

ENTERPRISE RANCHERIA FINAL ENVIRONMENTAL IMPACT STATEMENT

Peer Review

The following is a peer review of the Final Environmental Impact Statement (FEIS) for the Enterprise Rancheria (Tribe) Gaming Facility and Hotel Fee-to-Trust Acquisition dated May 2009.

Comments on Appendix K, Cultural Resources, were prepared by Marcos Guerrero, Cultural Resources Specialist for the United Auburn Indian Community. The rest of this peer review was prepared by ESA, an environmental consulting firm.

It is our opinion that the FEIS requires revision or supplement in order for public and reviewing agencies to provide meaningful comments on the analysis and to ensure compliance with the National Environmental Policy Act (NEPA). The Council on Environmental Quality's (CEQ) Regulations for Implementing NEPA state that agencies shall prepare a supplement to an EIS if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" (40 CFR Part 1502.9(c)(1)(ii)). Similarly, the Bureau's NEPA Handbook states that an EIS must be reviewed to determine if it needs to be revised or supplemented under several conditions including "[s]ignificant new circumstances or information relevant to environmental concerns" (59 IAM 3-H, Section 6.7). The comments below reflect that substantial analysis is missing or requires revisions in order to adequately analyze the environmental effects of the proposed action and alternatives. Of particular concern are the purpose and need statement, range of alternatives, the potential for flood hazards, greenhouse gas emissions, off-site impacts to federally-listed species and the baseline for air quality and traffic analyses, among other issues.

The FEIS provides revisions based on comments received on the Draft EIS (DEIS) dated February 2008. Peer review comments were submitted previously on the DEIS through the Indian Gaming Regulatory Act (IGRA) two-part determination consultation process by the United Auburn Indian Community. Some of the peer review comments appear to be addressed while others were not. While the IGRA comment process is separate from the formal comment period on the Draft EIS, it does not eliminate the need for the Final EIS to address relevant comments on the legal and technical adequacy of the NEPA document. *Italicized comments below denote comments which were submitted through the IGRA consultation process which were not addressed in the FEIS.*

Overall Comments

The revisions which have been made from the DEIS to the FEIS do not appear consistently in underline/strikeout. For example underline/strikeout appears for revisions in Section 3.1.3, Water Resources (pg. 3.1.3-7) but does not appear for the revisions made in Section 5, Mitigation Measures.

Purpose and Need

Section 1.3 Purpose and Need for the Proposed Action:

The purpose and need discussion should provide details regarding where Tribal members live and work. In order to meet the needs of providing jobs and services to the Tribe it would be logical to locate restored trust lands near the Tribe's current population base. As discussed on pg 3.1.7-1 of the FEIS, the majority of Tribal members live in Butte County. Additionally Tribal government functions and Tribal social gatherings occur in and around Oroville¹. It is unclear from the discussion what percentage live in Yuba County or in the vicinity of the Yuba Site. The document must include analysis explaining how development on the Yuba Site would directly meet the social and economic needs of the Tribe.

Alternatives

Section 2.0 Alternatives:

The FEIS analyzes an off-site alternative which is not reasonable (and does not meet the purpose and need) and therefore does not provide a sufficient range of alternatives under NEPA. The purpose and need section drives the determination of alternatives. CEQ Regulations for Implementing NEPA state that the purpose and need "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action" (40 CFR § 1502.13). The Bureau of Indian Affairs NEPA Handbook states "the proposed action and alternatives must address the purpose and need directly" (59 IAM 3-H § 6.4(E)(5)) and discusses that "viable alternatives are other possible means to meet the purpose and need" (59 IAM 3-H § 6.4(E)(6)). Yet the FEIS itself admits that the off-site alternative on the Butte Site "would be very difficult for the Tribe to finance and even if financing was obtained would result in minimal to no profits, especially in the near term" (pg. 2-47). If the project would not be financially viable at the Butte Site then it is not a reasonable alternative because it meets only one of the five objectives in the purpose and need. To summarize, it would restore tribal trust land but would fail to meet any of the other objectives including improving the socioeconomic status of the Tribe, establishing self-sufficiency for the Tribe, and providing employment opportunities for the Tribe and surrounding community. While the document appears to fairly evaluate an off-site alternative it has essentially been predetermined that the Yuba Site will be selected and therefore does not analyze a reasonable range. A new off-site alternative should be developed that will meet the purpose and need.

