



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:

DATE: FEB 9 - 2010
REPLY TO:
ATTN OF: Regional Director, Pacific Region
SUBJECT: Indian Gaming Land Acquisition Request for Enterprise Rancheria of Maidu Indians of California
TO: Assistant Secretary – Indian Affairs
Attention: Director, Indian Gaming Management

I. INTRODUCTION

Through this memorandum, the Pacific Regional Office (PRO) is hereby transmitting to the Assistant Secretary – Indian Affairs, our analysis of the Enterprise Rancheria of Maidu Indians' (Tribe) off-reservation Class III Gaming application for trust acquisition pursuant to the 25 U.S.C. § 465 of the Indian Reorganization Act, as amended by 25 U.S.C. § 2202, the Indian Land Consolidation Act of 1983. The Tribe also requests the lands to be determined eligible for gaming pursuant to Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(b)(1)(A). The property proposed for acquisition is located 36 miles from the boundaries of the Enterprise Rancheria. The Enterprise Rancheria was originally established on October 8, 1915 with the purchase by the United States of 40 acres with funds appropriated under the Interior Appropriations Acts of June 21, 1906 (34 Stat. 325, 333) and April 8, 1908 (35 Stat. 70, 76). The U.S. completed a second land purchase of 40.64-acres on December 6, 1915 with funds appropriated under the Interior Appropriations Act of August 1, 1914 (38 Stat. 582).

The additional tract, commonly referred to as "Enterprise 2" was sold to the State of California pursuant to the Act of August 20, 1964 (P.L. 88-453) in anticipation of complete flooding due to the construction of the Oroville Dam. The record reflects that a majority of the Indians of the Enterprise Rancheria voted to reject the provisions of the Indian Reorganization Act of 1934 (IRA), but their land acquisition proposal would fall under the authority of the Indian Land Consolidation Act of 1983.

The subject property consists of one parcel, containing a total of 40 acres more or less located approximately four miles southeast of the community of Olivehurst, near the intersection of Forty Mile Road and State Route 65, in Yuba County, California. This request is being processed as an off-reservation acquisition; with the subject property located approximately 36 miles from the Enterprise Rancheria boundaries.

The Tribe proposes to develop the site for recreation/tourism by constructing a casino, hotel, and parking structure. The casino and hotel resort would include a main gaming hall, food and beverage services, retail space, banquet/meeting space, administrative space, pool, and spa. Several food and beverage facilities are planned, including a buffet, casino bars, and two restaurants. The resort would include an eight-story hotel with 170 rooms, a pool area, an exercise room, and an arcade. Approximately 2,750 parking spaces would be provided for the casino/hotel resort, with 600 of those spaces within a multi-level parking structure.

II. AUTHORITY

The Tribe is listed in the Federal Register as a recognized Indian entity eligible to receive services afforded to recognized tribes. The governing body of the Tribe is the General Council which has delegated to the Tribal Council the authority to oversee and regulate the operations of the Tribe in accordance with Article IV of the Constitution of the Enterprise Rancheria Estom Yumeka Maidu (*Exhibit 2, Tab D*).

The Tribal Council of Enterprise Rancheria, by Resolution No. 02-08 dated June 26, 2002 (*Exhibit 1, Tab A*), authorized the Secretary of the Interior to acquire land into trust for the benefit of the Enterprise Rancheria of Maidu Indians of California to approximately 40.00 acres.

III. IGRA – 25 U.S.C. §2719

The Indian Gaming Regulatory Act (IGRA) precludes gaming on trust land acquired after October 17, 1988, unless the land meets one of several statutory exemptions. The exception the Enterprise Rancheria requested the Bureau of Indian Affairs review is the two-part Secretarial determination in Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §2719(b)(1)(A). Under this provision of IGRA, land acquired into trust after October 17, 1988, is eligible for gaming if:

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

The Pacific Regional Office has conducted the consultation required under Section 20 with the appropriate State and local governments and the nearby Indian tribe as described below. We have considered all the information submitted under §§292.16-292.19 in evaluating whether the proposed gaming establishment is in the best interest of the tribe and its members and whether it would or would not be detrimental to the surrounding community.

The Tribe's Two-part Determination Application

By letter dated March 29, 2006 (*Exhibit 1, Tab F*) the Tribe's attorneys confirmed that the Tribe was requesting a two-part determination pursuant to Section 20 (b)(1)(A) of the Indian Gaming Regulatory Act (IGRA). A formal nineteen-page request was subsequently submitted to the Pacific Region Director on April 13, 2006 (*Exhibit 1, Tab E*). Since then, the new Section 20 regulations at 25 CFR Part 292 was issued on May 20, 2008. On March 17, 2009, the Tribe amended and restated the request for a Secretarial two-part determination to conform to the application requirements found in the new regulations at 25 CFR §§ 292.16 through 292.19 for a Secretarial determination. The Tribe submitted a supplemental packet dated April 28, 2009 to the Tribe's amended and restated two-part request.
(*Exhibit 1, Tab A*)

The Consultation Process

On January 16, 2009 a letter was sent to the Tribe regarding the required documentation needed to fully analyze the Tribe's request for gaming on off-reservation lands. We initiated the consultation letter on the same day to the State and local governmental offices as follows:

Legal Affairs Secretary, Office of the Governor; Deputy Attorney General, State of California; District Director, Office of Senator Diane Feinstein; Yuba County Board of Supervisors, County of Yuba; Mayor, City of Auburn; Mayor, City of Lincoln; Mayor, City of Rocklin; Mayor, City of Roseville; Mayor, City of Gridley; Mayor, City of Live Oak; Mayor, City of Marysville; Mayor, City of Yuba City; City Manager, City of Wheatland; Placer County, Board of Supervisors; Sacramento County, Board of Supervisors; Yolo County, Board of Supervisors; Sutter County, Board of Supervisors; Butte County, Clerk of the Board; Nevada County Board of Supervisors; Colusa County Board of Supervisors; and the Auburn Rancheria. (*Exhibit 7*)

In response to consultation letter, we received comments from the following:

1. ***Letter dated February 3, 2009 from City of Wheatland refers to two prior letters that the City's had concerns with*** (*Exhibit 7, Tab A*).

- *Traffic impact*
- *Fire Services impact on their city*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the City of Wheatland. (*Exhibit 7, Tab R*)

- *the traffic and fire services impact will be in the final EIS*

2. ***Letter of support from the Yuba-Sutter Economic Development Corporation, an economic development advocate in the Yuba-Sutter region, dated February 27, 2009*** (*Exhibit 7, Tab B*).

- *will create a regional entertainment marketplace which will promote local tourism with a new hotel, restaurants, meeting space, gaming and more*

3. **Letter dated February 27, 2009 from California Tribal Business Alliance (CTBA), opposing the Enterprise Rancheria gaming application (Exhibit 7, Tab C).**

- *Not within the historic territory of the Enterprise Rancheria*
- *The Enterprise Tribe has land eligible for gaming*
- *Historical ties to the site*
- *Is not a landless tribe*
- *Seeking a more marketable location*
- *Concerns on the commute*
- *The location is in the historic territory of the Nisenan people*
- *The Olivehurst property is not land within the Enterprise Rancheria prior to termination*
- *It is not land where members will reside*
- *Land is not in "close proximity" to the existing Rancheria*
- *A gaming establishment would be detrimental to the government and members of the Auburn Tribe*
- *If the tribes abandon territorial jurisdictions, are they giving up sovereignty?*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated February 27, 2009 from CTBA. (Exhibit 7, Tab R).

- *Saying the CTBA is an organization comprised of seven Indian Tribes in California and only one of the seven Tribes is a concerned Tribe in the surrounding area.*
- *The CTBA is not an interest party within the 25-mile radius, nor is it a local governmental entity.*
- *CTBA is submitting comments on the behalf of the Auburn Tribe and Auburn already submitted its comments as a nearby Tribe.*
- *The Enterprise Tribe feels the CTBA as an organization of six other Tribes in California has no standing to be consulted with as an interested party per the regulation 25 CFR § 292.19.*

4. **Letter from the Dan Logue, Assembly member, California Legislature, dated March 9, 2009 (Exhibit 7, Tab D).**

- *Governor Schwarzenegger issued a proclamation which established the criteria by which gubernatorial concurrence with the Secretary of the Interior for off-reservation gaming.*
- *On November 8, 2005, the voters of Yuba County voted by 52% against Measure G, a local measure opposing the casino project.*
- *Mr. Logue states new casinos have a significant impact on local communities, local governments, regional infrastructure and quality of life.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to Mr. Logue's letter dated March 9, 2009 (Exhibit 7, Tab R).

- *The Secretary's and the Governor's criteria in making a two-part determination and gubernatorial concurrence are distinct from each other.*
- *The Tribe has worked with the nearby community that may be impacted and attempted to address the concerns through Memoranda of Agreements with the County of Yuba and the City of Marysville.*
- *The Tribe is simply seeking to acquire trust lands to pursue economic development under the statutory process intended by Congress to allow the Tribe an opportunity to gain equal footing with newly recognized and restored tribes or those tribes who already have an adequate land base.*
- *The Tribe responds that the Project impacts have been carefully analyzed in the EIS.*

5. Letter from Denis O'Connor, dated March 9, 2009, a local citizen in Wheatland, opposing the casino project (Exhibit 7, Tab E).

- *Mr. O'Connor agrees with the Governor Schwarzenegger proclamation which established the criteria by which gubernatorial concurrence with the Secretary of the Interior for off-reservation gaming.*
- *He also states the citizens voted in the local advisory on November 8, 2005, where the voters of Yuba County voted by 52% against Measure G.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to Mr. O'Connor's letter (Exhibit 7, Tab R).

- *The Tribe's response is that the commenter is an individual resident in Wheatland, California, and according to the 25 CFR Part 292.19 regulations, the consultation is between the state and local governments and any nearby Tribes. Therefore, it appears the commenter does not have standing to engage in the consultation per the consultation process under 25 CFR § 292.19.*

6. Letter from the Roger Abe, Supervisor – 4th District, Yuba County, dated March 12, 2009 opposing the casino (Exhibit 7, Tab F).

- *Mr. Abe is a newly elected supervisor for the Yuba County 4th District and his comments are his individual comments and does not reflect the position of Yuba County Board of Supervisors.*
- *He noted in November 2005, 52.1 % of Yuba County voted against Measure G and building the casino anyway would tell the voters that their vote does not count.*
- *During the Measure G's campaign period, voters were told of the potentially large job and other economic benefits the casino/hotel could provide.*
- *The location of the proposed casino is not the site of Enterprise*

Rancheria, which is located in Butte County, California. There are no historical, cultural, or moral reasons for selecting this location. The primary reason for this location is to maximize the potential profits generated by a casino operation.

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 12, 2009 (Exhibit 7, Tab R).

- *The Tribe responded stating the new Yuba County Supervisor is expressing his own "individual comments," which "does not reflect the position of the Yuba County Board of Supervisors." (Comments from individual citizens are neither solicited nor considered for purposes of consultation under 25 CFR § 292.19.)*
- *The Tribe responded saying that the Measure G is a nonbinding advisory vote to measure the current level of the public support for the Project in Yuba County. The advisory measure was put on the Ballot to satisfy one of several criteria used by the Governor, not the Secretary to determine whether to concur with the two-part determination.*
- *The Tribe stated they thoroughly addressed the historical, cultural, and moral reasons for selecting the Yuba Site in its fee-to-trust and two-part application as amended.*

7. Letter dated March 12, 2009 from Sutter County Community Services Department (Exhibit 7, Tab G).

- *The Sutter County stated their comments are not intended to support or oppose, but to provide potential impacts to Sutter County.*
- *The proposed facility is approximately three miles from the Sutter County boundary. This location is near the amphitheater, and Sutter County has experienced impacts to traffic and emergency services.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 12, 2009 (Exhibit 6, Tab R).

- *The studies concerning traffic circulation and emergency services are provided in EIS, and any concerns with the adequacy of those studies and any required mitigation should be addressed as part of the environmental review under NEPA.*

8. Letter from the Indians of Enterprise No. 1 dated March 12, 2009 opposing the Enterprise application (Exhibit 7, Tab H).

- *The Enterprise No. 1 commented the project fails to meet established criteria; the land at the project site has not been taken into trust as settlement of a land claim, nor is the land restoration land which has to be restored to federal recognition.*
- *The Enterprise Tribe is not a landless tribe.*
- *The Enterprise No. 1 forty acres location is used for residential as it was used in 1915 for "Emma Parker Walters".*

- Also, the distance per the 25 CFR 151.11 (b) regulations require the Bureau to give greater scrutiny and give greater weight to the local government concerns.
- Enterprise No. 1 states their tribe did not travel up and down Feather River; over 50 miles; they fished, hunted and logged nearby, within 20 miles.
- Traffic is a concern for the proposed project.
- Also, in the Measure G the Yuba County voters voted against the proposed project.
- The Enterprise government has been at the forefront among tribes in California who violate the civil rights and human rights of their members. There are complaints at the Central California Agency, Pacific Regional Office and the IBIA.

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 12, 2009 (Exhibit 7, Tab R).

- The Tribe's response letter states that the individual/non-federally recognized tribe, lives in Paradise, California, which is more than 25 miles away. Therefore, they are not considered a nearby tribe or a surrounding community to be consulted with per the federal regulations. Therefore, the weight of their comments should be considered less.

