# DRAFT GENERAL CONFORMITY DETERMINATION

# FOR THE GRATON CASINO/HOTEL PROJECT

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## GRATON HOTEL AND CASINO
## DRAFT GENERAL CONFORMITY DETERMINATION



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# 1.0 INTRODUCTION

An Environmental Impact Statement (EIS) is being prepared to assess the environmental consequences of the National Indian Gaming Commission's (NIGC) approval of a management contract between the Federated Indians of Graton Rancheria (Tribe) and SC Sonoma Management, LLC. The foreseeable consequence of this federal action will be the development of a casino/hotel resort either on the Wilfred site, the Stony Point site, or the Lakeville site in Sonoma County, California. The effects of seven alternatives, including an alternative use and a No Action alternative, are analyzed within the EIS.

The Bureau of Indian Affairs (BIA) will take the Wilfred site into trust for the Tribe (see EIS for site maps) if the proposed project is identified as the NIGC's preferred alternative. The Proposed Project (Alternative A) is planned for the northeast corner of the Wilfred site. The development consists of a casino/hotel resort, which would total approximately 762,300 square feet in area. The casino-hotel resort would include restaurants, a 300-room hotel, an entertainment venue, banquet/meeting space, and a pool and spa. The remainder of the Wilfred site would remain undeveloped and be used for open space, pasture, biological habitat, and recycled water sprayfields.

The Proposed Project is located adjacent to the City of Rohnert Park approximately 50 miles north of San Francisco and is located approximately 1 mile from Highway 101, which is the main north south artery in the region. The Bay Area Air Quality Management District (BAAQMD) has local jurisdiction over the region including, the Wilfred, Stony Point, and Lakeville sites, which are located within the San Francisco Bay Area Air Basin (SFAAB).

Alternative A was determined to have the highest potential to emit. Alternative A emissions are mainly due to mobile sources. Therefore, Alternative A will be the alternative analyzed for project level conformity.

# 2.0 GENERAL CONFORMITY – REGULATORY BACKGROUND

The United States Environmental Protection Agency (USEPA) promulgated the General Conformity Rule on November 30, 1993 to implement the conformity provision of Title I, Section 176 (c)(1) of the Federal Clean Air Act (CAA), which requires that the Federal government not engage, support or provide financial assistance for licensing or permitting, or approving any activity not conforming to an approved CAA implementation plan. CAA conformity is an issue that may be addressed during the NEPA process. The USEPA recommends that the conformity process be coupled with NEPA analysis.

## *GENERAL CONFORMITY PROCESS*

The conformity process should be addressed in two phases. The first phase is the conformity applicability process, which evaluates whether the conformity regulations would apply to the Federal action (i.e. whether a determination is warranted). The second phase is the conformity determination process, which demonstrates how a Federal action conforms to the applicable State Implementation Plan (SIP).

### *Phase One*

The purpose of a conformity review is to evaluate whether the conformity determination requirements would apply to a Federal action under 40 CFR 93.153. There are four steps in the review process. The first three steps can be preformed in any order; the four steps are shown below:

- Determine whether the proposed action causes emissions of criteria pollutants;
- Determine whether the emissions of a criteria pollutant or its precursor (i.e. NOx and VOCs for ozone) would occur in a non-attainment or maintenance area for that pollutant;
- Determine whether the Federal action is exempt from the conformity requirement as per 40 CFR 93.153 (c)(2)-(e).
- Estimate the total emissions of the pollutants of concern from the proposed action and compare the estimates to the de minimis threshold of 40 CFR 93.153 (b)(1) and (2) and to the non-attainment or maintenance area's emissions inventory for each criteria pollutant of concern.

### *Phase Two*

The purpose of the conformity determination, if needed, is to show if the Proposed Project conforms to the SIP.

Conformity can be shown for NOx and ROGs (Ozone precursors) by one of following four options:

- The applicable SIP specifically includes an allowance for emissions of the Proposed Project, 40 CFR 93.158 (a)(1);
- Offset emission credits are purchased for the total direct and indirect emissions, which fully offsets within the same non-attainment or maintenance area so that there is no net increase in emissions, 40 CFR 93.158 (a)(2).

- Emission from the Proposed Project coupled with the current emissions in the non-attainment area would not exceed the emissions budget in the SIP, 40 CFR 93.158 (a)(5)(i)(A).
- The Proposed Project can request that the SIP be changed by the State Governor or the State Governor's designee to include the emissions budget of the Federal action 40 CFR 93.158 (a)(5)(i)(B).

Conformity can be shown for CO by one of following two options:

- The applicable SIP specifically includes an allowance for emissions of the Proposed Project, 40 CFR 93.158 (a)(1);
- Modeling of CO shows that the action does not: cause or contribute to any new violation of any standard in any area or increase the frequency or severity of any existing violation of any standard in any area, 40 CFR 93.159 (a)(4)(i) and (b).