Section 2.3 Alternatives Eliminated from Further Consideration:

The CEQ NEPA regulations state that the alternatives section shall "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated" (40 CFR § 1502.14(a)). While several sites are discussed in this section, it is unclear whether a rigorous or "hard look" at available sites closer to the Tribe's historical holdings was done. Taking into account the Tribe's historical holdings and the Tribe's current population base (pg 3.1.7-1 of FEIS), a reasonable site in Butte County should be considered as an alternative. Alternatives are dismissed prematurely for issues which may be overcome or mitigated. For example, alternatives are eliminated due to lack of water/wastewater infrastructure, presence of wetlands or vernal pools, incompatibility with existing zoning and lack of ability to secure an investor for an alternative site. Feasible solutions to these issues include development of private water or wastewater infrastructure on site, avoidance of wetlands/vernal pools

¹ Enterprise Rancheria, March 2006 (Vol. 6 Issue 3) September 2006 (Vol. 06 Issue 58) January 2010 Newsletters and Tribal contact information available at <http://www.enterpriserancheria.org/>.

and measures to ensure compatibility with surrounding land uses. In fact, the federal government recently brought land into trust for the Elk Valley Rancheria which found solutions for all of these obstacles. In addition, it is undocumented how much effort was put into securing investors for an alternative site. Alternatives should be considered even if there is no current investor for a viable off-site alternative. As explained in CEQ's Memorandum Forty Most Asked Questions Concerning CEQ's NEPA Regulations "Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative."² Should the alternative site be selected by the Lead Agency it could improve the chances of obtaining an investor or securing a development grant.

Land Resources

Section 4.2 Land Resources (Environmental Consequences):

The document states throughout that the cut and fill would be balanced on site. The document should provide the amount of cubic feet for cut/fill so that it is clear that this could truly be balanced on site. Without this information, the document lacks methodology for determining that a site balance is possible and potentially could require significant import or export of fill.

Appendix F – Grading and Drainage Plans:

The project description in Section 2.0 and Appendix F are inconsistent on the height of the project above the floodplain. The grading and drainage study says at least 1 foot while the project description says at least 3.5 feet (page 2-19). This further solidifies the comment above that it is unclear whether site balance can be achieved as the project may require more fill than the grading and drainage plans assumed. The project description and grading/drainage plans should be made consistent on this point.

Water Resources

Project Description

The Grading and Drainage Plan figures (Figure 2-9, 2-13, 2-17) do not actually show grading or drainage plans. They do not have labeled contour lines or provide any other needed information, such as labeled drainage facilities. While Figure 2-4, the Grading and Drainage Plan for Alternative A does show drainage plans, it does not show grading plans. Additional details are needed in order to adequately review the environmental effects of the proposed action and alternatives.

Sections 3.1.3 and 3.2.3 Water Resources (Affected Environment):

- Page 3.1.3-1 indicates that the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map shows a 100-year flood elevation of 60 feet for the action area, but that a subsequent U.S. Army Corps of Engineers (USACE) map indicated a flood zone elevation of 59 feet. Unless a Letter of Map Revision or other FEMA map revision has been processed by FEMA, the analysis contained in this document should be based on a 60-foot elevation, not a 59-foot flood elevation for the 100-year storm.
- Page 3.1.3-1 states that the Sacramento and San Joaquin Drainage District holds an inundation easement for the Yuba Site, and Figure 3.1.3-2 has been updated since the DEIS to show the Flood Inundation Easement

² Question 2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. Available at: <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

Area. This figure shows that the Yuba Site, in its entirety, is located within the flood inundation easement area. Text on pages 3.1.3-1 and 3.1.3-2 of the FEIS indicate that the inundation easement “generally allows for the right to flood the property without recourse from the property owner.” In order to adequately characterize potential flood related impacts, the FEIS needs to provide an account of the following: when the site would be flooded under this easement; whether the easement would be discontinued; flood elevations under this easement as compared to FEMA flood elevations; discussion of whether inundation similar to (or greater than) a 100-year flood event would ever occur due to the easement; and discussion of potential effects on the safety of casino patrons and the ability of the casino to comply with flood related regulations for construction.

