



MIWOK
MAIDU United Auburn Indian Community
of the Auburn Rancheria

JESSICA TAVARÈS
CHAIRPERSON

JOHN SUEHEAD
VICE CHAIR

DAVID KEYSER
SECRETARY

DOLLY SUEHEAD
TREASURER

GENE WHITEHOUSE
COUNCIL MEMBER

May 11, 2009

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

Re: Supplemental letter objecting to Enterprise Rancheria application to conduct off-reservation gaming in Yuba County

Dear Mr. Morris:

The United Auburn Indian Community ("Auburn") provides this supplemental letter responsive to the January 16, 2009 solicitation by the Bureau of Indian Affairs ("BIA") for comments on the Enterprise Rancheria of Maidu Indians of California ("Enterprise" or "Tribe") application to conduct off-reservation gaming on certain lands site near Olivehurst, Yuba County ("Yuba County Lands" or "Yuba County Site").

Auburn provided a brief summary of its objections by letter dated March 12, 2009. Because Auburn was not on the distribution list for the January 16, 2009 letter, the BIA granted Auburn an extension to May 12, 2009. Accordingly, Auburn now files its further comments and objections regarding its opposition to Enterprise's application.

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

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.

In addition to the IGRA requirements, provisions of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465, must also inform the Secretary's decision on whether to take the proposed land into trust. Those provisions, implemented at 25 C.F.R. Part 151, impose certain requirements on land taken into trust by the BIA. And, in January of 2008, the Department of Interior ("DOI")

imposed more specific and stringent requirements for taking off-reservation land into trust for gaming purposes. That guidance is applicable to the Enterprise application.

Auburn opposes the land-into-trust application submitted by Enterprise on multiple grounds. 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 well as to the greater community in and around the Yuba County Lands. Even more importantly, the Yuba County Lands are within Yuba County, which is part of the “service area” legislatively granted to Auburn pursuant to the Auburn Restoration Act. 25 U.S.C. § 1300l-6 (7); *see* Auburn Restoration Act, attached as Exhibit A. As such, the Act is dispositive that the Yuba County Lands fall with Auburn’s historic and traditional land base. In this regard, Auburn’s reservation is approximately 20 miles closer to the Yuba County Lands than Enterprise’s existing reservation. Auburn clearly has stronger historical and current ties to the Yuba County Lands than Enterprise does. To allow this application would be to encroach on Auburn’s legal rights and sovereignty.

Auburn advocates that Enterprise use its 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 considered to be taken into trust. The Yuba County Lands simply do not meet the requisite criteria to obtain a favorable two-part determination from the Secretary.

B. 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 does not believe that Enterprise can establish that the proposed land acquisition would not be detrimental to the surrounding community. Here, there is an obvious potential resulting harm to Auburn, a Tribe that is clearly within the surrounding community, as contemplated by 25 U.S.C. § 2719.

Allowing Enterprise to build a gaming facility on the Yuba County Lands would be detrimental to Auburn, and would clearly encroach upon Auburn’s historic land base. Auburn was restored to federal recognition in 1994 through the Auburn Restoration Act, 25 U.S.C. Section 1300l, and its service area specifically included Yuba County. In designating a specific service area, Congress made the express determination that any Auburn tribal members living in Yuba County were deemed to be residing on reservation lands and therefore eligible to receive services from the BIA. 25 U.S.C. Section 1300l(c). The Yuba County Lands, therefore, clearly fall within Auburn’s designated service area.

Moreover, pursuant to the Office of Indian Gaming Management’s checklist governing gaming acquisitions (“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 Enterprise. Here, because the distance is so great—approximately 50 miles from the Enterprise reservation—the justification will need to be significant and substantial. But, Enterprise has provided no justification for taking land into trust that is located

approximately 50 miles from its existing land base. The inescapable conclusion is that land more commercially accessible than Enterprise's existing land would be better for gaming. That Enterprise's existing land is not located in a heavily populated area is insufficient justification to permit Enterprise's "shopping" for a better location.

Recently, DOI added two additional requirements to 25 CFR Section 151.10 to deal with the growing number of off-reservation land-into-trust applications—and the increased opposition to these applications. Under these regulations, as the distance between the tribe's reservation and the land to be acquired increases, the Secretary is mandated to give:

- a) Greater scrutiny to the tribe's justification of anticipated benefits from the acquisition; and
- b) Greater weight to concerns raised by state and local governments as to the acquisition's potential impacts on regulatory jurisdictions, real property taxes and special assessments.

25 CFR § 151.11(b).

The proposed Enterprise gaming facility cannot survive this heightened scrutiny. Specifically, the proposed casino will have a significant adverse impact on Auburn and its existing gaming operations. Auburn currently operates the Thunder Valley Casino in nearby Lincoln, California — approximately 20 miles from the proposed location. The current economic environment is not conducive to the operation of another gaming facility so close to Auburn's casino.

