



# 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 June 26, 2002, the Enterprise Rancheria of Maidu Indians of California (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to acquire approximately 40 acres of land (Site) in trust on its behalf in Yuba County, near the community of Olivehurst. The Tribe submitted its application 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.

By letter dated March 29, 2006, the Tribe confirmed that the purpose of the proposed trust acquisition is to establish a class III gaming facility pursuant to the Indian Gaming Regulatory Act's (IGRA) Secretarial Determination exception.<sup>1</sup>

The IGRA generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions and exemptions. 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 citizens; and
2. The Secretary also determines that gaming on the newly acquired lands would not be detrimental to the surrounding community.

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

On August 25, 2008, the Department of the Interior (Department) published new regulations in the *Federal Register* to implement the IGRA exceptions at 25 U.S.C. § 2719, titled, "Gaming on Trust Land Acquired after October 17, 1988" (Part 292 regulations). The Part 292 regulations articulate standards that the Department will follow in interpreting the various exceptions to the gaming prohibition on newly-acquired trust lands.

---

<sup>1</sup> 25 U.S.C. 2719(b)(1)(A).

Prior to acquiring land in trust on behalf of the tribe, 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; and, 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) and the Part 292 regulations, including submissions by state and local officials, and officials of nearby Indian tribes. I have determined that gaming on the proposed site in Yuba County would be in the best interest of the Tribe and its citizens, and would not be detrimental to the surrounding community.<sup>2</sup> I have set forth the bases for my decision below and request your concurrence in this determination, pursuant to 25 U.S.C. § 2719(b)(1)(A).

The Department's 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 for only 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. § 292.3.

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 Enterprise Rancheria of Maidu Indians of California consists of the modern descendants of the Maidu people who used and occupied lands in the Feather River Watershed in historical times. The Tribe has approximately 800 citizens, is headquartered in Oroville, California, and has been federally recognized since at least 1915.

---

<sup>2</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.

In 1915, the United States purchased two 40-acre tracts of land on behalf of the Tribe, using funds appropriated under the Interior Appropriations Acts of June 21, 1906 (34 Stat. 325, 333), April 8, 1908 (35 Stat. 70, 76), and August 1, 1914 (38 Stat. 582). One of these tracts, commonly known as “Enterprise 2,” was sold to the State of California pursuant to P.L. 88-453, and was flooded in connection with the construction of the Oroville Dam. The remaining parcel of land, commonly known as “Enterprise 1,” is located in Butte County, California and held in trust by the United States.

The Tribe originally submitted its request to have 40 acres of land acquired in trust on its behalf in Yuba County, California on June 26, 2002. The Tribe proposes to develop the Site for recreation and tourism by constructing a casino and hotel resort (Resort). The Resort would include a main gaming hall, retail space, banquet/meeting space, administrative space, pool, spa, exercise room, and an arcade. The Tribe also plans to develop food and beverage facilities, including a buffet, casino bars, and two restaurants. The Resort would include an eight-story hotel with 170 rooms, along with approximately 2,750 parking spaces, with 600 of those spaces within a multi-level parking structure.

## **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 “off-reservation” 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.**

By letter dated March 29, 2006, the Tribe confirmed that its request dated June 26, 2002 (*BIA Pacific Regional Office (PRO) Binder 1, Exhibit 1, Tab A*), was for the purpose of establishing a Class III gaming facility, and requested the Secretary make a determination that gaming on the Site is in the best interest of the Tribe and its citizens and is not detrimental to the surrounding community. On April 13, 2006, the Tribe submitted a more detailed request to the BIA Pacific Regional Office (PRO) (*PRO Binder 2, Exhibit 2*). The Tribe updated and revised its request by

letter dated March 17, 2009, in order to conform to the Department's new Part 292 regulations. On April 28, 2009, the Tribe supplemented the amended and restated request for a Secretarial Determination (*PRO Binder 2, Exhibit 2 Tab A*).

**(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 all appropriate State and local officials, including nearby Indian tribes as required under the regulations.<sup>3</sup> *See infra* Section 292.19 at 25.

**(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 not detrimental to the surrounding community. *See infra* Section 292.17 at 7; Section 292.18 at 15.

**(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 Part 292 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.<sup>4</sup>

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 that a gaming establishment on those lands would be in the best interest of the Tribe and its citizens, and

<sup>3</sup> *See supra* note 2.

