

**RECORD OF DECISION**

**SECRETARIAL DETERMINATION PURSUANT TO THE INDIAN GAMING  
REGULATORY ACT FOR THE 305.49-ACRE MADERA SITE IN MADERA  
COUNTY, CALIFORNIA, FOR THE NORTH FORK RANCHERIA OF MONO  
INDIANS**

**U.S. Department of the Interior  
Bureau of Indian Affairs  
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## U.S. Department of the Interior

**Agency:** Bureau of Indian Affairs

**Action:** Record of Decision (ROD) for a Secretarial Determination pursuant to the Indian Gaming Regulatory Act for the 305.49-acre Madera site (Preferred Alternative) in Madera County, California, pursuant to 25 C. F.R. Part 292 for the North Fork Rancheria of Mono Indians (Tribe).

**Summary:** In March of 2005, the Tribe submitted a fee-to-trust application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) accept trust title to land totaling 305.49 acres in Madera County, California (the "Madera site"). The Tribe plans to construct a gaming facility, hotel, and parking facilities. In order to game on the site, the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, requires that the Secretary of the Interior (Secretary) make a two-part determination of gaming eligibility.

The proposed Secretarial Determination (Proposed Action) was analyzed in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act (NEPA), under the direction and supervision of the BIA Pacific Regional Office. The Draft EIS (DEIS) was issued for public review and comment on February 15, 2008. After a comment period, a public hearing, and consideration and incorporation of comments received on the DEIS, the BIA issued the Final EIS (FEIS) on August 6, 2010. The DEIS and FEIS considered a reasonable range of alternatives and analyzed the potential effects of those alternatives, as well as feasible mitigation measures.

With the issuance of this Record of Decision (ROD), the Department announces that Alternative A is the Preferred Alternative. This ROD announces the Secretary's Determination that a gaming establishment would 1) be in the best interest of the Tribe and its members; and 2) that it would not be detrimental to the surrounding community. *See* 25 C.F.R. §292.2 and 25 C.F.R Part 292 Subpart C. A determination whether to acquire the 305.49-acre Madera site in trust pursuant to 25 U.S.C. § 465 of the Indian Reorganization Act and its implementing regulations at 25 C.F.R. Part 151 will be made at a later date.

The Preferred Alternative includes construction of a gaming-resort complex including a 247,180 square foot casino facility, 200-room hotel, surface and structured parking facilities, and corresponding mitigation measures. The Department has determined that this Preferred Alternative will best meet the purpose and need for the Proposed Action, in promoting the long-term economic self-sufficiency, self-determination and self-government of the Tribe. Implementing this action will provide the Tribe with the best opportunity for attracting and maintaining a significant, stable, long-term source of governmental revenue, and accordingly, the best prospects for

maintaining and expanding tribal governmental programs to provide a wide range of health, education, housing, social, cultural, environmental and other programs, as well as employment and career development opportunities for its citizens. The Department has considered potential effects to the environment, including potential impacts to local governments and other tribes, has adopted all practicable means to avoid or minimize environmental harm, and has determined that potentially significant effects will be adequately addressed by these mitigation measures, as described in this ROD.

The decision is based on thorough review and consideration of the Tribe's fee-to-trust application and materials submitted pursuant to IGRA; the applicable statutory and regulatory authorities governing the eligibility of land for gaming; the DEIS; the FEIS; the administrative record; and comments received from the public, Federal, state, and local governmental agencies; and potentially affected Indian tribes.

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## **1.0 INTRODUCTION**

### **1.1 SUMMARY**

The Bureau of Indian Affairs (BIA) is the Federal agency that is charged with reviewing and approving Tribal applications pursuant to 25 CFR Part 151 to take land into federal trust status. The BIA analyzed the potential environmental impacts of the proposed trust acquisition of the 305.49-acre Madera site and a Secretarial Determination under the Indian Gaming Regulatory Act (IGRA) in an Environmental Impact Statement (EIS). The Draft EIS (DEIS), issued for public review on February 15, 2008, and the Final EIS (FEIS), issued August 6, 2010, considered various alternatives to meet the stated purpose and need and analyzed in detail potential effects of various reasonable alternatives. With the issuance of this Record Of Decision (ROD), the Department of the Interior (Department) has determined that Alternative A is the Preferred Alternative which consists of the construction of an approximately 247,180 square foot casino, a 200-room hotel, ancillary infrastructure, and mitigation measures presented in Section 5.0 of the FEIS is the Preferred Alternative to be implemented. The Department has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Action. The Department's decision to issue a Secretarial Determination for the Madera site is based on thorough review and consideration of the Tribe's fee-to-trust application and materials submitted there within; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the DEIS; the FEIS; the administrative record; and comments received from the public, Federal, state, and local governmental agencies; and potentially affected Indian tribes.

Three separate Memorandums of Understanding (MOUs) were signed between the Tribe and Madera County (August 16, 2004), the City of Madera (October 18, 2006), and the Madera Irrigation District (MID) (December 19, 2006). Under the County and City MOUs, the Tribe agrees to provide one-time compensation (non-recurring contributions) to mitigate potential and perceived impacts of the proposed project on the County/City. The Tribe also agrees to compensate the County and City annually (recurring contributions) for potential and perceived project related impacts. The Tribe also agrees to a variety of non-monetary provisions. Under the MID MOU, the Tribe agrees to compensate MID annually (recurring contributions) for potential and perceived impacts of the proposed project on MID and for aquifer recharge purposes. The Tribe also agrees to various measures aimed at minimizing impacts to water resources and preserving and promoting agricultural land uses.

### **1.2 DESCRIPTION OF THE PROPOSED ACTION**

Under the Proposed Action, the BIA would issue a Secretarial Determination under the Indian Gaming Regulatory Act (IGRA). A decision whether to accept the 40-acre Yuba site into trust for the Tribe will be made at a later date. On the parcels, the Tribe proposes to develop a gaming facility, a hotel, parking facilities, and associated facilities.

The Madera site is located in southwest Madera County, just north of the City of Madera. The property is located immediately adjacent and west of State Route (SR) 99, which provides regional access to the area. The Madera site is located on unincorporated land within Madera County, within the sphere of influence area of the City of Madera. The casino-

resort complex would include Class III gaming conducted in accordance with the Indian Gaming Regulatory Act (IGRA) and Tribal-State Compact requirements and would consist of 83,065 square feet of gaming floor; restaurant and retail facilities and public space; and a 200-room hotel tower. Approximately 4,500 parking spaces would be provided for the project through a combination of surface parking (2,500) and development of a multi-level parking garage (2,000 spaces).

### **1.3 PURPOSE AND NEED**

The Tribe requested that the BIA issue a Secretarial Determination and transfer the 305.49 acres into Federal trust for the Tribe in order for the Tribe to conduct tribal government gaming authorized under IGRA. One of IGRA's purposes is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government" (25 USC §2702(1)). The gaming tools afforded the Tribe by IGRA are among the most effective means by which the Tribe can meet the diverse and urgent economic needs of its citizens.

Implementation of the Proposed Action would enable the Tribe to meet its need for economic development, self-sufficiency, and self-governance, and to provide its quickly growing Tribal citizen population with employment, educational opportunities and critically needed social services.

The purpose and need is as follows:

- Improve the socioeconomic status of the Tribe by providing an augmented revenue source that could be used to strengthen the Tribal Government, fund a variety of social, housing, governmental, administrative, educational, health and welfare services to improve the quality of life of Tribal citizens, and provide capital for other economic development and investment opportunities.
- Allow the Tribe to establish economic self-sufficiency.
- Provide employment opportunities to the Tribal community.
- Fund local governmental agencies, programs, and services.
- Make donations to charitable organizations and governmental operations, including local educational institutions.

The Proposed Action is consistent with the BIA's mission, as well as the policies underlying the Federal statutory authorities in IGRA, and BIA's implementing regulations at 25 C.F.R. Part 292, of promoting meaningful opportunities for economic development and self-sufficiency of the Tribe and its citizens, and furthering tribal self-government and self-determination.

### **1.4 AUTHORITIES**

IGRA was enacted in 1988 to regulate the conduct of Indian gaming and to promote tribal economic development, self-sufficiency and strong tribal governments. IGRA generally prohibits gaming on lands acquired in trust after 1988, unless certain exceptions found in 25 U.S.C. § 2719 are met. The Section 20 exceptions are implemented through regulations



found in 25 C.F.R. Part 292. Therefore, Section 20 of IGRA does not provide the Secretary of the Interior with the authority to acquire land in trust; rather, it allows gaming on certain after-acquired lands once those lands are acquired into trust. If none of the exceptions in § 2719 applies, § 2719(b)(1)(A) of IGRA provides that gaming can still occur on the lands under the Secretarial Determination provision. Under the Secretarial Determination process, the Secretary of the Interior may permit gaming to occur if the Secretary determines that gaming on the trust lands is 1) in the best interest of the Indian tribe and its members, and 2) not detrimental to the surrounding community. The State Governor must concur with the Secretary's Determination. The Tribe's fee-to-trust application indicates that they will seek the ability to conduct gaming on the Madera site through the IGRA Secretarial Determination process, although they have reserved the right to apply for the IGRA restored lands exception should the Secretarial Determination be unsuccessful.

## 1.5 PROCEDURAL BACKGROUND

The regulations in 25 C.F.R. Part 151 require compliance with the National Environmental Policy Act (NEPA). Accordingly, the BIA published a Notice of Intent ("NOI") in the *Federal Register* on October 27, 2004, describing the Proposed Action and announcing the BIA's intent to prepare an EIS. Council on Environmental Quality (CEQ) Regulations for implementing NEPA require a process referred to as "scoping" for determining the range of issues and alternatives to be addressed during the environmental review of a Proposed Action (40 C.F.R. §1501.7). The scoping process entails a determination of issues by soliciting comments from agencies, organizations, and individuals. In addition to accepting written comments, the BIA held a public scoping hearing on November 15, 2004, at the Madera District Fairgrounds, in Madera, California to accept comments. 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. During the NOI comment period, the BIA formally requested and received acceptance letters regarding Cooperating Agency participation from the United States Environmental Protection Agency (USEPA), National Indian Gaming Commission (NIGC), California Department of Transportation (Caltrans), the City of Madera and the Madera Irrigation District (MID).

The Draft EIS was distributed to Federal, tribal, state, and local agencies and other interested parties for a 45-day review and comment period. The CEQ Regulations (40 C.F.R. §1506.10(c)) require that agencies provide at least 45 days for comments on a Draft EIS, subject to the provisions of 40. C.F.R § 1506.10(d). In this case the comment period for interested parties was actually closer to 50 days since interested parties received an advance copy of the DEIS approximately a week before publication of the notice in the *Federal Register* and the formal start of the 45-day comment period, which began on February 15, 2008 after the Notice of Filing with the USEPA in the *Federal Register*. The Notice of Availability (NOA) 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 to the public, and accept comments. Public notice was also published in *The Fresno Bee* and the *Madera Tribune* on February 15, 2008.

The BIA received a total of 331 comment letters in addition to the comments received during the public hearing. Public and agency comments on the DEIS received during the comment

period, including those submitted or recorded at the public hearing, were considered in the preparation of the FEIS. Responses to the comments received were provided in Appendix Volume III of the FEIS and relevant information was revised in the FEIS as appropriate to address those comments. The NOA for the FEIS was published in the *Federal Register* on August 6, 2010 (**Attachment I** of this ROD). Consistent with the BIA NEPA Handbook, the NOA for the FEIS was also published in the local newspapers (*The Fresno Bee* and the *Madera Tribune*) on August 6, 2010 (**Attachment I** of this ROD). The 30-day review period ended on September 7, 2010. The comments received during this period are included in **Attachment II** of this ROD. Responses to each public comment letter are also provided in **Attachment II** of this ROD.

## **2.0 ANALYSIS OF ALTERNATIVES**

### **2.1 ALTERNATIVE SCREENING PROCESS**

Consistent with the relevant BIA authorities and policies that promote Indian self-government, self-determination, economic self-sufficiency, and Tribal economic development, a range of possible alternatives to meet the purpose and need were considered in the EIS, including non-casino alternatives, alternative development configurations, and alternative sites. As described above, the purpose and need for the project is to create a federally-protected land base for the Tribe on which it can engage in the economic development necessary to fund tribal government programs, provide employment opportunities for its citizens, and allow the tribe to become economically self sufficient and achieve self determination. Alternatives, other than the No Action Alternative, were first screened to see if they met the purpose and need of the BIA and the Tribe. Remaining alternatives were selected for the EIS largely based on three criteria: 1) providing an adequate and reasonable range of alternatives, 2) the recommendations of commenters during the scoping process, and 3) ability to reduce environmental impacts.

#### **2.1.1 Alternatives Eliminated from Further Consideration**

Alternatives that were initially considered but were ultimately removed from further consideration in the DEIS included:

##### ***Alternative Sites for Gaming***

HUD Tract - Utilization of a 61.5-acre tract located on a steep hillside was considered in the small town of North Fork (the "HUD tract") for development of a casino. The U.S. Department of Housing and Urban Development (HUD) provided the Tribe with funds to purchase the HUD tract in 2000 on the understanding that the Tribe would use the tract for low income Indian housing, an endangered species conservation reserve, and related uses (Kroll, 2000). In 2001, the Tribe entered into a local cooperative agreement with Madera County for low-income Indian housing on the HUD tract. In late 2002, the BIA placed the HUD tract in trust for the Tribe on the understanding that the Tribe would use the land for tribal housing and related uses. Since then, the North Fork Rancheria Housing Authority has expended nearly \$2.5 million of HUD funding to develop the HUD tract. This funding has been used to construct a community center and to develop infrastructure, including roads, water, sewer, and pads for nine single-family homes. One of the nine homes and a youth

center being built as an addition to the community center are currently under construction. Once the nine homes are built, the development of additional homes will depend on physical and environmental development constraints, infrastructure, and funding availability. While the Tribe had at one time anticipated the construction of up to 45 homes on the HUD tract, the steep topography has made development of the parcel far more difficult and expensive than anticipated and it is unclear how many additional homes can be built on the HUD tract.

In addition to this intention not to change the use of the HUD tract, development of the HUD tract for commercial purposes (such as a casino) would be very difficult due to the steep and varied topography and sensitive biological features (the presence of habitat for the threatened valley elderberry longhorn beetle habitat, for instance). Also, access to the HUD tract is via a single steep access road from a two-lane County roadway. The topography, biological factors, limited access, and rural location would necessitate the development of a very small facility. Few jobs would be created. The draw to the facility would likely be further limited by the proximity of three existing tribal gaming facilities located within 20 miles of the town of North Fork. The expensive construction costs and limited returns would likely constrain or eliminate the Tribe's options for financing a casino development on the trust land, further limiting the potential revenue stream to fund tribal programs. Therefore, for the reasons stated above, development of the HUD tract for commercial purposes would not meet the purpose and need for the project and has been eliminated from further consideration.

Avenue 7 and Avenue 9 Properties - The Tribe considered the 159-acre Oberti and 138-acre Gunner properties at Avenue 7, and the 106-acre "Juice Plant" and 154-acre Shoemate properties at Avenue 9. These properties were initially selected due to the location near the large Fresno market, preliminary reviews raised few environmental concerns, and there was little concern about the commercial development of the sites.

These properties, however, were removed from further consideration for a variety of reasons. Access to the properties was constrained by the train tracks that run just east and parallel to SR-99. Further, the Tribe was concerned about the impact a development there would have on the gaming operations of neighboring tribes, particularly the Picayune Rancheria and Table Mountain Rancheria. The operations of both tribes draw heavily from the northeast Fresno and Clovis markets. The Tribe was concerned that those patrons would be attracted by the short travel distance to a new development at Avenue 7. Further, the Tribe was concerned that a development near Fresno would inure primarily to the residents of Fresno and not Madera County. Finally, the Tribe was concerned that development of a facility along the southern stretch of SR-99 in Madera County would be inconsistent with existing land uses, as most of the surrounding area was used for agriculture.

Avenue 12 Properties - The Tribe considered the 162-acre Logoluso and 70-acre Bishell properties near the Avenue 12 interchange at Highway 99, in a search for available sites further from Fresno and closer to areas of existing development near the City of Madera. These properties were situated in the County but were understood to be within the City of Madera urban growth boundary, an economically viable area. Development within the urban growth boundary was assumed to be consistent with existing plans to develop the area. The Tribe was concerned that a gaming facility might not fit with the proposed development of a large retail center surrounded by subdivisions of single-family homes. In addition, there

was initial concern that the City of Madera might object to building a gaming facility near the Madera Community College Center located several miles east of the Avenue 12 Properties. Further, the 70-acre Bishell property was deemed too small to provide the area necessary for on-site wastewater spray fields, and the both the Avenue 12 Properties had potential wetland and flood plain issues. Ultimately, the Tribe concluded that a gaming facility on either of the Avenue 12 Properties, coupled with the proposed development, might put too much pressure on existing roads and infrastructure, and conflict with the County and City's vision for the area.

Avenue 17 and Avenue 18½ Properties - Having eliminated the Avenue 12 Properties south of the City, the Tribe considered properties north of the City near Avenue 17 and 18½. Specifically, the Tribe considered the 100-acre Sehachen property just north of Avenue 17, the 100-acre Weil property also just north of Avenue 17, and the 232-acre North Ranch property at Avenue 18½. The two smaller properties (Sehachen and Weil) were rejected out of concern that they might not be large enough for wastewater sprayfields, in the event they were needed, or to accommodate other potential environmental mitigation needs. Further, the Weil property was located in close proximity to a residential neighborhood, and presented potential environmental issues based on its prior use as a dairy.

Primary reasons for eliminating the North Ranch property from further consideration was the encumbrance by Williamson Act contracts on 232 acres of the property and the close proximity to the Southern Pacific railroad tracks along the property's western boundary. The close proximity of the railroad would result in frequent loud noises, which could disturb patrons of the proposed development.

Finally, potentially hazardous materials were discovered on the North Ranch property. The property contains a 500-gallon aboveground storage tank, with no secondary containment measures and evidence of stained soils in the vicinity of the tank. The property also contains a fairly large debris pile, which appeared to contain mostly non-hazardous wastes, but was not inventoried. Given the above constraints to development, the North Ranch property was eliminated from further consideration.

Old Mill Site - Several commenters during the DEIS comment period mentioned the location of the "Old Mill" in North Fork as a desirable alternative site for the development of a casino. The Old Mill site is a 135-acre site that housed a working lumber mill between 1941 and 1994. The site is currently owned by the North Fork Community Development Council (CDC), a charitable nonprofit California corporation. In 1998 the CDC adopted a Master Plan reflecting the community's desire that 60 percent of the developable land be used for some type of light industry, 30 percent for a recreational vehicle park and Visitor Center, and 10 percent for community serving uses such as picnic areas and trails. Finally, some areas were proposed to remain undeveloped, particularly in riparian areas. More recently the CDC has been overseeing various community development and cleanup related activities on the site.

The BIA carefully considered these comments and independently examined this site but ultimately decided to eliminate this site from further consideration for the reasons stated below.

The site is the location of a long standing mill operation and has been found to be contaminated with petroleum hydrocarbons in the soil and water, pentachlorophenol (PCP) and dioxins, furans, asbestos, and lead-based paint. Groundwater impacts from diesel fuels are believed to be the result of water leaching through impacted surface soils. Although groundwater samples collected in some onsite wells exceeded the Maximum Contaminant Level (MCL) taste and odor threshold of 100 micrograms per liter (ug/L), once the affected soils are removed from the NFLMS, the levels of diesel should decrease to levels that would not require remediation.

In addition to soil affected with diesel fuels, soils remain onsite that contain elevated levels of dioxins, furans, and pentachlorophenol (PCP). The areas affected with dioxins were identified as a former dip tank area and three large soil stockpiles. Samples exceeded the USEPA Preliminary Remediation Goals (PRGs) for PCP, but were below hazardous waste classification. The PCP excursions are not widespread and are limited to the dip tank area. The soil stockpiles were found to have dioxins and furans that would prevent onsite use. Given the presence of these materials onsite, several remedial actions were offered to DTSC to allow unrestricted use of the NFLMS. Remedial options include excavation, off-site disposal and treatment, on-site bioremediation, chemical treatment, and natural attenuation. Based on information provided in the March 2006 Focused Feasibility Study and Focused Health Evaluation prepared by Bryan A. Stirrat and Associates, INC, the NFLMS site has been extensively sampled and constituents have been identified and delineated. As stated above, the primary areas of concern are several soil stockpiles and the former dip tank area. The CVRWQCB case worker was contacted to discuss current remedial options at the site. The remedial action that was chosen is excavation and offsite removal of impacted soils. According to the case worker, Jeff Hammel, a Soil Removal Workplan was expected to be submitted to DTSC and the CVRWQCB before fall of 2008. The work plan will outline soil removal activities for all affected onsite soils. It is believed the removal of affected soils would allow for unrestricted use of NFLMS although the potential for the presence of unknown contamination related to past uses on the site remains.

Given that the Old Mill site is in a relatively remote location near the HUD site, similar disadvantages attracting customers would be present, reducing the potential for job development and the ability of the project to create a revenue stream sufficient to fund Tribal programs. Peckinpah Creek and a tributary to this creek run through the Old Mill site, creating constraints to development through the presence of waters of the U.S. and species habitat.

Finally, when the CDC learned that the BIA was considering the Old Mill site as an alternative for the Tribe's proposed casino project, it sent two letters to the BIA stating that the site would not be sold for the development of a casino project given that such a use was inconsistent with its Master Plan (**FEIS Section 2.0**).

