

## ***SECTION 3.0***

---

Issues Identified During Scoping

# SECTION 3.0

---

## ISSUES IDENTIFIED DURING SCOPING

### 3.1 INTRODUCTION

The Council on Environmental Quality (CEQ) Regulations for implementing NEPA require a process, referred to as “scoping” for determining the range of issues to be addressed during the environmental review of a proposed action (§1501.7). The scoping process entails a determination of issues by soliciting comments from agencies, organizations and individuals. The NOI comment period began on October 27, 2004 and closed on November 27, 2004 (**Appendix A**). As discussed in **Section 1.1**, the comment period was extended first to December 15, 2004 and second to May 6, 2005 (**Appendix A**). A list of individuals who provided comment letters during the comment period and the letters are provided in **Appendix C**. This scoping report also incorporates the comments received during the public scoping meeting held in Madera, California on November 15, 2004. A transcript of the public scoping meeting and a list of speakers are provided in **Appendix B**. The public comment cards received during the scoping meeting and a list of commenters can be found in **Appendix D**. The issues that were raised during the scoping comment period have been summarized in **Section 3.2** below.

### 3.2 ISSUES IDENTIFIED DURING SCOPING

This section contains a summary of public comments received during the EIS scoping process. These comment summaries are categorized by issue area. A general summary of the expected scope of the EIS for each issue area category is also provided.

#### 3.2.1 Air Quality

##### *Comments*

Specific air quality issues and questions during the scoping include:

- Would construction and operation of the Proposed Project adversely affect air quality?
- Would the EIS be required to include a California Environmental Quality Act (CEQA) compliant air quality analysis in addition to the National Environmental Protection Act (NEPA) analysis of compliance with the conformity criteria? The EIS should use updated emissions factors and current planning assumptions for analysis of air quality.
- Would the EIS be required to show project compliance with State air quality regulations and the California Clean Air Act (CCAA) and provide an approved methodology to measure air quality impacts under state and federal law?
- Would the Proposed Action be required to conduct an evaluation of potential impacts on Class I Clean Air Act areas, including but not limited to Yosemite National Park and Sequoia and Kings Canyon National Parks?

- Would the air quality effects from the Proposed Action lead to irritation to persons with chronic lung diseases such as asthma, chronic obstructive pulmonary disease and emphysema?
- The EIS should quantify the proposed increased vehicular traffic's impact on ambient air quality standards both under federal and state law.
- The EIS should consider the cumulative air quality impacts of secondary growth of business and residential development.
- The EIS should consider the cumulative air quality impacts due to proximity to the Madera Municipal Airport including the potential of increased small plane traffic and airport expansion.
- The EIS should evaluate the potential affects on Class One Clean Air Act areas, including but not limited to Yosemite, Sequoia, and Kings Canyon National Parks.

### *Scope*

The EIS will assess potential impacts on air quality due to construction and operation emissions. Emission inventories will be developed for construction and operation activities related to the Proposed Action alternatives. CEQA compliance will not be included because it is not required by NEPA.

## **3.2.2 Water Supply**

### *Comments*

Specific water supply issues and questions raised during scoping include:

- Would the Proposed Action have an adverse significant impact on water supply in the region?
- The EIS should discuss the effect of the Proposed Action on the use of water for drinking, household needs, recreation, fishing, transportation, commerce, biological and land resources.
- The EIS should discuss how the use of water by the Proposed Action would impact current water allocations and the allocations to the County's farmland.
- The EIS should discuss the water delivery methods for the Proposed Action.
- The EIS should discuss how the Proposed Action would affect Madera Irrigation District's ability to fund services related to water supply and water quality.
- The EIS should discuss how the Proposed Action would affect public safety and maintenance of the Madera Irrigation District's Airport Ditch, which runs along the western edge of the project site and is used for delivery of irrigation water.
- The EIS should include estimates of water demand for the Proposed Action including future expansion and secondary growth in Madera County.

### *Scope*

The EIS will address issues related to water supply. Water demands will be estimated for each alternative. Available hydrogeologic studies will be reviewed, and other information on the water resources of the area will be obtained. Water resources of the area will be evaluated for reasonably foreseeable adverse impacts to water supply and uses as a result of the Proposed Action and alternatives.

