



United States Department of the Interior

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

IN REPLY REFER TO:

MAR 25 2010

TO: Assistant Secretary – Indian Affairs
Attention: Director, Office of Indian Gaming

Acting

FROM: Regional Director, Pacific Region

SUBJECT: North Fork Rancheria's Land Acquisition Request for Class III Gaming

INTRODUCTION

Through this memorandum, the Pacific Regional Office (PRO) is hereby transmitting to the Assistant Secretary – Indian Affairs, our analysis of the North Fork Rancheria's (Tribe) application for trust acquisition as required by Section 20 of Indian Gaming Regulatory Act (IGRA). The property proposed for acquisition is located approximately 35 miles west of the restored boundaries of the North Fork Rancheria, as re-established in the judgment entered in Hardwick v. United States of America, U.S. District Court for the Northern District of California, No. C-79-1710-SW (*Exhibit 2, Tab E*). The subject property consists of seven parcels, containing a total of 305.49 acres, more or less, adjacent to State Route 99, just north of the City of Madera, California. The Tribe intends to develop a casino and hotel resort on the eastern side of the subject property. 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. Fifteen food and beverage facilities are planned, including a buffet, six bars, three restaurants, and a five-tenant food court. The resort would include a multi-story hotel with 200 rooms, a pool area, and a spa. Approximately 4,500 parking spaces would be provided for the casino/hotel resort, with 2,000 of those spaces within a multi-level parking structure.

I. AUTHORITY

The Tribe is listed in the Federal Register as a recognized Indian entity eligible to receive services afforded to recognized tribes. The Tribal Council of the Tribe is the governing body of the Tribe pursuant to Article III, Section 2 of Tribe's Constitution with the power to initiate or approve any acquisition or disposition of property pursuant to Article of the Tribe's Constitution (*Vol. 2, Tab 2*).

The Tribe, by Resolution No. 09-02 dated January 28, 2009 (*Exhibit 2, Tab H*), requested that the Secretary of the Interior take title in trust for the benefit of the Tribe approximately 305.49 acres of real property located in Madera County, California, and to determine the property eligible for gaming pursuant to Section 20(b)(1)(A) of the Indian Gaming Regulatory Act and authorizing the Chairperson of the Tribe to sign all documents necessary to effectuate the conveyance of the property into trust status for gaming purposes.

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II. 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 Department of the Interior, Office of the Solicitor, has primary responsibility for issuing an opinion as to whether the land in question, if taken into trust, would meet one of the statutory exemptions.

[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 Application

By letter dated June 7, 2004, the Tribal Council of the North Fork Rancheria of Mono Indians of California approved a resolution requesting that the Secretary of the Interior accept into trust for the benefit of the Tribe a 305-acre parcel located in an unincorporated area of Madera County, California.

On March 1, 2005, the Tribe submitted a fee-to-trust application to the Pacific Regional Office of the Bureau of Indian Affairs (the "BIA") requesting that the United States acquire the Site in trust for the benefit of the Tribe in accordance with the requirements of the Indian Reorganization Act and 25 C.F.R. Part 151. The statutory authority for the Site to be taken into trust is the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202, which amended Section 5 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465.

The property proposed for acquisition is located approximately 35 miles west of the restored boundaries of the North Fork Rancheria, as re-established in the judgment entered in Hardwick v. United States of America, U.S. District Court for the Northern District of California, No. C-79-1710-SW. The recent Supreme Court decision in Carciari v. Salazar, 129 S.Ct. 1058 (Feb. 24, 2009), does not affect the Secretary's authority to acquire new trust lands for the Tribe. The Tribe was under federal jurisdiction when the IRA was enacted in 1934. As described more fully below, the Federal Government recognized the Tribe prior to 1934. Recognition events include the negotiation of treaties intended to benefit ancestors of the Tribe in 1851 and the purchase of lands for the Tribe by the Federal Government in 1916. Further, the Tribe is one of dozens of tribes listed in the "Revised Tabulation of Election Returns on the Indian Reorganization Act from the Rancherias under the Jurisdiction of the Sacramento Indian Agency, California."¹ The

¹ A copy of the "Revised Tabulation of Election Returns on the Indian Reorganization Act from the

document indicates that the Tribe elected not to reorganize under the IRA. In *Carcieri*, the Court noted that tribes which voted to reject to reorganize under the IRA are still entitled to benefit from its provisions pursuant to the later-enacted Indian Land Consolidation Act, 25 U.S.C. § 2202.²

Further, the termination of the Tribe's federally recognized status in 1966 and subsequent restoration in 1983 does not alter the fact that the Tribe was among the intended beneficiaries of the IRA when it was enacted in 1934. The language of the stipulated settlement provides that "[t]he Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities or groups of the seventeen Rancherias . . . as Indian entities with the *same status as they possessed prior to distribution of the assets* of these Rancherias under the California Rancheria Act, and said Tribes, Bands, Communities and groups of Indians shall be included on the Bureau of Indian Affairs' Federal Register list of recognized tribal entities pursuant to 25 CFR, Section 83.6(b)."³ Thus, the Tribe's restored status does not affect the Court's analysis in *Carcieri* or the Secretary's authority to acquire land in trust for the Tribe under the IRA and Indian Land Consolidation Act.

The Consultation Process

On January 23, 2009, we sent a letter to the Tribe and initiated the consultation process within the State of California and Madera County. By identical letters dated January 23, 2009, input as to whether the Tribe's proposed gaming establishment would be detrimental to the surrounding community was requested from the following State and local offices:

Legal Affairs Secretary, Office of the Governor; Deputy Attorney General, State of California; District Director, Office of Senator Diane Feinstein; City of Chowchilla; City of Clovis; City of Firebaugh; Office of the Mayor, City of Fresno; County of Fresno; City of Madera; City of Mendota; and the City of Merced.

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

1) Letter dated March 7, 2009, from Robert L. Poythress, Madera City Council opposing the North Fork Rancheria's Gaming application. (Exhibit 7, Tab A)

- *Problem gamblers created by gambling activities*
- *Increase in Highway 99 traffic*
- *Extensive improvements to the Avenue 17 and Highway 99 Interchange*
- *Casinos being considered as a "zero sum game" if they are not like the Las Vegas Casinos which bring in "out of town" money*
- *Minimal mitigation in the MOU with the County and City of Madera*

Rancherias under the Jurisdiction of the Sacramento Indian Agency, California" is attached as Exhibit J.

² *Carcieri v. Salazar*, 129 S.Ct. at 1067-1068.

³ *Tillie Hardwick, et al. v United States of America, et al.*, Civil No. C-79-1710-SW (N. D. CA. 1979), Stipulation for Entry of Judgment, August 2, 1983 (emphasis added).

- *The proposed MOU funding for treatment of problem gambling is less than \$100,000 annually*

By letter dated June 24, 2009, the North Fork Rancheria responded to the Mr. Poythress, Madera City Council. (Exhibit 7, Tab I)

- *Highway 99 traffic mitigation measures are in the DEIS*
- *Project will provide significant economic benefits to the area by attracting visitors from the outside area*
- *The City and County MOU's provide local jurisdictions with \$1,090,000 annually to fund 11 ½ new law enforcement officers*
- *The commenter participated in the negotiations which was unanimously approved the City MOU*
- *The DEIS indicates that the Project could create 531 new problem gamblers. The County MOU includes annual payments of \$50,000 to supplement the department's budget*
- *The Tribe has established a program to mitigate pathological and problem gambling*

2) Letter dated March 16, 2009, from the Chowchilla Tribe of Yokut Indians. (Exhibit 7, Tab B)

- *Detrimental impacts on neighboring jurisdiction*
- *The Tribe has other reasonable options for a location and abuse of the two-part determination*
- *Disruption in the community due to gambling problems*
- *Traffic and air quality impacts*
- *Voters of California did not approve Tribes moving around the State to get closer to cities and freeways by approving Proposition 1A in 2000*

By letter dated June 24, 2009, the North Fork Rancheria responded to the Chowchilla Tribe of Yokut Indians. (Exhibit 7, Tab I)

- *The DEIS states that the project will create thousands of new jobs*
- *Concerns about the Lumber Mill location are being addressed in the DEIS*
- *Traffic and air quality are being addressed in the DEIS*
- *Proposition 1A was for voter referendum to decide whether to amend the California Constitution by authorizing the Governor to negotiate and conclude compacts, subject to ratification by the Legislature*

3) Letter dated March 20, 2009, from Jon Navarrette, County Administrative Officer, County of Fresno opposing the North Fork Rancheria's gaming application. (Exhibit 7, Tab C)

- *Resolution 06-139 opposing reservation shopping*
- *Resolution 07-639 opposing new development of casinos*

By letter dated June 24, 2009, the North Fork Rancheria responded to Mr. Jon

Navarrette, County Administrative Officer, County of Fresno. (Exhibit 7, Tab I)

- 06-139 opposes "Indian reservation shopping" in Fresno County;
- the project is in Madera County
- The Madera Site is within the Tribe's historical area and the Tribe has no viable land base
- The EIS addresses the issues of Resolution 07-639

4) Letter dated March 23, 2009, from Mayor Ashley E. Swearengin, City of Fresno, opposing the North Fork Rancheria's gaming application. (Exhibit 7, Tab D)

- Off-reservation gaming activities not consistent with Proposition 1A in 2000

By letter dated June 24, 2009, the North Fork Rancheria responded to Mayor Ashley E. Swearengin, City of Fresno. (Exhibit 7, Tab I)

- Proposition 1A contemplated that tribes would be able to conduct gaming on Indian lands which qualify under Federal Law
- The Tribe is without a viable land base

5) Letter dated March 23, 2009, from Andrew T. Souza, City Manager, City of Fresno. (Exhibit 7, Tab E)

- Design, safety, and level of service problems on Freeway 99 interchanges
- Lack of available water resources
- Regional air quality impacts and related economic effects

By letter dated June 24, 2009, the North Fork Rancheria responded to the Souza, City Manager, City of Fresno. (Exhibit 7, Tab I)

- Concerns were addressed in the EIS

6) Letter dated March 23, 2009, Picayune Rancheria of the Chukchansi Indians, excluding redacted information that is protected under the Freedom of Information Act, Exemption 4 - Commercial or Financial Information. (Exhibit 7, Tab F)

- Nearby Indian Tribe
- Timing of the two-part consultation process
- Economic impacts on revenues generated by the Chukchansi Gold Resort and Casino
- Tribal Competition
- Secretary's trust duty to consider any purported "detrimental impacts" to the surrounding community, including nearby Indian tribes
- Alternative locations
- Tribe's Intergovernmental Agreements with the City and County of Madera
- Contribution amounts that are not excessive

- *Applicability of Section 11(d) to the MOU's*
- *Title requirements referring to title defects or related liability with respect to the Madera Site*
- *Applicability of Section 81*
- *Historical connection*
- *Community Support*
- *Best interest of the tribe*
- *NEPA*

By letter dated June 24, 2009, the North Fork Rancheria responded to the Picayune Rancheria of the Chukchansi Indians. (Exhibit 7, Tab I)

- *The commenter falls outside the definition of "nearby Indian tribe".*
- *There is nothing in IGRA that specifies when to initiate the two-part consultation process.*
- *Seven public hearings conducted by Madera County, the City of Madera, the BIA, and the California Senate Governmental Operations Committee.*
- *The DEIS indicates the loss in revenue by the Chukchansi Gold.*
- *While revenues fall by 20%, the impact of operations does not jeopardize the ability to remain open.*
- *Nine months after opening the commenter learned of North Fork's gaming project.*
- *IGRA provides the possibility for all tribes, to pursue economic development.*
- *Nothing under IGRA or the IRA protects against competition.*
- *Madera Site is part of the Tribe's traditional and ancestral lands.*
- *The Site is 38 miles away from the Tribe's original Rancheria in North Fork.*
- *Sokaogon Cheppewa Community v. Babbitt, the Court found that the Tribe's alleged economic harm resulting from the proposed project was too speculative to warrant relief.*
- *Alternate site in North Fork is addressed in the DEIS.*
- *The County and City MOU's provide for mitigating project impacts and are consistent with IGRA.*
- *The County and City had agreed that the contribution amounts were sufficient.*
- *The MOU's clearly are not gaming compacts as they do not touch upon State regulation of class III gaming, therefore section 11(d) is inapplicable.*
- *The decisions cited by the commenter are not applicable to the MOU's in question as they pertain to Section 11(d)(4) of IGRA, the tribal-state compact negotiation or amendment process.*
- *Here, the Tribe's compact with the State is its first and the consideration provided by the State is exclusivity.⁴*
- *Parties to the MOUs were clearly mindful of the restrictions under Section 11(d)(4) of IGRA because both agreements expressly state that "the Tribe shall not be required, pursuant to this MOU or otherwise to . . . make any payments, reimbursements, contributions or investment to, through or on behalf of the [County*

⁴ See *In re Gaming Related Cases v. State of California*, 331 F.3d 1094, 1112 (9th Cir. 2002).

and City] for any taxes, fees, charges, cost reimbursements, service fees, or other assessments.”⁵

- The Tribe's MOU with the County is not an encumbrance on land that would render title unmarketable. The Title will also have to comply with the Department of Justice Title Standards if/when the acquisition is approved by the Secretary.
- “The Tribe shall not be required pursuant to this MOU or otherwise to . . . grant or transfer to the County any rights or any real property, place any conservation or other easement on any real property, or otherwise agree to forego any rights with respect to any real property.”⁶
- The Ninth Circuit has clearly held that review of a contract under Section 81 is required only when the lands in question are already held in trust by the United States.⁷
- The Madera Site was not held in trust by the United States at the time the Tribe and County entered into its MOU.
- 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 notes that the Madera Site is well within its traditional lands, and has “significant historical connections” to the Site, as defined under Federal law.
- Many different Native groups such as the Monos and Yokuts continuously used and occupied overlapping ranges of territory in the Valley and foothills, particularly, the Valley floor.
- The citizens of the Tribe today are descendants not only of Monos, but also from numerous other peoples who populated the Valley, including both Yokuts and Miwoks.
- As discussed in the Tribe's Two-Part Request, no archaeological evidence of permanent aboriginal settlement of the Valley floor exists in the vicinity of the City of Madera by any Native groups.⁸
- Historical Connection is elaborated on extensively.
- Governor Schwarzenegger's Proclamation on Indian Gaming dated May 18, 2005 (“Governor's Proclamation”) makes clear that the Governor would not have entered into a compact with the Tribe (which refers to his intent to concur in an affirmative two-part determination by the Secretary) without the support of the affected jurisdiction and the local community.⁹

5 Section 4(d)(i), County MOU; Section 4(e)(i), City MOU.

6 Section 4(d)(iii), County MOU.

7 *Guidiville Band of Pomo Indians v. NGV Gaming, LTD*, ___ F.3d ___, 2008 WL 2521901 (9th Cir. 2008).

8 As confirmed in Section 4.6.1 of the DEIS, no significant cultural/archaeological resources were identified within or adjacent to the Madera Site.

9 Governor Schwarzenegger's Proclamation on Indian Gaming Policy dated May 18, 2005, provides that the Governor will consider requests for gubernatorial concurrence only when a) The land that is sought for class III gaming is not within any urbanized area; b) The local jurisdiction in which the tribe's proposed gaming project is located supports the project; c) The tribe and the local jurisdiction demonstrate that the affected local community supports the project, such as by a local advisory vote; and d) The project substantially serves a clear, independent public policy, separate and apart from any increased economic benefit or financial contribution to the State, community, or the Indian tribe that may

- *The length and cost of the process and the requirements imposed by the BIA and the State have resulted in very few new off-reservation proposals.*
- *The Tribe has agreed to not seek ratification of its compact until the trust determination is made.*
- *The Tribe's application demonstrates why the project is in the Tribe's best interest even when factoring the requisite payments under the MOUs, management contract, and compact.*
- *The NEPA process was commented on and responded to in the EIS.*

7) Letter dated March 24, 2009, from Andrea Lynn Hoch, Legal Affairs Secretary, Office of the Governor, concludes that the project will not be detrimental to the surrounding community. (Exhibit 7, Tab G)

8) Letter dated March 26, 2009, from Nathan Fletcher, Assemblyman, California Legislature opposing the North Fork Rancheria's gaming application. (Exhibit 7, Tab H)

- *Approval of this application will allow other tribes to begin reservation shopping*
- *Land purchased by casino operators appears to violate IGRA which mandates a tribe to have governmental jurisdiction over the land prior the engaging in gaming*
- *Lasting impacts on the community*

By letter dated June 24, 2009, the North Fork Rancheria responded to the Mr. Fletcher, Assemblyman, California Legislature. (Exhibit 7, Tab I)

- *The commenter is located several hundred miles away and represents the 75th District*

We received two (2) opposing comment letters after the 60 day consultation letter deadline (Exhibit 7, Tab Q).

- *Letter of opposition dated May 11, 2009 from the California Tribal Business Alliance*
- *Letter of opposition dated June 4, 2009 from the Pala Band of Mission Indians*
- *Letter of support dated July 1, 2009 from the Building and Construction Trades Council*

Below is a list of fourteen (14) support letters from the surrounding community that came after the 60 day comment period (Exhibit 7, Tab J).

- *Letter of support dated May 19, 2009 from the Madera City Council*
- *Letter of support dated May 19, 2009 from Robert E. Marden*
- *Letter of support dated May 20, 2009 from Madera County Investment Board*
- *Letter of support dated May 26, 2009 from United Rentals*
- *Letter of support dated May 24, 2009 from Gary L. Svanda, Member of the Business Coalition for Building a Better Madera*

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- Letter of support dated May 25, 2009 from Nicholas & KC Pomeroy
- Letter of support dated May 27, 2009 from Madera Coalition for Community Justice
- Letter of support dated May 26, 2008(?) from Nora & Associates Real Estate
- Letter of support dated May 26, 2009 from Workingarts Marketing, Inc.
- Letter of support dated May 28, 2009 from Gary Gilbert
- Letter of support dated May 28, 2009 from Wellington Corporation
- Letter of support dated May 28, 2009 from Tom DuBose
- Letter of support dated May 30, 2009 from Pete's Sport Shop
- Letter of support dated May 30, 2009 from the Madera Downtown Association

FINDINGS OF FACT

A. Best Interest of the Tribe and its Members (25 CFR § 292.17).

§ 292.17 How must an application describe the benefits and impacts of the proposed gaming establishment to the tribe and its members?