### ***Redesign Alternative***

The proposed project has been designed to avoid and minimize impacts to the environment, including impacts to any potential jurisdictional wetlands or waters of the U.S., which are typically sensitive biological habitats. The project facilities have also been sited near the

center of the site in order to maximize the distance between project facilities and nearby residences and agricultural operations. Other financially and technically feasible site designs were considered in an attempt to further reduce environmental effects. However, the relative uniformity of natural features and surrounding uses resulted in an inability to devise a site plan that would further avoid or minimize significant environmental effects. Therefore, a redesign alternative was eliminated from further consideration.

***Large Gaming/Hotel Resort on the North Fork Site***

After the North Fork site was chosen as an alternative site that would be analyzed in the EIS (see **FEIS Section 2.5**), a site plan was prepared for the development of a casino on the site. Various sized facilities were considered. A resort of a size proposed under Alternative A was ultimately eliminated from further consideration, for the reasons explained below, in favor of a smaller casino facility.

In an effort to determine whether and what sized development would be feasible, primarily from an environmental and economic standpoint, a civil engineer and a socioeconomic consultant were consulted. According to the civil engineer, although slopes are relatively steep throughout the North Fork site (estimated at 25% from the eastern to western boundary), the portion of the property to the west of the existing access road has slightly less steep slopes and would require slightly less cut and fill to prepare a building pad. Development of the western portion of the site would also ensure that existing residences east of the access road would not need to be relocated.

It was the opinion of the proposed management company that due to the remote location of the North Fork site and considering existing competition, any development, and especially a large development, would be difficult to finance and operate profitably. Therefore, in order to determine what size facility could be a feasible alternative on the North Fork site from a profitability perspective, an independent socioeconomic consultant (the Innovation Group) was contacted to make a recommendation.

In April 2005, the Innovation Group completed a market potential and facility sizing analysis for a development on the North Fork site (see **FEIS Appendix R**). This analysis concluded that to accommodate potential gamer visits and to have as competitive a facility as possible, a facility with approximately 275 slot machines and 6 tables would be advised on the North Fork site. According to the Innovation Group, by subtracting more than 25 machines from this number, the scale of the facility would be too small to warrant visitation and provide variety, given the level of competition in the market. Similarly, adding more than 25 devices would provide for diminishing marginal returns, with the level of investment necessary far outweighing any economic benefits that could be received. In fact, the Innovation Group noted that, although a specific analysis of construction costs was not performed, due to the challenges on the site (steep slope, potentially minimal soil depth to bedrock), such costs were estimated at over \$20 million (these costs were later estimated at approximately \$41 million in the April 2005 Socioeconomic Assessment), which would make it difficult to successfully finance any casino on the site, even the optimally sized 275 slot machine variety. Thus, although a 275-slot facility has marginal potential for profitability on the North Fork site, possibly aided by an effective advertising campaign and a possible reduction in construction costs if financing could be obtained, a facility sized similarly to the proposed project would be

far too expensive to construct on the North Fork site considering the potential profitability, and would not constitute a feasible alternative. The Alternative D casino was therefore sized to accommodate approximately 275 slot machines and six table games on the western side of the existing access road. A larger facility on the North Fork site was eliminated from further consideration.

### **2.1.2 Non-Casino Alternatives**

The EIS evaluated the following non-gaming alternatives: (1) a mixed-use development and (2) the No-Action Alternative. The proposed mixed-use development was analyzed in detail as Alternative C in the EIS. A No-Action Alternative was analyzed in detail as Alternative E in the EIS.

### **2.1.3 Alternative Casino Sites**

Madera site: The Madera site is located in western Madera County, California, adjacent to SR 99, north of the City of Madera. The site includes 7 connected parcels. The approximately 305-acre site is bounded on the north by Avenue 18, rural residential land, light industrial land, and vacant land; on the east by Golden State Boulevard and SR-99; on the south by agricultural and residential land; and on the west by Road 23 and agricultural land. The site is located immediately adjacent and west of SR 99, which provides regional access to the area. The parcels are located on unincorporated land within Madera County. A majority of the project parcels are comprised of vacant agricultural lands which have never been developed, while one has developed and includes residential and barn structures. Livestock grazing currently occurs on the site. Development on the Madera site was analyzed in Alternatives A, B, and C of the EIS.

North Fork site: The 80-acre North Fork site is located east of the Madera site, approximately three miles east of the community of North Fork, east of Mammoth Pool Road, and 0.5 miles southwest of Hill 3954 (1.5 miles southwest of Cascadel). The North Fork site is situated at an elevation of 2800 to 3400 feet. The North Fork site is currently held in trust by the Federal Government. Thus, the North Fork site is not divided into parcels for local taxation purposes.

The original boundaries of the North Fork Rancheria were restored in 1987 pursuant to the Stipulation for Entry of Judgment (Madera County) in Tillie Hardwick et al. v. United States of America, Civil No. C-79-1710-SW (N.D. Cal. 1987). The stipulation provided that the lands within the exterior boundaries of the Rancheria shall be treated as any other federally recognized Indian reservation. Thus, the lands within the North Fork Rancheria are technically eligible for gaming under the IGRA. However, none of the lands within the exterior boundaries of the North Fork Rancheria are owned by, or held in trust for, the Tribe. Instead, all of such lands are held in trust for individual Indians. Neither the stipulation nor case law provides the Tribe with any special right to acquire or lease these lands on behalf of the Tribe. None of the beneficial owners of the North Fork Rancheria lands are required to convey an interest in those lands to the Tribe, and the Tribe would not be able to conduct gaming on the North Fork Rancheria lands unless it was able to obtain beneficial title to or a leasehold interest in those lands.

In addition, many of the same constraints to development of the HUD tract noted above are also present on the North Fork Rancheria (particularly varied and steep topography). Unlike the HUD tract, no development has been completed or is proposed for the North Fork site other than scattered existing rural residences. Also unlike the HUD tract, most of the Rancheria is undeveloped, with numerous and varied biological resources present throughout.

The Tribe also believes that a facility in the North Fork vicinity would generate considerable political opposition while doing little to advance the needs of its many tribal citizens or of the community. A relatively small facility on the North Fork site or the HUD tract would provide few jobs and generate only minimal revenues for the Tribe and even fewer for the larger community. Further, a facility around North Fork would likely be opposed by most local residents, many of whom are retirees who recently moved to North Fork to enjoy the beauty of the Sierra foothills and escape the stress of city living. Based on informal conversations with North Fork residents and community leaders, the Tribe has concluded that local residents would resent the development of gaming operation as threatening the rural character of the North Fork area. Without the ability to cite real benefits to County residents in terms of jobs or revenues, the County Board of Supervisors would likely defer to the local community and possibly end up opposing commercial development in the North Fork area. Finally, any gaming facility in the North Fork area would likely be limited to a small facility with high construction costs, likely constraining or eliminating the Tribe's options for financing a casino development. An independent analysis confirmed that, if construction estimates were correct, a casino development on the North Fork Rancheria could not be successfully financed.

Therefore, for the reasons mentioned above, the Tribe did not consider development of a casino on the North Fork Rancheria. Nonetheless, development of a casino on the North Fork Rancheria (the North Fork site) is fully analyzed in the EIS as Alternative D because commenters during the scoping period recommended that it be included as an alternative site, the site is eligible for gaming, it might be possible to lower construction costs to improve the viability of a casino development on the site, and the disruption of existing development would be limited.

In determining the gaming facility design for Alternative D, it was determined that to best achieve the expected customer experience, the casino would require a minimum of 30-acres of relatively level and vacant land. The North Fork site is characterized by predominantly forested area, scattered small residential developments, and some open spaces. The 80-acre site meets the minimum size requirement; however, the topography, existing conditions, and soil characteristics of the property make it difficult to accommodate a casino and ancillary components, such as a wastewater treatment plant (WWTP).

## **2.2 REASONABLE ALTERNATIVES CONSIDERED IN DETAIL**

The DEIS and FEIS evaluate the following reasonable alternatives and the mandatory No-Action Alternative in detail.

### **2.2.1 Alternative A – Proposed Project**

Alternative A, the Proposed Project, consists of the following components: (1) placing approximately 305.49 acres into Federal trust status; (2) approval of a gaming development



and management contract; and (3) development of a casino-hotel complex, including ancillary components such as parking and a WWTP. This alternative, which constitutes the Preferred Alternative (with incorporation of mitigation measures identified in the FEIS) and the Tribe's Proposed Project, most suitably meets all aspects of the purpose and need of the Proposed Action by promoting the Tribe's self-governance capability and long-term economic development. Components of Alternative A are described below.

Trust Title Acquisition: Alternative A consists of the conveyance of a 305.49-acre area of land into Federal trust status. The IRA authorizes the Secretary of the Interior to acquire land in trust for recognized Tribes.

The land transfer would be made in accordance with the procedures set forth in 25 C.F.R. Part 151. The Tribes' fee-to-trust application provides detailed information on the land being taken into trust. The regulations in 25 C.F.R. Part 151 implement Section 5 of the IRA, codified as 25 U.S.C. §465. Section 5 of the IRA provides the Secretary of the Interior with authority to acquire lands in trust status for tribes and individual Indians. Since the Tribe is seeking to acquire off-reservation land in trust for gaming purposes, compliance with Section 20 of IGRA (25 U.S.C. § 2701 *et seq*) must be included as part of a BIA Part 151 fee-to trust application.

Gaming Development and Management Contract: Congress enacted IGRA with the stated purpose of providing a statutory basis for the operation and regulation of gaming by Native American tribal governments. The NIGC, which was established by IGRA, has the authority to approve management contracts between tribal governments and outside management groups. Implementation of Class III gaming operations under Alternative A would require NIGC approval of the management contract between the Tribe and its management group. The Tribe has entered into a proposed Management Agreement with SC Madera Management, LLC. On March 23, 2004, the Tribe submitted a copy of the Management Agreement to the NIGC which is currently under review with the NIGC.

Proposed Facilities: Alternative A would result in the development of a 247,180 square-foot gaming and entertainment facility and a 224,530 square-foot hotel and spa on the 305.49-acre site. The gaming facility would include a casino floor, food and beverage areas (consisting of a buffet, specialty restaurant, steakhouse, food court, two bars, and coffee bar), lounge/banquet areas, offices, and a security area. The multi-story hotel facility would have 200 guest rooms. Regional access to the casino would be provided from SR 99.

The main casino complex would include: food and beverage services, small retail shops, administrative offices for gaming-related tribal activities, and the main gaming hall. The gaming facility would include the casino floor, food and beverage areas, back of house and support services, and public/miscellaneous areas and would operate 24-hours per day. Beverages and food would be served within a planned 500-seat buffet, a 200-seat specialty restaurant, a 175-seat food court, a 180-seat Steakhouse, and a 225-seat coffee shop. The casino floor area would provide 83,065 square feet for gaming purposes. The hotel tower would have a total building space of approximately 207,680 square feet. The main casino driveway off Golden State Boulevard would provide primary vehicle access to the hotel.

Alternative A includes surface parking and a multi-level parking structure for a total of 4,500 spaces. Signage identifying the entrances to the facilities would be the minimum size and have the minimum lighting required to safely advertise to vehicles along SR 99 the entrances to the development.

Water Supply: Water for domestic use, emergency supply, and fire protection would be provided by on-site wells or connection to the City of Madera public water system. If the water supply system is contained entirely on-site, two on-site wells would be drilled, one for continuous supply and one for redundancy in case of malfunction or maintenance of the primary well. Each well would have a firm water supply capacity of approximately 400,000 gallons per day (gpd) / 278 gallons per minute (gpm) (without use of water recycling) or approximately 273,000 gpd / 190 gpm (with incorporation of a recycled water distribution system). The approximate depth of the wells would be at least 600 feet below the surface. Water tank capacity would be based on fire flow requirements developed after review by local fire authorities.

Wastewater Treatment and Disposal: One off-site and two on-site options have been identified for treating the wastewater that would be generated by Alternative A. These options are described below.

- Option 1: Connect to the City of Madera sewer system. Treat and dispose of wastewater at the Madera WWTP, located five miles southwest of the Madera site. Recent construction has expanded the WWTP's capacity to 10.1 million gallons per day (MGD) where the treated wastewater is conveyed to percolation beds for disposal.
- Option 2: Construction of an on-site WWTP on the Madera site. The WWTP would use an immersed membrane bioreactor (MBR) system to provide tertiary-treated water. Average day disposal flows would be approximately 270,000 gpd. Treated effluent may be discharged through surface water disposal, spray disposal, sub-surface disposal, or a combination of these methods. Reclaimed water from the on-site wastewater treatment plant would be utilized for casino toilet flushing and landscape irrigation.

Site Drainage: Stormwater runoff generated during the operation of the casino would be conveyed by a combination of open channels, storm drains, and on-site detention basins. A drainage plan has been developed for Alternative A, and is included as Figures 2-4 through 2-6 of the FEIS. Runoff from the project facilities would be directed into vegetated swales or through inlets from buildings or curb inlets on roadways into storm drain pipes. Prior to release into the open channels that lead to Schmitt Creek, runoff would pass through sediment/grease traps that would filter out suspended solids, such as trash and soil sedimentation, oil, grease and other potential materials that could degrade surface water quality. The proposed parking lots would be landscaped with mulched plantings or grass and would serve as bioretention areas to initially treat storm water runoff. Vegetative swales would serve as energy dissipaters and filtering mechanisms for runoff generated on-site prior to release into the site drainage channels. Three on-site detention basins would be developed on-site to reduce the increased peak flows that would result from the introduction of

impervious surfaces. The basins would assure that post development runoff peaks during operation will not exceed existing peak runoff volumes.

The Madera site is located almost completely within a Federal Emergency Management Agency (FEMA) defined 100-year floodplain. Projects encroaching within a 100-year floodplain are required by FEMA to be constructed a minimum of 1.0 foot above the estimated floodplain elevation. During construction fill would be placed to elevate the finished floor of the proposed gaming facility and hotel approximately five feet above the FEMA 100-year floodplain. Due to the location within the defined floodplain, the on-site detention basins have been sized to hold both displaced flood storage volumes and increased runoff rated through construction of on-site impervious surfaces.

Utilities: Power lines would be provided by Pacific Gas and Electric (PG&E) as part of the development of Alternative A.

Law Enforcement: Tribal security personnel would work cooperatively with the Madera County Sheriff's Department, which would provide general law enforcement services to the Madera site on a contract basis through contractual agreements within the MOU. The Madera County Sheriff's Department has jurisdiction to enforce State criminal laws on the proposed trust lands to the extent authorized by Public Law 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360). The Tribe would install security cameras and would employ security personnel to provide surveillance of the casino, parking areas, and surrounding grounds. The security cameras would provide coverage of all surface parking areas and exterior areas of the casino and facility support buildings. Security guards would patrol the facilities to reduce and prevent criminal and civil incidents.

Fire Protection Services: The Tribe would contract with the Madera County Fire Department for fire protection and emergency medical services. The provisions for these services are incorporated into the Memorandum of Understanding (MOU) between the Tribe and Madera County, which additionally provides reasonable and fair share compensation for specific public services render by the County. The Tribe agreed to construct the gaming facility and all supporting buildings in accordance with standards no less stringent than those set forth in the Uniform Fire Code.

## **2.2.2 Alternative B – Reduced Casino**

Alternative B consists of a smaller-scale version of Alternative A, without a hotel and pool. Alternative B is approximately 40 percent (198,990 sq feet) of the total square footage of Alternative A. 3,200 parking spaces would be provided on surface lots and a multi-level parking structure.

The WWTP planned for Alternative B would not change in scope from the Proposed Project and would also be designed to comply with standards established by the USEPA. Wastewater disposal would take place by either Option 1 or Option 2 described above in Section 2.2.1. Water for domestic use, emergency supply, and fire protection would be provided by on-site wells or connection to the City of Madera, similar to Alternative A. Alternative B is estimated to require an average water demand of 251,000 gpd.

The provisions for construction standards, and public safety services (law enforcement, emergency medical services, and fire protection) within the MOUs for Alternative A would also apply to Alternative B.

### **2.2.3 Alternative C - Retail Development**

Alternative C consists of the development of an approximately 237,000-square-foot retail park along the eastern edge of the Madera site. Under this alternative the NIGC would not approve a management contract between the Tribe and SC Madera LLC, and the Tribe would likely need to seek another source of development funding as SC Madera LLC and its affiliates are not expected to support a development not related to a gaming operation.

The commercial development would include two large "big box" retail stores of 125,000 and 100,000 square feet, three restaurant pads, with 1,860 parking spaces. The remainder of the site would remain undeveloped and used as open space, pasture, biological habitat, and recycled water sprayfields. A stormwater detention system similar to that planned for Alternative B would be provided on-site to account for the increase in runoff created by increased impervious surfaces. Wastewater disposal would take place by one of two options, similar to those discussed above in Section 2.2.1. Given the different uses proposed for Alternative C, the provisions and payments within the MOUs would not apply to Alternative C.

### **2.2.4 Alternative D – North Fork Location**

Alternative D consists of the development of a casino-hotel resort at an alternative off-site location. Alternative D consists of a casino development located in eastern Madera County near the town of North Fork (North Fork site). The casino would be developed on approximately 30 acres in the central portion of the approximately 80-acre North Fork site. The North Fork site is currently held in trust by the BIA.

Alternative D Facilities: The resort would include a gaming area, food and beverage facilities, a service bar, coffee shop, and a food court/deli. Buildings totaling 26,001 square feet would be constructed, along with 250 surface parking spaces. Unlike development on the Madera site, the current topography of the North Fork site would require a considerable amount of earthwork activity to create a level site.

An on-site detention basin would be provided to reduce increased peak flows that would result from developing the site. The basins would ensure that post-development runoff peaks from the North Fork site would be equal to the existing conditions, reduce erosion, and negative effects to groundwater. A total of 1 acre-foot of storage would be provided in the stormwater detention system.

Infrastructure and Public Services: Water for domestic use, emergency supply, and fire protection would be provided by on-site groundwater or by Madera County. The Madera County Maintenance District 8A provides water to the town of North Fork and a nearby U.S. Forest Service complex. The water system has one well drilled in 1994 to a depth of 520 feet, which pumps 240 gpm into a 200,000-gallon storage tank. An additional existing well, known as the North Fork Center Well, is currently inactive but available for future use. If on-

site groundwater were used, two on-site wells would be drilled. One well would be used for continuous supply and the other for redundancy in case of malfunction or maintenance of the primary well. Each well would have a firm water supply capacity of either 19 (with no on-site water recycling) or 10 (with water recycling) gpm.

Wastewater treatment would occur at either the County-operated WWTP that serves the town of North Fork or at an on-site WWTP constructed in the southern portion of the North Fork site. The North Fork WWTP is located approximately one mile northwest of the North Fork site. Wastewater would travel through a proposed pipeline along Minarets Road and then south along Highway 274 to the North Fork WWTP. However, if the on-site WWTP is created, the treated effluent would be used for both on-site landscaping irrigation and various appropriate water reduction processes.

Electrical service would be provided by PG&E. PG&E has an existing overhead electric 12-kilovolt line near Road 225 and Rainbow Road. The Madera County Fire Department and the Madera Sheriff's Department would provide fire protection and law enforcement services to the North Fork site. The Tribe would additionally employ trained security personnel for surveillance and patrol on-site.

Given the different location of the casino resort proposed for Alternative D, the public service provisions within the Madera County MOU would not apply to Alternative D. Therefore, specific agreements would need to be provided by appropriate area service providers.

#### **2.2.5 Alternative E - No-Action Alternative**

Under the No-Action Alternative, the Madera site would not be placed into Federal trust for the benefit of the Tribe and the site would not be developed as described under the development alternatives. Land use jurisdiction of the Madera site would remain with Madera County. The existing abandoned residential and barn structures would remain on the Madera site and seasonal livestock grazing activities would continue to occur. The parcels within the County (and within the City's sphere of influence) are designated as agricultural parcels. However, it is foreseeable and highly probable that in the future, some other form of commercial or residential development would occur on the Madera site. The site would be subject to guidelines within the Madera County General Plan. Thus, little restriction exists for future development of the properties.

### **3.0 ENVIRONMENT IMPACTS AND PUBLIC COMMENTS**

#### **3.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN THE FEIS**

Implementation of the Proposed Action and alternatives could result in direct, indirect, and cumulative impacts to the environment. Impacts would occur as a result of the construction and operation of the Proposed Action and alternatives. A number of specific environmental issues were raised during the EIS process. The categories of the most substantive environmental issues raised during the EIS process include:

- Water Supply.

- Wastewater Treatment,
- Air Quality,
- Biological Resources,
- Cultural and Paleontological Resources
- Socioeconomic Conditions,
- Transportation and Traffic,
- Visual Resources,
- Public Health and Safety, and
- Noise

Each of the alternatives considered in the FEIS was evaluated for the potential to impact environmental issues as required under NEPA, as well as the above environmental concerns raised during the EIS process. The evaluation of these project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments for the FEIS were accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the FEIS at the time of preparation. Alternative courses of action and mitigation measures were developed in response to the identified environmental concerns and substantive issues raised during the EIS process. A summary of the analysis of the environmental issues within the FEIS, including the issues raised during the EIS process, is presented below.

