BIA and the Tribe should work with the local community to determine the most probable route for pedestrians/bicycles to connect to the nearest bus stop on Giant Highway. The DEIS indicates there are two major bicycle/pedestrian trails nearby, and that the Bay Trail just across Richmond Parkway from the project has been completed, although there are still incomplete sections. The FEIS should explore opportunities to complete the incomplete sections of the trail in the area, especially if there is the potential to intersect transit lines. The project should commit to incorporating pedestrian/bicycle access improvements in the project, and include these commitments in the ROD.

The FEIS should identify the four transportation improvement projects currently identified by the North Richmond Area of Benefit and discuss whether any of the projects would work cooperatively with mitigation proposed for the project. If any would help to alleviate project impacts, participation of the Tribe in this program should be considered.

Asbestos

The DEIS mentions that asbestos may be present in the structures to be demolished and that strict compliance with NESHAPS will mitigate impacts (p. 4.4-6). The DEIS does not provide further information as to what this compliance involves, nor does it include this as a mitigation measure in Chapter 5.

Asbestos is regulated under Section 112 of the Clean Air Act (CAA) as part of the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) program (40 CFR Part 61). The Asbestos NESHAPs cover demolition or renovation projects and requires that the owner/operator thoroughly inspect the facility for asbestos prior to the start of demolition or renovation and requires that all regulated asbestos-containing material be properly removed prior to the start of demolition or renovation. All individuals who inspect for asbestos, develop management plans, and conduct abatement work must be certified per the Asbestos Hazard Emergency Response Act (AHERA).

Recommendation:

The FEIS should include compliance with NESHAPS in the project mitigation measures. The FEIS should also provide some detail regarding steps that will be taken to ensure no asbestos is present in structures to be demolished, and if asbestos is found, measures that will be taken to meet NESHAPs and AHERA requirements regarding proper removal and disposal of asbestos-containing structural materials to avoid accidental release of friable asbestos during the project. If asbestos is suspected, the FEIS should include a clearance program that would be conducted to ensure against human health or environmental risks at the site after movement/demolition activities are completed. BIA is also subject to

state and local air pollution control agencies' asbestos removal requirements which may be stricter. The FEIS should identify these agencies and requirements.

Environmental Justice

The Environmental Justice section of the DEIS is confusing and would benefit from some clarification. For example, the DEIS states that only census tracts 3671 and 3680 contain greater than 50% minority communities, since these are the only tracts that contain over 50% of a single minority. However, the Council on Environmental Quality's *Environmental Justice Guidance Under the National Environmental Policy Act* (CEQ guidance) indicates that 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 one of the stated thresholds of greater than 50% or meaningfully greater than the majority population percentage (CEQ Guidance, p. 26).

In addition, geographic areas of potential environmental justice concern often warrant additional analysis to determine impacts to these communities. An environmental justice analysis could evaluate health, social, economic, and other indicators, depending on the specific circumstances of the project. For example, in evaluating air quality impacts from increased vehicle use in the area, factors such as existing health impacts (e.g. high asthma rates, etc.) should be considered, and access to health care discussed. EPA has developed a toolkit to assist in the evaluation of environmental justice impacts and cumulative risks[1] and is available to help in this analysis.

One of the purposes of Executive Order 12898 is to encourage the participation of minority and low-income populations in the NEPA process. The DEIS does not provide information on actions to specifically elicit participation of minority and low-income populations. Also, the DEIS does not address the success of those efforts and the level of meaningful involvement of the affected communities.

Recommendation:

The FEIS should identify potential environmental justice areas consistent with CEQ guidance, as stated above.

The FEIS should identify whether other factors exist in this community that render it more susceptible to project impacts, and consider these susceptibilities in impact assessments. For example, as mentioned in the Air Quality comments, diesel engines, motors, and equipment staging areas should be located as far as possible from residential areas and sensitive receptors (schools, daycare centers, and hospitals). The closest residential receptors should be identified so that this mitigation can be implemented. A construction traffic and parking management plan should also be developed that routes construction vehicles away from residential areas.