<sup>4</sup> 25 C.F.R. § 292.15.

would not be detrimental to its surrounding community. If the Secretary makes a favorable determination, the Governor of the State in which gaming activity is to be conducted must concur in the Secretary's determination. 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 new land acquired in trust on its behalf for off-reservation gaming, completion of 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.**

Enterprise Rancheria of Maidu  
Indians of California  
1940 Feather River Blvd., Suite B  
Oroville, California 95965  
Telephone (530-532-9214)

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

The Site is located approximately four miles southeast of the community of Olivehurst, near the intersection of Forty Mile Road and State Route 65, in Yuba County, California.<sup>5</sup>

The legal land description (*PRO Binder 1, Exhibit 1*) is as follows:

A portion of the East half of Section 22, Township 14 North,  
Range 4 East, M.D.B.&M., described as follows:

Commence at the North quarter corner of said Section 22 and being marked by 2 brass monument stamped LS3341 in a monument well as shown on Record of Survey No. 2000-15 filed in Book 72 of Maps, Page 34, County Records; thence South 0° 28' 11" East along the line dividing said Section 22 into East and West halves 2650.73 feet to a brass monument stamped LS3341 in a monument well as shown on said Record of Survey No. 2000-15 and marking the center of said Section 22; thence North 89° 31' 24" East 65.00 feet to a point on the East right-of-way line of Forty Mile Road; thence North 0° 28' 11" West along said East right-of-way line of Forty Mile Road 45.53 feet to a ½ inch rebar with LS3751 marking the point of beginning thence from said point of

<sup>5</sup> Map of Site – PRO Binder 2, Exhibit 3.

beginning continue along said East right-of-way line of Forty Mile Road the following courses and distances: North 0° 28' 11" West 1133.70 feet; thence North 5°14' 27" East 50.25 feet; thence North 0° 28' 31" West 750.00 to a ½ inch rebar with LS3751; thence leaving said East right-of-way line of Forty Mile Road run North 88° 00' 51" East 1860.00 feet to a ½ inch with LS3751; thence South 0°28'11" East 1932.66 feet to a ½ inch rebar with LS3751; thence South 87°59'10" West 1865.03 feet to the point of beginning.

Said land is also shown as Parcel "C" on Certificate of Lot Line Adjustment 2002-07 recorded June 26, 2002, Instrument No. 2002-08119, Official Records. ANP: 014-280-095

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

The Commitment for Title Insurance issued by Fidelity National Title Company of California dated September 8, 2008, shows the Site is owned in fee simple by Yuba County Entertainment, L.L.C. (YCE), a Delaware Limited Liability Company (*PRO Binder 1, Exhibit 1*). *See also infra* Section 292.16(h) at 7.

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

The Tribe's headquarters in Oroville, California are located approximately 21 miles west-southwest from the boundary of the Enterprise 1 parcel. The Site is located approximately 36 miles from the Tribe's headquarters in Oroville, and approximately 54 miles from the Enterprise 1 parcel in neighboring Butte County.

**(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 15.

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

Tribal Council Resolution No. 02-08 dated June 26, 2002, authorizes the Secretary to acquire 40 acres in trust for the Tribe (*PRO Binder 1, Exhibit 1, Tab A*).

**(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's class III tribal gaming ordinance was approved by the National Indian Gaming Commission (NIGC) on September 28, 2004 (*PRO Binder 1, Exhibit 2, Tab C*).

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

The Constitution of the Tribe, was ratified on October 29, 2003 (*PRO Binder 1, Exhibit 2, Tab D*).

**(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 not negotiated a tribal-state gaming compact with the State of California.<sup>6</sup>

**(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.**

The Tribe's proposed Resort would include a main gaming hall, retail space, banquet/meeting space, administrative space, pool, spa, exercise room, and an arcade. Several food and beverage facilities are planned, including a buffet, casino bars, and two restaurants. The Resort would include an eight-story hotel with 170 rooms. A parking structure with approximately 2,750 parking spaces would be provided for the Resort, with 600 of those spaces within a multi-level parking structure. The casino floor would be approximately 91,000 square feet (sf) and include 1,700 slot devices, table games, and bingo (*PRO Binder 1, Exhibit 2, Tab C*).

**(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.**

On February 2, 2002, the Tribe and the Yuba County Entertainment, L.L.C. (YCE) entered into a Gaming Development and Management Agreement (*PRO Binder 1, Exhibit 2, Tab H*). On January 25, 2006, the Tribe submitted a copy of the Management Agreement to the NIGC. Subsequently a Revised and Restated Management Agreement was submitted to the NIGC in response to comments from the NIGC. The Revised and Restated 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.**

---

<sup>6</sup> A valid tribal-state gaming compact is a necessary prerequisite to the operation of a class III gaming facility. 25 U.S.C. § 2710(d). 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. See 25 C.F.R. § 292.16(k).

