C. The following mitigation measures shall be implemented where feasible and when reasonable to reduce particulate matter emission from construction activities:

1. Water all active construction areas at least three times daily during dry weather.
2. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
3. Pave or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
4. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
5. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
6. Hydroseed or apply (non-toxic) soil stabilizes to inactive construction areas (previously graded areas inactive for 10 days or more).
7. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
8. Limit traffic speeds on unpaved roads to 15 miles per hour.
9. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
10. Replant vegetation in disturbed areas as quickly as possible.
11. Install windbreaks, or plant trees/vegetative windbreaks at windward side(s) of construction areas.
12. Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour.
13. Limit the area subject to excavation, grading and other construction activity at any one time.

D. The Tribe shall ensure through contract requirements that all development contractors locate construction staging areas on the east side of the project site away from residents. This would reduce sensitive receptor exposure to diesel particulate matter (DPM).

E. The Tribe shall ensure through contract requirements that development contractors establish activity schedules designed to minimized traffic congestion around the construction site. This mitigation measure would reduce idling; thus, reducing NOx, ROG, and DPM emissions.

F. The Tribe shall ensure through contract requirements that all contractors use only construction vehicles and heavy equipment that are equipped with, at a minimum, USEPA-approved emission control devices. This mitigation measure would reduce NOx, ROG, and DPM emissions.

G. The Tribe shall limit outdoor construction activities at the project site to Monday through Saturday between the hours of 6 a.m. to 6 p.m.

Operational Impacts

H. The Tribe shall provide on-site pedestrian facility enhancements such as walkways, benches, property lighting, and building access, which are physically separated from parking lot traffic.

I. Buses and other commercial diesel-fueled vehicles shall comply with the California Air Resource Board's Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling (California Code of Regulations, Title 13, Division 3, Article 1, Chapter 10, Section 2485), which requires that the driver of any diesel bus shall not idle for more than 5 minutes at any location, except in the case of passenger boarding where a 10-minute limit is imposed, or when passengers are onboard. Furthermore, the Tribe shall provide a "Drivers Lounge" for bus and truck drivers to discourage idling.

J. The Tribe shall install electrical outlets at the loading dock(s) of the development for refrigeration trucks. By providing electrical outlets to refrigeration trucks they will not need to idle, thus reducing emissions.

K. The Tribe shall encourage and facilitate the use of 'carpools' by construction workers, facility employees, and patrons. Encouraging and facilitating carpools would reduce the number of trips to and from the development, which would reduce operational emissions.

L. The Tribe shall provide signs that inform patrons that smoking is allowed at the facility and shall provide nonsmoking areas. The Tribe shall also provide pamphlets to employees on the health risk from second-hand smoke.

M. The Tribe shall ensure the installation of solar, low-emission, central, or tank less water heaters; wall insulation; and energy efficient appliances in the project facilities where feasible and when reasonable that shall exceed California Title 24 energy requirements.

N. The Tribe shall require the use of energy efficient lighting where feasible and when reasonable, which would reduce indirect greenhouse gas emissions.

O. The Tribe shall install water efficient water heaters, toilets, showers heads, ice machines, and faucets where feasible and when reasonable.

P. The Tribe shall develop an alternative energy plan, which shall include installation of photovoltaic cell arrays where feasible and when reasonable. Potential locations for the photovoltaic cell arrays include the parking structure and other facility rooftops.

6.4 BIOLOGICAL RESOURCES

Habitats

A. Project site plans shall be modified to avoid or minimize impacts to oak trees to the extent feasible. During construction, oak trees that are not to be considered impacted shall be enclosed in 4 foot high temporary construction fencing, installed at least 1 foot outside the dripline of all oak trees located in the vicinity of active construction. Encroachment into fenced areas shall not be permitted until all construction has been completed.

B. Removal of oak trees with a diameter at breast height (dbh) of 5 inches or greater, shall be avoided to the extent feasible. If avoidance is not possible, oak trees with a dbh between 5 inches and 24 inches shall be replaced at a 2:1 ratio and oak trees with a dbh greater than 24 inches shall be replaced at a 3:1 ratio. Replacement plantings shall be a minimum of 1 gallon in size and shall be monitored for 7 years, consistent with Section 21083.4 of the Public Resources Code. Any failed oak tree plantings shall be replaced.

C. Project site plans shall be modified to avoid or minimize impacts to riparian woodland habitat to the extent feasible. Temporary fencing shall be installed around riparian woodland habitat outside of construction areas. Fencing shall remain in place until all construction activities within the vicinity of the protected riparian area are complete. Impacted riparian areas shall be either restored or mitigated for by enhancement of riparian habitat within the property at a 1:1 ratio. Restored and/or enhanced riparian woodland habitats shall be monitored for a period of 5 years.

D. Invasive plant species of concern for Amador County and the State of California shall not be used for landscaping development of the proposed project. Management of the spray fields for wastewater disposal shall be conducted in a way that will discourage the growth of exotic and invasive plant species. Horticultural species of concern in Amador County and the State of California that shall not be included for use in the landscaping plan include, but are not limited to: iceplant (*Carpobrotus edulis*), periwinkle (*Vinca major*), all brooms (*Cytisus* spp., *Spartium* spp.), pampasgrass (*Cortadaria selloana*), cotoncaster (*Cotoneaster* spp.), scarlet wisteria (*Sesbania punicea*), English and Algerian Ivy (*Hedera* spp.), black acacia (*Acacia melanoxylon*), Russian olive (*Elagnus angustifolia*), *Myoporum laetum,* black locust (*Robinia pseudoacacia*), Chinese tallow tree (*Sapium sebiferum*), Brazilian and Peruvian pepper tree (*Schinus terebinthifolius* and *S. molle*), and fountain grass (*Pennisetum setaceum*).

Waters of the U.S.

E. A formal delineation of waters of the U.S. occurring within the proposed project area shall be submitted to the U.S. Army Corps of Engineers (USACE) for verification prior to the commencement of construction activities.

F. Project site plans shall be modified and parking areas for Alternatives A through C shall be reduced through the development of a parking structure to avoid or

minimize impacts to jurisdictional waters of the U. S. and wetland habitats to the extent feasible. Mitigated site plans have been developed for Alternatives A through C, which include the development of a parking structure to reduce the development footprint of the parking lot surrounding jurisdictional wetland habitats. Refer to **Figures 5-1** and **5-2** of the FEIS for the preliminary site plans for Phase I and Phase II of Alternative A, respectively. Refer to **Figures 5-3** and **5-4** of the FEIS for the mitigated site plans for Phase I and Phase II of Alternative B, respectively. Refer to **Figure 5-5** of the FEIS for the mitigated site plan for Alternative C.

G. A Department of the Army permit shall be obtained from the USACE prior to the discharge of any dredged or fill material within jurisdictional wetlands and other waters of the U.S. In addition, Water Quality Certification shall be obtained from the USEPA.

H. Unavoidable impacts to waters of the U.S., including wetlands and wetland habitat, shall be mitigated by creating or restoring wetland habitats either onsite or at an USACE approved off-site location. Compensatory mitigation shall occur at a minimum of 1:1 ratio and shall be approved by the USACE prior to any fill into jurisdictional features. As required by the 404 permit, a wetland mitigation and restoration plan shall be prepared by a qualified biologist for any wetland habitat to be created or restored on site. This plan will describe the mitigation ratio, location of restoration, size and type of native vegetation to be used, and a monitoring and maintenance schedule consistent with the new USEPA and USACE rule, shall include a 5 year monitoring plan that has an 80 percent success criteria for vegetative cover with native plants. Off site mitigation shall be conducted through the purchase of credits through a USACE approved mitigation bank. These measures will adhere to the USEPA Rule guidelines which take into account all aquatic resource functions of the impacted wetlands to the watershed as a whole, the likelihood of success, and time lag of establishment.

I. If the Tribe conducts construction activities in the vicinity of any jurisdictional wetland feature it shall do so during the dry season (April 15 through October 15), to the extent reasonable, to minimize potential erosion.

J. Temporary fencing shall be installed around wetland and intermittent drainage features and associated riparian woodland that is outside of the construction area. Fencing shall be located as far as feasible from the edge of wetlands and riparian habitats and installed prior to any construction. The fencing shall remain in place until all construction activities have been completed.

K. Staging areas shall be located away from the areas of wetland, intermittent drainage and riparian habitat that are fenced-off. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on-site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion (e.g. tarps, silt fences, straw bales).

L. BMPs shall be employed by the construction contractor to prevent the accidental release of fuel, oil, lubricant, or other hazardous materials associated with construction activities into jurisdictional features. As part of the project's NPDES permit, a contaminant program shall be developed and implemented in the event of release of hazardous materials.

