

Grass Valley Neighbors
P.O Box 2494,
Grass Valley, CA

January 22, 2018

Yuba County Board Of Supervisors
915 Eighth Street, Suite 109A
Marysville, California 95901

RE: Enterprise Rancheria Breach of Memorandum of Understanding

Dear Yuba County Board of Supervisors:

We write to express our serious concerns about the County's failure to enforce the Memorandum of Understanding (hereinafter "MOU") with Enterprise Rancheria regarding its illegal casino construction activities.

We read recently in the newspaper about a letter from the Colusa Indian Community raising similar concerns, and that County staff's response was that there was no construction occurring. ***That is simply false.*** Attached to this letter are photographs taken on the site very recently, since the first of the year, which ***clearly show substantial construction activities*** related to Enterprise's casino project, including installing a 4 inch water main from an adjacent property and a massive retention pond.

Be advised that the County's MOU allowing Enterprise's casino to be constructed and operated is a "project" under CEQA. That MOU contains provisions that purport to legally bind the County to definite courses of action that necessarily involve significant physical changes to the environment. California courts have invalidated such agreements between local governments and tribes entered into for gaming purposes. *See, e.g., Amador County vs. City of Plymouth*, 149 Cal. App. 4th 1089, 57 Cal. Rptr. 3d 704 (2007), as modified on denial of reh'g (May 10, 2007) (Municipal Services Agreement was a project subject to requirements of CEQA); *Voices for Rural Living v. El Dorado Irr. Dist.*, 209 Cal. App. 4th 1096, 147 Cal. Rptr. 3d 480 (2012) (MOU for tribal casino was subject to CEQA). The County's failure to comply with CEQA leaves it vulnerable to legal action. Erecting a casino at this location will entail a multitude of significant and direct negative impacts on the County's citizens, resources and natural environment. This area previously zoned farmland was voted to become a raceway but only under CEQA strict protections.

The County's failure to comply with CEQA leaves it vulnerable to additional legal action. Erecting a casino at this location will entail a multitude of significant and

direct negative impacts on the County's citizens, those in adjoining and near by areas, air quality, natural resources and the environment. This area previously zoned farmland was voted to become a raceway but only under CEQA strict protections. Grass Valley Neighbors submitted comments on the County CEQA process and we are party to the CEQA legal action regarding the project.

You must listen to Yuba County voters. They voted against this casino project, and yet your Board continues to knowingly ignore Enterprise's illegal activities, causing harm your constituents and County resources and environment. Why should the taxpayers of Yuba County foot the bill for the almost certain litigation that Enterprise's casino project and illegal construction will provoke? Will the out of town investors pay the County's costs associated with proper environmental studies and mitigations, and reimburse the County for its legal fees?

Enterprise Rancheria's illegal casino construction activities pose a significant threat to County interests and endangers neighbors such as ourselves, along with other County residents. It directly violates Enterprise's promises to the County. We therefore demand that the County act immediately to stop Enterprise's illegal construction activities. If you do not act to protect the County and its residents, we are prepared to seek all available legal remedies.

In the MOU, Enterprise promised to enact mitigation measures before beginning any casino construction, to address Enterprise's substantial negative impacts on the County and its residents and resources. Enterprise has entirely failed to undertake the promised mitigations.

In 2016 Enterprise began illegal casino construction without obtaining the necessary permits or enacting any of the promised mitigation measures. It was only after being threatened with a lawsuit that Enterprise ceased the illegal construction at that time. But now Enterprise it at it again, engaging in illegal casino construction with getting the required permits or living up to its promises to take required mitigation measures. For these reasons, we insist that the County exercise its rights under the MOU to stop Enterprise's unlawful construction. If the County does not stop Enterprise's illegal construction, it will be failing in its duties to protect the County's citizens and resources.

Before starting construction, Enterprise must obtain permits and enact the mitigation measures it promised in the MOU. For example, MOU section 3-3 requires Enterprise to adopt and comply with building standards comparable to Yuba County building, fire, plumbing, and electrical codes. Enterprise must demonstrate to the County that it has such codes in place and in force, as well as allowing the County to conduct code inspections. Enterprise's failure to do so violates the MOU.

Enterprise is also required to adopt and comply with fire safety standards that meet County and State codes, to provide those adopted standards to the County, and to allow the County Fire Marshall to conduct on-site inspections. Enterprise's failure to meet these standards violates the MOU. This is of particular concern given the recent devastating fires that have cost many Californians' lives and billions in property damage.

Enterprise is also required to adopt and comply with water quality standards, public health standards, food and beverage handling, that meet State standards and to provide such standards to the County. Its failure to do so violates the MOU.

In addition to its direct obligations to the County, Enterprise also has obligations under the federal Record of Decision (hereinafter "ROD"), which approved taking the Yuba County land into trust for Enterprise. The ROD incorporated the MOU's mitigation provisions and added numerous additional requirements including obtaining several permits. Enterprise has failed entirely to meet its obligations to obtain permits and enact mitigation measures prior to commencing construction.