Indeed, Thunder Valley Casino recently laid off approximately 5% of its workforce. Following a hiring freeze in January, Auburn was forced to lay off almost 100 part-time employees. And, after postponing modifications to its existing facility in January, Auburn recently decided to scale back its planned expansion. To further burden Auburn with competition from a nearby casino would be grossly unfair and would have a significant negative economic impact on Auburn.

C. THE OFF-RESERVATION ACQUISITION IS IMPROPER.

1. Enterprise Already Has Land Available For Gaming.

Enterprise already has existing ancestral lands in another part of California in trust 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. The proposed lands are within the historical territory of Auburn, not Enterprise. To encroach on Auburn's historical lands would be unfair to Auburn and infringe on the cultural heritage and sovereignty of Auburn.

"Reservation Shopping" has received much press coverage in the past few years as tribes try to develop gaming operations at commercially advantageous locations. That is exactly what is happening here with Enterprise's proposal. It is undisputed that Enterprise already has land that is eligible for gaming. The Tribe has acquired this property with the help of outside investors in a thinly veiled attempt to build a casino near the Thunder Bay Casino. The acquisition is more about economic opportunism than the land base of the Tribe. Enterprise is simply looking to

acquire additional trust land in a more commercially accessible location. Unfortunately, Enterprise has chosen a location in the historic territory of the Auburn Tribe.

Enterprise was federally recognized on April 20, 1915. Two separate land bases (“Enterprise No. 1” and “Enterprise No. 2”) were purchased by the United States in 1916 for specific Indian families deemed part of the Enterprise Rancheria and their descendants. These lands are located in Butte County while the Yuba County Lands are located about 40 miles away.

Enterprise No. 1 was purchased for Mrs. George Walters so that she and other Indians related to her would “have a permanent home on this land.” (See letter from Special Commissioner Indian Services to Mrs. George Walters, date September 23, 1916, attached as Exhibit B (documenting the purchase of Enterprise No. 1)). Enterprise No. 1 land remains in possession of Tribal descendants in Butte County near Oroville.

Enterprise No. 2 was purchased a few months later, but the Enterprise No. 2 land was sold to State of California in 1964 pursuant to Congressional Act for purpose of establishing Lake Oroville (reservoir) and is now under water. Because Enterprise No. 1 is a reservation taken into trust by a federally recognized tribe before 1988, it is suitable for gaming under IGRA. See 25 U.S.C. § 2701.

IGRA’s exceptions and the two-part Secretarial determination were put in place to offer some protection to Tribes that did not qualify under the regular provisions. To use these extraordinary procedures for a Tribe that already has land available for gaming flies in the face of the intent of Congress. This is particularly true given the current political environment—which seems to oppose any expansion of Indian gaming—and during the current economic downturn—which has already been reflected in a decrease in tribal gaming revenue, in California and nationally.

2. The Proposed Site Is Within Auburn’s Ancestral Lands.

Contrary to Enterprise’s assertions, the proposed site is not within the ancestral lands of Enterprise. There is no dispute that the Yuba County Lands are within Auburn’s ancestral lands and, as noted above, within Auburn’s service area. The Auburn Indian Community is located only 20 miles from the proposed Enterprise gaming facility. Auburn is located about 30 miles closer to the proposed gaming site than the Enterprise Rancheria itself. As such, Auburn has the superior right to claiming that the land at issue is within Auburn’s historical and current land base.

Historically, Auburn included the historic Miwok, Nisenan, and Southern Maidu Tribes. Its territory includes land in what is now Olivehurst, as well as, Maryville, Lincoln, Auburn and Roseville. *Handbook of North American Tribes*, Volume 8, California, p. 387-88 (Smithsonian 1978) (“Handbook”) (pp. 387 to 393 regarding the Nisenan are attached as Exhibit C). Indeed, the figure on page 388 of the Handbook demonstrates that Olivehurst (which is approximately 5 miles southwest of Maryville) is squarely within Auburn’s historical lands. *Id.* at 388. On the other hand, Enterprise, is part of the historic Konkow Tribe, and has a historic land base that is far north of Olivehurst. *Id.* at 370-74 (attached as Exhibit D).

Furthermore, at least one Enterprise Tribal member has indicated that his family “did not travel up and down the Feather River over 50 miles south into Yuba County.” See letter from Robert

L. Edwards, Chairman, Indians of Enterprise No.1 to Dale Morris, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, dated March 12, 2009. Mr. Edwards notes that it was a “major event” to travel to Oroville because so many resources (fishing, hunting and logging) were near their home on the Enterprise Rancheria. According to Mr. Edwards, he learned from his elders that his “people would not consider going out of their way to enter another Indian’s territory.” He also confirms that “Yuba County has strong historical ties for Indians such as the United Auburn Indian Community....” Allowing Enterprise to encroach on Auburn’s historical lands would be detrimental to Auburn.