Migratory Birds

M. If tree disturbance or other project-related activities are to occur during the nesting season (approximately March – September), pre-construction surveys for all nesting migratory bird and raptor species shall be conducted within 500 feet of the proposed construction areas by a qualified biologist. If active nests are identified in these areas, the USFWS shall be consulted to develop measures to avoid any "take" of active nests prior to commencing tree removal or project related activities. Avoidance measures may include the establishment of buffers and biological monitoring. If active nests are identified within trees proposed for removal or disturbance, removal or disturbance shall be postponed until after the nesting season or after a qualified biologist had determined that the young have fledged and are independent of the nest site.

N. The Tribe shall contribute to the funding of the environmental review and mitigation for traffic improvements identified in **Section 6.7**. The contribution shall be based on the amount of traffic generated by land uses on the 228.04± acre site as a percentage of the overall traffic volume. In the case of improvements that are identified within this document as the sole responsibility of the Tribe, the Tribe's contribution would provide 100 percent of the necessary funds. The Tribe's contribution shall include the cost of preparing environmental documents and the cost of mitigation for biological resources, including but not limited to purchases of land, contributions to mitigation banks or programs, and restoration of habitat. The Tribe's contribution shall be provided to the agency undertaking the improvement (e.g. Caltrans, Amador County, City of Plymouth).

6.5 Cultural Resources

A. In the event of any inadvertent discovery of archaeological resources during construction related earth-moving activities, all such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 800). Once the land has been taken into trust for the Tribe, the inadvertent discovery of archaeological resources would also be subject to the Native American Graves Protection and Repatriation Act (25 USC 3001 et seq.) and the Archaeological Resources Protection Act of 1979 (16 USC 470 aa-mm). Specifically, procedures for post-review discoveries without prior planning found in 36 CFR 800.13 shall be followed. The following shall apply to the inadvertent discovery of both archaeological and paleontological resources: All work within 50 feet of the find shall be halted until a professional archaeologist, or paleontologist as appropriate, can assess the significance of the find. If any find is determined to be significant by the archaeologist, or the paleontologist, then representatives of the Tribe and BIA shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action.

B. If human remains are discovered during ground-disturbing activities on Tribal lands, pursuant to the Native American Graves Protection and Repatriation Act and the implementing regulations found at 43 CFR 10 Section 10.4, *Inadvertent Discoveries,* the County coroner, the tribal official and the BIA representative shall be contacted immediately (on non-tribal land, the BIA representative does not need to be called). No further disturbance shall occur until the County coroner, tribal official, and BIA representative have made the necessary findings as to the origin and disposition (on non-tribal land, no BIA representative is present). If the remains are determined to be of Native American origin, the coroner shall notify the Native American Heritage Commission, which shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.

C. Implementation of **Mitigation Measure 6.4(N)** will reduce impacts associated with off-site roadway improvements and potential impacts to cultural resources.

6.6 SOCIOECONOMIC CONDITIONS AND ENVIRONMENTAL JUSTICE

A. The Tribe shall pay an annual contribution of $10,000 to an organization or organizations selected in consultation with the California Office of Problem and Pathological Gambling, to address problem gambling issues.

B. Commencing at the time of the fee-to-trust transfer of the project site, the Tribe shall pay an annual contribution equal to the annual property tax prior to conveyance to the City of Plymouth and Amador County to address lost property tax revenues. The amount of payment shall be subject to annual review by the Amador County Assessor, with any adjustments made with concurrence by the Tribe.

C. The Tribe will develop and implement a housing program to address the availability of affordable housing within Amador County. The housing program would coordinate its activities with Amador County and the City of Plymouth in order to further countywide planning efforts.

D. The Tribe shall contribute to school impact fee revenues to mitigate potential fiscal effects to the Amador County Unified School District by paying a one-time payment of $107,610 to the School District or such other amount as may be negotiated between the Tribe and the School District.

6.7 RESOURCE USE PATTERNS

Transportation

Access

A. The Tribe shall require at least three tribal security personnel to be educated in traffic control procedures. These security personnel will perform traffic control at the access roads during special events at the event center to make sure that when fire/emergency vehicles need to leave the site, traffic control is provided at the exit of the service entrance to allow smooth movement of emergency vehicles.

Construction

B. The Tribe shall prepare a Traffic Management Plan (TMP) to identify which lanes require closure, where night construction is proposed, and other standards set forth in the *Manual on Uniform Traffic Control Devices for Streets and Highways* (US DOT FHWA, 2003). The TMP shall be submitted to each affected local jurisdiction and/or agency.

C. Prior to the finalization of construction plans, the Tribe shall work to notify all potentially affected parties in the immediate vicinity of the project site. Notification shall include a construction schedule, exact location of construction activities, duration of construction period, and alternative access provisions.

D. Also prior to the finalization of construction plans, the Tribe shall work with emergency service providers to avoid restricting emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the construction schedule, exact location of construction activities, duration of construction period, and any access restrictions that could impact emergency response services. Traffic Management Plans shall include details regarding emergency service coordination. Copies of the TMPs shall be provided to all affected emergency service providers.

Operation-Phase I

Without the jurisdiction to implement off-site mitigation measures, the only feasible mitigation available to the Tribe is to provide funding for recommended roadway improvements. Various study roadway intersections and segments currently operate under unacceptable conditions (according to the corresponding jurisdictional agency) without the project. Therefore, the Tribe would contribute a share of the required funding proportionate to the level of impact associated with the trips added by the project alternatives. Under Caltrans guidelines this proportionate share contribution to recommended roadway improvements are considered appropriate mitigation to reduce the impact of a proposed project. Actual funding mechanisms for impact mitigation shall be determined through negotiations at the time of project implementation.

Mitigation measures are summarized below and are provided in more detail in the revised TIA (Appendix M of the FEIS). Proportionate share contributions for the Preferred Alternative are provided were applicable. As neither the Tribe nor BIA have jurisdictional authority to implement traffic improvement projects outside of the trust site boundaries, the following mitigation measures (6.6E through 6.6NNN) are recommended to reduce off-reservation impacts of the Preferred Alternative, and would be implemented after all requisition approvals are received from the agency(s) with jurisdiction over the roadways.

E. SR 49/Main Street
Install a signal. Construct NB and WB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.

Construct SB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

F. SR 49/Randolph Drive
Install a signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

G. Latrobe (Amador)/SR 16
Install a signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

H. SR 104 (Preston)/SR
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.

I. Preston Avenue/ Main Street
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.

J. Main Street / SR 124 (Church)/SR 104 (Main)
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.

K. SR 88 / Jackson Valley Road
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 43 percent.

L. SR 88 / Liberty Road
Install a Signal, convert NB right-turn lane into shared through/right-turn, and construct a second NB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 37 percent.

M. SR 16 / Grant Line Road
Add NB and SB left-turn lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.

N. Sunrise Boulevard/SR 16
Convert SB right-turn lane into a shared through/right-turn. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.

O. SR 49/Project Access Driveway
Restrict left-turn out of driveway. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

P. SR 16 between Bradshaw Road and Excelsior Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 17 percent.

Q. SR 16 between Sunrise Boulevard and Grant Line Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.

R. SR 16 between Grant Line Road and Dillard Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.

S. SR 16 between Dillard Road and Stonehouse Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.

T. SR 16 between Stonehouse Road and Ione Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

U. SR 16 between Latrobe Road (Amador) and SR 124
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 74 percent.

V. SR 16 between SR 124 and SR 49
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 97 percent.

W. SR 104 between SR 124 and Main Street
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.

X. SR 104 between Main Street and Church
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.

Y. SR 124 between Main Street and SR 88
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 31 percent.

Z. SR 88 between SR 124 and Liberty Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 26 percent.

AA. SR 88 between Liberty Road and SR 12 (east)
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 19 percent.

BB. SR 88 between SR 12 (east) and Tully Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.

CC. SR 88 between Tully Road and SR 12 (west)
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.

DD. SR 88 between SR 12 (west) and Kettleman Lane
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 19 percent.

Operation-Phase II

EE. SR 16 / Ione Road
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

FF. SR 16 / Grantline Road
Add NB and SB left-turn lanes. Proportionate share calculation of this project impact using Caltrans methodology is 10 percent.

Add NB and SB right-turn lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

GG. SR 16 / Sunrise Boulevard
Convert SB right-turn lane into a shared through/right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 9 percent.

Add NB right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

HH. SR 49 / Pleasant Valley Road
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

II. SR 49 between Casino Entrance and Main Street
Upgrade to Arterial Class II. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

JJ. SR 49 between Casino Entrance and Main Street
Upgrade to Arterial Class II. Proportionate share calculation of this project impact using Caltrans methodology is 84 percent.

Operation-Cumulative

KK. SR 49/Main Street
Install a signal. Construct NB left-turn and WB right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 33 percent.

LL. SR 49/SR 16
Add NB left-turn lane and second WB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

MM. SR 124/SR
Install a signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

NN. SR 104 (Preston)/SR 124
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 55 percent.

OO. Preston Avenue/ Main Street
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 69 percent.

PP. Main Street / SR 124 (Church)/SR 104 (Main)
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 72 percent.

QQ. R 88 / Jackson Valley Road
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 56 percent.

