



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

**SEP 01 2011**

The Honorable Jerry Brown  
Governor of California  
Sacramento, California 95814

Dear Governor Brown:

On March 5, 2005, the North Fork Rancheria of Mono Indians of California (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to acquire approximately 305.49 acres of land (Site) in trust on its behalf in Madera County, California, for purpose of establishing a class III gaming facility (Resort) pursuant to the Indian Gaming Regulatory Act's (IGRA) Secretarial determination exception.

The IGRA generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions. One exception, known as the Secretarial Determination exception, permits a tribe to conduct gaming on lands acquired after that date where:

1. The Secretary of the Interior (Secretary), after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members; and
2. The Secretary also determines that gaming on the newly acquired lands would not be detrimental to the surrounding community.

25 U.S.C. § 2719(b)(1)(A).

The Governor of the state in which gaming would be conducted must concur in the Secretary's Determination in order for the applicant tribe to conduct gaming on the proposed site.

The Tribe submitted its application to have land acquired in trust on its behalf pursuant to the Indian Reorganization Act, 25 U.S.C. § 465, as amended by the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202. Prior to acquiring land in trust, I must first determine that gaming on the proposed site would be in the best interest of the Tribe and its citizens, and would not be detrimental to the surrounding community. In addition, you must concur in this determination.

I have completed my review of the Tribe's application under 25 U.S.C. § 2719(b)(1)(A), including submissions by state and local officials, and officials of nearby Indian tribes. I have determined that gaming on the proposed site in Madera County would be in the best interest of

the Tribe and its citizens and would not be detrimental to the surrounding community.<sup>1</sup> I have set forth the basis for my decision below.

I request your concurrence in this determination, pursuant to 25 U.S.C. § 2719(b)(1)(A).

The Department's regulations at 25 C.F.R. Part 292 (Part 292 regulations) provide:

(a) If the Governor provides a written non-concurrence with the Secretarial Determination:

(1) The applicant tribe may use the newly acquired lands only for non-gaming purposes; and

(2) If a notice of intent to take the land into trust has been issued, then the Secretary will withdraw that notice pending a revised application for a non-gaming purpose.

(b) If the Governor does not affirmatively concur in the Secretarial Determination within one year of the date of the request, the Secretary may, at the request of the applicant tribe or the Governor, grant an extension of up to 180 days.

(c) If no extension is granted or if the Governor does not respond during the extension period, the Secretarial Determination will no longer be valid.

25 C.F.R. § 292.23.

Should you concur in this determination, I will proceed with the final review of the Tribe's application to acquire the proposed site in trust on its behalf. The Tribe may use the site for gaming purposes only after it is acquired into trust.

## **I. BACKGROUND**

The North Fork Rancheria of Mono Indians of California (Tribe) consists of the modern descendants of Mono Indians using and occupying lands near and in the San Joaquin Valley for several centuries. The Tribe has approximately 1,750 citizens<sup>2</sup>, is headquartered in North Fork, Madera County, California, and has been federally recognized since 1915.

The Tribe currently possesses 80 acres of land (Rancheria) in Madera County, which is held in trust for its benefit by the United States. The original boundaries of the North Fork Rancheria were restored and declared as "Indian Country" pursuant to the Stipulation for Entry of Judgment (Madera County) in *Tillie Hardwick et al. v. United States*, Civil No. C-79-1710-SW (N.D. Cal.

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<sup>1</sup> I am authorized to make this determination on behalf of the Secretary pursuant to authority delegated to me under 209 DM 8.1 - Secretarial Officers, AS-IA.

<sup>2</sup> PRO Folder 2, Tribe's Amended & Restated Request, p. 12.

1987).<sup>3</sup> The Tribe's headquarters are located approximately 4 miles east of its existing trust lands.

The Tribe originally submitted its request to have approximately 305 acres of land in Madera County acquired in trust on March 1, 2005.<sup>4</sup>

The Tribe proposes to construct a resort on this property (Resort), which will include a main gaming hall, food and beverage services, retail space, banquet/meeting space, administrative space, pool, and spa. Fifteen food and beverage facilities are planned, including a buffet, six bars, three restaurants, a five-tenant food court, and a multi-story hotel with 200 rooms, a pool area, and a spa. Approximately 4,500 parking spaces will be provided for the Resort, with 2,000 in a multi-level parking structure. The casino floor will be approximately 68,150<sup>5</sup> square feet (sf) and include up to 2,500 gaming devices, table games, and bingo.<sup>6</sup>

## **II. REVIEW OF THE TRIBE'S APPLICATION PURSUANT TO IGRA AND 25 CFR PART 292 SUBPART C**

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 citizens; (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.

### **SUBPART C – SECRETARIAL DETERMINATION**

**§ 292.13 When can a tribe conduct gaming activities on newly acquired lands that do not qualify under one of the exceptions in subpart B of this part?**

**A tribe may conduct gaming on newly acquired lands that do not meet the criteria in subpart B of this part only after all of the following occur:**

**(a) The tribe asks the Secretary in writing to make a Secretarial Determination that a gaming establishment on land subject to this part is in the best interest of the tribe and its members and not detrimental to the surrounding community.**

The Tribe approved Resolution No. 09-02 on June 28, 2009, requesting that the Secretary accept a 305.49-acre parcel located in an unincorporated area of Madera County (Site), California into trust for the benefit of the Tribe, and to determine that the property is eligible for gaming pursuant to IGRA, 25 U.S.C. § 2719(b)(1)(A).<sup>7</sup>

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<sup>3</sup> PRO Folder 2, Tab E.