9. Letter from the County of Yuba dated March 12, 2009 supporting the project (Exhibit 7, Tab I). The Yuba County response letter puts in chronology order of significant action concerning the subject application as listed below:

- Measure R dated January 27, 1998, the voters approved the measure for the "Yuba County Raceway Measure".
- The Amphitheatre was constructed and opened in 2000, well within the construction and operation periods identified in the Measure R, thereby disallowing the Board to amend or repeal without voter approval. The Raceway was not constructed, and there are no current plans to build the Raceway at the site.
- The Forsythe Racing, Inc., and the primary developer of the site for a Raceway entered into an agreement with Enterprise Rancheria to construct a casino and hotel on the subject site.
- The Community Development Director and County Counsel both opined that the casino and hotel project were allowable and compatible uses within the Sports and Entertainment Zone and the Board concurred.
- The County Board approved a Memorandum of Understanding (MOU) with the Enterprise Rancheria on December 17, 2002. The MOU with the Tribe mitigates potential impacts associated with the proposed casino and identified structures.
- The Yuba County received comments from the community opposing

- and supporting. In 2005 Measure G was presented to the Yuba County voters and overall, voters did not support the casino project.*
- *The Yuba County states that the Enterprise proposed gaming project will not be detrimental to the surrounding community. The County, as previously stated, entered into an MOU with the Tribe that mitigates potential impacts associated with the proposed casino and identified structures.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 12, 2009 (Exhibit 7, Tab R).

- *The County of Yuba is the governmental entity with jurisdiction over the Yuba Site and the MOU between the Tribe and Yuba County has mitigated measures in the MOU and the Final EIS.*

10. Letter from the City of Wheatland dated March 12, 2009, opposing the proposed casino project (Exhibit 7, Tab J).

- *The City attached a Resolution No. 54-02 opposing the casino project because the January 1998 Measure R voting was for a Sports and Entertainment Zone and not for a casino.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 12, 2009 (Exhibit 7, Tab R).

- *The tribe's response to the resolution attached the City's letter indicating the project was approved by a 3-2 margin by the City Council in 2002.*
- *At that time, the City had approximately 2,500 residents.*
- *As noted by the City, the Tribe will continue to work with the City of Wheatland to mitigate possible impacts the Project may have on the City.*

11. Letter from the Auburn Rancheria dated March 12, 2009, requesting an extension and a summary of what their forthcoming letter will include (Exhibit 7, Tab K).

- *Requested an extension until May 17, 2009, because they were not notified as being a nearby tribe within the 25 mile radius*
- *The development and operation of a gaming facility would be environmentally, socially, and economically detrimental to Auburn as being a neighboring tribe.*
- *The encroachment to Auburn's historical lands, cultural heritage and with the competition of a nearby casino would have a significant negative economic impact on Auburn.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 12, 2009 (Exhibit 7, Tab R).

- *The Enterprise concurs that the Auburn Tribe is a nearby tribe and supports an extension of the time for Auburn Tribe to respond to the*

two-part determination.

12. The Auburn Rancheria supplemental opposition letter dated May 11, 2009 (Exhibit 7, Tab S).

- *Auburn noted that the Secretary must complete the two-part determination before taking the Enterprise fee-to-trust request into trust and mentioned the DOI January of 2008 Memorandum with the requirements for taking off-reservation land into trust for gaming purposes.*
- *They believe that the development and operation of a gaming facility would be environmentally, socially, and economically detrimental to Auburn, as well as the greater community in and around the Yuba County lands.*
- *The subject lands are within "service area" legislatively granted to Auburn pursuant to the Auburn Restoration Act (25 U.S.C. § 13001-6(7)).*
- *Auburn feels they have stronger historical and current ties to the subject land. To allow this application would be to encroach on Auburn's legal rights and sovereignty.*
- *Auburn advocates that Enterprise use its existing lands or seek other land with historical and cultural ties.*
- *Does not meet the requisite criteria to obtain a favorable two-part determination from the Secretary.*
- *Says Enterprise has not provided justification for taking land into trust that is located approximately 50 miles from existing land base.*
- *The Auburn's casino recently let go approximately 5% of its workforce. There was a hiring freeze in January 2009 and the tribe was forced to lay off almost 100 part-time employees. They recently decided to scale back on planned expansion. The current project would burden them with a significant negative economic impact.*
- *Auburn is saying the off-reservation acquisition for the Enterprise Rancheria is improper. The Enterprise Rancheria already has land available for gaming.*
- *The proposed land acquisition would violate land into trust guidance and the Environmental Impact Statement is inadequate.*

By letter dated June 23, 2009, the firm of Maier, Pfeffer, Kim & Geary, LLP, writes on behalf of the Enterprise Rancheria responding to the above supplemental letter dated May 11, 2009, from Auburn (Exhibit 7, Tab U).

- *The Enterprise comment letter provided little or no evidence for its concern that the Project would be economically detrimental to Auburn. The claim that the Project would "have significant adverse impact on Auburn and its existing gaming operations" does not comport with the DEIS analysis or the Tribe's own calculations. If the Project is approved, the Enterprise Tribe and its 800 tribal*

members, many of whom live in poverty, would also be granted an opportunity to achieve economic self-sufficiency. The Project would have an "arguably negligible" impact on the Auburn Tribe.

- With regard to the NEPA process, it is based on a separate set of federal laws and regulations; the Tribe considers it unnecessary and inappropriate to respond to the Auburn's NEPA comments. The comments will presumably be considered in the final EIS or the Record of Decision.

13. Letter from Citizens for a Better Way dated March 13, 2009 opposing the proposed casino project (Exhibit 7, Tab L).

- Express outrage over the tactics used to obtain the off-reservation land into trust for a casino in the County of Yuba.
- Prior negotiations with the County of Yuba were to establish a NASCAR racetrack in 1998, and it was never built.
- Mr. Forsythe and Enterprise were not certain what "Rancheria is Number 1 or number 2 or the combination of both" qualified as a gaming candidate.
- Question how Mr. Forsythe and Enterprise convinced the Yuba County to enter into a MOU with them.
- The MOU with Yuba County is written poorly, and perhaps it is fraudulent.
- Mr. Forsythe and the Enterprise Tribe could be easily accused of "reservation shopping".
- The commenter mentioned two letters from the Governor's office, i.e., letter dated May 5, 2005, stating the "negotiations with the tribe at this time is premature," and letter dated May 18, 2005 issuing a proclamation on tribal gaming stating that the local jurisdiction in which the project is must support the project and the tribe and local jurisdiction (must) demonstrate that the local community supports the project. The November 8, 2005 advisory vote rejected the subject project by over 52%.
- Concern of validity with the Enterprise Tribe per the February 24, 2009 Supreme Court Carcieri decision.
- The Board of Supervisors was perplexed on how to answer the letter from the BIA (Dale Morris, Pacific Regional Office) dated January 16, 2009; the commenter concludes, that the County was unable to answer some of the questions.

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 13, 2009 (Exhibit 7, Tab R).

- The Tribe responds saying the Citizens for a Better Way is a non-governmental organization located within the 25-mile radius of subject Project.
- These comments were not on behalf of any State, local, or tribal governmental that is a part of the surrounding community. Thus, it

does not appear that the commenter has standing to directly engage in consultation with the Regional Director pursuant to the regulation under 25 CFR § 292.19.

14. Letter from James Gallagher, Sutter County Board of Supervisors, dated March 16, 2009 (Exhibit 7, Tab M).

- *The gaming casino project will have overall negative impact on the community.*
- *The County has concerns on "reservation shopping" and the primary reason they are proposing to place this area in trust is because of its prime location on Highway 65. If this is allowed, what is to stop other tribes from looking for prime real estate in our urban centers like Sacramento, Los Angeles, and San Francisco? By permitting this casino, you would be setting a dangerous precedent.*
- *The property removed off the taxes rolls; high volumes of traffic; road wear and tear; safety and labor laws and crime are a major concern.*
- *The Enterprise Tribe has an MOU with the Yuba County; it does not have one with the City of Wheatland and Sutter County, which they say their jurisdiction will be highly impacted. They don't think an MOU will fully account for the long term impacts on the community.*
- *Gambling addictions and addicts are always looking for ways, both legal and illegal, to support a habit.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 13, 2009 (Exhibit 7, Tab R).

- *The Tribe states that Mr. Gallagher is writing in his individual capacity and not as a Sutter County Supervisor. Therefore, the Tribe says the BIA should consider Mr. Gallagher comment letter with lesser weight than local governments and nearby tribes in the surrounding community.*
- *The Tribe states the DEIS confirms that the County MOU more than compensates Yuba County for tax revenues lost once the land is taken into trust. The DEIS also shows the small surrounding area will have a significant negative impact. With respect to the concerns on traffic, the Tribe has consulted with local governments throughout the Project's development area to study traffic concerns and develop a traffic pattern study and mitigation plan for traffic-related impacts. With regard to the negotiation between the Tribe and Governor on the environmental, health and safety, and labor laws will be negotiated in the Compact with the Governor. Finally, the DEIS concluded that the availability of casino gambling had no effect on rates of serious violent or property crimes.*

15. Letter from Stand Up For California dated March 16, 2009, stating two concerns (Exhibit 7, Tab N).

- *In the May 18, 2005 the Governor issued a proclamation, then an electorate of the Yuba County voted NO by 52%; Yuba County is willing to disenfranchise the electorate of Yuba County community and permit "Reservation Shopping."*
- *Memorandum of Understanding negotiated with the County of Yuba was not a mutually beneficial agreement.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 16, 2009 (Exhibit 7, Tab R).

- *The commenter writes on behalf of a non-profit organization located in Penryn, California, which is within 25 miles of the Yuba Site but not a governmental entity. Thus, it does not appear that the commenter has standing to directly engage in consultation with the Regional Director pursuant to 25 CFR § 292.19.*

16. *Letter from the Office of the Governor dated March 17, 2009 (Exhibit 7, Tab O).*

- *The Governor's letter refers back to letters dated May 5, 2008 (response to DEIS dated February 2008) and January 30, 2009 (response to the Notice of Application dated November 26, 2009). The Governor's office believes their previous comments will provide sufficient information on whether the proposed gaming project will or will not be detrimental to the surrounding community.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 13, 2009 (Exhibit 7, Tab R).

- *The Tribe defers to the BIA's response to comments on the DEIS that will be provided in the final EIS and directs the BIA to the Tribe's April 10, 2009 letter to Dale Morris, sent in response to the January 30, 2009 letter from the Governor's office.*

17. *Letter from Churches of God, Wheatland Community Fellowship, received March 16, 2009 at the Pacific Regional Office opposing the Enterprise gaming facility (Exhibit 7, Tab P).*

- *The Church wishes to express their opposition on Enterprise Rancheria's gaming project.*
- *The Church mentioned the Yuba County advisory vote in November 2005 which clearly showed over 52 % of the Yuba County citizens did not want an Indian gaming facility.*
- *The concerns were the high number of ex-parolees and their weaknesses, concern for the ability of Yuba County to handle the burden of providing services, and a genuine mismatch of the site location.*

By letter dated May 5, 2009, the Enterprise Rancheria responded to the above letter dated March 16, 2009 (Exhibit 7, Tab R).

- *The Tribe responds to the church's comment by saying the church is not a government entity and does not have standing to comment per the 25 CFR § 292.19 regulations.*
- *The commenter's concern was with ex-parolees; the Tribe agreed in the County MOU to provide \$60,000.00 annually to provide services to problem gamblers.*
- *As for the Yuba County, the Tribe has entered into a MOU with the County, which will financially compensate the County for the provision of services related to the Project.*
- *As for the mismatched location, the Tribe's proposed use is consistent with the zoning designation since entertainment is an appropriate land use area and has been deemed not to conflict with neighboring land uses.*

We received five (5) opposing comment letters after the 60 day consultation letter deadline (Exhibit 7, Tab Q).

- 1. A petition signed by 137 citizens residing in the area around the proposed Enterprise Rancheria gaming facility who wish to express their opposition to the development.*
- 2. A letter from David Beasley, a resident of Marysville, CA, opposing the Indian casino project.*
- 3. A letter from Wally Herger, Congress of the United States, dated April 13, 2009.*
- 4. Letter dated May 11, 2009 from California Tribal Business Alliance (CTBA) informing us of their opposition to the Enterprise Rancheria gaming application.*
- 5. Letter dated June 4, 2009 from Robert H. Smith, Chairman of the Pala Band of Mission Indians informing us of their opposition to the Enterprise Rancheria gaming application.*

Below is a list of thirteen (13) support letters from the surrounding community that came after the 60 day comment period (Exhibit 7, Tab T).