RR. SR 88 / Liberty Road
Install a Signal, convert NB right-turn lane into shared through/right-turn lane, and construct a second NB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 23 percent.

Construct separate WB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

SS. SR 88 / Victor (SR 12)
Convert SB right-turn lane into shared through/right-turn lane, and lengthen SB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 9 percent.

TT. SR 88 /Kettleman Lane
Install EB duel left-turn lanes and SB through lane. Proportionate share calculation of this project impact using Caltrans methodology is 10 percent.

UU. SR 16 / Grant Line Road
Convert EB right-turn lane into shared through /right-turn. Proportionate share calculation of this project impact using Caltrans methodology is 29 percent.

VV. Sunrise Boulevard/SR 16
Convert EB right-turn lane into a shared through/right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 31 percent.

WW. SR 16/Bradshaw Road
Add NB and SB through lane, an EB left-turn lane, two EB and WB through lanes. Proportionate share calculation of this project impact using Caltrans methodology is 8 percent.

Construct a WB right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

XX. SR 49/Pleasant Valley Road
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 49 percent.

YY. SR 88 (N)/Elliot Road
Convert SB right-turn lane into shared through/right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 5 percent.

ZZ. SR 49 between Casino Entrance and Main Street
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 55 percent.

AAA. SR 16 between Bradshaw Road and Excelsior Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.

BBB. SR 16 between Sunrise Boulevard and Grant Line Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 38 percent.

CCC. SR 16 between Grant Line Road and Dillard Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 69 percent.

DDD. SR 16 between Dillard Road and Stonehouse Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 48 percent.

EEE. SR 16 between Latrobe Road (Amador) and SR 124
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 60 percent.

FFF. SR 16 between SR 124 and SR 49
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 57 percent.

GGG. SR 104 between SR 124 and Main Street
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 60 percent.

HHH. SR 104 between Main Street and Church Street
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 63 percent.

III. SR 124 between Main Street and SR 88
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 82 percent.

JJJ. SR 88 between SR 124 and Liberty Road
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.

Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

KKK. SR 88 between Liberty Road and SR 12 (east)
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 19 percent.

Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

LLL. SR 88 between SR 12 (east) and Tully Road
Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

MMM. SR 88 between Tully Road and SR 12 (west) (NB and SB Couplets)
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 10 percent.

NNN. SR 88 between SR 12 (west) and Kettleman Lane
Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

6.8 PUBLIC SERVICES

Construction Related Solid Waste

A. The Tribe shall create and maintain an aggressive Waste Management Plan that implements recycling strategies to voluntarily meet State recycling and diversion requirements. The Waste Management Plan shall include the installation of a trash compactor for cardboard and paper products, and the placement of recycling bins throughout the facilities for glass, cans and paper products.

B. Environmentally preferable materials shall be acquired to the extent practical for construction of facilities.

Operational Solid Waste

C. A trash compactor shall be installed for cardboard and paper products.

D. Recycling bins shall be installed throughout the facilities for glass, cans and paper products.

E. The Tribe shall adopt universal waste recycling requirements similar to California's Universal Waste Rule.

Electricity, Natural Gas, and Telecommunication

F. The Tribe will fund the upgrade of the existing lines in accordance with PG&E engineers' recommendations.

Public Health and Safety

Law Enforcement

G. The Tribe shall adopt a Responsible Alcoholic Beverage Policy that shall include, but not be limited to, requesting identification and refusing service to those who have had enough to drink. This policy shall be discussed with the California Highway Patrol and the ACSO.

H. All parking areas shall be well lit to prevent areas that would not be visible by patrolling security guards, and monitored by parking staff, and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other related criminal activity.

I. Exterior areas surrounding the gaming facilities not designed as patron waiting areas shall have "No Loitering" signs in place, shall be well lit to increase the visibility of security features (cameras and guards), and shall be patrolled regularly by roving security guards. This will aid in the prevention of illegal loitering and all crimes that relate to, or require, illegal loitering.

J. The Tribe shall provide traffic control with appropriate signage and the presence of traffic control staff when appropriate. This will aid in the prevention of off-site parking, which could create possible security issues.

K. The Tribe shall provide payments to Amador County to mitigate increased costs to the Amador County District Attorney's Office, Probation Department, Public Defenders Office, and Superior Court system as they relate to law enforcement actions generated by the selected project alternative. Prior to commencement of operations, the Tribe shall negotiate in good faith to provide reasonable payment for services with Amador County.

L. The Tribe shall make payments to the County to provide for one Amador County Sheriff's Deputy to be based in Plymouth on a 24 hours a day/ 7 days a week basis. This would require the addition of 6.5 officers. Financial compensation shall include the equipment necessary for the full staffed officers. Prior to commencement of operations, the Tribe shall negotiate in good faith to provide reasonable payment for services with Amador County.

M. The Tribe shall provide payments to the CHP to mitigate potential impacts to CHP services in the area associated with the operation of the selected project alternative. Prior to commencement of operations, the Tribe shall negotiate in good faith to provide reasonable payment for services with the CHP.

Emergency Call Taking and Dispatching

O. The Tribe shall negotiate in good faith to make a reasonable contribution to Amador County to cover increased operating costs of emergency dispatching in Amador County including dispatching contracted through the State that is attributable to the operation of the selected project alternative.

6.9 OTHER VALUES

Noise

A. Outdoor construction activities shall be limited to the hours of 6 a.m. to 6 p.m., Monday through Saturday.

B. Earthen berms shall be constructed to reduce the effect of on-site traffic noise on nearby residences to below an average (Leq) of 45 decibels at level A attenuation (dBA). For Alternatives A, B, and C the earthen berms shall be designed to reduce noise levels from parking lot activities on residences to the northwest by 4 dBA and designed to reduce parking lot noise on residences to the southwest by 8 dBA. For

Alternative D, no earthen berm would be needed for residences to the northwest, but residences to the southwest would need attenuation of 14 dBA.

C. Earthen berms shall be constructed on the west end of the service court to block the line of site between the loading dock areas and the off-site residences to the west. In combination with the berms identified in above in (B), these berms need to reduce loading dock noise below 45 Leq at the nearest off-site residential receptor.

D. Roof mounted mechanical equipment shall be designed and installed so that noise levels from the mechanical equipment shall not exceed 45 Leq at existing residential property lines.

E. The Tribe shall contribute to the funding of the environmental review and mitigation for traffic improvements identified in **Section 5.2.8**. The contribution shall be based on the amount of traffic generated by land uses on the 228.04± acre site as a percentage of the overall traffic volume. In the case of improvements that are identified within this document as the sole responsibility of the Tribe, the Tribe's contribution would provide 100 percent of the necessary funds. The Tribe's contribution shall include the cost of preparing environmental documents and the cost of mitigation for traffic noise, including but not limited to the installation of sound walls. The Tribe's contribution shall be provided to the agency undertaking the improvement (e.g. Caltrans, Amador County, City of Plymouth).

Hazards and Hazardous Materials

F. Personnel shall follow written standard operating procedures (SOPs) for filling and servicing construction equipment and vehicles. These SOPs address storage and use of hazardous materials and would be implemented during both construction and operation of the casino. The SOPs, which are designed to reduce the potential for incidents involving the use and storage of hazardous materials, shall include the following where feasible and when reasonable:

1. Refueling shall be conducted only with approved pumps, hoses, and nozzles.
2. Catch-pans shall be placed under equipment to catch potential spills during servicing.
3. All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
4. Vehicle engines shall be shut down during refueling.
5. No smoking, open flames, or welding shall be allowed in refueling or service areas.
6. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
7. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.

8. Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, State, and Federal regulations.
9. All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure. All maintenance and refueling areas shall be inspected monthly. Results of inspections shall be recorded in a logbook that shall be maintained on-site.
10. Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.
11. Any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order.

G. The amount of hazardous materials used in project construction and operation shall be consistently kept at the lowest volumes needed.

H. During project operation, the least toxic material capable of achieving the intended result will consistently be used. These materials include industrial strength cleaners, detergents, pesticides, and degreasers. All potentially toxic materials would be used as directed according to Federal labeling requirements. All materials shall be kept within their original containers and at no time would the labels be removed from the original containers.

I. A hazardous materials and hazardous waste minimization program shall be developed, implemented, and reviewed annually by the Tribe to determine if additional opportunities for hazardous materials and hazardous waste minimization are feasible, for both project construction and operation. A copy of the hazardous waste minimization program and a full inventory of flammable and hazardous materials will be provided to the Amador County Fire Department.

J. The contractor shall be requested to avoid and minimize the use of hazardous materials and petroleum products during the project's construction to the fullest extent practicable.

K. The Tribe shall minimize the use of pesticides and toxic chemicals to the greatest extent feasible in landscaping or use less toxic alternatives, such as integrated pest management techniques.

L. The existing on-site residences shall be assessed for lead based paint and asbestos containing materials prior to demolition. The assessments will be performed by a licensed inspector. If lead-based paint or asbestos containing materials are found, the materials will be removed from the site according to local, State, and Federal requirements. All applicable Occupational Safety and Health Administration (OSHA) regulations shall be complied with.