3. The Proposed Land Acquisition Would Violate Land-Into-Trust Guidance.

DOI Regulations, 25 CFR Part 151, implement the trust land acquisition authority given to the Secretary by the IRA. This authority was primarily intended to redress the effects of the now-defunct policy of allotment—a policy that sought to divide up tribal land bases and apportion them to individual Indians. When the Secretary ultimately abandoned that policy, the IRA was passed.

The IRA gives the Secretary the authority to: 1) return “to tribal ownership the remaining surplus lands of any Indian reservation” that had been sold or otherwise disposed; 2) consolidate Tribal ownership of land holdings within reservations; and, most relevant here, 3) acquire lands “within or without existing reservations.” 25 U.S.C. § 465. Thus, one of the main goals of IRA is the reacquisition of lands for Tribes who were victims of U.S. policies. IRA was meant to help establish a land base for landless Tribes. As discussed above, Enterprise already has an existing land base, which it acquired in 1916.

To qualify under the IRA, the Tribe must prove that land acquisition is in its “best interest.” This will be difficult since Enterprise already has a land base in Butte County. In addition, DOI’s own guidance, promulgated in January of 2008, has imposed stricter standards on off-reservation acquisitions for gaming and articulated a new standard for off-reservation land acquisitions for gaming. Namely, land contemplated under gaming fee-to-trust applications must be within a “commutable distance” from the applicant tribe’s existing reservation. A “commutable distance” is defined as the distance a reservation resident could reasonably commute on a regular basis. DOI has noted that as the distance increases, there is a greater attenuation between the proposed benefit to Enterprise and the people living on its reservation.

Here, the proposed site is approximately 50 miles from Enterprise No. 1. The distance is compounded by the fact that the roads between the two locations are rural two-lane roads, not modern freeways. This will make commuting from Enterprise No. 1 extremely difficult. And, with population data for Enterprise lacking (as discussed below), it is difficult to determine where the Tribe’s members actually reside and whether they generally live within a commutable distance from the Yuba County Lands. Thus, based on its own information, presumably presented in the most favorable light, Enterprise is unable to satisfy the commutable distance requirement.

D. THE ENVIRONMENTAL IMPACT STATEMENT IS INADEQUATE.

The following sections summarize a careful review of the Enterprise Draft Environmental Impact Statement (“DEIS”) dated February 2008. Overall, the final Environmental Impact Statement (“EIS”) should be updated to address the following issues. Missing data and substantiation for analysis needs to be provided in order for the EIS to adequately analyze the environmental effects of the proposed action and alternatives under the National Environmental Policy Act (“NEPA”). The review raises concerns which must be addressed in either a revised DEIS or the Final EIS. The following review discussion is organized by DEIS sections, environmental resource areas, and technical support documents (Appendices) that require additional data, clarification, and/or analysis for adequate environmental review.

1. Purpose and Need

a. Section 1.3 Purpose and Need for the Proposed Action.

The purpose and need discussion should provide a details of 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. Reviewing Tribal newsletters from 2006 it appears that most Tribal government functions and Tribal social gatherings occurred in and around Oroville.¹ The document must include analysis explaining how development on the Yuba County Lands would directly meet the social and economic needs of the Tribe.

2. Alternatives

a. Section 2.0 Alternatives.

The DEIS analyzes an off-site alternative which is not reasonable (and does not meet the purpose and need standard) and therefore does not provide a sufficient range of alternatives under NEPA. The purpose and need section drives the determination of alternatives. The Council on Environmental Quality (“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 DEIS 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.” (pp. 2-48). 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 County Site will be selected as

¹ Available at: http://www.enterpriserancheria.org/index.cfm?fuseaction=page&page_id=5022.

the site, which effectively eliminates the off-site alternative and therefore inappropriately narrows the range of reasonable alternatives evaluated. A new off-site alternative should be developed that will meet the purpose and need.

The project description discussion should include the anticipated year that construction would end and begin for each alternative, as well as the first anticipated year of operation. These assumptions are important in establishing the baseline for technical analysis. From review of the air quality output files (Appendix G) and Traffic Impact Analysis (Appendix N), the document assumes that construction would begin in 2006 and that operation would begin in 2007. Thus, while the DEIS is dated 2008 it is clear that technical analysis were completed much earlier. A supplemental analysis based on the new project schedule must be completed or substantial evidence that the baseline condition has not changed to a significant degree must be provided. Traffic counts and assumptions particularly may have undergone significant changes which affects both the air quality and noise analysis. At the very least, the document must disclose the assumed years of construction and operation so that the reader is aware of the assumed project timeframe.

b. 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 Enterprise’s historical holdings and possibly current population base, 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 or vernal pools 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 unclear 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.

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>.

