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March 12, 2009

Mr. Dale Morris, Regional Director  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento CA 95825

Dear Mr. Morris:

#### **A. AUBURN OBJECTION TO ENTERPRISE PROPOSED LAND ACQUISITION**

The United Auburn Indian Community ("Auburn") is aware that the Enterprise Rancheria of Maidu Indians of California ("Enterprise") seeks to conduct off-reservation gaming on certain lands near Olivehurst, Yuba County, California (the "Yuba County Lands"). To this end, Enterprise has applied to have the Yuba County Lands taken into trust by the Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq. Specifically, before the Secretary may take the subject land into trust, the Secretary must complete a two-part determination that addresses whether the proposed tribal casino on the newly acquired land (1) is in the best interest of Enterprise and its members; and (2) is not detrimental to the surrounding community. Further, the Governor of California must concur in the determination of the Secretary. This two-part Secretarial determination process has resulted in land acquisitions for tribes only three (3) times since the IGRA was passed over 20 years ago (the last such approval occurring in 2000). Accordingly, the process is quite rigorous and the Secretary must carefully scrutinize the application, as well as any objections received -- including any objections from nearby tribes.

For multiple reasons, Auburn opposes the land-into-trust application submitted by Enterprise. In brief, Auburn believes that the development and operation of a gaming facility on the Yuba County Lands would be environmentally, socially, and economically detrimental to Auburn as a neighboring Tribe, as well as to the greater community in and around the Yuba County Lands.

On January 16, 2009, the Bureau of Indian Affairs ("BIA") solicited comments on the Enterprise land-into-trust application from neighboring Tribes and other members of the local community in and around the Yuba County Lands. Pursuant to the letter, comments are to be submitted to the BIA on or before March 17, 2009. As a neighboring Tribe to Enterprise and a member of the community surrounding the Yuba County Lands, Auburn should have received notice of the opportunity to comment on the Enterprise application. Notwithstanding the obligation of the BIA to solicit Auburn's input, Auburn was not included on the distribution list for the January 16, 2009, letter. As a result, Auburn only

recently learned that the BIA was soliciting comments. Based on the fact that Auburn only just learned of the comment period, Auburn respectfully requests a 60-day extension, or until and including May 17, 2009, to fully respond to the issues raised by the proposed gaming facility.

While Auburn anticipates filing fully-developed comments regarding its opposition to the acquisition on or before May 17th, a brief summary of Auburn's objections to Enterprise's application is set forth below to preserve Auburn's objection on the record and in the event its extension request is not granted.

## **B. CONSULTATION WITH NEARBY TRIBES IS REQUIRED -- WHICH INCLUDES AUBURN**

The IGRA and 25 C.F.R. 292 require the Secretary to consult with tribes located within 25 miles of the proposed gaming facility. Despite this requirement, the distribution list for the January 16, 2009 letter does not include any Indian tribes -- much less Auburn. Indeed, Auburn is located approximately 20 miles from the location of the proposed off-reservation gaming and therefore has a clear interest in the proceedings. As such, Auburn should have been on the distribution list and received notice of the request for comments. Based on Auburn's close proximity, Auburn is entitled under the IGRA to have sufficient time to prepare and submit comments.

The Revised 2007 Checklist for Gaming Acquisitions issued by the Secretary of the Interior's Office of Indian Gaming Management ("OIGM") sets forth, in great detail, the requirements for the Secretary completing a gaming land acquisition package and taking final action. The Checklist includes information on certain procedural steps to be followed. Among these requirements is consultation with local communities, nearby tribes and state officials.

Here, the Auburn Indian Community is located only 20 miles from the proposed gaming facility -- undisputably a "nearby" tribe. In fact, Auburn is located about 20 miles closer to the proposed site than the Enterprise Rancheria itself. As such, Auburn has a greater right to claiming that the land at issue is within Auburn's historical land base -- not the land base of Enterprise. Pursuant to the IGRA, 25 C.F.R. 292, and the OIGM Checklist, the BIA is mandated to consult with Auburn and permit Auburn the opportunity to lodge its objections to Enterprise's proposed land-into-trust acquisition.

## **C. PROPOSED GAMING FACILITY WOULD BE DETRIMENTAL TO AUBURN**

As noted above, in rendering a two-part determination here, the Secretary must conclude the acquisition (1) is in the "best interest" of Enterprise and its members; and (2) will not be "detrimental" to the surrounding community. 25 U.S.C. § 2719(b)(1)(A).

