UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

June 4, 2007

Brad Mehaffy
NEPA Compliance Officer
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Subject: Draft Environmental Impact Statement (DEIS), Graton Rancheria Casino and Hotel Project, Sonoma County, California (CEQ # 20070080)

Dear Mr. Mehaffy:

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.

The proposed project (Alternative A) consists of a 762,300 square foot casino and hotel project to be located in Sonoma County, California. Based on our review, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions"). We have concerns regarding impacts to groundwater resources from the proposed project, which the DEIS has determined would be significant to neighboring shallow wells. Regionally, the project would represent approximately 4.5% of all current and future pumping in the Southern Santa Rosa plain, a relatively large percentage for a single project. The regional significance of these impacts will also depend on whether the groundwater basin is determined to be in a state of overdraft, a determination that will be made by a joint Sonoma County Water Agency (SCWA) and US Geological Survey (USGS) study in future years.

The DEIS did not evaluate a reduced intensity alternative on the Wilfred site, and this is the basis for our "2" rating above. However, the DEIS indicates that a reduced intensity alternative on the Wilfred site is being evaluated as Alternative H for the Final EIS. While Alternative H was not evaluated, certain conclusions can be inferred from data presented on water use from the reduced-intensity alternative on the northwest Stony Point site (Alternative D), and it is clear that Alternative H would be environmentally preferable to the proposed project. Because of our concerns regarding groundwater impacts, EPA recommends the National Indian Gaming Commission (NIGC) and the Federated Indians of the Graton Rancheria (Tribe) select a reduced intensity alternative on the Wilfred site as the preferred alternative.

We commend NIGC and the Tribe for thoroughness of study, a good range of alternatives, avoidance of wetlands, and substantial mitigation measures. We recommend

commitments to all mitigation measures be included in the Final EIS and the Record of Decision (ROD).

While EPA appreciates the completeness of this DEIS, we recommend that NIGC and the Tribe consider the appropriate level of study for future NEPA analyses. Per 40 CFR 1500.1 and 1500.4, the goal of NEPA is to improve decision-making by providing decision makers and the public with pertinent and accessible information on potential project impacts. Quality of information is more valuable than quantity of information. The length of this DEIS may make it inaccessible to some members of the public.

EPA appreciates 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) 972-3846 or Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

Nova Blazej, Manager
Environmental Review Office

Enclosure: Summary of EPA Rating Definitions
EPA's Detailed Comments

CC: Greg Sarris, Tribal Chairman, Federated Indians of the Graton Rancheria
Devin Chatoian, Environmental Director, Federated Indians of the Graton Rancheria

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR GRATON RANCHERIA CASINO AND HOTEL PROJECT, SONOMA COUNTY, CALIFORNIA, JUNE 4, 2007

Water Resources

Groundwater

All project alternatives will utilize groundwater as the potable water source, and the proposed project (Alternative A) will require 200 gallons per minute (gpm) with a sustained pumping rate of 0.29 million gallons per day (mgd) (p. 4.3-4). This proposed groundwater pumping rate will equal approximately 7% of the City of Rohnert Park's average pumping rate in the period from 2000 through 2002. The proposed wells will represent approximately 0.8 to 1% of all current, and 1 to 1.7% of all future pumping in the Santa Rosa Valley Basin, and about 4.5% of all current and future pumping in the Southern Santa Rosa plain (Appendix G, p. iv).

The groundwater impacts analysis examined 193 shallow wells within 1.5 miles of the Wilfred (Alternative A) site and concluded that all of these wells are predicted to experience drawdown from groundwater pumping from the project (App. G, p. 52). Eight (8) wells are at greatest risk for going dry or being rendered unusable by having insufficient available drawdown to support normal (primarily residential) pumping (App. G, p. 53). Thirty-one (31) additional wells have a smaller but still significant risk of going dry or being rendered unusable. Modeling results also indicate the interference drawdown from project groundwater pumping can result in increased power costs needed to pump water. The DEIS identifies these impacts to shallow wells as significant (p. 4.3-7).