3. Land Resources

a. Section 4.2 Land Resources (Environmental Consequences).

The project is located on soils with high shrink-swell potential. The impact discussion on page 4.2-1 states that a geotechnical report would be prepared as discussed in Section 2.0 and that the engineering recommendations of the report would be adhered to. Preparation of a geotechnical report is not listed in either Section 2.0 (project description information) or Section 5.0 (mitigation measures) and there is no language in either section discussing adherence to the recommendations of the report. Without inclusion in the project description or mitigation this impact remains significant and a public health and safety concern.

Even if the EIS included language for the preparation of a geotechnical report and adherence to the recommendations of the report, this language would not be sufficient to adequately analyze and mitigate for the potential impact to public health and safety. This language simply delays analysis until the geotechnical report is prepared. The document should clarify to the reader whether this impact could be mitigated and at least conceptually how it would be mitigated. This language simply relies on an engineer at a later date to analyze the impact and provide mitigation without assurance of feasibility or enforceability. This calls into question the safety of the proposed facilities.

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

b. 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. 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.

4. Water Resources.

a. Project Description.

Various drainage facilities are mentioned in the DEIS, but aside from a single storm water retention pond, none are identified in Figure 2-4, 2-17 or Appendix F. Details such as the location and sizing of the underground storm drain system and location of outfall are needed in order to adequately review the environmental effects of the proposed action and alternatives.

b. Sections 3.1.3 and 3.2.3 Water Resources (Affected Environment).

Page 3.1.3-1 states that the Sacramento and San Joaquin Drainage District holds an inundation easement for the Yuba County Site, and indicates that this is shown on Figure 3.1.3-2. However, the easement is not shown or referenced on the figure. Additionally, because this flood easement could result in additional flows of water being released onto the action area, according to the text, at any time, Section 3.1.3 needs to provide additional description of this flood easement. The EIS needs to provide an overview of when the site would be flooded under this easement, whether the easement would be discontinued, flood elevations under this easement as compared to Federal Emergency Management Agency ("FEMA") flood elevations, discussion of whether inundation similar to a 100-year flood event would ever occur due to the easement, and discussion of potential effects on the safety of casino patrons.

Substantial portions of the review of water resources on site are cursory or inadequate. Specific examples include:

- 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.
- 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. At a minimum, descriptions of the water-bearing potential of the various geologic formations should be included.
- On page 3.1.3-6. Review of surface water quality is cursory, in particular as pertains to Kimball Creek.
- Drainage is located on the wastewater treatment plant site. This needs to be disclosed in Section 3.0, and potential impacts to this drainage need to be discussed in Section 4.0.
- Discussion of drainage for the Butte Site is cursory (p. 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.
- The Butte Site is not within a FEMA-defined area of flooding because the site has not been characterized by FEMA (p. 3.2.3-1). This needs to be disclosed as the existing text is misleading. Section 4.0 should provide an assessment of the potential for flooding at the casino site, since flood levels at the site are not known, and also because the Butte Site is traversed by 'various intermittent streams,' as indicated on page 3.2.3-1.
- Page 3.2.3-1 states that 'various intermittent streams traverse the Butte Site from north to south,' and then later states, under Surface Water Quality, that 'no surface waters are located on the Butte Site.'" These statements are contradictory and appear to indicate that 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.

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.

c. Section 4.3 Water Resources (Environmental Consequences).

As discussed above, the items that are missing from the project description and affected environment need to be addressed to provide an accurate and complete impact assessment in Section 4.3.

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 storm water discharges associated with increased impervious surfaces on site. However, the basin would not be sized large enough to contain both storm water 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 proposed sprayfield would discharge wastewater in the vicinity of the proposed wells, for both the Yuba and Butte Sites. Mitigation measures need to be added in order to ensure that the proposed wells would not become contaminated with seepage from the wastewater sprayfields. Additional mitigation needs to be added to address potential flooding associated with the existing flood easement.

The DEIS 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.

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 the California Environmental Quality Act).

d. Appendix F: Grading and Drainage Plan.

For the Yuba County Site, 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 indicates that two detention/flood basins would be required, yet the DEIS indicates Additionally, the Grading and Drainage Plan does not include any details regarding proposed grading, nor does it show the proposed locations of storm drains, outfalls, or other drainage facilities. A figure showing these features needs to be included in the Grading and Drainage that only one would be required. This discrepancy needs to be rectified. Plan or, at minimum, in the EIS.

The Grading and Drainage Plan addresses flooding, including 100-year flood zones, at the Yuba County Lands. However, the flood easement, discussed in previous comments and in the EIS, 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 to provide relevant mitigation.

5. Air Quality.

a. Section 3.1.4 Air Quality (Affected Environment).