### **3.2.3 Water Quality**

#### *Comments*

Specific water quality issues and questions raised during scoping include:

- Would the Proposed Action have an adverse effect on water quality?
- Would runoff from the Proposed Action have an adverse impact on the water quality of Smitz Creek?
- Would the Proposed Action have an impact on cumulative water quality which would potentially impact household needs, fishing, transportation and farmland?

#### *Scope*

The EIS will address issues related to water quality. Foreseeable discharges and runoff from development will be analyzed for each alternative. Available hydrogeologic studies will be reviewed, and other information on the water resources of the area will be obtained. Water resources of the area will be evaluated for reasonably foreseeable impacts to water quality, as a result of the alternatives.

### **3.2.4 Water Drainage**

#### *Comments*

Specific site drainage issues and questions raised during scoping include:

- The EIS should discuss water drainage methods that would be utilized by the Proposed Action.
- Would an increase in impervious surfaces increase runoff and potentially damage Madera Irrigation District' facilities and other public works?

#### *Scope*

The EIS will address issues related to site drainage, including stormwater runoff and flooding. Available hydrogeologic studies will be reviewed, and other information on the water resources of the area will be obtained. Water resources of the area will be evaluated for reasonably foreseeable impacts, as a result of the alternatives.

### **3.2.5 Wastewater Disposal**

#### *Comments*

Specific wastewater disposal issues and questions raised during scoping include:

- The EIS should discuss the treatment and disposal methods that would be utilized by the Proposed Action.
- The EIS should include the potential impact of regulatory standards on waste management and water usage by the Proposed Action.

*Scope*

The EIS will disclose wastewater treatment and disposal options for each alternative. The EIS will assess the reasonably foreseeable impacts of wastewater generated by the alternatives, and the impacts it may have on existing city facilities, water quality, and people.

### **3.2.6 Tribal Issues**

*Comments*

Specific tribal issues and questions raised during scoping include:

- Would the North Fork site located 50 miles northeast fulfill the purpose and need of the Proposed Action?

*Scope*

The development of a casino on the North Fork Rancheria will be analyzed as an alternative in the EIS. All EIS alternatives will be assessed for their ability to fulfill the purpose or need. Other tribal issues will be addressed in the EIS to the extent required under the NEPA process.

### **3.2.7 Visual Resources**

*Scope*

The EIS will identify if the alternatives would adversely affect visual resources.

### **3.2.8 Noise**

*Scope*

The EIS will address issues related to construction noise and operational noise of each alternative.

### **3.2.9 Traffic**

*Comments*

Specific traffic issues and questions raised during scoping include:

- Would the Proposed Project adversely effect traffic circulation due to the increase in cars exiting Highway 99 en route to the casino?
- Would an increase in traffic from the development of the proposed casino cause a conflicting use with farmers who are moving machinery and livestock?
- The EIS should discuss the beneficial impact from the Proposed Action of reducing the commute for community members.
- The EIS should discuss impacts to the circulation system and transportation in the region.
- Would the EIS include any required upgrades as mitigation for impacts to the circulation and transportation system?

- The EIS should analyze and quantify the effects on Highway 99 and primary and secondary roads within the vicinity of the proposed project.
- The EIS should analyze the effects of vehicle traffic patterns utilizing the Highway interchange.
- The EIS should consider and quantify the cumulative impacts as a result of secondary development resulting from the proposed project over several time intervals.
- Would the proposed project have an adverse effect on traffic circulation and traffic safety and require traffic lights?
- The EIS should consider and quantify the impact of the proposed project on the state and county roads to determine the requirements for access, given present and future traffic circulation.

#### *Scope*

The EIS will provide an estimate of the total daily trips and peak hour trips generated by the alternatives. Reasonably Foreseeable impacts to roadways and the intersections near the alternatives will be studied to access traffic impacts related to the alternatives. Mitigation will be proposed for significant impacts.

### **3.2.10 Biological Resources**

#### *Comments*

Specific biological resource issues and questions raised during scoping include:

- The EIS should assess potential impacts on endangered species and threatened species listed by the United States Fish and Wildlife Service.
- The EIS should also assess impacts to the threatened and endangered species that have been proposed for placement on the endangered and threatened list as well as those already listed.
- The EIS should include a determination of the cumulative impacts on plants and animals of secondary development in the region.

