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February 8, 2010

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

RE: Memorandum of Understanding – Enterprise Rancheria

Dear Yuba County Board of Supervisors:

Since Yuba County ventured forward 8 long years ago, aspiring to develop an off reservation casino with the Enterprise Tribe, many State and Federal policies have come into question. Thus, we are writing you again to alert you to a number of serious issues that Yuba County faces should it choose to continue in this endeavor: 1. questions regarding the validity and enforceability of the out dated Memorandum of Understanding (MOU) between the County of Yuba and the Enterprise Rancheria, 2. State policy with regard to off reservation casinos, 3. Current federal actions affecting off reservation gaming policy.

Questions regarding the validity and enforceability of the MOU between the County of Yuba and the Enterprise Rancheria: We wish to reiterate the facts in this matter because:

- The county may lack the authority to enter into an agreement based on revenue sharing with a tribal government from casino profits, (thus the MOU may be invalid and unenforceable),

- The County may be in non-compliance of the California Environmental Quality Act by not having conducted adequate review prior to signing the MOU.

- The Enterprise tribe may be in material breach of the MOU. Yuba County may have to pay the court costs to defend their sloppy applications and environmental documents.

- Your Board of Supervisors continues to honor this MOU in spite of the vote of Yuba County citizens against the Casino.

Lack of County or City Jurisdictional Authority: The Indian Gaming Regulatory Act (IGRA) authorized states to negotiate compacts for gaming with Indian Tribes. California has both Constitutional and state statute empowering the Governor to negotiate and the state Legislature to ratify gaming agreements as provided by federal law. There is, however, no express constitutional or statutory authorization for cities or counties to enter into agreements with tribal governments for a share of casino revenue without a provision in a tribal state compact. There is no compact and therefore no enabling authority for revenue sharing.

County Non-Compliance of CEQA: City and County governments which have developed agreements with tribes lacking tribal state compacts or land in trust do not know whether, or the conditions under which class III gaming will be approved, for the land in question. ***The Yuba County MOU appears to constitute a "project" under CEQA.*** The Yuba County agreement contains provisions that purport to legally bind the county signatory to definite courses of action that typically involve physical changes to the environment. In entering this agreement, it appears the county may NOT be in general compliance with state environmental review requirements under CEQA. Recent City MOU's have resulted in judicial invalidation of one settlement and two agreements by courts. (*Citizens to Enforce CEQA vs. City of Hesperia,* See also *No Casino in Plymouth vs. City of Plymouth, Amador County vs. City of Plymouth,* and *Citizens for Local Gov't Accountability vs. Palm Springs RDA: Settlement Payment)*

Potential Breach of MOU: "Whereas clauses" may constitute admissions by the party or parties agreeing to them to be true. (Evidence Code section 622.) It is imperative that the County be certain that these recitals in the "Whereas clauses" are in fact true. **For example:**

The very first recital in the December 2002 MOU states:

Whereas, the Tribe is a federally recognized Indian Tribe which has been recognized by the Government of the United States, continuously, since 1915:

Was this group of Indians in fact ever actually federally recognized, notwithstanding its recital as such in the Federal Register?

Are the signatories to the MOU the legitimate successors in interest to the current Enterprise Rancheria?

Do the signatories already have land in trust in their true aboriginal homeland in Butte County?

> **Whereas, a ruling on the Tribe's trust acquisition application constitutes a federal discretionary action subject to the National Environmental Policy Act (NEPA);**

The MOU with the Enterprise Rancheria was entered into good faith by the County of Yuba basing the tribes land acquisition on a **"discretionary"** process. (25 CFR 151.11).

Since that time, the tribe has attempted twice to acquire the land as a Congressional Act, without notifying the County of Yuba or Congressman Herger.

A Congressional Act makes the tribal land acquisition **'mandatory' and avoids a NEPA review**. The land becomes eligible for gaming as a clear and indisputable exception under the Indian Gaming Regulatory Act. As a Congressional exception the tribe circumvents state gaming policy recently established by Governor Schwarzenegger and the discretion of the Secretary of the Interior.

> **Whereas, the County is prepared to support the Tribe's trust acquisition application only if the County is assured that anticipated detrimental 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:**

This clause is exceptionally vague. What detrimental impacts will there be? How can they be mitigated? What will be the specific terms and provisions of any future "binding and enforceable agreement"?

Clearly the County in their August 19, 2004, letter to Clay Gregory, Regional Director of the Pacific Region of the Bureau of Indian Affairs has recognized the vagueness of this clause. The letter identifies thirty-six items and supports the conclusion that the casino/hotel resort complex will have a significant and detrimental environmental impact in several respects. The tribe has provided no assurance to the County as required in the "whereas clause".

Erecting a casino at this location will entail a multitude of significant and direct impacts. This area previously zoned farm land was voted to become a raceway under the stringent guidelines of CEQA. Without the protection of

CEQA to mitigate wholly and fully the impacts of a casino/hotel resort complex which includes related ancillary facilities such as restaurants and parking structures (section 1 of the MOU) coupled with the statements (section 11) of the tribes plans to purchase and take into trust additional contiguous parcels. Until this land is in trust, the tribal government must comply with state law and abide by CEQA. The tribe's sovereignty does not prevent the enforcement of CEQA on land owned in fee-simple.

It is further unclear if this proposed casino includes the serving of alcoholic beverages. If so, both state and federal law apply. The administrative regulation (25 CFR Section 291.4 (15)) provides that service of alcohol in a class III gaming facility can only follow the tribe's adoption of a liquor ordinance and approval of that ordinance by the Secretary of the Interior. The ordinance is submitted to the Secretary and reviewed. This process is subject to federal criminal law (18 USC Section 1154- Intoxicants dispensed in Indian Country). California State Constitution XX section 22 applies to public welfare at the manufacturing, importing or sale of alcoholic beverages at tribal casinos. The approval of the serving of alcohol may implicate indirect impacts subject to CEQA.