The Tribe has proposed measures to mitigate these impacts, including a groundwater monitoring program, and a well impact compensation program for neighboring wells that are negatively impacted (p. 5-8). EPA commends this proposed mitigation and concurs with the recommendation that a third party, such as Sonoma County, should oversee the program. However, it can be assumed that rendering wells unusable would be a hardship to neighboring well users, despite compensation. Avoiding these impacts is environmentally preferable and is strongly recommended, especially since the groundwater basin may be in a state of overdraft. A joint Sonoma County Water Agency (SCWA) and US Geological Survey (USGS) study that is currently underway will address whether the basin is in overdraft, but study results will not be available for some time.

A reduced groundwater pumping alternative could also benefit groundwater quality, in that it could lessen the risk of downward migration of shallow contamination to the deep aquifer from the leaking underground storage tanks located within 0.5 miles of the Wilfred site (p. 4.10-8).

> *Recommendation:* Because of potential overdraft concerns, EPA recommends selection of the reduced intensity casino on the Wilfred site that is being evaluated as Alternative H for the Final EIS (FEIS). This alternative would require substantially less sustained groundwater pumping (150 gpm versus 200 gpm for the proposed project).

Along with selection of Alternative H, EPA recommends including all the groundwater mitigation measures identified for Alternative A. We recommend the FEIS and Record of Decision (ROD) commit to use of reclaimed water for landscape watering and toilet flushing (p. ES-16). One measure states that the project proponent will consider creating an off-site artificial recharge project (p. 5-5). EPA recommends commitment to this measure if the basin is determined to be in overdraft.

Wetlands

We commend the Tribe for avoiding wetlands by proposing the project on the Wilfred site in the DEIS, over the originally proposed Stony Point and Lakeville sites. This change reduced impacts to wetlands by approximately 90%. In addition, the Wilfred site is the only site outside the 100-year floodplain (p. ES-6).

The Jurisdictional Delineation identified 18.44 acres of waters of the U.S. on the site, and the proposed project (Alternative A) would directly impact between 2.07 and 2.37 acres, depending on the on-site wastewater disposal option utilized. According to Figure 2-6, it appears that additional wetlands can be avoided if off-site wastewater treatment can be utilized and there is no need for the on-site wastewater treatment plant. Since the City of Rohnert Park has expressed interest in a hook up should the Wilfred site be utilized (p. 2-11), we encourage off-site wastewater treatment and disposal.

Avoidance of wetlands can also be achieved through a reduced project footprint on the Wilfred site, such as that would occur with a reduced intensity alternative (Alternative H) being evaluated for the FEIS. Figure 2-6 and 2-7 show that wetlands located in the northwest portion of the Wilfred site, and possibly also in the northeast portion, can be avoided by reconfiguring the parking lot, especially since the reduced intensity alternative will require 1452 fewer parking spaces (p. 2-7, 2-47). We note that the Clean Water Act (CWA), Section 404 permit will only permit the Least Environmentally Damaging Practicable Alternative (LEDPA) with regards to wetlands.

Recommendation: For the protection of wetland resources, EPA recommends offsite wastewater treatment and disposal if agreements with the City of Rohnert Park and the Laguna Subregional Wastewater Treatment Plant can be achieved. EPA also recommends the design for the reduced intensity Alternative H configure the smaller parking lot to avoid additional wetlands. See our additional comments about parking lot design below. If Alternative H is not selected, the project proponent should assess the feasibility of utilizing an additional parking structure to further avoid wetlands.

Also, the FEIS should state that EPA will evaluate project impacts to water quality under Section 401 of the CWA and is the agency that will issue Water Quality Certification.