- 1. A letter of support dated May 20, 2009, from Thomas B. Walther, C.E.O of the Peach Tree Healthcare in Yuba and Sutter County.*
- 2. A letter of support dated May 19, 2009, from Jeffrey L. Phinney, Fire Captain, Sacramento County Airport System, and resident of Plumas Lake, California.*
- 3. A letter of support dated May 21, 2009, from Donald W. Covey, President of the Yuba City Downtown Business Association of Yuba City, California.*
- 4. A letter of support dated June 1, 2009, from Tom King, a Business Owner in Marysville/Yuba County.*
- 5. A letter of support dated May 28, 2009, from Roy Crabtree, a resident/Community Leader of Wheatland, California.*
- 6. A letter of support dated May 29, 2009, from Robert Reich, Executive Director of Yuba Sutter Regional Arts Council in Marysville, California.*

7. *A letter of support dated May 29, 2009, from Ron Dougherty the Local Civic Leader and Olivehurst Public Utility District Board Director.*
8. *A letter of support dated May 27, 2009, from Gary Bradford, a resident of Plumas Lake, California.*
9. *A letter of support dated May 29, 2009, from Marsha Krouse-Taylor, Executive Director of Casa de Esperanza, Inc., in Yuba City, California.*
10. *A letter of support dated May 29, 2009, from Martin G. Skraber, Business Representative of Construction and General Laborers' Local 185 in Yuba City, California.*
11. *A letter of support dated May 29, 2009, from Bill Padget, Director of the Central Valley Homeless Veterans Assistance Program in Marysville, California.*
12. *A letter of support dated May 30, 2009, from Laura Nicholson, Executive Director of Yuba Sutter Chamber of Commerce in Marysville, California. The Chamber arrived at its decision because it determined that the project meets the criteria of the entertainment zone endorsed by Yuba County voters and will further the economic development efforts of this county where the unemployment rate was 19.1 percent in March.*
13. *A letter of support dated May 29, 2009, from Angel Diaz, President of North Valley Hispanic Chamber of Commerce in Yuba City, California.*

FINDING OF FACT

The following relate to the items listed in the §§292.16-292.19, with the information from the Tribe's application and supplemental (*Exhibit 2*), the consultation process, and the DEIS.

BEST INTEREST OF THE TRIBE

- (a) **Projections of class II and class III gaming income statements, balance sheet, fixed assets accounting, and cash flow statements for the gaming entity and the tribe;**

The Tribe presently lacks the resources to acquire tribal land and to develop and operate a tribal gaming facility and enterprise thereon and desires to retain the services of a developer and manager to assist the Tribe in acquiring land, securing financing, and developing, managing and operating Class II and Class III gaming activities and related facilities on tribal land.

CLASS III

Income statements: The annual net income of the casino is projected to be approximately \$189, 693, 079 by the 7th year for the Class III gaming.

Balance sheet: The balance sheet for the Class III gaming show the projected total cost of the property, Plant and Equipment, to be \$165,000,000.

Fixed assets accounting: The fixed assets breakdown for the Class III gaming is projected as follows: Land-\$7,000,000; Casino and Hotel-\$143,000,000.

Cash flow statements: The cash flow available to the Tribal Members is projected to be approximately \$19,325,947 on the 7th year for the Class III gaming.

The debt amortization schedule for the Class III will be paid in a 7 year period.

CLASS II

Income statements: The annual net income of the casino is projected to be approximately \$40,520,599 on the 5th year for the Class II gaming.

Balance sheet: The balance sheet for the Class II gaming show the projected total cost of the property, Plant and Equipment to be \$38,000,000.

Fixed assets accounting: The fixed assets breakdown for the Class II is projected as follows: Land \$7,000,000; Casino \$10,000,000.

Cash flow statements: The cash flow available to the Tribal Members is projected to be approximately \$3,502,666 on the 5th year for the Class II gaming.

The debt amortization schedule for the Class II will be paid in a 5 year period

(b) Projected tribal employment, job-training, and career development;

The Tribe's is in great need of an economic opportunity because in the most recent Labor Force Report, over forty percent (40%) of the Tribe's potential labor force is either not employed or employed but earning less than \$9,048 per year. The Tribe anticipates the subject project to produce jobs, training and educational opportunities for its tribal members, but also to eventually enable purchase of residential land to compensate for the loss of the original Rancheria to create a tribal community within its historic land.

In the EIS Table 4.7-1, the direct investment in construction-related activities is expected to generate 1,300 temporary construction jobs and nearly \$35 million in annual wages. The Facility is expected to generate 1,933 permanent operational jobs and nearly \$32 million in wages (EIS, Table 4.7-1). The Tribe is committed to increasing tribal employment by offering jobs at the Facility to the tribal members and establishing a preference for hiring tribal members.

The proposed casino is approximately 36 miles from the Enterprise 1 parcel and somewhat longer by car. The current Tribal population on the Enterprise 1 parcel is about five (5) persons. The majority of the Tribal population resides in Butte and Yuba Counties which are within 40 miles of the Site. Thus would make the average commute distance to the Site closer than to the Rancheria. The tribal members will be able to obtain jobs without a significant impact with the existing residential patterns of the tribal community.

The Tribe intends to provide job training and career development services to all employees of the Facility, including members of the Tribe. The Tribe is committed to offering training programs to assist both County residents and tribal members to becoming qualified for employment.

The Tribe also intends to use the revenue derived from the Facility to significantly expand the Tribe's current governmental services, including health, education, and welfare services. The expansion of the Tribe's governmental services will in turn create new job opportunities for tribal members to work for the tribal government.

Finally, the gaming revenues from the Facility will enable the Tribe to provide educational and training opportunities to its tribal members that will enable them to pursue employment opportunities which are not affiliated with the Facility or tribal governmental services, hence broadening employment and career prospects for its members.

(c) Projected benefits to the tribe and its members from tourism;

The EIS projects that the establishment of the facility at the Site will lead to an increase in the number of visitors to Yuba County. Increased tourism in Yuba County will have direct and indirect benefits to the Tribe. More specifically, the development of a new casino in the area will stimulate the existing local tourist, increasing the incentives to visit Yuba County, thereby benefitting the local economy as a whole. This influx of non-resident consumers will benefit businesses owned by tribal members, businesses employing tribal members, and will create new employment opportunities for tribal members. Furthermore, the Tribe may benefit from tourism by increasing awareness about the Tribe and its history, allowing visitors and local residents alike to become familiar with the Tribe and its Maidu culture.

(d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income;

The net income from gaming will greatly benefit the Tribe by stimulating tribal economic development and promoting tribal self-sufficiency and a strong tribal government. The gaming net revenues and an enhanced economic base will allow the Tribe to provide a variety of much needed social, housing, governmental, administrative, educational, health and welfare services to its members. Monies generated will expand and improve existing tribal governmental operations by funding additional staff and upgrading equipment and facilities, which will lead to increased employment opportunities for tribal members. The tribal income will also provide capital for other non-gaming economic development and investment opportunities, allowing the Tribe to diversify its holdings over time so that it may improve the quality of life of tribal members and strengthen the viability of the Tribe's government and tribal member community for the long-term.

(e) Projected benefits to the relationship between the tribe and the non-Indian communities;

The Tribe has established an excellent relationship with the surrounding community through the lengthy federal trust approval process and expects the development and operation of the Facility will only serve to strengthen those relationships. From the early stages of the Tribe's efforts to establish a gaming facility, the Tribe has made a substantial effort to involve local governments and thereby strengthen the relationship between the Tribe and the surrounding community. The Tribe has worked diligently to foster communication between the surrounding community and the Tribe. Public meetings were held regarding the proposed development to encourage dialogue, elicit opinions from the public and allay fears and misconceptions on both sides. Since then, efforts to reach out to the surrounding community have continued as tribal representatives meet with civic and business leaders, community groups, business and service organizations, industry groups and employee/trade associations in the County.

The anticipated job creation and economic growth resulting from the Facility will provide a much needed boost to the economy of the County and the surrounding community. As noted in the DEIS, unemployment in Yuba County is somewhat higher compared to the rest of California, and even before the current economic downturn, unemployment levels had increased from those in 2005 when the DEIS socioeconomic analysis was prepared (DEIS, p. 4.7-4.). By January 2009, the employment rate for Yuba County was 17.9%, compared to 10.1% for California and 7.6% nationally (Appendix M of FEIS). Particularly in light of the downturn in the national, state, and local economies in 2008-2009, the Facility and its economic growth opportunities will positively impact the surrounding community by creating a significant number of much needed jobs; and in the process, help enhance the Tribe's relationship with the surrounding community.

(f) Possible adverse impacts on the tribe and its members and plan for addressing those impacts;

The Tribe has no anticipated adverse impacts on the Tribe and its members which would result from the operation of the Facility. The Facility could indirectly lead to an increase in tribal members who develop problems with alcohol or gambling. However, the Tribe does not believe that the Facility would result in a discernable increase in the percentage of the Tribe's members who may be affected by such problems. Tribal members already have access to both alcohol and gambling opportunities in Butte, Colusa, Tehama, Placer and other nearby counties. Further, improvements in the delivery of social, health, and education services by the Tribe to its members as a result of the Facility may actually lead to a decrease in alcohol or gambling problems among tribal members.

The Tribe intends to develop a tribal program to adequately address problems associated with alcohol and gambling. The Tribe also intends that the Facility employee benefits program will include insurance coverage for the treatment of problem gambling for all employees, including members of the Tribe. Finally, the Tribe is dedicated to funding a behavioral health program for its members who have or who develop alcohol or gambling problems.

(g) Distance of the land from the location where the tribe maintains core

governmental functions;

The Site is located approximately 32 miles from the rented office, located on the outskirts of Oroville, California, where the Tribe currently maintains its core governmental functions. The Office is not located on the Rancheria due to the lack of access and infrastructure development. The Rancheria is located in the Sierra Nevada foothills approximately 10 air miles east of Oroville in Butte County. Access is via a dirt road off of Lumpkin Road from Forestown Road and State Route 162. There is approximately 4 acres of usable land for structure out of the 40 acres.

(h) Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States;

A copy of the Purchase and Sale Agreement between the Tribe and YCE is attached in **Exhibit 2, Tab G.**

(i) Evidence of significant historical connections, if any, to the land;

The Tribe's Constitution revised and ratified on October 29, 2003, specifically provides that the Tribe's membership is composed of Maidu people from the Feather River Drainage Area. The proposed site lies within the Feather River Drainage Area. During the 1915 census it lists seven of the 51 members as living in Yuba County. At this time, a little less than ten percent of the tribal members reside in Yuba and Sutter counties, and the Tribe considers these counties part of its service area.

While Section 20(b)(1)(A) of IGRA does not require the applicant tribe to have a historical or cultural connection to the land, the Tribe does have a significant historical and cultural connection to the area in and around the Site.

The Tribe has repatriated human remains and burials of its ancestors found in Yuba County, including areas not far from the Site. The Tribe is also recognized by both State and Federal agencies as the Indian tribe or Native American group most closely connected with Yuba County, including the area surrounding the Site. In recent years, the Native American Heritage Commission has appointed the Enterprise Rancheria as the Most Likely Descendant ("MLD"), pursuant to California Public Resources Code § 5097.98, for discoveries of human remains and associated grave goods in and around Yuba County. (A copy of the Public Resources Code is attached as Exhibit 2, Tab A, No. 1.) The Tribe is also regularly contacted through the Commission for consultation on cultural resource protection in sites for and around Sutter County.

For example, the Tribe was designated as the MLD for the Three Rivers Levee Improvement project, which includes the area located just west of the proposed gaming Site in Yuba County along the east bank of the Feather River between the Bear and Yuba River confluences.. The Three Rivers Levee Improvement Project, also known as the Feather River Levee Improvement Project ("Levee Project"), is part of a massive project

to improve 13 miles of levees in South Yuba County. The Levee Project is expected to lower water elevations by more than a foot during flood events, easing pressures on both the Yuba and Feather Rivers and providing increased flood protection to the cities of Marysville and Yuba. In late 2008, when Native American remains and burial items were discovered at the Levee Project site in the area south of Marysville, the Native American Monitor called to the site was a representative of the Tribe. (A press release by the Three Rivers Levee Improvement Authority dated December 1, 2008, and map showing a part of the Levee Project which includes the six-mile stretch along the Feather River is attached as Exhibit 2, Tab A, No. 2. A letter from the Native American Heritage Commission to the Tribe is attached as Exhibit 2, Tab A, No. 1.)

The United States Army Corp of Engineers has also identified the Tribe as a Native American tribe that attaches cultural significance to the area of the Levee Project, and has conferred the Tribe with standing as a consulting party to the U. S. Corps of Engineers for that project. As a consulting party, the Tribe continues to comment on and consult with relevant State and Federal agencies on the Levee Project. (A letter dated February 11, 2009 from the U.S. Army Corps of Engineers to the State Historic Preservation Officer is attached as Exhibit 2, Tab A, No. 1.)

Finally, the Indian Health Services under the U.S. Department of Health and Human Services has designated Yuba, Butte, and Sutter Counties as the service areas for the Feather River Tribal Health Clinic which provides healthcare to the Enterprise Rancheria, Berry Creek Rancheria, and Mooretown Rancheria. (Maps of the Service Area for Feather River Tribal Health and for Chapa-De Indian Health Program, which separately serves the United Auburn Indian Community, Rumsey Rancheria, and Cortina Rancheria in Yolo, Placer, Nevada, and Sierra Counties, are attached as Exhibit 2, Tab A, No. 1.)

The Tribe's significant historical and modern-day connections to the area in the vicinity of the Site have clearly been recognized by key State and Federal agencies.