Section 14: Reopen Provision - The MOU between the Estom Yumeka Maidu of the Enterprise Rancheria and the County of Yuba identifies the possibility of state or federal changes in gaming laws, financial obligations or changes which materially impacts the parties. Indeed, 8 years later there are a number of state, federal and financial changes.

Changes at the State Level:

- Governor Schwarzenegger has established judicially enforceable agreements in the newly negotiated compacts. The new compacts include "**disincentives**" for local government to host off-reservation casinos. Revenue sharing is with the State of California, not with local governments. Local government may anticipate only land use and service mitigations in Schwarzenegger compacts.

- May 18, 2005, Governor Schwarzenegger authored a Proclamation that clearly outlined when he would support off reservation gaming.

- November 2005, Yuba County Voters voted NO Casino by 52%.

- January 2009, Governor Schwarzenegger made clear he would not grant gubernatorial concurrence for the acquisition of after acquired lands for the development of a casino some 50 miles from the

established Indian lands of the Enterprise Rancheria outside of the Tribes established aboriginal territory.

Changes at the Federal Level:

- Significant Policy concerns over the "Sole Proprietary Interest Requirement". The proposed site is encumbered by the ownership of the developer/investor/ proposed management company. Herein lays a potential violation of the Indian Gaming Regulatory Act's (IGRA) sole proprietary interest requirement. IGRA requires, as one of the necessary conditions for a tribe to open and operate a casino, a gaming ordinance approved by the national Indian Gaming Commission un USC Section 2710(b)(B): 2710(d)(1)(A). For approval of a gaming ordinance, IGRA requires among other things, that the Indian tribe will have the sole proprietary inters and responsibility for the conduct of any gaming activity. As such, should a tribe and a contractor execute an agreement that gives to the contractor some proprietary interest in the gaming operating, the agreement violates both the tribal gaming ordinance and IGRA. These contracts are routinely denied.

- This proposed acquisition violates the Secretary's Trust Responsibility to other federally recognized tribes. The Secretary of the Interior is obligated to protect the interests of ALL Tribes. Approving a land acquisition for after acquired land outside of a Tribes aboriginal territory, 50 miles from its established Rancheria along a highway substantially enhances the economic ability of the Enterprise Tribe and its investors over other nearby Tribes that have remained on their established Indian lands in compliance with IGRA.

- February 25, 2009, the United States Supreme Court made it clear that the Secretary of the Interior lacks authority to transfer land into trust for Tribes not under federal jurisdiction in 1934. The Enterprise Band did not start to organize until 1994, so serious questions of the Tribe being under federal jurisdiction must be resolved.

- September 2009, United States Senators Feinstein, Boxer, Reid, Ensign, Kly and John McCain have all opposed the proliferation of off reservation gaming documented in a serious letter to Secretary Salazar.

Unenforceable promises:

The MOU further to obligate the County to support the tribes land acquisition in return for **"unenforceable promises".** There is a great deal of inconsistency in the treatment of promises and representations by the Tribe. Violation of Section 3, 6, and 7-1 contain breach language. However the remaining sections contain only promises made by the tribe. For example:

Section 4: there is reference to mutual interest in acting against 'crimes which may be committed against the Tribe, its members, personnel, business entities or patrons", Why no mirror reference to such crimes committed by those persons or entities?

Further, in Section 4 with reference to public benefit fraud there is a provision for a "redacted copy" of a document to be provided. What is the public policy rational behind this? What is to be redacted? Who decides? Is this to protect tribal members who might violate the law?

Overall, there is a disconnect with regard to the amount the County is to receive for law enforcement services. The amount is capped at $565 thousand dollars. The problem is if the County does not employ adequate personnel or acquire adequate equipment to provide law enforcement services "at a level at least equal to that provided to the County as a whole", the tribe may **WITHHOLD** up to $565 thousand dollars. So, what if the cost of providing those services, to reach that level of equality exceeds $565 thousand dollars?

- **These are just a few of the many serious and critical inconsistencies in this agreement**.

Limited Waiver of Sovereignty: It is unclear if the Resolution NO. 02-27 passed by the tribal council on December 18 2002, grants authorization to the persons signing the MOU. Or if this resolution is binding on future tribal councils.

In Conclusion:

The County in agreeing to the terms of the MOU without proper CEQA review has opened the county to significant legal exposure.

Will the out of town investors pay the costs associated with proper environmental studies and mitigations? Will they pay the legal fees the County will bear because you entered into a MOU with them? With the increased casino market saturation in California, lenders experiencing tribal loan defaults, the restructuring of casino development debt and the complexities of tribal bankruptcy, the development of a casino in the Yuba County is not what

it may have appeared to be in 2002. These are particularly contentious questions now considering the many state, federal and financial policy changes that have occurred and are still evolving.

Enterprise is the wrong tribe, doing the wrong thing, in the wrong place. You should rescind the MOU and focus your efforts and energies on projects that really will bring jobs and prosperity to Yuba County.

Sincerely,

Gary W. Archuleta
Chairman

cc: Congressman Wally Herger
Senator Sam Aanestad
Congressman Tom McClintock
Assemblyman Dan Logue
Butte County Board of Supervisors
Bureau of Indian Affairs, Central California Agency
Bureau of Indian Affairs, Pacific Regional Office
Governor Arnold Schwarzenegger
Senator Dianne Feinstein
Senator Barbara Boxer
Cal-EPA