Stormwater Pollution Prevention

The DEIS correctly describes that "runoff from project facilities, especially surface parking lots, could flush trash, debris, oil, sediment and grease into area surface waters..." and states that the drainage plan in Appendix C includes the "use of several features designed to filter the surface runoff prior to release to natural drainage channels" and that they include sediment/grease traps and vegetated swales (p. 4.3-2). However, according to the designs presented in Appendix C - Site Grading and Storm Drainage, the control of post-development stormwater appears to rely on the construction of a detention basin to mitigate the volume of peak flow events and does not include devises to filter or infiltrate runoff. A detention basin, designed to control the peak runoff capacity, may not have the ability to mitigate the increase in pollutants that will occur after development.

As mentioned, parking lots increase impervious surfaces and contribute pollutants to surface waters; therefore, it is important to consider changes in parking lot designs that address runoff and pollution. One common design change is reducing the excessively high parking ratios commonly used in commercial areas. The preferred alternative will include 6,102 parking spaces: 4,102 in surface parking lots, and 2,000 in a parking structure. It is not clear how the parking lot for the project was sized. Parking ratios are generally expressed as spaces per 1,000 ft^2 gross floor area (GFA) not including storage or utility spaces. It appears that the parking ratio used is over 8 spaces per 1000 ft^2 of *total* square footage. This is much higher than the conventional retail minimum parking ratio of 5 spaces per 1000 ft^2 GFA, and better site design parking ratios for retail spaces have been recommended at 4.0 to 4.5 spaces per 1000 ft^2 GFA[1].

> *Recommendation:* To prevent stormwater pollution from reaching surface waters, the project should ensure that the appropriate Best Management Practices (BMPs) to treat stormwater are included. These BMPs can include use of filtration devices such as grassed filter strips, swales, or channels and bioretention areas.
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> EPA also recommends the parking lot design be modified to conform with "green parking" guidelines. For more information on green parking, see http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=factsheet_results&view=specific&bmp=89. The FEIS should identify the parking ratio used to size the parking lot and indicate how this ratio is appropriate. We recommend the parking ratio be reviewed for conformance with local and national casino experience to see if lower ratios are warranted and feasible.
>
> We commend the use of a parking structure, which minimizes the parking lot footprint, and encourage the use of the structure for any alternative that is selected. We also have the following recommendations: (1) that at least 30% of the spaces have smaller dimensions for compact cars, and (2) that spillover parking with pervious surfaces be included in the design. Pervious alternative pavers include gravel, cobbles, wood mulch, brick, grass pavers, turf blocks, natural stone, pervious concrete, and porous asphalt.

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[1] Kwon, Hye Yeong. 2000. An Introduction to Better Site Design, *Watershed Protection Techniques*, 3(2): 623-632

Water Quality / TMDLs
The DEIS correctly identifies the Laguna Santa Rosa as impaired for temperature, nitrogen, phosphorus, sedimentation, and dissolved oxygen (p. 3.3-2) and Total Maximum Daily Loads (TMDLs) have been established for total nitrogen and ammonia. The DEIS concludes that discharging treated wastewater to the water body "could cause an incremental increase in the daily load of phosphates and nitrates, further impairing water quality in the waterway" (p. 4.3-3). While the onsite Wastewater Treatment Plant (WWTP) would treat for ammonia and nitrogen, it does not identify how phosphates would be addressed. In addition, the DEIS indicates that fertilizers would be used but only the minimum amount necessary and not before rain is expected (p. ES-15).

> *Recommendation:* In the FEIS, address phosphate removal from wastewater and identify mitigation for phosphates discharge to the phosphorus-impaired Laguna Santa Rosa.
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> We recommend additional measures be implemented regarding fertilizer use because the Laguna is impaired for nutrients and dissolved oxygen. While the DEIS states that fertilizers will be used with care, we recommend that the project include a landscape plan that commits to utilizing native plants which require less or no fertilizer, and avoids use of extensive lawn areas or uses native grasses only.

Wastewater Treatment Plant (WWTP)
The Executive Summary states that the WWTP will remove endocrine wastes in Spring to the extent feasible (p. ES-40), but the EIS does not further address this issue. It is unclear to what extent the Immersed Membrane Bioreactor (MBR) system will treat endocrine disruptors. Data demonstrating treatment performance of the MBR system for these constituents should be included if this statement is made.