- *Substantial portions of the review of water resources on site are cursory or inadequate. Specific examples include:*
 1. *Page 3.1.3-1 states that the wastewater treatment plant site is in FEMA Zone C, but Figure 3.1.3-2 shows it in Zone X.*
 2. *Figure 3.1.3-3 is titled “groundwater map,” but no groundwater information is provided on the map; this is a geologic map that reports geologic strata. Text has been added since the DEIS that adequately discusses groundwater levels and trends in the vicinity of the site.*
 3. *Discussion of drainage for the Butte Site is cursory (pg. 3.2.3-1). The discussion should identify existing drainage facilities, if any, and indicate which water bodies drain from the site, and in particular if the portion of the site that would be developed would receive drainage waters.*
 4. *On page 3.2.3-1 of the FEIS, under the “Floodplain” heading, text was added indicating that the Butte Site is not within an area of “FEMA-defined...” flooding. This analysis is not adequate. The Butte Site is not within a FEMA-defined area of flooding because the site has never been characterized by FEMA. Many areas of California, especially rural areas like the Butte Site, have never been reviewed by FEMA for potential flooding. Therefore, the FEIS is correct that the Butte Site is not within an area where FEMA has delineated flooding, but this is because FEMA has never completed a study of this area. This situation needs to be disclosed and the existing text remains misleading. Section 4.0 of the FEIS should provide an analysis and assessment of the potential for flooding at the Butte Site, since flood levels at the site are not known, and because the Butte Site is traversed by ‘various intermittent streams,’ as indicated on under the “Watershed” heading on FEIS page 3.2.3-1.*
 5. *FEIS Page 3.2.3-1, under the “Surface Water Quality” heading has been updated to indicate that four springs and nine small drainages are located on site. This information is relevant to the “Drainage” subsection and should be moved there. The “Surface Water Quality” subsection still does not address surface water quality on site or downstream of the site. As is, the site was not properly characterized as required under NEPA. The discussion of water quality needs to be revised to address the quality of surface waters on site. If no information is available on site, this needs to be disclosed. Water quality discussion of downstream areas also needs to be included, to the extent which changes on site could affect downstream water quality.*
- *Page 3.2.3-2 indicates that there is an existing spring water diversion that is used by on-site residents. The EIS needs to provide a review of existing users of this water, and Section 4.0 of the EIS needs to assess to what extent groundwater pumping would be anticipated to reduce available spring water, and whether such a reduction would affect existing users of the spring water. Additionally, because groundwater is surfacing on site (e.g., there is a spring on site), the EIS needs to provide an assessment of how surface water flows would be altered as a result of the proposed groundwater pumping. Finally, if there is an existing spring on site, this would constitute surface water on site, which is in conflict with the statement on the previous*

page that there is no surface water present on the Butte Site. These discrepancies need to be rectified, and a complete and accurate analysis needs to be presented.

Section 4.3 Water Resources (Environmental Consequences):

- The FEIS states that the proposed facility would use groundwater at the Butte County site. The FEIS should document the extent to which groundwater use could result in reduced surface water flows (there are springs on site, so a connection to groundwater is clear). Additionally, the applicant may also need to apply for a surface water right. To comply with NEPA, this needs to be fully disclosed and assessed as a potential impact.
- On page 4.3-1, the first paragraph of the FEIS mentions the inundation easement that is located on site, and also indicates that a portion of the site is within the 100-year flood plain, as defined by FEMA. But it is not clear that the FEMA flood zone accounts for potential flooding under the inundation easement. The reader can only assume that FEMA's flood zones do not account for flooding under the inundation easement, since the 100-year flood zone only covers a portion of the site, whereas the inundation easement includes the entire Yuba Site. Unfortunately, the FEIS provides no further characterization of flooding associated with the inundation easement. Instead, it simply ignores the easement and discusses the FEMA 100-year flood zone. The analysis is inadequate, and does not provide sufficient information to determine the potential effects of the proposed casino on flooding as required by NEPA. Further, if flooding associated with the inundation easement were to continue on site, minimum standards for visitor safety and other flood related requirements and regulations may not be met. Additional analysis and likely substantial additional mitigation, including removal of the inundation easements or elevation above easement-related flood levels, need to be added to the FEIS.
- *Page 4.3-1, first paragraph, the text indicates that Yuba County would review the development plans for the proposed action and determine whether the proposed construction is consistent with the need to minimize flood damage and if the proposed construction is reasonably safe from flooding. A review of whether the proposed construction is 'reasonably safe from flooding' needs to occur as a portion of this environmental review.*
- *Page 4.3-1, 3rd paragraph, the analysis of effects on floodplains relies on faulty logic. The text indicates that the proposed drainage basin would provide adequate storage during flood conditions to offset floodplain encroachment of the casino project. The document also indicates that the basin would be used to contain stormwater discharges associated with increased impervious surfaces on site. However, the basin would not be sized large enough to contain both stormwater discharges and floodwaters at the same time. Since a 100-year flood event is likely to occur during periods of intense rainfall, the basin would need to be sized large enough to contain both the displaced floodwaters and the additional runoff from casino impervious areas. Additionally, the document provides no discussion of whether adequate flood storage would be provided during flooding associated with the existing flood easement. These issues must be addressed to ensure that potential flooding impacts, including impacts downstream and potential health and safety impacts at the casino site, are adequately assessed and, if possible, mitigated.*
- *No discussion of drainage or grading is provided for the proposed changes at the wastewater treatment plant. Section 4.3 needs to be updated to include a discussion of drainage and grading for the wastewater treatment area.*
- The EIS states that an existing spring that is at the Butte Site provides a source of water supply to existing users. The EIS needs to evaluate whether installation of a groundwater well at the site would affect the availability of water from the spring, by drawing down groundwater levels such that spring outflow would be reduced. Mitigation measures need to be provided, as relevant, to offset such reductions in water availability by providing existing users with an alternative water supply. Additionally, the applicant may be

required to acquire surface water rights if withdrawal of groundwater would potentially affect surface water flow. These potential changes need to be addressed.