<sup>4</sup> PRO Folder 1, Exhibit 1.

<sup>5</sup> PRO Folder 1, Exhibit 7, p. 1.

<sup>6</sup> PRO Folder 2, Tab M.

<sup>7</sup> PRO Folder 2, Tab H.

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

**(b) The Secretary consults with the tribe and appropriate State and local officials, including officials of other nearby Indian tribes.**

I have consulted with the Tribe and State and local officials, including nearby Indian tribes as required under the regulations. *See infra* Section 292.19 at 43.

**(c) The Secretary makes a determination that a gaming establishment on newly acquired lands would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community.**

Based on my review of the record, I have determined that gaming on the Site would be in the best interests of the Tribe and its members and would not be detrimental to the surrounding community. *See infra* Section 292.17 at 7; Section 292.18 at 18.

**(d) The Governor of the State in which the gaming establishment is located concurs in the Secretary's Determination (25 U.S.C. 2719(b)(1)(A)).**

The request seeking your concurrence is presently before you.

**§ 292.14 Where must a tribe file an application for a Secretarial Determination?**

As detailed above, the Tribe submitted its application for a Secretarial Determination with the BIA Pacific Regional Office, which is the BIA Regional Office having responsibility over the land where the gaming establishment is to be located.

**§ 292.15 May a Tribe apply for a Secretarial Determination for lands not yet held in trust?**

The Department's regulations provide that a tribe may apply for a Secretarial Determination at the same time that it requests the Department to acquire land in trust on its behalf. 25 C.F.R. § 292.15.

The Department's regulations governing the fee-to-trust process, at 25 C.F.R. Part 151, require an applicant tribe to set forth the purpose for the proposed trust acquisition. 25 C.F.R. §§ 151.10 and 151.11. For discretionary acquisitions, the Secretary must determine that the proposed purpose of the trust acquisition is lawful.

Where a tribe seeks to have land acquired in trust on its behalf to conduct gaming under IGRA's Secretarial Determination exception, the Secretary must determine, and the Governor

must concur, that the conduct of gaming on those lands would be in the best interest of the Tribe and its citizens, and would not be detrimental to the surrounding community. The purpose of the proposed acquisition is only lawful when the Secretary makes this determination, and the Governor concurs. Therefore, when a tribe seeks to have land acquired in trust on its behalf for off-reservation gaming, the Secretarial Determination necessarily precedes the completion of the trust acquisition.

**§ 292.16 What must an application for Secretarial Determination contain?**

**A tribe's application requesting a Secretarial Determination under §292.13 must include the following information:**

**(a) The full name, address, and telephone number of the Tribe submitting the application.**

North Fork Rancheria of Mono Indians of California  
P.O. Box 929  
33143 Road 222  
North Fork, California 93463  
(559) 877-2461

**(b) A description of the location of the land, including a legal description supported by a survey or other document.<sup>8</sup>**

The Site is located in an unincorporated area of Madera County, California.

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

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

PARCELS 1, 2, 3, 4, 5, 6, AND 8 of PARCEL MAP 3426 IN THE UNINCORPORATED AREA OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, AS PER MAP RECORDED SEPTEMBER 7, 1995 IN BOOK 44, PAGES 15 AND 16 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.<sup>9</sup>

**(c) Proof of identity of present ownership and title status of the land.**

The land is held in fee with title vested in Fresno Land Acquisitions, LLC, an affiliate of SC Madera Development, LLC.<sup>10</sup>

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<sup>8</sup> PRO Folder 1, Exhibit 3

<sup>9</sup> Id.

<sup>10</sup> Id.

**(d) Distance of the land from the tribe's reservation or trust lands, if any, and tribal government headquarters.**

The 80-acre North Fork Rancheria is located approximately 4 miles east of the town of North Fork in Madera County. The original boundaries of the North Fork Rancheria were restored and declared as "Indian Country" in *Tillie Hardwick v. United States*.

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, and approximately 38 miles from the Rancheria.<sup>11</sup>

**(e) Information required by § 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members.**

*See infra* Section 292.17 at 7.

**(f) Information required by § 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community.**

*See infra* Section 292.18 at 18.

**(g) The authorizing resolution from the tribe submitting the application.**

The Tribe approved Resolution No. 09-02 on June 28, 2009, requesting that the Secretary determine the Site eligible for gaming pursuant to Section 20 (b)(1)(A) of IGRA.<sup>12</sup>

**(h) The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C. 2710.**

The Tribe does not have an approved gaming ordinance. However, on April 6, 2009, the Tribe enacted a gaming ordinance and a resolution authorizing submission of the gaming ordinance to the Chairman of the National Indian Gaming Commission (NIGC).<sup>13</sup>

**(i) The tribe's organic documents.**

On May 18, 1996, the Tribe ratified its Constitution at a General Council meeting of the Tribe.<sup>14</sup>

**(j) The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated.**

The Tribe has negotiated a tribal-state gaming compact with the former Governor of the State of

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<sup>11</sup> PRO, p. 63.