The DEIS states that chlorine will be used as the primary disinfectant from the wastewater treatment plant (p. 4.3-3). However, Appendix V indicates that ultraviolet disinfection will be used. Note also that if chlorine is used to disinfect treated wastewater discharged to the Laguna de Santa Rosa, the NPDES permit may include effluent limitations for the control of chlorine by-products (e.g., trihalomethanes (THM)). Similar wastewater treatment systems utilizing the membrane bioreactor system have used ultra violet (UV) disinfection for discharged wastewater to avoid the production of THMs and have avoided the need for THM effluent limitations in NPDES permits.

> *Recommendation:* In the FEIS, provide information regarding the performance of the MBR system regarding endocrine disruptor removal. Clarify the primary disinfectant that will be used for the WWTP. We also recommend Mitigation J on p. 5-4 be modified to clearly state "The Tribe will only discharge to the Laguna de Santa Rosa during the period from October 1 through May 14 each year".

Air Resources

Conformity Analysis - Carbon Monoxide
The draft general conformity analysis relies on the "Transportation Project-Level Carbon Monoxide Protocol" (CO protocol) to demonstrate that the CO emissions generated by the operation of the project conform to the State Implementation Plan (SIP). In the General Conformity Determination and in Section 4.4 of the DEIS, it states that projects that do not meet the criteria of Sections 4.7.3 or 4.7.4 of the CO protocol are presumptively determined to not cause a violation of the CO National Ambient Air Quality Standards (NAAQS) and do not trigger a requirement for dispersion modeling.

While it is appropriate to use the CO protocol to evaluate emissions impacts, the entire process has not been completed. Section 4.7.5 of the CO protocol notes that, "[u]nder certain special conditions, there still may be cause for concern about the air quality impacts of the project even if no further analysis was required according to Sections 4.7.3 and 4.7.4." In order to complete the analysis, the project must be evaluated in accordance with the criteria in section 4.7.5 of the CO protocol.

> *Recommendation:* In the final general conformity analysis and FEIS, evaluate CO impacts in accordance with the criteria set out in section 4.7.5 of the CO protocol and include a discussion of the results of the evaluation and any additional analyses that may be triggered.

Conformity Analysis – Nitrogen Oxides (NOx)
Section 4.0 of the draft conformity analysis indicates that the project proponent intends to demonstrate conformity for NOx by purchasing emission credits to fully offset NOx emissions. Offsets used to demonstrate conformity must meet all criteria for federal enforceability, i.e., reductions must be real, surplus, permanent, quantifiable and enforceable and must be obtained and used in accordance with the federally approved SIP for the Bay Area.

> *Recommendation:* In the final general conformity analysis and FEIS, add language acknowledging the requirement for federal enforceability of offsets.

Conformity Analysis – Ozone
The *Specific SIP Allowance* portion of Section 4.0 of the draft conformity analysis includes information regarding the Bay Area's attainment status with respect to the federal 8-hr ozone standard. Please note that the attainment deadline is June 15, 2007 rather than April, and that the Bay Area Air Quality Management District (BAAQMD) is not required to "petition the USEPA for upgrade [sic] ozone status" and may not immediately do so. While monitoring data currently indicate that the Bay Area is attaining the 8-hr ozone standard, it is not certain that it will continue to do so, and it is premature to state that the Bay area "is expected to be classified as an ozone maintenance area."

Recommendation: In the final general conformity analysis and FEIS, modify the language in the document to reflect the uncertainty regarding when and if the Bay Area will be redesignated as an ozone maintenance area.

Mitigation Measures

We commend the National Indian Gaming Commission (NIGC) and the Tribe for including construction and operational mitigation measures to mitigate air impacts. Because of potentially significant cumulative impacts from the project, especially particulate matter less than 10 microns (PM_{10}) for which the project will be contributing a relatively large portion (4%) of the countywide total (p. 4.12-24), it is important to ensure the mitigation measures proposed will be adopted and commitments to them included in the ROD.