- The wastewater treatment expansion would occur off trust lands and require additional environmental review for the proposed changes to the treatment plant (e.g., compliance with NEPA and the California Environmental Quality Act). The proposed treatment system does not appear to be a viable alternative. A discharge permit with the State of California would be required for disposal of treated effluent based on the potential for percolation into the local water table. Based on the FEIS and under Alternative A, the existing wastewater treatment plant would consist of converting two of the four aeration ponds into a 325,000 gpd Dual-Powered Multi-Cellular pond system, capable of producing high quality secondary effluent (FEIS, Section 2, p. 2-14). Wastewater treatment recommendations from the Appendix D July 2008 HSe report entitled Enterprise Rancheria Casino and Hotel Water and Wastewater Feasibility Study state in Section 7.3 that Regional Water Quality Control Board (RWQCB) discharge requirements for secondary treatment would likely impose stringent nitrogen limitations on the plant discharge, and that a tertiary treatment system should be constructed to reliably nitrify and denitrify wastewater. The report also recommends the Tribe take part with agencies within the County for a regional wastewater treatment solution. It appears the proposed secondary wastewater treatment and disposal system could potentially adversely affect the local water table, and would have difficulty securing a discharge permit from the RWQCB. The recommended treatment solutions from the HSe report (i.e. tertiary treatment system or a regional wastewater solution) do not appear to have been included within the analysis of the FEIS as wastewater treatment alternatives, and analysis of potential off-site effects (including effects on waters of the U.S., state and federally listed species, air quality, traffic, noise, and growth inducement) should be included within the document.

Appendix F – Grading and Drainage Plan:

- For the Yuba Site, according to Section 2 of the FEIS, upgrades to the works of the existing wastewater treatment plant would be implemented, as well as upgrades to the existing sprayfields. However, the Grading and Drainage plan does not provide any analysis for the wastewater treatment plant site. In order to support adequate environmental review for the Yuba Site, an assessment of the proposed changes at the wastewater treatment plant needs to be provided.
- The Grading and Drainage Plan addresses flooding, including 100-year flood zones, at the Yuba Site. However, the flood easement, discussed in previous comments and in the FEIS, is not discussed or mentioned. Because the flood easement could result in additional flood flows being released to the site at any time, and potentially during a 100-year flood event, the Grading and Drainage Plan needs to be revised to include a detailed assessment of how flooding under the easement would affect the site, and provide relevant mitigation.

Air Quality

Section 3.1.4 Air Quality (Affected Environment):

- The most recent standards have not been updated in the FEIS in Table 3.1.4-2.

Section 4.4 Air Quality (Environmental Consequences):

- *The General Conformity Analysis of each alternative only looked at emissions in the project area. However, as described in Table 4.4-1, patrons would travel as far as the San Francisco Bay Area to get to the project. The analysis should also determine project-generated emissions from patron traffic in the other air basins (which may be subject to conformity analysis) affected by the patron traffic.*
- *Based on the transportation/traffic review comments, issues with the trip generation and traffic volumes (such as the baseline conditions potentially being out-of-date, as well as trip generation for Alternatives A*

and C being low) would change the estimated emissions from motor vehicles and could worsen air quality effects. This could potentially change the significance determinations reported.

Section 4.12 Cumulative Effects, Greenhouse Gas (GHG) Analysis:

- Footnote 3 on table 4.12-5 should note the source of the estimate of 4,500 kilowatt-hours/month of power.
- Using the equivalent factors given in Table 4.12-15 it seems that the CO₂e should be higher. 804.5(CO₂ equivalent factor) multiplied by 318 (MWH/Yr) = 255,843.72 divided by 2204.62 (lbs per metric ton) = 116 metric tons of CO₂e/yr from project electricity use.
- *In addition, GHG emissions under Alternatives A and B are substantially over 25,000 metric tons/year of CO₂e, which is the California Air Resources Board reporting criteria for major facilities that are required to report greenhouse gas emissions to the state. The 25,000 metric ton annual limit identifies the large stationary point sources in California that make up approximately 94 percent of the stationary emissions. If the project's total emissions are below this limit, its total emissions are equivalent in size to the smaller projects in California that as a group only make up 6 percent of all stationary emissions. It is assumed that the activities of these smaller projects generally would not conflict with State's ability to reach AB 32 overall goals. However, due to the potential GHG emissions of the project and insufficient mitigation (included in Section 5.0), the "less than significant cumulative impact" determination for Alternatives A and B are not supported.*
- *As mentioned above, after review of Section 5.0 (Mitigation Measures), the mitigation measures included seem deficient in addressing GHG emissions. Additional measures should be considered and implemented where feasible. A description of some of these measures, as recommended by the Office of the California Attorney General are described on the Attorney General's webpage³.*

Appendix G – URBEMIS Output Files:

Appendix G needs to be updated with new URBEMIS files.