(a) Projections of Class II and Class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe;

Copies of the Tribe's current pro forma income statement, balance sheet, statement of cash flows, seven-year debt roll forward, project cost summary, and payroll expense detail for Class III gaming at the Facility for the first seven years of operation are attached as Exhibit 2, Tab Q.¹⁰ The Tribe has not prepared separate financial projections for Class II gaming since the Tribe has signed a Class III gaming compact with the Governor, but can prepare and provide such projections upon request.

The Tribe has entered into a Management Agreement with SC Madera Management, LLC, and a Memorandum of Understanding with the County of Madera, the City of Madera and the Madera Irrigation District. The Tribe has also signed a Class III gaming compact with the State of California. The Tribe's financial projections assume that (i) the Management Agreement will be approved by the NIGC, will comply with IGRA, and will be in the best interest of the Tribe and its citizens, (ii) each of the Memoranda of Understanding with local governmental entities will remain in effect, and (iii) the Compact will be ratified by the legislature of the State of California and approved by the Secretary of the Interior or will otherwise become effective by operation of law.

The pro forma financial statements for Class III gaming which the Tribe has prepared for this

¹⁰ The Tribe considers Exhibit Q to contain trade secrets and/or confidential or financial information which are protected from release to third parties without the consent of the Tribe pursuant to the Freedom of Information Act (5 U.S.C. § 552), the Trade Secrets Act (18 U.S.C. § 1905) and other provisions of Federal law, as well as pursuant to the California Public Records Act (California Government Code § § 6250-6276.48) and other provisions of California law. The Tribe hereby requests that the Department protect Exhibit Q to the maximum extent provided by Federal law and, if Exhibit Q is forwarded to the Governor, that the Governor protect Exhibit Q to the maximum extent permitted by California law.

Request are based on what the Tribe currently considers to be reasonable assumptions, including the assumptions that (i) the Facility will operate 2000 Class III gaming devices, (ii) the gaming devices will have the win per unit identified in the pro forma income statements; and (iii) the revenues will increase at the rate reflected in the pro forma income statements. The Tribe considers these assumptions to be reasonable by industry standards and the Tribe's market analysis. Based on the pro forma financial statements, the Tribe believes that the Facility will be profitable and will generate substantial income to the Tribe, as indicated in Exhibit 2, Tab P. The Tribe believes that the development and operation of the Facility is in the best economic interests of the Tribe.

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

The Tribe's economic need is great. The Tribe hopes to use the Site to generate jobs, training, and educational opportunities for its tribal members and to create a tribal community within its historic territory. The Tribe projects that the construction and operation of the Facility will lead to a substantial increase in Tribal employment, job training and career development. (A summary of the most recent tribal labor force data is attached as Exhibit 2, Tab R.) (Note: The labor force data that comprises Exhibit Q was not yet finalized at the time of this Request but will be provided as a supplement to this Request.)

According to the DEIS, direct investment and spending in construction-related activities is expected to generate 2,441 temporary construction jobs.¹¹ The operation of the Facility is anticipated to generate 1,291 full-time employees and 283 part-time employees.¹² The project is expected to create 2,319 permanent jobs in Madera County, including 858 indirect and induced jobs.¹³ These figures translate to a significant increase in job opportunities for tribal members both in and outside the gaming industry.

Tribal Employment

The Tribe is committed to increasing Tribal employment by offering jobs at the Facility to Tribal citizens and establishing a preference for hiring Tribal citizens. Building and operating the Project on the Site is consistent with the Tribe's goals of providing employment opportunities to tribal citizens. Not only is the Site relatively close to the original, untermiated North Fork Rancheria, it is more easily reached by a majority of tribal citizens. More tribal citizens live nearer to the Site than the Rancheria by an almost three to one margin, and the average distance for all tribal households residing within the State is less for the Site than to the Rancheria. Moreover, as none of the lands within the exterior boundaries of the Rancheria are tribally owned, and the Rancheria is tiny by reservation standards, there is little prospect of the Rancheria supporting any increase in residential population beyond the few residents living in the two homes located on the Rancheria.

The tribal population of more than 1,750 tribal citizens is comprised of 982 adult tribal citizens living in California. Of these adult tribal citizens in California, 718 or seventy-three percent

¹¹ DEIS, § 4.7.1, page 4.7-2.

¹² *Id.*

¹³ DEIS, Table 4.7-2; DEIS, Appendix R - Socioeconomic Assessment, October 2005 § 3.1.2, page 9.

(73%) are located closer to the Site than the original Rancheria. Six hundred eleven (611) adult tribal citizens in California, comprising 62% of the total are located within 50 miles of the Site, while only 586 of the households are located within 50 miles of the Rancheria. Three hundred sixty (360) adult tribal citizens reside within 40 miles of the Site, while only three hundred ten (310) adult tribal citizens reside within 40 miles of the Rancheria. Three hundred forty-five (345) adult tribal citizens are located within 35 miles of the Site, while only two hundred fifty-four (254) adult tribal citizens are located within 35 miles of the Rancheria. Three hundred four (304) adult tribal citizens live within 30 miles of the Site, while only two hundred forty-nine (249) live within 30 miles of the Rancheria. For all 982 adult tribal citizens, the average distance to the Site is 12% closer than to the Rancheria.

California Tribal Household Location from Casino Site and Rancheria

	Reside Nearer	Within 50 Miles	Within 40 Miles	Within 35 Miles	Within 30 Miles	Average Distance all Household
Casino	718	611	360	345	304	88
Rancheria	264	586	310	254	249	99

Thus, the Site is situated in a location that is a shorter commuting distance for more tribal citizens than the Rancheria. Consequently, the Project will provide plentiful job opportunities for tribal citizens and not result in any adverse impacts on the residential patterns of the tribal community.

Job Training and Career Development

The Tribe intends to provide job training and career development services to all employees of the Facility, including citizens of the Tribe. In its Memorandum of Understanding with the County of Madera, the Tribe specifically agreed that "Prior to the opening of the Facility, the Tribe shall offer training programs to assist County residents to become qualified for employment."¹⁴ The Tribe also agreed to establish and fund the North Fork Educational Foundation, which would provide funding to support the instructional programs of the local school districts and to support work force development and training programs.¹⁵ All Tribal citizens will be eligible to participate in such programs.

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 citizens to work for the Tribal government.

In addition, the Tribe's gaming revenues will enable the Tribe to provide educational and training services to its citizens which will enable them to pursue employment opportunities which are not associated with the Facility or Tribal governmental services.

¹⁴ County MOU, § 6(i).

¹⁵ County MOU, § 3(a) (iv).

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

Because the Tribe intends for the Facility to become a destination resort, the Tribe projects that the establishment of the Facility at the Site will lead to an increase in the number of persons who visit or stop in Madera County. The increase in visitors to Madera County will have direct and indirect benefits to the Tribe and its citizens, as well as to the surrounding community.

More specifically, the development of a new gaming facility in the area will stimulate the existing local tourist industry by increasing the incentives to visit Madera County, thereby benefiting the local economy as a whole. This influx of non-resident consumers will benefit local businesses employing or owned by Tribal citizens, thereby creating new employment and business opportunities for Tribal citizens. In addition, increased tourism in Madera County will create opportunities for visitors and local residents alike to become familiar with the Tribe, its history and its culture.

The Tribe has already begun exploring potential ways to promote the rich agricultural traditions of the surrounding community. As explained in subsection (e) below, the Tribe has also agreed to the creation of an advisory board to promote local agriculture pursuant to its Memorandum of Understanding with the Madera Irrigation District.

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

As of the date of this Request, the Tribe is not engaged in any economic development activities and does not have any source of revenues other than government grants, California Revenue Sharing Trust Fund grants, and payments from its development partner. If the Facility is built, the Tribe would own the Facility and would eventually become financially self-sufficient. Income from the Facility would greatly benefit the Tribe and its citizens by establishing a solid economic foundation for the Tribe, thereby promoting Tribal self-determination and a strong Tribal government.

More specifically, the Tribe intends to use gaming income to provide a variety of much needed social, housing, governmental, administrative, educational, health and welfare services to its more than 1,750 Tribal citizens. The increased tribal income will allow the Tribe to better meet the housing, medical and cultural needs of its citizens, as well as drastically reduce debt, fund youth and employment programs, and provide education grants that will greatly enhance the quality of life for the next generation of tribal citizens. Gaming income will also permit expansion and improvement of existing Tribal governmental operations by funding additional staff and upgrading equipment and facilities, which will lead to increased employment opportunities for Tribal citizens. Tribal income would provide capital for non-gaming economic development and investment opportunities, allowing the Tribe to diversify its economic base over time so that it may improve the quality of life of Tribal citizens for the long-term. Just as important as economic benefits, tribal income from the Facility will help the Tribe and its citizens strengthen Mono cultural programs and initiatives, thereby helping to sustain the collective and individual efforts of the Tribe and its citizens to revitalize and maintain their unique Mono heritage, language, and traditions for future generations.

Such tribal ambitions and goals are consistent with the intent of Congress in enacting IGRA and providing certain exceptions to the general prohibition against gaming on lands acquired in trust for a tribe after 1988. While off-reservation gaming approvals are the exception to the general rule favoring gaming on a tribe's reservation, the Tribe's circumstances fit precisely the type of situation for why Congress included the Secretarial two-part determination exception in Section 20 of IGRA. Given the following factors: the historical circumstances of the Tribe, the fact that the Tribe does not already have a casino nor readily available tribal trust lands, the limited sources of current revenue for the Tribe, the relatively close proximity between the existing Rancheria and government offices and the Site, of which are 36 and 38 miles respectively, the number of tribal citizens, the large percentage of adult tribal citizens residing within an easy commute to the Site, exceptionally strong local community support, and the support of the Governor under the compact, approval for the Tribe to engage in off-reservation gaming under 25 U.S.C. § 2719(b)(1)(A) would be consistent with the language and spirit of IGRA.

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

Community Outreach

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 that relationship. 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, business leaders, and community organizations. Specifically, the Tribe closely consulted with officials of Madera County in the process of selecting the location of the Site. Prior to the signing of the County MOU, the Tribe began working to foster communications between the Tribe and the surrounding community. Several public meetings were held regarding the proposed Project to encourage dialogue, elicit opinions from the public and allay fears and misconceptions on both sides. Since then, Tribal representatives have held dozens of meetings with civic and business leaders, community groups, business and service organizations, industry groups and employee/trade associations in the County. As a result of its outreach efforts with the non-Indian community, the Tribe now enjoys the support/endorsement of at least 30 local non-Indian governments, agencies, civic and business/labor groups. The Tribe intends to continue its efforts to reach out to the surrounding community in the future. (A copy of the North Fork Rancheria Project Local Support Update - April 24, 2008, is attached as Exhibit 2, Tab S.)

As a result of its outreach efforts, the Tribe has entered into a Memorandum of Understanding dated August 16, 2004 with the County of Madera (the "County MOU"), a Memorandum of Understanding dated October 18, 2005 with the City of Madera (the "City MOU") and a Memorandum of Understanding dated December 19, 2005 with the Madera Irrigation District (the "District MOU"). (Copies of the County MOU, the City MOU and the District MOU are attached as Exhibit 2, Tabs T, U, and V.) The MOU's establish government funding mechanisms to mitigate potential impacts of the Project on the surrounding community, provide for ongoing charitable giving, and address various other local concerns. These agreements promise to foster ongoing collaboration and dialogue between the Tribe and the surrounding community.

The Tribe also intends to enter into an agreement with the California Department of

) Transportation ("CalTrans") for road and interchange improvements identified in the EIS and as contemplated in the Compact. The Tribe is currently funding an engineering firm to work with Caltrans and local governments to prepare an interchange design.

County MOU

In the County MOU, the Tribe and the County agreed to establish a Tribal-County Advisory Committee which shall have jurisdiction over questions related to the implementation of the County MOU.¹⁶ Meetings of the Tribal County Advisory Committee will provide an opportunity to strengthen the relationship between the Tribe and the County.

The County MOU also establishes and funds four separate non-profit foundations to be known as the North Fork Rancheria Charitable Foundation, Economic Development Foundation, Educational Foundation and Unincorporated Area Foundation, respectively.¹⁷ The Tribe's commitment to establish these foundations once the Facility is opened has generated substantial goodwill with the surrounding community. Also, the Tribe has agreed in the County MOU that the boards of directors of the foundations would include at least two individuals designated by the County. The funds which the Tribe contributes to the foundations will be used for the purposes determined by their respective boards of directors, including mitigating potential impacts of the Project and otherwise benefiting the surrounding community. The meetings of the boards of directors of the respective foundations to determine how funds would be expended will lead to increased communication between the Tribe and local officials and civic leaders, thereby strengthening the relationship between the Tribe, the local governments and the surrounding community.

City MOU

) In the City MOU, the Tribe agreed to establish the Madera East Side Youth Recreational Committee consisting of two members of the Tribe, two members designated by the City and one member selected by the other members. The Committee shall determine the use of the \$2,000,000 contribution which the Tribe will make to enhance recreational opportunities for youth and other citizens residing on the east side of the City.¹⁸ Meetings of the Madera East Side Youth Recreational Committee and meetings with City officials regarding other projects of interest to the City which will be funded by the City MOU would provide additional opportunities for strengthening the relationship between the Tribe.

District MOU – City and Surrounding Community

The Tribe recognizes the importance of agriculture to the economy and character of Madera County and intends to promote local agriculture by: (i) establishing arrangements with local providers for the sale and purchase of local agricultural products at the Facility, and (ii) establishing an agricultural demonstration project for educational purposes of the [Site]... To facilitate a constructive and mutually

16 County MOU, § 24.

17 County MOU, §§3(a)(i), (ii), (iii) and (iv).

18 City MOU, § 2(vi).

beneficial relationship between the Tribe and the local agricultural community, the Tribe and the [Madera Irrigation] District shall establish an advisory committee to be known as the Water and Agricultural Advisory Committee to advise the Tribe in the development and implementation of the Tribe's efforts to promote local agriculture. The Water and Agricultural Advisory Committee shall be composed of at least one (1) representative of the District and one (1) representative of the Tribe, but may be expanded upon mutual agreement of the Tribe and the District to include representatives from interested agencies and organizations such as the Madera County Farm Bureau with expertise in agricultural production, commerce, or education.¹⁹

The District MOU also provides for the establishment of a Tribal District Advisory Committee with representatives of the Tribe and the District which shall have jurisdiction over questions related to the implementation of the District MOU.²⁰ The Tribe's contractual commitment to promote the local agriculture industry and the meetings of the Water and Agricultural Advisory Committee and the Tribal District Advisory Committee would provide additional opportunities for strengthening the relationship between the Tribe and the surrounding community.

Other

Finally, the Madera County region has experienced an unemployment rate which is consistently much higher than the State average. Job creation and economic growth resulting from the Facility will provide a much needed boost to the economy of Madera County and the surrounding community. The Tribe's efforts to facilitate such economic growth will have a positive impact on the Tribe's relationship with the surrounding community. 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.²¹

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

The Tribe has not identified any material adverse impacts which the development, construction or operation of the Facility would have on the Tribe or its citizens.

Although it is possible that the operation of the Facility could lead to an increase in the number of Tribal citizens who develop problems with alcohol or gambling, the Tribe does not expect that to occur. (Tribal citizens already have easy access to both alcohol and Indian gambling establishments located in Madera and Fresno Counties).

In addition, the Tribe is committed to using income generated by the Facility to fund a Tribal behavioral health program for its citizens who have or develop alcohol or gambling problems,

¹⁹ District MOU, § 6.

²⁰ District MOU, § 12.

²¹ See also discussion of impact on employment in surrounding community, *infra*, at page 37.

regardless of whether the problem is related to the Facility or other alcohol or gambling establishments. Therefore, improvements in the delivery of social, health, and education services by the Tribe to its citizens as a result of the income generated by the Facility could actually lead to a decrease in alcohol or gambling problems among Tribal citizens.

Also, as explained in greater detail below, the Tribe intends to develop programs for Facility patrons and employees, including Tribal citizens, to 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 citizens of the Tribe.

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

The Site is located approximately 36 miles from the Tribe's current government headquarters, which are located in the town of North Fork, Madera County, California.

(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;

Section 2.1(b) of the Development Agreement between the Tribe and SC Madera Development, LLC, a subsidiary of Station Casinos, Inc., provides that the land will be transferred to the Secretary once the Secretary is prepared to take the land into trust for the Tribe for gaming purposes. (A copy of the Development Agreement is attached as Exhibit 2, Tab W.)

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

The Tribe has significant aboriginal, historical, cultural and modern connections to Madera County in general and the area around the Site in particular.

Aboriginal Connections

The Site is located in the eastern plains of the San Joaquin Valley within two and one half miles of the Fresno River and near the Sierra Nevada foothills. There is no archeological evidence of permanent aboriginal settlement of the Valley floor in the vicinity of the City of Madera by any Native groups. The land in that area was subject to seasonal flooding, and, prior to the introduction of irrigation in the latter part of the 19th century, was extremely hot in the summer months.