- (j) Any other information which may provide a basis for Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any:**
- (1) Consulting agreements relating to the proposed gaming establishments;**
 - (2) Financial and loan agreements relating to the proposed gaming establishment; and**
 - (3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.**

Please see a copy of the Management Agreement at **Exhibit 2, Tab F**, referenced in the response to 25 CFR § 292.16(1) above.

The establishment of the Facility will be the Tribe's first economic development activity and a source of pride for the Tribe and its members. The Facility will also provide an important gathering place and focal point for increased interaction among Tribal members, whether or not employed at the Facility. As pointed out above, the Facility's

closer proximity to the vast majority of adult tribal members who do not reside on the Rancheria makes it much more accessible than the existing Rancheria parcel. Locating the Facility at the Yuba County Site will also make it much more economically viable. In contrast, locating the Facility on the existing Rancheria is unlikely to benefit most tribal members due to both physical and financial limitations.¹

The Tribe also notes that all of the benefits that the Project will provide to the County and the surrounding community described in the Section below will also provide direct and indirect benefits to those Tribal members who live within the County and the surrounding community.

Thus, the Tribe has concluded that the development, construction and operation of the Facility on the Site would clearly be in the best interests of the Tribe and its members. The Tribe believes that the information contained above in this Request and the referenced supporting documents provides ample basis for the Secretary and the Governor to concur with the Tribe's conclusion that the Facility would be in the best interests of the Tribe and its tribal members within the meaning of Section 20(b)(i)(A) of IGRA.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

The Yuba County and the City of Marysville have entered into a Memorandum of Understanding (MOU) with the Tribe and have indicated that the Tribe's proposed gaming facility would not have an adverse impact on the surrounding community. There were several identified issues that were a concern from the surrounding community and they have been addressed either in the MOU's or in the Environmental Assessment outlined below.

(a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA);

The BIA prepared an EA that analyzed the potential environmental effects of the proposed action. The EA was made available for public comments in July 2004. Upon consideration of the public and agency comments received during the 30-day public comment period, the BIA, in consultation with the Tribe, decided to prepare an EIS to further analyze the environmental effects which may result from the proposed action. Additionally, the EIS analyzes a reasonable range of alternatives, including four development alternatives and a no action alternative.

¹ The DEIS explains that Alternative D (Rancheria site) calls for a much smaller casino and excludes a hotel, and that access to the Rancheria site in Butte County would be solely through Craig Access Road. DEIS, § 2.2.4. The DEIS also provides that the number of permanent and temporary jobs created if the Project was located on the Rancheria site would be 340 and 374, respectively, a significantly lower number when compared to anticipated employment created if the Project is located at the Site in question. See *infra*, p. 9.

The BIA published a Notice of Intent (NOI) in the Federal Register on May 20, 2005, describing the proposed action, announcing the BIA's intent to prepare an EIS, and soliciting public input on the scope of the EIS. A scoping meeting was held in Marysville, California, on June 9, 2005 during the NOI comment (scoping) period, which ended June 20, 2005. A scoping report was issued in November, 2005.

A Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) was published by the BIA and U.S. Environmental Protection Agency (USEPA) on March 21, 2008. The NOA was also published in *The Sacramento Bee*, *Chico-Enterprise Record*, *Oroville-Mercury Register*, and the *Appeal-Democrat* between March 22 and 24, 2008. The NOA notified the public that the DEIS was available for review and solicited public comments during a 45-day comment period. The NOA also provided the time and location of the public hearing, which was held in Marysville, California, on April 9, 2008.

The BIA received a total of 94 comment letters and public hearing statements during the comment period. The Final EIS (FEIS) includes a list of all comment letters received and statements made at the public hearing. The 40 C.F.R. § 1503.4 requires that, "All substantive comments, or summaries thereof where the response has been exceptionally voluminous, should be attached to the final statement whether or not the comment is thought to merit individual discussion from the agency in the text of the statement." Therefore, all substantive comments have been included in the FEIS. Responses are provided in the FEIS for each substantive comment submitted during the comment period. These responses are provided within the Response to Comments document included within the Appendix to the FEIS and are reflected in appropriate modifications made throughout the text of the FEIS where necessary and appropriate.

The BIA and USEPA will publish a NOA for the FEIS in the Federal Register marking the beginning of the 30-day review period after which the BIA may issue a Record of Decision (ROD) on the proposed action. The ROD will state what the decision is, identify all the alternatives considered in reaching the decision, and discuss preferences among alternatives based on relevant factors including economic and technical considerations and the BIA's statutory mission (40 C.F.R § 1505.2). The ROD also will identify and discuss all factors that were considered in making the decision and discuss whether all practicable mitigation measures have been adopted to minimize environmental effects. If all practicable measures are not adopted, the BIA must state why such measures were not adopted.

The environmental impacts which the FEIS determines to be potentially significant before mitigation, and the recommended mitigation measures for those potentially significant impacts for the Tribe's proposed project (Alternative A, which is identified in the FEIS as the BIA's Preferred Alternative), are summarized below.

Water Resources, Hydrology and Flooding.

The presence of a flood inundation easement on the Yuba Site would allow for the flooding of the site, which could present a hazard to public safety if public notice were

not provided. This possibility represents a potentially significant impact. Mitigation in FEIS Section 5.2.2 would reduce this impact to a less than significant level by ensuring proper notice and providing for plan review by the State Reclamation Board.

Air Quality, Construction-Related Emissions.

During the construction phase, construction-related activities could generate air pollutant emissions, including significant emissions of ozone precursors. The FEIS Section 5.2.3 recommends compliance with Feather River Air Quality Management District mitigation measures to ensure a less than significant effect.

Air Quality, Emissions Generated by Operation.

Operational emissions would primarily be comprised of exhaust gases associated with visitor motor vehicle use. In order to reduce operational emissions, the FEIS Section 5.2.3 recommends that the Tribe adopt a number of mitigation measures designed to encourage energy efficiency, encourage transit usage, encourage carpooling, reduce emissions from the project vehicle fleet, minimize employee commuting, and result in the reduction in emissions through contributions to one or more regional measures such as fireplace retrofits and purchasing low emission fleet vehicles.

Air Quality, Carbon Monoxide (CO) Emissions.

Emissions of CO may cause a violation of short-term standards if implementation of the Project were to result in congestion of major roadways and intersections. Improvements recommended by the Traffic Analysis in the FEIS, which are included in FEIS Section 5.2.7, would result in all intersections affected to operate at Level of Service (LOS) of D or better, resulting in less than significant CO impacts.

Air Quality, Toxic Air Contaminants.

While the Facility is not expected to contribute or generate toxic air contaminants, bus and diesel truck traffic to and from the Site would result in increased concentration of diesel emissions, especially in loading areas. The application of mitigation measures in FEIS Section 5.2.3 would result in the reduction of emissions associated with on-site loading docks resulting in a less than significant impact.

Air Quality, Indoor Air Quality.

Although the Facility is expected to operate in compliance with indoor air quality requirements, patrons of the Facility could be exposed to toxics and carcinogens from indoor tobacco use. In order to reduce such effects to a less than significant level, FEIS Section 5.2.3 contains mitigation measures to ensure proper ventilation and to ensure that patrons and employees are informed about the dangers of second hand smoke.

Climate Change Impacts.

To address emissions of greenhouse gases (GHG) which have the potential to increase global temperatures, the DEIS contains mitigation measures to help reduce GHG emissions, including various energy efficiency measures and requiring buses and commercial diesel-fueled vehicles to comply with the California Air Resource Board's airborne toxic standards and regulations, which require that the driver of any diesel bus avoid idling for more than five minutes at any location, except where passengers are boarding.

Biological Resources, Federally Listed/Sensitive Species.

The FEIS lists and discusses in great detail a range of wildlife species that have the potential to live in the area of the proposed project and explains whether or not they could be impacted. Potentially significant impacts to several species and migratory birds could occur although there is no U.S. Fish and Wildlife Service-designated critical habitat within the vicinity of the Yuba Site and wastewater treatment plant area. Nevertheless, mitigation measures to protect any potential impacts to several protected species, including extra precautions for migratory and nesting birds, are outlined in FEIS Section 5.2.4. Specific mitigation measures, including protective steps during construction such as avoidance of habitat, limiting construction to certain periods of the year, worker environmental awareness programs, surveys taken prior to construction, monitoring by qualified biologists, and fencing to prevent encroachment by construction personnel of any identified habitats, are provided in detail for the Giant Garter Snake, Swainson's Hawk, Burrowing Owl, and migratory birds.

Biological Resources, Waters of the United States.

Prior to the December 2, 2008 site visit with the United States Army Corps of Engineers (USACE), the construction of the casino/hotel resort was designed to avoid the palustrine emergent wetland within the Yuba Site. More recently however, the USACE requested that the palustrine emergent wetland be expanded from 2.13 acres to 2.27 acres. Because of this modification, the proposed project design would result in a slight impact to potential waters of the U.S. within the Yuba Site, resulting in a potentially significant impact. A mitigation measure in FEIS Section 5.2.4 recommends modifying the project design to fully avoid this wetland area, resulting in a less than significant impact.

Cultural Resources.

As the FEIS describes, no significant cultural resources were identified. However, FEIS Section 5.2.5 includes mitigation measures that ensure that any resources encountered during construction are treated appropriately. Any discovery of archeological resources during earth-moving activities will be subject to a host of federal protection laws, including the federal National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources Protection Act. All work within 50 feet of any cultural resource discovery will be halted until a professional archaeologist or where appropriate, a paleontologist, can assess the significance of the find. If any human remains are discovered, no further ground disturbance will occur until the County, Federal, and Tribal officials have been consulted and notified and have

examined findings and agreed on a course of action. If any human remains are determined as Native American in origin, officials will notify the Native American Heritage Commission and the Most Likely Descendant.

Resource Use Patterns, Traffic.

The FEIS identifies several significant traffic-capacity related impacts on local and regional streets. FEIS Section 5.2.7 lays out a range of detailed traffic mitigation measures that the Tribe will undertake during the construction phase of the project and into the operational phase, spanning through the year 2025.

Public Services, Fire Protection/Emergency Medical Assistance.

Operations of the Facility will increase calls for services to the Wheatland Fire Authority due to an increased population of employees and patrons. Most calls will likely be for emergency medical assistance. To address this impact, FEIS Section 5.2.8 recommends that the Tribe enter into a binding agreement with the Wheatland Fire Authority or another fire protection district located in Yuba County (to provide for compensation for increased equipment, staffing, or station needs), or make arrangements in lieu of an agreement to provide fire and emergency medical services to its facilities, to provide for additional compensation for increased equipment, staffing, and station needs from the Tribe's development.

Public Services, Electric, Natural Gas, Telecommunications.

Alternative A's anticipated electrical service demand for the hotel and casino is approximately 6.68 megawatts. Electrical service for the proposed project would be provided by Pacific Gas & Electric (PG&E). The anticipated service demand resulting from Alternative A may require an increase in capacity at the Plumas Substation and an upgrade of the overhead lines along Plumas-Arboga Road and Forty Mile Road, resulting in a potentially significant impact. FEIS Section 5.2.8 includes mitigation measures requiring that the Tribe be responsible for the fair share costs associated with the necessary upgrading and relocation of PG&E facilities.

Other Values, Noise.

During the construction phase, noise from mechanical equipment may exceed noise significance criteria. Mitigation measures identified in FEIS Section 5.2.9 to reduce construction noise impacts to a less than significant level include: limiting construction activities to daytime hours, 7 AM to 10 PM; fit engine-powered construction equipment with adequate mufflers, with additional noise abatement techniques employed where such equipment is located near residences for more than five days of continuous use; and during operations, prohibit tour buses operating near existing residences from idling engines for more than 15 minutes in daytime hours, or more than 5 minutes at nighttime. During operation traffic noise levels would exceed significance criteria along 40-Mile Road, south of the Yuba Site. Mitigation measures are identified in FEIS Section 5.2.9 to reduce operational traffic noise impacts to a less than significant level.

Other Values: Hazardous Materials.

During grading and construction, the use of hazardous materials would include substances such as gasoline, diesel fuel, motor oil, hydraulic fluid, solvents, cleaners, sealants, welding flux, various lubricants, paint, and paint thinner. These materials would be used for the operation and maintenance of equipment, and directly in the construction of the facilities. Regular fueling and oiling of construction equipment would be performed daily. The most likely possible incidents would involve the dripping of fuels, oil, and grease from construction equipment. The small quantities of fuel, oil, and grease that may drip would have low relative toxicity and concentrations. Typical construction management practices limit and often eliminate the effect of such accidental releases. An accident involving a service or refueling truck would present a scenario for the release of a hazardous substance. Depending on the relative hazard of the hazardous material, if a spill were to occur of significant quantity, the accidental release could pose both a hazard to construction employees as well as the environment. This effect is potentially significant. Mitigation incorporating several best management practices has been included within FEIS Section 5.2.9 to reduce the significance of the hazardous materials effects to a less than significant level during construction.

The wastewater treatment plant would require the delivery, storage, and use of hazardous materials, particularly the use of sodium hypochlorite (bleach). The amount or types of hazardous materials that would be stored, used and generated could have a potentially significant impact on the environment and public. Mitigation measures relating to removing or managing hazardous materials are recommended in FEIS Section 5.2.9.