M. As part of the WWTP design, hazardous materials used for disinfection of water and treated effluent would be fully stored in the chemical room of the WWTP operations

building. The storage and chemical metering facilities shall be located inside a chemical spill containment area, sized to contain 150 percent of the storage volume in case of an unintentional release. To the extent feasible, chemicals shall be stored as dry material in sealed containers, and then in a 50-gallon mixing tank when needed.

N. In the event that contaminated soil and/or groundwater are encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or a qualified individual can assess the extent of contamination. If contamination is determined to be significant, representatives of the Tribe shall consult with USEPA to determine the appropriate course of action, including the development of a Sampling Plan and Remediation Plan if necessary.

O. The Tribe shall establish a vegetative cover over mine tailings with California Flannelbush (*Fremontodendron californicum*), Yerba Santa (*Eriodictyon crassifolium*), Coyote Brush (Baccharis pilularis), or similar native plants used for soil stabilization/erosion control prior to public access to the project development. The Tribe will ensure the vegetative cover is maintained providing full coverage of the mine tailings. Additionally, the tailings area shall be fenced off to prevent public access.

Visual Resources

The Tribe shall participate in Caltrans' Adopt-A-Highway Program to provide litter removal on one or more highway segments in the vicinity of the project site.

6.10 MITIGATION MEASURES THAT ARE NOT ADOPTED

CEQ NEPA regulations (40 C.F.R. § 1505.2(c)) call for identification in the ROD of any mitigation measures specifically mentioned in the FEIS that are not adopted. All mitigation measures identified in the FEIS have been adopted.

7.0 ELIGIBILITY FOR GAMING PURSUANT TO THE INDIAN GAMING REGULATORY ACT

The Tribe intends to develop a gaming facility on the 228.04 acres of land, located in Plymouth, Amador County, California. Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719, prohibits gaming on land acquired in trust after October 17, 1988, but provides several exceptions to the general prohibition. Under § 2719(b)(1)(B)(iii) land that is the restoration of lands for an Indian tribe that is restored to Federal recognition is exempt from the general prohibition. For the reasons stated below, we believe that the lands that are the subject of the fee-to-trust application qualify as "Indian lands" within the meaning of IGRA on which the Tribe could conduct gaming once the lands are acquired in trust by the Department.

IGRA prohibits gaming on lands acquired after October 1988 unless:

A. The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

B. Lands are taken into trust as part of –
   i. A settlement of a land claim,
   ii. The initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or
   iii. The restoration of lands for an Indian tribe that is restored to Federal recognition.

25 U.S.C. § 2719(b)(1).

In May 2008, the Department published regulations for "Gaming on Trust Lands Acquired after October 17, 1988," (Part 292 regulations). The regulations became effective on August 25, 2008. Section 292.26(b) of the Part 292 regulations states:

> [T]hese regulations apply to final agency action taken after the effective date of these regulations except that these regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the National Indian Gaming Commission (NIGC) issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.

In 2004, prior to submitting its fee-to-trust application, the Band requested a legal opinion from the Department as to whether the Plymouth Parcels would be eligible for gaming under IGRA's Restored Lands exception at 25 U.S.C. § 2719(b)(1)(B)(iii). In 2006, the Department determined that the Band is a "restored tribe" and that the Plymouth Parcels would qualify as restored lands under IGRA if they were acquired in trust for the benefit of the Band.

The Department's 2006 determination constitutes a written opinion regarding the applicability of 25 U.S.C. § 2719 for land to be used for a particular gaming establishment under the Part 292 grandfather provision. Therefore, the particular criteria in the Part 292 regulations governing Restored Lands determinations do not apply to this particular trust application. I have relied upon, and adopted, the conclusions in the 2006 opinion pursuant to 25 C.F.R. § 292.26(b). The Plymouth Parcels thus constitute "[restored] lands for an Indian tribe that is restored to Federal recognition" within the meaning of IGRA.

Specifically, and as set forth in more detail in the Department's 2006 determination, we believe that the history of the Tribe's relationship with the United States is unique and complex. The evidence shows that the Department intended in 1916 to acquire land for the

Indians at Ione. The actions of the Department in furtherance of its efforts to acquire land for the Indians at Ione are not conclusive as to the Tribe's recognized tribal status. However, in 1972, Commissioner Bruce sent a letter that amounted to recognition for the Tribe in accordance with the practices of the Department at the time. The positions subsequently taken by the Department in Federal court and before the IBIA against the Tribe were wholly inconsistent with that position, and as such manifest a termination of the recognized relationship. Assistant Secretary Deer's review of the matter and reaffirmation of Commissioner Bruce's position amounts to a restoration of the Tribe's status as a recognized Tribe. Under the unique history of its relationship with the United States, and as allowed under the Part 292 grandfather provision, the Tribe should be considered a restored tribe within the meaning of IGRA.

In order to conduct gaming on the land, not only must the Tribe be considered a restored tribe within the meaning of IGRA, but the land being acquired must also be considered restored lands. The IGRA does not define what constitutes restored lands.

The Department's 2006 determination also found that the land being acquired is in an area that is historically significant to the Tribe. It is within a few miles of several historic tribal burial grounds and the site where some of the Tribe's ancestors signed a treaty. Many of the Tribe's members live in the surrounding area and the Tribe has used facilities in the City of Plymouth to hold governmental meetings in recent years establishing a modern connection to the area. Finally, the proposed acquisition of the land is reasonably temporal to the date the Tribe was restored.

In summary, the Department had previously determined that the proposed acquisition would constitute restored lands for a restored within the meaning of the IGRA. This prior determination qualifies the Tribe for the Part 292 grandfather provision at 25 C.F.R. § 292.26(b). This ROD thus records the Department's determination that the Plymouth County parcels are eligible for gaming under the "restored lands" exception in IGRA Section 20, 25 U.S.C. 2719(b)(1)(B)(iii), such that the Tribe may conduct class II gaming on the Amador County parcels once they are acquired in trust. At this time, the Tribe does not have an approved Tribal-State compact with the State of California for class III gaming. However, there is no requirement in IGRA that a compact be in place before the land is acquired in trust.

8.0 ACQUISITION OF LAND IN TRUST PURSUANT TO THE INDIAN REORGANIZATION ACT

The authority to acquire lands in trust for Indian tribes is found in 25 U.S.C. § 465. Section 465 is implemented though regulations found at 25 C.F.R. Part 151.

8.1 25 C.F.R. § 151.3: LAND ACQUISITION POLICY

The Secretary may acquire land in trust for a tribe when the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. The BIA has determined that the acquisition of the 228.04 acres of parcels satisfies 25 C.F.R. § 151.3(a)(3), and that the land is necessary to facilitate tribal self-determination and economic development.

8.2 25 C.F.R. § 151.10(A): STATUTORY AUTHORITY FOR THE ACQUISITION

Section 151.10(a) requires consideration of the existence of statutory authority for the acquisition and any limitations on such authority.

The statutory authority used by the Department to acquire the land in trust is Section 5 of the IRA, 25 U.S.C. § 465. Section 5 gives the Secretary broad authority to acquire land in trust for Indian tribes "within or without existing reservations…for the purpose of providing land for Indians…" Section 5 provides that title to any land so acquired shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired. Section 5 contains no specific limitations on acquiring lands in trust for the Tribe.

8.2.1 LEGAL ANALYSIS OF "UNDER FEDERAL JURISDICTION" IN 1934

In the Department's record of decision regarding the Cowlitz Tribe of Indians' fee-to-trust application (December 17, 2010), we concluded that the text of the IRA does not define or otherwise establish the meaning of the phrase "under federal jurisdiction." Nor does the legislative history clarify the meaning of the phrase. Because the IRA does not unambiguously give meaning to the phrase "under federal jurisdiction," the Secretary must interpret that phrase in order to continue to exercise the authority delegated to him under section 5 of the IRA.[2] The canons of construction applicable in Indian law, which derive from the unique relationship between the United States and Indian tribes, also guide the Secretary of the Interior's interpretation of any ambiguities in the IRA.[3] Under these canons, statutory silence or ambiguity is not to be interpreted to the detriment of Indians. Instead, statutes establishing Indian rights and privileges are to be construed liberally in favor of the Indians, and ambiguities are to be resolved in their favor.[4]

The discussion of "under federal jurisdiction" also must be understood against the backdrop of basic principles of Indian law that define the Federal Government's unique and evolving relationship with Indian tribes. The Supreme Court has long held that "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that [the Supreme Court] consistently described as 'plenary and exclusive.'"[5] The Indian Commerce Clause also authorizes Congress to regulate commerce "with the Indian tribes," U.S. Const.,

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[2] The Secretary receives deference to interpret statutes consigned to his administration. *See Chevron v. NRDC*, 467 U.S. 837, 844 (1984); *United States v. Mead Corp.*, 533 U.S. 218, 230-31 (2001); *see also Skidmore v. Swift*, 323 U.S. 134, 139 (1944) (agencies merit deference based on "specialized experience and broader investigations and information" available to them).