Joe Kinsman was an American settler who settled along the Fresno River in 1849, later married a Mono Indian and fathered children who became the ancestors of many citizens of the Tribe. In his autobiography, he described the eastern San Joaquin Valley at the time of his arrival on the Fresno River in 1849 as follows:

There was no Madera, no Merced, no Modesto, and no Fresno. All of the settlements were in the foothills. The entire valley country was desolate

of human habitation. In places where now there are blooming orchards and verdant fields of alfalfa and the homes of many men the valley was a desert without any vegetation. ... Antelope, deer, elk and wild horses ranged at will over the valley and adjacent foot-hills.²²

Although the settlements may not have been permanent, anthropologists and historians have determined that an aboriginal group identified as the Howechi (Howechee, How-a-chez, Howchis, Heuchi, Heuche, Heutsi, Whee-Chee) had a settlement located on the north side of the Fresno River four miles downriver from the modern day City of Madera.²³ It has been estimated that the original aboriginal population of this group was approximately 450.²⁴

The Valley floor was an area of inter-tribally used lands and waters, where neighboring Native group's hunted large game, fished in the waters of the San Joaquin River, and otherwise shared access to its resources during certain times of the year. Thus, ancestors of the Tribe used and occupied the San Joaquin Valley floor and the adjacent Sierra Nevada foothills. One of the federal treaty commissioners described the relations of aboriginal groups in the San Joaquin Valley in the vicinity of the Fresno and San Joaquin Rivers as follows:

The Gentile class [of Indians] constitute the tribe proper, occupying the valleys and low hills near the base of the mountains; the Monos or lost tribes inhabiting the higher mountains back from the Gentiles, or tribe proper, by whose permission and protection they [the Monos] visit occasionally the plains and water-courses for the purposes of hunting and fishing. In fact, they [the Monos] maintain towards the tribe proper the character of colonies or dependencies, always assisting them in times of war, and at all times secreting the large bands of animals stolen by the tribe proper from the citizens of the country...²⁵

(A copy of the referenced excerpt from the 1852 report from G. W. Barbour to Luke Lea, is attached as Exhibit 2, Tab X.)

Historical Connections: The 1851 Reservations

The Tribe also has significant historical connections to the Site during the period following first contact. After the discovery of gold in the foothills of the San Joaquin Valley, the Federal Government sent treaty commissioners to the area to negotiate treaties with San Joaquin Valley Native peoples. The goal of the commissioners was to sign treaties which induced the San Joaquin Valley Native peoples to leave their homelands in the foothills and mountains where gold had been discovered and settle on the originally far less valuable land in the Valley. One of the commissioners wrote in the spring of 1851:

22 Madera County Magazine, 1915, "The Story", p. 18.

23 Kroeber, A.L., *Handbook of the Indians of California* (1925, reprint, New York; Dover Publications, 1976), p. 484.

24 Latta, Frank, *Handbook of Yokuts Indians* (1949: reprint, Santa Cruz, CA; Bear State Books, 1977), p. 159.

25 G. W. Barbour to Luke Lea, rec. 2 February 1852, S. Doc. 4 (33-Special Session) 688, pp. 261.

Our policy is ... to get them down from their mountain fastnesses and place them on reservations, along the foothills bordering on the plains. The miners will then be between them and the mountains, forming a formidable cordon or barrier through which it would be difficult to take their families unobserved [back to their foothill homelands]; and in those reservations ... they will there learn the ways of civilization, and thereby become useful members in the community, instead of being an expense and dead weight to the General Government.²⁶

The commissioners signed three treaties with San Joaquin Valley Native groups in the spring of 1851. Under the terms of the treaties, the Natives relinquished all legal title to their homelands. The treaties provided that, in exchange, Indian reservations would be set aside in the valley lands between the Sierra Nevada foothills and the San Joaquin River in modern day Madera and Fresno Counties. Current citizens of the Tribe are able to trace their ancestry to multiple Native groups whose headsmen signed those treaties.

The treaty signed at Camp Barbour on the San Joaquin River on April 29, 1851, specifically mentioned the Mono ancestors of the Tribe who had not yet come down from the foothills on the day the treaty was signed and made them express beneficiaries of the reservation contemplated by that treaty. It stated that the "*mona* [Mono]... which were still in the mountains, shall, when they come in ... receive a fair and equal interest in the land and provisions hereinafter stipulated to be furnished for the whole reservation...". (A copy of the Camp Barbour treaty is attached as Exhibit 2, Tab Y.)

The Site selected by the Tribe for the Facility is located within the boundaries of the reservations set aside for the predecessors of the Tribe and other Native groups by the San Joaquin Valley treaties. (A map of the boundaries of the San Joaquin Valley treaties is attached as Exhibit 2, Tab Z.) However, once substantial numbers of Natives had physically removed from the foothills to the valley, the United States no longer considered the treaties to be necessary, and the U.S. Senate refused to ratify the treaties. Therefore, the treaties never became legally effective and the reservations contemplated by the treaties were never legally established. Congress passed a separate statute which effectively extinguished Indian title to land throughout the State of California by 1853, leaving the ancestors of the Tribe and all other California Indians landless, without legal rights to their homelands and without formal reservations.

Historical Connections: The 1850s Fresno River Farm

In order to implement the Federal policy of civilizing California Indians, the Federal Government did establish the "Fresno River Farm" in 1851 along the banks of the Fresno River. (The Fresno River Farm later became the headquarters of what was referred to in historical records as the Fresno River Reservation or Agency.) Although the exact boundaries of the Fresno River Farm are difficult to determine and may have changed over time, the Tribe believes that the boundaries of the historical Fresno River Farm are near or within the boundaries of the modern day City of Madera. Given that the Site is located less than a mile from the City of

26 O.M. Wozencraft to Luke Lea, 14 May 1851, ARCOIA 1851, PP. 225-226.

Madera's northern boundary, the Site may reasonably be considered to be within three to seven miles from the historical Fresno River Farm.

Contemporary records prepared by the Federal Indian agents confirm that, although some ancestors of the Tribe remained in the foothills, other Mono and non-Mono ancestors of the Tribe used and occupied the Fresno River Farm and surrounding lands. In a July 1856 report, the Federal Indian agent counted the "Monos" as among the "number of Indians which live on, visit, and recognize this place [the Fresno River Farm] as their home and headquarters."²⁷ In an August 1857 report, the Federal Indian agent reported that there were various San Joaquin Valley Native groups which included ancestors of the Tribe and which "visit and recognize this [Fresno River] reservation", including 360 "Monos" and other Native groups which included ancestors of the Tribe.²⁸ In an August 1858 report, the Federal Indian agent reported that the Mono "have more recently made frequent visits to the farms for counsel and presents, never failing to tender their service to labor."²⁹ The Monos were substantially the largest Native group identified in these reports. (Copies of the referenced Federal Indian agent reports are attached as Exhibit 2, Tabs AA, BB, and CC.)

A close reading of the reports also shows the devastating effect of disease on the San Joaquin Valley Native population. An August 1857 report notes that the "How-a-chez", a Native group which used and occupied lands in the immediate vicinity of the modern day City of Madera, "live permanently on this farm, once the great ruling tribe, now only sixteen". An August 30, 1859 report discussing the "How-chis" stated that "This tribe of Indians within the vicinity of Farm was a ranking people, now the smallest Tribe within the bounds of this Agency. ... Their native land is this Fresno River and they have known no other home since the Treaty made by them and other tribes with the commissioners in the year 1851 [at] this Fresno Farm. The numbers of Males are 8, Females 10 [total] 18." Another August 1859 Federal Indian agent report states that, except for the Chukchansi and Mono Native groups, "there have been many deaths but few births, which unnatural consequence is mostly attributed to the social intercourse between the women of the latter and the men of other [i.e. white] denominations".³⁰

Thus, many of the aboriginal Native groups which lived in the San Joaquin Valley area became virtually extinct within a decade or two after contact with the American settlers. A noted California anthropologist later stated that,

It is... known that the valley tribes from about the Fresno River northward were removed and missionized almost completely, and that their early virtual extinction was due to the effects of this process... [With respect to the Valley Yokuts tribes south of the Fresno River,] It was apparently their valley habitat, or at best hill abode, that crushed the Yokuts, through making them more readily and unmitigatedly accessible to the white man. In the mountains, civilization advanced slowly, or receded after the first rush of miners. The Indian shrank back, but had numberless corners left to himself. In the [valley] plains, the farmer

27 M.B. Lewis to Thomas J. Henley, 22 July 1856, S. Exec. Doc. 5 (34-3) 875, pp.803-807.

28 M.B. Lewis to Thomas J. Henly [Henley], 4 August 1857, S. Exec. Doc. 11 (35-1) 919, pp 686-689.

29 M.B. Lewis to Thomas J. Henley, 18 August 1858, S. Exec. Doc. 1 (35-2) 974, pp. 643-646.

30 M.B. Lewis to James Y. McDuffie, 27 August 1859, S. Exec. Doc. 2 (36-1) 1023, pp. 809-811.

followed hard on the pioneer, the soil was broken, fences began to stretch, and before long railroads ran their course and cities flourished. There was no way for the [valley] native to escape the full brunt of civilization; and it melted him away... If any doubt remains as to the strength of the factor of proximity to centers of Caucasian population, in rapidly diminishing Indian numbers, the Mono clinch the argument. Eastern neighbors of the Yokuts in the higher Sierra and the desert beyond it, they numbered at most a quarter or a third, perhaps not a fifth as many [as the Yokuts]. Today they are the largest group in California, and total nearly three souls for every living Yokuts. The [few Valley Yokuts] survivors, then, tell us nothing of the strength of their ancestors, because the wastage has been too excessive. The fragments are too small for an estimate of the original stock. The [Valley Yokuts] remnant may be 2 per cent or 5 [of the original group].

In 1859, the Fresno River Farm was closed. In an August 1859 report, the Federal Indian agent stated that the Indians who used and occupied the Fresno River Farm, influenced by hunger and paternal attachment for their native land, commenced leaving this place by tribes and smaller parties... And I do at this time feel called upon, in the name of peace and prosperity of these people, and the interest of the Indian Department, to recommend their removal from that section of country [near the Fresno River Farm] into the mountains, where they will be less expense to the government, less subject to abuse of ill-disposed white men; where the land is better and seasons more reliable. The growing of the Foot-hills from north to south within the bounds of this agency, ... more especially the immediate vicinity of this [Fresno River Farm/Reservation] and King's river farm, with the various kinds of [live] stock and the various classes of [non-Indian] men, has made apparent the policy and necessity of moving the entire Indian population higher up in the mountains...".³¹

(A copy of the referenced Indian agent report is attached as Exhibit 2, Tab DD.)

Thus, many of the Indians which had survived the devastating diseases of the 1830s and 1850s and which used and occupied the Fresno River Farm and surrounding area moved to the Sierra Nevada foothills. There they rejoined, or were absorbed into, Native groups living in the foothills. Therefore, citizens of the modern North Fork Rancheria Tribe can trace their ancestry to multiple Native groups listed in the historical records of the 1850s and thereafter. For example, trust allotment patents and 1928 roll numbers issued by the Federal Government during the first half of the 20th century include those issued to many ancestors of current citizens of the Tribe whose lineage can be traced to many San Joaquin Valley Native bands in addition to the "Mono" band, including the following: Chowchilla, (a Valley Yokuts, Madera and Mariposa County, band); Mariposa, (a Mariposa County band and possibly the same as Chowchilla); Choak-chan-cee (Chukchansi) (a foothills Yokuts, Madera County, band); and Cas-sons (a.k.a. Gashowu, a foothills Yokuts band).³² (Copies of documents referenced in fn 32 are attached as

31 M.B. Lewis to James Y. McDuffie, 27 August 1859, S. Exec. Doc. 2 (36-1) 1023, pp. 809-811.

32 Trust allotment Patent No. 743453 to Chester House ("Chickehanse"); Patent No. 743454 to Jesse House ("Chickehanse"); Patent No. 1126456 to Clarence James McIntosh ("Chickchansie"); Patent No. 741734 to Frank Lewis ("Chickchansi"); Patent No. 1117827 to Eliza Jack ("Chukchansie"); Roll No. 13772 for Thomas Murphy ("Cassons"); Patent No. 376244 to Neal Lewis ("Mariposa"); Patent No.

Exhibit 2, Tab EE.)

The Tribe has not identified any reference in the historical record after the 1850s to the Howechi tribe which used and occupied the Fresno River Valley area in aboriginal times. The only reference in the Madera County 1900 census records to a Valley Yokuts group is the identification of the Lewis family as "Mariposa" (sometimes a reference to Chowchilla). Mary Lewis and Mary Blackhawk, tribal ancestors to many citizens of the Tribe who were granted the Indian allotments nearest to the City of Madera, were originally from the Chowchilla band.³³ (A copy of the allotment application for Mary Lewis is attached as Exhibit 2, Tab FF.)

Historical Connections: Later 19th and Early 20th Century

Primary documents from the latter half of the nineteenth century provide a picture of the ancestors of the Tribe traveling from the Valley floor, often passing through the City of Madera to the foothills and back again as they herded sheep for local ranches. Ancestors of the Tribe also worked in the timber industry. The lumber they cut was transported by an elaborate flume system from the watershed of the Fresno River to the City of Madera. Tribal ancestor Joe Kinsman and other men from the foothills area would drive their hogs to a store in Borden, which was located along the Southern Pacific rail line within 600 yards of the border of the City of Madera.³⁴

By the late 1800s, many of the ancestors of the Tribe worked picking grapes at the Minturn vineyards, which are described in historical records as five miles from Madera,³⁵ presumably in the direction of the modern-day village of Minturn, which is north of the City of Madera. This location would place the vineyards in very close proximity to the Site. In the twentieth century until the 1960s, numerous families associated with the Tribe traveled in masses to these vineyards, which were north of the City of Madera and extending to the banks of the Chowchilla River. Many of the Tribe's oldest citizens have personal recollections of working in these vineyards, and all of the early photographs of Tribal citizens in personal collections of Tribal citizens were taken in the area of these vineyards. In the midst of a typhoid epidemic among the North Fork Indians in 1924, an administrator serving at the North Fork Indian School reported that she was "glad to see they did not get the germs here [in North Fork] but down at Minturn where they went to pick grapes and figs".³⁶ (A copy of the correspondence, plus photographs of tribal ancestors at work in the Valley, is attached as Exhibit 2, Tab GG.)

In addition to picking grapes, many Tribal ancestors traveled to the Valley during the twentieth century to work in other industries as well, such as farming and sheep-shearing. In 1916, Indian Agent John J. Terrell, as part of his communication with the Commissioner of Indian Affairs

1125713 for Martha Smith ("Mariposa"); and Patent No. 1142152, issued to Rosie Washington Watt, heir of Jennie Washington, original allottee ("Chowchilla").

33 Approved allotment of Mary Lewis, 23 September 1907, NARA-DC, RG75, Central Classified Tiles, 1907-1939, Tule River, 95868-1915, 301 to 151396-1913, 3134, Box 6, 56220-1911, 310.

34 Wogaman, *Medicine Man*, p. 9; Kinsman Diary, 1876-1894, English Collection, California State University, Fresno, Henry Madden Library, Department of Special Collections, P ___. [oct 27, 1980]

35 History of Fresno County, 1882, p. 225

36 Minnie Clayton to Col. La' F. A. Dorrington, 21 October 1924.

about the purchase of Rancheria lands for the "North Fork band of Indians", wrote that:

While a number of these Indians have in the past secured more or less employment locally [in the foothills], and will likely be able to continue to do so, quite a number, likely a majority, temporarily leave their mountain habitations and go to the rich San Joaquin Valley in proper seasons to secure work on the farms, hay meadows, vineyards [sic] and orchards, as well as sheep-shearing in its season.³⁷

(A copy of the referenced letter is attached at Exhibit 2, Tab HH.) Later in the 20th century, the City of Madera continued to serve as a hub of activity for the citizens of the Tribe. The City of Madera was considered the closest and most convenient urban center where they could do their shopping and socialize. They were also able to access services there, such as public assistance and health care.

Cultural Connections

Access to the San Joaquin River and surrounding lands has always played an important role in sustaining the culture of the Tribe. Since aboriginal times, the Tribe and its ancestors have been renowned for the baskets made by the women members of the Tribe. The plants which grow near the rivers and marshes in the San Joaquin Valley area have been a rich source of basket-weaving material. Well into the 20th century, women used their trips to work on farms located on the Valley floor along the San Joaquin and Fresno Rivers in the vicinity of Madera to gather basket-making materials. Tribal citizen and author Gaylen Lee elaborated on this practice in his book Walking Where We Lived, stating that "Although sedegrass grows in the mountains, the roots aren't as long as those that grows in the San Joaquin Valley. Mom said her Grandma Lizzie preferred to travel there for white root."³⁸ (An excerpt from the book is attached as Exhibit 2, Tab II.)

Modern Connections

Finally, the Tribe has significant modern connections to the Site. The Site is located in the center of Madera County, which is the County in which the North Fork Rancheria lands and the Tribe's governmental headquarters are located. A substantial number of the Tribe's citizens live within 25 miles of the Site and the vast majority of the Tribe's citizens live within 50 miles of the Site. Also, the Site is centrally located within the Tribe's service area, which is comprised of Madera, Fresno and Mariposa Counties.³⁹

37 John J. Terrell to Commissioner Indian Affairs, 4 April 1916, NARA-DC, RG75, Central Classified Files, 1907-1939, Roseburg, 108465-1914, 310, Part 23, North Fork.

38 Gaylen Lee, Walking Where We Lived, p. 172.

39 The Bureau of Indian Affairs has designated the Counties of Madera, Mariposa, and Fresno as the Tribe's service area. The Department of Housing and Urban Development has designated the Counties of Madera, Mariposa, and Fresno as the Tribe's Indian Housing Block Grant Formula Area. The Indian Health Service has designated the Counties of Madera, Mariposa, and Fresno as the Tribe's Contract Health Service Delivery Areas.

Conclusion

In sum, the Tribe has significant aboriginal, historical, cultural and modern connections to Madera County in general and the area around the Site in particular. Also, although this Request does not ask the Secretary to determine whether the Site would be eligible for gaming under the "restored lands" exception in IGRA, the Tribe believes that its connections to the Site are more than sufficient in order for acceptance of the Site into trust to constitute "the restoration of lands for an Indian tribe that is restored to Federal recognition" within the meaning of Section 20(b)(1)(B)(iii) of IGRA.