The most recent standards and information are not included in the DEIS (pp. 3.1.4-18, 3.1.4-22, 3.1.4-24). Table 3.1.4-4 shows older California and National Ambient Air Quality Standards. In addition, although the State standard for 8-hour ozone became effective May 17, 2006 (and is described on page 3.1.4-21), it is not included in Table 3.1.4.6, Yuba County CAAQS Attainment Status. Finally, the 2003 Air Quality Attainment Plan is described (starting on p. 3.1.4-24) in the DEIS, but the latest revision is the 2006 Air Quality Attainment Plan.

b. Section 4.4 Air Quality (Environmental Consequences).

An older version of URBEMIS (URBEMIS 2002) was used for the air quality analysis since it was the most recent version of the software available at the time preparation of the DEIS began.

However, the newer URBEMIS 2007 (version 9.2.0) was used to calculate CO₂ emissions. The analysis should have used the newer URBEMIS 2007 model for criteria pollutants as well, which incorporates updated EMFAC 2007 emission factors for traffic. Use of URBEMIS 2007 would provide more complete and accurate estimates of emissions generated by project construction and operations than the estimates reported in the DEIS.

The General Conformity Analysis of each alternative only looked at emissions in the project area, which is not located in a non-attainment or maintenance area and not subject to conformity analysis (pp. 4.4-12, 4.4-16, 4.4-19, and 4.4-23). 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 in the DEIS.

c. Section 4.12 Cumulative Effects, Greenhouse Gas (“GHG”) Analysis.

The estimated electrical usage source data for each alternative is not documented and appears low. For instance, under Alternative A the estimated electrical usage is 40 MW-h/year (shown in Table 4.12-5 on p. 4.12-12 of the DEIS). Based on South Coast AQMD factor³ of 10 kW-h/sq. ft./ year (averaged for retail/hotel land uses) and the proposed casino/hotel square footage of 317,785, the estimated electrical usage for Alternative A would be approximately 3,178 MW-h/year, which is substantially greater than what is currently analyzed in the DEIS.

In addition, GHG emissions under Alternatives A and B are substantially over 25,000 metric tons/year of CO₂e, which is the CARB 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

³ Electricity Usage Rates from Table A9-11-A South Coast AQMD CEQA Air Quality Handbook.

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 webpage⁴.

d. Section 5.2.3 Air Quality (Mitigation Measures).

The mitigation to be implemented during project construction would reduce criteria pollutant emissions, but the DEIS does not substantiate the conclusion that the measures would reduce the emissions to less than significant during construction activities. Each alternative would generate substantial NOx emissions during construction and the DEIS does not describe what percent the mitigation measures would reduce the pollutant emissions in order to meet the respective thresholds of significance.

e. Appendix G - URBEMIS Output Files.

Some revisions need to be made to the Air Quality analysis (both for the criteria pollutant and GHG analyses) based on review of assumptions included in Appendix G. These include:

- The hotel land use should not be included in the analysis of Alternative B since it is not going to be developed under this alternative (as shown in Table 2-2 on page 2-23 of the DEIS).
- For Alternative C, the sum of total trips shown in Appendix G does not match the trip generation included in the traffic/transportation section. In addition, the trip lengths for this alternative should be 44.3 miles (as shown in Table 4.4-1 on page 4.4-2 of the DEIS), versus the 35.5 miles listed in Appendix G.
- For Alternative D, the trip rate should be 43.8 trips/1000 sq. ft. for the casino according to the traffic/transportation section, rather than 11.42 trips/1000 sq. ft. included in Appendix G. Based on this trip rate discrepancy, the current analysis only estimates emissions for 232 trips, versus the 890 daily trips estimated in the traffic/transportation section.
- The same comments/revisions described above apply to the URBEMIS 2007 runs for the GHG analysis.

6. Cultural Resources.

In the event that any development has occurred at either project site since the 2004 records search was conducted, a new records search should be completed and the sections updated as necessary.

⁴ Available at: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

7. Socioeconomic Conditions and Environmental Justice.

- a. Section 3.1.7 Socioeconomic Conditions and Environmental Justice (Affected Environment).⁵

Socioeconomic Conditions.

The Enterprise Rancheria population and labor force data is confusing and insufficient. The stated total tribal enrollment population of 792 does not correspond with Table 3.1.7-1 which states a tribal enrollment of 490 (and is separately sourced from the tribe in 2003). The text also does not provide any quantitative or qualitative information on the tribal population's residential location (and hence their availability for future employment by the proposed action or alternatives). Furthermore, the layout of Table 3.1.7-1 does not facilitate tribal labor force and employment comparisons with those provided for the regional labor force in Table 3.1.7-3. The analysis should apply greater consistency in its data presentation and provide additional information characterizing the tribal population's relationship with the project site.