Biological Resources

Section 4.5 Biological Resources (Environmental Consequences):

Page 4.5-2 states:

“the 0.72-acre roadside ditch between Forty Mile Road and the western boundary of the Yuba Site has the potential to be impacted from the development of Alternative A due to the development of roadway and access improvements. The USACE does not consider roadside ditches to be jurisdictional (45, 48, and 51 FR Subsections 62732, 62747, 21466, 21474, 41206, and 41217). Therefore, a significant impact would not result to the ditch.”

Current USACE guidance of jurisdictional waters does not rule out all roadside ditches as being non-jurisdictional. The U.S. Environmental Protection Agency and the USACE generally do not assert jurisdiction over ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water. It appears this potentially jurisdictional roadside ditch feature has not been formally delineated, and would still be subject to official review and verification in writing by USACE.

³ Available at: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf

The potential Forty Mile Road roadside ditch impact, made aware by the County of Yuba Community Development and Services Agency comment letter dated April 22, 2008, could potentially affect suitable giant garter snake habitat. Formal consultation with the USFWS pursuant to Section 7(a) of the Endangered Species Act and regarding the federally threatened giant garter snake (*Thamnophis gigas*), vernal pool tadpole shrimp (*Lepidurus packardii*), and vernal pool fairy shrimp (*Branchinecta lynchi*) was initiated on June 3, 2004 for the proposed action. A Biological Opinion (1-1-04-I-2971) was issued by the USFWS on August 29, 2005. If new information reveals effects of the proposed action that may affect federally listed species in a manner or to an extent not considered, reinitiating Section 7 consultation with USFWS would be required. It appears the proposed road widening of Forty Mile Road (discussed above) could potentially affect giant garter snake habitat (roadside ditch) that was not previously disclosed. Also, if additional wastewater treatment upgrades, or a regional wastewater treatment alternative is required as discussed in Section 4.3 comments, then previously undisclosed potential effects to federally listed species would require reinitiating Section 7 consultation with USFWS.

Cultural Resources

Appendix K – Cultural Resources Assessments

The United Auburn Indian Community reviewed the cultural resources section for the Enterprise Rancheria Final Environmental Impact Statement (FEIS) dated May 2009. This included a review of two independent stand alone archaeological survey reports. The first is a 2003 report titled, *Enterprise Rancheria Casino and Hotel Project*, by John Salter, Analytical Environmental Services, Inc., and the second is a 2004 report titled *Archaeological Inventory Survey, Enterprise Rancheria's Proposed Wastewater Treatment Plant Expansion and Interconnecting Pipeline Project c. 50 acre Land Area and c. 1.5 miles of Pipeline corridor, Yuba County, California*, by Peter Jensen, Analytical Environmental Services, Inc. The following comments refer to both reports:

- Salter (2003) contains many contextual fallacies. In particular the Ethnography/Prehistory and History sections do not relate to the project and are not specific to the project area. However, the Jensen (2004) report accurately describes the ethnographic setting as Nisenan (Southern Maidu). Furthermore, Jensen accurately discusses Yuba City and Marysville in the Historic Context, while Salter (2003) chooses to focus on the history of Enterprise Rancheria and not the proposed project area.
- There was no attempt or good faith effort by Bureau of Indian Affairs, Analytical Environmental Services, Inc., Peter Jensen, or John Salter to consult with the Native American community. There was no consultation between the Native American Heritage Commission and any interested stakeholders or Native American groups.
- The Records Search results for both reports are considered outdated and need to be updated.
- There are no survey coverage maps in either report.
- The Area of Potential Effect should be submitted to the State Historic Preservation Officer and concurrence sought.

Ethnographically, the project area is below the border zone and totally within an area that was traditionally occupied by the Penutian-speaking Nisenan. The area represents a unique dialectical group of the Nisenan speakers (Tastch 2009). A review of Town & Wilson, Beals, Shipley, or Kroeber reveals that the Nisenan territory extended from the area surrounding the current City of Oroville on the north, to a few miles south of the American River in the south. Kroeber (1976: p. 397, Plate 37) identifies

Bauka (#34) in the northwestern Maidu district, while *Helto* (#35), *Toto* (#36), *Honkut* (#37), and *Tomcha* (#38) define the northwestern boundary of the Southern Maidu (Nisenan) district. The project area appears to be over 20 miles northwest from the nearest northwestern Maidu village of *Bauka*.