(j) Any other information that may provide a basis for a 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 establishment;**
- (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.**

The establishment of the Facility will be the Tribe's first economic development activity and a source of pride for the Tribe and its citizens. The Facility will also provide an important gathering place and focal point for increased interaction among Tribal citizens, whether or not employed at the Facility. As pointed out above, the close proximity of the Site to the majority of adult tribal citizens makes it much more accessible than the North Fork location. Locating the Facility at the Site will also make it much more economically viable. In contrast, locating the Facility on the North Fork location is unlikely to benefit most tribal members due to both physical and financial limitations. The DEIS explains that the North Fork location calls for a much smaller casino and excludes a hotel and retail development.⁴⁰ The DEIS also provides that the number of permanent and temporary jobs created if the Project was located on the North Fork location would be 167 and 351 jobs, respectively, a significantly lower number when compared to anticipated employment for both tribal citizens and those in the surrounding community created if the Project is located at the Site.⁴¹

The Tribe also notes that all of the benefits which the Project will provide to the County, the City, the State, and surrounding communities as described below will also provide direct and indirect benefits to those Tribal citizens who live within the County and the surrounding community.

⁴⁰ DEIS, § 2.5

⁴¹ DEIS, § 4.7.1, pages 4.7-49 -4.7-52.

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 citizens. The Tribe believes that the information contained above in Section 14 of 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 citizens within the meaning of Section 20(b)(i)(A) of IGRA.

B. Not Detrimental to the Surrounding Community (25 CFR § 292.18).

§ 292.18 What information must an application contain on detrimental impacts to the surrounding community?

(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);

Analysis of Environmental Impacts

On October 27, 2004, the Secretary published in the Federal Register a Notice of Intent to gather information necessary to prepare an Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA") in connection with the proposed Federal actions of the Secretary acquiring the Site into trust for the benefit of the Tribe for the purposes of gaming and the Chairman of the NIGC approving a management agreement between the Tribe and its management partner.⁴² The NOI was published in the Madera Tribune on November 12, 2004. On November 15, 2004, the BIA conducted a scoping meeting at Hatfield Hall, Madera District Fairgrounds, Madera, California.

In response to a request, the BIA extended the public scoping comment period to December 15, 2004. Notices extending the comment period were published in the Madera Tribune and Fresno Bee on November 29, 2004 and December 7, 2004. The Madera Tribune notice incorrectly listed the extended comment deadline as December 10, 2004. Thus, a correction was published in the Madera Tribune on December 3, 2004.

The BIA then published a Notice of Correction (NOC) in the Federal Register on April 6, 2005. The NOC amended the October 2004 NOI to include a description of possible project alternatives and also to further extend the scoping comment period to May 6, 2005. The BIA published the NOC in the Madera Tribune on April 8, 2005 and in the Fresno Bee on April 9, 2005.⁴³ In July 2005, the Department issued a scoping report which summarized the comments received during the scoping period and outlined the expected scope of the EIS.⁴⁴

42 69 Fed. Reg. 62721 (Oct. 27, 2004).

43 70 Fed. Reg. 17461 (Apr. 6, 2005).

44 The scoping report is publicly available at www.analyticalcorp.com, which is the website of the BIA's environmental contractor for the EIS.

Publication of the DEIS was delayed for nearly a year while Interior officials considered new policies concerning pending off-reservation trust applications submitted by tribes requesting a Secretarial two-part determination. During the delay, a Madera County Supervisor and Madera City Council member testified in two separate hearings before the Senate Indian Affairs Committee to urge publication of the DEIS. In addition, the Tribe's Congressional representative, George Radanovich, and others submitted letters of inquiry to the Department requesting that the process be allowed to proceed. (Copies of Congressional testimony by the local officials and selected letters are attached as Exhibit 2, Tab KK.) Ultimately, the Tribe's trust application was one of only approximately six nationwide and one of only two in California submitted by tribes requesting a Secretarial two-part determination which were allowed to move forward through the process.

On February 15, 2008, the Secretary published in the Federal Register a Notice of Availability ("NOA") of the draft EIS ("DEIS"). The NOA was also published in the Fresno Bee and the Madera Tribune on February 15, 2008. The NOA provided the public with the time and location of the public hearing on March 12, 2008 held for purposes of presenting the proposed project with alternatives and to accept public comments.⁴⁵ (Copies of the Federal Register Notices are attached as Exhibit 2, Tab JJ.)

In connection with the preparation of the EIS, the Bureau of Indian Affairs has served as the lead agency and the Tribe, the NIGC, the California Department of Transportation ("Caltrans"), the Madera Irrigation District, the U.S. Environmental Protection Agency ("USEPA") and the City of Madera have served as cooperating agencies. As part of the NEPA process, the cooperating agencies and all other interested parties have been, and will continue to be, given opportunities to learn about the Project and to provide comments regarding potential environmental impacts of the Project. In addition to the information summarized below, the DEIS contains a detailed presentation of potential environmental impacts of the Project and planned mitigation of those impacts.

Specifically, the DEIS analyses potential environmental impacts of the Project and makes determinations regarding which potential impacts are less than significant prior to mitigation and which potential impacts are less than significant or are potentially significant after mitigation.

Recommended Mitigation of Potentially Significant Environmental Impacts

The environmental impacts which the DEIS determines to be potentially significant before mitigation, and the recommended mitigation measures for those potentially significant impacts, are summarized below. Note that at the date of this memorandum we understand that additional mitigation measures have been added in a final EIS ("FEIS") in response to comments received on the DEIS. However, with the exception of operational air quality mitigation measures where additional mitigation measures have been added to ensure a less than significant impact after mitigation, the FEIS conclusions and summary impact analysis and mitigation remain similar to the DEIS. Therefore, only the DEIS is cited here.

45 73 Fed. Reg. 8898 (February 18, 2008)

Land Resources, Seismicity

Although the risk of soil liquefaction and seismically-induced flooding is low, the Site is located approximately 40 miles from the seismically-active San Andreas Fault. The DEIS recommends that the construction of the Facility adhere to the 1997 Uniform Building Code, including provisions relating to earthquake design.⁴⁶

Air Quality, Construction-Related Emissions

During the construction phase, construction-related activities could generate air pollutant emissions, including substantial amounts of fugitive dust. The DEIS recommends development of a Construction Emissions Mitigation Plan that requires compliance with San Joaquin Valley Air Pollution Control District fugitive dust rules, creation of a dust control plan, adoption of certain dust control practices, compliance with certain measures related to construction equipment, and creation of a construction traffic and parking management plan.⁴⁷

Air Quality, Emissions Generated by Operation

The Site is located in the San Joaquin Valley Unified Air Pollution Control District. During the operational phase, operational Reactive Organic Gases (ROG) and Nitrogen Oxide (NOx) emissions, primarily resulting from traffic to and from the Facility, are expected to exceed the District's significance thresholds. In order to reduce such emissions, the DEIS recommends that the Tribe adopt the following mitigation measures: provide shuttle transportation to major transit stations and multi-modal centers; provide transit amenities, such as bus turnouts, shelter benches, and lighting, route signs and other amenities around the transit shelter benches to encourage public use of transit services; provide for, or contribute to, dedication of land for off-site bicycle trails linking the Site to designated bicycle commuting routes in accordance with the regional Bikeway Master Plan; maximize the potential of passive solar design principles where feasible; use clean fuel vehicles in the vehicle fleet where practicable; provide a parking lot design that includes clearly marked and shaded pedestrian pathways between transit facilities and building entrances; provide amenities such as personal lockers, bicycle lockers and racks, bus pass subsidies and flexible schedules for employees who walk, bike or utilize public transit to work; provide electric vehicle charging facilities; provide preferential parking for vanpools and carpools; provide on-site pedestrian facility enhancements which are physically separated from parking lot traffic; and provide adequate ingress and egress at entrances to the Facility to minimize vehicle idling and traffic congestion; direct any parking structure ventilation away from inhabited areas.⁴⁸

46 DEIS, § 5.2.1.

47 DEIS, § 5.2.3.

48 DEIS, § 5.2.3.

Air Quality, Odor Impacts

The proposed on-site wastewater treatment plant (WWTP) could represent a potentially significant source of odors if not operated properly. In order to reduce such effects, the DEIS recommends that the Tribe adopt the following mitigation measures: the WWTP shall be constructed with comprehensive odor control facilities; spray drift for the WWTP or spray disposal field shall not migrate out of the disposal field boundaries; spray field irrigation shall cease when winds exceed 30 miles per hour; and the WWTP shall be staffed with operators who are qualified to operate the plant safely, effectively, and in compliance with all permit requirements and regulations.

Air Quality, Toxic Air Contaminant Impacts

The proposed developments under Alternative A would not contribute or generate toxic air contaminants (TAC). However, bus and diesel truck traffic to and from the developments, especially in loading areas, would result in an increased concentration of diesel emissions in those areas, leading to a potentially significant effect. In order to reduce such effects, the DEIS recommends that the Tribe ensure that air intakes associated with the heating and cooling system are not located next to potential TAC-emitting locations.

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, the DEIS recommends that the Tribe adopt the following mitigation measures: the casino floor shall be ventilated to at least the standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers; the Tribe shall ensure that provisions are made for easy access to heating, ventilation, and air conditioning equipment requiring periodic maintenance; the Tribe shall ensure the use of low-emitting building materials where feasible; a non-smoking gaming area shall be provided; and signage shall be displayed or brochures made available to Facility patrons and employees describing the health effects of second-hand smoke.⁴⁹

Biological Resources, Migratory Birds and Other Special-Status Species

During the construction phase, any vegetation removal activities occurring during the nesting season could have a significant effect on migratory bird nests. If vegetation removal activities are to be conducted during the nesting season, a pre-construction survey shall be conducted prior to disturbance. If active migratory bird nests are identified, vegetation removal that would disturb these nests shall be postponed until after the nesting season, or a qualified biologist has determined the young have

⁴⁹ DEIS, § 5.2.3.

fledged and are independent of the nest site.⁵⁰

Cultural Resources, Cultural Resources, Paleontological Resources

Although no cultural or paleontological resources have been identified at the Site, there is a possibility that, during the construction phase, previously unknown archaeological or paleontological resources or human remains will be encountered. If such resources or remains are discovered, all work within 50 feet of the find shall be halted until a professional archaeologist, or paleontologist if the find is of a paleontological nature, can assess the significance of the find. If any find is determined to be significant by the archaeologist, or paleontologist as appropriate, then representatives of the Tribe, the NIGC and the BIA shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards. If human remains are discovered during ground-disturbing activities on Tribal lands, work shall halt in the vicinity, the Madera County Coroner should be notified immediately, and, pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), Section 10.4, Inadvertent Discoveries, a Tribal Official and BIA representative will be contacted immediately. No further ground disturbances shall occur until the Tribal Official and BIA representative have examined the findings and agreed on the appropriate course of action.⁵¹

Resource Use Patterns, Transportation and Air Quality; Carbon Monoxide Emissions Generated by Operation

Certain roadway and freeway segments and intersections in the vicinity of the Site currently operate at levels of service below applicable thresholds. With the addition of traffic to and from the Facility and other developments planned in the area, those and other segments and intersections would operate at reduced levels of service. Also, intersections which operate below certain level of service thresholds could result in carbon monoxide concentrations from idling vehicles. The DEIS identifies roadway segments, freeway segments and intersections which the County, the City or Caltrans could consider improving as of the date the Facility opens or as of the year 2030. The DEIS recommends that the Tribe make financial contributions to those governmental authorities equal to the Tribe's fair share of the costs of any such improvements which are undertaken.⁵² None of the recommended road improvements are more than 8 miles from the Site and none involve the acquisition of significant additional lands or rights of way. The County MOU and the City MOU do not commit the County or the City to undertake the recommended road improvements, but do provide that the Tribe shall make fair share contributions for

⁵⁰ DEIS, § 5.2.4.

⁵¹ DEIS, § 5.2.5.

⁵² DEIS, § 5.2.7.

those road improvements which are undertaken. In the County MOU and the City MOU, the County and the City acknowledge that the Project does not create a need to make road improvements and that the Tribe would be able to construct and operate the Project if no road improvements were to occur.⁵³

Resource Use Patterns, Land Use

The Site is within the influence of the Madera Municipal Airport. In order to reduce the amount of light which would otherwise escape from the Site, the DEIS recommends installing specified types of lighting fixtures and bulbs. The DEIS also recommends maintaining the current aviation easement, which includes prohibitions on obstructing certain airspace and creating certain electrical interference or visual impairments. Finally, the DEIS recommends that the Tribe submit a "Notice of Proposed Construction or Alteration" to the Federal Aviation Administration due to the temporary use of a crane to construct the project.⁵⁴

Public Services, Fire Protection

During the construction phase, construction activities could introduce potential sources of fire to the Site. Mitigation measures are recommended to reduce the risk of fire from construction activities.

Other Values, Noise

During the construction phase, noise levels from mechanical equipment may exceed noise significance criteria. Mitigation measures are recommended to reduce construction noise consequences including restricting construction activities to weekdays during normal daytime hours where feasible and designing, installing, and screening mechanical equipment.⁵⁵

Other Values, Hazardous Materials

Although not anticipated, construction personnel could encounter contamination during construction-related earth moving activities which could pose a risk to human health and/or the environment. Also, the amount or types of hazardous materials that would be stored, used and generated during the operation of the Facility could have a potentially significant impact on the environment and public. Mitigation measures relating to removing or managing hazardous materials located or stored at the Site are recommended in the DEIS.⁵⁶

In sum, many of the environmental impacts which the DEIS determines to be potentially significant before mitigation only occur during the construction phase,

53 County MOU, §2(a)(ii); City MOU, § 2(a)(iii).

54 DEIS, § 5.2.7.

55 DEIS, § 5.2.9.

56 DEIS, § 5.2.9.

) such as discharge of pollutants and fugitive dust from construction activities or construction noise. Other potential impacts may never occur, such as the possibility of encountering significant paleontological resources or migratory bird nests. Still other potential impact can be mitigated by design features, such as building an earthquake-resistant and water and energy efficient building. The only environmental impact which the DEIS determines could continue to be significant after mitigation is mobile emissions from traffic to and from the Facility once the Facility is operating. (The current version of the FEIS addresses this impact with additional mitigation measures.)

In any event, the Tribe intends to adopt and implement substantially all of the mitigation measures recommended in the DEIS. As discussed below, the Tribe has entered into binding and enforceable Memoranda of Understanding with the County, the City and the District which legally commit the Tribe to adopt and implement certain mitigation measures which are recommended in the DEIS or which are otherwise considered to be important to the local governmental entity. The Tribe also intends to enter into a Memorandum of Understanding or similar agreement with Caltrans as required under Section 11.8.7(c) of the Compact.

County MOU Mitigation Measures

) In the County MOU, the Tribe has agreed to provisions intended to mitigate potential impacts of the Project on the environment and the surrounding community. Those provisions include the following:

- (i) the Tribe has not requested the County to provide water, wastewater, electricity, natural gas or telecommunication services to the Site;⁵⁷
- (ii) in the event the Tribe develops and constructs its own wastewater treatment system on the Site, the Tribe shall (a) obtain a National Pollution Discharge Elimination System permit for wastewater discharge if and as required by the Clean Water Act from the USEPA, (b) construct a tertiary treatment system or similar system, and (c) to the extent feasible and commercially reasonable, incorporate measures to minimize wastewater flows and use recycled water;⁵⁸
- (iii) the Tribe shall obtain solid waste services from the County's solid waste franchise and implement single stream recycling and green waste diversion;⁵⁹
- (iv) in the event such issues are not addressed in the Tribal-State gaming compact, the Tribe shall enter into agreements or other arrangements with the County regarding food and beverage handling, safe drinking water standards, and building codes and inspections, which agreements or other arrangements shall contain provisions no less favorable to the County than the provisions set forth in previous California Tribal-State gaming compacts;⁶⁰

57 County MOU, § 6(a).

58 County MOU, § 6(c).

59 County MOU, § 6(d).

60 County MOU, § 6(e).

- (v) the Tribe shall prohibit persons under the age of 21 from entering and remaining in any area in which gaming activities are being conducted;⁶¹
- (vi) the Tribe shall not construct a golf course on the Site during the term of the County MOU unless otherwise agreed by the City of Madera;⁶²
- (vii) the Tribe shall not develop, construct or operate a water park on the Site during the term of the County MOU;⁶³
- (viii) the Tribe shall work in good faith to employ qualified residents of the County at the Facility with the goal that fifty percent (50%) of the new hires will be County residents;⁶⁴
- (ix) the Tribe may enter into mutual aid agreements or other arrangements with the County relating to fire protection, emergency medical, first responder and law enforcement responses;⁶⁵ and
- (x) the Tribe may enter into agreements with the County relating to investigation, jurisdictional or other similar issues.⁶⁶

City MOU Mitigation Measures

In the City MOU, the Tribe has agreed to provisions intended to mitigate possible impacts of the Facility on the environment and the surrounding community. Those provisions include the following:

- (i) the Tribe has not requested the City to provide water, wastewater, electricity, natural gas or telecommunication services to the Site;⁶⁷
- (ii) in the event the Tribe develops and constructs its own wastewater treatment system on the Site, the Tribe shall (a) obtain a National Pollution Discharge Elimination System permit for wastewater discharge if and as required by the Clean Water Act from the United States Environmental Protection Agency, (b) construct a tertiary treatment system or similar system, and (c) to the extent feasible and commercially reasonable, incorporate measures to minimize wastewater flows and use recycled water;⁶⁸
- (iii) the Tribe shall work in good faith to employ qualified residents of the City at the Gaming Facility with the goal that thirty-three percent (33%) of the new hires from the County will be City residents;⁶⁹ and
- (iv) the Tribe may enter into mutual aid agreements or other arrangements with the City relating to fire protection, emergency medical, first responder and law enforcement responses.⁷⁰

61 County MOU, § 6(f).

62 County MOU, § 6(g).

63 County MOU, § 6(h).

64 County MOU, § 6(i).

65 County MOU, § 7(a).

66 County MOU, § 7(b).

67 City MOU, § 6(a).

68 City MOU, § 6(c).

69 City MOU, § 6(d).

70 City MOU, § 7(a).

District MOU Mitigation Measures

In the District MOU, the Tribe agreed to provisions intended to mitigate impacts of the Project on water drainage. Those provisions include adoption of a grading and drainage plan to ameliorate the loss of floodplain storage on the Site through the construction of an onsite detention system, including a storm drainage basin, grassy swales, and stormwater detention basins.⁷¹

(b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;

Social Structure of the Community

Crime

The existence of the Facility will not result in a significant increase in crime in the surrounding community beyond the petty crime typically associated with any commercial facility of similar size. The DEIS examines the question of crime, and concludes that, based on comparative studies of other jurisdictions in California with large-size Indian casinos, that no definitive link has been found between gaming facilities and increased regional crime rates. The DEIS concludes that although an increase in calls for service might be expected as would be the case with any large-scale development, the Project will not result in an increased regional crime rate.⁷² In any event, the Tribe intends to establish a sophisticated surveillance program and otherwise operate the Facility in a manner which will minimize crime.