### **3.1.1 Land Resources**

Topography – All development alternatives would involve clearing and grading. The Madera site is essentially flat, and the result of on-site grading would not alter this characteristic. Approximately 200,000 cubic yards of fill material is anticipated to be excavated during construction of stormwater detention basins, however this material would be incorporated into the site grading. The overall topography of the Madera site, however, would remain essentially unchanged. The North Fork site (Alternative D) would use approximately 600,000 cubic yards of displaced or imported fill material to provide a surface appropriate for construction and to facilitate proper drainage. Operation of the alternatives would not cause significant disturbance to topography.

Soils – All development alternatives could potentially impact soils due to erosion during construction, operation, and maintenance activities, including clearing, grading, trenching, and backfilling. Obtaining a National Pollutant Discharge Elimination System (NPDES) permit from the USEPA for sediment control and erosion prevention is required for construction projects disturbing more than one acre of soil, as under Alternatives A through D. Impacts to soils under Alternative A through D would be less than significant with required compliance with the USEPA's NPDES general permit and required Storm Water Pollution Prevention Plan (SWPPP).

Seismicity – Seismic events and related structural damage and resulting hazard to public safety would be considered a potentially significant impact, due to the alternatives location

within an area of regional seismic activity. Mitigation measures related to seismicity on the alternative sites appear in the MMEP within **Chapter 2** to reduce any impacts to less than significant levels.

Mineral Resources – Alterations of the land resources use under any of the alternatives would not significantly diminish the extraction of important ores or minerals, as no economically significant mineral resources are known to exist in the project area. Impacts are less than significant.

### 3.1.2 Water Resources

Surface Water Drainage – Impacts from runoff changes from the increase in impervious surfaces resulting from Alternatives A through D would be reduced through minimization of impervious surfaces; incorporation of storm drains, vegetative swales, and a sediment/grease trap in the project design, and development of three detention basins (Madera site) ensure off-site discharge rates would be approximately equivalent to pre-development runoff rates. With the incorporation of these design components into Alternatives A through D, impacts would be reduced to less than significant levels.

Flooding – Alternative D is located outside the 100-year floodplain, thus impacts would be less than significant.

Under Alternative A, B, and C, less than half of the hardscape proposed would be located within the 100-year floodplain. Proposed design plans would elevate the buildings and structures five feet in elevation above the footprint of the 100-year floodplain. The parking areas would be at least one-foot above the floodplain. Mitigation measures related to flooding on these alternative sites appear in the Mitigation Monitoring and Enforcement Plan (MMEP) within **Chapter 2** to reduce impacts to a less than significant level.

Surface Water Quality – Construction of Alternatives A through D would result in ground disturbance, which could increase sediment discharge to surface waters during storm events, reducing water quality. Construction also has the potential to generate waste materials that can be washed into nearby surface waters during storm events. In accordance with the requirements of the NPDES Permit, the tribe would prepare and implement a SWPPP to control discharge of pollutants in stormwater. The plan would incorporate appropriate best management practices (BMPs) to prevent degradation of surface water resources during construction. Through compliance with permit requirements, including incorporation of BMPs, impacts to water quality during construction of Alternatives A through D would be less than significant.

Wastewater Disposal – Under all alternatives, wastewater would either be conveyed to a local off-site WWTP or treated at a constructed on-site WWTP. Compliance with all NPDES permit requirements would provide a less-than-significant impact to water quality from the allowed discharge of tertiary treated wastewater. Nonetheless, mitigation measures have been included within the MMEP within **Chapter 2** that would further reduce impacts from wastewater treatment and disposal.

Groundwater – All development alternatives would increase the demand for groundwater, but would not significantly deplete supplies or degrade water quality in violation of ground water standards or threaten public safety. However, due to drawdown, significant and potentially significant impacts to well operation would occur at wells within the vicinity of the Madera site soon after pumping begins for the project. Mitigation measures contained in the MMEP within **Chapter 2** would reduce these impacts to a less-than-significant level.

### 3.1.3 Air Quality

Construction Emissions – Emissions of ozone precursors nitrogen oxides (NO<sub>x</sub>) and reactive organic gasses (ROGs) during implementation Alternatives A through D would not exceed Clean Air Act (CAA) General Conformity thresholds; therefore, there would be a minimal adverse effect to air quality from the construction of Alternatives A through D. Through compliance with the National Emissions Standards for Hazardous Air Pollutants (NESHAP) reporting and operating requirements as regulated under the Federal Clean Air Act, the demolition of structures during the development of Alternatives A through D that may contain asbestos would have a less than significant impact on air quality. The impacts to air quality from construction of Alternatives A through D would be less than significant.

Operational Emissions – All development alternatives would result in emissions during operation, primarily from traffic generated by the project. Mitigation has been incorporated to reduce congestion and emissions totals so that significance thresholds are not exceeded, with the exception of ozone precursors. Recent redesignation of the San Joaquin Valley Air Basin to “extreme” nonattainment has lowered Federal air quality conformity de minimus levels. Therefore a final general conformity determination is contained in **Attachment IV**. The general conformity determination recommends mitigation to achieve conformity with the State Implementation Plan and ensure a less than significant impact to air quality. These mitigation measures have been added to the MMEP in **Chapter 2**.

### 3.1.4 Biological Resources

Wildlife and Habitats – Development of all alternatives would result in habitat disturbances, including potential impacts to cultivated fields. Under the various wastewater treatment options proposed for the Madera site, Option 1 and Option 3 would affect a smaller portion of the Madera site, primarily dryland wheat fields. Option 2 would affect approximately 10% more of the site, also dryland wheat fields. Alternative D is expected to disturb a smaller percentage of habitat which is much more biologically sensitive than on the Madera site. Mitigation measures are presented within **Chapter 2** to reduce site specific impacts to wildlife and habitat to less than significant levels.

Waters of the U.S – Alternatives A - C have been designed to avoid impacts to jurisdictional Waters of the U.S through project grading or placement of on-site wastewater treatment options. Impacts to jurisdictional waters would be unavoidable for Alternative D. Mitigation measures are presented within the MMEP (**Chapter 2.0**) to avoid or reduce site specific impacts to waters of the U.S. to less than significant levels.

Federally-Listed Special-Status Species – No Federal special-status species were observed or expected to occur on the Madera site, as the Madera site is ruderal and subject to constant



human disturbance. Therefore, it does not provide habitat for the Federally-listed special-status invertebrates, fish, amphibians, reptiles, or plant species.

Alternative D has the potential to impact two federally listed species, that have the potential to occur on the North Fork site: Mariposa pussypaws (*Calyptridium pulchellum*) and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). Mitigation measures to avoid potential impacts to these special-status plant species are identified in **Chapter 2**.

Migratory Birds – Under Alternatives A, B, C, and D migratory bird nests could be affected by vegetation removal associated with project construction during the nesting season. Development on all alternative sites would result in the loss of a small amount of foraging habitat for migratory bird species. Permanent features associated with proposed facilities under the development alternatives, such as night lighting, may potentially impact migratory bird species. Mitigation listed in **Chapter 2** would reduce potential impacts to migratory bird foraging habitat and nesting locations to less than significant levels.

### 3.1.5 Cultural Resources

Cultural Resources: All alternatives located on the Madera site would have no effect on known cultural resources. Alternative D contains a prehistoric resource composed of two granitic bedrock mortar outcrops and a sparse lithic scatter. One outcrop contains 9 cups and one contains 2 cups. Additional prehistoric resources were found on the North Fork site during the digging of a small pipeline for one of the residences. These resources do not extend into the Alternative D development footprint, but underscore the potential for the presence of subsurface cultural resources on the North Fork site. Mitigation measures are presented within **Chapter 2** to protect and preserve these resources. Additional mitigation measures are presented in **Chapter 2** for the treatment of unanticipated discoveries of archaeological sites at both the Madera and North Fork sites.

Paleontological Resources: Given disturbance over time at the Madera site (Alternatives A, B, and C), primarily due to grading from agricultural operations, the upper layer of soils underlying the Proposed Project are not known to contain paleontological resources and have a low probability of containing unknown paleontological resources. However, the discoveries at the Fairmead Landfill site (approximately 6 miles to the north of the Madera site) discussed in the FEIS contribute to the potential for significant paleontological deposits to be present beneath the ground surface. For the protection and preservation of unanticipated discoveries of paleontological resources, mitigation measures are presented in **Chapter 2** to reduce potential impacts to a less than significant levels.

### 3.1.6 Socioeconomic Conditions and Environmental Justice

Socioeconomics Conditions – Alternative A would result in the greatest economic stimulus to the region and would result in the greatest beneficial economic impact to the Tribe. All development alternatives would result in potential economic benefits for the City and County of Madera, the Tribe, and various other regional municipalities. Benefits to these municipalities would result from the creation of jobs and payments in-lieu of taxes agreed to in the various MOUs. The greatest economic benefit for the Tribe and the most jobs would be created by development alternatives with gaming. The Tribe has agreed to contribute annual

funds to compensate problem gambling service programs. With this contribution, effects to problem gambling services would be less than significant. However, the non-gaming alternative (Alternatives C) would not cause social impacts potentially attributable to casinos (such as an increase in the incidence of problem/pathological gambling).

Environmental Justice – Development of Alternatives A through D would benefit the Tribe and local communities by creating employment opportunities that would be primarily filled by the local labor market. These communities would not be disproportionately adversely impacted. A less-than-significant effect would result.

### **3.1.7 Resource Use Patterns**

Transportation/Circulation – In response to issues raised on the DEIS, a revised Traffic Impact Analysis (TIA) was prepared and included as Appendix M and summarized in Section 4.8 of the FEIS. Specifically, the analysis and study areas were revised in response to comments on the DEIS and in consultation with local jurisdictions. As stated in the revised TIA, development of Alternatives A through D would cause certain roadway segments and intersections in the vicinity of the proposed casino to operate at an unacceptable LOS (refer to Section 4.8 of the FEIS). Mitigation measures have been developed for the roadway segments and project intersections showing unacceptable LOS during operation of Alternatives A through D. With the incorporation of project mitigation measures described in **Chapter 2**, impacts to project roadways would be reduced to a less-than-significant level.

Land Use – Alternative A through C would replace the existing agricultural land use with development that is inconsistent with the existing planned land use designation. The development of Alternatives A through D would result in a noticeable increase in land use intensity, but no land use conflicts with the exception of potential conflicts with the municipal airport operation located near the Madera site for Alternatives A-C. These impacts would be reduced to a less than significant level through mitigation measures contained in **Chapter 2**.

Agriculture – Due to the inferior quality of land available for farming purposes, impacts to agriculture from the development of Alternative D would be less than significant. Given the generally poor quality of agricultural soils where development is proposed, the combined Farmland Policy Protection Act (FPPA) score of 143, and the retention of a large portion of the Madera site as open space that could be used for agricultural purposes, Alternatives A - C would have a less than significant impact on agriculture. In addition, the Tribe has agreed in the MID MOU to establish arrangements with local providers for the sale and purchase of local agricultural products and to establish an agricultural demonstration project for educational purposes on the Madera site, promoting and benefiting regional agricultural operations. Nonetheless, mitigation measures have been included in **Chapter 2** that would further reduce impacts to agriculture.

### **3.1.8 Public Services**

All development alternatives (A through D) would increase demands for water supply, wastewater, solid waste, gas and electric, telecommunications, law enforcement, fire protection, and emergency medical services.

Water – Because adequate water is available from the County to serve Alternative D, and the Tribe would pay for all infrastructure upgrades required to serve the site, there would be no significant impact to water supply services. Since water supply for Alternatives A - C would be supplied either wholly from on-site wells or from an on-site well in combination with City Well No. 26 (used solely during maintenance of the primary on-site well or for fire flow), a reduction in available capacity of the City's water facilities would not occur. In addition, the Tribe would pay for the cost of constructing the piping and related facilities required to create a looped system with the City. Therefore, the effect on public water utilities would be less than significant.

Wastewater – On-site wastewater treatment options under Alternatives A - D would have no effect on local public service providers because they would be fully paid for and operated by the Tribe on-site. While the City of Madera has available capacity to accept wastewater from Alternatives A - C, obtaining City of Madera sewer service would require connection to the City sewer lines. An additional sewer line would be needed as well as potential expansion of existing lift stations. This impact would be significant and mitigation is provided in **Chapter 2**, which would reduce impacts to a less than significant level. By adding the Alternative D wastewater flows to the expanded Madera County WWTP for the community of North Fork, the plant would be near capacity. This impact would be significant and mitigation is provided in **Chapter 2**. Implementation of mitigation measures would reduce impacts to a less than significant level.

Solid Waste – Construction waste that cannot be recycled would be disposed of at the Fairmead Landfill under Alternatives A - D, which accepts construction/demolition materials. This impact would be temporary and not significant. Nonetheless an additional mitigation measure as discussed in **Chapter 2** would further reduce effects to the landfill. Solid waste generation resulting during the operation of Alternatives A - D would represent a small percentage of the Fairmead Landfill's remaining daily capacity, which would be a less than significant impact. Mitigation is provided in **Chapter 2** to further ensure a reduction in the amount of waste that is landfilled.

Utilities – Adequate electrical, natural gas, and telecommunications facilities are available to serve Alternatives A - D and any upgrades or extensions would be funded by the Tribe. Thus, no significant impacts to utilities would occur.

Public Health and Safety – Additional costs would be incurred for law enforcement and fire protection services to serve the added demands of Alternatives A - D, resulting in a significant impact. Mitigation measures in **Chapter 2** would reduce this impact to a less than significant level. Given that the Tribal-State Compact would require compliance with state food and beverage handling standards and that the Safe Drinking Water Act (SDWA) would apply to trust land, a significant effect to public health and safety due to inadequate food and water safety precautions would not occur under Alternatives A, B, and D. Given that the SDWA would apply to trust land, a significant impact to public health and safety due to inadequate water safety precautions would not occur under Alternative C. For Alternative C a Tribal-State Compact would not be required and the terms of the County MOU would not apply. Any renegotiated MOU with the County is expected to contain the food and beverage handling and safe drinking water provisions noted under Alternative A. However, if such

terms were not included in a renegotiated MOU or the MOU was not renegotiated, a potentially significant effect to public health could occur if Tribal food and beverage handling standards were inadequate. Mitigation measures contained in **Chapter 2** would ensure this effect is mitigated to a less than significant level.

Schools – Existing school facilities would be able to absorb any new student population under Alternatives A - D. Thus, the impact to school services would be less than significant.

### **3.1.9 Other Values**

Noise – Construction noise increases and mechanical noise equipment during operation may exceed significance criteria for all alternatives, resulting in a potentially significant noise impact during construction and operation. Mitigation measures contained in **Chapter 2** would reduce these impacts to less than significant levels.

Hazardous Materials – Typical construction management practices limit and often eliminate the effect of such accidental releases including the use of storage areas that are not exposed to rainwater. An accident involving a service or refueling truck would present the worst-case scenario for the release of a hazardous substance. Depending on the relative hazard of the hazardous material, if a spill of significant quantity were to occur, the accidental release could pose a hazard to construction employees as well as to the environment. This impact is potentially significant for all alternatives but is reduced to a less than significant level through mitigation measures in **Chapter 2**. The amount and types of hazardous materials that would be stored, used, and generated during the operation of Alternatives A - D could have a potentially significant impact to the environment and public if not managed properly. Mitigation is included in **Chapter 2** to reduce potential impacts to a less than significant level.

Visual Resources – Alternatives A - D have been designed to avoid architectural features, such as the use of neon, which may be especially incompatible with a non-urban setting. Instead, the use of earth tones in paints and coatings, and native building materials such as stone have been utilized extensively in the project design. Architectural treatments incorporated into the various structures also serves to break up and soften the massing of the proposed buildings. In addition, landscape amenities have been incorporated into the project design to complement buildings and parking areas, including raised landscaped areas and plantings of trees and shrubs. Finally, no local or State-designated scenic corridors would be affected by the implementation of Alternatives A - D. Thus, effects to visual resources would be less than significant.

### **3.1.10 Indirect Effects**

Indirect Effects from Off-Site Traffic Mitigation – As described in detail in Section 4.12.2 of the FEIS, implementation of off-site traffic mitigation may indirectly affect the environment; however, off-site activities would be required to comply with Federal, state, and local laws, policies, and ordinances, resulting in less than significant impacts, with the exception of potential costs to local jurisdictions to pay for land acquisition. Mitigation measures in **Chapter 2** would ensure a less than significant impact.

Indirect Effects from Off-Site Pipeline Construction – As described in detail in Section 4.12.3 of the FEIS, implementation of off-site traffic mitigation may indirectly affect the environment; however, off-site activities would be required to comply with Federal, state, and local laws, policies, and ordinances, resulting in less than significant impacts.

### **3.1.11 Growth-Inducing Effects**

The housing demand generated by the EIS alternatives would be met by available and planned housing developments and no housing growth would occur as a result of the alternatives. No significant off-site commercial growth would occur due to any of the EIS alternatives, either from visitors to the sites or from new residents. Office developments to serve the needs of currently planned residential development would not be induced by any of the EIS alternatives, because residential development has already occurred or is planned independent of the project alternatives. Additional industrial jobs that may be created due to increased economic activity would be accommodated by the vacant units in existing industrial areas in the County or in existing industrial operations. These jobs would be dispersed among industrial operations in Madera County and beyond. Thus, no growth in industrial facilities would occur under any of the alternatives and a less than significant impact would occur.

Should the Tribe decide to obtain local water and wastewater services, any water/wastewater pipeline extensions would be sized solely to serve the development proposed by the Tribe. Any other utilities improvements, such as improvements to electrical facilities, would be minor and tailored specifically for the project alternative. Thus, no growth would be induced by the extension of infrastructure or the expansion of utilities resulting from the project alternatives and a less than significant impact would occur.

### **3.1.12 Cumulative Effects**

The development alternatives when added to past, present, and reasonably foreseeable future actions would not result in significant cumulative impacts to land resources, water resources, biological resources, socioeconomic impacts, land use, agriculture, public services (except off-site wastewater treatment services), noise, and visual resources.

Potentially significant impacts to air quality would occur from future operational emissions under Alternative A and due to additional greenhouse gas emissions under all development alternatives. Mitigation measures in **Chapter 2** would ensure a less than significant cumulative air quality impact. Significant cumulative cultural resources impacts could occur if unknown cultural resources are discovered during construction. Mitigation measures in **Chapter 2** would ensure a less than significant cumulative cultural resources impact. The development of Alternatives A through D would cause certain roadway segments and intersections in the vicinity of the proposed casino to operate at an unacceptable LOS during future cumulative conditions. Mitigation measures have been developed for the roadway segments and project intersections showing unacceptable LOS during operation of Alternatives A through D. With the incorporation of project mitigation measures described in **Chapter 2**, impacts to project roadways would be reduced to a less-than-significant level. Off-site treatment of wastewater would result in the capacity of the municipal wastewater treatment plant being exceeded earlier than anticipated under all of the alternatives. This impact is considered significant. Mitigation is listed in **Chapter 2** to reduce this impact to a

less than significant level. The amount and types of hazardous materials that would be stored, used, and generated during the construction and operation of Alternatives A through D could have a potentially significant impact to the environment and public. Mitigation is included in **Chapter 2** to reduce potential impacts to a less than significant level.

### **3.1.12 Unavoidable Adverse Effects**

In accordance with the analysis within the FEIS, there are no unavoidable adverse effects that would occur as a result of the implementation of the Proposed Action and alternatives. All identified impacts can be adequately mitigated.

## **3.2 COMMENTS ON THE FEIS AND RESPONSES**

During the 30-day waiting period following issuance of the FEIS on August 6, 2010, the BIA received comment letters from agencies and from other interested parties. During the decision making process for the Proposed Action, all comment letters on the FEIS were reviewed and considered by the BIA and are included within the administrative record. A list of comment letters and a copy of each letter received are included within **Attachment II**. Specific responses to these letters are included in the Response to Comments document, which is also included in **Attachment II**.

## **4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)**

Either the Mixed-Use Development Alternative (Alternative C) or the No-Action Alternative (Alternative E) would result in the fewest effects to the natural and human environment. The No-Action Alternative would be environmentally preferred. The No-Action Alternative, however, would not meet the stated purpose and need. Specifically, it would not provide the Tribe with an area in which the Tribe may engage in economic development to generate sustainable revenue to allow the Tribe to achieve self-sufficiency, self-determination, and a strong Tribal government. The No-Action Alternative also would likely result in substantially less economic benefits to Madera County and the City of Madera than the development alternatives.

Of the development alternatives, Alternative C would result in the fewest adverse effects on the human environment. Alternative C would have the fewest effects due to a lesser amount of new development than would occur with any of the other development alternatives. However, Alternative C would generate less revenue, and therefore reduce the number of programs and services the Tribal Government could offer Tribal citizens and neighboring communities. Alternative C is the Environmentally Preferred Development Alternative, but it would not fulfill the purpose and need for the Proposed Action stated in the EIS.

## **5.0 PREFERRED ALTERNATIVE**

For the reasons discussed herein, the Department has determined that Alternative A (the Proposed Project) is the Preferred Alternative. The BIA's mission is to enhance the quality of life and to promote economic opportunity in balance with meeting the responsibility to protect and improve the trust resources of American Indians, Indian Tribes, and Alaska Natives. This mission is reflected in the policies underlying the statutory authorities of the IRA, which was

enacted to promote Indian self-government and economic self-sufficiency, and IGRA, which was enacted to govern Indian gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Of the alternatives evaluated within the EIS, Alternative A would best meet the purposes and need for action, consistent with its statutory mission and responsibilities to promote the long-term economic vitality, self-sufficiency, self-determination, and self-governance of the Tribe. The Tribal government facilities and casino-hotel described under Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the Tribal government. Under such conditions, the Tribal Government would be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to Tribal citizens, as well as provide the Tribe, its citizens, and local communities with greater opportunities for employment and economic growth. Alternative A would also allow the Tribe to implement the highest and best use of the property. Finally, while Alternative A would have slightly greater environmental impacts than either of the environmentally preferred alternatives, those alternatives do not meet the purpose and need for the Proposed Action to the same extent as Alternative A, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD.