<sup>12</sup> PRO Folder 2, Tab H.

<sup>13</sup> PRO Folder 2, Tab I.

<sup>14</sup> PRO Folder 2, Tab J.

California.<sup>15</sup> That compact sets forth the Tribe's proposed scope of gaming.

**(k) If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment.**

Not applicable, since the Tribe has negotiated a class III gaming compact with the State.

**(l) A copy of the existing or proposed management contract required to be approved by the National Indian Gaming Commission under 25 U.S.C. 2711 and 25 CFR Part 533.**

The Tribe has entered into a proposed Management Agreement with SC Madera Management, LLC.<sup>16</sup> On March 23, 2004, the Tribe submitted a copy of the Management Agreement to the NIGC.<sup>17</sup> The Management Agreement is currently under review with the NIGC.

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

**To satisfy the requirements of § 292.16(e), an application must contain:**

**(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.<sup>18</sup> 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:

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

<sup>15</sup> PRO Folder 2, Exhibit 1, Tab L. A valid tribal-state gaming compact is a necessary prerequisite to the operation of a class III gaming facility. Nevertheless, it is not necessary that a tribe negotiate and conclude a valid class III gaming compact prior to requesting and receiving a Secretarial Determination. The State of California has not yet approved the Tribe's compact, and the Tribe has not submitted its compact to the Department for approval. According to the Tribe, it will not submit its compact until such time that the Site is acquired in trust. PRO Folder, Exhibit 7, Tab 1. Since the Tribe's negotiated class III compact has not been formally executed by the State, and since it has not been submitted to the Department, we will not offer substantive comments on the validity of the compact at this time.

<sup>16</sup> Exhibit 2, Tab O.

<sup>17</sup> ASIA Exhibit 2.

<sup>18</sup> PRO Folder 2, Exhibit 1, Tab Q.

[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.<sup>19</sup>

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.<sup>20</sup>

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.**

<sup>19</sup> FEIS, 4.7.1, p. 4.7-2.

<sup>20</sup> FEIS, Appendix R – Socioeconomic Assessment, September 2008 § 3.1.3 p.13



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.<sup>21</sup>

**(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.<sup>22</sup>

**(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

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<sup>21</sup> PRO Folder 2. Tribe's Amended & Restated Request, pg 13 & County MOU 6(i).

<sup>22</sup> PRO Folder 2. Tribe's Amended & Restated Request, p. 14.

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.<sup>23</sup>

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.<sup>24</sup>

**(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<sup>25</sup> 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]

<sup>23</sup> PRO Folder 2, Tab S.

<sup>24</sup> This distance was calculated using the shortest point-to-point driving distance between the Tribe's headquarters and the Site.

<sup>25</sup> PRO Folder 2, Tab W.

[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.”<sup>26</sup> 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 Howechee (Howechee, How-a-chee, 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<sup>27</sup> 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*

<sup>26</sup> Webster's New Collegiate Dictionary 1153 (G. & C. Merriam Co. 1979).

<sup>27</sup> 1852 report from G. W. Barbour to Luke Lea, Exhibit 2, Tab X.

*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.<sup>28</sup>*

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.<sup>29</sup> The Tribe has also identified direct ancestors of current tribal citizens who participated in those negotiations.<sup>30</sup>

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..."<sup>31</sup>

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.<sup>32</sup> However, once substantial

<sup>28</sup> O.M. Wozencraft to Luke Lea, 05/14/1851, ARCOIA 1851, pp.225-226.

<sup>29</sup> Application of Mary Ann Kinsman for Enrollment with Indians of California, March 8, 1928.

<sup>30</sup> Application of Savage Lewis for Enrollment with Indians of California, March 19, 1929.

<sup>31</sup> Camp Barbour treaty, PRO Folder 2, Tab Y.

<sup>32</sup> ASIA Exhibit 5 - Map of the boundaries of the San Joaquin Valley treaties with explanatory notes, Heather Howard, PhD., 2006, Exhibit 2, Tab Z .

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.<sup>33</sup>

Citizens of the modern North Fork Rancheria Tribe can trace their ancestry to Mono Indians listed among those people at the Fresno River Farm.<sup>34</sup> 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.<sup>35</sup>

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*

<sup>33</sup> Id.

<sup>34</sup> Alta California, February 7, 1858.

<sup>35</sup> Federal Indian agent reports, PRO Folder 2, Tabs AA, BB, and CC.

latter and the men of other [i.e. white] denominations."<sup>36</sup>

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<sup>37</sup> 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.<sup>38</sup> 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).<sup>39</sup>

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

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

<sup>37</sup> Indian agent report, Exhibit 2, Tab DD.

<sup>38</sup> PRO Folder 2, Tab EE

<sup>39</sup> Id..

band.<sup>40</sup>

### *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.<sup>41</sup>

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."<sup>42</sup>

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:<sup>43</sup>

*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

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<sup>40</sup> PRO Folder 2, Tab FF.