In sum, many of the environmental impacts which the DEIS determines to be potentially significant before mitigation only occur during the construction phase. Other potential impacts may never occur, such as the possibility of encountering significant cultural resources or migratory bird nests. Still other potential impact can be mitigated by design features, such as building a water and energy efficient building.

Anticipated impact on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.

Social Structure of the Community

Crime. The Tribe plans to build a destination resort and casino. By definition, a destination resort is expected to attract visitors from outside the area. The introduction of additional visitors to the area may result in a corresponding increase in the crime rate, similar to what would occur with the introduction of a shopping mall or any other large development.² However, empirical research shows that communities with casinos are just as safe as communities that do not have casinos and that no definitive link has been found between casino development and increased regional crime rates.³

² FEIS, § 4.7 at p. 4.7-11

³ Id.

Problem Gambling.

The proposed gaming facility is not expected to result in an increase in problem gamblers. Most patrons would come from the greater Sacramento and Yuba/Sutter County region, which already offers various forms of convenience gambling such as the California lottery, betting, Internet gambling, California poker rooms, and other destination style tribal casinos. Moreover, this region has long been an important feeder market for casinos in Reno and Lake Tahoe. Thus, problem gamblers and those disposed to problem gambling have already been exposed to casino style and other forms of gambling near their homes and work. As stated in the DEIS, “[w]hatever negative consequences a casino would have on this segment of the population have already been felt.”⁴ Nonetheless, the MOU with the County provides that the Tribe will expand the availability of problem gambling services by contributing \$60,000 a year to a charitable organization in Yuba County dedicated to the prevention and treatment of problem gambling.

Age Limit.

The Tribe has agreed in the MOU to limit gambling to persons 21 or older.

Infrastructure and Services

Libraries and Parks.

The project’s impact on Yuba County’s lone public library and three parks would be nominal. Patrons to the resort from outside the area are not expected to frequent local libraries or parks during their visits and local patrons are not expected to change their current use. Although the small number of employees expected to relocate to the area for work could slightly increase usage of the library and parks, the increase would be less than significant.⁵

Public Schools.

The project will not have a significant impact on area schools as the children of a majority of the adults expected to work at the facility already attend local schools in Yuba and Sutter Counties. Some employees will relocate to the area, however, and those with children will increase local enrollment. Although enrollment in Yuba County is increasing, it is increasing at a lower rate than the state average, and both Yuba and Sutter Counties have relatively small class sizes. Thus, the increase in school enrollment caused by the project should be adequately absorbed by area schools, resulting in a less than significant impact.⁶

Roads.

⁴ FEIS, § 4.7.1 at p.4.7-11.

⁵ FEIS, § 4.7.1.

⁶ FEIS, § 4.7.1

The FEIS identifies several significant traffic-capacity related impacts on local and regional streets. FEIS Section 5.2.7 lays out a range of detailed traffic mitigation measures that the Tribe will undertake during the construction phase of the project and into the operational phase, spanning through the year 2025.

Utilities.

PG&E supplies electric and natural gas to the proposed development area. Southern Bell Company (SBC) provides telecommunications to the area. Alternative A's anticipated electrical service demand for the hotel and casino is approximately 6.68 megawatts. Electrical service for the proposed project would be provided by Pacific Gas & Electric (PG&E). The anticipated service demand resulting from Alternative A may require an increase in capacity at the Plumas Substation and an upgrade of the overhead lines along Plumas-Arboga Road and Forty Mile Road, resulting in a potentially significant impact. FEIS Section 5.2.8 includes mitigation measures requiring that the Tribe be responsible for the fair share costs associated with the necessary upgrading and relocation of PG&E facilities. The Tribe will take on the cost of paying fees to receive the necessary natural gas and telecommunication services as well.⁷

Water and Wastewater.

As noted in FEIS Section 2.2.1, an on-site water well and distribution system would be utilized for water supply. No significant impacts to the environment would result from the use of this water system.⁸ The Facility will utilize an existing wastewater treatment and disposal facility located on an adjacent parcel, which would be expanded to accommodate the project wastewater disposal demands.⁹ The FEIS concludes that there will be a less than significant impact as a result of any wastewater treatment operations. Nevertheless, the FEIS contains mitigation to ensure against water quality impacts from the wastewater treatment plant.¹⁰

Housing

The proposed project is estimated to draw new households to the County. However, this growth is not expected to place any undue burden on residential development in the area, as new housing developments are already underway and are expected to absorb the increased population.¹¹

Community Character and Land Use Patterns

Residential Area.

⁷ FEIS, § 3.1.9.

⁸ FEIS, § 4.3.

⁹ FEIS, §2.2.1.

¹⁰ FEIS, §§ 4.3.1 and 5.2.2.

¹¹ DEIS, § 4.7.1.

The Site is undeveloped land situated at a distance from residential and other sensitive areas. The Project is located within the Yuba County Sports Entertainment Zone ("Zone") that was specifically approved by the voters and incorporated within the County Master Plan.¹² This is a 900 acre site which has been zoned for purposes of sports and entertainment, including racing, hotels and other compatible uses, such as casino gaming and entertainment. The proposed Facility will cover only 40 acres of the 900 acre Sports and Entertainment Zone.¹³

Agricultural Areas.

The land surrounding the Site is used in rural residential, agriculture, commercial, and SR-65 capacities, and such use will not be significantly impacted by the project.¹⁴

Noise and Light.

While project development will impact traffic patterns and will affect noise and light levels in the area, the development plans place the Facility in a Zone that was created with the explicit intention of intensive commercial development, such as a major racing facility, which obviously would create substantial levels of noise and light emissions. As analyzed in the EIS, project features and mitigation measures would ensure noise and light impacts are less than significant.¹⁵

Zoning.

Once taken into trust, local zoning laws will not apply to the Site. However, the proposed Project complies with local zoning ordinances.¹⁶

MOU Provisions

In the MOU between the Tribe and the County, the Tribe has agreed to provisions intended to mitigate potential impacts of the Project on the social structure of the community, infrastructure, services, housing, community character, and land use patterns of the surrounding community. Those provisions include the following:

First and foremost, the Project is located within a small section of a much larger (22 times larger) special zone that was created for development projects of this nature, and that the Project complies and is consistent with both the County of Yuba General Plan and the current zoning for the property;¹⁷ the Tribe will adopt and comply with standards no less stringent than state public health standards for food and beverage handling, and shall provide a copy of said standards to the County. The Tribe will also allow inspection of food and beverage services by County health inspectors during normal hours of

¹² Memorandum of Understanding Between the Estom Yumeka Maidu Tribe, Enterprise Rancheria and the County of Yuba ("MOU"), December 17, 2002, Exhibit 1, p. 1.

¹³ *Ibid.*

¹⁴ FEIS, § 4.8.

¹⁵ FEIS, §§ 2.0 and 4.10.

¹⁶ *Ibid.*

¹⁷ MOU, Page 1.

operation;¹⁸ the Tribe will adopt and comply with standards no less stringent than water quality and safe drinking water standards applicable in California by operation of either state or federal law, and shall provide a copy of said standards to the County;¹⁹ the Tribe will adopt and comply with building standards no less stringent than applicable building codes, fire codes, plumbing, electrical and related codes applicable in the County ;²⁰ the Tribe will adopt and comply with standards no less stringent than any County ordinances and California state laws dealing with fire safety pertaining to the operation of the resort hotel, gaming facility and ancillary facilities;²¹ the Tribe has agreed that prior to the opening to the public of any facility located on the Property, it will enter into a binding agreement with the Plumas-Brophy Fire District or another fire protection district located within the County of Yuba, or will make other private arrangements in lieu of an agreement with an existing fire protection district, for the provision of fire and emergency medical services both on the Property as well as any emergency medical services arising out of the operation of the Tribe's business operations on the Property. This fire district agreement or other private arrangement will insure that there is an adequate level of fire protection and emergency service available in accordance with any and all federal, state and/or local standards that apply;²² the Tribe shall prohibit persons under the age of 21 from entering and remaining in any area in which gaming activities are being conducted; and ²³ the Tribe may enter into agreements with the County relating to investigation, jurisdictional or other similar issues.²⁴

Further, as pointed out by the Chairman of the County Board of Supervisors in a December 17, 2002, letter to former Secretary of Interior Norton:

The County has found that the Tribe's proposed uses of the property which is the subject of the trust application are consistent and compatible with the County's general plan and the zoning of the property.

The County and the Tribe have negotiated in good faith over a period of months to arrive at the Memorandum of Understanding, and have arrived at an agreement which more than adequately mitigates all anticipated impacts of the proposed development.

Anticipated impact on the economic development, income, and employment of the surrounding community.

Economic Development and Income

The construction and operation of the Facility is expected to stimulate economic development in the surrounding community. Yuba County is one of the poorest regions in the United States. In June of 2004, it was reported that the Yuba-Sutter metropolitan area had the third highest unemployment rate among the nation's 331 metropolitan areas.

¹⁸ MOU, § 3.1.

¹⁹ MOU, § 3.2.

²⁰ MOU, § 3.3.

²¹ MOU, § 3.4.

²² MOU, § 3.5.

²³ MOU, § 8.

²⁴ MOU, § 3.4.

Only nine other metropolitan areas had jobless rates of at least ten percent; Yuba-Sutter's jobless rate was 14.9 percent. California's overall jobless rate for the corresponding period was nearly half that of the Yuba-Sutter metropolitan area.²⁵ The unemployment rate for January 2009 in Yuba County alone rose to 17.9 percent.²⁶ Commercial development in the County is currently lagging. The proposed project will provide a much needed boost to the commercial economy, increasing demand for retail and office employment.

The increased economic activity is expected to result in increased income to the County and the Cities of Marysville and Olivehurst in the form of increased tax revenues.²⁷ There will also be increased revenue to the County because of the significant contributions which the Tribe has agreed to make pursuant to the MOU.²⁸

Employment

The construction and operation of the Facility will create both critically needed temporary construction jobs and permanent positions at the Facility. The FEIS estimates that the number of permanent positions at the Facility will be in excess of 1,900 permanent jobs, and that an additional 400 jobs will be created in the surrounding area as a result of increased spending and sales of services throughout the area. Additionally, construction of the Facility will create approximately 1,300 temporary construction jobs.²⁹ These new employment opportunities will benefit the unemployment rate.³⁰ In the MOU, the Tribe has agreed to comply with both Fair Labor Standards Act and California's Minimum Wage Act.³¹ Importantly, the Tribe has also agreed to adopt a labor ordinance that requires that all construction jobs created by the development comply with the County's prevailing wage ordinances.³² The Tribe has also agreed in the MOU that the Tribe's operations of a Class III gaming facility will be subject to the same workplace health, safety and fair employment rules set forth in the State of California's Model Compact.³³ Regardless of any changes made to the Model Compact, the Tribe will adopt policies and standards that are no less stringent than federal workplace and occupational health and safety standards, federal and state laws covering workplace discrimination.³⁴ The Tribe will also comply with state standards prohibiting the cashing of any check drawn against a federal, state, county or city fund, such as social security, unemployment, and disability benefits payments.³⁵ In other provisions of the MOU, the Tribe has agreed to: follow state standards governing the extension of credit,³⁶ discounting the cost of alcoholic beverages, food or lodging as an inducement to game,³⁷

25 U.S. Bureau of Labor Statistics.

26 California Employment Development Department, *supra*, note 7.

27 FEIS § 4.7.1

28 MOU, § 2(a), 2(b).

29 FEIS, Tables 4.7-1 and 4.7-3 at pp. 4.7-1, 2.

30 FEIS §4.7.1

31 MOU, § 7.9.

32 MOU, § 6.

33 MOU, § 7.

34 MOU, § 7.1, 7.2.

35 MOU, § 7.3.

36 MOU, § 7.5.

37 MOU, § 7.4.

participation in the state worker's compensation program or equivalent,³⁸ participation in the state unemployment compensation system,³⁹ and to withhold all applicable taxes.⁴⁰

Anticipated costs of impacts to surrounding community and sources of revenue to accommodate them.

Costs of Impacts; Sources of Revenue

The Site is located in the County of Yuba near the City of Marysville. The Tribe anticipates that impacts of the Project would result in certain costs to the County of Yuba and the City of Marysville. In order to provide a source of revenue to mitigate the effects of these costs on the County and the City, the Tribe entered into the County MOU and the City MOU, (collectively, "MOUs").

At the time they entered into each MOU, the Tribe and the governmental authorities attempted to estimate the capital and annual costs of various impacts of the Project on the governmental entities and the surrounding community. The Tribe then agreed in the MOUs to make capital and annual contributions to the government entities and certain non-profit groups which were intended, in the aggregate, to equal or exceed the costs of the impacts of the Project on the County, the City, and the surrounding community. The Project is also expected to generate additional tax and other revenues for the County and the City. The Tribe believes that the payments which the Tribe will make to the governments entities pursuant to the MOUs, together with the additional tax and other revenues which the governments entities will receive as a result of the Project, will be more than sufficient, in the aggregate, to cover the costs of the impacts of the Project on the County, the City, and the surrounding community. This is also the conclusion of the FEIS, Section 4.7.1.

Facility-Induced Costs to County and City

Facility-Induced Costs for Property Taxes.