It is recommended that both proposed project areas be resurveyed and survey reports be rewritten according to the *Secretary of Interior's Standards of Professional Qualifications*. The United States Army Corps of Engineers, *Sacramento District Regulatory Branch Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966, as amended*, provides standards for professional reporting requirements. The standards and guidelines put out by the California Office of Historic Preservation for *Archaeological Resources Management Reports* should also be adhered to.

Based on the information contained in the Enterprise Rancheria FEIS, the UAIC understands that no prehistoric cultural resources have been observed within the study area, nor were any identified as part of the records searches. However, the UAIC would like to express concern regarding the possibility for discovery of previously unidentified cultural resources and/or subsurface remains, particularly in the case of ground disturbing activities such as those proposed.

An inadvertent discovery could potentially have a significant effect on cultural resources, including possible human remains. As a proposed mitigation measure, we suggest that the following language be added to the FEIS document to ensure proper consideration of potential effects to cultural resources during project implementation:

1. In the event that prehistoric archaeological resources are discovered during ground disturbing activities, all work in the vicinity of the find shall be halted and the project proponent shall consult a professional archaeologist to assess the significance of the find. The UAIC should also be contacted immediately. If the find is determined to be legally significant by the archaeologist, or culturally important to the Tribal community, project representatives shall meet with the archaeologist and the UAIC to determine the appropriate course of action.
2. If human remains are discovered, California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the county coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If the coroner determines that the remains are of Native American origin, the coroner will notify the Native American Heritage Commission, which will notify a Most Likely Descendant (MLD). The MLD shall be responsible for recommending the appropriate disposition of the remains and any grave goods at that time.

Please contact Marcos Guerrero, Cultural Resources Specialist at (530) 883-2364 should you have any questions.

Socioeconomic Conditions and Environmental Justice

Section 3.1.7 Socioeconomic Conditions and Environmental Justice (Affected Environment)⁴:

Socioeconomic Conditions

- *The analysis does not explain its rationale for not including Yuba City in its description of the affected environment. Yuba City is Sutter County's primary city and is located next to Marysville and within 10 miles of the project site. Furthermore, Yuba City has a population three times that of Marysville and later is acknowledged in the DEIS as a likely source of the project's future employment.*
- *The California Employment Development Department labor force and employment data should also be provided for the cities of Marysville and Wheatland to better characterize future local economic impacts and to be consistent with the population and housing data.*
- *Unemployment data is one of the most readily available and dynamic indicators of a community's economic health. Consequently, many socioeconomic analyses will present the most recent employment data. Given the recent major economic downturn, the most current available unemployment data for the affected environment should be provided.*

Environmental Justice

- *Tables 3.1.7-6 and 3.1.7-7 should at a minimum be improved by including corresponding data for the State and County (and preferably local cities similar to that presented elsewhere in the affected environment) for comparative purposes. Table 3.1.7-7 should also include any information on the total census tract population and the proportion of residents living below the poverty line to better characterize the local low-income population.*
- *The low-income criteria adopted by the analysis are very stringent and inconsistently applied. The first criteria (median household population) is a very high standard given that the federal poverty level threshold is very low, according to its 1999 thresholds and income data only 9.2% of the national population were living below the poverty level. To surpass the first criteria, a community would need to have more than five times the national average number of poverty-level residents, a proportion far exceeding the level of what might reasonably be expected to represent a "meaningfully greater" population.*
- *Table 3.1.7-8 provides insufficient information for reviewers to assess the market relationships between the proposed action and the other local tribal casinos it identifies as competitors. Each casino's relative size should be added to the EIS affected environment section so that reviewers can understand their potential competitive relationship with the project.*

Section 4.7 Socioeconomic Conditions and Environmental Justice (Environmental Consequences)⁵:

Economic Impacts

- *The socioeconomic impact analysis does not clearly identify any differences between the proposed action's expected future total operating revenues and the net revenues that the project would generate for the Sutter and Yuba economies. Although the DEIS analysis briefly acknowledges that an estimated \$77 million of the project's annual operating revenues are expected to be captured from other competing casinos in the local market (page 4.7-2), the analysis did not discuss or assess what portion of these sales would be*

⁴ Note that most comments for the Yuba Site discussion also apply to the Butte Site discussion.

⁵ The comments identified for Alternative A will correspondingly also apply to the other development alternatives.

substituted from existing local businesses. Any sales that the casino might capture from existing local hotel and restaurant businesses would not represent an economic benefit to the local economy and therefore should be reduced from both the annual operating economic impact total and similarly from the indirect and induced impact estimates.