#### *Scope*

The EIS will assess reasonably foreseeable impacts of the alternatives on vegetation, wildlife, and threatened/endangered species listed by the United States Fish and Wildlife Service (USFWS).

### **3.2.11 Land Use Planning**

#### *Scope*

The EIS will assess the potential for land use conflicts caused by the alternatives.

### **3.2.12 Community Character**

#### *Comments*

Specific community character issues and questions raised during scoping include:

- Would the development of the proposed casino change the character of the area?

- Would development of the proposed casino adversely impact farmland preservation?

*Scope*

The EIS will assess if the alternatives would impact the area's community character. The EIS will assess impacts to farmland caused by the alternatives.

### **3.2.13 Emergency Response**

*Scope*

The EIS will assess the reasonably foreseeable impacts that the alternatives would have on emergency response.

### **3.2.14 Public Services**

*Comments*

Specific public services issues and questions raised during scoping include:

- The EIS should evaluate public safety impacts including law enforcement and fire fighting agencies to the City of Chowchilla.
- Would the EIS include appropriate mitigation measures to mitigate impacts on law enforcement and fire departments?

*Scope*

The EIS will assess the reasonably foreseeable impacts that the alternatives would have on public services. Mitigation will be prepared for significant impacts.

### **3.2.15 Socioeconomic**

*Comments*

Specific socioeconomic issues and questions raised during scoping include:

- The EIS should discuss projected benefits to the local economy from the development of the Proposed Action, including alleviation of the high unemployment rate in Madera County.
- Would operation of the Proposed Action result in an increase to addictive behaviors such as alcohol abuse, nicotine abuse and gambling?
- The EIS should discuss the beneficial effects of the Proposed Action to economic development and job growth in the region.
- The EIS should discuss beneficial impacts of the Proposed Action on businesses within the highway corridor between the project site and the North Fork area.
- The EIS should describe the socio-economic condition of the proposed site and adjacent jurisdictions, including, but not limited to, the County and the City of Madera, adjacent or nearby Counties and/or municipalities, and other affected special districts.

- The EIS should discuss the impact to property values within the vicinity of the project site.

*Scope*

The EIS will assess the reasonably foreseeable impacts that the alternatives would have on socioeconomic issues such as employment, local business revenue, property value, problem gambling, and crime rates.

### **3.2.16 Environmental Justice**

*Comments*

Specific environmental issues and questions raised during scoping include:

- How would the Proposed Action impact other Tribes within the region?

*Scope*

The EIS will assess the reasonably foreseeable and disproportionate impacts of the alternatives on minority and low-income populations, as required by Executive Order 12898.

### **3.2.17 Cultural Resources**

*Comments*

Specific cultural resource issues and questions raised during scoping include:

- Madera County is located away from the North Fork Tribe's original reservation. Does the Tribe have historical claim to the proposed trust acquisition land?
- The Picayune Rancheria stated that the project site is located within close proximity to the Picayune Rancheria and on lands to which the Picayune Tribe has cultural ties.
- One project alternative suggested by the Picayune Rancheria included placing a smaller scale project on the North Fork Tribe's former Rancheria, located elsewhere.
- Would the project site be located in another tribe's aboriginal territory?

*Scope*

The EIS will contain a cultural resources analysis that identifies and mitigates any reasonably foreseeable impacts to paleontological, historical, and archaeological resources located within the project site and alternative site. The EIS process will include a cultural records search and consultation with the Native American Heritage Commission and consultation under Section 106 of the National Historic Preservation Act (NHPA).

### **3.2.18 Hazards and Hazardous Materials**

*Scope*

The EIS will contain Phase I environmental site assessments for the project site and the alternative site that will disclose any incidences of past and current hazardous materials incidents and involvements, if



any. The EIS will also discuss construction and operational hazardous materials usage, if any, as it relates to the alternatives.

### **3.2.19 Public Health and Safety**

#### *Comments*

Specific issues and questions raised during scoping include:

- The EIS should discuss whether the additional traffic from the casino would expose school children in the area to traffic related hazards.
- Would the Proposed Action result in safety risks for nearby school children?
- Would development of the Proposed Action result in an increased fire hazard potential?
- The EIS should compare the effects to crime rate from other casinos throughout the state.