[3] *Yankton Sioux Tribe v. Kempthorne*, 442 F. Supp. 2d 774, 783 (D.S.D. 2006); *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan*, 369 F.3d 960, 968, 971 (6th Cir. 2004) (*Grand Traverse III*). This canon is "rooted in the unique trust relationship between the United States and the Indians." *Montana v. Blackfeet Tribe*, 471 U.S. 756, 766 (1988). *See also, Chickasaw Nation v. U.S.*, 534 U.S. 84 (2001) (*quoting Montana v. Blackfeet Tribe*, 471 U.S. at 766).

[4] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 200 (1999); *see also County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992).

[5] *United States v. Lara*, 541 U.S. 193, 200 (2004); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813 (1993) (If Congress possesses legislative jurisdiction then the question is whether and to what extent, Congress has exercised that undoubted jurisdiction); *Morton v. Mancari*, 417 U.S. 535, 551-52 (1974) ("The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself.").

art. I, § 8, cl. 3, and the Treaty Clause grants the President the power to negotiate treaties with the consent of the Senate. U.S. Const., art. II, § 2, cl. 2. Pursuant to U.S. Const., art. VI, cl. 2, treaties are the law of the land.

The Court also has recognized that "[i]nsofar as [Indian affairs were traditionally an aspect of military and foreign policy], Congress' legislative authority would rest in part, not upon 'affirmative grants of the Constitution,' but upon the Constitution's adoption of pre-constitutional powers necessarily inherent in any Federal Government, namely powers that this Court has described as 'necessary concomitants of nationality.'"[6] In addition, "[i]n the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them…needing protection…. Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation…."[7] In order to protect Indian lands from alienation and third party claims, Congress enacted a series of Indian Trade and Intercourse Acts ("Nonintercourse Act")[8] that ultimately placed a general restraint on conveyances of land interests by Indian tribes:

> No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered pursuant to the Constitution.[9]

Indeed, in *Johnson v. M'Intosh,* the Supreme Court held that while Indian tribes were "rightful occupants of the soil, with a legal as well as just claim to retain possession of it," the United States owned the lands in "fee."[10] As a result, title to Indian lands could only be extinguished by the United States. Thus, "[n]ot only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States…the power and the duty of exercising a fostering care and protection over all dependent Indian communities…."[11] Once Congress has established a relationship with an Indian tribe, Congress alone has the right to determine when its guardianship shall cease.[12]

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[6] *Lara,* 541 U.S. at 201.

[7] *Morton v. Mancari,* 417 U.S. at 552 (citation omitted).

[8] *See* Act of July 22, 1790, Ch. 33, § 4, 1 Stat. 137; Act of March 1, 1793, Ch. 19, § 8, 1 Stat. 329; Act of May 19, 1796, Ch. 30, § 12, 1 Stat. 469; Act of Mar. 3, 1799, Ch. 46, § 12, 1 Stat. 743; Act of Mar. 30, 1802, Ch. 13, § 12, 2 Stat. 139; Act of June 30, 1834, Ch. 161, § 12, 4 Stat, 729. In applying the Nonintercourse Act to the original states the Supreme Court held "that federal law, treaties, and statutes protected Indian occupancy and that its termination was exclusively the province of federal law." Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 670 (1974). This is the essence of the Act: that all land transactions involving Indian lands are "exclusively the province of federal law." The Nonintercourse Act applies to both voluntary and involuntary alienation, and renders void any transfer of protected land that is not in compliance with the Act or otherwise authorized by Congress. *Id.* at 669.

[9] Act of June 30, 1834, § 14, 4 Stat, 729, now codified at 25 U.S.C. § 177.

[10] 21 U.S. (8 Wheat.) 543 (1823).

[11] *United States v. Sandoval,* 231 U.S. at 45-46; *see also United States v. Kagama,* 118 U.S. 375, 384-385 (1886).

[12] *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan,* 369 F.3d 960, 968 (6th Cir. 2004), *citing Joint Tribal Council of the Passamaquoddy Tribe v.*

Having closely considered the text of the IRA, its remedial purposes, legislative history, and the Department's early practices, as well as the Indian canons of construction, we construe the phrase "under federal jurisdiction" as entailing a two-part inquiry. The first part examines whether there is a sufficient showing in the tribe's history, at or before 1934, that it was under federal jurisdiction, *i.e.,* whether the United States had, in 1934 or at some point in the tribe's history prior to 1934, taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members – that are sufficient to establish or that generally reflect Federal obligations, duties, responsibility for or authority over the tribe by the Federal Government. Some Federal actions may in and of themselves demonstrate that a tribe was under Federal jurisdiction or a variety of actions when viewed in concert may achieve the same result.

For example, some tribes may be able to demonstrate that they were under Federal jurisdiction by showing that Federal Government officials undertook guardianship actions on behalf of the tribe, or engaged in a continuous course of dealings with the tribe.[13] Evidence of such acts may be specific to the tribe and may include, but is certainly not limited to, the negotiation of or entering into treaties, the approval of contracts between the tribe and non-Indians, enforcement of the Nonintercourse Acts (Indian trader, liquor laws, and land transactions); inclusion in federal census counts; and the provision of health, education, or social services to a tribe or individual Indians. Evidence also may consist of actions by the Office of Indian Affairs, which became responsible for the administration of the Indian reservations in addition to implementing legislation. The Office exercised this administrative jurisdiction over the tribes, individual Indians, and their lands. Such evidence may be further found in a tribe's petition for federal acknowledgment under 25 C.F.R. Part 83 and corresponding factual findings related to the decision acknowledging the tribe. There may, of course, be other types of actions not referenced herein that evidence the Federal Government's obligations, duties to, acknowledged responsibility for, or power or authority over a particular tribe.

Once having identified that the tribe was under Federal jurisdiction at or before 1934, the second part ascertains whether the tribe's jurisdictional status remained intact in 1934.[14] For purposes of deciding the instant application, it is not necessary to posit in the abstract the universe of action that might be relevant to such a determination. It should be noted, however, that the Federal Government's failure to take any action towards or on behalf of a tribe during a particular time period does not necessarily reflect a termination of its

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Morton, 528 F.2d 370 (1st Cir. 1975); *see also United States v. Nice,* 241 U.S. 591, 598 (1916); *Tiger v. W. Investment Co.,* 221 U.S. 286 (1911).

[13] *See* Memorandum, Associate Solicitor, Indian Affairs 2 (Oct. 1, 1980) (re Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe); *see also United States v. John,* 437 U.S. 634, 653 (1978) (in holding that federal criminal jurisdiction could be reasserted over the Mississippi Choctaw reservation after several decades, the Court stated that the fact that federal supervision over the Mississippi Choctaws had not been continuous does not destroy the federal power to deal with them).

[14] For some tribes, evidence of being under federal jurisdiction in 1934 will be unambiguous, thus obviating the need to examine the tribe's history prior to 1934. For such tribes, there is no need to proceed to the second step of the two-part inquiry.

relationship with the tribe since only Congress can terminate such a relationship.[15] In general, however, the longer the period of time prior to 1934 in which the tribe's jurisdictional status is shown, and the smaller the gap between the date of the last evidence of being under Federal jurisdiction and 1934, the greater likelihood that the tribe retained its jurisdictional status in 1934. Correspondingly, the absence of any probative evidence that a tribe's jurisdictional status was terminated prior to 1934 would strongly suggest that such status was retained in 1934. As Justice Breyer discussed in his concurring opinion in *Carcieri*, a tribe may have been "under federal jurisdiction" in 1934 even though the Federal Government did not believe so at the time.[16]

Justice Breyer cited to a list of tribes that was compiled as part of a report issued 13 years after the IRA (the so-called Haas Report) and noted that some tribes were erroneously left off that list – because they were not recognized as tribes by Federal officials at the time – but whose status was later recognized by the Federal Government.[17] Justice Breyer further suggested that these later-recognized tribes nonetheless could have been "under federal jurisdiction" in 1934. He cited several post-IRA administrative decisions as examples of tribes that the BIA did not view as under Federal jurisdiction in 1934, but which nevertheless confirm the existence of a "1934 relationship between the tribe and federal government that could be described as jurisdictional."[18]

This interpretation of the phrase "under federal jurisdiction," including the two-part inquiry, is consistent with the remedial purpose of the IRA and with the Department's post-enactment practices in implementing the statute.

8.2.2 APPLICATION OF THE TWO-PART INQUIRY TO THE IONE BAND

In the early 1900s, the Ione Band, like many California tribes, did not have its own reservation. This situation reflects the dramatic history of the Indians in California, who were conscripted by the Spanish and Mexican governments and then substantially displaced by invading settlers under U.S. rule. It was in this same time period (early twentieth century) that the United States began consistent efforts to acquire land in order to establish a reservation for the Band. This substantial undertaking is clear evidence of a jurisdictional relationship between the United States and the Ione Band and satisfies step one of the two-part inquiry described above. The government's efforts to establish a reservation for the Band continued well past 1934. Moreover, there was no disruption in the relationship between the United States and the Ione Band prior to and in 1934. The second part of the two-part inquiry thus is satisfied and supports the conclusion that the Ione Band was under Federal jurisdiction in 1934.