- *Most socioeconomic analyses express monetary data in terms of a standard financial year (typically the first year of the project's expected operation adjusted for inflation). This is done to better enable reviewers to evaluate the reasonableness of the financial data, estimates and its findings, and facilitate comparisons with other economic data sources or similar analyses. The financial year used for the monetary data and estimates used throughout the Enterprise EIS socioeconomic analysis is unstated. The economic estimates are presumably expressed in nominal terms and frequently reported with a level of exactitude that seems to exceed the precision of the actual estimate (e.g. see Table 4.7-1 output and wages estimates), especially given the indeterminate financial year being represented. The analysis should better identify the economic terms used. Ideally, most if not all the economic figures should be expressed in a single common year.*
- *As mentioned in the general comments for the analysis, inconsistencies in the presentation of costs, output and wage figures frequently distract reviewers from evaluating the analysis's findings. Similarly, Tables 4.7-4, 4.7-5 and 4.7-8 do not include the direct construction and operating estimates for each alternative from which the indirect and induced multiplier effects have been derived. Inclusion of the corresponding direct impacts would better reveal the somewhat surprising outcome that Alternative C is projected to generate greater indirect and induced impacts on local economic output and employment than Alternative B despite having a slightly lower construction cost.*
- *Similarly, the incorporation within the County Labor Force estimates in Table 4.7-6 of the expected project related local population in-migration is confusing. At a minimum, the projected local population growth should be acknowledged in the table's footnotes. In addition, Alternative D's impacts should be similarly quantified and incorporated with notation of its effects.*
- *The expected school enrollment impacts of the project-related population growth should also be quantified in the community infrastructure impact determination. The fiscal impact should also more clearly identify the potential for the local school district to face increased enrollment (i.e. from project employee local in-migration) while the local school district's revenues would not be increased since no new housing (and hence no increased property taxes) would be associated with the project.*

Social Impacts

The analysis's general discussion on the broad social relationships between casinos and problem gambling behavior concludes that "(w)hatever negative consequences a casino would have on...the population would have already been felt ...since they have already have a number of conveniently located gaming venues and non-casino outlets to participate in gambling." While this assertion may be arguable since at least \$60 million in new gambling sales are projected to be generated by the new casino,⁶ the analysis should at a minimum justify its argument by providing a map (or table) showing the relative distance and nature of existing casino gambling opportunity for local residents in the region. Such a map (or table) would presumably be similar to the recommended additional information on competing casino recommended for the affected environment for the local tribal gaming market.

⁶ Recognizing that up to \$77 million of the proposed Alternative A casino's expected \$137 million in annual sales would be captured from existing casinos in the region.

Transportation/Circulation

It should be noted that this review focuses on Alternative A (the alternative with the highest trip generation).

Section 3.1.8 Resource Use Patterns, Transportation (Affected Environment):

Existing conditions used for the analysis are potentially out-of-date. Traffic analyses typically require existing conditions to be no more than two years old when the analysis is published. Pages 3.1.8-6 and 3.2.8-4 of the DEIS state that 2005 represents existing conditions, and that traffic counts were generally conducted in September 2004 (no dates are given for the four intersections counts provided by other traffic consultants). What is missing from the February 2008 document is a statement that “for reasons X, Y & Z, those traffic volumes remain valid representations of current conditions”. Without such a statement, reviewers of the analysis have no reason to trust that impacts from the added traffic generated by the proposed action are appropriately judged (i.e., are being added to the correct base conditions).

Section 3.1.8 Resource Use Patterns, Transportation (Environmental Consequences):

- *The 2008 document’s reference to a 2007 Opening Date, and to past years in a future tense (e.g., Footnote 1 in Table 4.8-6, page 4.8-11, states that an intersection will be modified in 2005) is awkward at best, and misleading and non-informative at worst.*
- *The estimated new trips generated by the proposed project (Alternatives A and C, pages 4.8-1 and 4.8-17, respectively) are too low. The estimated trip generation (before applying the diverted trips factor) is reasonable in that it is based on data published by various sources, including the San Diego County Casino Study. In addition, application of a trip reduction factor to account for trips diverted from the surrounding road network to the casino is reasonable. However, it is not reasonable to apply a diverted trips factor to the hotel component of the proposed project (Alternatives A and C). The hotel’s estimated trip generation excludes trips internal to the site (trips between the casino and the hotel), and therefore represents trips made with the hotel as the primary destination, and those trips would not be made by people that “are already on the adjacent street for another purpose and would stop at [the hotel] as a matter of convenience” (pg. 25 of the March 6, 2003 traffic study in Appendix B of the Traffic Impact Analysis [Appendix N of the DEIS]).*
- *It is not clear why the project trip distribution (DEIS Table 4.8-2, page 4.8-4) would be different in the opening year compared to in 2025. The differences are relatively small, but there needs to be an explanation of why a higher percentage of project-generated trips would travel on State Route 65 to/from the southeast in 2025 than in the opening year, and a smaller percentage would travel on State Route 70 to/from the north in 2025 than in the opening year.*
- *What is the source for the description of LOS standards that Caltrans applies to state highways (on page 3.1.8-6 of the DEIS)? As stated in their “Guide for the Preparation of Traffic Impact Studies”, Caltrans generally endeavors to maintain a target LOS at the transition between LOS C and LOS D, not LOS E as stated in the DEIS. Even though the DEIS analysis uses the County LOS standard, the description that the County standard is “more stringent” than Caltrans is incorrect. The LOS E “standard” is not the minimum acceptable LOS, but rather provides direction to analysts when dealing with an unsignalized intersection that is operating poorly (LOS E or F).*