---

1 Toolkit for Assessing Allegations of Environmental Injustice, EPA Office of Enforcement and Compliance Assurance (OECA), November 2004, available at: http://www.epa.gov/compliance/resources/policies/ej/index.html.

The FEIS should document the public involvement methods used to communicate with potential environmental justice communities within the project area and provide an analysis of results achieved by reaching out to these populations. These methods include any newsletters and summary meeting notes that were made available, outreach to tenants in addition to landowners, and/or holding meetings during the evening or weekends when more of the working public would be able to participate. Assessment of the projects impacts should reflect consultation with affected populations. EPA has developed a model plan for public participation that may assist BIA in this effort[2].

Water Supply

The DEIS states that East Bay Municipal Utility District (EBMUD) is in the planning stages for providing recycled water for landscape irrigation and toilet flushing, and has expressed interest in providing recycled water for the preferred project alternative (p. 2-7). The Water Reclamation Plant is located approximately 600 feet south of the project site.

Recommendation:

Because of the project proximity to the Water Reclamation Plant, EPA recommends the Tribe construct the facility with dual plumbing to take advantage of this water recycling opportunity. This will substantially reduce water consumption and will help address the cumulative impacts to water supply expected during multiple drought years and as a result of growth and development in the EBMUD service area (p. 4.12-41).

Stormwater Pollution Prevention

The DEIS states that the parking lot runoff would be directed into vegetative filter strips and a Stormceptor before being discharged into vegetated swales that lead to a detention basin. EPA commends BIA and the Tribe for committing to use of a Stormceptor (p. 4.3-3) as a Best Management Practice (BMP) for stormwater management and treatment, as well as a detention basin. The DEIS states, however, that vegetative filter strips will be used (p. vii) while also stating that infiltration was not considered due to the presence of shallow groundwater and clayey soils (p. 4.3-1). Because filter strips require some infiltration for proper treatment, they are not recommended for use on soils with high clay content.

Recommendation:

In the FEIS, clarify use of vegetative filter strips and other stormwater treatment structures and indicate how the features will interact and be maintained. The DEIS states that the Tribe shall create, utilize, and update as necessary a maintenance plan for all BMPs. Because maintenance of treatment structures is vital to proper function, and neglecting maintenance on oil/water separators such as a Stormceptor can result in concentrated pollutant discharges of a magnitude greater than if no unit were in operation,

2 The Model Plan for Public Participation, EPA OECA, February 2000, is available at: http://www.epa.gov/compliance/resources/publications/ej/nejac_publications.html.

more specific maintenance commitments should be included. EPA recommends a long-term maintenance contract be secured along with the purchase and installation of the Stormceptor unit.

The DEIS states that impervious surfaces will be minimized to the greatest extent feasible to reduce the project's potential to increase surface runoff (p. 4.3-1). BIA and the Tribe should consider minor design adjustments to the parking lot to reduce impervious surface areas. These minor design adjustments can include incrementally reducing parking demand ratios, minimizing the dimensions of parking spaces, narrowing drive aisles, and using alternative pavers for spillover parking areas. The FEIS should indicate pre- and post-project percentages of impervious surfaces on the site.

EPA also recommends that structural BMPs be incorporated into the design of the facility's restaurants to avoid contaminated discharges to the storm drain system during operations. These BMPs should include a dedicated wash area for floor mats and covered storage areas for dumpsters and used cooking oil, with both areas plumbed to the sanitary sewer system through a grease trap.

LEED Green Building

The DEIS states that efforts will be made to use environmentally preferable purchasing in the construction and operation of the project and that energy efficiency will be promoted in heating, cooling and lighting systems (p. 5-14). BIA and the Tribe should commit to a facility that is certified as a green building per the Leadership in Energy and Environmental Design (LEED) green building rating system. LEED emphasizes state of the art strategies for sustainable site development, water savings, energy efficiency, and materials selection, and indoor air quality.

Recommendation:

BIA and the Tribe should specify that the project will be constructed for certification by LEED. This specification will guide the building process and create a high-performance, sustainable building. LEED certification will enable the Tribe to establish themselves as recognized leaders in the green building sector and offer them the opportunity to market their venue as an environment-friendly facility.