Even if a project is shown to conform to the SIP by one of the above methods, the project may not be determined to conform to the applicable SIP unless the total of the direct and indirect emissions for the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, including but not limited to the use of baseline emissions that reflect the historical activity levels that occurred in the geographic area, reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, 40 CFR 93.158 (c).

## 3.0 APPLICABILITY OF PROPOSED PROJECT

### *EMISSIONS*

The Proposed Project's emissions are evaluated in two phases, construction and operation. The two phases would not overlap. Criteria pollutants will be produced during both phases. The pollutants of concern during construction are particulate matter ($PM_{10}$, $PM_{2.5}$), reactive organic gas (ROG), carbon monoxide (CO), and nitrogen oxides (NOx), which are generally a product of combustion, in this case from heavy equipment. $PM_{10}$ and $PM_{2.5}$ are generated during site grading and though diesel exhaust. Operational emissions are mainly emitted from vehicles visiting the casino/hotel, while area emissions from stationary source are negligible. Pollutants of concern during operation of the casino/hotel are ROG, NOx (ozone precursors), and CO. The EIS gives a detailed account of both operation and construction emissions.

### *ATTAINMENT/NON-ATTAINMENT AREA*

The Proposed Project would be constructed within the boundaries of the SFAAB. The SFAAB is currently designated marginal non-attainment for 8-hour ozone and is a maintenance area for CO.

*EXEMPTION*

The Federal action that is described in Section 1.0 does not result in emissions less than de minimus thresholds, does not have emissions that are associated with a conforming program, cannot be analyzed under certain other environmental regulation, and/or are not in response to an emergency or natural disaster. Thus, the Proposed Project is not exempt from a conformity determination under 40 CFR 93.153 (c)(2)-(e).

*DE MINIMUS THRESHOLDS*

Emissions were estimated for both construction and operation. The construction equipment emissions were estimated by using the USEPA and California Air Resource Board approved land use based Urban Emissions (URBEMIS) air model. Operational emissions were also estimated using URBEMIS. Because operation and construction would not overlap they were evaluated separately. Construction emissions were below the 100 tons per year (tpy) de minimis thresholds for all criteria pollutants. Operational emissions for NOx and CO exceeded the 100 tpy threshold establish under 40 CFR 93.153 (b)(1). **Table 1** shows the estimated emissions for pollutants of concern during operation. **Section 3.4, 4.4, and 5.2.3** of the EIS gives a more in-depth analysis.

**Table 1**

Unmitigated Operational Emissions of Significant Criteria Pollutants

| SOURCES | NOx | ROG | CO |
|---|---|---|---|
| | tons per year | | |
| MOBILE | 155.05 | 77.19 | 1,176.36 |
| AREA | 0.70 | 0.09 | 0.72 |
| **Total** | **155.75** | **77.29** | **1,177.08** |
| Applicable Conformity Threshold | 100 | 100 | 100 |
| *Exceedance of Threshold* | *Yes* | *No* | *Yes* |

Note: NOx and ROG emissions values were estimated using URBEMIS air modeling program approved by the USEPA and CARB (see **Appendix W** of the DEIS)
Source AES, 2006

A conformity determination is required for NOx and CO. This is due to the Proposed Project being located in a non-attainment area for NOx and a maintenance area for CO, and the total NOx and CO emissions are greater then the de minimis level shown in **Table 1**.

# 4.0 GENERAL CONFORMITY DETERMINATION

## *CARBON MONOXIDE DETERMINATION*

### *Analysis*

Air modeling analysis was preformed for the EIS and the general conformity determination concurrently. The results of this analysis can be found in this EIS in **Sections 3.4, 4.4, 5.2.3, and Appendices Volume III, Appendix W**.

*Modeling*

Conformity can be shown by complying with the criteria detailed in Section 2.0, under phase two. According to the *Transportation Project-Level Carbon Monoxide Protocol* (CO-protocol), Institute of Transportation Studies, University of California at Davis, 1996, which is the recognized industry standard for modeling CO, if an intersection has a level of service (LOS) A, B, C, or D then the CO emissions will not cause a violation of any standard in any area. All intersections (measuring total intersections, not worst approach) within the project region operate at LOS A, B, C, or D, after the implementation of traffic mitigation measures detailed in the EIS. Thus, CO emissions would not cause a violation of the NAAQS.

On November 8, 2004, CARB submitted to the USEPA a second revision to the 1998, *San Francisco CO Attainment Plan* (SIP). When the USEPA upgraded the SFBAABs NAAQS status from moderate non-attainment to maintenance a revision to the SIP was needed. This revision to the SIP included a maintenance plan: *Revision to the California State Implementation Plan for Carbon Monoxide, Updated Maintenance Plan for Ten Federal Planning Areas* (Maintenance Plan). The Maintenance Plan is an amendment or update to the SIP and covers the SFBAAB. The Maintenance Plan outlines how the SFBAAB will continue to comply with the NAAQS for the next 10 years. The Proposed Project will not violate the NAAQS according to the CO-protocol discussed above; therefore, the Proposed Project supports the Maintenance Plan and conforms to the SIP, and is consistent with conformity determination criteria. 40 CFR 93.153 (b)(1) and (2)(i and ii).