Problem Gambling

While operation of a gaming facility could increase the percentage of problem gamblers in the surrounding community, problem gambling may be attenuated, or possibly reduced, through the expansion of problem gambling services offered by the Facility. Problem gambling services to be provided by the Facility are described below.

Age Limit

In order to reduce potential impacts of the Facility on persons who are under 21, the Tribe has agreed in the County MOU to limit gambling to persons 21 or older.⁷³

Infrastructure and Services

Utilities

Pacific Gas & Electric Company (PG&E) supplies electricity and natural gas services

71 District MOU, § 4(a).

72 DEIS, § 4.7.1, pages 4.7-6 through 4.7-8.

73 County MOU, § 6(f).

and Southern Bell Company provides telecommunication services to the area around the Site. The DEIS does not anticipate that those companies will have any capacity or other constraints in providing such services to the Site. The Tribe's gaming enterprise will pay the applicable fees to receive the necessary electrical, natural gas and telecommunication services.

Water Supply Infrastructure

Currently, the proposed Facility has several options, both onsite and offsite, for water service. Water for the proposed Facility could be supplied by either groundwater wells or the City of Madera Domestic Water Service. While the increased water demand caused by the Facility will necessitate infrastructure upgrades if City water services are utilized, the Tribe is prepared to pay for any upgrades required. Thus, regardless of which water supply strategy is ultimately chosen, the Facility will not result in a significant impact to water supply services.

Wastewater Infrastructure

Onsite wastewater options, including sprayfield disposal, leachfield disposal, surface water discharge, and water reuse, would be paid for and operated onsite by the Tribe and would thus have no impact on the City of Madera wastewater infrastructure. If an off-site option is chosen, the Tribe would use the City of Madera's wastewater treatment infrastructure and will pay for services and any necessary upgrades to infrastructure. In light of the City's available wastewater treatment system capacity, the Facility will not have a significant impact on wastewater system infrastructure.

Housing

The Project is estimated to draw approximately 836 new residents to the County.⁷⁴ However, this growth is not expected to place any undue burden on residential development in the area, since new housing developments are already underway and are expected to absorb the increased population. Also, the Tribe has agreed in the County MOU to make contributions to the County of \$250,000 per year to supplement the County's budget for neighborhood housing or other workforce programs.⁷⁵

Community Character and Land Use Patterns

Residential Areas

The Site is undeveloped land situated at a distance from residential and other sensitive areas between the only two Cities in the County, Madera and Chowchilla. While there are some rural residential areas near the Site, mostly commercial operations exist immediately adjacent to State Highway 99. (DEIS, § 3.4.4, page 3.4-34.) The nearest residential area is located some distance away on the other side of a two-lane surface road (Golden State Road) and a busy, four-lane

⁷⁴ DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.1.3, page 12.

⁷⁵ County MOU, § 3(a)(v)(A).

divided highway (SR-99) and corresponding rights-of-way. High-value residential properties are not currently in the vicinity of the Site. The proposed Facility will cover only 55 acres of the 305-acre Site, and there will be a land buffer between the Facility and other properties surrounding the Site.

Agricultural Areas

The land surrounding the Site is used primarily for agricultural purposes, and such use will not be significantly impacted by the Facility. Although the Project may contribute to the existing trend of diminishment of agricultural land in the area, the Project will also mitigate such loss in the immediate area by commercially developing only a portion of the overall Site. In addition, the Tribe acknowledges the importance of the agricultural character of the surrounding community in the District MOU and agrees not to interfere with agricultural operations in the surrounding community. More specifically, the District MOU states that

[t]he Tribe recognizes the importance of agriculture to the economy of Madera County and supports the operation of properly conducted agricultural operations within the County of Madera. The Tribe acknowledges the possible inconvenience or discomfort arising from such operations, including, but not limited to, noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The Tribe is prepared to accept such inconveniences or discomfort as a normal and necessary aspect of operating the Project in a County where agriculture is the primary economic engine and recognizes the right of farms and agricultural operations located near the Facility to engage in agricultural activities for commercial purposes in a manner consistent with proper and accepted customs and standards without incurring liability for nuisance as set for under California Civil Code Section 3482.5. The Tribe has no jurisdiction, intent, or inherent sovereign powers to interfere with the right to farm as guaranteed under State or local law.⁷⁶

Noise and Light

While the Project will impact noise and light levels in the area, the development plans place the Facility in the center of a large tract of land with the explicit intention of creating a buffer between the Facility and the surrounding land, thus mitigating possible noise and light detrimental impacts. Also, see the various noise and light related mitigation measures in Section 5.0 of the DEIS.

Zoning

If taken into trust, local zoning laws will not apply to the Site. Nonetheless, the DEIS concludes

⁷⁶ District MOU, § 5(a).

that no significant land use effects, such as precluding existing or planned land uses or disruption of access or conflicts with existing land uses, would occur. In addition, the County MOU provides that, if such issues are not addressed in the Tribal-State gaming compact, the Tribe will enter into agreements or other arrangements with the County regarding building codes and that those agreements or other arrangements shall contain provisions no less favorable to the County than the provisions set forth in previous California Tribal-State gaming compacts.⁷⁷ In addition, the County MOU places limitations on what developments can occur on the Site, such as prohibiting development of a golf course or water park without the consent of Madera County or the City of Madera.⁷⁸

Airport

Although the Site lies in close proximity to the Madera Municipal Airport, the Tribe has made significant efforts to tailor development plans so as to reduce possible detrimental impacts to airport operations. In addition, mitigation efforts will include reducing light emissions and maintaining aviation easements, thereby reducing potential impacts on human safety and airport operations to a less than significant level.

(c) Anticipated impacts on the economic development, income, and employment of the surrounding community;

Economic Development and Income

Based on the DEIS and terms of the MOUs, the Tribe projects that development, construction and operation of the Facility would have a beneficial, rather than a detrimental, impact on the surrounding community by stimulating economic development and income. Commercial and residential development in the County is currently lagging, particularly with the recent economic downturn. The Project will provide a much needed boost to the local commercial economy, increasing demand for retail and office development. Commercial development plans are in place to absorb some of the expected growth.

The increased economic development from the construction and operation of the Facility is expected to result in increased income to the County and the City of Madera in the form of increased tax and other revenues. There will also be increased revenue to the County, the City of Madera and local non-profit foundations because of the contributions which the Tribe has agreed to make to such local governments and non-profit foundations pursuant to the County MOU and the City MOU.⁷⁹

Employment

In 2004, the unemployment rate in Madera County fluctuated between 6.5% and 11.8%, reflecting, in part, the seasonality of jobs in the agricultural sector.⁸⁰ As a result of the high

77 County MOU, § 6(e).

78 County MOU, §§ 6(f) and 6(g).

79 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 2.2, page 2.

80 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 2.3, page 3.

unemployment rate, the seasonality of agricultural jobs and other factors, the average annual household income in 2004 was \$43,942 for the City of Madera and \$52,131 for the County of Madera. These figures are substantially below the US average of \$63,301 and the California average of \$73,464 for the same year.⁸¹ By February 2009, the unemployment rate in Madera County rose to 13.8%, compared to an unadjusted unemployment rate of 10.9% for California and 8.9% for the nation during this same period. The reported unemployment rate for the City of Madera, as of March 2009, is a staggering 19.3%.⁸² The surrounding community clearly needs new employment offerings.

The construction and operation of the Facility would have the beneficial impact on the surrounding community of creating desperately needed temporary construction jobs and permanent positions at the Facility. It is estimated that, during the construction phase, the Project would create approximately 2,441 jobs.⁸³ Although most of these jobs fall within the construction sector, other jobs are created in multiple other sectors of the economy.

It is estimated that the Facility would employ 1,291 full-time employees and 283 part-time employees, which is a total of 1,461 full-time equivalents.⁸⁴ It is also estimated that the operation of the Facility would create an additional 858 indirect or induced jobs.⁸⁵ (Indirect jobs are those jobs which provide support services to the Facility, but which are not directly paid by the Facility, such as the baker who provides bread to the Facility. Induced jobs are other jobs which are created due to the ripple effect of spending induced by the Facility on the economy as a whole, such as the hair dresser who cuts the hair of an employee.) Thus, the Facility is estimated to create a total of 2,441 temporary jobs and 2,319 permanent direct, indirect or induced jobs.

The Tribe is committed to helping reduce unemployment in the surrounding community. In the County MOU, the Tribe agreed that it will "work in good faith with the Cities and the County to employ qualified residents of the County at the Facility" with the goal that "fifty percent (50%) of the new hires will be County residents to the extent permitted by applicable law. Prior to the

81 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 2.2, page 2.

82 State of California Employment Development Department ("EDD"), Labor Market Information Division, Monthly Labor Force Data for Counties and for Cities and Census Designated Places, dated February 2009 and updated March 20, 2009. <http://www.labormarketinfo.edd.ca.gov>. The actual number of people who are unemployed is likely to be higher since the term "unemployment" is defined by the Bureau of Labor Statistics ("BLS") as people who do not have a job, have actively looked for work in the past four weeks, and are currently available for work. Also, people who were temporarily laid off and are waiting to be called back to that job are counted as unemployed.

However, the unemployment rates cited here do not include those who are jobless and have not looked for work within the past four weeks, since they are removed from the labor force by BLS and therefore no longer counted as unemployed. Neither do the unemployment rates include persons who feel they cannot get work, and so stop looking. These are called discouraged workers by the BLS. They too are typically removed from official unemployment statistics and labor force.

83 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.1.1, page 8.

84 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.12, page 9.

85 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.1.2, page 9.

) opening of the Facility, the Tribe shall offer training programs to assist County residents to become qualified for employment.”⁸⁶ In the City MOU, the Tribe agreed that it will “work in good faith to employ qualified residents of the City at the Gaming Facility with the goal that thirty-three (33%) of the new hires from the County will be City residents”.⁸⁷

Labor Agreements

The Tribe has entered into two labor agreements that will significantly benefit both citizens of the Tribe as well as residents of the surrounding community.

The Tribe has entered into a project labor agreement dated September 16, 2005, with the Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council, AFL-CIO. The project labor agreement will ensure that the Project is built with highly skilled union labor which is paid a living wage. (A copy of the project labor agreement is attached as Exhibit 2, Tab LL.)

The Tribe also has entered into a card check neutrality agreement dated January 31, 2006, with UNITE HERE International Union. The agreement will allow employees to organize more easily for the purpose of negotiating a collective bargaining agreement. The card check agreement will help ensure that the Tribe's employees are paid living wage jobs with benefits. (A copy of the card check neutrality agreement is attached as Exhibit 2, Tab MM.)

(d) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;

Costs of Impacts and Sources of Revenue

) The Site is located in an unincorporated area of the County of Madera near the boundary of the City of Madera. The Tribe anticipates that impacts of the Project would result in certain costs to the County of Madera, the City of Madera and the Madera Irrigation District. In order to provide a source of revenue to mitigate the effects of these costs on the County, the City and the District, the Tribe entered into the County MOU, the City MOU and the District MOU (collectively, the “MOUs”). As noted above, the Tribe also intends to enter into an agreement with Caltrans.

At the time they entered into each of the MOUs, 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 MOU's to make capital and annual contributions to the government entities and certain non-profit foundations which were intended, in the aggregate, to equal or exceed the costs of the impacts of the Project on the County, the City, the District 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 governmental 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, the District and the surrounding

86 County MOU, § 6(i).

87 City MOU, § 6(c).

community. In fact, the DEIS confirms that overall, MOU contributions and tax revenues generated by the Project far outweigh any negative fiscal impacts to either the City of Madera or Madera County. Thus a beneficial fiscal impact would result.⁸⁸

COUNTY COSTS AND REVENUES

Certain capital and annual costs to the County are directly induced by the construction or operation of the Facility and other costs are not directly related to the Facility but indirectly related to the Facility or the Project.

County Facility-Induced Capital Costs

Facility-Induced Capital Costs for Fire Protection

Although the County has acknowledged in the County MOU that the Tribe could construct its own fire station and that construction of a new County fire station is not necessary for the operation of the Facility, the County has expressed an interest in building a new fire station in the vicinity of the Facility. The Tribe has agreed in the County MOU to fund a substantial portion of the cost of constructing a new County fire station near the Facility and equipping that fire station with an aerial apparatus in order to adequately protect the Facility in the event of a fire. The capital costs for constructing the new fire station are estimated to be between \$1.2 and \$2 million and the cost of purchasing the aerial apparatus is estimated to be approximately \$750,000.⁸⁹ Thus, the total capital costs are estimated to be between \$1.95 and \$2.75 million.⁹⁰ The fair share of such costs attributable to the Project is also only a portion of such costs, because the fire station and aerial apparatus will provide benefits to the County, the City and the surrounding community, as well as to the Facility.

Facility-Induced Capital Costs for Roads and Transportation Resources

Although the County and the Cities have acknowledged in their respective MOU's that roadway improvements are not necessary for the operation of the Facility, the County and the City have expressed an interest in making certain roadway improvements in the area surrounding the Site. Therefore, the Tribe has agreed in its MOU's to pay the Tribe's fair share of the costs of road and transportation improvements undertaken by the City and County, which are estimated to cost up to \$4,000,000 for the City and between \$4,000,000 to \$15,000,000 for the County, as to be determined by a final traffic study prepared for the EIS or other later-prepared traffic analysis as mutually agreed upon with the Tribe.⁹¹ For example, the County MOU explains that such funds may be used by the County to pay for costs of construction, improvements, or environmental analysis of County roads and other transportation resources which the County elects to complete on the basis of the traffic study, and for any other road and transportation-related purposes as

88 DEIS, § 4.7.1, page 4.7-23.

89 DEIS, § 4.7.1, page 4.7-11; DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 14.

90 DEIS, § 4.7.1, page 4.7-11; DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 14.

91 County MOU, § 2(a)(ii); City MOU § 2(a)(iii).

mutually agreed to by the County and Tribe.⁹² The applicable City MOU provision is similar, except it includes references to roads that are annexed into the City.⁹³ Except for the Roads Department, the construction and operation of the Facility is not expected to result in increased capital costs by the other departments which are included in the County Resource Management Agency, including the Planning, Environment, Health, Sanitation, Engineering, Building Inspection and Fire Marshall Departments.⁹⁴

Facility-Induced Capital Costs for Schools

It is anticipated that the Facility would result in an increase in population in the County of 836 persons and that these new residents would result in an increase in the school population of 175 students in the Madera Unified School District, which is the largest school district in the County and the one which includes the Site and the City of Madera. Because the Madera Unified School District is undergoing a massive capital development campaign for its school system, it is anticipated that the school system has sufficient capacity to absorb an additional 175 students without requiring the construction of a new school.⁹⁵

County Facility-Induced Annual Costs

Facility-Induced Annual Costs for Fire Protection Services

The staffing of the new fire station which will be constructed using contributions by the Tribe will result in increased operating costs to the County for fire protection personnel. Personnel costs for 6 firefighters, 3 captains, 12 volunteer memberships and 21 sets of equipment are estimated to be approximately \$700,000 per year.⁹⁶

Facility-Induced Annual Costs for Law Enforcement Services

The Tribe anticipates that the Project will result in increased costs to the County for law enforcement services. Salaries, benefits and non-capital equipment costs for five deputy sheriffs and a one-half time sergeant position are estimated to be approximately \$500,000 per year.⁹⁷

Facility-Induced Annual 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.⁹⁸ 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.

92 County MOU, § 2(a)(ii).

93 City MOU § 2(a)(iii).

94 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 20.

95 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 21.

96 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 15.

97 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 16.

98 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 16.

Facility-Induced Annual Costs for Judicial System Services

The Project is not expected to result in significant increased costs for judicial system services. (The judicial system includes the District Attorney who prosecutes the crimes, the Public Defender who defends those accused who are indigent, the court that holds the trials, and the grand jury that indicts the accused.) Based on experience with the operation of another Indian gaming facility in the County, it is estimated that any increase in demand for judicial services will not be so large as to warrant hiring a new attorney to handle the increased case load.⁹⁹

Facility-Induced Annual Costs for Department of Corrections Services

Although the Tribe does not believe that the Project will lead to more criminal activity than is common for other commercial projects of the same size, it is estimated that the operation of the Facility would result in an additional 36 arrests per year. At an average cost of \$53 per night and an average stay of 24 nights, such arrests could result in an increased cost to the County Department of Corrections of \$46,000 per year. The total number of overnight stays is the equivalent of adding 2.4 prisoners per year, which is not expected to warrant a capital investment by the County in larger correction facilities.¹⁰⁰

Facility-Induced Annual Costs for Behavioral Health Services

It is estimated that the Project would lead to an increased demand for services from the County Department of Behavioral Health Services in connection with treating individuals with problem gambling disorders. It is estimated that the County would have to hire the equivalent of one half-time licensed counselor to meet the increased demand for services and that the cost to the County for a half-time licensed counselor would be approximately \$40,000 per year.¹⁰¹

Other Costs

New Resident-Induced Annual Costs for Services

For every new resident in the County, the County incurs an increase in costs which may not be related to the Facility-induced costs referenced above. These costs include the costs of providing new residents fire protection services, law enforcement, behavioral health services, social services, resource management agency services, and school services. These costs also include the costs of providing new residents with general administrative services, such as the costs associated with the County Board of Supervisors, library, animal control, human resources, information technology, insurance, tax collection, elections, contingency fund and other costs. It is estimated that the temporary jobs created during the construction phase of the Project will not result in a significant number of new residents locating in the County.¹⁰² However, it is conservatively estimated that the operation of the Facility will result in an increase of

99 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 17.