The Tribe projects the following financial results (*PRO Binder 1, Exhibit 2, Tab B*):

### CLASS II FACILITY

- **Income Statements** – The annual net income of the Resort is projected to be:  
Net income:

Year 1	\$2,995,011
Year 2	\$7,978,373
Year 3	\$9,173,578
Year 4	\$10,321,113
Year 5	\$11,579,576

- Balance sheet: The balance sheet for the class II gaming shows the projected total cost of the Property, Plant, and Equipment is \$38,000,000.
- Fixed assets accounting:  
Land: \$7,000,000  
Resort: \$19,000,000
- Cash flow available to Tribe:  
Year 1 (\$2,648,566)  
Year 2 \$2,961,613  
Year 3 \$3,260,824  
Year 4 \$3,395,012  
Year 5 \$3,502,666
- **Debt Amortization** – The debt amortization schedule for a class II facility is 5 years.

### CLASS III FACILITY

- **Income Statements** – The annual net income of the Resort is projected to be:  
Net income:

Year 1	\$15,196,670
Year 2	\$29,080,822
Year 3	\$32,238,698
Year 4	\$35,246,910
Year 5	\$38,368,244
Year 6	\$41,511,488
Year 7	\$46,209,339

- Balance sheet: The balance sheet for the class III gaming shows the projected total cost of the Property, Plant, and Equipment is \$165,000,000.
- Fixed assets accounting:

Land: \$7,000,000  
 Resort: \$143,000,000

- Cash flow available to Tribe:

Year 1 \$6,695,700  
 Year 2 \$18,177,071  
 Year 3 \$18,887,608  
 Year 4 \$19,122,165  
 Year 5 \$19,098,547  
 Year 6 \$18,674,878  
 Year 7 \$19,325,947

- **Debt Amortization** – The debt amortization schedule for the class III gaming facility is 7 years.

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

According to the 2010 Department of the Interior American Indian Population and Labor Force Report, more than 50 percent of the Tribe’s potential labor force is unemployed, with an additional 8 percent who are employed, but whose income is below the Federal poverty guidelines. The Tribe’s proposed gaming facility would provide significant opportunities for unemployed and underemployed tribal citizens to obtain jobs, either through direct employment at the Resort, or indirect employment in tribal programs funded with gaming revenues.

Construction-related activities associated with the Resort are projected to generate 1,300 temporary jobs and nearly \$35,000,000 in annual wages. The Resort is expected to generate 1,933 permanent operational jobs and nearly \$32,000,000 in wages (*FEIS Table 4.7-3*). The Tribe is committed to increasing tribal employment by offering jobs at the Resort to tribal citizens and establishing a preference for hiring tribal citizens.

Only five tribal citizens currently reside on the Tribe’s existing trust lands at the Enterprise 1 parcel. The majority of the Tribe’s citizens reside in Butte and Yuba Counties, within 40 miles of the Site (*FEIS 3.1.7*). The close proximity of the Site to the core of the Tribe’s population will provide those tribal citizens with an opportunity to seek gainful employment at the Resort.

The Tribe intends to provide job training and career development services to all employees of the Resort, including those who are not tribal citizens. The Tribe is committed to offering training programs to assist both Yuba County residents and tribal citizens. in becoming qualified for employment.

The Tribe intends to use the revenue derived from the Resort to significantly expand its governmental services. including those focused on improving the health, education, and welfare of the Tribe. 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. Given that a majority of tribal citizens live in Butte and Yuba Counties, those individuals will

have the opportunity to work in and near the Tribe's headquarters in Oroville, at programs funded by revenues generated by the development.

Revenues from the Resort also will enable the Tribe to provide educational and training opportunities to its tribal citizens, broadening employment and career prospects for its citizens to pursue employment opportunities that are not affiliated with the Resort or tribal governmental services.

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

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

The EIS projects that the establishment of the Resort at the Site will lead to an increase in the number of visitors to Yuba County. Increased tourism in Yuba County will have both direct and indirect benefits to the Tribe. Tourism is expected to generate approximately \$3,200,000 in gaming revenues in year two of the operation of the Resort. More specifically, the development of the Resort in the area will stimulate existing local tourism and provide incentives to visit Yuba County, thereby benefitting the local economy as a whole. This influx of non-resident consumers will benefit businesses owned by tribal citizens, businesses employing tribal citizens, and will create new employment opportunities for tribal citizens. Furthermore, the Tribe may benefit from tourism by allowing visitors and local residents alike to become familiar with the Tribe and its Maidu culture (*FEIS Appendix M*).

