

LETTER 4 (LOG # A004)

US Environmental Protection Agency

JUL-14-2006 FRI 03:44 PM

FAX NO.

P. 02



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
 1200 Sixth Avenue
 Seattle, WA 98101

JUL 14 2006

Ref: 04-063-BIA

Reply To
 Attn Of: ETPA-088

Mr. Gerald Hendrickson
 Regional Environmental Protection Specialist, NW Regional Office
 Bureau of Indian Affairs
 911 Northeast 11th Avenue
 Portland, OR 97232

Dear Mr. Hendrickson:

The U.S. Environmental Protection Agency has reviewed the draft **Cowlitz Indian Tribe Trust Acquisition and Casino Project Environmental Impact Statement (EIS)** [CEQ #20060122] in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. The proposed project would place in trust 151.87 acres for the development of a casino-resort by the Cowlitz Indian Tribe. The EIS assesses the environmental impacts of four casino-resort alternatives at two alternate sites and an alternative for a business park. The Tribe's preferred alternative (Alternative A) includes a gaming, entertainment and hotel complex, associated parking facilities, a recreational vehicle (RV) park, Tribal offices, a cultural center and elder housing.

We are not opposed to the proposed project, and are supportive of those aspects of the project that reduce impacts on the environment such as using treated wastewater for non-potable water supplies in the facilities. However, we find that the EIS does not provide sufficient information to support some statements made in the document, and that there are proposed activities which have the potential to have significant environmental impacts and that may violate environmental regulations. We find that the EIS does not contain sufficient information on baseline conditions and potential project impacts to determine whether wastewater and stormwater discharges will result in violations of water quality standards. In addition, adverse impacts to air quality, wetlands and habitat from the proposed project could be significant if not adequately mitigated.

We have assigned a rating of EO-2 (Environmental Objections - Insufficient information) to the draft EIS. This rating and a summary of our comments will be published in the *Federal Register*. A copy of the rating system used in conducting our review is enclosed for your reference. Our concerns and recommendations are highlighted in detail in the enclosed attachment.

If you would like to discuss these comments in detail, please contact Teena Reichgott at (206) 553-1601 or Mike Letourneau at (206) 553-6382. If you have specific questions regarding our comments on wetlands, please feel free to contact Richard Clark at (206) 553-6522.

Sincerely,

Richard Parkin, Acting Director
 Office of Ecosystems, Tribal and Public Affairs

Enclosures

CC: M. Walker, ACOE, Seattle
 J. Barnett, Cowlitz Tribe

A004-1

Enclosure Page 1

**Cowlitz Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement**

Water Quality Impacts

To determine if water quality standards will be met, it is important that the impacts of a proposed project are compared to the baseline environmental conditions. This comparison requires baseline and project data that represents conditions when impacts would be most significant. This is particularly important for the East Fork Lewis River which is currently on the Clean Water Act (CWA) list of impaired waters because water quality standards for temperature and fecal coliform are not met.

The EIS states that treated wastewater (page 4.3-3) would be discharged into the unnamed stream and potentially impact the East Fork Lewis River through increases in fecal coliform, sediment loads and temperature (page 4.5-6 and Appendix Y). Appendix G of the EIS states that if the treatment plant permit will not allow discharge to the unnamed stream, the discharge point would become the East Fork Lewis River. While the EIS provides information on the expected concentration of some components of the treated wastewater (Table 4.3-2), it does not provide information on the water temperature of the effluent nor does it demonstrate that all water quality standards (e.g., temperature, fecal coliform, total ammonia as nitrogen, pH) will be met in the unnamed stream and in the East Fork Lewis River. Appendix P of the EIS provides some water quality data for the unnamed stream and two points of the East Fork Lewis River. However, this data is limited to four separate days in January 2006, and does not adequately characterize the baseline water quality for the stream and the river.

A004-2

The EIS needs to provide baseline water quality data for the unnamed stream and the East Fork Lewis River as well as analyses that demonstrate that water quality standards will be met in the unnamed stream, the East Fork Lewis River and downstream from these two potential discharge points. In addition, the EIS needs to provide information on all the physical and chemical factors of the wastewater discharge and stormwater runoff. The EIS needs to compare the current water quality of the receiving waterbodies with that of the wastewater and stormwater for the proposed project and clearly demonstrate that all water quality standards will be met. In particular, these data and analyses should address seasons when fecal coliform concentrations and water temperatures will be at a maximum.