#### *Scope*

The EIS will address issues related to public health and safety of the alternatives, including any reasonably foreseeable impacts to school children, fire hazard, and crime rates.

### **3.2.20 Soils and Geology**

#### *Scope*

The EIS will assess the reasonably foreseeable impacts related to geology, topography, seismicity, mineral resources and soils.

### **3.2.21 Agriculture**

#### *Comments*

Specific agricultural issues and questions raised during scoping include:

- Would the development of the Proposed Action result in the reduction of agricultural land?
- The EIS should describe the actual and potential agricultural productivity of the land at the project site.
- The Division of Land Resources (Division) Important Farmland Map for Madera County should be utilized in the EIS to identify agricultural land within the project site and in the surrounding area that may be impacted. Acreages should be identified for both areas.
- The County's Williamson Act map should be utilized to identify potentially impacted contracts, Farmland Security Zone (FSZ) and agricultural preserve land by acreage and whether it is prime or nonprime agricultural land according to definition in Government Code §51201 (c).
- The EIS should include maps identifying the Important Farmland and Williamson Act land.
- The EIS should include a discussion of conflicts with Williamson Act contracts, including any termination of contracts to accommodate the Proposed Action. The EIS should also discuss the

impacts that conflicts or termination would have on nearby properties under contract; i.e., growth-inducing impacts from the perspective that the removal of contract protection removes a barrier to development and results in an incentive to shift to a more intensive land use such as urban development.

- The EIS should discuss indirect impacts on current and future agricultural operations; e.g., land-use conflicts, increases in land values and taxes, vandalism, population, traffic, water availability, etc.
- The EIS should discuss incremental project impacts leading to cumulatively considerable impacts on agricultural land. These impacts would include impacts from the Proposed Project as well as impacts from past, current and probable future projects. The Division's farmland conversion tables would provide useful historical data.
- The EIS should quantify and qualify impacts on agricultural resources through the use of established thresholds of significance. The Division has developed a California version of the USDA Land Evaluation and Site Assessment (LESA) Model, a semi-quantitative rating system for establishing the environmental significance of project specific impacts on farmland. The model may also be used to rate the relative value of alternative project sites.
- The EIS should consider the use of agricultural conservation easements on land of at least equal quality and size as partial compensation or mitigation for the direct loss of agricultural land, if applicable. If a Williamson Act contract is terminated, or if growth-inducing or cumulative agricultural impacts are involved, the EIS should consider increasing the ratio as mitigation.
- The EIS should consider mitigation, if applicable, using agricultural conservation easements which can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance, and the search for replacement land conducted regionally or statewide, and not limited strictly to lands within the project's surrounding area.
- The EIS should also consider the following mitigation, if applicable:
  - Protecting farmland in the project area or elsewhere in the County through the use of less than permanent long-term restrictions on use such as 20-year Farmland Security Zone contracts (Government Code §51296 et seq.) or 10-year Williamson Act contracts (Government Code §51200 et seq.).
  - Directing a mitigation fee to invest in supporting the commercial viability of the remaining agricultural land in the project area, County or region through a mitigation bank that invests in agricultural infrastructure, water supplies, marketing, etc.
  - The Division also has available listing of approximately 30 "conservation tools" that have been used to conserve or mitigate project impacts on agricultural land.
- The EIS should consider current and past agricultural use of the project area, including data on the types of crops grown, crop yields and farm gate sales values.

- The EIS should describe the value of the soils of the site by using economic multipliers to assess the total contribution of the site's potential or actual agricultural production to the local, regional and state economies. State and Federal agencies such as the UC Cooperative Extension Service and USCA are sources of economic multipliers.
- The EIS should include the type, amount and location of farmland potentially affected by implementation of the project, including discussion on the conversion of prime farmland, unique farmland or farmland of statewide importance.

### *Scope*

The EIS will assess reasonably foreseeable impacts to agricultural resources within the region, including impacts to Williamson Act contracts. Mitigation will be proposed for significant impacts. Significance of impacts will be determined according to the requirements of NEPA.