## *NOX DETERMINATION*

### *Analysis*

Air modeling analysis was preformed for the EIS and the general conformity determination concurrently. The results of this analysis can be found in this EIS in **Sections 3.4, 4.4, 5.2.3, and Appendices Volume III, Appendix W**.

As shown above a general conformity determination is required for NOx. Conformity can be shown by complying with the criteria detailed in Section 2.0, under phase two.

*Specific SIP Allowance*

The SFAAB was designated as an 8- hour ozone marginal non-attainment area in June 2004. The applicable State Implementation Plan (SIP) for ozone in the SFBAAB, is the 2001, *Revised San Francisco Bay Area Ozone Attainment Plan for 1-hour National Ozone Standard.* Although the 1–hour National Ambient Air Quality Standard (NAAQS) was revoked on June 15, 2004, this plan is considered the latest air quality management plan for 8-hour ozone, per the BAAQMD. Therefore, the 2001 plan will be used to determine conformity for the Proposed Project. The following is a summary of how the 2001 plan became effective;

The California Air Resource Board (CARB) submitted to the USEPA a Bay Area Attainment Plan in August 1999 titled *San Francisco Bay Area Ozone Attainment Plan for 1-hour National Ozone Standard.* On November 1, 2001 a revised plan responding to the USEPA's disapproval of the Bay Area's 1999 Ozone Attainment Plan was adopted by the BAAQMD's Governing Board. The 2001 revised ozone attainment plan titled *Revised San Francisco Bay Area Ozone Attainment Plan for 1-hour National Ozone Standard* was submitted to the USEPA for their approval on November 30, 2001. The USEPA approved the ozone attainment plan in April 2004.

It should be noted that in April 2007 the SFBAAB is expected to archive attainment for 8-hour ozone. At that time the BAAQMD will petition the USEPA for upgrade ozone status. The SFBAAB is expected to be classified as an ozone maintenance area.

Emission control measures and regulations that have been included in the 2001 SIP do not include the estimated emissions of the Proposed Project. Therefore compliance cannot be determined though conformity to the most recent applicable SIP.

*Offsets*

Conformity can be determined by fully offsetting the Proposed Project's mitigated operational emissions through the acquisition of emission credits or an equally enforceable measure. The Proposed Project does not include the purchase of offset credits in the project description.

*Emission Budget*

The Proposed Project coupled with the most recent SFBAAB emissions inventory (2005) exceeds the applicable ozone SIPs emission budget.

*Addendum to SIP*

The Proposed Project does not anticipate that the Governor or State Governor designee will approve an addendum to the present applicable SIP, which would include the Proposed Project's estimated emissions. Therefore conformity will not be determined using this option.

### *Mitigation*

Mitigation measures for the Proposed Project are outlined in **Section 5.2.3** of the EIS. Mitigation measures were also used to reduce project emissions estimated by URBEMIS air model. These mitigation measures can be found in EIS **Appendices Volume III, Appendix W**. The estimated mitigated emissions are shown in **Table 2**.

**Table 2**

Mitigated Operational Emissions of Significant Criteria Pollutants

| SOURCES | NOx tons per year |
|---|---|
| MOBILE | 148.12 |
| AREA | 0.56 |
| **Total** | **148.69** |
| Applicable Conformity Threshold | 100 |
| *Exceedance of Threshold* | *Yes* |

Note NOx emissions values were estimated using URBEMIS air modeling program approved by the USEPA and CARB (see **Appendix W** of the DEIS)
Source AES, 2006

The Tribe chooses to demonstrate conformity through the purchase of emissions credits to fully offset NOx emissions. The recommendation to purchase these credits has been included in the EIS. The Tribe would provide the USEPA and other agencies with documentation necessary to support the emissions reductions through offset purchase, such as certification of credit purchase. This information would be included in the final General Conformity Determination.

## 5.0 CONCLUSION

As of yet documentation supporting conformity has not been filed with the appropriate agencies and the NIGC has not selected a preferred alternative. Until the Tribe provides this information, the Proposed Project is deemed to not conform to the applicable SIP. This Draft Conformity Determination will serve as a submittal to the USEPA, CARB, BAAQMD, and BIA per 40 CFR 93.155 (a). After the comment period for the EIS and this Draft Conformity Determination, the NIGC will make a final conformity determination, which will include detailed information on the purchase of emission offset credits for NOx. At the time these credits are purchased the Proposed Project will have met the requirements of conformity and conformed to the applicable SIP.

The NIGC expects to receive documentation supporting conformity after selecting a preferred alternative and before issuing a Record of Decision approving the preferred alternative per 40 CFR 93.150. Upon receipt of documentation supporting conformity, the NIGC will issue a final Conformity Determination as part of the Record of Decision.