A004-3

A004-4

A004-5

On Page 4.3-4, the EIS states that fecal coliform and total nitrogen levels from the wastewater effluent would reduce the concentrations in the unnamed creek on the project site and concludes that the water quality standard antidegradation provisions would be met for the preferred alternative. While the data presented in Appendix P indicates that there is the potential to reduce fecal coliform levels during January, the holding times for some of the samples were missed, thereby biasing the data low. Furthermore, the EIS does not provide information on whether 2006 is a typical year and whether levels of fecal coliform would be higher or lower in other months or years. In addition, the EIS discusses how the elimination of livestock grazing would decrease fecal coliform loads to the unnamed stream (page 4.5-3). However, it does not discuss the contribution the septic systems (page 3.3-12) make to the fecal coliform loading and what will happen to the septic systems when the land is developed. The EIS needs to provide an analysis that addresses all sources of fecal coliform under current conditions and with the proposed project in place (discussing how loadings

A004-6

will be reduced for each source), and demonstrate that fecal coliform water quality standards will be met at the two potential discharge points and in all downstream waters.

A004-6
Cont.

The nitrogen values presented in Table 4.3-2 for the treated wastewater are Total Kjeldahl Nitrogen (TKN) values, and the values presented in Appendix P are for nitrates and nitrites. While nitrates and nitrites are components of TKN, the sample preservation method and holding times between sample collection and analysis are different and, under some circumstances, the values are not comparable. The EIS needs to provide baseline nitrogen (total ammonia as nitrogen) data for the unnamed stream, East Fork Lewis River and the wastewater and stormwater discharges that clearly demonstrate that the antidegradation provisions of the CWA would be met for the proposed project.

A004-7

The EIS states (page 4.3-3) that the discharge of treated wastewater to the unnamed onsite stream would flush particulates, remove debris, increase low flows and provide better habitat for anadromous fish and supports this statement with a reference for a study on Coyote Creek in San Jose, California. The EIS needs to provide information on how Coyote Creek and the unnamed stream on the proposed project site are similar in physical and water quality characteristics and explain how the discharges from the two projects are comparable. Also, if the discharge will actually flush particulates from the unnamed stream, the EIS needs to demonstrate that water quality standards for turbidity would be met in the unnamed stream and downstream from the discharge in the East Fork Lewis River. If the Coyote Creek study is representative of conditions for this project, the EIS needs to discuss the mitigation measures that will be utilized to address the increases in algae growth, nitrogen concentrations and un-ionized ammonia observed in Coyote Creek from the addition of treated wastewater effluent.

A004-8

A004-9

A004-10

The EIS states that stormwater and wastewater effluent from the proposed project could change the on-site unnamed stream from a seasonal to perennial stream below the point of the effluent discharge (page 4.5-3). While the EIS provides the current beneficial uses for the East Fork Lewis River, (page 3.3-10) it does not provide the beneficial uses for the unnamed onsite stream. The EIS needs to include a discussion addressing the current beneficial uses of the unnamed onsite stream and describe how those beneficial uses will be maintained when the stream becomes perennial with the effluent discharge.

A004-11

The EIS discusses the use of storm filter vaults to remove suspended solids such as trash, soil sedimentation, oil, grease and other potential materials that could degrade surface water quality. In addition, vegetative swales will be relied upon to provide additional filtering of runoff prior to release in the unnamed onsite stream and wetlands. However, the EIS does not discuss the expected components of the stormwater, the concentration of those components or demonstrate that the proposed mitigation measures are adequate to assure that the treated stormwater will meet water quality standards. The EIS needs to include an analysis that demonstrates that the proposed stormwater treatment is adequate to assure that water quality standards will be met. This is of particular importance for the stormwater that would be retained in the 5.4 acre "Wetland Cs."

A004-12

Page 4.3-1 of the EIS states that during flash flood events untreated stormwater could be discharged into the unnamed onsite stream. However, the EIS does not provide information on the potential components of the untreated stormwater, the concentration of those components and the expected frequency of the flash flood events. In addition, untreated surface water runoff has the

A004-13

potential to negatively impact groundwater quality. The EIS needs to discuss the expected frequency of the flash flood events and the potential impacts the untreated stormwater from these events will have on the unnamed stream and the groundwater.

A004-13
Cont.

Wetlands and Waters of the U.S.