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[15] *See Lara*, 541 U.S. at 200.
[16] *Carcieri*, 555 U.S. at 397-98.
[17] *Id.* at 1070.
[18] *Id.* (discussing Stillaguamish, Grand Traverse, and Mole Lake). Justice Breyer concurred with Justices Souter and Ginsburg that "recognized" was a distinct concept from "now under federal jurisdiction." However, in his analysis he appears to use the term "recognition" in the sense of "federally recognized" as that term is currently used today in its formalized political sense (*i.e.*, as the label given to Indian tribes that are in a political, government-to-government relationship with the United States), without discussing or explaining the meaning of the term in 1934.

A. History of the Ione Band's Relationship with the United States

The Ione Band did not live on a federally-established reservation in 1934. Prior to that year, however, the United States began an effort to acquire land for the Band that could become its reservation.

The Band is a successor in interest to the signatories of Treaty J, one of 18 unratified treaties negotiated by the Federal Government with California Indians in the mid-1800s. The Band currently occupies a 40 acre tract of land southeast of Sacramento, California, in Amador County, approximately 8.5 miles west of Jackson, the county seat. The Band has occupied this land since before 1900.

In 1906, C. E. Kelsey, a special agent to the Commissioner of Indian Affairs, wrote a report on the conditions of Indians in California. Dated March 16, 1906, the report was the result of 8 months of hands-on research (much on horseback) by Special Agent Kelsey.[19] The report was needed in order to meet a Congressional mandate that the Commissioner "investigate . . . existing conditions of the California Indians and to report to Congress at the next session some plan to improve the same."[20] As part of the report, Special Agent Kelsey undertook a census of the California Indians. In his census report, Kelsey identified 36 Ione Indians in Amador County and designated them as being "without land."[21]

In a May 11, 1915, letter to the Commissioner of Indian Affairs, Special Agent John J. Terrell described in detail his efforts to negotiate a purchase for the Ione Band of their "Indian Village."[22] Special Agent Terrell relayed the Band's "great opposition to leaving their old home spot around which cluster so many sacred memories to this remnant band" and noted that, "[o]f all the Indians I have visited these have stronger claims to their ancient Village than any others."[23] Special Agent Terrell further observed: "They have better and more extensive improvements, more especially in the erection of their large 'Sweat-House.'"[24] In the letter, Special Agent Terrell also referred to many communications he had had with the land owner in an attempt to obtain an affordable price (he deemed the owner's price of $50 per acre a "hold-up," and took credit for pushing back from the original $100 per acre price) and with various Department employees (reporting on the negotiations, collecting unspent money to augment his funds, seeking approval for his plans).[25] Attached to the letter was a census of the Ione Band, presumably conducted by Special Agent Terrell, which indicated a total of 101 residents, much higher than Kelsey's 36 inhabitants, but many of the names are the same.

By August 18, 1915, Special Agent Terrell received approval from the Department for a purchase based on a price of $50 per acre and concluded that the land owner would not lower

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[19] Report to Commissioner of Indian Affairs from Special Agent Charles E. Kelsey (March 21, 1906) (Census of Non-Reservation California Indians, 1905-1906) (Kelsey Report).
[20] Pub. L. No. 58-1479, 33 Stat. 1048, 1058 (1905).
[21] Kelsey Report at 7.
[22] Letter from John J. Terrell, Special Indian Agent, to Cato Sells, Commissioner of Indian Affairs 1 (May 11, 1915).
[23] *Id.* at 2.
[24] *Id.* at 2-3.
[25] *Id.* at 1-4.

the price below that figure.[26] Special Agent Terrell reported in a letter to the Commissioner on that date that he had "requested [the land owner] to have prepared at earliest practable [sic] date the required warranty deed conveying to the United States of America the 40 acres for the aggregate of $2,000-00, accompanying same with proper abstract."[27] This effort stalled, however, due to title problems. A May 2, 1916 letter from the Acting Assistant Commissioner of Indian Affairs to the Secretary of the Interior detailed problems with the abstract of title and the deed: the title covered "other land in addition to the 40 acres to be purchased" and the deed lacked a signature from the seller, revenue stamps, and a sufficient statement that the grantor was authorized to convey the parcel under its charter.[28] The Acting Assistant Commissioner recommended that the matter be referred to the Solicitor for the Interior Department.[29]

In a July 31, 1917 letter from Indian Service Inspector John J. Terrell to the Commissioner of Indian Affairs, Inspector Terrell expressed concern about the need to effect the proposed purchase of land noting "the sore disappointment to the Indians in the event this proposed purchase should fail and the exceeding great difficulty in removing these Indians, which would sooner or latter [sic] have to follow. . . ."[30] Inspector Terrell also related that the "chief of this band" explained that the Ione Band had always resided at that location.[31] On July 15, 1920, Superintendent O. H. Lipps and Special Supervisor L. F. Michaels conveyed to Commissioner of Indian Affairs Cato Sells a report, prepared over the course of 8 months beginning in September of 1919, regarding the condition of landless, non-reservation Indians in California.[32] The report included another census, which enumerated the "Ione group consist[ing] of 5 families – 19 people."[33]

The 1923 Reno Indian Agency annual report identified the estimated Indian population in Amador County as including 150 Indians at "Ione, Enterprise and Richey, etc."[34] The report also stated that the Indians did not have a reservation.[35] In correspondence to the Superintendent of Sacramento Agency in 1924 and 1925, the Assistant Commissioner of Indian Affairs referred to the earlier efforts to purchase land for the Ione Band and requested that the Superintendent give the purchase "early attention with a view to clearing the way for final action."[36]

A 1927 report from Superintendent L. A. Dorrington to the Commissioner of Indian Affairs found the Ione Band population to be 46.[37] Superintendent Dorrington also reported that the

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[26] Letter from John J. Terrell, Special Indian Agent, to Cato Sells, Commissioner of Indian Affairs 1 (Aug. 18, 1915).
[27] *Id.*
[28] Letter from Acting Assistant Commissioner of Indian Affairs to Secretary of the Interior 1 (August 18, 1915).
[29] *Id.* at 2.
[30] Letter from John J. Terrell, Indian Service Inspector, to Commissioner of Indian Affairs 1 (July 31, 1917).
[31] *Id.*
[32] Report to Cato Sells, Commissioner of Indian Affairs from O. H. Lipps, Superintendent and L. F. Michaels, Special Supervisor (June 15, 1920).
[33] *Id.* at 41.
[34] Reno Indian Agency, Annual Report 4 (1923).
[35] *Id.*
[36] Letter from E. B. Merritt, Assistant Commissioner of Indian Affairs, to L. A. Dorrington, Superintendent, Sacramento Agency, 1 (January 18, 1924).
[37] Report to Commissioner of Indian Affairs from L. A. Dorrington, Superintendent 2 (June 23, 1927).

effort "for the past several years" to purchase land for the Ione Band "has been tied up by legal procedure."[38] A May 7, 1930, letter from Superintendent Dorrington to John Porter, who had written to Dorrington on behalf of the Ione Band, explained that "because of our inability to get a clear title to the land, the deal has not been closed."[39] This problem persisted despite having negotiated with the owners of the parcel "for more than eight years."[40]

A series of letters in 1933 described efforts by the Department to address this problem. On October 5, 1933, Superintendent O. H. Lipps wrote to the Commissioner of Indian Affairs about a meeting he had had with two residents of Amador County (one being the Chairman of the Board of County Supervisors) regarding how to provide land to landless Indians in the county, including those living near Ione.[41] Superintendent Lipps reported that local officials planned to hold a conference to discuss the issue of acquiring land for the Indians. The Chairman of the Board of County Supervisors had suggested that the United States sell its reservation land at Jackson, California and rancheria land at Buena Vista, California, and use the proceeds to purchase land for landless Indians in Amador County, which was closer to work and schools, and to provide water to each parcel.[42] The Commissioner promptly wrote back to Superintendent Lipps on December 4, 1933 inquiring about the planned local conference and whether there had been any outcome.[43] Shortly thereafter, Superintendent Lipps wrote to the Chairman of the Board of County Supervisors. Referencing a promise by the Chairman "to submit a plan for securing suitable land and building homes for the homeless Indians in your County," Superintendent Lipps inquired "when we may expect it, together with an estimate of the cost."[44] This conference did not produce a breakthrough.

