

**STOP THE CASINO 101 COALITION**  
*The Voice of the People*

979 Golf Course Drive, No. 170  
Rohnert Park, CA 94928  
www.stopthecasino101.com

March 29, 2010

National Indian Gaming Commission  
Attention: Mr. Bradley Mehaffy  
1441 L Street NW, Suite 9100  
Washington, DC 20005

re: Graton Rancheria Casino/Resort, Sonoma County, CA FEIS **FATAL FLAW**  
USFWS Biological Opinion, Sonoma County population group of the California  
Tiger Salamander

Dear Mr. Mehaffy:

Please include this in the official record of the above-referenced project. With regard to the above-reference Final Environmental Impact Study (“FEIS”) conducted by the National Indian Gaming Commission (“NIGC”) as required by the National Environmental Protection Act, I am herein advising the NIGC that the FEIS for this project is **FATALLY FLAWED**. The following issues represent new information and/or new circumstances not reflected in either the U.S. Fish & Wildlife Service (“USFWS”) Biological Assessment and/or the FEIS, and are provided for your review.

1) The decision to re-designate “critical habitat” for the California Tiger Salamander should trigger a review of the Casino USFWS Biological Opinion.

The previous Biological Opinion was in response to the mechanisms and procedures established in the Santa Rosa Plain CITE, including the requirement for certain levels of mitigation based upon proximity to current or historic breeding areas, and/or observations. Those mitigation standards and ratios were predicated upon the associated strategy to create a series of specific mitigation banks to provide mitigation credits relative to subareas of the Santa Rosa Plain.

The new proposal to designate Critical Habitat clearly includes the Casino site, as well as surrounding lands that will be impacted by Casino construction and operation (further specified below). Moreover, as noted in the USFWS Proposed Rule (beginning on page 41663 of the August 18 2009 Federal Register), “a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species” (pg.41664).

The USFWS did advise the County of Sonoma on July 29 of 2009, that pending a final decision on Critical Habitat, that the Santa Rosa Plain programmatic biological opinion will still be used, but in conjunction with “the most current Interim Guidelines.”

I understand that the City of Santa Rosa and County of Sonoma have both withdrawn support from the previous plan, finding it logistically unworkable. That raises serious questions as to whether it is prudent to continue to use that document in areas where the local agencies believe it will not accomplish its purpose. In fact, the formal withdrawal of those agencies arguably disqualifies the Programmatic Consultation from being applied in this case, since there is no willingness on the part of local agencies to pursue this mitigation strategy. And as described below, certain key infrastructure improvements will have to occur outside the boundaries of the proposed Trust lands and within the jurisdiction of the County of Sonoma.

In addition, the Programmatic Biological Opinion was brought forward as an alternative to designation of Critical Habitat, a decision that was opposed by the Center for Biological Diversity and resoundingly rejected by the Federal Court.

2) Failure to specify a “Project Action Area” means the potential indirect impacts were not properly identified.

The Biological Assessment does not seem to provide a determination of a Project Action Area as required for consultation under the Endangered Species Act. Such an Action Area is meant to encompass the area “directly or indirectly affected by the proposed action.” Guidance from the Sacramento USFWS office notes that impacts to address include noise, air quality, and “changes in water quality and quantity (both surface and underground water).”

As discussed in greater detail below, there are multiple on and offsite issues and potential impacts. These include issues associated with grading, and providing both water supply and wastewater treatment capacity. Off-site road improvements will be triggered by the Project that will disturb further land, as well as increase the scope of migratory obstacles. Existing groundwater flows may be altered. Trace chemicals may remain following wastewater treatment, such as pharmaceuticals or other medical residues.

3) Local rulemaking by the Local Agency Formation Commission barring any extension of utility services to the property will trigger more extensive use of land on and off site, in ways not reflected in the Biological Assessment.

In late 2009, the Sonoma County Local Agency Formation Commission (LAFCO) adopted new policy that sets much stronger controls on extension of urban services to lands outside of existing City limits. The policy serves to further restrict the extension of urban services to properties outside existing City limit but within the “sphere of influence” as approved by LAFCO.