Alternatives B and C, while slightly less intensive than Alternative A, would require similar levels of mitigation for identified impacts; however, the economic returns would be smaller than under Alternative A and the more limited development is not the most effective use of either the land or the Tribe's capital resources. Based on the limitations of the environmental resources in the area (such as the existing roadway network), the Tribe needs a development option that would ensure adequate capital resources to not only fund Tribal programs but fund mitigation measures for identified impacts and payment obligations to local jurisdictions. The reduced revenue anticipated from Alternatives B and C would limit the Tribe's ability to fund both Tribal programs and mitigation measures. Additionally, without the development of the hotel and the rural location of the North Fork, Alternative D would provide further limited opportunities for capital development to fund Tribal programs.

The competitive market forces associated with commercial development and the amount of competitive commercial development along the Highway 99 corridor within Madera County make Alternative C (mixed-use development) less attractive than Alternative A from the standpoint of securing a long-term, sustainable revenue stream. A retail development on the Madera site would have limited competitive ability to draw patrons from the greater population centers within Madera County and the Highway 99 corridor compared to the gaming alternatives. In addition, based on peak-hour traffic patterns for retail centers compared to gaming operations, Alternative C also would likely have equal to and in certain instances greater traffic impacts during peak hours than would Alternative A.

In short, Alternative A is the alternative that best meets the purpose and need of the Tribe and the BIA while preserving the natural resources of the Madera site. Therefore, Alternative A is the Department's Preferred Alternative.

## 6.0 MITIGATION MEASURES

All practicable means to avoid or minimize environmental harm from the Preferred Alternative have been identified and adopted. The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to Federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this decision. Specific best management practices and mitigation measures adopted pursuant to this decision are set forth below and included within the MMEP (see **Chapter 2**).

### 6.1 GEOLOGY AND SOILS

#### *Seismicity*

- A. All structures shall be designed in compliance with the California Building Code (CBC) Building Code (Article VI Chapter 6.04) current at the start of construction such that risks to the health or safety of workers or members of the public from earthquake hazards are reduced to a less-than-significant level.

### 6.2 WATER RESOURCES

#### *Flooding*

- A. To reduce the project's potential to increase surface runoff, impervious surfaces shall be minimized where feasible. Where feasible, all areas outside of buildings and roads will be kept as permeable surfaces, either as vegetation or high infiltration cover such as mulch, gravel, or turf block. Pedestrian pathways shall use a permeable surface where possible, such as crushed aggregate or stone with sufficient permeable joints (areas between stone or brick if used). Rooftops shall drain to vegetated driplines to maximize infiltration prior to concentrating runoff.

#### *Construction Impacts*

- B. An erosion control plan will be developed with the primary intent to decrease pollutants entering the water columns, with a secondary intent of trapping pollutants before they exit the site.
- C. The Tribe shall comply with all provisions stated in the Clean Water Act (CWA). As required by the General Construction National Pollutant Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency (USEPA) under the CWA, a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared that will address water quality impacts associated with construction of the project. Water quality control measures identified in the Storm Water Pollution Prevention Plan shall include, but not be limited to, Best Management Practices (BMPs) described below:
  - a. Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.



- b. Temporary erosion control measures (such as silt fences, staked straw bales, and temporary revegetation) shall be employed for disturbed areas.
- c. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.
- d. Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures.
- e. A Spill Prevention Control and Countermeasure Plan (SPCC) shall be developed, if necessary, which will identify proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.
- f. Petroleum products shall be stored, handled, used, and disposed of properly.
- g. Construction materials, including topsoil and chemicals, shall be stored, covered, and isolated to prevent runoff losses and contamination of groundwater.
- h. Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.
- i. Sanitary facilities shall be provided for construction workers.
- j. Disposal facilities shall be provided for soil wastes, including excess asphalt produced during construction.
- k. All workers and contractors shall be educated in the proper handling, use, cleanup, and disposal of all chemical materials used during construction activities.
- l. All contractors involved in the project shall be educated on the potential environmental damages resulting from soil erosion prior to development by conducting a pre-construction conference. Copies of the project's erosion control plan shall be distributed at this time. All construction bid packages, contracts, plans and specifications shall contain language that requires adherence to the plan.
- m. Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall to reduce erosion during the rainy seasons.
- n. Construction zones shall be created and only one part of a construction zone shall be graded at a time to minimize exposed areas. If possible, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone.

- o. Utility installations shall be coordinated to limit the number of excavations.
- p. Disturbed soils shall be protected from rainfall during construction by preserving as much natural cover, topography, and drainage as possible. Trees and shrubs shall not be removed unnecessarily.
- q. Disturbed areas shall be stabilized as promptly as possible, especially on long or steep slopes. Recommended plant materials and mulches shall be used to establish protective ground cover. Vegetation such as fast growing annual and perennial grasses shall be used to shield and bind the soil. Mulches and artificial binders shall be used until vegetation is established. Where truck traffic is frequent, gravel approaches shall be used to reduce soil compaction and limit the tracking of sediment off site.
- r. Surface water runoff shall be controlled by directing flowing water away from critical areas and by reducing runoff velocity. Diversion structures such as terraces, dikes, and ditches shall collect and direct runoff water around vulnerable areas to prepared drainage outlets. Surface roughening, berms, check dams, hay bales, or similar devices shall be used to reduce runoff velocity and erosion.
- s. Sediment shall be contained when conditions are too extreme for treatment by surface protection. Temporary sediment traps, filter fabric fences, inlet protectors, vegetative filters and buffers, or settling basins shall be used to detain runoff water long enough for sediment particles to settle out.
- t. Topsoil removed during construction shall be carefully stored and treated as an important resource. Berms shall be placed around topsoil stockpiles to prevent runoff during storm events.
- u. The disturbance of soils shall be avoided and minimized as fully as possible.

#### *Operational Impacts*

- D. Fertilizer use shall be limited to the minimum amount necessary, taking into account any nutrient levels in the recycled water source. Fertilizer shall not be applied prior to a rain event.
- F. Landscape irrigation shall be adjusted based on weather conditions and shall be reduced or eliminated during the wet portion of the year in order to prevent excessive runoff.
- F. The sprayfield shall be designed so that any wastewater runoff is captured and not allowed to run off the site or enter waters of the U.S.
- G. At least 15 percent of surface parking areas shall be constructed of pervious surfaces.

## Groundwater

- H. Stormwater BMPs that promote infiltration of water from stormwater runoff and on-site disposal of treated wastewater shall be implemented. BMPs for enhancing infiltration of stormwater runoff have the potential to increase the rate of natural recharge at the site, while on-site disposal of treated wastewater will return groundwater originating from the casino wells back to the aquifer. The effectiveness of these measures to reduce drawdown impacts is directly proportional to the rate of new recharge compared with the pumping rate (see **FEIS Appendix L**). Given the limited amount of rainfall received in Madera County, additional recharge from stormwater BMPs would have a minimal effect on the drawdown effects of on-site pumping, offsetting such effects by only 1.6 percent. Irrigating on-site landscaping combined with the use of on-site sprayfields and/or leachfields would have a far greater offsetting effect on the aquifer, reducing drawdown from 7 to 67 percent. Under each alternative, if treated wastewater is disposed via a leachfield, the recharge rate would be at the upper end of this range; whereas, if the treated wastewater is disposed in a sprayfield, the recharge rate would be in the lower end of the range (see **FEIS Appendix L** for a detailed breakdown of potential recharge rates for each disposal option).
- I. If on-site groundwater resources are used for water supply, groundwater sampling and analysis shall be performed to determine if treatment is necessary. If treatment is necessary, an on-site water treatment plant shall be constructed to treat drinking water to USEPA standards.
- J. The Tribe shall adopt water conservation measures, such as electronic dispensing devices in faucets, low flow toilets, low flow showerheads, and the use of native plants in landscaping, to reduce the consumption of groundwater as recommended by the regional groundwater management plan.
- K. Effects to regional overdraft shall be reduced by Tribal contributions to a reserved water bank or groundwater recharge area in an amount at least equivalent to property pumping rates. Possible groundwater recharge areas include areas operated or proposed by the Madera Irrigation District (MID) (**FEIS Appendix L**). The Tribe has executed a Memorandum of Understanding (MOU) with MID (**ROD Attachment V**) that provides for equivalent water contributions to a MID recharge area should development under Alternative A occur. Therefore this mitigation measure would not apply to Alternative A.
- L. The Tribe shall implement a groundwater monitoring program (described in **FEIS Appendix L**) as soon as is feasible after project approval and preferably at least one year before opening of the project facilities to the public (to allow for baseline monitoring).
- M. The Tribe shall implement a program to compensate neighboring well owners for impacts to well operation. The actual amount of interference drawdown associated with the project and the future rate of regional groundwater level decline shall be

estimated from the groundwater monitoring program (FEIS Appendix L). At least one year of baseline data and one year of data after project pumping begins should be collected prior to implementation of the following well impact compensation program:

- a. Reduction in usable well life –The tribe shall reimburse the owners of wells that become unusable within 30 years of the onset of project pumping for a portion of the prevailing, customary cost for well replacement, rehabilitation or deepening. In order to be eligible, the well owner will need to provide the tribe with documentation of the well location and completion data, and prove that the well was constructed and usable before project pumping was initiated. The percentage of the cost reimbursed by the tribe shall depend upon the degree to which the well's usable life is shortened as determined from data gathered during the groundwater level monitoring program and water level data gathered by others. Specifically, the following approach shall be used:
  - i. Regional groundwater monitoring data for the period between the time that pumping for the project begins and the well becomes unusable will be analyzed using a best-fit line approach to determine the regional rate of groundwater level decline in feet per year;
  - ii. Groundwater monitoring data for the project will be used to assess the amount of drawdown in feet experienced by the affected well for which the project is responsible;
  - iii. The number of years by which the well's life is shortened due to the project will be calculated by dividing the amount of drawdown induced by the project by the calculated annual rate of regional water level decline; and
  - iv. The Tribe shall reimburse the well owner for the cost of replacing or deepening the unusable well at a rate of 10 percent of the customary and prevailing cost for each year that the well life is shortened due to the project.
- b. Groundwater level falling near or below pump intake – The concept of usable well life can also be applied to this impact, except that the well's usable life is extended by lowering the pump intake. The impact of project pumping on shortening this time period would be similar to the impact on shortening well life, and shall be determined using the same methodology described above. The tribe shall reimburse the owners of wells with pumps that require lowering within 30 years of the onset of project pumping for a portion of the prevailing, customary cost for this service. The percentage of the cost reimbursed by the tribe shall depend upon the degree to which the time period until a well's pump intakes require lowering at a rate of 10% of the cost of lowering the pump or pump intake for each year that the well's life with the pump at the original position is shortened. In order to be eligible, the well owner will need to provide the tribe with documentation of the well location and completion data, including pump intake depth, and prove that the well was constructed and usable before project pumping was initiated. The Tribe must be made aware of the cost reimbursement claim prior to lowering of the pump intake, so that the

need for possible well deepening, replacement or rehabilitation can be assessed and inefficiencies can be avoided. At the Tribe's discretion, compensation may be paid toward well deepening, replacement or rehabilitation in lieu of toward lowering the pump intake.

- c. Increased Electrical and Maintenance Cost – The Tribe shall reimburse well owners pumping more than 100 AF/year for their additional annual electrical costs (for no longer than 30 years) at the prevailing electrical rate based on the following formula:

$$\text{KWhr/year} = \frac{(\text{gallons Pumped/year}) \times (\text{feet of interference drawdown})}{1621629}$$

In order to qualify for reimbursement, the well owner must provide proof of the actual annual volume of water pumped. As an alternative to annual payments, a one-time lump sum payment of a mutually agreeable amount could be made.

- d. No reimbursement would be made available for wells installed after operation of the project.
- e. For any of the above impacts, the Tribe may choose at its discretion to provide the well owner with a connection to a local public or private water supply system in lieu of the above mitigation measures, at a reduced cost in proportion to the extent the impact was caused by project pumping.
- f. The known owners of identified wells within two miles of the project pumping well shall be notified of the well impact compensation program outlined above before project pumping begins.
- g. The Tribe shall contract with a third party such as the County of Madera to oversee this well impact compensation program.

### 6.3 AIR QUALITY

#### *Construction Impacts*

- A. All construction mitigation measures shall be incorporated into a Construction Emissions Mitigation Plan.
- B. During construction, the Tribe shall comply with San Joaquin Valley Air Pollution Control District (SJVAPCD) Regulation VIII (Fugitive Dust Rules).
- C. Prior to the start of any construction activity on the site, the Tribe shall create a Dust Control Plan pursuant to SJVAPCD Rule 8021. Implementation of SVAPCD Rule 8021 would limit visible dust emissions to 20 percent opacity.
- D. In addition to full compliance with all applicable Regulation VIII requirements, the Tribe shall implement the following dust control practices, drawn from Tables 6-2 and 6-3 of SJVAPCD's *Guide for Assessing and Mitigating Air Quality Impacts* (GAMAQI), during construction:
  - a. All disturbed areas, including soil stockpiles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust

- emissions using water, chemical stabilizer/suppressant, or vegetative ground cover.
- b. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
  - c. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
  - d. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, or at least six inches of freeboard space from the top of the container shall be maintained.
  - e. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at least once every 24 hours when operations are occurring. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.)
  - f. Following the addition of materials to, or the removal of materials from, the surface of outdoor soil stockpiles, piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
  - g. Limit traffic speeds on unpaved roads to 15 mph; and
  - h. Install erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- E. The Tribe shall prepare an inventory of all equipment prior to construction and identify the suitability of add-on emission controls for each piece of equipment before groundbreaking. Control technologies such as particle traps control approximately 80 percent of diesel particulate matter. Specialized catalytic converters (oxidation catalysts) control approximately 20 percent of diesel particulate matter, 40 percent of carbon monoxide emissions, and 50 percent of hydrocarbon emissions.
- F. The Tribe shall ensure that diesel-powered construction equipment is properly tuned and maintained, and shut off when not in direct use.
- G. The Tribe shall prohibit engine tampering to increase horsepower, except when meeting manufacturer's recommendations.
- H. The Tribe shall locate diesel engines, motors, and equipment staging areas as far as possible from the closest residences.
- I. The Tribe shall require the use of low sulfur diesel fuel (<15 parts per million sulfur) for diesel construction equipment, if available.
- J. The Tribe shall reduce construction-related trips of workers and equipment, including trucks. A construction traffic and parking management plan shall be developed that minimizes traffic interference and maintains traffic flow.

- K. The Tribe shall lease or buy newer, cleaner equipment (1996 or newer model), using a minimum of 75 percent of the equipment's total horsepower.
- L. The Tribe shall use lower-emitting engines and fuels, including electric, liquefied gas, hydrogen fuel cells, and/or alternative diesel formulations.

***Operational Impacts***

- M. The Tribe shall provide transportation (e.g., shuttles) to major transit stations and multi-modal centers. The Tribe shall at a minimum provide six shuttles daily to major transit stations and multi-modal centers.
- N. The Tribe shall provide transit amenities such as bus turnouts; shelter benches; street lighting, route signs, and displays in and around the transit shelter benches to encourage public use of the transit service.
- O. The Tribe shall contribute to dedication of land for off-site bicycle trails linking the project to designated bicycle commuting routes in accordance with the regional Bikeway Master Plan.
- P. The Tribe shall maximize the potential of passive solar design principles where feasible.
- Q. The Tribe shall ensure the use of clean fuel vehicles in the vehicle fleet where practicable.
- R. The Tribe shall provide a parking lot design that includes clearly marked and shaded pedestrian pathways between transit facilities and building entrances.
- S. The Tribe shall provide amenities such as personal lockers and showers, bicycle lockers and racks, bus pass subsidies and flexible schedules for employees who walk, bike, or utilize public transit to work.
- T. The Tribe shall provide electric vehicle charging facilities.
- U. The Tribe shall provide preferential parking for vanpools and carpools.
- V. The Tribe shall provide on-site pedestrian facility enhancements such as walkways, benches, proper lighting, vending machines, and building access, which are physically separated from parking lot traffic.
- W. A parking structure is proposed in Alternatives A and B. If the parking structure includes mechanical ventilation and exhaust, the exhaust should be vented in a direction away from inhabited areas.
- X. The Tribe shall provide adequate ingress and egress at entrances to the Casino to minimize vehicle idling and traffic congestion.
- Y. The Tribe shall contract only with commercial landscapers who operate equipment that complies with the most recent California Air Resources Board certification standards, or standards adopted no more than three years prior to date of use.
- Z. The Tribe shall adopt an anti-idling ordinance for the facility. To help maintain compliance with this ordinance, the Tribe should consider creating a driver's lounge, where drivers can wait and occupy themselves comfortably instead of sitting in their buses or trucks.

- AA. The Tribe shall implement or fund the implementation of one or more of the following measures to reduce NOx, ROG, and PM10 emissions to less than the SJVAPCD thresholds, which would result in a less than significant impact from Alternatives A, B, and C. FEIS Table 5-1 shows the reductions necessary for each alternative.
- a. Pave or resurface unpaved roadway(s) or roadway(s) in a deteriorated state within the San Joaquin Valley Air Basin, which have a minimum daily vehicle count of 100 vehicles.
  - b. Contribute to a program to retrofit residential fireplaces that do not meet EPA certification standards within the San Joaquin Valley Air Basin.
  - c. Purchase low emission buses to replace older municipal or school buses used within the San Joaquin Valley Air Basin.
  - d. Purchase hybrid vehicles to replace existing governmental fleet vehicles within the San Joaquin Valley Air Basin.
  - e. Purchase and install on-site or within the San Joaquin Valley Air Basin; a photovoltaic array, wind powered energy, and/or other form(s) of renewable energy.
  - f. Contribute a fair share percentage to the synchronization of traffic signals within the San Joaquin Valley Air Basin.
  - g. Purchase Emission Reduction Credits that are available from sources within an air basin in conformity with 40 CFR 93.

#### *Odor Impacts*

- BB. The wastewater treatment plant shall be constructed with comprehensive odor control facilities, including the injection of odor control oxidants at the sewage lift station and construction of covered headworks with odor scrubber at the wastewater treatment plant.
- CC. Spray drift from the wastewater treatment plant or spray disposal field shall not migrate out of the disposal field boundaries.
- DD. Spray field irrigation shall cease when winds exceed 30 mph.
- EE. 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. The operators shall have qualifications similar to those required by the State Water Resources Control Board Operator Certification Program for municipal wastewater treatment plants. This program specifies that for tertiary level wastewater treatment plants with design capacities of 1.0 MGD or less, the chief plant operator must be a Grade III operator. Supervisors and Shift Supervisors must be Grade II operators. An Operations and Maintenance Program must be followed by the plant operators. Emergency preparedness shall include all appropriate measures, including a high level of redundancy in the major systems.



### ***Toxic Air Contaminants Impacts***

- FF. Air intakes associated with the heating and cooling system for buildings shall not be located next to potential TAC-emitting locations (e.g., loading docks) in accordance with CARB's Air Quality and Land Use Handbook.

### ***Indoor Air Quality Impacts***

- GG. The casino floor shall be ventilated to at least the standards of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), *Ventilation for Acceptable Indoor Air Quality*, ASHRAE Standard 62-2001.
- HH. The Tribe shall ensure that comfort levels are acceptable to most occupants, and consistent with ASHRAE Standard 55-1992, under all operating conditions.
- II. The Tribe shall ensure that significant expected sources of pollutant emissions are isolated from occupants using physical barriers, exhausts, and pressure controls.
- JJ. The Tribe shall ensure that outdoor air entering the building is protected from contamination from local outdoor sources and from building exhausts and sanitation vents.
- KK. The Tribe shall ensure that provisions are made for easy access to heating, ventilation, and air conditioning (HVAC) equipment requiring periodic maintenance.
- LL. The Tribe shall ensure the use of low-emitting building products pursuant to Integrated Waste Management Board's Section 01350 where feasible.
- MM. The Tribe shall ensure that occupant exposure to construction contaminants is minimized using protocols for material selection, preventive installation procedures, and special ventilation and pressure control isolation techniques.
- NN. A non-smoking gaming area shall be provided.
- OO. Signage shall be displayed or brochures made available to casino patrons describing the health effects of second-hand smoke.
- PP. The Tribe shall provide notice of the health effects of secondhand smoke exposure to employees upon hire.
- QQ. The Tribe shall seek LEED certification for project components, where possible.

### ***Climate Change***

As noted in the FEIS, a less than significant cumulative impact to global climate change would result after the implementation of Mitigation Measure QQ. In addition, the implementation of mitigation measures RR through YY are recommended to further reduce project climate change impacts.

- RR. Buses and other commercial diesel-fueled vehicles shall comply with the California Air Resource Board's (CARB) Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling (California Code of Regulations, Title 13, Division 3, Article 1, Chapter 10, Section 2485), which

requires that the driver of any diesel bus shall not idle for more than five minutes at any location, except in the case of passenger boarding where a ten minute limit is imposed, or when passengers are onboard. Furthermore, the Tribe will provide a "Drivers Lounge" for bus and truck drivers to discourage idling.