<sup>41</sup> Wogaman, *Medicine Man*, p.9; Kinsman Diary, 1876-1894, English Collection, California State.

<sup>42</sup> PRO Folder 2, Tab GG.

<sup>43</sup> PRO Folder 2, Tab HH.



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."<sup>44</sup>

### **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**

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<sup>44</sup> PRO Folder 2, Tab II.

**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.<sup>45</sup>

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.<sup>46</sup>

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

**To satisfy the requirements of § 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment.**

**(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.<sup>47</sup> 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.<sup>48</sup> In July 2005,

<sup>45</sup> ASIA Exhibit 2

<sup>46</sup> FEIS 2.0 Alternatives

<sup>47</sup> 69 Fed. Reg. 62721 (Oct. 27, 2004).

<sup>48</sup> 70 Fed. Reg. 17461 (Apr. 6, 2005).

the Department issued a scoping report which summarized the comments received during the scoping period and outlined the expected scope of the EIS.<sup>49</sup>

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.<sup>50</sup>

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.

### **Recommended Mitigation of Potentially Significant Environmental Impacts**

The environmental impacts which the FEIS determines to be potentially significant before mitigation, and the recommended mitigation measures for those potentially significant impacts, are summarized below.

#### *Land Resources, Seismicity*

Although the risk of soil liquefaction and seismically-induced flooding is low, the Site is located approximately 40 miles from the seismically active San Andreas Fault. The FEIS recommends that the construction of the Resort adhere to the 1997 Uniform Building Code, including provisions relating to earthquake design.<sup>51</sup>

#### *Air Quality, Construction-Related Emissions*

During the construction phase, construction-related activities could generate air pollutant emissions, including substantial amounts of fugitive dust. The FEIS recommends development of a Construction Emissions Mitigation Plan that requires compliance with San Joaquin Valley Air Pollution Control District fugitive dust rules, creation of a dust control plan, adoption of certain dust control practices, compliance with certain measures related to construction equipment, and creation of a traffic and parking management plan.<sup>52</sup>

#### *Air Quality, Emissions Generated by Operation*

The Site is located in the San Joaquin Valley Unified Air Pollution Control District. During the

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<sup>49</sup> The scoping report is publicly available at [www.analyticalcorp.com](http://www.analyticalcorp.com), which is the website of the BIA's environmental contractor for the EIS.

<sup>50</sup> PRO Folder 2, Tab JJ.

<sup>51</sup> FEIS, section 5.2.1.

<sup>52</sup> FEIS, section 5.2.3.

operational phase, operational Reactive Organic Gases and Nitrogen Oxide emissions, primarily resulting from traffic to and from the Resort, are expected to exceed the District's significance thresholds. In order to reduce such emissions, the FEIS recommends that the Tribe adopt the following mitigation measures:

- (i) provide shuttle transportation to major transit stations and multi-modal centers;
- (ii) provide transit amenities, such as bus turnouts, shelter benches, and lighting, route signs and other amenities around the transit shelter benches to encourage public use of transit services;
- (iii) provide for, or contribute to, dedication of land for off-site bicycle trails linking the Site to designated bicycle commuting routes in accordance with the regional Bikeway Master Plan;
- (iv) maximize the potential of passive solar design principles where feasible;
- (v) use clean fuel vehicles in the vehicle fleet where practicable;
- (vi) provide a parking lot design that includes clearly marked and shaded pedestrian pathways between transit facilities and building entrances;
- (vii) provide amenities such as personal lockers, bicycle lockers and racks, bus pass subsidies and flexible schedules for employees who walk, bike or utilize public transit to work;
- (viii) provide electric vehicle charging facilities;
- (ix) provide preferential parking for vanpools and carpools;
- (x) provide on-site pedestrian facility enhancements which are physically separated from parking lot traffic;
- (xi) provide adequate ingress and egress at entrances to the Resort to minimize vehicle idling and traffic congestion; and
- (xii) direct any parking structure ventilation away from inhabited areas.<sup>53</sup>

#### *Air Quality, Odor Impacts*

The proposed on-site wastewater treatment plant (WWTP) could represent a potentially significant source of odors if not operated properly. In order to reduce such effects, the FEIS recommends that the Tribe adopt the following mitigation measures:

- (i) the WWTP shall be constructed with comprehensive odor control facilities;
- (ii) spray drift for the WWTP or spray disposal field shall not migrate out of the disposal field boundaries;
- (iii) spray field irrigation shall cease when winds exceed 30 miles per hour;
- (iv) and the WWTP shall be staffed with operators who are qualified to operate the plant safely, effectively, and in compliance with all permit requirements and regulations.

#### *Air Quality, Toxic Air Contaminant Impacts*

The proposed developments under Alternative A would not contribute or generate toxic air contaminants (TAC). However, bus and diesel truck traffic to and from the developments, especially in loading areas, would result in an increased concentration of diesel emissions in those areas, leading to a potentially significant effect. In order to reduce such effects, the FEIS

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<sup>53</sup> FEIS, section 5.2.3.

recommends that the Tribe ensure that air intakes associated with the heating and cooling system are not located next to potential TAC- emitting locations.