The next correspondence in the record related to the Ione Band is an April 29, 1941 letter from Edwin H. Hooper, Chief Clerk in Charge, Sacramento Indian Agency, to the Commissioner of Indian Affairs. This letter detailed the then recent efforts to purchase land for the Ione Band and described the impediments to that acquisition, including lack of clear title and problems involving "mineral rights and values."[45]

The continuous efforts of the United States beginning in 1915 to acquire land for the Ione Band as a permanent reservation demonstrate a consistent "under federal jurisdiction" relationship between the Federal Government and the Ione. These efforts satisfy the first part of the Department's two-part inquiry. Because this undertaking was continuous and not interrupted, and because no other events disrupted the relationship between the United States and the Band, the second part of the two-part inquiry also confirms the existence of a jurisdictional relationship in 1934.

B. Post-1934 Confirmations that Band was Under Federal Jurisdiction in 1934

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[38] *Id.*
[39] Letter from L. A. Dorrington, Superintendent to John Porter 1 (May 7, 1930).
[40] *Id.*
[41] Letter from O. H. Lipps, Superintendent, to Commissioner of Indian Affairs 1-2 (Oct. 5, 1933).
[42] *Id.* at 2.
[43] Letter from John Collier, Commissioner of Indian Affairs, to O.H. Lipps, Superintendent 1 (Dec. 4, 1933).
[44] Letter from O. H. Lipps, Superintendent, to Anson V. Prouty, Chairman of the Board of Amador County Supervisors 1 (Dec. 9, 1933).
[45] Letter from Edwin H. Hooper, Chief Clerk in Charge, to Commissioner of Indian Affairs 1 (April 29, 1941).

The substantial efforts by the United States to acquire land for the Ione Band have been noted and found significant in several other contexts. In the 1970s the Bureau of Indian Affairs recognized the Ione Band as an Indian tribe based on the 1915 and later efforts to acquire land for the Band. More recently, the United States District Court for the District of Columbia described these efforts to acquire land in an opinion regarding the Muwekma Tribe. *Muwekma Ohlone Tribe v. Salazar*, No. 03-1231, 2011 U.S. Dist. LEXIS 110400 (D. D.C. Sept. 28, 2011).

In the early 1970s California Indian Legal Services (CILS) became involved in efforts by the Ione Band to quiet title to the land they occupied and to get the Department to take the land in trust for the Band. On October 18, 1972, then Commissioner of Indian Affairs Louis R. Bruce wrote the Band acknowledging its request to have its forty acre parcel taken into trust and noting that the Secretary had authority to take land into trust under Section 5 of the IRA (25 U.S.C. § 465) and the Band had not voted to reject the IRA.[46] The Commissioner's letter directed the Region, then called an Area, to assist the Band in adopting a governing document under the IRA and agreed to accept the described land (the same 40 acres the United States sought to acquire starting in 1915) in trust for the Ione Band.[47] Unfortunately, the acquisition was never completed. The letter does recognize the Ione Band as an Indian tribe based on the 1915 determination by the United States to acquire land for the Band.[48] This conclusion was reaffirmed in a September 19, 2006 Indian Lands Determination written by Associate Solicitor Carl Artman, which found, *inter alia*, that the 1972 letter from Commissioner Bruce recognized the Ione Band as an Indian tribe.[49] This 2006 Determination represents the current policy of the Department: it was reinstated by the current Solicitor after having been withdrawn by a prior Solicitor in January 2009.[50]

The recognition of the Ione Band in 1972 by Commissioner Bruce supports the above conclusion that there was an under Federal jurisdiction relationship between the United States and the Ione Band. This is the case because the Bruce letter finds the efforts by the United States to acquire land for the Band beginning in 1915 and continuing past 1934 significant enough to warrant recognition of the Band.

In the course of deciding an issue involving another tribe, the United States District Court for the District of Columbia recently described the efforts by the United States to acquire land for the Ione Band as significant. In *Muwekma Ohlone Tribe v. Salazar*, the court accepted the Department's conclusion that the Ione Band has had a "long-standing and continuing governmental relationship with the United States."[51] The court took notice of a November 27, 2006 document filed by the Department entitled "Explanation to Supplement the

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[46] Letter from Louis R. Bruce, Commissioner of Indian Affairs, to Nicholas Villa and the Ione Band of Indians 1-2 (Oct. 18, 1972).
[47] *Id.* at 2.
[48] *Id.* at 1-2.
[49] Memorandum from Carl J. Artman, Associate Solicitor, to James E. Cason, Associate Deputy Secretary (Sept. 19, 2006) (Indian Lands Determination).
[50] Memorandum from Hilary C. Tompkins, Solicitor, to Larry Echo Hawk, Assistant Secretary – Indian Affairs (July 26, 2011).
[51] *Muwekma*, 2011 U.S. Dist. LEXIS 110400 at *81.

Administrative Record – Muwekma Ohlone Tribe."[52] Upon examination, the *Muwekma* court concluded:

> [T]he supplement to the administrative record . . . identifies a history of dealings between the federal government and the Ione. In 1915, a special agent for the BIA identified the Ione in a census conducted by the agency, and that "[t]he [f]ederal [g]overnment attempted to purchase land for" the Ione at that time. *Id.* at 7. The Department then noted that "the Indian Office obtained a deed and abstract of title for the purchase of land for the Ione[,] . . . and the Department provided the Office with a formal "Authority" for the purchase. *Id.* Documents in the record also reflect the federal government's "extensive, but unsuccessful, effort[] to clear title to the land for the" Ione from 1915-1925. *Id.*[53]

Based on the Department's "Explanation" document, the court accepted that the United States dealt with the Ione Band as a tribal entity – and not as a collection of individual Indians.[54] The *Muwekma* court's acknowledgement of a government-to-government relationship between the United States and the Ione Band prior to 1934 further supports the conclusion that the Ione Band was under Federal jurisdiction in 1934.

8.2.3 Conclusion

The Ione Band was under Federal jurisdiction in 1934. This conclusion is confirmed by application of the Department's two-part inquiry.

As noted above, the two-part inquiry first examines whether there is a sufficient showing in the tribe's history, at or before 1934, that it was under Federal jurisdiction, *i.e.*, whether the United States had, in 1934 or at some point in the tribe's history prior to 1934, taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members – that are sufficient to establish or that generally reflect Federal obligations, duties, responsibility for or authority over the tribe by the Federal Government.

The Federal Government's jurisdictional relationship with the Ione Band began no later than 1915, when the Department decided and undertook substantial efforts to acquire land for the Ione Band as a permanent reservation. At a minimum, these efforts evince Federal obligations, duties, and responsibility for the Band. The fact that this Federal effort was not completed in 1934 does not disturb this conclusion; the question posed by *Carcieri* is whether there was a jurisdictional relationship between the United States and a tribe in 1934, not the specific fruits of that relationship.

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[52] *Id.* at *42, *81.

[53] *Id.* at *83-84 (all citations are to "Explanation to Supplement the Administrative Record – Muwekma Ohlone Tribe"). The "Explanation to Supplement the Administrative Record - Muwekma Ohlone Tribe" is Exhibit 1 to Defendants' Response to Plaintiff's Statement of Material Facts as to Which There is No Genuine Dispute, *Muwekma Ohlone Tribe v. Kempthorne*, No. 1:03 CV 1231 (D. D.C. Mar. 16, 2007). The document, which provided a detailed explanation of the Department's refusal to waive the Part 83 procedures for the Muwekma Tribe's Federal recognition application, was signed by the Principal Deputy Assistant Secretary – Indian Affairs.

[54] *Id.* at *85.

Once having identified that the tribe was under Federal jurisdiction at or before 1934, the second part of the inquiry is to ascertain whether the tribe's jurisdictional status remained intact in 1934.

In the case of the Ione Band, the Department's effort to acquire land for the Band as a permanent reservation continued up to and past 1934, as noted in the April 29, 1941 letter from Chief Clerk Hooper to the Commissioner of Indian Affairs.

The 1972 Louis R. Bruce letter and the 2011 determination of the *Muwekma* court also find the United States' efforts to acquire land for the Band significant. The Bruce letter recognized the Ione Band as an Indian tribe based on the 1915 determination by the United States to acquire land for the Band. In *Muwekma*, the court identified a longstanding and continuous government-to-government relationship between the United States and the Ione Band on the same basis.

8.3 25 C.F.R. § 151.10(B): THE NEED OF THE INDIVIDUAL INDIAN OR TRIBE FOR ADDITIONAL LAND

Section 151.10(b) requires consideration of the "the need of the...tribe for additional land."

The Tribe has no reservation and no land in trust. Since it was restored to Federal recognition, the Tribe has lacked sufficient funds to purchase land and have that land placed in trust. As a result, the Tribe has been unable to provide for its people in ways similar to the surrounding community and surrounding Indian tribes because the Tribe has no sustainable economic base. Without trust land, the Tribe has had little opportunity for successful economic development and little chance at true self-governance. Placement of the Plymouth Parcels into trust will promote tribal self-determination, provide opportunities for economic development, and aid in the establishment of tribal government programs. The proposed trust acquisition will provide a land base from which the Tribe may exercise governmental powers and operate governmental programs to serve its membership, and will allow the Tribe to operate an enterprise which will provide the revenue for these programs.