The EIS does an adequate job of identifying wetlands in the proposed project area. However, it appears that not all impacts to waters of the U.S. have been identified in the EIS. Figure 3.5-4 (Wetland Map) identifies all those wetlands verified as jurisdictional waters of the U.S. by the U.S. Army Corps of Engineers (ACOE). In comparing Figure 3.5-4 with Figure 2.1 (Proposed Site Plan - Alternative A), EPA has identified wetland impacts that are not addressed in the EIS. These identified wetland impacts are the use of "Wetland Cs" (5.4 acres) as a storm water detention pond and the filling of the proposed "Roadside Ditch." The EIS needs to discuss the impacts to waters of the U.S. and identify what wetland mitigation proposals are available to offset these impacts.

A004-14

Section 5.2.4 describes the actions that will be taken to mitigate impacts to biological resources. Paragraph B states that a permit from Army Corp of Engineers will be obtained to address the discharge of dredged or fill material into waters of the U.S and that CWA Section 401 Water Quality Certification will be obtained from the Environmental Protection Agency. However, the EIS does not describe the mitigation measures for specific impacts to wetlands and wetland buffers. The EIS needs to discuss how the impacts to specific wetlands and their buffers described in Section 3.5 of the EIS will be mitigated for all action alternatives.

A004-15

Alternative routes for electrical, water, and wastewater treatment services are proposed for the casino complex. A number of alternate service routes are identified in Appendix G [Figure 3.1.1 (Offsite Water Improvement for Clark Public Utilities (CPU) Service), Figure 3.1.3 (City of Ridgefield Water Service - Offsite Improvements), Figure 3.2.3.A (City of Ridgefield Water Service - Offsite Improvements Option 1), Figure 3.2.3.A2 (City of Ridgefield Water Service - Offsite Improvements Option 2), Figure 3.2.3.A3 (Alternative E - Offsite Sanitary Discharge to City of Ridgefield), Figure 3.2.3.B (Offsite Sanitary Service from the City of La Center) and Figure C.3 (Onsite Wastewater Treatment Effluent Discharge Options)]. The EIS does not identify any of the wetlands or stream channels that will be impacted by the construction of the proposed utility lines. At a minimum, the document should use the existing National Wetland Inventory maps or use Clark County wetlands data base to estimate the impacts of each pipeline alternative, identify the stream crossings and discuss the impacts the proposed project may have on those wetlands, as well as how those impacts will be mitigated.

A004-16

Figure C.3 (Onsite Wastewater Treatment Effluent Discharge Options) shows that an outfall pipeline will be used to discharge treated wastewater into the Main Fork Lewis River. The document will need to discuss the potential wetlands impacts associated with the construction and operation of this option and potential mitigation measures for those impacts.

A004-17

Air Quality

Methods for predicting air quality changes from different alternatives are sound and show that the area will continue to attain the current NAAQS through construction and operation of this project. However, each of the action alternatives contributes to an increase in emissions, and the amount of increase is not made clear in the EIS. While Appendix E (Table 5-11) provides some information on the percent change from baseline, this information is incomplete. Accurately

A004-18

predicting the increase above background is particularly important now as EPA has proposed a 24-hour PM 2.5 NAAQS of 35 ug/m³ with a potential effective date of December 2006. Based on 2005 monitoring data, Clark County would exceed the proposed new 24-hour PM 2.5 NAAQS, and PM 2.5 emissions from the project could contribute to a violation of the new standard.

A004-18
Cont.

Tables 4.4-4 and 4.4-5 compare the maximum carbon monoxide concentrations and vehicle emissions for each of the action alternatives. They do not, however, provide this information for the baseline (No Action Alternative). The EIS states that emissions from Alternative A (page 4.4-8) and Alternative B (page 4.4-11) would be considered significant, but it does not provide baseline data to demonstrate the significance of these emissions. The statements in Sections 4.4.2 and 4.4.3 are correct in that no violation of carbon monoxide standards would occur under Alternative A and Alternative B. However, there would still be air quality impacts (i.e., more CO emissions) under these alternatives. The EIS needs to provide baseline data that compares the action alternatives with those of the No Action alternative. Of particular importance is data for PM 2.5.