The demographic analysis for the Yuba County region could be improved by the addition of percentage change indicators in Table 3.1.7-2. In addition, the analysis identifies but does not explain the "substantial growth of 60%" occurring within Wheatland between 2000 and 2005". As presented, this growth suggests a recent major new residential development and implicitly that the community has recently undergone a changes to its character; however, growth could also be associated with an annexation of a neighboring unincorporated community which would not represent new growth locally. This issue should be clarified.

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.

The analysis notes that the housing vacancy rate between 2000 and 2005 in Wheatland changed significantly falling from 11.1% to 3.8%. This vacancy rate is more than 60% less than Yuba

⁵ Note that most comments for the Yuba County Lands discussion also apply to the Butte Site discussion.

County's average vacancy rate of 9.6% and such a major decrease is contrast to all other local and county housing trends. The cause of the change is likely related to Wheatland's corresponding population change and similarly it should be explained.

b. Environmental Justice.

The analysis implies that County or State averages most appropriately represent the general population for determining whether there is a "meaningfully greater" minority or low-income population near the project site. CEQ and U.S. Environmental Protection Agency guidance do not prohibit use of city or other sub-County level averages to evaluate the presence of "meaningfully greater" minority or low-income communities. Such sub-County comparisons are likely to be more appropriate in comparatively rural County's (such as Yuba County) where local real estate conditions, employment opportunities or provision of public services can encourage low-income or minority populations to become disproportionately clustered within or outside its urban areas.

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.

Furthermore, the low-income population analysis does not conform to its stated approach that "(t)he poverty threshold for each census tract was determined from the average household size of the census tract (and) (t)he poverty threshold assumes average household size is conservatively rounded *up* (emphasis added) to the nearest person (page 3.1.7-9)." In Table 3.1.7-7, the analysis applies a lower \$13,290 threshold for Census Tracts 405, 406 and 407 than that used for Census Tract 404 – in actuality the analysis rounded *down* to the nearest person.

Federal poverty thresholds are a national measurement of income that is not adjusted for regional costs of living. The eligibility levels for many federal and state programs are significantly higher than the poverty level (e.g., to qualify for food stamp assistance in California under the Women, Infants, and Children program the income eligibility criterion is 185 percent of the poverty level).⁶ Among its poverty statistical data, the U.S. Census Bureau also reports population data income ratios from 50 percent to 200 percent of the poverty threshold at a census

⁶ The Women, Infants, and Children program is a California Department of Health Services nutrition program that helps pregnant women, new mothers, and young children eat well and stay healthy.

tract population level.⁷ The MTC's 2001 *Regional Transportation Plan Equity Analysis and Environmental Justice Report* definition of low-income community states "Low-income is defined as the household income that is at or below the U.S. Department of Health and Human Services Poverty Guidelines. For the purposes of this exercise (i.e., the 2001 Regional Transportation Plan Equity Analysis) the definition of low-income to households was established as households at or below 200 percent of poverty. This level was used to reflect the relatively high cost of living in the Bay Area. Zones, where the low-income population was 30 percent of the total population or greater, were included in the Equity Analysis." The U.S. Census poverty data presented in its Census 2000 Summary File 3 "P88 Ratio of Income In 1999 to Poverty Level" provides a far more informative measure of the local communities' income conditions and distribution. Table 1 (see below) shows the corresponding income data for the local census tracts and cities. While the MTC low-income criteria might arguably be too inclusive for Yuba and Sutter Counties, the relatively high proportion of individuals residing in Tracts 405 and 406 with annual incomes less than 200% of the poverty threshold nonetheless suggest that these census tracts should be recognized as low-income populations.

**TABLE 1
INCOME OF YUBA COUNTY, SUTTER COUNTY AND
THE SURROUNDING AFFECTED ENVIRONMENT**

	Total Population (2000)	Population with Incomes Below Poverty Level	Population with Incomes Below 200 Percent of Poverty Level	Population with Incomes More than 200 Percent of Poverty Level
Tract 404	5,330	34.1%	71.2%	28.8%
Tract 405	3,741	20.2%	59.3%	40.7%
Tract 406	5,224	19.5%	56.0%	44.0 %
Tract 407	2,853	14.7%	36.2%	63.8%
Tract 409.01	2,186	14.8%	38.5%	61.5%
Wheatland	2,264	19.8%	42.9%	57.1%
Maryville	11,758	18.9%	44.8%	55.2%
Yuba County	58,696	20.8%	48.7%	51.3%
Sutter County	77,420	15.5%	38.2%	61.8%
California	33,100,044	14.2%	33.1%	66.9%

⁷ The 2000 Census data is the most current available census tract level demographic information. The proportion of individuals below the poverty level are based on 2000 population, income and poverty level threshold data.

**TABLE 1
INCOME OF YUBA COUNTY, SUTTER COUNTY AND
THE SURROUNDING AFFECTED ENVIRONMENT**

Total Population (2000)	Population with Incomes Below Poverty Level	Population with Incomes Below 200 Percent of Poverty Level	Population with Incomes More than 200 Percent of Poverty Level
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SOURCE: U.S. Census Bureau, 2000b.