**(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 stronger tribal government.

Tribal income will allow the Tribe to provide a variety of much needed social, housing, governmental, administrative, educational, health and welfare services to its citizens. This new income will expand and improve existing tribal governmental operations by funding additional staff and upgrading equipment and facilities. In turn, this will lead to increased professional employment opportunities for tribal citizens and incentivize the pursuit of higher education.

The tribal income also will provide capital for other non-gaming economic development and investment opportunities, including investments in businesses owned by tribal citizens, allowing the Tribe to diversify its holdings over time. Overall, this development will improve the quality of life of tribal citizens and strengthen the viability of the Tribe's government and economy.

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

The Tribe has established a strong relationship with its neighboring communities through the Federal trust approval process, and expects the development and operation of the Resort will further strengthen those relationships. The record shows that Tribe has worked diligently to foster communication with the surrounding communities. Public meetings were held regarding the proposed development to encourage dialogue, elicit opinions from the public and allay fears and misconceptions. Since then, outreach efforts with the surrounding communities have continued, as tribal representatives meet with civic and business leaders, community groups, service organizations, industry groups and employee/trade associations in Yuba County.

The anticipated job creation and economic growth resulting from the Resort will provide a much needed boost to the local economy in Yuba County and surrounding communities. As noted, the unemployment rate in Yuba County is somewhat higher than that in the rest of California. By January 2009, the unemployment rate for Yuba County was 17.9 percent, compared to 10.1 percent for California and 7.6 percent nationally (*FEIS 3.1.7-3*). In addition, in a letter dated May 30, 2009, the Executive Director of the Yuba Sutter Chamber of Commerce (Chamber) stated the Chamber determined that the Resort meets the criteria of the Sports and Entertainment Zone (Zone) and will further economic development efforts in Yuba County, where the unemployment rate was 19.1 percent in March 2009 (*PRO Binder 2, Exhibit 7, Tab T*).

Particularly in light of the downturn in the national, state, and local economies since 2008-2009, the Resort and its economic growth opportunities will positively impact the surrounding community by creating a significant number of much needed jobs and, in the process, will help 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 where the Tribe currently maintains its core governmental functions.<sup>7</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.**

YCE, the Developer/Manager, currently owns the Site. The Tribe has submitted a copy of a

---

<sup>7</sup> This distance was calculated using the shortest point-to-point driving distance between the Tribe's headquarters and the Site.

Memorandum of Agreement (Agreement) between itself and YCE. (PRO Binder 1, Exhibit 2, Tab H). The Agreement contains the Tribe's Site purchase option.

The Agreement includes the following provision:

Upon review and approval of the Gaming Site, the TRIBE shall enter into a written agreement, containing terms, provisions and conditions consistent with the Memorandum of Agreement, for the sale of the Gaming Site from Developer to the TRIBE.

(Section 2.2(b) of the Agreement).

YCE shall finance the Purchase Price of the Site. The Agreement includes the following provisions:

Upon final approval of the Land to Trust Application by all applicable Governmental Authorities, Developer shall deposit the full amount of the Purchase Price into escrow. The escrowed funds shall constitute part of the principal amount of the Facility Loan to be made to the TRIBE. The sale of the Gaming Site from Developer to the TRIBE shall be subject to satisfaction of all conditions precedent to issuance of the Facility Loan. The closing of the sale of the Gaming Site shall take place at the same time as the closing of the Facility Loan.

\*\*\*

"2.7(a) The obligation of Developer to make the Facility Loan to the TRIBE ... shall be subject to satisfaction [sic] the following conditions precedent:

"(ii) The Management Agreement Provisions of this Memorandum of Agreement shall have become effective pursuant to Section 3.19."

\*\*\*

"3.19 Effective Date. Notwithstanding the date of signature of the parties hereto, the Management Agreement provisions of this Memorandum of Agreement shall become effective upon the last of the following events to occur: ... (ii) approval by the Secretary and publication in the *Federal Register* of the Tribal-State Compact; and (iii) issuance to Manager by the Tribal Gaming Commission of all applicable license(s) to operate the Enterprise, required by the IGRA, the Gaming Control Ordinance, the Tribal-State Compact and any other applicable Governmental

Authorities.”

The purchase option requires that YCE be approved as Manager, and that a tribal-state compact be in effect. There is no provision for the Tribe to purchase the Site except with funds provided by YCE and held in escrow.