100 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 17.

101 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.1, page 19.

102 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.1.3, page 10.

approximately 836 new residents in both the incorporated and unincorporated areas of the County and that the increase in residents will result in an increase in costs to the County for services to new residents of approximately \$384,000 per year.¹⁰³

County Property Tax Losses

The 2008-09 property taxes for the Site were \$49,197.14, not including a separate assessment payable to the Madera Irrigation District which is discussed further below. (Copies of the 2009 Property Tax Bill for each of the parcels that comprise the Site are attached as Exhibit 2, Tab NN.) Under state funding formulas, the State receives the bulk of these revenues and the County, as subdivision of the State, receives the remaining portion. According to a letter from the Madera County Resource Management Agency to the BIA dated March 16, 2005, the County's portion of the property tax on the Property is "inconsequential (\$31)." (A copy of the letter is attached as Exhibit 2, Tab OO.) Therefore, the removal of the Site from the property tax rolls is not expected to result in a significant loss to the County of property tax revenues at the current rates.

Total County Costs

In sum, it is estimated that the Project will result in:

- (i) One-time capital costs to the County of up to \$17,750,000 for a new fire station, a new fire truck and roadway improvements;¹⁰⁴
- (ii) Facility-induced annual costs to the County of approximately \$1,289,000 per year for fire protection, law enforcement, Department of Corrections and Department of Behavioral Health services;¹⁰⁵ and
- (iii) new resident-induced annual costs to the County of approximately \$384,000 per year for services to new residents, including administrative services, fire protection, law enforcement, judicial services, Department of Corrections services, behavioral health services, social services, resources management agency services and school services.¹⁰⁶

County MOU Revenues

County MOU One-Time Revenues

In the County MOU, the Tribe agreed to make the following one-time contributions to the County of up to \$17,915,000 to mitigate potential one-time costs of impacts of the Project on the County and the surrounding community:

103 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.3, page 26.

104 DEIS, § 4.7.1, page 4.7-11, note 3 under Table 4.7-17; DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.3, page 25; and County MOU, § 2(a)(ii).

105 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.3, page 26.

106 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.2.3, page 26.

- (i) \$1,915,000 as the Tribe's fair share contribution toward construction of a new fire station to mitigate potential impacts of the Project on fire protection, emergency medical, first responder and law enforcement resources of the County;¹⁰⁷
- (ii) between \$4,000,000 and \$15,000,000 to pay the Tribe's fair share of the actual costs of construction, improvement, equipping and environmental analysis of County roads and other transportation resources in order to mitigate potential impacts of the Project on road and other transportation resources of the County;¹⁰⁸
- (iii) \$600,000 to mitigate additional potential impacts of the Project on the County's budget for roads and in lieu of road impact fees;¹⁰⁹
- (iv) \$200,000 to mitigate additional potential impacts of the Project on the County's budget for certain recreational properties, specifically including the Courthouse Park and the Ahawahee property;¹¹⁰
- (v) \$150,000 in order to mitigate potential impacts of the Project on the Madera Unified School District's budget for schools and in lieu of school impact fees;¹¹¹ and
- (vi) \$50,000 in order to mitigate the cost to the County of preparing and negotiating the County MOU.¹¹²

County MOU Annual Revenues

In the County MOU, the Tribe also agreed to make the following annual contributions to the County of up to \$2,935,000¹¹³ to mitigate potential recurring costs of impacts of the Project on the County and the surrounding community:

- (i) \$250,000 to be used to establish or supplement the County's budget for neighborhood housing or other workforce programs;¹¹⁴
- (ii) \$415,000 to be used to cover the costs of one-half of a sergeant position and five deputy positions for law enforcement;¹¹⁵
- (iii) \$1,200,000 to be used to cover the costs of three fire captains and six firefighters;¹¹⁶
- (iv) \$50,000 to be redistributed to the County Department of Behavioral Health Services to supplement its budget for alcohol education and the treatment and prevention of problem gambling and gambling disorders;¹¹⁷

107 County MOU, § 2(a)(i).

108 County MOU, § 2(a)(ii).

109 County MOU, § 2(a)(iii).

110 County MOU, § 2(a)(iv).

111 County MOU, § 2(a)(v).

112 County MOU, § 2(c).

113 This amount does not include the recurring contribution of \$1,100,000 made by the Tribe to local foundations established pursuant to § 3(a)(i)-(iv) of the County MOU.

114 County MOU, § 3(v)(A).

115 County MOU, § 3(v)(B).

116 County MOU, § 3(v)(C).

117 County MOU, § 3(v)(D).

- (v) \$70,000 for the maintenance, operation and preservation of open space within the Courthouse Park and the Ahwahnee property;¹¹⁸
- (vi) \$100,000 to fund additional public safety support/administrative positions within the County's public protection budget;¹¹⁹
- (vii) \$500,000 to be used to supplement the County's general fund public facilities budget;¹²⁰
- (viii) \$250,000 for redistribution to the City of Madera to be used to supplement the City's transportation budget and to mitigate additional potential impacts of the Project;¹²¹ and
- (ix) \$100,000 for redistribution to the City of Chowchilla to be used to supplement the City's transportation budget and to mitigate potential impacts of the Project.¹²²

County Facility-Induced Tax Revenues

The County derives tax revenues from property taxes, hotel and occupancy taxes and sales and use taxes. Because the Site would be owned by the United States in trust for the benefit of the Tribe, the Tribe would not owe property taxes on the Site and most patrons would be required to pay a hotel or occupancy tax for staying overnight at the Facility.¹²³ However, it is expected that, during the construction phase, the Project would result in a one-time increase in County sales and use tax revenues of \$216,809, and that, during the operational phase, the Project would result in a recurring increase in County sales and use tax revenues of \$83,530 per year.¹²⁴ Because it is estimated that there is more than enough housing stock currently under development in Madera County, it is not expected that the County would receive an increase in property taxes as a result of new residents moving into the area.¹²⁵

County New Resident-Induced Tax Revenues

In addition to tax revenues resulting from construction and patron spending at the Facility, new residents would also pay property and sales taxes to the County. Even if a new resident chooses to rent, a portion of the rent payment will be used to pay property taxes. Based on conservative assumptions, it is estimated that the Project would result in approximately 836 new residents within the boundaries of the County of Madera. The DEIS estimates that 418 out of the 836 new residents will be residents of the City of Madera, leaving a balance of 418 new residents projected to reside in the unincorporated areas of the County ("new County residents").¹²⁶ Table 4.7-15 of the DEIS calculates the per capita tax revenue received by the County from new County residents. According to the DEIS, each County resident pays an average of \$110 in

118 County MOU, § 3(v)(E).

119 County MOU, § 3(v)(F).

120 County MOU, § 3(vi).

121 County MOU, § 3(vi).

122 County MOU, § 3(vi).

123 DEIS, Table 4.7-14; DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.3.2, page 29-31.

124 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.3, page 28.

125 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.3.2, page 30.

126 DEIS, § 4.7.1, page 4.7-15.

County property, sales, and use taxes which are passed to the County and used to fund County operations. Since it is conservatively estimated that the Project would result in 418 new County residents, the estimated amount of County property, sales, and use tax revenues from these residents is approximately \$46,302 ($\$110 \times 418 = \$46,302$).¹²⁷

Total County Revenues

In sum, the Project would result in the following increased revenues to the County:

- (i) up to \$17,915,000 in one-time contributions by the Tribe to the County pursuant to the County MOU for a fire station, a fire truck, roadway improvements, road impact fees, recreational properties, schools and legal fees;¹²⁸
- (ii) up to \$2,935,000 in recurring annual contributions by the Tribe to the County pursuant to the County MOU for workforce or housing programs, police, fire, behavioral health, open space/parks, public facilities budget, the City of Madera and the City of Chowchilla;
- (iii) \$1,100,000 in recurring annual contributions by the Tribe to four foundations pursuant to the County MOU for charities, economic development, education and community development in the surrounding community;
- (iv) \$216,809 as a one-time increase in County sales and use tax revenues during the construction phase of the Project; and
- (v) \$83,530 as an annual increase in County sales and use tax revenues during the operational phase of the Project.
- (vi) \$46,302 as an increase in County sales and use tax revenues from 418 new residents:

Comparison of Total County Costs and Revenues

The total one-time contributions which the Tribe would make to the County pursuant to the County MOU is up to \$17,915,000 and the estimated one-time increase in County sales and use tax revenues as a result of the Project is \$216,809, yielding a total one-time increase in revenues of up to \$18,131,809. The total one-time costs which the Tribe estimates that the County would incur as a result of impacts of the Project are up to \$17,750,000. Therefore, the total one-time increase in revenues exceeds the total one-time increase in costs by \$381,809.

The total annual contributions which the Tribe would make to the County and the foundations pursuant to the County MOU are \$4,035,000. The total annual increase in County sales and tax revenues on operational spending from the Project (\$83,530) plus the annual increase in County sales and use tax revenues from the estimated 418 new County residents (\$46,302) is \$129,832. Thus the total annual revenues from the MOU and taxes are projected to be \$4,164,832. The total recurring annual costs which the Tribe estimates that the County would incur as a result of impacts of the Facility is approximately \$1,673,000. Therefore, the total recurring annual revenues and contributions exceeds the total estimated annual recurring costs by \$2,491,832.

¹²⁷ DEIS, § 4.7.1, page 4.7-20.

¹²⁸ DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.3.1, page 27.

County Revenues and Costs

	One-Time Revenues/Costs	Annual Revenues/Costs
MOU Revenue	17,915,000	4,035,000
Tax Revenue	+ <u>216,809</u>	+ <u>129,832</u>
	18,131,809	4,164,832
Costs	- <u>17,750,000</u>	- <u>1,673,000</u>
Net	+ 381,809	+ 2,491,832

Finally, the County MOU states that "The County has determined that the contributions referenced in Sections 2 and 3 [of the County MOU] are, in the opinion of the County after consultation with the Cities [of Madera and Chowchilla], sufficient to mitigate additional potential non-recurring and recurring impacts of the Trust Acquisition and the Project on the County and the Cities which are not specifically identified or mitigated elsewhere in this [County] MOU".¹²⁹

CITY COSTS AND REVENUES

City Facility-Induced Costs

Since the Site is located just outside the boundaries of the City of Madera, the Tribe anticipates that the Project would have impacts on the City of Madera which would result in increased capital and annual costs to the City of Madera.

City Facility-Induced Capital Costs

As contemplated by the City MOU, the City intends to hire a shift of six new law enforcement officers, which the Tribe believes is more than sufficient to cover potential impacts of the Project on the City's law enforcement resources. It is estimated that the capital costs associated with equipping such six law enforcement officers would not exceed \$200,000.¹³⁰ The Tribe will also pay up to \$4,000,000 for its share of road improvement costs incurred by the City. Except for capital costs associated with law enforcement equipment and road improvements, it is not expected that the Project would result in increased in capital costs to the City.¹³¹

City Facility-Induced Annual Costs

Because the Site is located outside the boundaries of the City, it is estimated that most Facility-induced annual costs will be borne by the County. For example, although the City has its own Police Department and roads, it relies upon the County for fire protection, Department of Corrections and behavioral health services. The costs of salaries, benefits and equipment for hiring the six City Police Department officers contemplated by the City MOU are estimated to be

¹²⁹ County MOU, § 3(a)(iv).

¹³⁰ City MOU, § 2(a)(i).

¹³¹ DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 8.2.1, page 74.

\$675,000 per year (\$640,000 in the first year).¹³² Except for the costs of those officers, it is not expected that the Project will generate Facility-induced annual costs to the City.¹³³

City New Resident-Induced Annual Costs

Based on conservative assumptions, it is estimated that the Project would result in approximately 418 new residents within the boundaries of the City of Madera.¹³⁴ According to the City's 2004-2005 budgets, the City spends approximately \$273.70 annually for each City resident.¹³⁵ Therefore, it is estimated that 418 new City residents would result new resident-induced costs to the City of approximately \$114,407 per year.¹³⁶

Total City Costs: In sum, it is estimated that the Project will result in the following increased costs to the City:

- (i) One-time capital costs of up to \$4,200,000 (\$200,000 + \$4,000,000 = \$4,200,000);
 - (ii) Facility-induced annual costs of \$675,000 per year (\$640,000 in the first year);
- and
- (iii) New resident-induced annual costs to the City of \$114,407 per year

City Revenue

City MOU One-Time Contributions

In the City MOU, the Tribe agreed to make the following one-time contributions totaling up to \$10,285,000 to the City to mitigate possible one-time costs of impacts of the Project on the City and the surrounding community:

- (i) \$200,000 to fund the initial capital costs for an additional shift of six City law enforcement officers;¹³⁷
- (ii) \$885,000 to supplement the City's budget for road and transportation improvements;¹³⁸
- (iii) up to \$4,000,000 to pay the Tribe's proportionate (i.e. fair) share of the actual costs of construction, improvement, equipping and environmental analysis of County roads and other transportation resources which are annexed into the City.¹³⁹
- (iv) \$200,000 to fund a specific plan update of the area near the Facility.

132 City MOU, § 3(a)(i).

133 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 8.2.1, page 73.

134 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.1.3, page 13.

135 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 8.2.1, page 75.

136 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 8.2.2, page 75.

137 City MOU, § 2(a)(i).

138 City MOU, § 2(a)(ii).

139 City MOU, § 2(a)(iii).

- (v) \$2,500,000 to supplement the City's budget to fund the water and recreation features of the City's golf course.
- (vi) \$2,000,000 to enhance recreational opportunities for youth in the City and surrounding community.
- (vii) \$500,000 for public safety training to police and fire personnel in the City and surrounding region.

City MOU Annual Contribution

In the City MOU, the Tribe also agreed to make the following annual contributions to the City of Madera totaling \$1,075,000 to mitigate possible recurring costs of impacts of the Facility on the City and the surrounding community:

- (i) \$675,000 (\$640,000 in the first year) per year to cover the salaries, benefits, and non-capital equipment of six new law enforcement officers;¹⁴⁰
- (ii) \$250,000 per year to supplement the City's general fund (but only if the County fails to provide this amount to the City pursuant to the County MOU).¹⁴¹
- (iii) \$100,000 to supplement the City's downtown reinvestment fund.
- (iv) \$50,000 to supplement the City's budget to extend the city bus system.

City Taxes and Other Revenues

It is estimated that each City resident pays an average of \$110 in property and sales taxes which are passed through to the City and used to fund City operations.¹⁴² Based on the City's 2004 budget and population figures, it is estimated that the City's total revenues from property and sales taxes and other sources are \$230 per resident.¹⁴³ It is conservatively estimated that the Project would result in 418 new City residents.¹⁴⁴ Therefore, it is estimated that the new City residents would result in an increase in City property and sales tax and other revenues of approximately \$96,000 per year ($\$230 \times 418 = \$96,265$).¹⁴⁵

Total City Revenues

In sum, it is estimated that the Project will result in the following increased revenues to the City:

- (i) One-time contributions pursuant to the City MOU of up to \$10,285,000;
- (ii) Annual contributions pursuant to the City MOU of \$1,075,000 per year; and
- (iii) Property and sales tax and other revenues of \$96,000 per year.

One-Time Costs and Revenues

140 City MOU, § 3(a)(i).

141 City MOU, § 3(a)(iv).

142 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 8.3.2, page 76.

143 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 8.3.2, page 77.

144 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.1.3, page 13.

145 DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 8.3.2, page 77.

Pursuant to the City MOU, the City will receive one-time contributions totaling \$10,285,000. It is estimated that the impacts of the Project will result in one-time capital costs to the City of up to \$4,200,000. Therefore, the one-time contributions which the City will receive from the Tribe pursuant to the City MOU exceed the estimated one-time capital costs to the City resulting from impacts of the Project by approximately \$6,085,000.

City One-Time Costs and Revenues

City MOU Revenue	\$10,285,000
Costs	- <u>4,200,000</u>
Net	+ 6,085,000

Annual Costs and Revenues

As a result of the Project, the City will receive annual contributions from the Tribe of \$1,075,000 per year pursuant to the City MOU and an estimated increase of tax and other revenues to the City of \$96,000 per year from new residents. It is estimated that the Project will result in an increase in annual operational costs to the City of \$675,000 per year for law enforcement salaries, benefits and equipment and \$114,407 per year as a result of new resident demands. Therefore, the estimated annual contributions and revenues which the City will receive exceed the estimated increase in annual costs by approximately \$381,593 per year.

City Annual Costs and Revenues

City MOU Revenue	\$1,075,000
Tax Revenue	+ <u>96,000</u>
Total Revenue	\$1,171,000
Facility-Induced Costs	- 675,000
<i>New Resident-Induced Costs</i>	- <u>114,407</u>
	+ \$ 381,593

Also, the City MOU states that "The City has determined that, in the opinion of the City, the contributions referenced in Sections 2 and 3 [of the City MOU] are sufficient to mitigate possible non-recurring and recurring impacts of the Trust Acquisition and the Project on the City which are not specifically identified or mitigated elsewhere in this MOU, and, as a result, the Trust Acquisition and the Project will not have a detrimental impact on the City and the surrounding community".¹⁴⁶

OTHER GOVERNMENTAL ENTITY COSTS AND REVENUES

Costs of Impacts to the Madera Irrigation District

District Costs

146 City MOU, § 4(a).

In 2009, the tax assessment for the Site by the Madera Irrigation District Site totaled \$7,360.53. (Copies of the 2009 Statement of Assessment of Taxes for each of the parcels comprising the Site are attached as Exhibit 2, Tab PP.) If the Secretary acquires the Site in trust for the benefit of the Tribe, the Site would be removed from the local tax roles, resulting in a loss to the District of approximately \$7,400 per year in standby or other fees, assessments, and taxes.