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 casinos' location, distance from the project and relative size should be added to the EIS affected environment section so that reviewers can understand their potential competitive relationship with the project.

- c. Section 4.7 Socioeconomic Conditions and Environmental Justice (Environmental Consequences).⁸

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 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 DEIS

⁸ The comments identified for Alternative A will correspondingly also apply to the other development alternatives.

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.

Similarly, the socioeconomic analysis frequently expresses its monetary data in different forms – at times even within the same sentence (e.g. page 4.7-1 and Table 4.7-2). Financial totals are presented to the precise dollar while the sector estimates are (presumably) and confusingly presented in terms of millions of dollars, approximated to the nearest hundred thousand dollars. The analysis should apply greater consistency in its data presentation.

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, the exclusion of Alternative D from these comparison tables is confusing. Alternative D's impacts should be similarly quantified and incorporated with notation of its effects.

The analysis should more clearly identify the net population impact associated with the projected project. According to the DEIS, 193 new out-of-county employees (or 198 as it is shown in Table 4.7-6) would be employed under Alternative A (p. 4.7-5). Based on comparison with the projected total Yuba and Sutter County housing occupancy levels in Table 4.7-9, the analysis also appears to conclude that there will be a future net in migration to occupy 183 currently vacant housing units by the 193 net new employees. Although the net housing impacts may admittedly be relatively minor in magnitude, the net population, housing and employment impacts to the Yuba and Sutter County economy should be more clearly identified. Furthermore, 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,⁹ 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.

8. Transportation/Circulation.

ESA's professional traffic engineer¹⁰ reviewed the DEIS and associated Traffic Impact Analysis (Appendix N). It should be noted that this review focuses on Alternative A (the alternative with the highest trip generation).

- a. 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 (2007-2008) 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).

- b. 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.

⁹ 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.

¹⁰ Jack Hutchison, P.E. (TR 1411), has 32 years of experience in a wide range of transportation analyses for CEQA and NEPA purposes, from planning-level impact analyses to operations and design evaluations.

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" (p. 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).

9. Mitigation Measures.

Section 4.8 of the DEIS states that recommended mitigation measures in Section 5.2.7 would reduce project impacts (to the level of service on roadways and at intersections) to a less-than-significant level, but does not say what the improved levels of service would be. Section 5.2.7 does not inform the reader of the levels of service after implementation of the mitigation measures nor does it refer the reader to Appendix N (Traffic Impact Analysis).

Section 4.8 of the DEIS states that the level of service at the SR 70 / Nicolaus Avenue would degrade when project-generated traffic (at Opening) is added, but no mitigation measure is identified in Section 5.2.7. Appendix N (p. 61) states that because Caltrans plans to construct an interchange at this intersection in 2008, no mitigation is needed because the intersection would then operate at an acceptable LOS. The problem is that Section 4.12 (Cumulative Effects) of the DEIS states that the SR 70 / Nicolaus Avenue interchange is not expected until 2025. The DEIS is deficient in that it does not identify an improvement that would mitigate the project's significant impact until the interchange is built.

Section 5.2.7 of the DEIS states that the Tribe shall contribute their fair share to implementation of improvements to roads and intersections, but fails to make it clear that in some cases, the fair share would be the full cost of the improvement. A direct project significant impact means that the project sponsor would be *fully responsible* for mitigating the impact, and project contribution to an unacceptable level of service means that the project sponsor would be *partially responsible* for mitigating the impact (responsible for their percent contribution to the impact). The phrase “fair share” funding, in and of itself, does not preclude the Tribe from paying the full cost of a mitigation measure (i.e., the project’s share would be 100% if the project were the only source of added traffic that would degrade the level of service from acceptable to unacceptable). Typically, however, EIS and EIR documents provide a clearer distinction between the different types of impact by using the term “fair share” only when the project sponsor would be only partially responsible for mitigating the impact. For example, as stated on page 4.8-10 and shown in Table 4.8-6 on the next page of the DEIS, Project Alternative A would cause the level of service to degrade from an acceptable LOS C to an unacceptable LOS D or worse at three intersections (SR 70 / Plumas Arboga Road, SR 70 / Nicolaus Avenue, and Plumas Arboga Road / Algodon Road). Implementation of the mitigation measures shown in Table 5-2 of the DEIS for those three intersections would be the sole responsibility of the Tribe. As stated above, however, no mitigation measure is identified for the SR 70 / Nicolaus Avenue intersection.

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.

10. Land Use and Agriculture.

a. 4.8 Resource Use Patterns, Land Use (Environmental Consequences).