- SS. The Tribe shall ensure the use of low-emitting building products pursuant to Integrated Waste Management Board's Section 01350 where feasible.
- TT. The Tribe shall ensure use of low-emission, central, or tankless water heaters and install wall insulation that shall exceed Title 24 requirements.
- UU. The Tribe shall use energy efficient appliances in the hotel and casino.
- VV. Environmentally preferable materials shall be used to the extent practical for construction of facilities.
- WW. Implementation of Mitigation Measures P, Q, U, and V
- XX. The Tribe shall maintain all vehicles to manufacturers' specifications. This mitigation measure would reduce emission that occurs when vehicles are not maintained.
- YY. The Tribe shall ensure that the project will provide multiple and/or direct pedestrian access to adjacent, complementary land uses and throughout the project. This mitigation measure would encourage walking to destinations adjacent to the proposed project and thus, reducing vehicle trips.

#### 6.4 BIOLOGICAL RESOURCES

##### *State Special-Status Species*

##### **Swainson's Hawk**

- A. The pre-construction survey shall be conducted within 30 days prior to initiation of construction activity, and cover all potential nesting trees. If active nests are found, consultation with USFWS shall occur. Appropriate measures shall be adopted similar to California Department of Fish & Game (CDFG) mitigation guidelines, regarding losses of suitable foraging habitat. Impacts within 10 miles of a Swainson's hawk nest site shall be mitigated by protecting or creating equally suitable foraging habitat elsewhere within the territory's 10-mile radius (CDFG 1994). The acreage of Habitat Management (HM) lands provided shall be derived from the 1994 CDFG staff report.

Projects within five miles of an active nest tree but greater than one mile from the nest tree shall provide 0.75 acres of HM land for each acre of urban development planned (0.75:1 ratio). All HM lands protected under this requirement shall be protected through fee title acquisition or conservation easement (acceptable to the CDFG) on agricultural lands or other suitable habitats that provide foraging habitat for Swainson's hawks. Management Authorization holders/project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands).

- B. Informal consultation with CDFG shall occur prior to construction activities to discuss potential on-site impacts to state special-status species.

#### ***Migratory and Nesting Birds***

- C. If feasible, vegetation removal activities shall occur outside of the nesting season (approximately March through September) for migratory birds. If vegetation removal activities are to be conducted during the nesting season, a qualified biologist shall conduct a pre-construction survey for active migratory bird nests in and around proposed disturbance areas within one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the site shall be resurveyed. If a migratory bird nest is present, consultation with USFWS shall occur. A disturbance-free buffer of 250 feet shall be established around the nest and demarcated with fencing or flagging. No project-related construction activities, including vegetation removal, shall occur within the buffer zone until a qualified biologist determines the young have fledged and are independent of the nest.
- D. A pre-construction survey for Western burrowing owls shall be conducted to ensure that impacts to burrowing owls, if present, do not occur during the nesting season. The pre-construction survey shall be conducted within 30 days prior to initiation of construction activity. If active burrows are found prior to the nesting season, consultation with USFWS shall occur. If feasible, passive relocation measures shall be provided for each burrow in the area of the Madera site that is rendered biologically unsuitable. Passive relocation measures shall include the creation of two natural or artificial burrows for each burrow rendered biologically unsuitable. Daily monitoring will be implemented until the owls have been relocated to the new burrows. This measure will reduce potential impacts to burrowing owl species.
- E. The following measures shall be implemented to minimize the effects of lighting and glare:
  - a. Install downcast lights with top and side shields to reduce upward and sideways illumination. This shall reduce potential disorientation affects from non-directed shine to birds and wildlife species.
  - b. Turn off as many exterior and interior lights as possible during the peak bird migration hours of midnight to dawn to reduce potential building collisions with migratory birds.

#### ***Waters of the U.S.***

- F. Permanent fencing shall be installed around areas of wetlands and identified jurisdictional waters of the U.S., as shown on the U.S. Army Corps of Engineers (USACE) verified, waters of the U.S. map. Fencing shall be located no closer than a minimum of 50 feet from boundaries of waters of the U.S. Fencing shall be installed prior to any construction to protect water quality and shall remain in place after construction to maintain the wetlands and waters of the U.S.

- G. Construction staging areas shall be located at least 50 feet away from the wetlands and identified jurisdictional waters of the U.S. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion (e.g. seeding and silt fences or straw bales).

#### ***Aquatic Habitat***

- H. To prevent impacts to aquatic habitat due to a change in water temperature, the water temperature of Dry Creek above its confluence with Schmidt Creek shall be monitored. Measures such as a cooling pond or cooling tower shall be used if necessary to decrease the temperature of the effluent to within five degrees Fahrenheit of the temperature of the creek. In accordance with the RWQCB Basin Plan, at no time shall the temperature of the receiving body of water be altered more than five degrees Fahrenheit.

#### ***Roosting Bats***

- I. Within one month prior to tree removal, a qualified bat biologist shall conduct surveys to determine whether special-status bat species are roosting in the trees. If tree removal activities are delayed or suspended for more than one month after the pre-construction survey, the trees shall be resurveyed. If special-status bat species are roosting in trees at the site, a qualified bat biologist will remove or relocate the bats.

### **6.5 CULTURAL RESOURCES**

- A. Any inadvertent discovery of archaeological resources, shall be subject to Section 106 of the National Historic Preservation Act as amended (36 CFR 800), the Native American Graves Protection and Repatriation Act (25 USC 3001 et seq.), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm). Specifically, procedures for post review discoveries without prior planning pursuant to 36 CFR 800.13 shall be followed.

All work within 50 feet of the find shall be halted until a professional archaeologist, can assess the significance of the find. If any find is determined to be significant by the archaeologist, then representatives of the Tribe, the NIGC and the BIA shall meet with the archaeologist, to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, according to current professional standards.

- B. 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.
- C. Monitoring of construction activities by a qualified paleontologist shall occur during any trenching or excavation associated with development under the Alternatives.
- D. Should paleontological resources be unearthed, a paleontological resource impact mitigation plan (PRIMP) shall be created prior to further earthmoving in the vicinity of the find. The PRIMP shall detail the procedures for collecting and preserving the discovered fossils. Any fossils discovered during construction shall be accessioned in an accredited scientific institution for future study.

#### **6.6 SOCIOECONOMIC CONDITIONS AND ENVIRONMENTAL JUSTICE**

- A. The Tribe shall pay the fair-share cost of traffic mitigation, including the cost of any required land acquisition.
- B. The Tribe shall contract with a gambling treatment professional to train management and staff to develop strategies for recognizing and addressing customers whose gambling behavior may strongly suggest they are experiencing serious to severe difficulties.
- C. The Tribe shall refuse service to any customer whose gambling behavior convincingly exhibits indications of problem or pathological gambling.
- D. The Tribe shall respectfully and confidentially provide the customer (as described above) with written information that includes a list of professional gambling treatment programs and self-help groups.
- E. The Tribe shall implement procedures to allow for voluntary self-exclusion, enabling gamblers to ban themselves from a gambling establishment for a specified period of time.
- F. The Tribe shall prominently display (including on any automatic teller machines (ATMs) located on-site) materials describing the risk and signs of problem and pathological gambling behaviors. Materials shall also be prominently displayed (including on any ATMs located on-site) that provide available programs for those seeking treatment for problem and pathological gambling disorders, including, but not limited to a toll-free hotline telephone number.

- G. The Tribe shall offer insurance coverage for problem/pathological gambling treatment programs to its casino employees.
- H. The Tribe shall reimburse Madera County in the following amounts: \$835,110 (one-time, prior to the opening of the Alternative A developments to the public) and \$1,038,310 (annually) for fiscal impacts.

## 6.7 TRANSPORTATION/CIRCULATION

Mitigation measures for the improvement of the following intersections have been recommended in 2010 and 2030. Where roadway segments and intersections are shown as having an unacceptable LOS with the addition of traffic from the project alternatives (and caused at least in part from project traffic) the Tribe shall pay for a proportionate share of costs for the recommended mitigation.

### *2010 – Alternative A*

#### **Avenue 17 – SR-99 to Road 27**

- Restripe/widen from two (2) lanes to four (4) lanes

#### **SR-99 between Avenue 18 ½ and Avenue 17**

- Restripe/widen the NB leg from two (2) lanes to three (3) lanes
- Restripe/widen the SB leg from two (2) lanes to three (3) lanes

#### **SR-99 south of Avenue 17**

- Restripe/widen the SB leg from two (2) lanes to three (3) lanes
- Restripe/widen the NB leg from two (2) lanes to three (3) lanes

#### **SR-99 north of Avenue 18½**

- Restripe/widen the SB leg from two (2) lanes to three (3) lanes

#### **Avenue 18½ at SR 99 NB ramps**

- Signalize the intersection

#### **Avenue 18½ at SR 99 SB ramps/Road 23**

- Signalize the intersection with one year traffic monitoring. The traffic signals may be turned off if the signal warrants are not met within one year.

#### **Avenue 17 at SR 99 NB ramps**

- Signalize the intersection
- Restripe/widen the NB approach, south leg, from one (1) shared left-through lane and one (1) right-turn lane to one (1) left-turn lane, one (1) shared left-through lane and two (2) right-turn lanes.
- Restripe/widen the EB approach, west leg, from one (1) left-turn lane and one (1) through lane to one (1) left-turn lane and two (2) through lanes.
- Restripe/widen the WB approach from one (1) through lane and one (1) right-turn lane to two (2) through lanes and one (1) right-turn lane

#### **Avenue 17 at SR 99 SB ramps**

- Signalize the intersection
- Restripe/widen the EB approach, west leg, from one (1) through lane to two (2) through lanes
- Restripe/widen the WB approach, east leg, from one (1) through lane to two (2) through lanes

#### **Avenue 17 at Golden State Boulevard**

- Signalize the intersection
- Restripe/widen the SB approach, north leg, from one (1) shared left-through-right lane to two (2) left-turn lanes and one (1) shared through-right lane
- Restripe/widen the EB approach, west leg, from one (1) left-turn, one (1) through lane, and one (1) right-turn lane to one (1) left-turn lane, one (1) through lane, and one (1) shared through-right lane
- Restripe/widen the WB approach, east leg, from one (1) left-turn lane and one (1) shared through-right lane to one (1) left-turn lane, two (2) through lanes, and one (1) right-turn lane

#### **Avenue 17 at Road 23**

- Signalize the intersection

#### **Olive Avenue/Avenue 14/SR 99 SB on-ramp at SR 145**

- Restripe/widen the EB approach, west leg, from one (1) shared left-through and one (1) right-turn lane, to one (1) left-turn lane, one (1) through lane, and one (1) right-turn lane

#### **Olive Avenue/Avenue 14 at SR 99 SB off-ramp**

- Restripe/widen the SB approach, north leg, from one (1) left-turn lane and one (1) right-turn lane, to two (2) left-turn lanes and one (1) right-turn lane

#### **Avenue 12/Golden State Boulevard at SR 99 SB off ramps**

- Signalize the intersection
- Restripe/widen the SB approach, north leg, from one (1) shared left-through to one (1) left-turn lane and one (1) through lane
- Restripe/widen the WB approach, east leg, from one (1) left-turn lane and one (1) right-turn lane, to dual (2) left-turn lanes and one (1) right-turn lane

#### **Avenue 12 at Golden State Boulevard**

- Restripe/widen the SB approach, north leg, from one (1) left-turn lane, one (1) through lane and one (1) right-turn lane to dual (2) left-turn lanes, one (1) through lane and one (1) right-turn lane

#### **Avenue 12 at SR 99 NB ramps**

- Restripe/widen the WB approach, east leg, from a shared through-right lane to one (1) through lane and one (1) right-turn lane

**2030 – Alternative A**

**Avenue 17 – Road 23 to SR-99**

- Restripe/widen from two (2) lanes to six (6) lanes

**Avenue 17 –SR-99 to Road 27**

- Restripe/widen from four (4) lanes to six (6) lanes

**SR 99 north of Avenue 18½**

- Restripe/widen the NB leg from three (3) lanes to four (4) lanes
- Restripe/widen the SB leg from three (3) lanes to four (4) lanes

**SR 99 between Avenue 18½ to Avenue 17**

- Restripe/widen the NB leg from three (3) lanes to four (4) lanes
- Restripe/widen the SB leg from three (3) lanes to four (4) lanes

**SR 99 south of Avenue 17**

- Restripe/widen the NB leg from three (3) lanes to four (4) lanes
- Restripe/widen the SB leg from three (3) lanes to four (4) lanes

**Avenue 18½ at SR 99 NB ramps**

- Restripe/widen the EB approach, west leg, from one (1) left-turn lane and one (1) through lane, to dual (2) left-turn lanes and one (1) through lane

**Avenue 18½ at SR 99 SB ramps/Road 23**

- Restripe/widen the SB approach, north leg, from one (1) left-turn lane and one (1) through lane, to dual (2) left-turn lanes and one (1) through lane

**Avenue 18½ at Pistachio Drive**

- Although the Avenue 18½ at Pistachio Drive intersection is projected to meet the urban peak hour volume signal warrant, it will not be signalized due to its proximity to the SR 99 SB off-ramp. The intersection will be restricted to right-in/right-out/left-in access, which reduces the need for a signal and allows the intersection to operate at an acceptable level of service without a signal.

**Avenue 18½ at Golden State Boulevard/Road 23**

- Signalize the intersection
- Restripe/widen the NB approach, south leg, from one (1) left-turn lane and one (1) through-right lane, to one (1) left-turn lane, one (1) through lane, and one (1) right-turn lane
- Restripe/widen the WB approach, east leg, from one (1) shared left-through lane and one (1) right-turn lane, to dual (2) left-turn lanes and one (1) shared through-right lane
- Restripe/widen the SB approach, north leg, from one (1) shared left-through-right lane, to one (1) left-turn lane and one (1) through-right lane

**Avenue 18 at Road 23**



- Signalize the intersection

#### **Avenue 17 at SR 99 NB ramps**

- Restripe/widen the NB approach, south leg, from one (1) left-turn lane, one (1) shared left-through lane, and two (2) right-turn lanes to three (3) left-turn lanes, one (1) shared through-right lane, and two (2) right-turn lanes.
- Restripe/widen the EB approach, west leg, from one (1) left-turn lane and two (2) through lanes to two (2) left-turn lanes and three (3) through lanes.
- Restripe/widen the WB approach, east leg, from two (2) through lanes and one (1) right-turn lane to two (2) through lanes and one (1) shared through-right lane
- Widen the NB off-ramp to two (2) lanes with a NB auxiliary lane on SR 99

#### **Avenue 17 at SR 99 SB ramps**

- Restripe/widen the SB approach, north leg, from one (1) left-turn lane, and one (1) right-turn lane to two (2) left-turn lanes and two (2) right-turn lanes
- Restripe/widen the EB approach, from two (2) through lanes to four (4) through lanes
- Restripe/widen the WB approach, east leg, from two (2) through lanes to three (3) through lanes

#### **Avenue 17 at SR 99 SB ramps**

- Restripe/widen the SB approach, north leg, from one (1) left-turn lane, and one (1) right-turn lane to two (2) left-turn lanes and two (2) right-turn lanes
- Restripe/widen the EB approach, from two (2) through lanes to four (4) through lanes
- Restripe/widen the WB approach, east leg, from two (2) through lanes to three (3) through lanes

#### **Avenue 17 at Golden State Boulevard**

- Restripe/widen the NB approach, south leg, from one (1) left-turn lane, one (1) through lane, and one (1) right-turn lane to one (1) left-turn lane, one (1) through lane, and two (2) right-turn lanes
- Restripe/widen the SB approach, north leg, from two (2) left-turn lanes and one (1) shared through-right lane to two (2) left-turn lanes, one (1) through lane and one (1) right-turn lane
- Restripe/widen the EB approach, west leg, from one (1) left-turn, one (1) through lane, and one (1) shared through-right lane to two (2) left-turn lanes, two (2) through lanes, and one (1) shared through-right lane
- Restripe/widen the WB approach, east leg, from one (1) left-turn lane, two (2) through lanes, and one (1) right-turn lane to two (2) left-turn lanes, two (2) through lanes, and one (1) shared through-right lane

The intersection improvements listed above for the Avenue 17 at Golden State Boulevard intersection may not meet appropriate queuing lengths under 2030 conditions (FEIS: **Appendix N**). Therefore, the interchange and surrounding circulation system would require additional reconstruction to provide adequate queuing lengths. Measures required to ensure adequate queue lengths include either requiring limiting movements to right turns only onto and off of Golden State Boulevard and Airport Drive at Avenue 17 or relocating the Golden State Boulevard/Airport Drive/Avenue 17 intersection to the west.

### **Avenue 17 at Road 23**

- Restripe/widen the NB approach, south leg, from one (1) shared left-through-right lane to one (1) left-turn lane and one (1) shared through-right lane
- Restripe/widen the SB approach, north leg, from one (1) shared left-through-right lane to one (1) shared left-through lane and one (1) right-turn lane
- Restripe/widen the EB approach, west leg, from one (1) shared left-through-right lane to one (1) shared left-through lane, one (1) through lane, and one (1) right-turn lane
- Restripe/widen the WB approach, east leg, from one (1) shared left-through-right lane to one (1) left-turn lane and one (1) through lane, and one (1) shared through-right lane

### **Avenue 16/Ellis Street at Aviation Drive**

- Restripe/widen the NB approach, south leg, from one (1) left-turn lane and one (1) shared through-right lane to one (1) left-turn lane, one (1) through lane, and two (2) right-turn lanes
- Restripe/widen the SB approach, north leg, from one (1) left-turn lane, one (1) through lane, and one (1) right-turn lane to two (2) left-turn lanes, one (1) through lane, and one (1) shared through-right lane
- Restripe/widen the EB approach, west leg, from one (1) left-turn lane, one (1) through lane, and one (1) shared through-right lane to one (1) left-turn lane, two (2) through lanes, and one (1) right-turn lane
- Restripe/widen the WB approach, east leg, from one (1) left-turn lane, one (1) through lane, and one (1) shared through-right lane to two (2) left-turn lanes, one (1) through lane, and one (1) through-right lane

### **Cleveland Avenue/Avenue 15½ at SR 99 NB ramps**

- Restripe/widen the EB approach, west leg, from one (1) left-turn lane and two (2) through lanes to two (2) left-turn lanes and two (2) through lanes
- Restripe/widen the NB approach, south leg, from one (1) left-turn lane, one (1) shared left-through lane, and one (1) right-turn lane to one (1) left-turn lane, one (1) shared left-through lane, and two (2) right-turn lanes

### **Cleveland Avenue/Avenue 15½ at SR 99 SB ramps**

- Restripe/widen the SB approach, north leg, from one (1) shared left-through lane and one (1) right-turn lane to two (2) left-turn lanes and one (1) shared through-right lane

### **Avenue 15½ at Road 23**

- Signalize the intersection

### **SR 145/Madera Avenue at SR 99 NB ramps**

- Restripe/widen the SB approach, north leg, from one (1) through lane and one (1) shared through-right lane to two (2) through lanes and one (1) right-turn lane
- Restripe/widen the WB approach, east leg, from one (1) left-turn lane and one (1) shared through-right lane to two (2) left-turn lanes and one (1) shared through-right lane

#### **Olive Avenue/Avenue 14/SR 99 SB on-ramp at SR 145**

- Restripe/widen the NB approach, south leg, from two (2) left-turn lanes, one (1) through lane, and one (1) shared through-right lane, to dual (2) left-turn lanes, two (2) through lanes, and one (1) shared through-right lane
- Restripe/widen the SB approach, north leg, from one (1) shared left-through lane, one (1) through lane, and one (1) right-turn lane, to one (1) left-turn lane, two (2) through lanes, and one (1) right-turn lane
- Restripe/widen the EB approach, west leg, from one (1) left-turn lane, one (1) through lane and one (1) right-turn lane, to dual (2) left-turn lanes, one (1) through lane, one (1) shared through-right lane and one (1) right-turn lane

#### **Olive Avenue/Avenue 14 at SR 99 SB off-ramp**

- Restripe/widen the SB approach, north leg, from two (2) left-turn lanes and one (1) right-turn lane to one (1) left-turn lane, one (1) shared left-right-turn lane, and one (1) right-turn lane

#### **Avenue 14 at Road 23**

- Signalize the intersection
- Restripe/widen the SB approach, north leg, from one (1) shared left-through-right lane, to one (1) left-turn lane and one (1) shared through-right lane
- Restripe/widen the EB approach, west leg, from one (1) shared left-through-right lane, to one (1) left-turn lane and one (1) shared through-right lane

#### **Avenue 12/Golden State Boulevard at SR 99 SB off ramps**

- Widen the SB off-ramp to two (2) lanes with a SB auxiliary lane on SR 99

#### **Avenue 12 at Golden State Boulevard**

- Restripe/widen the SB approach, north leg, from a dual (2) left-turn lanes, one (1) through lane and one (1) right-turn lane, to three (3) left-turn lanes, and one (1) shared through-right lane
- Restripe/widen the WB approach, east leg, from one (1) left-turn lane, one (1) through lane, and one (1) shared through-right lane, to one (1) left-turn lane, three (3) through lanes, and one (1) right-turn lane

#### **Avenue 12 at SR 99 NB ramps**

- Restripe/widen the NB approach, south leg from a shared left-through lane and a separate right-turn lane, to dual (2) left-turn lanes, a shared through-right lane, and one (1) right-turn lane
- Restripe/widen the EB approach, west leg, from one (1) left-turn lane and two (2) through lanes to dual (2) left-turn lanes and three (3) through lanes
- Restripe/widen the WB approach, east leg, from two (2) through lanes and one (1) right-turn lane, to two (2) through lanes, one (1) shared through-right lane and one (1) right-turn lane

### ***Construction Traffic***

- A. A Traffic Management Plan (TMP) shall be prepared to identify which lanes require closure, where night construction is proposed, and other standards set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways (US DOT FHWA, 2003). The TMP shall be submitted to each affected local jurisdiction and/or agency. Also prior to the finalization of construction plans, the Tribe shall work with emergency service providers to avoid restricting emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the construction schedule, exact location of construction activities, duration of construction period, and any access restrictions that could impact emergency response services. Traffic Management Plans shall include details regarding emergency service coordination. Copies of the TMPs shall be provided to all affected emergency service providers.
- B. Importation of construction material shall be scheduled outside of the area wide commute peak hours.
- C. Where feasible, lane closures or obstructions associated with the construction of the project shall be limited to off-peak hours to reduce traffic congestion and delays.
- D. Prior to construction, the Tribe shall work to notify all potentially affected parties in the immediate vicinity of the North Fork, or the Madera sites, as appropriate. Notification shall include a construction schedule, location of construction activities, the duration of construction period, and alternative access provisions.
- E. Debris along construction vehicle routes shall be monitored daily during construction and the roadways cleaned as necessary.