The Tribe and the District estimated in the District MOU that the Tribe's fair share of costs relating to the Project associated with other activities of the District, including recharge efforts, would be \$36,000 per year.

District Revenues

In the District MOU, the Tribe agreed to make the following annual contributions to the District to mitigate possible annual costs of impacts of the Facility on the District and the surrounding community:

- (i) \$11,500 per year in lieu of any standby or other fees, assessments and taxes to the District related to the Site;¹⁴⁷ and
- (ii) \$36,000 per year as an equitable share of costs associated with District activities including recharge efforts to help address any overdraft of the groundwater basin associated with the Site.¹⁴⁸

Also, the District MOU further states that [t]he Parties acknowledge and agree that the amount of this [\$36,000] contribution is sufficient to compensate the District for up to 450 acre feet of annual water usage on the [Site]. ... In the event the amount of annual water usage monitored and reported by the Tribe pursuant to Section 4(c) [of the District MOU] exceeds 450 acre feet, within (30) days of the District's receipt of such report, the Tribe shall replace the difference between the actual water usage and 450 acre feet by either (1) paying to the District the equivalent of the current market cost to deliver the replacement water, including all transfer and wheeling fees, to the District, or (2) purchasing and delivering such replacement water to the District.¹⁴⁹

Comparison of District Costs and Revenues

The Tribe estimates that the annual contributions which the Tribe would make to the District pursuant to the District MOU would easily exceed the estimated annual costs to the District resulting from costs of impacts of the Project. The Tribe has agreed to compensate the District over \$3,100 more a year than the amount the District currently receives in taxes for the Site. Further, the Tribe has agreed to fully compensate the District for the cost to replace the water used by the Project. In the likely event the Project uses less than 450 acre feet; the Tribe's payments will be greater than the costs associated with the impact on the District.

Costs of Impacts and Sources of Revenue for the City of Chowchilla

¹⁴⁷ District MOU, § 2(a).

¹⁴⁸ District MOU, § 2(b).

¹⁴⁹ District MOU, § 2(b) and (d).

City of Chowchilla Facility-Induced Costs

The Site is approximately 13 miles from the City of Chowchilla, Madera County, California. Because of the distance of the Site from the City of Chowchilla, the Tribe does not expect that the Project would require the City of Chowchilla to incur any significant roadway or other capital costs or any significant increased Fire Department, Police Department or other Facility-induced costs.

City of Chowchilla New Resident-Induced Costs and Revenues

It is estimated that only 8 of the projected 836 new County residents resulting from the Project would be residents of the City of Chowchilla.¹⁵⁰ Assuming that the operational costs per resident for the City of Chowchilla are the same as the operational costs of \$230 per resident for the City of Madera, the Tribe estimates that the increased annual operational costs to the City of Chowchilla as a result of the new resident demand associated with the Project would be approximately \$1,840 per year. Assuming that the revenue per resident for the City of Chowchilla is the same as the revenue of \$230 per resident for the City of Madera, the Tribe estimates that the City of Chowchilla would receive an increase in property and sales taxes and other revenues from new City of Chowchilla residents associated with the Project of approximately \$1,840 per year. Therefore, the Tribe estimates that new resident-induced costs would be substantially or entirely offset by new resident-induced revenues and that, in any event, the amount of such costs and revenues is not significant.

County MOU Revenues

The County MOU provides that the Tribe shall make a contribution to the County of \$100,000 per year which the County shall redistribute to the City of Chowchilla.¹⁵¹ Therefore, the Tribe estimates that the revenues which the City of Chowchilla will receive as a result of the Project are substantially in excess of the costs which the City of Chowchilla will incur as a result of the Project.

Costs of Impacts to Other Local Governmental Authorities

The Site is located approximately 15, 14, 14 and 14 miles from the boundaries of the Counties of Merced, Mariposa and Fresno and the City of Fresno, respectively. There are no other counties or cities which are located within 25 miles of the Site.

Because of the distance of the Site from those jurisdictions, the Tribe does not expect that the Project would require the Counties of Merced, Mariposa or Fresno, the City of Fresno or other

150 DEIS, § 4.7.1, page 4.7-5; DEIS, Appendix R - Socioeconomic Assessment, October 2005, Section 3.1, page 13. The DEIS notes that the Socioeconomic Assessment assumes that 8 of the 836 new residents would live in the City of Chowchilla. But because these 8 residents are not expected to result in measurable socioeconomic effects to the City of Chowchilla, they have been added to the unincorporated County totals of 418 new County residents.

151 County MOU, § 3(a)(vi).

local governmental authorities to incur capital costs as a result of the Project, such as capital costs to build roadway improvements, fire protection and public safety facilities, corrections facilities or schools.

Also, because Facility-induced costs will be incurred primarily by the County and City of Madera (except in the case of occasional fire and other emergency situations), the Tribe also does not anticipate that such other local governmental authorities would incur significant Facility-induced annual costs associated with the Project, such as increased costs for fire protection, law enforcement, Department of Corrections or behavioral health services.

Finally, because of the unemployment rates in Merced, Mariposa and Fresno Counties and the City of Fresno and because the Tribe has agreed in the County MOU and the City MOU to attempt to hire residents of Madera County and the City of Madera,¹⁵² the Tribe estimates that the Project will not result in a significant increase in new residents in those jurisdictions or a corresponding increase in new resident demand for services. However, even if the Project were to result in new residents or new resident demands for services in those outlying jurisdictions, the Tribe estimates that the increased costs of providing such new resident-related services would be substantially or entirely offset by increased property and sales taxes, fees and other revenues paid by such new residents.

Tribal-State Gaming Compact Revenue

As previously discussed, the Tribe signed its Compact with the Governor of the California on April 28, 2008. The Compact provides for revenue-sharing payments to the State based on a percentage of annual net win from the operation of gaming devices and banking and percentage card games. Based on projected revenues, the Tribe expects that the State will receive approximately \$29,500,000 in the first year of operation and larger amounts thereafter. These contributions will constitute a source of revenue to the State which will be more than sufficient to mitigate the costs of any impacts of the Project on the State. Also, since the County, the City and the surrounding community are located within the State of California, the Tribe expects that a proportionately small, but nevertheless economically meaningful, amount of the revenue-sharing payments which the Tribe makes to the State pursuant to the Compact would directly or indirectly benefit the County, the City and the surrounding community. Finally, a portion of the compact revenues will be used by Caltrans to pay for local improvements to SR-99 which will benefit the surrounding community. Section 4.3.3(c) (1) of the Compact provides for this benefit by allowing the Tribe to deduct payments made to Caltrans for such improvements pursuant to an intergovernmental agreement between Caltrans and the Tribe.

(e) Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment;

The Tribe will adopt and fund responsible gambling and self-limitation policies pursuant to Section 9.2 of the Compact.

¹⁵² County MOU, 6(i) City MOU, § 6(c).

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 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, to receiving direct mail marketing promotions, and to the facility. 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 committed to provide \$50,000 annually under the County MOU for the purpose of funding the County's alcohol and problem gambling) prevention and treatment program.¹⁵³

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

There are no nearby Indian tribes as defined under 25 C.F.R. § 292.2. Thus, there are no nearby Indian tribes with significant historical connections to the Site. For further information, see Section 292.17(i) above. As confirmed in Section 4.6.1 of the DEIS, no significant cultural resources were identified within or adjacent to the Project site. However, the DEIS outlines the Tribe's commitment to engaging in appropriate mitigation if such resources are encountered.¹⁵⁴

(g) Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and inter-governmental agreements with affected local governments.

¹⁵³ County MOU, § 3(v)(D).

¹⁵⁴ DEIS, § 5.2.5.

Net Benefits

After taking into account the mitigation measures set forth in DEIS and the MOUs which the Tribe has signed, the Project would not be detrimental to the surrounding community. In fact, the Tribe believes that, on balance, the Project would be a net benefit to the surrounding community.

The Project would stimulate economic growth which will be beneficial to the County, the City and the surrounding community. In addition, according to the DEIS, the revenues the Tribe would pay to the County pursuant to the County MOU and to the City pursuant to the City MOU exceed the costs of the Project to the County and the City and could therefore help fund projects of interest to the County, the City and the surrounding community.

County MOU Benefits

Pursuant to the County MOU, the Tribe would make contributions to the County which would pay the Tribe's fair share or more of the costs of the impacts of the Project on the County and the surrounding community, including contributions which would supplement the County's budget for fire stations, road improvements, housing or workforce programs, law enforcement personnel, fire protection personnel, behavioral health services, recreational properties, public safety administrative positions, and public facilities.

In addition, the Tribe has agreed in the County MOU to establish the following foundations and to make the following annual contributions totaling \$1,100,000 to those foundations to provide benefits to the surrounding community which are not directly associated with costs of the Project to the County or the surrounding community, but which would provide substantial benefits to the County and the surrounding community:

- (i) \$200,000 to the North Fork Rancheria Charitable Foundation to be used for purposes which mitigate potential social impacts of the Project or otherwise benefit the County, including recreation, park services, senior centers, youth programs and service club projects;¹⁵⁵
- (ii) \$250,000 to the North Fork Rancheria Economic Development Foundation to be used for County-wide purposes which mitigate potential impacts of the Project, benefit the County or are unanimously agreed upon by the Foundation's board;¹⁵⁶
- (iii) \$400,000 to the North Fork Rancheria Educational Foundation to be used for purposes which provide funding to support the instructional programs of the local school districts, to support work force development and training programs or to mitigate potential impacts of the Project;¹⁵⁷ and
- (iv) \$250,000 to the North Fork Rancheria Unincorporated Area Foundation to be used for purposes which benefit unincorporated area of the County, including for community development, education, beautification, infrastructure,

155 County MOU, § 3(a)(i).

156 County MOU, § 3(a)(ii).

157 County MOU, § 3(a)(iii).

) parks/recreation, business relations/development/attraction, and assistance to other non-profit organizations.¹⁵⁸

City MOU Benefits

Pursuant to the City MOU, the Tribe would make contributions to the City which would pay the Tribe's fair share or more of the costs of the impacts of the Project on the City and the surrounding community, including contributions which would provide funds to expand the City's law enforcement resources, improve the City's roads and contribute to the City's general fund. In addition, the Tribe has agreed in the City MOU to make the following contributions to the City which are not associated with costs of direct impacts of the Project, but which would provide substantial benefits to the City and the surrounding community:

- (i) \$200,000 to fund a specific plan update of the area in close proximity to the Site;¹⁵⁹
- (ii) \$2,500,000 to supplement the City's budget to fund improvements to the irrigation system, water features, and other items of maintenance to the City's golf course in order to conserve water resources in the area surrounding the Site and to positively contribute to the recreational health of the City;¹⁶⁰
- (iii) \$2,000,000 to enhance recreational opportunities for youth and other citizens residing on the east side of the City;¹⁶¹
- (iv) \$500,000 to fund a feasibility study and other costs associated with determining the feasibility of providing public safety training programs to police and fire personnel in the City and surrounding region;¹⁶²
- (v) \$100,000 per year to supplement the City's reinvestment fund in order to help preserve the character and economic vitality of the City's downtown area;¹⁶³ and
- (vi) \$50,000 per year to supplement the City's budget to extend the City bus system to the Site.¹⁶⁴

Local Support

) The Board of Supervisors of the County of Madera, the City Council of the City of Madera and the Board of Directors of the Madera Irrigation District each approved the MOUs between the Tribe and those local government entities. The approvals by the County and City were by unanimous votes. In addition, a year after approving the County MOU, the Board of Supervisors voted 4-1 to approve the location of the proposed project at the Site. A copy of County Resolution Number 2005-169 is attached as Exhibit 2, Tab QQ.

In addition, the Tribe has the firm support of the residents, governments, and organizations in the surrounding community, particularly those in closest proximity to the Site. Many letters of

158 County MOU, § 3(a)(iv).

159 City MOU, § 2(a)(iv).

160 City MOU, § 2(a)(v).

161 City MOU, § 2(a)(vi).

162 City MOU, § 2(a)(vii).

163 City MOU, § 3(a)(ii).

164 City MOU, § 3(a)(iii).

support expressing affirmative support for the Project and the benefits to the surrounding community and thereby helping to confirm that the Project would not have a detrimental impact on the surrounding community have been submitted to the BIA's Pacific Regional Office. *See also*, Exhibit S for list of key local supporters and partners.

The Project clearly has the support of local governments and organizations who recognize not only the significant economic benefits the Project will bring to their localities and constituents, but also acknowledge that what has helped garner their support and respect was the singularly collaborative and open process by which the Tribe engaged them and they include the following:

- Letter to Regional Director dated March 28, 2008 by Council Member Gary Svanda, City of Madera, stating that he has been involved with the Tribe and the project from its inception.
- Letter dated March 28, 2008 by Council Member Steven Mindt, City of Madera, states that the Tribe has "established a collaborative and constructive working relationship with our community and have garnished unparalleled community support and endorsements."
- Letter dated April 1, 2008 from the Executive Director of Madera County's EDC, stating that the Tribe "has proven beyond a doubt, they will be an asset to our communities not only by contributing more than their fair share monetarily but also by giving of their personal time.
- Letter dated March 28, 2008 by the President/CEO of the Madera District Chamber of Commerce, confirms its "steadfast support" for the Project and the Tribe.
- Letter dated March 31, 2008 from the Executive Director of the Madera County Workforce Investment Board (WIB). Citing the County's high unemployment rate, the Madera County Workforce Investment Board has also stated its support of the Tribe's Project due to the "large number of quality employment opportunities for local residents during both the project development and implementation phases.
- Letter dated March 12, 2008 from the City of Chowchilla, Office of Community and Economic Development, praises the Tribe for working in a collaborative and constructive manner with the local communities and for its commitment to mitigate significant impacts, particularly through the "generous public funding through the MOUs."
- Letter dated March 31, 2008 from the President of the Chowchilla Industrial Development Corporation stated its support.

Many private citizens and business leaders in the surrounding community have also voiced unequivocal support for this Project and they are as follows:

- Letter dated March 31, 2008 from Rosanne Bonilla, lifelong resident of Madera and business leader in Madera County
- Letter from Jeffrey Singer, resident
- Letter dated March 27, 2008 from Gary Gilbert, former Madera County Supervisor, 1997-2007, and resident of North Fork, California
- Letter dated March 31, 2008 from Rosanne Bonilla, lifelong resident of Madera and business leader in Madera County
- Letter dated April 4, 2008 by Primitive Nuno Sr., business owner in Madera, California
- Letter dated March 13, 2008 by Dennis Bruno, lifelong resident of Madera, California

- Letter dated March 10, 2008, Michael Rench, resident of Merced, California
- Letter dated March 26, 2008 from Rick Farinelli, lifelong resident of Madera County
- Letter dated March 31, 2008 from Nora Salazar, President of Latina Unidas and business owner and resident of Madera, California
- Letter dated March 31, 2008 from Robert Marden, volunteer for the local police department and President of the local health center

(Copies of the letters quoted above are attached as Exhibit 2, Tab RR.)

RECOMMENDATIONS

There appears to be some concerns from the local community (Chowchilla Tribe of Yokut Indians, County of Fresno, Assembly California Legislature, and the Picayune Rancheria), they are all being mitigated either through MOU's or the Final EIS. In fact, the proposal for the Tribe's Class III gaming proposal on the off-reservation 305-acre tribal tract has been favorably received by the State, through a tribal-state compact between the State of California and the North Fork Rancheria of Mono Indians of California (Tribe); the County of Madera, through a Memorandum of Understanding (MOU) dated August 16, 2004; the City of Madera through an MOU dated October 18, 2005; and the Madera Irrigation District dated December 19, 2006. Based on the finding of facts set forth above, we conclude that the Project would not be detrimental to the surrounding community.

III. 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 Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202, which amended Section 5 of the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. 465). 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.

Additionally, the Department issued guidance on taking off-reservation land into trust for gaming purposes by memo dated January 3, 2008. Section 151.11(b) requires the Secretary to "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" of trust land "as the distance between the tribe's reservation and the land to be acquired increases." The reason for this requirement is that, as a general principle, the farther the economic enterprise – in this case, a gaming facility – is from the reservation, the greater the potential for significant negative consequences on reservation life.

IV. PROPERTY TO BE ACQUIRED

The subject land is held in fee with title vested in Fresno Land Acquisitions, LLC, a California limited liability company. The subject land is legally described as follows:

Real property in the City of UNINCORPORATED AREA, County of Madera, State of California, described as follows:

PARCEL NO. 1: APN: 033-030-(010 THRU 015 AND 017)

PARCELS 1, 2, 3, 4, 5, 6, AND 8 OF PARCEL MAP 3426 IN THE UNINCORPORATED AREA OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, AS PER MAP RECORDED SEPTEMBER 7, 1995 IN BOOK 44, PAGES 15 AND 16 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Said legal description was reviewed by the Regional Geographer and was found to be adequate for purposes of the trust land acquisition. (*See Exhibit 3*).

V. COMPLIANCE WITH 25 C.F.R. PART 151.10 AND 151.1

A. Notification of State and Local Governments – 151.10

On March 10, 2005 (*Exhibit 4*), we issued notice of, and sought comments regarding the fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Deputy Legal Affairs, Office of the Governor, State of California; Deputy Attorney General; State of California; James Peterson, Office of the Honorable Dianne Feinstein; Madera County Board of Supervisors; Madera County Planning Department; Madera County Treasurer; Madera County Tax Assessor's Office; Madera County Fire Department; Madera County Sheriff's Department; City of Madera; City of Chowchilla; Picayune Rancheria.