Enterprise's construction – including grading as depicted in the attached photos -- will cause significant soil erosion. As a result, the ROD requires Enterprise to obtain a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit from the federal Environmental Protection Agency for sediment control and erosion prevention. Enterprise must also adopt a Storm Water Pollution Prevention Plan (hereinafter "SWPPP"). *See* ROD pp. 11, 20-21. The ROD requires that these actions be taken prior to starting construction, yet Enterprise has failed entirely to do so.

Enterprise is also obligated to implement mitigation measures such as storm drains, vegetative swales, sediment traps, and develop an on-site detention basin. Concerns about runoff apply both during construction and later during casino operation. *See* ROD pp. 11-12, 20-21. Enterprise also must get an NPDES permit and develop a SWPPP addressing these matters. In the absence of the required permits and SWPPP, Enterprise's construction activities violates federal law. Is the County fully informed as to how Enterprise is mitigating the impacts of runoff?

Enterprise's casino site is in a 100-year floodplain. Thus Enterprise must raise the buildings it intends to build as well as taking other precautions to reduce flooding impacts. Before starting construction, Enterprise is supposed to provide plans to the State Reclamation Board for review. *See* ROD pp. 12, 20. Enterprise must also obtain an NPDES permit and develop a SWPPP addressing these matters. Enterprise has once again resumed construction activities without obtaining the necessary permits or implementing the required SWPPP, in clear violation of federal law, and without notifying the County of how it planned to mitigate the impacts of potential flooding. Enterprise has also failed to make plans available to the State Reclamation Board as required.

The ROD found that Enterprise's construction would result in ground disturbance, which will increase sediment discharge into surface waters during storms, thereby reducing water quality. The ROD also found that Enterprise's casino construction would generate waste materials that can be washed into nearby surface waters. Enterprise is required to obtain an NPDES permit and to prepare and implement a SWPPP to control discharge of pollutants in storm water and to incorporate appropriate best management practices to prevent degradation of surface water resources during construction. (ROD pp. 12, 20-21.) Enterprise has apparently commenced construction without applying for the required permits, adopting the required plan, or notifying the County of how it intends to avoid contaminating the County's water.

The ROD found that Enterprise's casino construction would generate air pollution emissions that will exceed standards of the Feather River Air Quality Management District. Construction will thus pose a significant harm to air quality, harming our neighbors and us. Thus while Enterprise is supposed to develop and implement numerous safeguards to prevent air pollution, see(ROD pp. 12, 23-25.) Enterprise has apparently commenced construction without adopting the required mitigation measures.

The ROD also found that Enterprise's project would harm waters of the United States. Enterprise thus must take certain actions prior to commencement of, and during, construction activities, and must obtain a federal Section 404 Clean Water Act permit. *See* ROD pp. 13, 32-33. But Enterprise has commenced construction without adopting the required mitigation measures, taking required action, or obtaining the required permit.

The ROD further found that Enterprise's casino construction would likely create significant noise pollution. *See* ROD pp. 16, 38. Yet again, Enterprise has commenced construction without adopting the required mitigation measures or notifying the County how it plans to reduce noise pollution.

In sum, Enterprise is obligated by law to adopt numerous standards, inform the County of those standards, allow County inspections, obtain permits, and mitigate the damaging environmental effects of its casino project and protect County citizens and resources. Yes Enterprise has entirely failed to obtain the necessary permits and take the required actions. Enterprise has blatantly ignored the County's interests in clean water, avoiding flooding, preventing water contamination, and other similar interests.

The County must act immediately to stop Enterprise's unlawful construction and protect these interests. It is the County's duty to make sure that Enterprise lives up to its promises. The County's failure to do so must be corrected immediately.

The County should immediately insist that Enterprise stop all construction, and demand arbitration under MOU § 12. The County should also designate a County official

to oversee and enforce the MOU. In addition, the County should communicate Enterprise's failure to live up to its obligations to relevant departments and agencies, including the U.S. Army Corps of Engineers, Bureau of Indian Affairs, Secretary of Interior, U.S. Environmental Protection Agency, among others.

The County's duty to serve its residents and to safeguard their interests mandates that the County secure Enterprise Rancheria's full and immediate compliance with the mitigation obligations established in the MOU and ROD.

We therefore urge you to immediately demand that Enterprise Rancheria cease all construction activity and initiate dispute resolution procedures with Enterprise as mandated under the MOU. As explained above, Enterprise has waived its sovereign immunity from such action and the County has full legal authority to prosecute it.

Moreover, given Enterprise's intentional and willful disregard of its promises, and in light of the prior vote of Yuba County voters rejecting the Enterprise casino project, the **County should deem the MOU rescinded**, and focus its efforts and energies on projects that really will bring jobs and prosperity to our region while protecting its citizens and the environment.

Sincerely,



Steve Enos

CC: Senator Jim Nielsen
Assemblyman James Gallagher
Congressman Doug La Malfa
Supervisor Andy Vasquez
Olivehurst Public Utilities District