A004-19

The discussion in the EIS regarding Air Toxics (Appendix E) concludes that no significant differences in air toxics emission among the alternatives for the project are anticipated and therefore, no quantitative analysis was conducted. However, the preferred alternative proposes 8000 parking spaces, and the EIS does not provide data that demonstrates that emissions from motor vehicles would not result in significant differences in air toxics emissions. While FHWA guidance states that quantitative analysis is only required for projects with high potential of mobile source air toxics (MSAT), qualitative analysis is recommended for projects with low potential MSAT. The guidance describes those projects with low potential MSAT effects as those that serve to improve operations of highway, transit or freight without adding substantial new capacity or without creating a facility that is likely to meaningfully increase emissions. Those projects with high potential MSAT effects are those that create new or add significant capacity to urban highways, alter major intermodal freight facilities, or propose to locate in proximity to populated areas or vulnerable populations. The EIS needs to demonstrate that the project with its 8000 parking spaces is unlikely to have adverse MSAT effects, or at a minimum, provide a qualitative analysis of air toxics for the action alternatives. If it is demonstrated that there is a high potential for MSAT effects, the EIS needs to include a quantitative MSAT analysis.

A004-20

Page 4.4-9 of the EIS states that the stationary source emissions do not exceed the Washington Administrative Code (WAC) 173-401, thus suggesting that these sources would be subject to state and local regulations. If the land is in trust (reservation) status prior to construction, WAC or local permit requirements are not applicable, and the sources may be major sources under the Federal rules that apply in Indian Country. The EIS needs to make this clarification and discuss how it will meet the Federal rules that apply in Indian Country.

A004-21

Section 5 of Appendix E provides modeled results of vehicle emissions for the proposed project; however, it is unclear whether these emission projections include mitigation measures. The EIS needs to be clear whether projected emission values include proposed mitigation measures.

A004-22

Habitat and Listed Endangered Species

The EIS states that stormwater and wastewater effluent from the proposed project could change the on-site unnamed stream from a seasonal to perennial stream below the point of the effluent discharge (page 4.5-3). These impacts could include increased streambank erosion,

A004-23

sedimentation, destruction of riparian vegetation and a loss of riparian habitat. While we agree that the removal of cattle from the project site would decrease fecal coliform loadings to the unnamed stream, the EIS does not provide adequate information to conclude that overall habitat impacts are less than significant. Of particular concern is the loss of riparian habitat that provides shade for the unnamed stream. This habitat could be of value for mitigating increases in stream temperatures due to the effluent discharge.

A004-23
Cont

There are thirteen federal Endangered Species Act (ESA) listed animal species that could be impacted by the proposed project (page 4.5-3). Eight of these species are ESA listed fish. While the unnamed drainage is inaccessible to fish due to a culvert and an 8-foot waterfall, stormwater and wastewater effluent will impact the East Fork Lewis River where these species reside. The EIS states (page 4.5-4) that there would be significant impacts on the unnamed stream and East Fork Lewis River that include increased turbidity, increased temperature and increases in Biological Oxygen Demand (BOD), nitrates and phosphates. It states that impacts to the unnamed stream would be minimized by a 25-foot buffer and the removal of grazing cattle. While we agree that the removal of grazing cattle from the project area and use of vegetative swales would help reduce sediment loads to the unnamed stream. The EIS does not contain an analysis that evaluates the magnitude and duration of these significant impacts, their specific impacts on the ESA listed species and how the 25-foot buffer will mitigate the impacts from the stormwater and wastewater discharges on these species.

A004-24

A004-25

The EIS needs to discuss in detail the impacts to all species from the proposed project including those in the East Fork Lewis River. In particular the EIS should discuss the total acreage of potential habitat loss, impacts on species populations, and how species composition would change as the unnamed stream moves from a seasonal state to a perennial state. This should include direct and indirect impacts to the species that currently use the waterbodies and cumulative impacts from the project. Also, the EIS should discuss whether best management practices, restoration and mitigation activities are planned to restore habitats, as discussed in the East Fork Lewis River Survey Report contained in Appendix V.

A004-26

A004-27

The EIS also needs to discuss the potential impacts to biological resources and habitat from the proposed offsite water improvement for Clark Public Utility (CPU) Service, the new CPU well field location and transmission main improvement, the improvements to offsite water service and sanitary discharges in Ridgefield and La Center, and the proposed alternate outfall in the East Fork Lewis River. The EIS should discuss the current state of the environment at these sites and the direct, indirect and cumulative impacts during the construction and operation of these facilities.

A004-28

**U. S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Actions***

Environmental Impact of the Action

LC -- Lack of Objections

The Environmental Protection Agency (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 these impacts.

EO -- Environmental Objections

The EPA review has identified significant environmental impacts that should 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 potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (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 of 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 analyzed 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 analyzed in the draft EIS, which should be analyzed 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 National Environmental Policy Act 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 1840 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.