#### *Air Quality, Indoor Air Quality*

Although the Resort is expected to operate in compliance with indoor air quality requirements, patrons of the Resort could be exposed to toxics and carcinogens from indoor tobacco use. In order to reduce such effects, the FEIS recommends that the Tribe adopt the following mitigation measures:

- (i) the casino floor shall be ventilated to at least the standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers;
- (ii) the Tribe shall ensure that provisions are made for easy access to heating, ventilation, and air conditioning equipment requiring periodic maintenance;
- (iii) the Tribe shall ensure the use of low-emitting building materials where feasible;
- (iv) a non-smoking gaming area shall be provided; and
- (v) signage shall be displayed or brochures made available to Resort patrons and employees describing the health effects of second-hand smoke.<sup>54</sup>

#### *Biological Resources, Migratory Birds and Other Special-Status Species*

During the construction phase, any vegetation removal activities occurring during the nesting season could have a significant effect on migratory bird nests. If vegetation removal activities are to be conducted during the nesting season, a pre-construction survey shall be conducted prior to disturbance. If active migratory bird nests are identified, vegetation removal that would disturb these nests shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site.<sup>55</sup>

#### *Cultural Resources, Cultural Resources, Paleontological Resources*

Although no cultural or paleontological resources have been identified at the Site, there is a possibility that, during the construction phase, previously unknown archaeological or paleontological resources or human remains will be encountered. If such resources or remains are discovered, all work within 50 feet of the find shall be halted until a professional archaeologist, or paleontologist if the find is of a paleontological nature, can assess the significance of the find. If any find is determined to be significant by the archaeologist, or paleontologist as appropriate, then representatives of the Tribe, the NIGC and the BIA shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a treatment plan, if necessary. All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards. If human remains are discovered during ground-disturbing activities on Tribal lands, work shall halt in the vicinity, the Madera County Coroner should be notified immediately, and, pursuant to the Native American Graves Protection and Repatriation Act of 1990 (Pub. L. 101-

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<sup>54</sup> FEIS, section 5.2.3.

<sup>55</sup> FEIS, section 5.2.4.

691; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058) and its implementation regulations) 43 CFR 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.<sup>56</sup>

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

Certain roadway and freeway segments and intersections in the vicinity of the Site currently operate at levels of service below applicable thresholds. With the addition of traffic to and from the Resort and other developments planned in the area, those and other segments and intersections would operate at reduced levels of service. Also, intersections which operate below certain level of service thresholds could result in carbon monoxide concentrations from idling vehicles. The FEIS identifies roadway segments, freeway segments and intersections which the County, the City or Caltrans could consider improving as of the date the Resort opens or as of the year 2030. The FEIS recommends that the Tribe make financial contributions to those governmental authorities equal to the Tribe's fair share of the costs of any such improvements which are undertaken.<sup>57</sup> None of the recommended road improvements are more than 8 miles from the Site and none involve the acquisition of significant additional lands or rights of way. The Memorandum of Understanding between the Tribe and Madera County (County MOU) and the Memorandum of Understanding between the Tribe and the City of Madera (City MOU) do not commit the County or the City to undertake the recommended road improvements, but do provide that the Tribe shall make fair share contributions for those road improvements which are undertaken. In the County MOU and the City MOU, the County and the City acknowledge that the Resort does not create a need to make road improvements and that the Tribe would be able to construct and operate the Resort if no road improvements were to occur.<sup>58</sup>

#### *Resource Use Patterns, Land Use*

The Site is within the influence of the Madera Municipal Airport. In order to reduce the amount of light which would otherwise escape from the Site, the FEIS recommends installing specified types of lighting fixtures and bulbs. The FEIS also recommends maintaining the current aviation easement, which includes prohibitions on obstructing certain airspace and creating certain electrical interference or visual impairments. Finally, the FEIS recommends that the Tribe submit a "Notice of Proposed Construction or Alteration" to the Federal Aviation Administration due to the temporary use of a crane to construct the Resort.<sup>59</sup>

#### *Public Services, Fire Protection*

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

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<sup>56</sup> FEIS, section 5.2.5.

<sup>57</sup> FEIS, section 5.2.7.

<sup>58</sup> County MOU, section 2(a)(ii); City MOU, section 2(a)(iii).

<sup>59</sup> FEIS, section 5.2.7.

### *Other Values, Noise*

During the construction phase, noise levels from mechanical equipment may exceed noise significance criteria. Mitigation measures are recommended to reduce construction noise consequences including restricting construction activities to weekdays during normal daytime hours where feasible and designing, installing, and screening mechanical equipment.<sup>60</sup>

### *Other Values, Hazardous Materials*

Although not anticipated, construction personnel could encounter contamination during construction-related earth moving activities which could pose a risk to human health and/or the environment. Also, the amount or types of hazardous materials that would be stored, used and generated during the operation of the Resort could have a potentially significant impact on the environment and public. Mitigation measures relating to removing or managing hazardous materials located or stored at the Site are recommended in the FEIS.<sup>61</sup>

Many of the environmental impacts which the FEIS determines to be potentially significant before mitigation only occur during the construction phase. Other potential impacts may never occur, such as the possibility of encountering significant paleontological resources or migratory bird nests. Still other potential impacts can be mitigated by design features, such as building an earthquake-resistant and water and energy efficient building. The only environmental impact which the FEIS determines could continue to be significant after mitigation is mobile emissions from traffic to and from the Resort once the Resort is operating. In any event, the Tribe intends to adopt and implement substantially all of the mitigation measures recommended in the FEIS. As discussed below, the Tribe has entered into binding and enforceable MOU with the County, the City and the District which legally commit the Tribe to adopt and implement certain mitigation measures which are recommended in the FEIS or which are otherwise considered to be important to the local governmental entity. The Tribe also intends to enter into a MOU or similar agreement with Caltrans as required under Section 11.8.7(c) of the tribal-state compact.