Recommendation: Include commitments for the air mitigation measures in the FEIS and ROD. We recommend adding the following measures: (1) use of construction entrances to reduce soil/dust transport off the site, and (2) time-staged construction to avoid dust/open soils. As an operations mitigation measure, we recommend NIGC and the Tribe consider inclusion of a bus-driver lounge to discourage idling, and adoption and enforcement by the Tribe of an anti-idling ordinance for buses.

Solid Waste Recycling

The DEIS states that "to the extent determined commercially reasonable", the Tribe agreed to implement recycling and green waste diversion (p. 2-25). We are concerned with a lack of commitment in the DEIS to implement these basic pollution prevention measures. The Council on Environmental Quality (CEQ) has issued guidance[1] on integrating pollution prevention measures in NEPA documents. In addition, Executive Order (EO) 13423[2], Section 2(e) states that each agency shall "ensure that the agency (i) reduces the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of by the agency, (ii) increases diversion of solid waste as appropriate, and (iii) maintains cost-effective waste prevention and recycling programs in its facilities".

Recommendation: Consistent with CEQ's guidance and EO 13423, we recommend firm commitments in the FEIS and ROD to implementation of solid waste recycling programs for the project.

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[1] Memorandum to Heads of Federal Departments and Agencies Regarding Pollution Prevention and the National Environmental Policy Act, CEQ, January 12, 1993.

[2] Executive Order 13423, January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management. Available: http://ceq.eh.doe.gov/nepa/regs/Executive_Order_13423.htm

Green Building

The DEIS states that "to the extent determined commercially reasonable", the Tribe agreed to design buildings using green building techniques (p. 2-25). There is a mitigation measure on p. ES-27 that states that the tribe shall "ensure that buildings are oriented to take advantage of solar heating and natural cooling, and use passive solar designs". It is not clear how or if the site plan or architectural rendering of the proposed project (Figures 2-1 and 2-2) are utilizing passive solar design. Additionally, in the discussion of indoor air quality, the DEIS contains a discussion of Leadership in Energy and Environmental Design (LEED) and states that LEED factors were "used to evaluate indoor air quality concerns for the project and, where appropriate, to incorporate green building best practices for each alternative" (p. 3.4-21). There is no clear demonstration of how various LEED factors were evaluated in the DEIS, nor is there a commitment for a LEED-certified project.

> *Recommendation:* NIGC and the Tribe should commit to a facility that is certified as a green building per the LEED green building rating system. This specification will guide the building process and create a high-performance, sustainable building, which would be consistent with the goals of EO 13423. 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. For questions on green building, please contact Timonie Hood with EPA Region 9's Solid Waste Office at 415-972-3282.

Miscellaneous Comments

- The cumulative impacts assessment did not include the impacts from the planned 175-acre Sonoma Mountain Village project by the City of Rohnert Park. This development will include over 1800 housing units and substantial water use. The cumulative impacts assessment should be amended to include this development.
- The DEIS defines the Area of Potential Affect (APE) for cultural and paleontological resources to be the construction footprint only, and states that "all other areas within the confines of the site boundaries are considered areas of indirect effect and all outside the APE" (p. 3.6-1). We note that this definition of the APE is inconsistent with the National Historic Preservation Act, which states that the "Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." The DEIS also states that the "architectural APE" included the site boundaries for the site plus "one parcel beyond" (p. 3.6-1). This designation is confusing. The EIS should clarify how the cultural and paleontological resource APE is consistent with that of the National Historic Preservation Act.
- The mitigation measures in the Executive Summary identify a stormwater detention basin for Alternative G, but not for Alternative A (p. ES-18). This is not consistent with Chapter 4.

- Page 1-21 of the DEIS states that NIGC solicited Cooperating Agency status from the U.S. Environmental Protection Agency. This is incorrect and should be amended.
- On page ES-97, the DEIS states that biological surveys would be required to comply with CEQA (the California Environmental Quality Act). It is not clear how this state regulation would apply to tribes. This discussion should be clarified.