The policy states as follows:

*“The Commission, or by direction, the Executive Officer, will consider authorization of an Outside Service Area Agreement for existing development within a city’s sphere of influence under the following conditions only:*

- 1 1. There is a documented existing or potential threat to public health or safety;*
- 2 2. The property owner and city have entered into a recordable agreement that runs with the land, limiting development to existing levels;*
- 3 3. A covenant is recorded against the property prohibiting the current and future property owners from protesting annexation to the city; and*
- 4 4. The existing development has been determined to be either legal or legally non-conforming by the Sonoma County Permit and Resource Management Department.”*

Since there is no expectation or provision for annexing the proposed Casino properties into the City of Rohnert Park, the site could only receive water and sewer utility service through an Outside Service Area Agreement. New uses are already constrained, and this policy further limits such utility service extensions to existing uses and then only with a showing of a threat to public health or safety. Clearly the Rancheria Casino can no longer rely on utility services from Rohnert Park.

The Casino EIS did make provision for such a circumstance with design alternative 3-a, which provides for on-site wastewater treatment, winter storage, and summer disposal via irrigation.

However, the Biological Assessment does not seem to have addressed the habitat disruption associated with the installation of the irrigation infrastructure, nor is it apparent whether the storage ponds have been sized to provide full winter containment in light of the increasingly extreme storm events associated with climate change (as cited by the USFWS in their Biological Opinion).

Nor is there any discussion as to the implications of also installing an extensive well capacity to provide water to the Project. There is no consideration as to proximity issues between the wastewater storage and irrigation areas with the well location. As described further below, there is also no discussion of potential impact associated with groundwater flow redirection associated with the Project water supply well.

4) \_\_\_\_\_ The Project will require additional off-site improvement not reflected in the Biological Assessment and not considered in the USFWS Biological Opinion.

The EIS acknowledges that improvements will be needed for the local street network, to provide additional capacity. In some cases, this will involve the potential addition to road width for the purposes of extra travel lane capacity and bicycle lanes.

This roadwork will have both direct and indirect impacts upon California Tiger Salamander habitat and populations. The widening of roads represents a direct loss of habitat area to development with impervious surfaces. Beyond the actual loss of habitat land, the increased traffic volumes, combined with the widened streets will present a greater obstacle for Salamanders moving between breeding ponds and aestivation areas.

Not only is no mitigation proposed to address these additional losses, but the Biological Assessment incorrectly suggests that there will be no construction work beyond the identified Project parcels.

Since the Biological Assessment was incomplete and inaccurate, the Biological Opinion is similarly compromised.

5) Under Alternative 3-a, the Casino would discharge treated wastewater into the Laguna de Santa Rosa without sufficient analysis, legal access, or mitigation. The construction of off-site wastewater infrastructure is not reflected in the Biological Assessment, nor potential impacts upon off-site CTS habitat.

EIS Appendix V – Effluent Study indicates the discharge would be directly into the Wilfred-Bellevue Channel and then flow into the “Laguna de Santa Rosa flood control channel” south of the site. The Appendix notes that Laguna flows reverse during flooding periods, particularly during high tides.

The Casino proposes a discharge much higher in the system than the Subregional Laguna Treatment Plant. The rationale behind this approach is that any nutrient loading resulting from the discharge is trivial compared to the Laguna Plant nutrient load. This ignores some basic and documented facts.

The first is that the volume of receiving water in the Wilfred-Bellevue channel is much less, which changes the proportionate nutrient loading.

The second fallacy is that the additional discharge volume is small compared to the Laguna Treatment Plant. While technically correct, this defies the entire purpose of cumulative impact analysis. The latest new increment of additional wastewater from the Casino may be a tipping factor in terms of regulatory thresholds or localized biological impacts.