### *County MOU Mitigation Measures*

The Tribe has agreed in the County MOU to provisions intended to mitigate potential impacts of the Resort on the environment and the surrounding community. Those provisions include the following:

- (i) the Tribe has not requested the County to provide water, wastewater, electricity, natural gas or telecommunication services to the Site;
- (ii) in the event the Tribe develops and constructs its own wastewater treatment system on the Site, the Tribe shall (a) obtain a National Pollution Discharge Elimination System permit for wastewater discharge if and as required by the Clean Water Act from the EPA, (b) construct a tertiary treatment system or similar system, and (c) to the extent feasible and commercially reasonable, incorporate measures to minimize wastewater flows and use recycled water;

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<sup>60</sup> FEIS, section 5.2.9.

<sup>61</sup> FEIS, section 5.2.9.

- (iii) the Tribe shall obtain solid waste services from the County's solid waste franchise and implement single stream recycling and green waste diversion;
- (iv) in the event such issues are not addressed in the tribal-state gaming compact, the Tribe shall enter into agreements or other arrangements with the County regarding food and beverage handling, safe drinking water standards, and building codes and inspections, which agreements or other arrangements shall contain provisions no less favorable to the County than the provisions set forth in previous California tribal-state gaming compacts;
- (v) the Tribe shall prohibit persons under the age of 21 from entering and remaining in any area in which gaming activities are being conducted; the Tribe shall not construct a golf course on the Site during the term of the County MOU unless otherwise agreed by Madera;
- (vi) the Tribe shall not develop, construct or operate a water park on the Site during the term of the County MOU;
- (vii) the Tribe shall work in good faith to employ qualified residents of the County at the Resort with the goal that fifty percent (50%) of the new hires will be County residents;
- (viii) the Tribe may enter into mutual aid agreements or other arrangements with the County relating to fire protection, emergency medical, first responder and law enforcement responses; and
- (ix) the Tribe may enter into agreements with the County relating to investigation, jurisdictional, or other similar issues.

#### *City MOU Mitigation Measures*

The Tribe has agreed in the City MOU to provisions intended to mitigate possible impacts of the Resort on the environment and the surrounding community. Those provisions include the following:

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

#### *District MOU Mitigation Measures*

The Tribe agreed in the District MOU to provisions intended to mitigate impacts of the Resort on



water drainage. The provisions include adoption of a grading and drainage plan to ameliorate the loss of floodplain storage on the Site through the construction of an on-site detention system, including a storm drainage basin, grassy swales, and storm water detention basins.

**(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.<sup>62</sup> 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.<sup>63</sup>

**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.

<sup>62</sup> FEIS, 4.7.1, pages 4.7-6 through 4.7-8.

<sup>63</sup> County MOU, Section 6(f).

## Housing

The Resort is estimated to draw approximately 836 new residents to the County.<sup>64</sup> 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.<sup>65</sup>

## 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.<sup>66</sup> 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

<sup>64</sup> FEIS, Appendix R, Section 3.1.3, page 12.

<sup>65</sup> County MOU, Section 3(a)(v)(A).

<sup>66</sup> FEIS, Section 3.4.4, page 3.4-34.

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.<sup>67</sup>

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.<sup>68</sup>

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.<sup>69</sup>

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.<sup>70</sup>

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<sup>67</sup> District MOU, Section 5(a).

<sup>68</sup> FEIS Section 5.0.

<sup>69</sup> County MOU, section 6(f) and 6(g).

<sup>70</sup> FEIS, Section 2.2, page 2.

## 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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup> It is also estimated that the operation of the Resort will create an additional 858 indirect or induced jobs.<sup>76</sup> 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.<sup>77</sup>

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."<sup>78</sup>

### *Labor Agreements*

The Tribe has entered into two labor agreements that will significantly benefit both citizens of

<sup>71</sup> FEIS, Appendix R, Section 2.3, page 3.

<sup>72</sup> FEIS, Appendix R, Section 2.2, page 2.

<sup>73</sup> State of California Employment Development Department ("EDD"), Labor Market Information Division, Monthly Labor Force Data for Counties and for Cities and Census Designated Places, dated February 2009 and updated March 20, 2009. <http://www.labormarketinfo.edd.ca.gov>.

<sup>74</sup> FEIS, Appendix R, Section 3.1.1, page 8.

<sup>75</sup> FEIS, Appendix R, Section 3.1.2, page 9.

<sup>76</sup> FEIS, Appendix R, Section 3.1.2, page 9.