### ***Land Use***

- F. In order to reduce the amount of light that would otherwise escape from the Madera site, the Tribe shall provide nighttime lighting for the parking areas that shines only on the parking areas and not surrounding areas. This can be achieved by employing down pointing lighting fixtures and low-pressure sodium bulbs.
- G. The Tribe shall either maintain current aviation easements within Zones A, B1, and B2 on the Madera site or shall enter into an agreement with the City of Madera to allow for the actions contained in the current aviation easement. This will prevent impacts to human safety or to airport operations. The easement or agreement shall address:
  - a. Overflight: A right-of-way for free and unobstructed passage of aircraft through the airspace of the property at any altitude above a surface specified in

the easement (set in accordance with Federal Aviation Regulations Part 77 and/or criteria for terminal instrument approaches).

- b. Impacts: A right to subject the property to noise, vibration, fumes, dust, and fuel particle emissions associated with normal airport activity.
  - c. Height Limits: A right to prohibit the construction or growth of any structure, tree, or other object that would enter the acquired airspace.
  - d. Access and Abatement: A right-of-entry onto the property, with appropriate advance notice, for the purpose of removing, marking, or lighting any structure or other object that enters the acquired airspace.
  - e. Other Restrictions: A right to prohibit electrical interference, glare, misleading light sources, visual impairments, and other hazards to aircraft from being created in the property.
- H. The Tribe shall submit a "Notice of Proposed Construction or Alteration" to the Federal Aviation Administration (FAA) due to the temporary use of a crane to construct the projects on the Madera site prior to construction. Cranes shall not operate unless the FAA determines that their operation will not cause a hazard to air navigation.

### ***Agriculture***

- I. If feasible within the first year of operation, an agricultural conservation easement shall be purchased (either directly or through an organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements) that is at least as large as the area of agricultural land converted on the Madera site (approximately 85 acres). At least a portion of the agricultural conservation easement site shall be designed as prime farmland, unique farmland, farmland of statewide importance, or farmland of local importance.

## **6.8 PUBLIC SERVICES**

### ***Off-Site Wastewater Service***

- A. The Tribe shall enter into an agreement with the City of Madera to pay the fair share cost of improvements and upgrades to connect to the City of Madera sewer line. The Tribe shall also pay the fair share cost of future expansion/improvements to increase wastewater capacity of the City of Madera wastewater treatment plant.

### ***Construction-Related Solid Waste***

- C. Construction waste shall be recycled to the fullest extent practicable by diverting green waste and recyclable building materials from the solid waste stream.

- D. Environmentally preferable materials shall be acquired to the extent practical for construction of facilities.

***Operational Solid Waste***

- E. Installation of a trash compactor for cardboard and paper products.
- F. Solid waste shall be recycled to the fullest extent practicable by diverting green waste and recyclable materials from the solid waste stream.
- G. Installation of recycling bins throughout the facilities for glass, cans and paper products.
- H. A solid waste management plan shall be adopted by the Tribe that addresses recycling and solid waste reduction on-site. The plan shall have a goal of at least 50% diversion of materials from disposal, which includes reduction, recycling, and reuse measures.

***Public Health and Safety***

**Law Enforcement**

- I. The Tribe shall make one-time and annual payments to the City of Madera and Madera County as discussed previously under the mitigation measures for *Socioeconomic Conditions*, **Section 6.6**. These payments would fund increased demands on City and County law enforcement services.

**Fire Protection / Emergency Medical Service**

- J. Any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order. This includes, but is not limited to vehicles, heavy equipment, and chainsaws. During construction, staging areas, wilding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.
- K. The Tribe shall make one-time and annual payments to the City of Madera and Madera County as discussed above under the mitigation measures for *Socioeconomic Conditions*, **Section 6.6**. These payments would fund increased demands on City and County fire protection and emergency medical services.

## **Schools**

- L. The Tribe shall make annual payments to Madera County as discussed previously under the mitigation measures for Socioeconomic Conditions, **Section 5.2.6**. These payments would fund increased demands on County educational services.

## **6.9 NOISE**

- A. Where feasible, construction activities shall be restricted to weekdays and normal daytime hours (7:00 a.m. to 7:00 p.m.).
- B. All mechanical equipment shall be designed, installed, and screened where feasible, so as to generate average noise levels of 52 dBA or less at the property lines of existing sensitive receptors. This sound level reduction can be achieved through the use of sound walls and berms, noise attenuating building materials, and vegetative screening as well as through regular monitoring of noise generating equipment.

## **6.10 HAZARDOUS MATERIALS**

- A. In the event that contaminated soil and/or groundwater are encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or a qualified individual can assess the extent of contamination. If contamination is determined to exceed USEPA preliminary remediation goals for residential land use, representatives of the Tribe shall consult with USEPA and BIA to determine the appropriate course of action, including the development of a Sampling Plan and Remediation Plan if necessary.
- B. In the event that suspected hazardous materials are encountered during construction-related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or an equivalent qualified individual can identify the material. If the material is determined, by USEPA standards, to be hazardous to human health and welfare, a representative from the Tribe shall meet with USEPA and BIA to determine the appropriate course of action, including the appropriate disposal of the material according to State and Federal regulations.
- C. To reduce the potential for accidental releases, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment tanks and shall not otherwise be stored on-site. Paint, thinner, solvents, cleaners, sealants, and lubricants used during construction shall be stored in a locked utility building, handled per the manufacturers' directions, and replenished as needed. These materials will be stored at least one foot above the 100-year flood zone in water tight containers away from areas exposed to rain water, surface water, and groundwater.
- D. Personnel shall follow written standard operating procedures (SOPs) for filling and servicing construction equipment, maintenance vehicles, and casino emergency

generators. The SOPs, which are designed to reduce the potential for incidents involving hazardous materials shall include the following:

- a. Refueling shall be conducted only with approved pumps, hoses, and nozzles.
  - b. Catch-pans shall be placed under equipment to catch potential spills during servicing.
  - c. All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
  - d. Vehicle engines shall be shut down during refueling.
  - e. No smoking, open flames, or welding shall be allowed in refueling or service areas.
  - f. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
  - g. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
  - h. Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, state, and Federal regulations.
  - i. All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure. All maintenance and refueling areas shall be inspected monthly. Results of inspections shall be recorded in a logbook that would be maintained on-site.
- E. The amount of hazardous materials used in project construction and operation shall be consistently kept at the lowest volumes needed. Project managers shall ensure the lowest volumes are maintained and that their uses are documented to ensure excessive volumes are not being applied as part of the overall hazardous materials and hazardous waste minimization program that would be developed for the project (see below).
- F. The least toxic material capable of achieving the intended result shall consistently be used to the extent practicable.
- G. A hazardous materials and hazardous waste minimization program shall be developed, implemented, and reviewed annually by the Tribe to determine if additional opportunities for hazardous materials and hazardous waste minimization are feasible, for both project construction and operation.
- II. The Tribe shall avoid and minimize the use of hazardous materials during the project's construction to the fullest extent practicable.
- I. The use of pesticides and toxic chemicals shall be minimized or less toxic alternatives shall be used to the greatest extent feasible in landscaping.
- J. If secondary diesel tanks are necessary for the emergency generators, the tanks shall have double walls with integrated leak detection systems. If a leak occurs



within the inner tank, the outer tank shall contain the leak, while a pressure sensor signals the leak on the indicator panel of the generator unit. Security personnel and casino managers, trained in emergency response procedures, shall regularly monitor the generator units to ensure they are functioning as intended and no leaks are present.

- K. Excavation and proper disposal of stained soils shall occur on the Madera site as recommended in **FEIS Appendix P**.

#### **6.11 MITIGATION MEASURES THAT ARE NOT ADOPTED**

CEQ NEPA regulations (40 C.F.R. § 1505.2(c)) call for identification in the ROD of any mitigation measures specifically mentioned in the FEIS that are not adopted. There are no mitigation measures listed in the FEIS for the Preferred Alternative that are not included in this ROD.

#### **7.0 SECRETARIAL DETERMINATION PURSUANT TO 25 C.F.R. PART 292**

Section 2719 of IGRA generally prohibits gaming on land acquired in trust after October 17, 1988, subject to several exceptions. The "Secretarial Determination" exception permits gaming if the Secretary determines that: (1) gaming on the newly acquired lands would be in the best interest of the tribe and its members; (2) would not be detrimental to the surrounding community; and (3) only if the Governor of the state in which the gaming establishment is located concurs in the Secretary's determination. The Department's Part 292 regulations set forth the factors that I must consider in making this determination under Section 2719 of IGRA.

#### **§ 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.**

The Tribe's pro forma income statement, balance sheet, statement of cash flows, seven-year debt repayment schedule, project cost summary, and payroll expense detail for class III gaming at the Resort for the first seven years of operation are provided. The Tribe has not prepared separate financial projections for class II gaming.

The Tribe projects the following financial results:

- **Net Revenue** -- The annual Net Revenue is estimated to be:

████████████████████  
████████████████████  
████████████████████  
████████████████████  
████████████████████

[REDACTED]

- **Cash Distribution** – The annual cash distribution to the Tribe from the Resort is estimated to be:

[REDACTED]

- **Fixed Assets** – The fixed assets for a class III facility, for property, plant, and equipment, are estimated at [REDACTED]

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

According to the 2010 Department of the Interior's American Indian Population and Labor Force Report, more than 16 percent of the Tribe's potential labor force is unemployed. The Tribe projects that the construction and operation of the Resort will lead to a substantial increase in tribal employment, job training, and career development. Direct investment and spending in construction-related activities is expected to generate 2,441 temporary construction jobs. The operation of the Resort is anticipated to generate 1,291 full-time employees and 283 part-time employees. The Resort is expected to create 2,319 permanent jobs in Madera County, including 858 indirect and induced jobs, a significant increase in job opportunities for tribal citizens in and outside gaming.

The Resort will offer substantial employment opportunities to citizens of the Tribe. Seventy-three percent of the adult citizens of the Tribe are located closer to the Site than the original Rancheria; and, 62 percent of tribal citizens live within 50 miles of the Site.

Revenues derived from the Resort will allow the Tribe to expand governmental services. The expansion of the Tribe's governmental services will, in turn, create new, professional job opportunities for tribal citizens seeking employment in the tribal government.

Finally, the Resort is located in relatively close proximity to the Tribe's existing community. The employment opportunities generated by the Resort will provide an opportunity for tribal citizens living far away to return to their community. This is consistent with our overall policy of self-determination, and will help correct the lasting impacts of previous Federal Indian policy eras that encouraged tribal citizens to leave their communities.

**(c) Projected benefits to the Tribe and its members from tourism.**

The Resort will be a destination resort property. The Tribe projects that the Resort will increase visitors to Madera County and will stimulate the existing local tourist industry, thereby benefiting the local economy as a whole. The influx of non-resident consumers will

benefit local businesses employing or owned by Tribal citizens, and create new employment and business opportunities for tribal citizens. In addition, increased tourism in Madera County will create opportunities for visitors and local residents to become familiar with the Tribe, its history, and its culture. The Tribe has agreed to the creation of an advisory board to promote local agriculture pursuant to its Memorandum of Understanding (MOU) with the Madera Irrigation District.

**(d) Projected benefits to the Tribe and its members from the proposed uses of the increased tribal income.**

The primary purpose of Indian gaming, under IGRA, is to generate revenues for tribal governments and advance the social and political development of tribal nations. The net income from gaming at the Resort will greatly benefit the Tribe by stimulating tribal economic development, promoting tribal self-sufficiency, and providing resources for the development of a strong tribal government.

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. Income from the Resort will greatly benefit the Tribe and its citizens by establishing a solid economic foundation for the Tribe, promoting tribal self-determination, and a strong tribal government. If the Resort is built, the Tribe may eventually become financially self-sufficient.

The Tribe intends to use gaming income to provide a variety of much needed social, housing, government, administrative, education, health, and welfare services to its more than 1,750 tribal citizens. Tribal income will 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 Resort 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.

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

*Community Outreach*

The Tribe has established a strong relationship with the surrounding community through the Federal trust approval process, and expects that the development and operation of the Resort will strengthen that relationship. From the early stages of the application process to establish a gaming facility, the Tribe has made a substantial effort to involve the surrounding community. The Tribe consulted with officials of Madera County in the process of selecting the location of the Site. 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. The Tribe intends to continue its efforts to reach out to the surrounding community.

The Tribe intends to enter into an agreement with the California Department of Transportation (Caltrans) for the road and interchange improvements identified in the FEIS. The Tribe is currently funding an engineering firm to work with Caltrans and local governments to prepare an interchange design.

According to the Tribe's projections, the Resort 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 positively impact and enhance the Tribe's relationship with the surrounding community.

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

The Tribe has not identified any adverse impacts to itself or its citizens from the operation of the Resort.

**(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 unspecified land will be transferred to the Secretary once the Secretary is prepared to take the land into trust for the Tribe for gaming purposes:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Based on the terms of the Development Agreement, the Tribe has contractual rights to cause the lands to be transferred and put into trust for its benefit.

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

The IGRA does not require an applicant tribe to demonstrate an aboriginal, cultural, or historical connection to the land in order to receive a positive Secretarial determination. Nevertheless, the Department's regulations require the Secretary to weigh the existence of a historical connection between an applicant tribe and its proposed gaming site as a significant factor in determining whether gaming on the proposed site would be in the best interest of the tribe and its citizens.

The Department's regulations define the term "significant historical connection" as one in which "the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." 25 C.F.R. § 292.2 Subsistence use and occupancy require something more than a transient presence in an area. "Subsistence" is defined as "a means of subsisting as the *minimum* (as of food and shelter) necessary to support life." Accordingly, activities that would tend to show a tribe was using land for subsistence purposes might include sowing, tending, harvesting, gathering and hunting on lands and waters. "Occupancy" can be demonstrated by a consistent presence in a region supported by the existence of dwellings, villages or burial grounds, as alluded to in the regulations.

**Historic use and occupancy**

The Site is located in the eastern plains of the San Joaquin Valley within 2.5 miles of the Fresno River, and near the Sierra Nevada foothills. Joe Kinsman, an American settler who

settled along the Fresno River in 1849 and then married a Mono Indian, had children who are the ancestors of many citizens of the Tribe. In his autobiography, Kinsman described the eastern San Joaquin Valley at the time of his arrival on the Fresno River in 1849:

*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.*

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, How-chis, Heuchi, Heuche, Heutsi, Whee-Chee) resided in a settlement located on the north side of the Fresno River four miles downriver from the modern day city of Madera. It has been estimated that the original population of this group was approximately 450.

The Valley floor was an area of intertribal use and occupancy, where neighboring bands 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. Accordingly, 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 members of the country...*

### **The 1851 Treaty Negotiations**

The Tribe maintained significant historical connections to the areas near the Site during the period following European contact. In 1850, 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 tribes in the San Joaquin Valley. The goal of the commissioners was to induce those tribes to leave their homelands in the foothills and mountains, where gold had been discovered, and settle on less-valuable land in the Valley. One of the commissioners wrote in the spring of 1851:

*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.*

The commissioners signed three treaties with San Joaquin Valley bands in the spring of 1851. Under the terms of the treaties, the bands relinquished all legal title to their homelands. The treaties provided that Indian reservations would be established in the valley lands between the Sierra Nevada foothills and the San Joaquin River in modern day Madera and Fresno Counties.

Historical documents demonstrate that the Tribe's predecessors were represented by signatories to the 1851 Treaty signed at Camp Barbour. The Tribe has also identified direct ancestors of current tribal citizens who participated in those negotiations.

The 1851 Treaty signed at Camp Barbour on the San Joaquin River specifically mentioned the Mono ancestors of the Tribe, who had not yet arrived 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..." The Site is within the boundaries of the reservations set aside for the predecessors of the Tribe and other Native groups by the San Joaquin Valley treaties. However, once substantial numbers of Indians had physically removed from the foothills to the valley, the United States no longer considered the treaties to be necessary, and the United States Senate refused to ratify them. Therefore, the treaties never became legally effective, and the reservations contemplated by the treaties were never 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.

### **The 1850s Fresno River Farm**

The Federal Government established 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, it is clear that it was located near or within the boundaries of the modern day City of Madera. The Site is located within 7.6 miles of the City of Madera's northern boundary, in the vicinity of where the Fresno River Farm was located.

Citizens of the modern North Fork Rancheria Tribe can trace their ancestry to Mono Indians listed among those people at the 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." 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. 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". The Monos were substantially the largest Native group identified in these reports.

A close reading of the reports also shows the devastating effect of disease on the San Joaquin Valley tribal 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, "*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.*"

Thus, many of the original bands that lived in the San Joaquin Valley area were decimated within several decades after contact with American settlers.

The Fresno River Farm was closed in 1859. 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..."*



Thus, many of the Mono Indians who had survived the devastating diseases of the 1830's and 1850's, and who used and occupied the Fresno River Farm and surrounding area, moved to the Sierra Nevada foothills where they rejoined, or were absorbed into, various bands living in the foothills.

Other historical records demonstrate the connection between the Tribe's predecessors and the areas near the Site. For example, trust allotment patents and 1928 roll numbers were issued by the United States to many ancestors of current citizens of the Tribe. Many tribal citizens can trace their lineage to San Joaquin Valley Native bands in addition to the "Mono" band, including: 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).

The Tribe has not identified any reference in the historical record after the 1850's 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" (which is sometimes used in reference to Chowchilla). Mary Lewis and Mary Blackhawk, ancestors of many citizens of the Tribe who were granted the Indian allotments nearest to Madera, were originally from the Chowchilla band.

#### *Late 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 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 Madera. Joe Kinsman, an ancestor to many tribal citizens, 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 Madera.

By the late 1800's, 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, in the direction of the present village of Minturn, which is north of the City of Madera. This location would place the vineyards in very close proximity to the Site. Throughout much of the twentieth century, up until the 1960's, numerous families associated with the Tribe traveled to these vineyards, which were north 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 Indians at North Fork 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."

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 about the purchase of Rancheria lands for the "North Fork Band of Indians" wrote:

*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.*

The City of Madera has continued to serve as a hub of activity for the citizens of the Tribe. 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 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 citizens 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 gathered basket-making material during their trips to work on farms located on the Valley floor along the San Joaquin and Fresno Rivers in the vicinity of Madera. 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."

### **Conclusion**

The Site is located within the reservations contemplated by the San Joaquin Valley treaties for the Tribe's predecessors. Those treaties were never ratified, and the reservation was never established. Nevertheless, the Part 292 regulations provide that a tribe may confirm that it has a significant historical connection to land where it is "within the boundaries of the tribe's last reservation under a ratified or *unratified treaty*." 25 C.F.R. § 292.2 (emphasis added). Based upon this fact alone, I can conclude that the Tribe has a significant historical connection to the Site.

The historical documentation presented by the Tribe also demonstrates that it established a continuous presence in the vicinity of the Site, through occupancy and subsistence activities, over a period of time. The Tribe's predecessors: hunted game in the areas of the San Joaquin Valley near the Site; they gathered plants and other materials from the areas of the San Joaquin Valley near the Site; they occupied the Fresno River Farm in the vicinity of the Site;

and, they earned a living from activities, such as logging and agriculture, conducted on lands in the vicinity of the Site.

These facts also establish that the Tribe has a significant historical connection to the Site, pursuant to the Part 292 regulations.

**(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.**

A Development Agreement, dated December 8, 2003, has been signed between The North Fork Rancheria of Mono Indians of California and SC Madera Development, LLC, a California Limited Liability Company. The agreement has not yet been approved by the NIGC.

The Tribe's existing land base, which consists of 80-acres near the town of North Fork, is located on environmentally sensitive lands within the Sierra National Forest, and near Yosemite National Park. Those lands are currently used for residential purposes, such that any economic development at that site would result in the displacement of individuals from their homes.

The Rancheria is difficult to access by car, making it difficult to engage in any form of economic development on those lands, whether through gaming or non-gaming activities.

**§ 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 information that allows the Secretary to comply with the requirements of the National Environmental Policy Act (NEPA); e.g., an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), if required by NEPA.**

On October 27, 2004, the Secretary published in the *Federal Register* a Notice of Intent (NOI) to gather information necessary to prepare an EIS under the 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. 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.