Removal of the Site from County's property tax rolls would result in loss of approx. \$450 per acre or \$18,000 in annual property taxes (Yuba County Assessor's Office, 2004). On the other hand the DEIS projects increased tax revenues to local governments of approximately \$9 million during the construction phase and \$11.5 million once the Facility is operating.⁴¹ Thus the projected loss of revenue to local governments in the form of property taxes and development fees is more than off-set by the increased governmental tax revenues resulting from both the construction and operation phases of the Project. In addition, through MOUs with local governments, the Tribe has agreed to make various payments to both the County and City that would further compensate them for Project impacts.

³⁸ MOU, § 7.6.

³⁹ MOU, § 7.7.

⁴⁰ MOU, § 7.8.

⁴¹ FEIS, § 4.7.1

Facility-Induced Costs for Law Enforcement.

The FEIS estimates that three additional law enforcement personnel, a new patrol car, and related law enforcement equipment will be needed to mitigate impacts on the Sheriff's Department. The FEIS estimates that annual expenditures for this purpose will not exceed \$750,000. Yuba County has stated in a letter to the Department of the Interior that the County MOU "more than adequately mitigates all anticipated impacts of the proposed development" in part through "providing revenue to support public services to the property."⁴²

Facility-Induced Costs for Fire Protection.

In terms of fire protection, since the Site is within service area of the Wheatland Fire Protection Authority, it is expected that the Authority will provide fire protection to the Facility. The Wheatland Fire Authority anticipates the need for a 6-story ladder truck in connection with the height of the hotel. To support the Facility, the FEIS cites the need for a neighborhood substation, ongoing staffing, and related fire-suppression equipment that will be needed. Costs for a neighborhood substation of two to four personnel would not exceed \$3-4 million. Ongoing staffing of 2-4 personnel would not exceed \$1 million.⁴³ FEIS Section 5.2.8 requires that an agreement for fire protection services be entered into that provides compensation for increased equipment, staffing, or station needs.

Facility-Induced Costs for Emergency Medical Services.

The Project is not expected to result in significant increased costs to the County for emergency medical services because such costs are typically borne by the individual who calls for the service.⁴⁴ Also, costs which are incurred by the County for emergency medical services are included in the figures for annual fire protection, law enforcement and general administrative services.

Facility-Induced Costs for Roads.

As described in the FEIS, the Tribe intends to pay the County for any traffic impact fees and to contribute its fair share to towards the cost of improvements that may be needed to roadways, intersections and ramps, as well as any development by the County of pedestrian and bike facilities along Forty Mile Road.⁴⁵

Facility-Induced Costs Related to Pathological and Problem Gambling.

As noted in the FEIS, the residential populations of greater Sacramento and Yuba County have been exposed to various forms of gambling, including destination casinos, for many

⁴² FEIS, § 4.9.1.

⁴³ FEIS, § 4.9.1

⁴⁴ FEIS, § 4.9.1

⁴⁵ FEIS, § 5.2.7.

years. These regions have long been feeder markets for casinos in Reno, South Lake Tahoe, and existing Indian casinos in the area. While an additional casino in Yuba County would not likely impact those people who are problem gamblers since whatever negative consequences a casino would have on problem gamblers have already been felt, any increased costs to local governments stemming from problem gambling is addressed by the Tribe's MOU with the County. The County MOU provides that no less than \$60,000 is to be given annually to a charitable organization dedicated to the treatment and prevention of pathological gambling disorders located in or providing services within the County.⁴⁶

Revenues for County and City under MOUs

County MOU.

During the negotiations between the Tribe and the County concerning the MOU, the Tribe and the County attempted to estimate the recurring and non-recurring costs of various impacts of the development, construction and operation of the Facility (the "Project") on the County and the surrounding community. As described in detail below, the Tribe then agreed in the MOU to make contributions to the County which is intended to be sufficient, in the aggregate, to mitigate the costs and the impacts of the Project on the County and the surrounding community. Thus, the primary source of revenue to mitigate the costs and impacts of the Project on the County and the surrounding community will be the contributions which the Tribe will make to the County pursuant to the terms of the MOU.

In the County MOU, the Tribe agreed to make the following contributions to the County to mitigate potential non-recurring costs and impacts of the Project on the County and the surrounding community:

\$697,120.00 in lieu of development fees that would be required under County ordinance to mitigate the development costs that the County will bear;⁴⁷ and
Payments in lieu of taxes to reimburse the County for services and infrastructure and to further mitigate the impact on the County. These graduated payments will total at least \$83,000,000.00 over twenty years.⁴⁸

The MOU states that this MOU has been entered into "... if the County is assured that the anticipated impacts to the County and the surrounding communities can be mitigated through a binding and enforceable agreement between the County and the Tribe, and the Tribe is willing to enter into such a binding and enforceable agreement."⁴⁹

City MOU.

The Tribe's has agreed to make the following contributions to the City of Marysville to

⁴⁶ FEIS, § 4.7.1.
⁴⁷ MOU, § 2. (b).
⁴⁸ MOU, § 2.(b).
⁴⁹ MOU, § 3(a)(iv).

mitigate potential non-recurring costs and impacts of the Project on the City:

\$110,000 to defray City expenses;⁵⁰ and
Recurring payments to the City to help the City defray additional expenses associated with the Project. These graduated payments will total \$4,822,977.85 over fifteen years.⁵¹

Other Sources of Revenue

The Tribe intends to enter into a Tribal-State Gaming Compact with the State of California. Any revenue-sharing payments which the Tribe will make to the State pursuant to the Compact would constitute a source of revenue to the State and would be expected to be more than sufficient to mitigate the costs and impacts of the Project on the State.

The Tribe also intends to enter into memoranda of understanding or other arrangements with various additional governmental entities, the California Department of Transportation and other nearby towns that may be impacted by the development, as necessary. In the negotiations regarding such memoranda of understanding and other arrangements, the Tribe and such government entities will estimate the cost of impacts on such government entities not covered by the MOU or the Compact. Any contributions which the Tribe agrees to make pursuant to such agreements or arrangements would constitute an additional source of revenue to such governmental entities to mitigate the costs of impacts of the Project.

Finally, as discussed above, the Tribe expects that the Project will be an important economic stimulus to the County and surrounding community. The increased tax revenue which the County and local cities and towns will receive from such increased business activity constitutes an additional source of revenue to mitigate the costs of impacts of the Project on the surrounding community.

Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gamblers attributable to the proposed gaming establishment.

The Tribe will adopt and fund responsible gambling and self-limitation policies as further described below:

Responsible Gambling Policies

The Tribe is committed to help ensure that its patrons and employees understand the importance of gambling responsibly and that they are aware of the treatment programs available. Additionally, the Tribe is committed to promoting responsible gaming practices. To that end, the Tribe will make available to the public a list of organizations that are available to provide treatment and counseling to both the problem gambler and those affected by the gambler's problem. In addition, the Tribe's casino employee

⁵⁰ Memorandum of Agreement with the City of Marysville MOU, § 2 (a) & (b).

⁵¹ City of Marysville MOU, § 1(a).

benefits program will include insurance coverage for the treatment of problem gambling for its employees. Furthermore, the Tribe will post written materials concerning the nature and symptoms of problem gambling and a toll-free 1-800 problem gambling helpline on or near all gaming and cage areas and ATM machines located within the Facility. Finally, the Tribe is committed to fully support and utilize the entire spectrum of materials, programs, and events to promote responsible gaming among its patrons and employees.

Self Limitation Policy

The Tribe will implement a "Right to Self Limitation" policy. This policy will allow patrons to voluntarily self-limit themselves from certain gaming activities and privileges, which are offered as a service and convenience. The Tribe will encourage its patrons to take part in a self-limit program should they feel that they have a gambling problem. Specifically, patrons will be able to limit their access to check cashing and receiving direct mail marketing promotions. Once a patron requests to self-limit, the patron will not be able to rescind the request for at least one year. All information related to the self-limit policy will be made available to all patrons.

Source of Funding

The Tribe has agreed in the MOU to make annual contributions of \$60,000 to a charitable organization to be used for education and the treatment and prevention of problem gambling and gambling disorders.

If a nearby tribe has a significant historical connection to the land, then the impact on that tribe's traditional cultural connection to the land; and

As the FEIS describes, no significant cultural resources were identified within or adjacent to the Project site at this time. The only nearby Indian tribe for purposes of this Request is Auburn. The Tribe is not aware of nor believes that the Site is within the boundaries of Auburn's last reservation under a ratified or unratified treaty or that any nearby Indian tribe has demonstrated by historical documentation the existence of its tribal villages, burial grounds, occupancy, or subsistence use in the vicinity of the Site. As discussed in March 17, 2009 submission of this Request and supplemented herein, the Site lies within the Tribe's aboriginal and historical area in the Feather River Drainage Basin and is an area to which the Tribe maintains a significant historical connection.

Any other information which may provide a basis for the Secretarial determination that the gaming establishment is not detrimental to the surrounding community.

Net Benefits

The Tribe believes that, after taking into account the mitigation measures set forth in FEIS and the MOUs, the Project would not be detrimental to the surrounding community. In fact, the Tribe believes that, on balance, the Project would result in a net benefit to the surrounding community.

The Project will stimulate economic activity which will be beneficial to the County, the City, and the surrounding community. In addition, the Tribe believes that the revenues it would pay to the County pursuant to the County MOU and to the City pursuant to the City MOU substantially exceed the costs of the Project to the County and the City and would therefore help fund projects of interest to the County, the City and the surrounding community.

Local Support

The Project enjoys strong local support. In a January 2009 poll of 400 Yuba County residents conducted by Fairbank, Maslin, Maulin & Associates, 71% of those polled stated that they supported the Project, with only 25% opposed to the Project. The Project is supported by key local jurisdictions, business organizations, public agencies, and local residents, including the following:

- Yuba County, who approved the County MOU in December 2002
- City of Marysville, who approved the City MOU in August 2005
- Yuba Sutter Chamber of Commerce, a 900 member organization which has endorsed the Project since December 2003
- The Marysville Business Improvement District
- The Olivehurst Public Utility District which provides water, sewer, fire, and parks and recreation services to the unincorporated community of Olivehurst, the closest community to the proposed site
- The Yuba-Sutter Economic Development Corporation, a leader in economic development advocacy in the Yuba-Sutter region.
- And over two thousand private citizens who have individually signed letters of support for the Project.

RECOMMENDATIONS

There appears to be some concerns from the local community (Wheatland City, the Assembly California Legislature, and the Auburn Tribe), they are all mitigated either through a MOU or the Final EIS. In fact, the proposal has been favorably received by the City of Marysville and the County of Yuba. The City of Marysville and the County of Yuba both have stated the proposed project will not be detrimental to the surrounding community. Based on the finding of facts set forth above, we are recommending that the Project would not be detrimental to the surrounding community.

IV. 25 CFR PART 151.3 - LAND ACQUISITION POLICY

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when

the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing.

In this instance, the authorizing Act of Congress is the 25 U.S.C. § 465 of the Indian Reorganization Act, as amended by 25 U.S.C. § 2202, the Indian Land Consolidation Act of 1983. As to the second part, it is our determination that the land acquisition is necessary to facilitate tribal self-determination and economic development, as will be discussed more fully in the analysis to follow.

V. PROPERTY TO BE ACQUIRED

A portion of the East half of Section 22, Township 14, North, Range 4 East, M.D.B. &M., described as follows:

Commence at the North quarter corner of said Section 22 and being marked by 2 brass monument stamped LS3341 in a monument well as shown on Record of Survey No. 2000-15 filed in Book 72 of Maps, Page 34, Yuba County Records; thence South 0°28'11" East along the line dividing said Section 22 into East and West halves 2650.73 feet to a brass monument stamped LS3341 in a monument well as shown on said Record of Survey No. 2000-15 and marking the center of said Section 22; thence North 89° 31' 24" East 65.00 feet to a point on the East right-of-way line of Forty Mile Road; thence North 0°28'11" West along said East right-of-way line of Forty Mile Road 45.53 to a ½ inch rebar with LS3751 marking the point of beginning thence from said point of beginning continue along said East right-of-way line of Forty Mile Road the following courses and distances: North 0° 28' 11" West 1133.70 feet, thence North 5° 14' 27" East 50.25 feet; thence North 0° 28' 31" West 750.00 feet to a ½ inch rebar with LS3751; thence leaving said East right-of-way line of Forty Mile Road run North 88° 00' 51" East 1860.00 feet to a ½ inch LS3751; thence South 0° 28' 11" East 1932.66 feet to a ½ inch rebar with LS3751; thence South 87° 59' 10" West 1865.03 feet to the point of beginning.

Said land is also shown as Parcel "C" on Certificate of Lot Line Adjustment 2002-07 recorded June 26, 2002, Instrument No. 2002-08119, Official Records.
(*Exhibit 1, Tab A*).

Said property contains 40.00 acres.

VI. COMPLIANCE WITH 25 C.F.R. PART 151.10 AND 151.11

A. Notification of State and Local Governments – 151.10

On November 26, 2008 (*Exhibit 4*), we issued notice of, and sought comments regarding the gaming fee-to-trust application from the State Clearinghouse, Office of Planning and Research; Office of the Governor, Legal Affairs Secretary; State of California, Department of Justice; James Peterson, Office of the Honorable Dianne Feinstein; Yuba County Board of Supervisors, County of Yuba; Yuba County Assessor,; County of Yuba, Planning Department; Yuba County Sheriff's Department; County of Yuba, Department

of Public Works.