<sup>77</sup> FEIS, Appendix R, Section 2.2, page 2. State of California Employment Development Department (EDD), Labor Market Information Division, Monthly Labor Force Data for Counties and for Cities and Census Designated Places, dated February 2009 and updated March 20, 2009. <http://www.labormarketinfo.edd.ca.gov>

<sup>78</sup> PRO Folder 2, Exhibit 1, Tab 2.

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.<sup>79</sup>

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.<sup>80</sup>

**(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.<sup>81</sup>

**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

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<sup>79</sup> PRO Folder 2, Tab LL.

<sup>80</sup> PRO Folder 2, Tab MM.

<sup>81</sup> FEIS, Section 4.7.1, page 4.7-23.

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.<sup>82</sup>

The total capital costs are estimated to be between \$1,950,000 and \$2,750,000.<sup>83</sup> 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 the 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.<sup>84</sup> 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.<sup>85</sup>

#### *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

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<sup>82</sup> FEIS, Section 4.7.1, page 4.7-11.

<sup>83</sup> FEIS, Section 4.7.1, page 4.7-11.

<sup>84</sup> PRO Folder 1, Exhibit 1, Tab 2.

<sup>85</sup> FEIS, Section 3.2.1.

costs for five deputy sheriffs and a one part-time sergeant position are approximately \$500,000 per year.<sup>86</sup>

*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.<sup>87</sup>

*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.<sup>88</sup>

*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.<sup>89</sup>

*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.<sup>90</sup>

#### *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

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<sup>86</sup> FEIS 3.2.1 p. 16

<sup>87</sup> FEIS 3.2.1 p. 16

<sup>88</sup> FEIS 3.2.1 p. 17

<sup>89</sup> FEIS 3.2.1 p. 17

<sup>90</sup> FEIS 3.2.1 p. 19

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.<sup>91</sup>

*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.<sup>92</sup> 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)."<sup>93</sup> 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;

<sup>91</sup> FEIS, Appendix R, Section 3.2.3, page 26.

<sup>92</sup> PRO Folder 2, Tab NN.

<sup>93</sup> PRO Folder 2, Tab 00.



- (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.<sup>94</sup>

<sup>94</sup> FEIS, Appendix R, Section 3.3.2, page 30.

### *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.<sup>95</sup> 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.<sup>96</sup>

### *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.

<sup>95</sup> FEIS, Table 4.7-15

<sup>96</sup> FEIS, section 4.7.1, page 4.7-20.

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".<sup>97</sup>

## **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 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.

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<sup>97</sup> County MOU, section 3(a)(iv).

*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."<sup>98</sup>

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

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

#### *District Costs*

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<sup>98</sup> PRO Folder 2, Tab U.

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.”<sup>99</sup>

#### *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*

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<sup>99</sup> PRO Folder 2, Tab V.

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.<sup>100</sup> 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.<sup>101</sup> 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,<sup>102</sup> the Resort will likely not result in a significant increase in new residents in those jurisdictions or a corresponding increase in new resident

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<sup>100</sup> FEIS, Appendix R, Section 3.1, page 13.

<sup>101</sup> PRO Folder 1, Exhibit 1, Tab 2.

<sup>102</sup> PRO Folder 1, Exhibit 1, Tab 2.

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.<sup>103</sup>

**(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.<sup>104</sup>

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.<sup>105</sup>

**(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

<sup>103</sup> PRO Folder 1, Exhibit 1, Tab 2.

<sup>104</sup> FEIS, section 5.2.5.

<sup>105</sup> My decision to consider the comments submitted by the Picayune Rancheria are based upon careful consideration of the interests of the Picayune Rancheria pursuant to my discretionary authority under IGRA and 25 C.F.R. Part 292. It is important to note that neither IGRA nor the Department's regulations require that I consider the Picayune Rancheria's comments in this process, because it does not qualify as a "nearby Indian tribe" under 25 C.F.R. § 292.2.

- 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 in the 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.<sup>106</sup>

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.<sup>107</sup>

<sup>106</sup> County Resolution Number 2005-169, Exhibit 2, Tab QQ.

<sup>107</sup> Exhibit S.

## Local Support <sup>108</sup>

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

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<sup>108</sup> Exhibit 2, Tab RR.

- 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.<sup>109</sup>

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.<sup>110</sup>

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.”<sup>111</sup>

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.”<sup>112</sup>

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 BIA 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

<sup>109</sup> PRO Folder 7, Tab G

<sup>110</sup> PRO Folder 7, Tab D

<sup>111</sup> PRO Folder 7, Tab C

<sup>112</sup> PRO Folder 7, Tab H

Coarsegold, California.<sup>113</sup>

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.<sup>114</sup> 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,**

<sup>113</sup> This distance was calculated by using the shortest distance travelled between Auburn's existing gaming facility and the Site.

<sup>114</sup> PRO Folder 7, Tab 1

- 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.<sup>115</sup>

### III. 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 "off-reservation" 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).<sup>116</sup>

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

<sup>115</sup> PRO Folder 7, pg. 1-2

<sup>116</sup> "Although the IGRA requires the Secretary to consider the economic impact of proposed gaming facilities on the surrounding communities, it is hard to find anything in that provision that suggests an affirmative right for nearby tribes to be free from economic competition." *Sokaogon*, 214 F.3d at 941 (7<sup>th</sup> Cir. 2000).