Mitigation Measures

Traffic safety is addressed only with regard to SR 70 / Plumas Arboga Road. No accident rate data or other safety assessment is provided for any study intersection. Why is SR 70 / Plumas Arboga Road identified as the only safety concern? The proposed mitigation for SR 70 / Plumas Arboga Road is to prohibit left turns at this

intersection, which would divert traffic to the SR 70 / McGowan Parkway interchange. What is the effect of this redirected traffic on the SR 70 / McGowan Avenue interchange? The impacts to the ramp intersections at that interchange are already significant under both the project and cumulative plus project scenarios.

Public Services

Section 3.1.9 Public Services (Affected Environment):

The law enforcement setting discussion does not provide existing average response times or a breakdown of crimes for the patrol area and service area as a whole. Thus, insufficient data is available to establish a baseline.

Section 4.9 Public Services (Environmental Consequences):

- *The impact discussion does not address whether response times would be maintained with the recommended mitigation. While the County states that the mitigation in the MOU is adequate there is no methodology provided which explains how the specified compensation is sufficient to address impacts.*
- *The EIS does not analyze the impact of the casino on crime in the surrounding communities served by other law enforcement agencies such as the City of Marysville and Yuba City.*
- *In the event of a structure fire additional engines would be needed and likely a regional response. The EIS should discuss which agencies and engines would be available to provide support.*

Appendix M – Socio-Economic, Growth Inducing and Environmental Justice Impact Study:

The crime analysis in Appendix M is lacking. The discussion under Social Impact Analysis interchangeably refers to crimes from pathological/problem gambling and crimes in general. This discussion should be clarified. Additionally, the study states that other departments were contacted but provides no references as to which communities. The only study cited is the National Gambling Impact Study Commission Report from 1999. Analysis should take into account the more recent studies including Grinols and Mustard's 2004 Casinos, Crime and Community Costs study and 2006 Gambling in the Golden State: 1998 Forward report.

Noise

Section 4.10 Other Values, Noise (Environmental Consequences):

- *All Alternatives need to state approximate noise levels at nearest sensitive receptors by attenuating construction noise levels using the appropriate attenuation rate for the site.*
- *Page 4.10-6 states "It is not possible to calculate HVAC unit noise levels at this stage of the project design." HVAC units typically generate noise levels of approximately 55 dB at a reference distance of 100 feet. If HVAC location is not known, the DEIS should attenuate noise levels from the nearest edge of the building rooftop to sensitive receptors for a worse-case scenario impact for each alternative.*
- *The DEIS should state the distances idling buses would be located from the nearest sensitive receptors and the noise levels sensitive receptors would experience.*
- *The DEIS should state potential noise levels of the central plant facilities, the distance to the nearest sensitive receptor, and if the equipment will be housed in a closed structure.*

- Alternative C should state the distance the amusement park noise generating facilities would be located from the nearest sensitive receptors and state the approximate noise levels sensitive receptors would experience (for example pump noise from the water park).

Hazards

Section 3.1.10 and 3.2.10 Other Values, Hazardous Materials:

Phase I Environmental Site Assessments should be prepared to the current ASTM E1527-05 standard. While an updated records search has been conducted (less than a year old), there is no indication if updated site visits have taken place within the past year. This must be completed to ensure site conditions have remained the same and compliance with ASTM E1527-05 standards.

Visual Resources

Section 4.10 Other Values, Visual Resources (Environmental Consequences):

- *The visual resources analysis is very brief, and lacks in depth analysis of impacts to visual resources. The EIS does not identify if there are impacts to nearby residences in Section 4.10, which instead focuses on impacts to public views.*
- *The sections should provide visual simulations of the proposed facilities from public vantage points, as well as identify the closest sensitive receptors for light and glare impacts and aesthetic impacts.*