The EIS correctly states that as sovereign lands, the parcels placed into trust would not be subject to local general plans or zoning ordinances. However, NEPA requires an analysis of the effects of the proposed action on adopted land use plans. The fact that trust lands are not subject to County land use designations does not excuse the preparers of the EIS from discussing the seriousness of the impact, whether the proposed action will impair the effectiveness of the land use plan, and what measures are available to resolve the conflict (CEQ Regulations, 40 CFR 1502.16[c]).

The EIS fails to describe the existing land uses surrounding the project area and it does not identify or discuss the general plan land use designations of neighboring parcels. The land use analysis is limited to the project site and therefore ignores important compatibility issues with neighboring existing and proposed land uses that are at the heart of any land use analysis. Furthermore, the

land use analysis should identify the location and nature of any adjacent sensitive receptors (i.e. residences).

Page 4.8-37 of the DEIS states that Alternative D (the Butte County Alternative) “would replace existing rural residential and open space uses and would differ from surrounding land uses.” As noted above, the surrounding land uses should be described, in addition, the potentially displaced rural residences should be described in detail (number of homes, etc.).

b. **4.8 Resource Use Patterns, Agriculture (Environmental Consequences).**

The EIS appears to correctly identify the lack of Important Farmland on the two potential project sites; however it fails to mention whether any agricultural activities are currently taking place on either of the sites. Furthermore, the DEIS fails to identify if any adjacent properties are classified as Important Farmland or are currently under Williamson Act contract. The potential incompatibility of the proposed action with adjacent Important Farmland and/or Williamson Act lands is a potential impact that should be discussed in Section 4.8.

11. Public Services.

a. **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.

b. **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.

c. **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.

d. Section 4.10 Other Values, Noise (Environmental Consequences).

Page 4.10-2 states that "Alternative A would not create any significant increases in traffic noise as compared to future conditions of the cumulative development without a Tribal project. Therefore, this would be a less than significant impact". Alternatives A, B, and C exceed the 3.0 dB or more significance increase for transportation noise sources in an area with ambient noise levels (or in this case, the "No Project" scenario) between 60-65 dB for the roadway segment 40-mile Road, South of the site. The project would therefore generate cumulatively considerable noise, based on the criteria included in Table 4.10-1 of the DEIS.

Based on the transportation review, 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 noise from motor vehicles and could worsen the noise impact. This could potentially change the significance determinations reported in the DEIS.

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 (pp. 4.10-4, 4.10-9, 4.10-12).

All alternatives need to analyze vibration from construction at sensitive receptors. Ground-borne vibration from activities that involve the use of heavy equipment for project construction could exceed Federal Transit Administration thresholds of 0.20 in/sec or the annoyance threshold of 80 RMS.¹¹

Page 4.10-5 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 (pp. 4.10-6, 4.10-11, 4.10-13).

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 would also include outdoor noise associated with the water park, batting cages, go carts and other uses. The DEIS needs to assess noise attributed to these uses (pp. 4.10-7, 4.10-11, 4.10-13).

¹¹ Federal Transit Administration, *Transit Noise and Vibration Impact Assessment*, May 2006.

e. Section 3.1.10 and 3.2.10 Other Values, Hazardous Materials.

The Phase I Environmental Site Assessment (ESA) prepared for the Butte Site was completed in May 2006. The records search for the Butte Site was conducted in June 2005. The Phase I ESA prepared for the Yuba County Lands was completed in March 2003. The records search for the Yuba County Lands was conducted in October 2002. The Phase I ESAs prepared for these potential sites were not prepared to the current ASTM E1527-05 standard, which was revised from the previous ASTM E1527 in November 2005. Pursuant to the current standard, data collection for a valid Phase I, including records searches, site reconnaissance, and interviews with owners, occupants, or users, should be conducted no later than one year prior to the date of property acquisition. The Phase I ESAs should be updated to conform to ASTM 1527-05 Standard Practices, which includes a minimum of updating the records search and revisiting the site. The EIS preparers should rely on a Phase I ESA that is in compliance with ASTM E1527-05 standards and includes data collection no older than one year.

f. 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. Rural residential development is identified as surrounding the site, and a specific residential/ranch complex is located immediately west of the Yuba Site, but the analysis fails to identify the distance between the closest residence and the proposed facilities. Nor are impacts to nearby residences discussed 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.

E. CONCLUSION

Auburn is and will continue to be opposed to Enterprise's application to take land into trust to conduct gaming operations. This application is yet another attempt by a developer to take advantage of a small Tribe and develop a gaming facility. Consistent with the Secretary's stated heightened scrutiny of land-into-trust applications for off-reservation gaming, Enterprise's application should be denied. The development and operation of a gaming facility on the Yuba County Lands would be environmentally, socially, and economically detrimental to Auburn. Because the Yuba County Lands are within the historical lands of Auburn and because Enterprise already has land on which it can conduct gaming, this application should be denied.


Jessica Tavares, Chairperson