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.<sup>117</sup>

These revenues will allow the tribe to expand the services delivered by the tribal government. An expansion of the tribal government would have a significant 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 lives 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

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<sup>117</sup> IGRA requires the Secretary to determine whether the proposed off-reservation gaming facility is in the "best interest of the Indian tribe and its members," 25 U.S.C. § 2719(b)(1)(A), which implicates the Department's trust obligation to the applicant tribe. I must closely examine the potential benefits claimed by the Tribe in making this determination. However, this obligation must be balanced with the longstanding Federal policy of tribal self-determination. See, e.g., P.L. 93-638, Indian Self-Determination and Education Assistance Act of 1974. Therefore, I must also accord some deference to the business judgment of the Tribe regarding whether it will realize these anticipated revenues under its various memoranda of agreement and its proposed management contract. It is important to note that IGRA vests the Chairperson of the National Indian Gaming Commission (NIGC) with the authority to review and approve a management contract between an applicant tribe and its proposed management contractor. 25 U.S.C. § 2710(d)(9) and § 2711(b)-(d), (f)-(h).

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.<sup>118</sup>

## **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 \$17.9 million to mitigate potential one-time costs incurred due to the Resort. The Tribe will also make

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<sup>118</sup> While not central to my determination, it is also important to note that the Tribe has acknowledged that it would not be able to develop a gaming facility under IGRA's "equal footing" exception for the restored lands. See Letter from John Maier and Jenny Kim to PRO Director Dale Morris (June 24, 2009) ("The Tribe is foreclosed under 25 CFR § 292.12(c)(2) from qualifying such land for gaming as restored lands since more than 25 years have passed since the Tribe was restored to federal recognition."). Thus, the "off-reservation" exception is the only means available to the Tribe to develop a class III gaming facility *anywhere* but its limited trust lands.



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 Secretarial Determination 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."<sup>119</sup> 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 Secretarial Determination 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 off-reservation 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

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<sup>119</sup> PRO Folder 3, Tab 5

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.<sup>120</sup> *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. *Id.*

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 Secretarial Determination exception prohibits the Department from approving a Secretarial Determination 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. *See infra*, footnote 117. I have explained above the reasons for which I have determined the proposed Resort is in the North Fork Rancheria's best interest.

For the foregoing reasons, I have determined that the Tribe's proposed class III Resort in Madera County would not have a detrimental impact on the Picayune Rancheria of Chukchansi Indians.

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<sup>120</sup> Under IGRA, a tribe must also submit a proposed ordinance governing the conduct of gaming to the Chairperson of the NIGC for approval prior to the conduct of gaming. 25 U.S.C. § 2710. In considering whether to approve the proposed tribal gaming ordinance, the Chairperson must consider, among other issues, whether the ordinance provides that the tribe has the "sole proprietary interest" in the conduct of gaming. *See* 25 C.F.R. §§ 522.4(b)(1), 522.6(c). Additionally, the Chairperson is vested with authority to enforce this requirement through the issuance of a Notice of Violation after the conduct of class III gaming begins. 25 U.S.C. § 2713. Just as the consideration of a tribal-state gaming compact is a separate analysis committed to the Secretary by IGRA, the determination regarding "sole proprietary interest" is a separate inquiry, expressly committed to the NIGC Chairperson under IGRA.

#### IV. CONCLUSION

I have completed my review of the Tribe's application under 25 U.S.C. § 2719(b)(1)(A), including submissions by state and local officials, as well as officials of potentially interested Indian tribes.

For the foregoing reasons, I have determined that gaming on the proposed site in Madera County would be in the best interest of the Tribe and its citizens, and would not be detrimental to the surrounding community.

I request that you concur in this determination, pursuant to 25 U.S.C. § 2719(b)(1)(A). Under the Department's regulations at 25 C.F.R. Part 292, you have one year from the date of this letter to concur in my determination. You may request an extension of up to 180 days to render a concurrence. The Tribe may also request an extension of this period for up to 180 days.

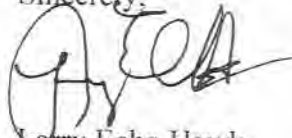
Should you decide not to concur in my determination, the Tribe may not proceed with its request for the acquisition of the land in trust on its behalf for off-reservation gaming.

Should you concur in my determination, I will proceed with the final review of the Tribe's application to acquire the proposed site in trust on its behalf. The Tribe may use the proposed site for gaming purposes only after it has been accepted into trust.

This letter and its attachments contain commercial and financial information that is protected from release under exemption 4 of the Freedom of Information Act (FOIA). Due to the sensitive nature of this information, it is the Department's practice to withhold it from the public under the FOIA, and to contact the Tribe any time a member of the public requests it. I respectfully request that the State of California take appropriate steps to similarly protect the commercial interests of the Tribe by referring any FOIA requests to the Department.

I have included copies of the record for your review and consideration. I thank you for your consideration of this important matter.

Sincerely,



Larry Echo Hawk  
Assistant Secretary - Indian Affairs

cc: Judy E. Bethal Fink, Chairwoman  
North Fork Rancheria of Mono Indians of California