The BIA has considered the Tribe's need for lands in trust status and finds that the Tribe has a demonstrable need to acquire the Plymouth Parcels in trust.

8.4 25 C.F.R. § 151.10(C): THE PURPOSES FOR WHICH THE LAND WILL BE USED

Section 151.10(c) requires consideration of the purposes for which the land will be used.

As detailed in the FEIS, the Tribe proposes to construct a casino-resort complex that would include Class III gaming conducted in accordance with the IGRA and Tribal-State Compact requirements. The resort complex would consist of approximately 65,000 square feet of gaming floor; 35,000 square feet of restaurant and retail facilities and public space; 30,000 square feet of convention and multi-purpose space (with seating for up to 1,200); and a 5-story, 250-room hotel. Approximately 2,965 parking spaces would be provided for the project in surface parking lots and a five level parking structure located adjacent to the

proposed casino complex. The project would be developed in two phases, with the casino and restaurant complex, the parking structure, and auxiliary facilities constituting Phase I, and the development of the hotel, convention and conference center, and additional parking constituting Phase II.

The BIA finds that the stated purposes for which the land will be used appropriately meet the purpose and need for acquiring the lands in to trust.

8.5 25 C.F.R. § 151.10(E): IF THE LAND TO BE ACQUIRED IS IN UNRESTRICTED FEE STATUS, THE IMPACT ON THE STATE AND ITS POLITICAL SUBDIVISIONS RESULTING FROM THE REMOVAL OF LAND FROM THE TAX ROLLS

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

The potential fiscal impacts of the Preferred Alternative were comprehensively evaluated during negotiations of the now voided Municipal Services Agreement (MSA) and in the FEIS. As stated in the FEIS, the Tribe has incorporated the fiscal mitigation provisions of the voided MSA into FEIS. These provisions include payments, commencing at the time of the fee-to-trust transfer of the Plymouth Parcels, of an annual contribution equal to the current tax rate to the City of Plymouth and Amador County to address lost property tax revenues. The amount of payment shall be subject to annual review by the Amador County Assessor with any adjustments made with concurrence by the Tribe. The Department finds that the impacts of removing the subject property from the tax rolls are not significant because of the degree to which the Tribe's direct and indirect payments to the Amador County offset the loss of real property taxes that would occur.

8.6 25 C.F.R. § 151.10(F): JURISDICTIONAL PROBLEMS AND POTENTIAL CONFLICTSW OF LAND USE WHICH MAY ARISE

Section 151.10(f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise.

The Plymouth Parcels are located partially within the City of Plymouth and partially within unincorporated Amador County. Accordingly, both the City of Plymouth and Amador County currently exercise land use jurisdiction over the Plymouth Parcels. Through the incorporation of the voided MSA provisions within the FEIS, the Tribe has agreed to address all major jurisdictional issues, including, but not limited to compensating the County Sheriff's Department, prosecuting attorney's office, courts, and schools that will provide public services on the Tribe's trust lands.

9.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE

The Department has determined that it will implement the Preferred Alternative (Alternative A). This decision has been made based upon the environmental impacts identified in the EIS and corresponding mitigation (including modification of the site plan to reduce surface parking through development of a multi-story parking structure), a consideration of economic

and technical factors, as well as the BIA's policy goals and objectives, and the purpose and need for the project. Of the alternatives evaluated in the EIS, Alternative A would best meet the purposes and needs of the BIA, consistent with its statutory mission and responsibilities, to promote the long-term economic vitality and self-sufficiency, self-determination and self-governance of the Tribe. The casino-resort complex described under Alternative A would provide the Tribe, which has no trust land, with a long deferred reservation land base and the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government and to fund necessary mitigation for development of economic ventures. This would enable the tribal government to establish, fund, and maintain governmental programs that offer a wide range of health, education and welfare services to tribal members, as well as provide the Tribe, its members and local communities with greater opportunities for employment and economic growth.

The Department is aware that completion of the project as detailed in Alternative A will require approval or other actions of Federal or local agencies. For Alternative A to be implemented, NIGC must approve the Gaming Management Contact, USEPA must grant general construction and discharge NPDES permits, USACE must concur with the wetland delineation and issue a CWA Section 404 permit for the fill of water of the U.S., and the USEPA must issue a CWA Section 401 certification. While the No-Action Alternative (Alternative E) and Retail Development Alternative (Alternative D) would result in lesser environmental impacts, these alternatives would limit the ability of the Tribe to facilitate and promote tribal economic development, self-determination and self-sufficiency. The No-Action Alternative would result in no net income or other economic benefits to the Tribe, and thus does not meet the stated purpose and need. Likewise, Alternative D, which has been identified in **Section 4.0** as the Environmentally Preferred Alternative, would substantially limit the beneficial effects that would otherwise be available to the Tribe and surrounding communities under the Preferred Alternative and would not substantially meet the purpose and need for the Proposed Action.

The Preferred Alternative results in substantially greater beneficial effects for the Tribe and surrounding communities than any of the other alternatives. Alternatives B and C, while less intensive than Alternative A, would require similar levels of mitigation for identified impacts while providing less revenue to fund mitigation. The additional impacts from the Preferred Alternative would be reduced to less than significant after the implementation of mitigation measures. Accordingly, the Department will implement the Preferred Alternative subject to the mitigation measures discussed in **Section 6.0**.

9.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS

The Preferred Alternative reasonably is expected to result in beneficial effects for Amador County communities, the Tribe, and its members. Key beneficial effects include:

- Establishment of a land base for the Tribe, from which it can operate its tribal government and provide a variety of health, housing, education, social, cultural and other programs and services for its members, provide employment

opportunities for its members, and promote a sense of community and political cohesion.

- Generation of needed government revenues for the Tribe that will allow the Tribe to fund the governmental operations and programs required to meet Tribal needs, will provide capital for other economic development opportunities, and will allow the Tribe to achieve Tribal self-sufficiency, self-determination, and a strong, stable Tribal government.

- Generation of approximately 392 jobs over the entire construction period.

- Generation at the onset of operations of employment of 1,271 full-time equivalent jobs. Employees who earn tips are estimated to earn additional annual income. Approximately 60 percent of employees are anticipated currently to reside in Amador County.

- Increased off-site spending and economic opportunities benefiting local community members. Revenue from new in-state expenditures on goods and services is estimated to total tens of millions annually.

- Generation of annual and one-time revenues to the State of California through the Tribal State Compact.

9.2 PREFERRED PROJECT WITH REDUCED GAMING AREA (ALTERNATIVE B) AND WITH REDUCED GAMING AND NO HOTEL (ALTERNATIVE C) RESTRICTS BENEFICIAL EFFECTS

The reduced intensity alternatives (Alternatives B and C) would generate less revenue than the Preferred Alternative. As a result, they would restrict the Tribe's ability to meet its needs and to foster Tribal economic development, self-determination, and self-sufficiency. Due to a lesser amount of new development, the effects on the natural and physical environment would be slightly less under Alternatives B and C than those created by the Preferred Alternative. Both alternatives would result in a similar level of impacts after mitigation. The reduced economic and related benefits of Alternatives B and C make them less viable options that would fulfill the purpose and need of the Proposed Action to a lesser degree than the Preferred Alternative. Accordingly, the BIA has selected the Preferred Alternative over Alternatives B and C.

9.3 RETAIL DEVELOPMENT ALTERNATIVE (ALTERNATIVE D) SEVERELY RESTRICTS BENEFICIAL EFFECTS

The Retail Development Alternative (Alternative D) is the Environmentally Preferred Alternative; however, implementation would result in less employment and economic growth for both the Tribe and neighboring communities than from the Preferred Alternative. As a result, it would restrict the Tribe's ability to meet its needs and to foster Tribal economic development, self-determination, and self-sufficiency. The reduced economic and related benefits of Alternative D make it a less viable option that would fulfill the purpose and need of the Proposed Action less than the Preferred Alternative. Additionally, based on the

dynamic differences in patron behavior between gaming and commercial venues, Alternative D would result in greater trip generation and a higher percentage of trip generation at peak hours, subsequently increasing the potential for adverse traffic impacts and associated air quality emissions. Therefore, selection of Alternative D over the Preferred Alternative is not warranted.

9.4 NO-ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED FOR ACTION

Under the No-Action Alternative, it is reasonably foreseeable that the Plymouth Parcels would be developed with commercial and residential uses. The government revenue and employment impacts from such development would be relatively low, particularly compared to the government revenue and employment benefits of a casino. Because of this, City and County residents, the Tribe, and its members would not receive the economic and related benefits that the proposed casino is reasonably anticipated to provide. This would result in a continuation of the poor economic conditions and very limited economic opportunities of the Tribe and its members.

10.0 SIGNATURE

By my signature, I indicate my decision to implement the Preferred Alternative and acquire the Plymouth Parcels property in trust for the Ione Band of Miwok Indians.

Date: 5-29-12

Donald E. Laverdure
Acting Assistant Secretary – Indian Affairs
United States Department of the Interior