## **3.2.22 Cumulative Impacts**

### *Comments*

Specific issues raised during scoping include:

- The EIS should consider the growth-inducing and cumulative effects resulting from the trust acquisition and development of the proposed casino.
- Would the mitigation measures detailed in the Memorandum of Understanding (MOU) between the County of Madera and the cities of Madera and Chowchilla adequately address impacts from the Proposed Action?
- The EIS should address the direct, indirect and cumulative effects of the proposed action and include a comprehensive accounting of development that may occur in the project area at project opening and in the future as identified by local government entities (either the "buildout" projections cited in respective General Plans, or more specific short-and long-term development projections.).
- The EIS should discuss growth-inducing impacts, including whether leapfrog development would occur.

### *Scope*

The EIS will address the indirect, growth-inducing, and reasonably foreseeable cumulative impacts of the alternatives. Where applicable, existing MOUs and contracts will be considered in the EIS.

## **3.2.23 NEPA Process and Other Issues**

### *Comments*

Specific questions and comments regarding the NEPA process were raised during the scoping period and include the following:

- Is the Notice of Intent (NOI) required to discuss the BIA's plan for consulting other federal, state, and tribal governments in the region that are affected by the proposed development?
- The Picayune Tribe requested consultation with the BIA during the EIS process.
- The Picayune Tribe requested an extension of the scoping comment period to December 15, 2004 and also requested a second scoping hearing.
- Is the NOI required under NEPA to describe the Proposed Action and the possible alternatives?
- Does NEPA require the preparation of an Environmental Assessment or information packet for the scoping meeting? The Picayune Tribe requested maps of the project, traffic projections, impacts to Highway 99, and other items recommended by CEQ in advance of the deadline for the submission of comments.
- Would the North Fork Rancheria comply with CEQA as well as NEPA?
- Is there a basis for a joint CEQA/NEPA document? What State entitlements would the Proposed Action entail?
- Would the EIS discuss a range of alternatives to the Proposed Action?
- What are the public notification requirements for the preparation of an EIS under NEPA?
- Would the Section 20 (trust application) consultation process be the means that the BIA communicates with the tribal governments within 50 miles of the project site or is there a separate process under NEPA?
- The Picayune Rancheria requests information on how many Records of Decision (ROD) on EISs have been issued for gaming projects in California.
- Does the Indian Gaming Regulatory Act (IGRA) allow for the establishment of off-reservation land for gaming purposes?
- How would the approval of an off-reservation gaming facility affect the State of California's ability to negotiate compacts with tribes in good faith?
- Does the Memorandum of Understanding between the County/City and the Tribe require compliance with CEQA?
- Would the EIS incorporate the intent and standards established under both NEPA and CEQA, including (but not limited to) those related to the preparation, review and approval of the environmental study?
- Would the EIS include an assessment of all issues or concerns identified during the scoping period or provide a rationale as to why the issues or concerns would not be included within the EIS?
- Would the analysis in the EIS be based on the most recent data available?
- In addition to technical reports, the EIS should incorporate data from other government and non-government sources or provide rationale as to why incorporation was not necessary.
- Would technical references cited in the EIS be provided as appendices to the EIS?
- The EIS should include a record of intergovernmental consultation and review between the BIA and any federal, State, regional or local governmental agency designated as a "trustee" or "responsible" agency and/or any such entity that has regulatory oversight of the project site, on-

site and/or adjacent natural resources; on-site and/or adjacent infrastructure, structures, or utilities; or any entity that currently or in the future will exercise land use authority on or adjacent to the project site.

- The EIS should include realistic and feasible alternatives to the proposed action. The EIS should include alternatives that meet the stated objectives of the Tribe while providing meaningful reduction of potentially significant environmental impacts.
- The draft EIS should determine whether some actions will require Madera County to prepare an EIR pursuant to CEQA.
- Is the BIA required to hold a second scoping meeting for the EIS results of scoping?
- The EIS should discuss the level of detail the Proposed Action and project alternatives are required for the NOI and NOC process.

### ***Scope***

An EIS will be prepared, as required by NEPA. Additional opportunities for public participation will occur after the Draft EIS has been published. There will be a public comment period to solicit comments on the Draft EIS. The BIA will consult with local Tribes and governments, according to the requirements of NEPA. Issues relating specifically to IGRA or the Tribal/State compact will not be addressed in the EIS, unless required by NEPA.