Auburn believes Enterprise will have a difficult burden in demonstrating that the proposed land acquisition would not be detrimental to the surrounding community and

would be in the best of interest of Indian Country as a whole. Pursuant to the OIGM Checklist, the greater the distance the acquired land is from the Enterprise reservation, the greater the justification Enterprise will need to show to support the additional benefits to the Tribe. With the distance here being 45 miles from the Enterprise reservation, the justification will need to be significant and substantial.

In addition, Enterprise already has existing ancestral lands in another part of California on which gaming can occur. Enterprise is simply looking for better, more accessible land near an urban center on which to conduct gaming. Enterprise should not be allowed to "shop" for a better location to the detriment of Auburn, its members, its government, and its own economic development. To encroach on Auburn's historical lands would be unfair to Auburn and infringe on the cultural heritage and sovereignty of Auburn.

Auburn advocates that Enterprise use existing land or seek other land where it has the requisite historical and cultural nexus in which to engage in gaming and other economic development. Should it indeed prove impractical to use the existing Enterprise tribal lands, there are surely other tracts of land closer to the historical and cultural lands of Enterprise that can be taken into trust.

To be sure, the proposed Enterprise gaming facility would have a significant adverse impact on Auburn and its existing gaming operations. Auburn currently operates a casino in nearby Lincoln, California — approximately 20 miles from the proposed location. In the current economic environment, Auburn has postponed modifications to its existing facility. To further burden Auburn with competition from a nearby casino would be grossly unfair and would have a significant negative economic impact on Auburn.

#### **D. ENVIRONMENTAL ISSUES**

The following sets forth certain environmental impacts and mitigation regarding the proposed Enterprise land acquisition. If the extension request is granted, additional comments and detail will be provided. Page and figure numbers below reference the Draft EIS prepared for the project.

##### **1. Flooding**

A portion of the project (including the hotel) would be located within what is currently designated as a flood zone. While the project proposes to elevate structures out of the floodplain, it is unclear which structures would be elevated. The extent of the floodplain as shown in the Draft EIS (Figure 3.1.3-2) is different than the FEMA flood map included as Figure 2 of Appendix F (Drainage Study), making the extent of impacts unclear.

##### **2. Soil Limitations**

The project is located on soils with high shrink-swell potential (as noted on page 3.1.2-1) yet no impact discussion or mitigation measures are discussed for this limitation. Without

a geotechnical report and recommendations from a licensed professional, the extent of impacts is unknown and potentially significant.

### 3. Socioeconomic Impacts

The EIS should evaluate the economic impacts to existing Tribal gaming operation including Thunder Valley. For examples of similar studies, see the analysis conducted for the North Fork Casino EIS and Cowlitz Casino EIS.

### 4. Traffic

- No accident rate data or other safety assessment was provided for study intersections, even though this concern was identified in the Scoping Report. Traffic safety is discussed only with regard to SR-70/Plumas Arboga Road. The proposed mitigation is unclear but seems to be prohibiting left turns at this intersection. The document does not analyze the impacts of prohibiting turns on the local road system (increased turning at other intersections) which could be significant.
- The Draft EIS does not provide LOS tables for the alternatives after the incorporation of mitigation; thus, it is unclear whether mitigation would adequately reduce impacts to a less than significant level.
- What assurances are provided that the Tribe would construct needed traffic improvements prior to and during operation? The EIS should define "fair share" payments, which are included as mitigation.
- The EIS does not include an analysis of traffic in conjunction with events at the Sleep Train Amphitheater.
- The EIS does not analyze impacts to California Highway Patrol for increased calls and traffic accidents on state routes.

### 5. Hazards

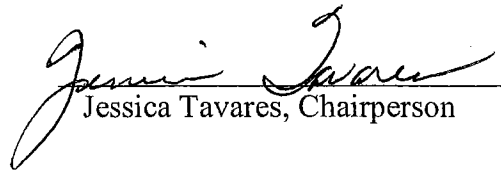
The EDR report prepared for the Phase I is dated 2003. This report should be updated to reflect any new conditions on surrounding properties.

### 6. Visual

This section provides no photographs of the discussed view sheds or simulations of the view sheds with the project. Without evidence, the document cannot conclude there is a less than significant impact.

## **E. CONCLUSION**

Auburn anticipates developing the foregoing comments, as well as others, over the course of the next 60 days. The requested extension to the comment period will permit a full explanation of the adverse impact of the proposed gaming facility to Auburn. We appreciate very much your anticipated courtesy and cooperation in granting the requested extension to enable Auburn to have its voice heard in this matter.

  
Jessica Tavares, Chairperson