In response to our notification, we received comments from the following entities:

1. **Letter dated December 10 and 11, 2008 from State of California, Department of Justice, Attorney General Office (Exhibit 4, Tab A).** The State requested a 30-day extension of the comment period and requested a copy of the fee-to-trust application.

On December 15, 2008 BIA responded with a copy of the application and granted the extension to January 30, 2009.

2. **Letter dated December 9, 2008 from the Native American Heritage Commission office (Exhibit 4, Tab B).** The Commission stated they have no comment to the fee-to-trust application.
3. **Letter dated January 9, 2009 from State of California, Department of Justice, Attorney General Office (Exhibit 4, Tab C).** The State requested a copy of all comment letters, Memo, e-mails, notes or other correspondence received by the BIA.

Patty Brandt from the State's Office made an appointment for January 14, 2009 to review the fee-to-trust files and tab the copies she wanted. BIA copied the documents tabbed and notified the State they were ready to be picked up on January 15, 2009.

4. **Letter dated January 15, 2009 from the City of Wheatland (Exhibit 4, Tab D).** The City had three primary concerns on the fee-to-trust project:
 - adverse economic influence related to rapidly urbanizing area,
 - traffic and circulation and
 - fire protection services.

The Tribe responded by letter dated April 10, 2009 (Exhibit 4, Tab G).

- The City is located approximately six miles from the Yuba Site with its sphere of influence approximately three miles from the Site.
- According to California Department of Finance estimates, the City has a population of 3,513, up from 2,275 residents in the 2000 Census.
- The City's recent growth is consistent with growth experienced in other parts of Yuba County as a result of a sharp increase in residential housing.
- However, the housing boom ended abruptly last year, construction has come to a standstill, and Yuba County is now experiencing rising double-digit unemployment and among the highest foreclosure rates in the nation.
- While the City may be planning to extend its jurisdictional reach and engage in rapid development, such plans at this juncture are speculative,

and are likely to remain so in the current economic climate.

- *The City claims that the Project “will adversely impact the City’s ability to develop urbanized neighborhoods and commercial centers, and to revitalize its downtown.” Yet nothing in the draft EIS evidences how the Tribe’s development of a 40-acre parcel located approximately six miles from the City will create such adverse impacts. To the contrary, according to Appendix M of the draft EIS, the Project is expected to directly create over 1300 construction jobs and over 1900 permanent positions. Most of these jobs are expected to be filled by nearby residents, including residents of the City, and will result in increased economic activity in the City and elsewhere. According to Appendix M, the large induced expenditures that would be generated from the proposed project on the Yuba site would have an overall positive effect on the surrounding areas. This finding is bolstered by the views of those spearheading other local development efforts. They consistently cite the need to bring local entertainment options to Yuba County in order to attract new businesses as a reason to support the Tribe’s proposed facility. Thus, rather than hinder the City’s vision, the Project may be the City’s best hope for transforming its vision into reality.*
- *Further, the City’s attempts to distinguish between large and small casinos and urban and rural locations are misguided. The distinctions are both confused – the Project under the City’s own definition would be a small, not a large, project – and, more importantly, irrelevant under federal law. The only relevance of the urban versus rural distinction is in the context of California Governor Schwarzenegger’s Proclamation on Indian Gaming dated May 18, 2005. In his proclamation, the Governor indicated that he would not concur in a Secretarial two-part determination under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act if the proposed site was within an urban area of 100,000 residents or more. The entire County of Yuba has only 60,129 residents (2000 Census). Thus, the Yuba Site satisfies the Governor’s criteria for concurrence with respect to being within a rural area. In addition, the Yuba Site is particularly well-suited for the proposed development in that it lies within an area already zoned for sports and entertainment.*
- *Finally, the Tribe and the City have met several times recently to negotiate a Memorandum of Understanding for the purposes of mitigating potential impacts on the City. Regardless of the outcome, the Tribe remains committed to entering into agreements with the appropriate jurisdiction to pay for mitigation measures and services identified in the final EIS and Record of Decision for the Project or in the MOU with the County. The Tribe looks forward to working with the City and other local jurisdictions to mitigate Project impacts and bring jobs and economic development to the area.*

5. Letter dated January 30, 2009 from the Office of the Governor, State of California, (Exhibit 4, Tab E) summarized as follows:

- *The State stated the Tribe failed to demonstrate the need for additional*

land under the 25 C.F.R. §§ 151.10(b) and 151.11(a) regulations.

- *Also, stated the application is premature to proceed until the Indian Lands Determination is complete under Section 2719 (b) (1) (A), which allows a tribe to conduct gaming on trust lands acquired after October 17, 1988.*
- *Plus, the State feels the Secretary should reject the application until the outstanding issues regarding the DEIS (25 C.F.R. §§ 151.10(h) and 151.11(a)) are resolved.*
- *The State also mentioned additional information is needed to evaluate other guidance Memo criteria (daily commutable distance).*

By letter dated April 10, 2009 Enterprise Rancheria responded to the comments submitted by the Office of the Governor (Exhibit 4, Tab F).

- *The Tribe stated that their trust application clearly put forth the need for additional lands, as required under 25 CFR 151 regulations.*
- *The Tribe also mentioned that the Enterprise 1 trust property is eligible for gaming; the real question is whether the Tribe could ever engage in gaming on the parcel. As for the Indian Lands Determination, the Tribe agrees that it is appropriate for the Secretary to wait before making a determination to take the land into trust until the Governor has been provided the opportunity to concur in a separate determination by the Secretary under Section 20(b)(1)(A) of IGRA.*
- *As for the guidance Memo and the daily commute, the Tribe stated the concern raised is that the farther the economic enterprise (a gaming facility) is from the reservation, the greater the potential for it to negatively impact reservation life. Of course, this assumes that a significant reservation population exists, which certainly does not reflect the circumstances of the Tribe. The commutable distance for the Enterprise Tribe does not affect the tribe for the Yuba Site since it is only 36 linear miles from Enterprise 1.*

B. Statutory Authority for the Acquisition – 151.10 (a)

As previously stated above, the statutory authority for this land acquisition is the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. 465) as amended by 25 U.S.C. § 2202, the Indian Land Consolidation Act of 1983.

C. Need Of The Tribe For Additional Land – 151.10 (b)

The Tribe's need is unique in a couple of different ways. One is that the Tribe as a whole states they have been technically landless since the 1965 sale of Enterprise 2 to the State of California for the Orville Dam and Enterprise 1 being use solely by one family (Walter). The second is the tribe was not terminated pursuant to the Rancheria Act in 1958 and to understand the Tribe's land status, it is necessary to review its history.

The United States of America purchased two 40 acre tracts of land in 1915 called

Enterprise 1 and Enterprise 2. Both of these purchases were made pursuant to Interior Appropriation Statutes. Enterprise 1, for many years has been used only by the Walters family, who were the residents at the time of the purchase. Correspondence at the Department of Interior (DOI) from 1915 and 1916 indicates that this parcel had been the home of Emma and George Walters. The intended land use was to be use as a home site for any of the 51 Enterprise Indians listed on the 1915 Census. The DOI has correspondence expressing the need for additional land for the Enterprise members. With the purchase of the 1915 40-acre parcel, it doubled Enterprise's land base and helped ensure the viability of the Tribe as a sovereign Native American nation. Several of the current tribal members, including Tribal Council members, were born or raised on the Enterprise 2 parcel.

The Enterprise 1 Walters family has not participated for many years in tribal affairs and refused to be enrolled in the Tribe. The members of the Walters family have since become members of the Tribe and some are currently serving as members of the Tribal Council.

The Bureau of Indian Affairs (BIA) records show that Enterprise 1 was intended to be used for all homeless Enterprise Indians and is considered tribal land. For many years, the current residents were against anyone outside the Walters family moving onto Enterprise 1. As a result, this parcel of land has been inaccessible and lacking in any utility to the Tribe. The Enterprise 1 at the time of purchase was not sufficient for tribal needs in 1915, when there were only 51 tribal members. The property is located approximately 10 miles east of Orville, accessed only by a dirt road, in a remote and sparsely populated area. The property as whole was not appropriate for housing or other buildings, as some of the land contains steep slopes. Currently the Tribe has approximately 823 tribal members. The Enterprise 1 is clearly not sufficient for tribal housing needs, let alone for tribal government or economic development purposes.

In 1964, Congress enacted Public Law 88-453, which permitted the Department of the Interior to sell Enterprise 2 to the State of California to be submerged under Lake Oroville, which was created by the construction of the Oroville Dam as a part of the State water plan. The sale was completed in January 1965. No alternative reservation land was acquired for the displaced Enterprise members or for other tribal members with legal interest as beneficiaries to the land, but who were not in residence there.

In the Public Law 88-453, four tribal members received the proceeds from the sale of Enterprise 2. The remainder of the Tribe received no compensation whatsoever for the sale of Enterprise 2. Not only were other tribal members never consulted in advance of the sale, but they were not compensated or provided with replacement land for that which was sold and inundated under Lake Oroville.

The Enterprise Tribe was not a terminated tribe pursuant to the Rancheria Act of 1958. After the sale of Enterprise 2, the BIA continued to have a government to government relationship with the Tribe. The Tribe shares the same land loss as the terminated tribes of 1958. Unlike the terminated tribes, the Enterprise Tribe has not benefitted from restoration legislation or court settlements. Thus, the Enterprise Tribe has been in a more

difficult position than the terminated tribes.

With Enterprise 2 sold and Enterprise 1 not in the Tribe's possession, Enterprise Rancheria has been unable to exercise many of its sovereign powers as an Indian Tribe these past 44 years, not the least of which is the right to engage in gaming, as permitted under the Gaming Regulatory Act. The Tribe needs the subject parcel held in trust in order to better exercise its sovereign responsibility to provide economic development to Tribal citizens. It is well recognized that a secure land base is an essential component of tribal sovereignty. The Tribe's office is located on non-Indian fee land, and there is no usable land base for tribal housing or programs of any kind.

D. Purpose For Which The Land Will Be Used – 151.10 (c)

The Tribe proposes to develop the site for recreation/tourism by constructing a casino, hotel, and parking structure. The casino and hotel resort would include a main gaming hall with 1,700 machines, food and beverage services, retail space, banquet/meeting space, administrative space, pool, and spa. Several food and beverage facilities are planned, including a buffet, casino bars, and two restaurants. The resort would include an eight-story hotel with 170 rooms, a pool area, an exercise room, and an arcade. Approximately 2,750 parking spaces would be provided for the casino/hotel resort, with 600 of those spaces within a multi-level parking structure.

E. Impact On The State And Political Subdivisions Resulting From The Removal The Tax Rolls – 151.10 (e)

According to the 2007-2008 tax statements, the amount assessed for APN: 014-280-095 was \$39,021.02. The property will be exempt from the category of taxation if the parcel is taken into trust. That loss will be mitigated per the MOU with the County of Yuba.

The Tribe entered into an MOU with Yuba County on December 17, 2002, to make contributions to mitigate the costs and impacts of the Project on the County and the surrounding community. The Tribe subsequently entered into an MOU with the City of Marysville on August 16, 2005, to mitigate potential non-recurring cost and impacts by contributing to the City. The State of California will also benefit significantly from the receipt of a percentage of the net win from Class III gaming devices, in a future gaming compact with the Tribe.

The Tribe estimates that the number of permanent positions at the Facility will be in excess of 1,900 permanent jobs, and that an additional 600 jobs will be created in the surrounding area as a result of increased spending and sales of services throughout the area. Additionally, construction of the Facility will create approximately 1,300 temporary construction jobs.⁵² The increased economic development is expected to result in increased income to the County and the Cities of Marysville and Olivehurst in the form of increased tax revenues. There will also be increased revenue to the County because of

⁵² DEIS, Tables 4.7-1 and 4.7-3 at pp. 4.7-1, 2.

the significant contributions which the Tribe has agreed to make pursuant to the MOU.⁵³ In consideration of the preceding, it is our determination that the benefits that will be provided from the proposed land use far outweigh any financial loss to applicable taxing jurisdictions.

F. Jurisdictional Problems And Potential Conflicts Of Land Use Which May Arise – 151.10 (f)

The Tribe does not anticipate any significant problems or conflicts as a result of the intended land use and removal from State and local jurisdiction. The County has found that the Tribe's proposed use of the property is consistent and compatible with the County's general plan and the zoning of the property. The Tribe recognizes that all Indian County within California is subject to P.L. 83-280; therefore, there will be no change in criminal jurisdiction. The Tribe will assert civil/regulatory jurisdiction.