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 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 Resort 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. 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.

On February 15, 2008, the Secretary published in the *Federal Register* a Notice of Availability (NOA) of the 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 Resort with alternatives and to accept public comments.

In connection with the preparation of the EIS, the BIA has served as the lead agency and the Tribe, the NIGC, the Caltrans, the Madera Irrigation District, the Environmental Protection Agency and City of Madera have served as cooperating agencies. The FEIS was published on August 6, 2010. It analyzes potential environmental impacts of the Resort 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.

**(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 Resort will not result in a significant increase in crime in the surrounding community. The FEIS examines the issue of crime, and concludes that no definitive link has been found between gaming facilities and increased regional crime rates. The FEIS concludes that although an increase in calls for service might be expected as would be the case with any large-scale development, the Resort will not result in an increased regional crime rate. In any event, the Tribe intends to establish a sophisticated surveillance program and otherwise operate the Resort in a manner that 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 Resort.

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

## **Infrastructure and Services**

Utilities. Pacific Gas & Electric Company (PG&E) supplies electricity and natural gas services, and Southern Bell Company provides telecommunication services to the area around the Site. The FEIS does not anticipate that those companies will have any additional capacity or other constraints in providing such services to the Site. The Resort will pay all applicable fees for electrical, natural gas, and telecommunication services.

Water Supply and Wastewater. The Resort has several options, both on-site and off-site, for water service. Water for the Resort could be supplied by either groundwater wells or Madera Domestic Water Service. While the increased water demand caused by the Resort will require infrastructure upgrades if Madera water services are utilized, the Tribe will pay for any upgrades required. Regardless of which water supply strategy is chosen, the Resort will not result in a significant impact to water supply services.

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

## **Housing**

The Resort is estimated to draw approximately 836 new residents to the County. 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.

## **Community Character and Land Use Patterns**

Residential Area. 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. 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. The footprint of the Resort will cover only 55 acres of the 305.49-acre Site, and there will be a land buffer between the Resort 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 Resort. Although the Resort may contribute to the existing trend of reducing agricultural land in the area, the Resort 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:

The 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 Resort in a county where agriculture is the primary economic engine and recognizes the right of farms and agricultural operations located near the Resort 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.

Noise and Light. The Tribe plans place the Resort in the center of a large tract of land to create a buffer between the Resort and the surrounding land, mitigating possible noise and light detrimental impacts.

Zoning. If taken into trust, local zoning laws will not apply to the Site. The FEIS concludes 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. 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. 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 Madera.

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 FEIS and terms of the MOUs, the Tribe projects that development, construction, and operation of the Resort will have a beneficial impact on the surrounding community by stimulating economic development, creating jobs, and generating income. The Resort will provide a much needed boost to the local commercial economy, increasing demand for retail and office development.

The increased economic development from the construction and operation of the Resort is expected to result in increased income to the County and Madera from increased tax and other revenues. There will also be increased revenue to the County, 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.

**Employment**

In 2004, the unemployment rate in Madera County fluctuated between 6.5 percent and 11.8 percent, reflecting, in part, the seasonality of jobs in the agricultural sector. As a result of the high unemployment rate, the seasonality of agricultural jobs and other factors, the average annual household income in 2004 was \$43,942 for Madera and \$52,131 for the County of Madera. These figures are substantially below the United States average of \$63,301 and the California average of \$73,464 for the same year. By February 2009, the unemployment rate in Madera County rose to 13.8 percent, compared to an unadjusted unemployment rate of 10.9 percent for California and 8.9 percent for the nation during this same period. The reported unemployment rate for Madera, as of March 2009, is 19.3 percent.

The construction and operation of the Resort will create temporary construction jobs and permanent positions at the Resort. It is estimated that during the construction phase, the Resort will create approximately 2,441 jobs. Although most of these jobs fall in the construction sector, jobs will be created in other sectors of the economy.

It is estimated that the Resort will employ 1,291 full-time employees and 283 part-time employees, which is a total of 1,461 full-time equivalents. It is also estimated that the operation of the Resort will create an additional 858 indirect or induced jobs. The Resort is estimated to create a total of 2,441 temporary jobs and 2,319 permanent direct, indirect or induced jobs.

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 50 percent of the new hires will be County residents to the extent permitted by applicable law.

Prior to the opening of the Resort, the Tribe will offer training programs to assist County residents to become qualified for employment. In the City MOU, the Tribe agreed that it will

"work in good faith to employ qualified residents of the City at the Resort with the goal that 33 percent of the new hires from the County will be City residents."

#### *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 Resort is built with highly skilled union labor, and that those workers are paid a living wage.

The Tribe also has entered into a card check neutrality agreement dated January 31, 2006, with UNITE HERE International Union to facilitate organization of Resort employees.

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

#### **Costs of Impacts; Sources of Revenue.**

The Site is located in an unincorporated area of the County near the boundary of Madera. The Tribe anticipates that impacts of the Resort will result in certain costs to the County, Madera, and the Madera Irrigation District. In order to provide a source of revenue to mitigate the effects of these costs on the County, Madera, 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 estimated the capital and annual costs of various impacts of the Resort on the governmental entities and the surrounding community. The Tribe agreed in the MOUs to make capital and annual contributions to the government entities and certain non-profit foundations which were intended to address the costs of the impacts of the Resort on the County, Madera, the District, and the surrounding community. The Resort is expected to generate additional tax and other revenues for the County and Madera. These payments, and the additional tax and other revenues, will be sufficient to cover the costs of the impacts of the Resort on the County, Madera, the District, and the surrounding community. In fact, the FEIS confirms that overall, MOU contributions and tax revenues generated by the Resort mitigate any negative fiscal impacts to either Madera or the County.

#### **County Costs and Revenues**

Certain capital and annual costs to the County are directly induced by the construction or operation of the Resort and other costs are indirectly related to the Resort.

#### *County Resort-Induced Capital Costs*



*Resort-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 Resort, the County has expressed an interest in building a new fire station in the vicinity of the Resort. The Tribe has agreed to fund a substantial portion of the cost of constructing a new County fire station near the Resort and equipping it with an aerial apparatus in order to adequately protect the Resort. The capital costs of construction are estimated to be between \$1,200,000 and \$2,000,000, and the cost of purchasing the aerial apparatus is estimated to be approximately \$750,000.

The total capital costs are estimated to be between \$1,950,000 and \$2,750,000. The fair share of such costs attributable to the Resort is also only a portion of such costs, because the fire station and aerial apparatus will provide benefits to the County, City of Madera, and the surrounding community, as well as to the Resort.

*Resort-Induced Capital Costs for Roads and Transportation Resources.* Although the County and the Cities have acknowledged in their respective MOUs that roadway improvements are not necessary for the operation of the Resort, the County and City of Madera have expressed an interest in making certain roadway improvements in the area surrounding the Site. Therefore, the Tribe has agreed in its MOUs to pay the Tribe's fair share of the costs of road and transportation improvements undertaken by Madera 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 subsequent traffic analyses as mutually agreed upon with the Tribe. The applicable City MOU provision is similar, except it includes references to roads that are annexed into the City. Except for the Roads Department, the construction and operation of the Resort 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.

*Resort-Induced Capital Costs for Schools.* It is anticipated that the Resort will result in an increase in population in the County of 836 persons and that these new residents will result in an increase in the school population of 175 students in the Madera Unified School District. 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.

*County Resort-Induced Annual Costs*

*Resort-Induced Annual Costs for Fire Protection Services.* The staffing of the new fire station, which will be constructed using contributions by the Tribe, will increase 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 approximately \$700,000 per year.

*Resort-Induced Annual Costs for Law Enforcement Services.* The Resort 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 part-time sergeant position are approximately \$500,000 per year.

*Resort-Induced Annual Costs for Emergency Medical Services.* The Resort 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. 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.

*Resort-Induced Annual Costs for Judicial System Services.* The Resort is not expected to result in significant increased costs for judicial system services. 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 justify hiring a new attorney to handle the increased case load.

*Resort-Induced Annual Costs for Department of Corrections Services.* The Resort is projected to 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 in a larger correction facility.

*Resort-Induced Annual Costs for Behavioral Health Services.* The Resort will lead to increased demand for services from the County Department of Behavioral Health Services in connection with treating individuals with problem gambling disorders. The County will have to hire the equivalent of one part-time licensed counselor to meet the increased demand for services, and the cost to the County for a part-time licensed counselor will be \$40,000 per year.

#### *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 Resort-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 Resort will not result in a significant number of new residents locating in the County. Operation of the Resort will result in an increase of approximately 836 new residents in both the incorporated and unincorporated areas of the County, and the increase in residents will result in an increase in costs to the County for services to new residents of \$384,000 per year.

*Resort-Induced Costs for Property Taxes.* 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. 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)." 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*

It is estimated that the Resort 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;
- (ii) Resort-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; 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.

#### **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 Resort on the County and the surrounding community:

- (i) \$1,915,000 as the Tribe's fair share contribution toward construction of a new fire station to mitigate potential impacts of the Resort on fire protection, emergency medical, first responder, and law enforcement resources of the County;
- (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 Resort on road and other transportation resources of the County;
- (iii) \$600,000 to mitigate additional potential impacts of the Resort on the County's budget for roads and in lieu of road impact fees;
- (iv) \$200,000 to mitigate additional potential impacts of the Resort on the County's budget for certain recreational properties, specifically including the Courthouse Park and the Ahwahnee property;
- (v) \$150,000 to mitigate potential impacts of the Resort on the Madera Unified School District's budget for schools and in lieu of school impact fees; and
- (vi) \$50,000 to mitigate the cost to the County of preparing and negotiating the County MOU.

##### *County MOU Annual Revenues*

In the County MOU, the Tribe also agreed to make the following annual contributions to the County of up to \$2,935,000 to mitigate potential recurring costs of impacts of the Resort 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;
- (ii) \$415,000 to be used to cover the costs of one-half of a sergeant position and five deputy positions for law enforcement;
- (iii) \$1,200,000 to be used to cover the costs of three fire captains and six firefighters;
- (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;
- (v) \$70,000 for the maintenance, operation, and preservation of open space within the Courthouse Park and the Ahwahnee property;
- (vi) \$100,000 to fund additional public safety support/administrative positions within the County's public protection budget;
- (vii) \$500,000 to be used to supplement the County's general fund public facilities budget;
- (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 Resort; 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 Resort.

#### *County Resort-Induced Tax Revenues.*

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

#### *County New Resident-Induced Tax Revenues*

In addition to tax revenues resulting from construction and patron spending at the Resort, new residents will 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. It is estimated that the Resort will result in 836 new residents within the boundaries of the County. The FEIS estimates that 418 out of the 836 new residents will be residents of Madera, leaving 418 new residents projected to reside in the unincorporated areas of the County. The FEIS calculates the per capita tax revenue received by the County from new County residents. According to the FEIS, each County resident pays an average of \$110 in County property, sales, and use taxes which are passed to the County and used to fund County operations. Since it is

estimated that the Resort will result in 418 new County residents, the amount of County property, sales, and use tax revenues from these residents is \$46,302.

#### *Total County Revenues.*

According to the Tribe's projections, the Resort will 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;
- (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, 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 Resort;
- (v) \$83,530 as an annual increase in County sales and use tax revenues during the operational phase of the Resort; and
- (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 will 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 Resort is \$216,809, a total one-time increase in revenues of \$18,131,809. The total one-time costs which the Tribe estimates that the County will incur as a result of impacts of the Resort 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 made by the Tribe 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 Resort (\$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. 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 will incur is approximately \$1,673,000. Therefore, the total recurring annual revenues and contributions exceeds the total estimated annual recurring costs by \$2,491,832.

Finally, the County MOU states that "[t]he 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 Resort on the

County and the Cities which are not specifically identified or mitigated elsewhere in this [County] MOU".

## **CITY COSTS AND REVENUES**

*City Resort-Induced Costs.* Since the Site is located just outside the boundaries of the City of Madera, the Tribe anticipates that the Resort will have impacts on the City of Madera which will result in increased capital and annual costs to the City.

*City Resort-Induced Capital Costs.* The City of Madera intends to hire a shift of six new law enforcement officers, which the Tribe believes is sufficient to cover potential impacts of the Resort on the Madera's law enforcement resources. Estimated capital costs associated with equipping six law enforcement officers will not exceed \$200,000. The Tribe will also pay up to \$4,000,000 for its share of road improvement costs incurred by Madera. Except for capital costs associated with law enforcement equipment and road improvements, it is not expected that the Resort will result in increased in capital costs to Madera.

*City Resort-Induced Annual Costs.* Because the Site is located outside the boundaries of the City of Madera, it is estimated that most Resort-induced annual costs will be borne by the County. For example, although Madera 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 \$675,000 per year (\$640,000 in the first year). Except for the costs of those officers, it is not expected that the Resort will generate Resort-induced annual costs to Madera.

*City New Resident-Induced Annual Costs.* It is estimated that the Resort will result in 418 new residents within the boundaries of Madera. According to Madera's 2004-2005 budgets, Madera spends approximately \$273.70 annually for each Madera resident. Therefore, it is estimated that 418 new Madera residents will result new resident-induced costs to Madera approximately \$114,407 per year.

*Total City Costs:* In sum, it is estimated that the Resort 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) Resort-induced annual costs of \$675,000 per year (\$640,000 in the first year); and
- (iii) New resident-induced annual costs to Madera \$114,407 per year

### **City of Madera 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 Madera to mitigate possible one-time costs of impacts of the Resort on Madera and the surrounding community:

- (i) \$200,000 to fund the initial capital costs for an additional shift of six Madera law enforcement officers;
- (ii) \$885,000 to supplement Madera's budget for road and transportation improvements;
- (iii) Up to \$4,000,000 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 which are annexed into the City of Madera;
- (iv) \$200,000 to fund a specific plan update of the area near the Resort;
- (v) \$2,500,000 to supplement Madera's budget to fund the water and recreation features of its golf course;
- (vi) \$2,000,000 to enhance recreational opportunities for youth in the City of Madera and surrounding community; and,
- (vii) \$500,000 for public safety training to police and fire personnel in the City of Madera and surrounding region.

#### *City MOU Annual Contribution*

In the City MOU, the Tribe also agreed to make the following annual contributions to Madera, totaling \$1,075,000 to mitigate possible recurring costs of impacts of the Resort on Madera 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;
- (ii) \$250,000 per year to supplement Madera's general fund (but only if the County fails to provide this amount to Madera pursuant to the County MOU);
- (iii) \$100,000 to supplement Madera's downtown reinvestment fund; and
- (iv) \$50,000 to supplement Madera's budget to extend the city bus system.

#### *City Taxes and Other Revenues*

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

#### *Total Madera Revenues*

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

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

#### *One-Time Costs and Revenues*

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

#### *Annual Costs and Revenues*

Madera 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 Madera \$96,000 per year from new residents. It is estimated that the Resort will result in an increase in annual operational costs to Madera \$675,000 for law enforcement salaries, benefit, and equipment, and \$114,407 per year as a result of new resident demands. Therefore, the estimated annual contributions and revenues which Madera will receive exceed the estimated increase in annual costs by approximately \$381,593 per year.

Also, the City MOU states that "[t]he 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 [Resort] on the City which are not specifically identified or mitigated elsewhere in this MOU, and, as a result, the Trust Acquisition and the [Resort] will not have a detrimental impact on the City and the surrounding community."

### **OTHER GOVERNMENTAL ENTITY COSTS AND REVENUES**

#### **Costs of Impacts to the Madera Irrigation District**

##### *District Costs*

The Tribe and the District estimate in the District MOU that the Tribe's fair share of costs relating to the Resort associated with other activities of the District, including recharge efforts, will 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 Resort 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; 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.



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.”

#### *Comparison of District Costs and Revenues*

The Tribe estimates that the annual contributions which the Tribe will make to the District pursuant to the District MOU will exceed the estimated annual costs to the District resulting from costs of impacts of the Resort. 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 Resort.

#### **Costs of Impacts and Sources of Revenue for the City of Chowchilla Resort-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 Resort will require the City of Chowchilla to incur any significant roadway or other capital costs or any significant increased Fire Department, Police Department or other Resort-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 Resort will be residents of the City of Chowchilla. Assuming that the operational costs per resident for the City of Chowchilla are the same as the operational costs of \$230 per resident for 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 Resort will 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 Madera, the Tribe estimates that the City of Chowchilla will receive an increase in property and sales taxes and other revenues from new City of Chowchilla residents associated with the Resort of approximately \$1,840 per year. Therefore, the Tribe estimates that new resident-induced costs will 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. Therefore,

the Tribe estimates that the revenues which the City of Chowchilla will receive as a result of the Resort are substantially in excess of the costs which the City of Chowchilla will incur as a result of the Resort.

### **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 Resort will require the counties of Merced, Mariposa, or Fresno, the City of Fresno, or other local governmental authorities to incur significant capital costs as a result of the Resort, such as capital costs to build roadway improvements, fire protection and public safety facilities, corrections facilities, or schools.

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

Finally, due to 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 Madera, the Resort will likely 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 Resort were to result in new residents or new resident demands for services in those outlying jurisdictions, the increased costs of providing such new resident-related services will 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**

The Tribe negotiated a Compact with the former Governor of the State of California on April 28, 2008. That Compact was not ratified by the State Legislature and has not been submitted to the Department for review and approval.

Because the Tribe intends to conduct class III gaming at the Resort, it must execute a tribal-state gaming compact with the State of California prior to commencing gaming operations, and the Department must approve that agreement. The IGRA allows for tribal-state compact provisions that allow states to assess a fee on the conduct of tribal gaming in an amount necessary to defray the cost of regulating such activity. Tribes and states may also agree to provisions in a class III gaming compact that allow for the sharing of gaming revenues with the state in certain instances.

**(e) Proposed programs, if any, for compulsive gamblers and the source of funding.**

### *Responsible Gambling Policies*

The Tribe is committed to helping 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 Resort. 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 receipt of direct mail marketing promotions, and access to the Resort. 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.

**(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.**

The Part 292 regulations define a "nearby Indian tribe" as "an Indian tribe with tribal Indian lands located within a 25-mile radius of the location of the proposed gaming establishment, or, if the tribe has no trust lands, within a 25-mile radius of its government headquarters." 25 C.F.R.

§ 292.2. There are no nearby Indian tribes as defined under 25 C.F.R. § 292.2.

Nevertheless, the Picayune Rancheria of the Chukchansi Indians (Picayune) has submitted a substantial number of comments regarding the North Fork Rancheria's application. Picayune is located in Coarsegold, California, and currently operates the Chukchansi Gold Casino in Coarsegold, which is approximately 39 miles from the Site. Given the relative proximity of Picayune to the Site, and the relative proximity of the Chukchansi Gold Casino to the Site, I have considered the comments submitted by Picayune in my evaluation of the North Fork Rancheria's application.

**(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.**

### **Local Opposition**

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 Resort 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 Resort or otherwise benefit the County, including recreation, park services, senior centers, youth programs, and service club projects;
- (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;
- (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; 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, parks/recreation, business relations/development/attraction, and assistance to other non-profit organizations.

### *City MOU Benefits*

The Tribe has agreed Madera MOU to make the following contributions to Madera which are not associated with costs of direct impacts of the Project, but which would provide substantial benefits to Madera and the surrounding community:

- (i) \$200,000 to fund a specific plan update of the area in close proximity to the Site;
- (ii) \$2,500,000 to supplement Madera's budget to fund improvements to the irrigation system, water features, and other items of maintenance to Madera'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;
- (iii) \$2,000,000 to enhance recreational opportunities for youth and other citizens residing on the east side of Madera;
- (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 Madera and surrounding region;
- (v) \$100,000 per year to supplement Madera's reinvestment fund in order to help

- preserve the character and economic vitality of Madera's downtown area; and
- (vi) \$50,000 per year to supplement Madera's budget to extend the Madera bus system to the Site.

The Board of Supervisors of the County, the City Council of Madera, and the Board of Directors of the Madera Irrigation District each approved the respective MOUs between the Tribe and those local government entities. The approvals by the County and Madera were by unanimous votes. In addition, one year after approving the County MOU, the Board of Supervisors voted 4-1 to approve the location of the proposed Resort at the Site.

The Tribe appears to have the firm support of the residents, governments, and organizations in the surrounding community, particularly those in closest proximity to the Site. Many letters of support expressing affirmative support for the Resort and the benefits to the surrounding community and thereby helping to confirm that the Resort would not have a detrimental impact on the surrounding community have been submitted to the BIA's PRO.

### **Local Support**

The Resort has the support of local governments, as demonstrated by the following:

- Letter to Regional Director dated March 28, 2008 by Madera Council Member Gary Svanda, stating that he has been involved with the Tribe and the Resort from its inception.
- Letter dated March 28, 2008 by Madera Council Member Steven Mindt, 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 Resort 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 WIB has also stated its support of the Tribe's Resort due to the large number of quality employment opportunities for local residents during both the Resort 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 stating its support.