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

1) Letter dated March 16, 2005 from the Resource Management Agency, County of Madera. (*Exhibit 4, Tab A*)

- The proposed acquisitions assessed valuation of \$11,838.24 is inconsequential

2) Letter dated March 28, 2005 from the Department of Transportation, State of California.

- They have no objection to the proposed trust acquisition

3) Letters dated April 8, 2005 and April 29, 2005 from the Picayune Rancheria of the Chukchansi Indians. (*Vol. 2, Tab 5*)

- "The Tribe is opposed to the North Fork Rancheria's application for land into trust

- for gaming purposes in an encroachment into our Tribe's aboriginal homelands.
- Approval by the Department of Interior of both the North Fork Rancheria's application to take land into trust, and in turn, its approval of the land acquisition for gaming purposes sets an ill-advised precedent in the Director's Region.
 - In the future, the approval of North Fork Rancheria's proposed acquisition opens the possibility that Indian tribes will race one another to the most economically feasible location without regard to the impact on another Indian tribe's business or its aboriginal connection.
 - Decisions made for economic benefit to the community coupled with non-Indian support undermine the spirit of IGRA's purpose to promote Indian self-sufficiency.

By letter dated February 23, 2010, the North Fork Rancheria responded to the Picayune Rancheria of the Chukchansi Indians. (Exhibit 7, Tab R)

- Under its regulations the BIA is required to notify certain state and local governments upon receipt of the tribe's written request.
- The encroachment into aboriginal lands is a misunderstanding of the tribe's circumstances, which are detailed in the Amended and Restated Request for A Secretarial Two Part Determination dated April 7, 2009.
- "Racing" to the most economically feasible location has not materialized. The length and cost of the process, the requirements imposed by the Bureau, and the need for strong support by the local community and the state have resulted in very few, if any, off-reservation projects.
- The tribe's connection to the Madera parcel is detailed on pages 8-24 of the Two-Part Request.

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

As previously stated, the statutory authority for this land acquisition is the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202, which amended Section 5 of the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. 465).

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

The North Fork Rancheria was originally established by purchase under the authority of the Interior's Appropriations Act of June 30, 1913 (38 Stat. 77, 86). In 1953, the 85th Congress enacted house concurrent resolution 108 which initiated a termination policy for California Indians. Passage later of House resolution 2824 and Public Law 85-671 (72 Stat. 619) in 1958, known as the California Rancheria Act, called for the termination of federal trusteeship of the North Fork Rancheria. The original 80 acres of tribal land was subdivided and distributed in accordance with the Distribution Plan of the North Fork Rancheria.

In the late 1970's, a suit was filed against the U.S. for illegal termination and sought restoration of trust status. A judgment was issued on December 22, 1983, in Tillie Hardwick v. United States, C-79-1710SW, where the Tribe's status was restored and confirmed. In 1987, the Court declared the original boundaries of the North Fork Rancheria restored, and all land within the

restored boundaries of the North Fork Rancheria were declared "Indian Country" as defined by 18 U.S.C. §1151. To this day, none of the lands within the exterior boundaries of the North Fork Rancheria are owned by, or held in trust for the Tribe.

The only land held in trust for the Tribe is a 61.5 acre tract located in the town of North Fork. The Department of Housing and Urban Development (HUD) provided the Tribe with funds to purchase the 61.5 acre tract in 2000 for tribal housing. The land was subsequently placed in trust by the United States of America in 2002. The housing tract is currently being used by the North Fork Housing Authority to construct a community center and 15 single-family homes.

The trust acquisition and development of the proposed hotel and casino project will assist the North Fork Rancheria of Mono Indians by providing a significant revenue source. This revenue would be used to strengthen the tribal government and fund a variety of programs that would improve the long-term welfare of the Tribe. The proposed economic development will also provide long-term employment within Madera County. The proposed hotel and casino project will also allow the Tribe to reacquire historical territory.

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

Proposed land use includes the development of a casino and hotel resort on the eastern side of the Madera site adjacent to SR-99. The casino and hotel resort would include a main gaming hall, food and beverage services, retail space, banquet/meeting space, and administrative space. Food and beverage facilities are planned, including a buffet, three restaurants, a food court and several bars/lounges. The resort would also include a multi-story hotel with 200 rooms, a pool area, and spa. Ancillary support facilities would include a central plant (utilities/operations control and storage building) and potentially a wastewater treatment plant. Approximately 4,500 parking spaces would be provided for the casino and hotel resort. The remainder of the Madera site would remain undeveloped and would be used for passive recreation, pastureland, biological habitat, and/or recycled water spray fields.

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

General and special taxes assessed for fiscal year 2006-2007 was \$18,920.48.

The Tribe and the County of Madera have entered into a Memorandum of Understanding (MOU) to address impacts of the project on County services, with the following agreed upon financial commitments from the Tribe:

- Non-Recurring Public Safety Resources Contribution - \$1,915,000
- Non-Recurring Transportation Resources Contribution – \$4,000,000 up to \$15,000,000
- Non-Recurring Road Contribution Consistent with County Ordinances - \$600,000
- Non-Recurring Recreation Contribution - \$200,000
- Non-Recurring School Contribution - \$150,000
- County Legal Fees Reimbursement - \$50,000
- In lieu of taxes, fees, charges, cost reimbursements, service fees and other assessments –

- up to \$4,035,000 per annum
- North Fork Rancheria Charitable Foundation Recurring Contribution - \$200,000 per annum
- North Fork Rancheria Economic Foundation Recurring Contribution - \$250,000 per annum
- North Fork Rancheria Education Foundation Recurring Contribution - \$400,000 per annum
- North Fork Rancheria Unincorporated Area Foundation Recurring Contribution - \$250,000 per annum
- Supplement County's budget for neighborhood housing or other workforce programs - \$250,000 per annum
- Contributions to supplement the County's budget for law enforcement - \$415,000 per annum
- Contributions to supplement the County's budget for fire protection - \$1,200,000 per annum
- Contributions to supplement the County's budget for alcohol education and the treatment and prevention of problem gambling and gambling disorders - \$50,000
- Contributions for the maintenance, operation and preservation of open space within the Courthouse Park and Ahwahnee property - \$70,000.
- Contributions to fund additional public safety support/administrative positions with the County's public protection budget - \$100,000.

The Tribe and the City of Madera have entered into a Memorandum of Understanding (MOU) to address impacts of the project on City services, with the following agreed upon financial commitments from the Tribe:

- Non-Recurring Law Enforcement Contribution - \$200,000
- Non-Recurring Transportation Resources Contribution - \$885,000
- Non-Recurring Additional Transportation Resources Contribution - \$4,000,000
- Non-Recurring Specific Plan Update Contribution - \$200,000
- Non-Recurring Water & Recreation Resources Contribution - \$2,500,000
- Non-Recurring Madera East side Youth Recreational Contribution - \$2,000,000
- Non-Recurring Public Safety Training Contribution - \$500,000
- Mitigate possible impacts of the Project on the City, recurring contributions of up to \$1,075,000 per annum
- Law Enforcement Contribution - \$640,000 (first year contribution) and Recurring Contribution of \$675,000 per annum
- Downtown Redevelopment Recurring Contribution - \$100,000 per annum
- Air Quality Resources Recurring Contribution - \$50,000 per annum

Additionally, the Tribe and the Madera Irrigation District (District) have entered into a Memorandum of Understanding (MOU2) (*Exhibit 2, Tab V*) that anticipates and addresses the impact to this special district's budget and services. The MOU requires the Tribe to make a payment in lieu of special assessments to the District as follows:

- \$11,500 per annum in lieu of any stand by or other fees, assessments, and taxes to the district related to the property.
- \$36,000 per annum as an equitable share of costs associated with District activities, such as addressing the overdraft of the groundwater basin associated with Trust Property.

In addition, the dollar amounts of the contributions reference above shall be adjusted by the CPI Adjustment as of July 1 following the Opening Date and each July 1st thereafter. In the event the amount of annual water usage exceeds 450 acre feet, within thirty (30) days of the District's receipt of such report, the Tribe shall replace the difference between the actual water usage and 450 acre feet by either (1) paying the District the equivalent of the current market cost, or (2) purchasing and delivering such replacement water to the District. The recurring contributions will be made on a per annum basis, the contributions will be made in two equal semiannual installments, unless agreed otherwise. Upon acceptance of the acquisition, the first contribution shall be made within thirty days. As previously indicated, the County of Madera Irrigation District has stated that as long as the United States owns the Property in trust for the benefit of the Tribe, Recurring contributions In-Lieu of Tax Assessments shall continue.

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

The Tribe does not anticipate any problems or conflicts as a result of the intended land use and removal from State and local jurisdiction. The Madera Parcel is located in an unincorporated area of Madera County, and only the County currently has jurisdiction. The land surrounding the Site is used primarily for agricultural purposes, and such use will not be significantly impacted by the Facility. While there are some rural residential areas near the Site, mostly commercial operations exist immediately adjacent to State Highway 99. (DEIS, § 3.4.4, page 3.4-34.) The nearest residential area is located some distance away on the other side of a two-lane surface road (Golden State Road) and a busy, four-lane divided highway (SR-99) and corresponding rights-of-way. High-value residential properties are not currently in the vicinity of the Site. The proposed Facility will cover only 55 acres of the 305-acre Site, and there will be a land buffer between the Facility and other properties surrounding the Site.

The development of a gaming facility raises issues relating to local land use policies, compliance with health and safety codes, mitigation of project impacts, and the provision of fire, police, and ambulatory services. As previously noted, the County of Madera, the City of Madera and the Madera Irrigation District have all entered into a Memorandum of Understanding with the Tribe which addresses the issues of concern related to the transfer of jurisdiction to the tribe. With the language set forth in each of the Memorandums of Understanding, the Bureau does not see any Jurisdictional Problems or Potential Conflicts arising.

**G. Whether the Bureau of Indian Affairs Is Equipped To Discharge the
Additional Responsibilities Resulting From the Acquisition - 151.10 (g)**

The Tribe is a mature contracting tribe and presently contracts to manage and administer the vast majority of BIA's services itself, through Self-determination Act grants. Except for administrative and other services related to ownership of the parcel by the United States, the

) Tribe does not anticipate any increase in its request for services from the BIA as a result of a trust conveyance. This trust acquisition will result in increased tribal self-sufficiency and, ultimately, 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 agencies¹⁶⁵ must ensure that it has analyzed and addressed the environmental effects of taking lands into trust.

) The environmental review of this project under NEPA has been extensive. The process started on October 27, 2004, when the BIA published a Notice of Intent (NOI) in the Federal Register which described the Proposed Action, announced the BIA’s intent to prepare an Environmental Impact Statement (EIS) and invited comments. A scoping meeting was held on November 14, 2004 in Madera, California. The BIA published a Notice of Correction (NOC) on the Federal Register on April 6, 2005. The NOC amended the October 2004 NOI to include a description of possible project alternatives and also to further extend the scoping comment period to May 6, 2005. In July 2005, the BIA published a Scoping Report which summarized the comments received during the scoping period.

The Notice of Availability (NOA) of the Draft EIS was published by the BIA on February 15, 2008, provided the time and location of the public hearing on March 12, 2008 to present the proposed project with alternatives and to accept comments. The Notice of Filing on February 15, 2008 with the United States Environmental Protection Agency (USEPA) initiated the distribution of the DEIS to federal, tribal, state, and local agencies and other interested parties for a 45-day review and comment period which ended March 31, 2008.

An administrative version of the Draft EIS was circulated to cooperating agencies and the California Coastal Commission in March 2006 for review and comment. Comments were taken into consideration and revisions were made based upon those comments prior to public release of the document. The EPA Notice of Availability (NOA) for the Draft EIS (EIS No. 20050396) appeared in the Federal Register on September 30, 2005, Vol. 799, Pg 57277). The NOA provided information on the proposed project, advised the public of the 60-day comment period, and provided the time and location of the public hearing for the Draft EIS. Comments received during the comment period, including those submitted or recorded at the public hearing, were considered in the preparation of the Final EIS.

) An administrative version of the Final EIS was circulated to cooperating agencies in November 2008 for review and comment. The NOA for the Final EIS is on hold pending completion of the

¹⁶⁵ 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.

review by Central Office of PFEIS and response to Caltrans comment letter.

North Fork Rancheria's request to accept into trust the above described property for the purpose of operating a gaming facility, subject to the conditions and commitments found in Section 6.0 Mitigation Measures of the ROD is appropriate. As of this writing, there has been no decision on the ROD recommendation.

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" dated December 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)

The 80-acre North Fork Rancheria is located several miles east of the town of North Fork in Madera County. The original boundaries of the North Fork Rancheria were restored and declared to be "Indian Country" pursuant to the Stipulation for Entry of Judgment (Madera County) in Tillie Hardwick v. United States of America, U.S. District Court for the Northern District of California, No. C-79-1710-SW. The subject property is located approximately 36 miles from the Tribe's current government headquarters, which are located in the town of North Fork, Madera County, California, and approximately 38 miles from the North Fork Rancheria. The lands are adjacent to the Sierra National Forest and are approximately 20 miles south of Yosemite National Park and approximately 190 miles from the State's border with Nevada.

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)

The Tribe intends to develop a casino and hotel resort on the eastern side of the subject property. In conjunction with gaming, the resort would include: a main gaming hall, food and beverage services, retail space, banquet/meeting space, administrative space, pool, and spa. Fifteen food and beverage facilities are planned, including a buffet, six bars, three restaurants, and a five-tenant food court. The resort would include a multi-story hotel with 200 rooms, a pool area, and a spa. Approximately 4,500 parking spaces would be provided for the casino/hotel resort, with 2,000 of those spaces within a multi-level parking structure.

The Tribe has entered into a Purchase and Sales agreement dated December 19, 2003, to purchase the subject property. On December 8, 2003, the Seller and Buyer 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 on its own and desires to retain the services of a manager, with knowledge and experience in the gaming industry, to manage and operate a Class II and Class III Gaming facility and related amenities on tribal land.

VI. COMPLIANCE WITH 25 C.F.R. PART 151.13 – TITLE EXAMINATION

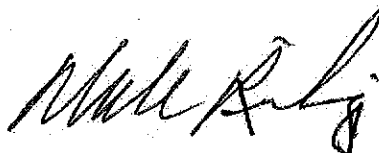
On December 22, 2008, we requested a preliminary opinion of title from the Regional Solicitor. In response to our request, we received a Solicitor's Endorsement /Comments dated February 2, 2009 wherein it was acknowledged that the procedure set forth in our transmittal was in accordance with Departmental procedures (Exhibit 6).

With regard to the property taxes on the subject property, we have verified that they have been paid to date and have included documentation to that affect (Exhibit 2, Tab NN).

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 305.00 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

Attachments:

Exhibit 1:

Application dated March 1, 2005 from the North Fork Rancheria for 305.49 acres of fee land to be conveyed into Tribal Trust lands and all supporting documentations.

Exhibit 2:

The North Fork 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 September 5, 2007

Exhibit 4:

Notice of Application dated March 10, 2005

Tab A: Informational letter dated March 16, 2005, from the Resource Management Agency, County of Madera (Exhibit 4, Tab A).

Tab B: Letter dated March 28, 2005, from the Department of Transportation, State of California stating no objection to the proposed acquisition (Exhibit 4, Tab B).

Tab C: Letters dated April 8, 2005 and April 29, 2005 from the Picayune Rancheria of the Chukchansi Indians (Exhibit 4, Tab C).

Tab D: Letter dated May 6, 2005, from the Renewable Resources Group regarding the environmental issues (Exhibit 4, Tab D).

Tab E: Letter dated September 30, 2005, from the Madera Ministerial Association received after the 30-day comment period (Exhibit 4, Tab E).

Tab F: Response letter dated February 23, 2010 from the North Fork Rancheria (Exhibit 4, Tab F).

Exhibit 5:

Phase I Survey dated December 15, 2008

Exhibit 6:

Solicitor's Endorsement dated February 2, 2009

Exhibit 7:

Consultation letter dated January 23, 2009 to State and local officials, including officials of other nearby Indian tribes and response letters.

Tab A: Letter dated March 7, 2009, from Robert L. Poythress, Madera City Council opposing the North Fork Rancheria's Gaming application (Exhibit 7, Tab A).

Tab B: Letter dated March 16, 2009, from the Chowchilla Tribe of Yokut Indians (Exhibit 7, Tab B).

Tab C: Letter dated March 20, 2009, from Jon Navarrette, County Administrative Officer, County of Fresno opposing the North Fork Rancheria's gaming application (Exhibit 7, Tab C).

Tab D: Letter dated March 23, 2009, from Mayor Ashley E. Swearingin, City of Fresno opposing the North Fork Rancheria's gaming application (Exhibit 7, Tab D).

Tab E: Letter dated March 23, 2009, from Andrew T. Souza, City Manager, City of Fresno (Exhibit 7, Tab E).

Tab F: See Exhibit 8

Tab G: Letter dated March 24, 2009, from Andrea Lynn Hoch, Legal Affairs Secretary; Office of the Governor concludes that the project will not be detrimental to the surrounding community (Exhibit 7, Tab G).

Tab H: Letter dated March 26, 2009, from Nathan Fletcher, Assemblyman, California Legislature opposing the North Fork Rancheria's gaming application (Exhibit 7, Tab H).

Tab I: Response letter dated June 24, 2009 from the North Fork Rancheria (Exhibit 7, Tab I).

Tab J: Letters of opposition received after the 60 day comment period.

Tab K: Letters of support received after the 60 day comment period.

Exhibit 8:

Letter dated March 23, 2009, Picayune Rancheria of the Chukchansi Indians and its attachments, excluding redacted information that is protected under the Freedom of Information Act, Exemption 4 – Commercial or Financial Information (Exhibit 7, Tab F). ✓

I:\Central Tribes\North Fork Gaming Decision Memo to AS-IA 3/17/10 lr