The third is the apparent assumption that the Regional Water Quality Control Board would agree to determine the allowed Casino discharge volume be based upon flows in the Russian River, as opposed to at the point of discharge. Agency studies have confirmed that the proportion of wastewater within the Laguna can be quite high relative to natural flows. While the Santa Rosa Subregional system has historically been allowed to discharge based upon Russian River volumes, there is no reason or evidence to suggest that the Regional Board would extend such a standard to a new discharger, particularly one that is even farther from the Laguna/Russian River confluence.

The fourth problem is there does not seem to be a capacity or storm event peaking analysis to determine the capacity that would reliably be available for such a discharge without compromising the primary flood control function. The primary function of the constructed Channel is to provide flood management. As noted in the Biological Opinion, one consequence of climate change will be larger and wetter storm events.

Until it can be demonstrated that there is sufficient capacity in the Wilfred-Bellevue channel to handle both 100/500 year peaking flows and Casino wastewater flows, the Casino project should demonstrate either the capacity to store significant volumes of winter flow on site pending off-peak discharge or the ability to discharge directly into the Laguna via further extension of wastewater lines. Either scenario will result in further loss of CTS habitat not acknowledged in the Biological Assessment or reflected in the USFWS Biological Opinion.

The fifth problem is that if the Wilfred-Bellevue Channel is contained within a public utility easement (presumably in favor of the Sonoma County Water Agency in its capacity of managing infrastructure to reduce flood impacts), then some permission may be required from the Water Agency in terms of construction encroachment or actual discharge. Again, the Casino must demonstrate both the engineering capacity and legal ability to discharge into the Channel, or demonstrate an alternative discharge point that would not rely upon the Wilfred-Bellevue Channel. Such an alternative discharge point would require significantly longer infrastructure extension to permit direct discharge into the Laguna. As noted above, this would present new water quality impact issue as well new potential impacts upon CTS habitat or populations.

6. Given the above considerations, the USFWS should also decline to issue any incidental take permit for any activities associated with the proposed Graton Rancheria casino. If the totality of potential impacts were not addressed through the Biological Assessment, then there is no clear basis for issuance of an incidental take permit in reliance upon a document with significant omissions and errors.

7. USFWS has previously maintained it made a no jeopardy determination “after a through effects analysis”. As the above comments make clear, the Biological Assessment was far from thorough.

In summary, the Biological Opinion released by the Fish and Wildlife Service was based upon a Biological Assessment that was both incomplete and inaccurate. The net impacts of the Casino upon California Tiger Salamander habitat extends far beyond the project boundaries due to necessary off-site infrastructure. In addition, the uncertainty of the location, volume, and quality of any wastewater discharge presents further evidence of CTS impacts not considered in the Biological Opinion.

Preparation of an accurate Project Action Area map would have allowed earlier disclosure of these potential impacts that extend beyond the claimed boundaries of Casino construction and impacts. It might also have avoided the issuance of a Biological Opinion that clearly does not address or reflect the off-site impacts already presumed in the EIS. Under these circumstances, the current Biological Opinion should be withdrawn. If and when a substantive and accurate Project description exists that reflects all off-site impact, it may be possible to again issue a Biological Opinion for this Project. But until that full disclosure and analysis is presented to the Service, the current Biological Opinion is not adequate to assess California Tiger Salamander impacts of the Graton Rancheria Casino. The NIGC should so advise the Graton Rancheria and the

various federal, state, regional and local agencies involved in the environmental review and possible approval of this project.

A package of additional material, including original source information confirming that there is off-site work that will occur that was not reflected in the Biological Assessment provided to USFWS, will be sent under separate cover.

Thank you for your prompt attention to this matter. If you have any questions, please feel free to call me at 707-548-4756.

Sincerely,

Marilee Taylor Montgomery  
Mailing Address: 979 Golf Course Drive, #170  
Rohnert Park, CA 94928

/mtm

cc: Honorable Dianne Feinstein, U.S. Senate  
Honorable Lynn Woolsey, U.S. House of Representatives  
Honorable Mark Leno, California State Senate  
Honorable Jared Huffman, California State Assembly  
Mr. Noah Greenwald, Center for Biological Diversity