The Tribe has stated that they will pay for any additional impact coming from a gaming facility. To this end, the Tribe has worked cooperatively to enter into a Memorandum of Understanding with the County of Yuba and/or the City of Marysville, wherein the Tribe would agree to mitigate all of the impacts that the development of the casino may have on the surrounding area. In anticipation of impacted services, the Tribe has authorized the following expenditures:

1. Tribe agreed to waive certain sovereignty rights allowing for any unresolved disputes, within 30 days to go to the American Arbitration Association in accordance with its Commercial Arbitration Rules.
2. A one-time fee of \$697,120 to Yuba County.
3. Payment in-lieu of taxes beginning at \$800,000 for the first year of operation up to \$5,000,000 during the sixth year of operation, and then annually adjusted by the Consumer Price Index of a maximum of 4 percent for the County.
4. At least \$565,000 of "in-lieu tax" payments beginning in the first year of operation would allocated for law enforcement and \$60,000 a year to fund gambling disorders to a charitable organization dedicated to the treatment and prevention of gambling disorders.
5. Agreement by Tribe to adhere to all local, State and Federal laws pertaining to workplace safety, health and fair employment practices.
6. Agreement by Tribe to pay prevailing wages for all jobs associated with the construction of the facility.
7. As you are aware, the EIS identified that over 3,500 jobs will be created by the project. Of this total, it has been estimated that the casino will create 1,933 permanent jobs, 1,300 temporary jobs (construction, etc.) and additional spin off jobs. It is further projected that the permanent jobs will provide approximately \$32 million a year in payroll and benefits with \$150 million projected to

⁵³ MOU, § § 2(a), 2(b).

- be spent on construction of the project and would generate one-time wages of approximately \$35 million.
8. The Tribe will make contributions to the City of \$250,000 for two years, after which the annual contribution shall increase by an annually compounded rate of 4% for the remainder of this agreement through the third to the fifteen year.
 9. Recurring payments to the City to help the City defray additional expenses associated with the Project. These graduated payments will total \$4,822,977.85 over fifteen years.⁵⁴

As previously stated, the Tribe has entered into MOU's with the County and the City of Marysville which are the result of the Tribe's community outreach efforts, and incorporates input from the State and local governments. For instance, the MOU's require the Tribe to comply with State building code standards.

G. Whether The Bureau Of Indian Affairs Is Equipped To Discharge The Additional Responsibilities Resulting From The Acquisition – 151.10 (g)

The subject property does not contain any natural resources requiring BIA management assistance. The Tribe will be required to pay for whatever municipal services that may be required in connection with the newly acquired property.

With no leases, rights of ways or any other trust transactions forthcoming, any additional responsibilities resulting from this transaction will be minimal. This trust acquisition will optimally result in increased tribal self-sufficiency and less dependence on the Interior Department. As such, the Bureau of Indian Affairs will administer any additional responsibilities that may result from this acquisition.

H. The Extent To Which The Applicant Has Provided Information That Allows The Secretary To Comply With NEPA and Hazardous Substances Determinations – 151.10 (h)

The National Environmental Policy Act of 1969 ("NEPA") requires that a public environmental review process be accomplished prior to an agency's approval of any federal action. Prior to making a decision, the Bureau of Indian Affairs (BIA) as the lead agency under NEPA and five cooperating agencies⁵⁵ must ensure that it has analyzed and addresses the environmental effects of taking lands into trust.

The BIA prepared an EA that analyzed the potential environmental effects of the proposed action. The EA was made available for public comments in July 2004. Upon consideration of the public and agency comments received during the 30-day public comment period, the BIA, in consultation with the Tribe, decided to prepare an EIS to further analyze the environmental effects which may result from the proposed action.

⁵⁴ City of Marysville MOU, § 1(a).

⁵⁵ U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, State of California Department of Fish and Game, and Crescent City.

Additionally, the EIS analyzes a reasonable range of alternatives, including four development alternatives and a no action alternative.

The BIA published a Notice of Intent (NOI) in the Federal Register on May 20, 2005, describing the proposed action, announcing the BIA's intent to prepare an EIS, and soliciting public input on the scope of the EIS. A scoping meeting was held in Marysville, California on June 9, 2005 during the NOI comment (scoping) period, which ended June 20, 2005. A scoping report was issued in November, 2005.

A Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) was published by the BIA and U.S. Environmental Protection Agency (USEPA) on March 21, 2008. The NOA was also published in *The Sacramento Bee*, *Chico-Enterprise Record*, *Oroville-Mercury Register*, and the *Appeal-Democrat* between March 22 and 24, 2008. The NOA notified the public that the DEIS was available for review and solicited public comments during a 45-day comment period. The NOA also provided the time and location of the public hearing, which was held in Marysville, California on April 9, 2008.

The BIA received a total of 94 comment letters and public hearing statements during the comment period. The Final EIS (FEIS) includes a list of all comment letters received and statements made at the public hearing. The regulation at 40 C.F.R. § 1503.4 requires that, "All substantive comments, or summaries thereof where the response has been exceptionally voluminous, should be attached to the final statement whether or not the comment is thought to merit individual discussion from the agency in the text of the statement." Therefore, all substantive comments have been included in the FEIS. Responses are provided in the FEIS for each substantive comment submitted during the comment period. These responses are provided within the Response to Comments document included within the Appendix to the FEIS and are reflected in appropriate modifications made throughout the text of the FEIS where necessary and appropriate.

The BIA and USEPA will publish a NOA for the FEIS in the Federal Register marking the beginning of the 30-day review period after which the BIA may issue a Record of Decision (ROD) on the proposed action. The ROD will state what the decision is, identify all the alternatives considered in reaching the decision, and discuss preferences among alternatives based on relevant factors including economic and technical considerations and the BIA's statutory mission (40 C.F.R § 1505.2). The ROD also will identify and discuss all factors that were considered in making the decision and discuss whether all practicable mitigation measures have been adopted to minimize environmental effects. If all practicable measures are not adopted, the BIA must state why such measures were not adopted.

602 DM 2, Land Acquisitions: Hazardous Substances Determination.

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" approved September 15, 2008 (Exhibit 5), reflecting that there were no

hazardous materials or contaminants. If the decision to accept said lands in trust is approved, an additional site inspection will be conducted by BIA staff prior to acceptance of said land in trust.

I. The Location Of The Land Relative To State Boundaries, And Its Distance From The Boundaries Of The Tribe's Reservation – 151.11 (b)

- 1) greater scrutiny to the tribe's justification of anticipated benefits from the acquisition; and
- 2) greater weight to concerns raised by State and local governments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

The subject property is located in Northern California, four miles southeast of the community of Olivehurst, County of Yuba, approximately 125 miles east of the Pacific Coast and roughly 75 miles west of the Nevada State border. Additionally, the property proposed for acquisition is located approximately 36 miles from the Enterprise 1 parcel and somewhat longer by car.

J. Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use – 151.11 (c)

As previously stated, the Tribe plans to commercially develop the parcel and offer Class II and Class III gaming at the proposed facility. In conjunction with gaming, the proposed project anticipates a 170-room hotel, rooms, a pool area, an exercise room, and an arcade. Approximately 2,750 parking spaces would be provided for the casino/hotel resort, with 600 of those spaces within a multi-level parking structure

The Tribe has entered into a purchase agreement (Exhibit 1, Tab B) dated May 31, 2002 to purchase the subject property. On February 6, 2002, the Seller and Buyer have entered into a Memorandum of Agreement Gaming Development and Management Agreements, pursuant to which Seller and Buyer agreed to jointly develop a Tribal gaming operation on a portion of the Seller's property to be acquired by the Tribe.

The Tribe presently lacks the resource to acquire tribal land and to develop and operate a tribal gaming facility and enterprise thereon and desires to retain the services of a developer and manager to assist the Tribe in acquiring land, securing financing, and developing, managing and operating Class II and Class III gaming activities and related facilities on tribal land.

VII. COMPLIANCE WITH 25 C.F.R. PART 151.13 – TITLE EXAMINATION
(Exhibit 6)

On December 22, 2008, we requested a preliminary opinion of title from the Regional Solicitor. In response to our request, we received two non-endorsements from the

Solicitor dated May 7, 2009 and May 26, 2009. The Solicitor raised concerns with regard to the wording in the draft partial release to the "Declaration of Easements, Covenants and Restrictions" and the unrecorded lease (exception 8) noted in the commitment that the land is subject to restrictions contained in the lease.

After subsequent review, the Solicitor provided by memo dated July 23, 2009 that title to the subject property conformed to Department procedures.

With regard to the property taxes on the subject property, the current land owner, YCE, is responsible for payment of taxes per the terms in the purchase agreement. Therefore, the Tribe will have no liability for fees or taxes relating to the subject property.

Additionally, the legal description as described in Section V above was reviewed by the Regional Geographer and was found to be adequate (*Exhibit 3*). The acreage was also reviewed and a figure of 40.00 was determined.

IX. CONCLUSIONS AND RECOMMENDATIONS

I attest that I have reviewed this transaction and find that the case file is documented and in compliance with all of the above-stated regulations, citations and facts. Based on the information presented in this proposal, it is my opinion that the subject acquisition is necessary to facilitate tribal self-determination and economic development. I recommend that the subject land acquisition proposal be approved.

Attachments

A handwritten signature in black ink, appearing to read "M. F. King", is written over the word "Attachments".

Phase 1 Survey dated September 15, 2008

Exhibit 6:

Solicitor's Endorsement dated July 23, 2009

Exhibit 7:

Consultation letter dated January 16, 2009 to State and local officials, including officials of other nearby Indian tribes and response letters.

Tab A: Letter dated February 3, 2009 from City of Wheatland refers to two prior letters wherein the City expressed concerns (Exhibit 7, Tab A).

Tab B: Letter of support from the Yuba-Sutter Economic Development Corporation, an economic development advocate in Yuba-Sutter region, dated February 27, 2009 (Exhibit 7, Tab B).

Tab C: Letter dated February 27, 2009 from California Tribal Business Alliance (CTBA), opposing the Enterprise Rancheria gaming application (Exhibit 7, Tab C).

Tab D: Letter from the Dan Logue, Assembly Member, California Legislature, dated March 9, 2009 (Exhibit 7, Tab D).

Tab E: Letter from Denis O'Connor, dated March 9, 2009, a local citizen in Wheatland, opposing the casino project (Exhibit 7, Tab E).

Tab F: Letter from the Roger Abe, Supervisor – 4th District, Yuba County, dated March 12, 2009 opposing the casino (Exhibit 7, Tab F).

Tab G: Letter dated March 12, 2009 from Sutter County Community Services Department (Exhibit 7, Tab G).

Tab H: Letter from the Indians of Enterprise No. 1 dated March 12, 2009 (Exhibit 7, Tab H).

Tab I: Letter from the County of Yuba dated March 12, 2009 supporting the project (Exhibit 7, Tab I).

Tab J: Letter from the City of Wheatland and dated March 12, 2009 (Exhibit 7, Tab J).

Tab K: Letter from the Auburn Rancheria dated March 12, 2009 (Exhibit 7, Tab K).

Attachments:

Exhibit 1:

Application dated August 13, 2002 and supplemental application dated September 23, 2008 from the Enterprise Rancheria for forty (40) acres of fee land to be conveyed into Tribal Trust lands and all supporting documentations.

Exhibit 2:

The Enterprise two-part Secretarial Determination application and the supplemental application per Section 20(b)(1)(A) in the Indian Gaming Regulatory Act (IGRA) and all supporting documentation.

Exhibit 3:

Legal Description Review dated November 14, 2008

Exhibit 4:

Notice of Application dated November 26, 2008

Tab A: Letter dated December 10 and 11, 2008 from State of California, Department of Justice, Attorney General Office (Exhibit 4, Tab A).

Tab B: Letter dated December 9, 2008 from the Native American Heritage Commission office (Exhibit 4, Tab B).

Tab C: Letter dated January 9, 2009 from State of California, Department of Justice, Attorney General's Office (Exhibit 4, Tab C).

Tab D: Letter dated January 15, 2009 from the City of Wheatland (Exhibit 4, Tab D).

Tab E: Letter dated January 30, 2009 from the Office of the Governor, State of California (Exhibit 4, Tab E).

Tab F: Letter dated April 10, 2009 from the Enterprise Rancheria responding to the comments submitted by the Office of the Governor (Exhibit 4, Tab F).

Tab G: Letter dated April 10, 2009 from the Enterprise Rancheria responding to the January 15, 2009 comments submitted by City of Wheatland (Exhibit 4, Tab G).

Exhibit 5:

Tab L: Letter from Citizens for a Better Way dated March 13, 2009 (Exhibit 7, Tab L).

Tab M: Letter from James Gallagher, Sutter County Board of Supervisors, dated March 16, 2009 (Exhibit 7, Tab M).

Tab N: Letter from Stand Up For California dated March 16, 2009 (Exhibit 7, Tab N).

Tab O: Letter from the Office of the Governor dated March 17, 2009 (Exhibit 7, Tab O).

Tab P: Letter from the Churches of God received on March 18, 2009 (Exhibit 7, Tab P).

Tab Q: We received five (5) opposing comment letters after the 60 day consultation letter deadline (Exhibit 7, Tab Q).

Tab R: By letter dated May 5, 2009, the Enterprise Rancheria responded to the City of Wheatland comments. (Exhibit 7, Tab R)

Tab S: The Auburn Rancheria's supplemental opposition letter dated May 11, 2009 (Exhibit 7, Tab S).

Tab T: Thirteen (13) support letters from the surrounding community that came after the 60 day comment period (Exhibit 7, Tab T).

Tab U: Letter dated June 23, 2009, Maier Pfeffer Kim & Geary, LLP, writes on behalf of the Enterprise Rancheria responding to the above supplemental letter dated May 11, 2009, from Auburn (Exhibit 7, Tab U).