

US EPA ARCHIVE DOCUMENT



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

December 20, 2013

Amy Dutschke
Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Subject: Final Environmental Impact Statement for the Soboba Band of Luiseno Indians
Proposed Trust Acquisition and Casino/Hotel Project, Riverside County, CA
(CEQ # 20130351)

Dear Ms. Dutschke:

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

EPA reviewed the Draft Environmental Impact Statement and provided comments to the Bureau of Indian Affairs on September 15, 2009. We rated the DEIS as *Environmental Concerns - Insufficient Information* (EC-2) due to concerns regarding potential impacts to jurisdictional waters of the U.S., which could be present where the project's onsite wastewater treatment plant percolation ponds are proposed. We also expressed concerns regarding the lack of air quality mitigation measures during construction, since the project would be located in an ozone and particulate matter (PM₁₀ and PM_{2.5}) nonattainment area, and noted the lack of sustainable building or energy efficiency measures in the project description.

The response to comments in the FEIS states that, if an onsite wastewater treatment option is eventually pursued, a jurisdictional report will be prepared and submitted to the Army Corps of Engineers for jurisdictional determination and, should a Clean Water Act Section 404 permit be needed, mitigation would be developed in consultation with the Corps and EPA (Appendix E p. 166). We appreciate this response to our comment and recommend that this wording be included in the mitigation measures in the Record of Decision and as a condition of BIA approval. If the proposed percolation ponds do contain jurisdictional waters, a National Pollutant Discharge Elimination System permit from EPA would be needed to discharge treated wastewater into those ponds. We recommend that the ROD/conditions of approval also specify that the Tribe will consult with EPA regarding this determination.

We note that the Appendix to the FEIS includes a will-serve letter to the Tribe from the Eastern Metropolitan Water District for wastewater treatment services. To avoid potential impacts to waters of the U.S. or other non-jurisdictional waters, we encourage the Tribe to utilize this method of wastewater treatment.

The response regarding our suggestion to include additional construction-phase air quality mitigation measures states that these measures will be added to the mitigation chapter of the FEIS; however, this was not done. We inquired of your office about this and received a response from BIA's consultant that these measures will, indeed, be included as project requirements (email correspondence from Joe Broadhead, Environmental Data Systems on Dec. 9, 2013). We understand that their omission from the FEIS was an oversight. We reiterate the importance of including these reasonable mitigation measures in the ROD, as their adoption would reduce air quality impacts from project construction in an area not currently meeting health-based air quality standards.

BIA has also informed us that a closed-loop wash pad was installed at the existing golf course maintenance yard to address the ongoing contamination that was occurring there. EPA had recommended that the proposed project upgrade these facilities and install this equipment; therefore, we are pleased this has already occurred.

Finally, regarding the inclusion of energy efficiency measures and Leadership in Energy and Environmental Design certification, BIA's response to comments indicates that including these elements is at the discretion of the Tribe; however, the mitigation measures in Chapter 5 state that LEED certification "would be implemented". We inquired of BIA and the Tribe for clarification and learned that there is interest by the Tribe in pursuing LEED certification to the extent financially feasible (telephone conversation with Tribal representative Karl Johnson, December 10, 2013). Please note that reduced operating costs are frequently seen in LEED-certified facilities. In a 2011 study of the U.S. General Services Administration's LEED-certified buildings, the Department of Energy found LEED-certified buildings to have 25 percent lower energy use compared to the national average, which reduced operational costs by 19 percent compared to the national average. LEED Gold buildings were singled out as being particularly high performers (see: http://www.gsa.gov/graphics/pbs/Green_Building_Performance.pdf).

EPA appreciates the opportunity to review this FEIS. If you have any questions, please contact me at 415-972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

/s/

Kathleen Martyn Goforth, Manager
Environmental Review Office

cc: Rosemary Morillo, Chairperson, Soboba Band of Luiseno Indians
David Montoya, Interim Environmental Director, Soboba Band of Luiseno Indians
Dan Swenson, U.S. Army Corps of Engineers, Los Angeles District