### **§ 292.19 How will the Regional Director conduct the consultation process?**

**(a) The Regional Director will send a letter that meets the requirements in 292.20 and that solicits comments within a 60-day period from (1) "(1) [a]ppropriate State and local officials, and (2) [o]fficials of nearby Indian tribes."**

On January 23, 2009, the PRO sent a letter to the Tribe regarding the required information needed to analyze the Tribe's request for gaming on off-reservation lands. On the same day, the PRO initiated consultation by letters to the State and local governmental offices as to whether the Tribe's proposed gaming establishment would be detrimental to the surrounding community. Consultation was solicited from the following State and local offices and officials:

- Legal Affairs Secretary, Office of the Governor – Responded conditionally in support of the Resort
- Deputy Attorney General, State of California – No response
- District Director, Office of United States Senator Diane Feinstein – No response
- City of Chowchilla – No response
- City of Clovis – No response
- City of Firebaugh – No response
- Office of the Mayor, City of Fresno – Responded in opposition to the Resort
- County of Fresno - Responded in opposition to the Resort
- City of Kernan - No response
- City of Madera – No response
- City of Mendota – No response
- City of Merced – No response

The response from the Office of the Governor of the State of California supported the proposed Resort citing terms of the April 2008 Compact and "assuming that the compact's prescribed conditions are met..." The Governor's office also points out that the Tribe's reservation is located near the environmentally sensitive Yosemite National Park and Sierra National Forest as justification for the Resort to be located off-reservation on land in Madera County.

The response of the Mayor of the City of Fresno indicated that the City opposes the proposed Resort, asserting that off-reservation gaming activities are not consistent with Proposition 1A, which was passed in 2000.

The response from the County of Fresno Board of Supervisors indicated that it opposed the Tribe's gaming application, citing Resolution 06-139: "... the County of Fresno opposes the practice of reservation shopping by Tribes. . . ." The County of Fresno also referred to Resolution 07-639 "... which resolves that the Fresno County Board of Supervisors opposes expansion of current Indian Gaming Facilities, and opposes new development of Indian Casinos.

Although the PRO did not solicit comments from California Legislature Assembly Members, Nathan Fletcher, Assemblyman, representing San Diego County, responded opposing the Tribe's gaming application because Proposition 1A "legalized Indian gaming on historical tribal lands that were situated away from urban areas" and "allowing outside land . . . to be

put into a trust for gaming purposed appears to violate the . . . IGRA that mandates a tribe must have governmental jurisdiction over the land prior to engaging in gaming.”

The PRO did not directly solicit comments from the Picayune Rancheria of the Chukchansi Indians (Picayune), but informed Picayune of consultation regarding the North Fork application by letter dated January 23, 2009. Picayune responded by submitting comments to the Bureau in opposition to North Fork’s application. Picayune described its primary concerns with the North Fork application as: (1) having possible negative economic impacts on its own community; (2) the Site lies outside of the North Fork Rancheria’s “aboriginal territory;” and, (3) the various MOUs entered into between North Fork and other local units of government are not in North Fork’s best interest. *Letter from Picayune to Dale Morris, PRO Director* (March 23, 2009). The proposed Site for the Resort is approximately 30 miles from Picayune’s casino located in Coarsegold, California.

The Department’s regulations require us to consult with “Nearby Indian tribes” regarding off-reservation gaming applications, but define that term as those tribes with Indian lands located within 25 miles of the proposed gaming site (or, if the Tribe does not have trust lands, where its government headquarters are located within 25 miles of the proposed gaming site). As I have noted above, Picayune is not a “Nearby Indian tribe,” as defined in our regulations. See 25 C.F.R. § 292.2. Nevertheless, I have reviewed and considered Picayune’s comments regarding North Fork’s application in a manner consistent with the definition of “Surrounding community” under 25 C.F.R. § 292.2.

**(b) Upon written request the Regional Director may extend the 60-day comment period for an additional 30 days.**

The BIA did not receive any requests to extend the comment period.

**(c)(2) Allow the Tribe to address or resolve any issues raised in the comments.**

The BIA forwarded the responses to its request for comments to the Tribe on April 27, 2009, requesting that the Tribe respond to the comments. Attorneys for the Tribe responded to the comments by letter to the Regional Director dated June 24, 2009. The primary concern of the commenters was the fact that the proposed Site is located outside of the Tribe’s existing trust lands. The Tribe responded by pointing out that IGRA contemplated off-reservation gaming when it included in the regulations section 2719, titled “Gaming on lands acquired after October 17, 1988.”

The Tribe also responded to Picayune’s letter of March 23, 2009 in its June 24, 2009 Letter, addressing the issues raised by Picayune.

**§ 292.20 What information must the consultation letter include?**

**a) The consultation letter required by Sec. 292.19(a) must:**

- (1) Describe or show the location of the proposed gaming establishment;**
- (2) Provide information on the proposed scope of gaming; and**

(3) Include other information that may be relevant to a specific proposal, such as the size of the proposed gaming establishment, if known.

(b) The consultation letter must include a request to the recipients to submit comments, if any, on the following areas within 60 days of receiving the letter:

- 1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts;
- (2) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;
- (3) Anticipated impact on the economic development, income, and employment of the surrounding community;
- (4) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;
- (5) Anticipated costs, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment; and
- (6) Any other information that may assist the Secretary in determining whether the proposed gaming establishment would or would not be detrimental to the surrounding community.

The consultation letter included all elements required by Department regulations.

#### I. ANALYSIS OF THE FACTORS IN 25 C.F.R. PART 292, SUBPART C

The Indian Gaming Regulatory Act was enacted, in part, to balance state and tribal interests in tribal gaming activities. With respect to tribal interests, the regulatory scheme established by IGRA favors on-reservation gaming to off-reservation gaming. Congress expressly prohibited gaming on lands acquired in trust after October 17, 1988. In establishing this prohibition, Congress exempted lands acquired after that date which are within, or contiguous to, a tribe's existing reservation. It also exempted lands acquired after October 17, 1988 that are within the boundaries of a tribe's former reservation.

Congress also established limited exceptions to this prohibition. The first category of exceptions, known as the "equal footing" exceptions, were intended to permit more recently recognized tribes with an equal opportunity to engage in gaming. A second type of exception, known as the "Secretarial Determination" exception, was to provide tribes with a limited opportunity to conduct gaming outside of their existing or former reservations where circumstances warrant.

Consistent with the scheme established by IGRA, the Department will apply heavy scrutiny to tribal applications for off-reservation gaming on lands acquired after October 17, 1988. The Department also will seek to avoid upsetting the intent of Congress, which favors tribal gaming on existing and former reservations, and on lands acquired in trust prior to October 17, 1988. It is important to note, however, that IGRA does not guarantee existing tribal gaming operations protection from tribal competition. See *Sokaogon Chippewa Community v. Babbitt*, 214 F.3d 941 (7<sup>th</sup> Cir. 2000).



The Department will also apply heavy scrutiny to tribal applications for off-reservation gaming on lands acquired after October 17, 1988 to ensure that they do not result in a detrimental impact to communities surrounding the proposed gaming site. The Department will seek to avoid upsetting the intent of Congress in enacting IGRA, which balances the interests of Indian tribes in economic development with the interests of states in protecting local communities from detrimental impacts.

**A. The proposed Resort is in the best interest of the Tribe and its members**

In my review of the record, I am satisfied that development of the Resort will likely result in a significant increase in the funds available to the Tribe's government. The annual net income of the Resort is projected to be approximately [REDACTED] in its second year of operations, increasing to approximately [REDACTED] in the seventh year of operations. This will result in an annual cash flow to the Tribe's government of approximately [REDACTED] in the second year of the Resort's operation, increasing to approximately [REDACTED] in the seventh year of operation.

These revenues will allow the tribe to expand the services delivered by the tribal government. An expansion of the tribal government would have a positive impact on the Tribe and its citizens in several ways. The first impact would be the availability of essential services to tribal citizens, such as health care and education, where few currently exist. The second impact would be the availability of professional job opportunities for those tribal citizens to manage and implement tribal programs. Third, the availability of new revenues to the tribal government would permit the Tribe to acquire a land base on which to consolidate a tribal community. Fourth, income from the Resort will help the Tribe strengthen Mono cultural programs and initiatives, helping to revitalize and maintain its unique Mono heritage, language, and traditions.

New revenues will also allow the tribe to pursue opportunities to invest in other ventures and diversify its economy, which could potentially lead to additional revenues for the tribal government and more job opportunities for tribal citizens.

The development of the Resort itself also presents significant job opportunities for tribal citizens. The construction and operation of the Resort is projected to result in 2,441 temporary construction jobs, and more than 2,319 permanent jobs. Given that a majority (62 percent) of tribal citizens live within 50 miles of the Site, and a substantial number of tribal citizens live within 25 miles of the Site, the development of the Resort presents immediate employment opportunities for a significant portion of tribal citizens.

The employment opportunities generated by the Resort will provide an opportunity for tribal citizens living far away to return to their community. This is consistent with our overall policy of self-determination, and will help correct the lasting impacts of previous Federal Indian policy eras, which encouraged tribal citizens to leave their communities.

The Site is located 36 miles from the Tribe's existing headquarters in North Fork, California, and approximately 38 miles from the Tribe's existing trust lands. The relatively short distance between the Tribe's seat of government and the proposed Resort leads to the logical

conclusion that the Tribe will be able to sufficiently regulate the conduct of class III gaming and exercise governmental power over the Site.

The Tribe's existing trust lands – the 80-acre Rancheria situated in a remote, environmentally-sensitive area that is difficult to access – are unlikely to support economic development on a scale approaching that of the Resort. Moreover, those existing lands are located within the Sierra National Forest, and near Yosemite National Park, meaning that development of a commercial gaming facility at that site is far less compatible with existing land use and development plans than at the proposed Site. Finally, the Tribe's existing trust lands are currently used for residential purposes, making significant economic development at the Rancheria disruptive to those tribal citizens residing there.

The Resort constitutes a viable and appropriate alternative to economic development on the small parcel of the Tribe's existing trust lands, because it would be located in an area to which the Tribe has a significant historical connection. The Site is located within territory ceded by the Tribe's predecessors. Other documents in the Record further support a finding of a significant historical connection between the Tribe and the Site.

For the foregoing reasons, I find that the Tribe's proposed Resort in Madera County is in the best interest of the Tribe and its citizens.

**B. The proposed Resort would not be detrimental to the surrounding community, or the Picayune Rancheria.**

**1. Local governments**

The record clearly demonstrates that the trust acquisition of the Site, and the operation of class III gaming there, would not result in a significant cost increase for either Madera County or the adjacent local units of government. To the contrary, the facts presented to me indicate that any financial burdens imposed upon Madera County and local units of government are sufficiently mitigated by provisions contained in separate MOUs executed between the Tribe and Madera County, between the Tribe and the City of Madera, and between the Tribe and the Madera Irrigation District.

Under its MOU with Madera County, the Tribe will issue a one-time contribution of up to [REDACTED] million to mitigate potential one-time costs incurred due to the Resort. The Tribe will also make annual payments to Madera County and local foundations of up to \$4.03 million, which would be used to mitigate ongoing impacts resulting from development of the Resort. Development of the Resort is projected to result in a one-time increase in tax revenues of \$216,809, as well as a recurring increase in tax revenues of \$83,530 per year. The County has indicated, through the MOU, that the Tribe's contributions are sufficient to mitigate potential impacts of the Resort on the County.

Under its MOU with the City of Madera, the Tribe will make a one-time contribution to the City of up to \$10.3 million to mitigate such potential one-time impacts as law enforcement expansion and road improvements. The Tribe will also make annual contributions of up to

\$1.075 million to mitigate recurring costs to the City as a result of the Resort. Finally, the development of the Resort is projected to lead to \$96,265 in increased tax revenue to the City.

The Tribe's MOU with the Madera Irrigation District will also cover the cost of the Tribe's water use associated with the Resort. Pursuant to that agreement, the Tribe will make annual contributions to the District of \$11,500 in lieu of fees, assessments, and taxes, and of \$36,000 to cover other costs, including for recharge.

The FEIS published on August 6, 2010, indicates that the Tribe has worked with the local communities to identify and mitigate any environmental impacts of the proposed Resort. It concludes that there are no significant impacts from the Resort after mitigation. Thus, I find that development of the Resort would not result in a detrimental impact to the environment in the area.

The record before me also supports the proposition that development of the Resort would not be disruptive to existing and anticipated land use in the area. The Site is not located near existing residential areas, and the fact that development of the Resort will only cover 55 acres of the 305-acre Site means that there will be a buffer between the facilities and adjoining properties. This buffer will adequately mitigate noise and light generated by the Resort.

The City and County of Fresno have both expressed opposition to the Tribe's proposed Resort based upon a principled opposition to gaming under the "off-reservation" exception, but have not provided sufficient analysis that explains how the Resort would result in a detrimental impact on their respective communities. As noted above, the FEIS concludes that mitigation will result in no significant impacts from the Resort.

The weight of the evidence in the record strongly indicates that the Tribe's proposed gaming facility in Madera County would not result in detrimental impact on the surrounding community. The Governor of the State of California is vested with authority under IGRA to similarly evaluate these factors and concur or disagree with my determination.

## **2. Picayune Rancheria**

Picayune operates an existing class III gaming facility in Coarsegold, California, approximately 39 miles from the Site. Picayune is not a "nearby Indian tribe" within IGRA's definition of "surrounding community" under our regulations. See 25 C.F.R. § 292.2. However, the relative proximity of Picayune's lands, headquarters, and existing class III gaming facility to the Site has led me to consider their comments in making my determination. Those comments must be accorded less weight than comments submitted by communities and tribes that fall within the definition of "surrounding community" in our regulations.

The reality of the economics of class III gaming, tribal government service delivery, and tribal interests in land compels me to accord some weight to Picayune's concerns in this instance. Our regulations contemplate such consideration at 25 C.F.R. § 292.2:

A local government or nearby Indian tribe may petition for consultation if it can establish that its governmental functions, infrastructure, or services will be directly, immediately and significantly impacted by the proposed gaming establishment.

The weight accorded to the comments of tribes and local governments outside the definition of "surrounding community" will naturally diminish as the distance between their jurisdictions and the proposed off-reservation gaming site increases.

Picayune challenges the North Fork Rancheria's claimed historical connections to the Site, asserting that the Site lies outside of North Fork's "aboriginal territory. The term "aboriginal title" is a legal term of art that is inapplicable to the Indian Reorganization Act, IGRA, and our implementing regulations. Through various means, a number of tribes have had their aboriginal title extinguished, or have otherwise been separated from their aboriginal territory.

Our regulations implementing IGRA's off-reservation exception do, however, require us to consider the existence of the applicant tribe's "significant historical connections" to the proposed gaming site. While this factor, alone, is not determinative, we will accord it significant weight. The Record in this instance clearly demonstrates that the North Fork Rancheria has significant historical connections to the area surrounding the Site.

Picayune also asserts that it will suffer a detrimental impact as a result of the North Fork Rancheria's proposed Resort due to potential negative economic impacts.

Picayune has projected a loss of revenue at the Chukchansi Gold Resort and Casino of up to [REDACTED] percent as a result of the North Fork Rancheria's proposed Resort. See Letter from Picayune Chairman Morris Reid to Bureau PRO Director Dale Morris (March 23, 2009). It added that the loss of revenues will require Chukchansi Gold Resort and Casino to cut employment, and preclude the Tribe from issuing per capita payments to its citizens. *Id.* Lastly, Picayune also stated that government programs will be cut or eliminated due to the loss of revenues.

As I have noted above, IGRA favors on-reservation gaming over off-reservation gaming, and the Department's policy is to narrowly apply the Secretarial Determination exception to the general prohibition against the conduct of tribal gaming on lands acquired after October 17, 1988. The Department will not approve a tribal application for off-reservation gaming where a nearby Indian tribe demonstrates that it is likely to suffer a detrimental impact as a result. Nevertheless, IGRA does not guarantee that tribes operating existing facilities will continue to conduct gaming free from both tribal and non-tribal competition. See *Sokaogon*, 214 F.3d at 941 (7th Cir. 2000).

Picayune's Chukchansi Gold Resort and Casino has proven to be a successful operation in a highly competitive gaming market. Virtually all of the potential detrimental economic impacts asserted by Picayune would result from competition with the North Fork Rancheria's proposed gaming facility. While we must accord weight to Picayune's concerns, competition from the Tribe's proposed gaming facility in an overlapping gaming market is not sufficient, in and of itself, to conclude that it would result in a detrimental impact to Picayune.

Lastly, Picayune asserts that the Department must determine that the proposed Resort would not be in the best interest of the North Fork Rancheria because of onerous mitigation contributions to local units of government pursuant to memoranda of understanding. *See* Letter from Picayune Chairman Morris Reid to Bureau PRO Director Dale Morris (March 23, 2009). It also asserts that these contributions are impermissible under IGRA's provisions governing tribal-state gaming compacts.

It is important to note that IGRA's provisions governing tribal-state gaming compacts, and the Department's policy regarding revenue sharing under such compacts, are inapplicable to intergovernmental agreements between tribes and local units of government.

The IGRA's off-reservation exception prohibits the Department from approving an off-reservation gaming application where the conduct of class III gaming would be detrimental to the surrounding community. In this instance, the North Fork Rancheria has reached agreements with local units of government to mitigate potential detrimental impacts stemming from its proposed Resort. The Department has no authority to approve or disapprove any of the MOUs entered into by the North Fork Rancheria.

We will, however, scrutinize efforts to mitigate the impacts of off-reservation gaming to ensure that they are in the best interest of the applicant tribe. In doing so, we must accord substantial deference to the applicant tribe regarding what is in its best interest. I have explained above the reasons for which I have determined the proposed resort is in the North Fork Rancheria's best interest.

## **8.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE**

The Department has determined that it will implement the Preferred Alternative (Alternative A). This decision has been made based upon the environmental impacts identified in the FEIS and corresponding mitigation, a consideration of economic and technical factors, as well as the BIA's policy goals and objectives, and the identified purpose and need. Of the alternatives evaluated in the EIS, Alternative A would best meet the purpose and need for action. The casino-hotel complex described under Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its Tribal Government and to fund necessary mitigation for development of economic ventures. This would enable the Tribal Government to establish, fund, and maintain governmental programs that offer a wide range of health, education and welfare services to Tribal citizens, as well as provide the Tribe, its citizens and local communities with greater opportunities for employment and economic growth. Accordingly, the Department will implement the Preferred Alternative subject to implementation of the mitigation measures identified in **Chapter 2**.

### **8.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS**

The Preferred Alternative is reasonably expected to result in beneficial effects for Madera County, City of Madera, and the Tribe. Key beneficial effects include:

- Needed revenues to the Tribe to allow it to begin to meet the Tribe's and its citizens' significant needs and to help develop the political cohesion and strength necessary for Tribal self-sufficiency, self-determination and strong Tribal government.
- Estimated construction cost of \$350,000,000, with approximately 2,441 jobs generated over the entire construction period.
- 1,461 direct full-time equivalent employees are anticipated during operation period.
- \$1,915,000 to Madera County to be used to equip and construct a new fire station.
- Madera County would collect increased revenues of approximately \$1,008,683 over accrued costs under Alternative A.
- City of Madera would collect increased revenues of approximately \$856,771 over accrued costs under Alternative A.

Generation of annual and one-time revenues to the State of California through the Tribal State Compact.

## **8.2 ALTERNATIVE B RESTRICTS BENEFICIAL EFFECTS**

The reduced intensity alternative (Alternative B) would generate less revenue than the Preferred Alternative. As a result, it would restrict the Tribe's ability to meet its needs and to foster Tribal economic development, self-determination, and self-sufficiency. Due to a lesser amount of new development, the effects on the natural and physical environment would be slightly less under Alternative B than those created by the Preferred Alternative. This alternative would result in a similar level of impacts after mitigation. The BIA believes the reduced economic and related benefits of Alternative B make it a less viable option that would fulfill the purpose and need of the Proposed Action to a lesser degree than the Preferred Alternative. Accordingly, the BIA has selected the Preferred Alternative over Alternative B.

## **8.3 MIXED-USE DEVELOPMENT ALTERNATIVE (ALTERNATIVE C) SEVERELY RESTRICTS BENEFICIAL EFFECTS**

The Mixed-Use Development Alternative (Alternative C) is the Environmentally Preferred Development Alternative; however, implementation would result in less employment and economic growth for both the Tribe and neighboring communities than from the Preferred Alternative. As a result, it would restrict the Tribe's ability to meet its needs and to foster Tribal economic development, self-determination, and self-sufficiency. The BIA believes the reduced economic and related benefits of Alternative C make it a less viable option that would fulfill the purpose and need of the Proposed Action less than the Preferred Alternative. Therefore, selection of Alternative C over the Preferred Alternative is not warranted.

**8.4 ALTERNATIVE D WOULD RESULT IN INCREASED SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

Unlike the Proposed Action, the Alternative D is reasonably expected to result in potentially significant impacts on biological resources, cultural resources, land use resources, land resources, traffic safety, and noise, as discussed in the FEIS Section 4. Accordingly, the BIA has selected the Proposed Project over Alternative D.

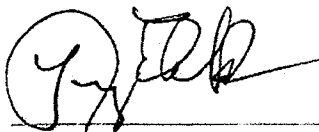
**8.5 NO-ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED OF PROJECT**

The no-action alternative (alternative e) would not meet the stated purpose and need. Specifically, it would not provide the Tribe a source of net income to allow the Tribe to achieve self-sufficiency, self-determination, and a strong tribal government. This alternative also would likely result in substantially less economic benefits to Madera County and the surrounding communities than the development alternatives.

**9.0 SIGNATURE**

By my signature, I indicate my decision to implement the Preferred Alternative and issue a Secretarial two-part determination pursuant to the Indian Gaming Regulatory Act for the Madera site for the North Fork Rancheria of Mono Indians.

Date: SEP 01 2011



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Larry Echo Hawk  
Assistant Secretary – Indian Affairs