Based on the terms of the Memorandum of Agreement, the Tribe has contractual rights to cause the lands to be transferred and put into trust for its benefit once YCE has an approved Management Agreement, and the Tribe has a tribal-state compact that is in effect.

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

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 requires 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>8</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.

The Tribe asserts that it has both significant historical and modern-day connections to the area in the vicinity of the Site, which are recognized by State and Federal agencies.<sup>9</sup>

Pursuant to its 2003 Constitution, the Tribe’s citizenship is comprised of Maidu people from the Feather River Drainage Area (*PRO Binder 1, Exhibit 2, Tab D*). The Site is located within the Feather River Drainage Area.

A 1915 census lists 7 of the Tribe’s 51 citizens as residing in Yuba County. Today, Yuba County is part of the Tribe’s Service Area.

<sup>8</sup>

Webster’s New Collegiate Dictionary 1153 (G. & C. Merriam Co. 1979).

<sup>9</sup> The United Auburn Indian Community of the Auburn Rancheria (Auburn), a nearby Indian tribe under the Department’s regulations at 25 C.F.R. Part 292, has challenged the existence of the Tribe’s historical connections to the Site. Auburn’s assertions are discussed below at p. 24.

The Tribe has repatriated human remains of its ancestors found near the site in Yuba County. The United States Army Corps of Engineers has identified the Tribe as one that attaches cultural significance to the area near the Three Rivers Levee Improvement Project, also known as the Feather River Levee Improvement Project (Levee Project), much of which is located just several miles from the Site in Yuba County.

The Levee Project is part of a larger effort to improve 13 miles of levees in South Yuba County. It is expected to lower water elevations by more than one foot during flood events, easing pressures on both the Yuba and Feather Rivers, and providing increased flood protection to the cities of Marysville and Yuba. In 2008, Native American remains and funerary objects were discovered at the Levee Project site approximately 5 miles south of Marysville. The Native American Monitor called to the site was a representative of the Tribe.<sup>10</sup> The Tribe continues to consult with Federal and State agencies on activities relating to the Levee Project.

The Tribe is also recognized by both State and Federal agencies as the Indian tribe or Native American group most closely connected with Yuba County, including the area surrounding the Site. In recent years, the Native American Heritage Commission appointed the Tribe as the “Most Likely Descendant” pursuant to California Public Resources Code (Code) § 5097.98, for discoveries of human remains and associated grave goods in and around Yuba County. A copy of the Code is attached (*PRO Binder 1, Exhibit 2, Tab A1*).

## **Conclusion**

Both the United States Army Corps of Engineers and the State of California have recognized the Tribe as being most closely connected with human remains and funerary objects discovered in the vicinity of the Site. Our Part 292 regulations include the existence of burial grounds, among other things, as evidence that a tribe was occupying an area, and therefore possessing a “significant historical connection” to land.

The documentation presented by the Tribe demonstrates that it engaged in occupancy and subsistence activities in the vicinity of the Site, and that its ancestors were interred in the vicinity of the Site. I am thus satisfied that the Tribe has a significant historical connection to the Site.

**(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**

---

<sup>10</sup> A press release by the Three Rivers Levee Improvement Authority, dated December 1, 2008, and a map showing the part of the Levee Project including the 6-mile stretch along the Feather River is included in the Record. The Record also includes a letter from the Native American Heritage Commission to the Tribe. (*PRO Binder 1, Exhibit 2, Tab A1*).

**where the gaming establishment will be located.**

The Tribe has been recognized by the United States since at least April 20, 1915. The United States subsequently purchased two 40-acre parcels for the Tribe. One parcel is the Tribe's existing lands at Enterprise 1. The second Butte County parcel, Enterprise 2, was sold in a condemnation sale in 1965 for the construction of Oroville Reservoir, and was subsequently flooded. (*FEIS*, 3.2.6.4).

One purpose and asserted need for the acquisition is “[r]estoring trust land to the Tribe in an amount equal to the amount of land previously lost as the result of federal action” (*FEIS*, ES.2). The current plans for the Resort include 207,760-sf of casino space, and a 107,125-sf hotel (*FEIS*, Table 2-1). As an alternative, under the National Environmental Policy Act, the Tribe considered development of a gaming facility on its existing trust lands in Butte County. Those alternative plans included a 20,312-sf casino with no hotel (*FEIS*, Table 2-4)(Butte Site). Various maps, including a topographical map of the Tribe's existing trust lands, demonstrate that the Enterprise 1 parcel is very difficult to access by car and is located on steep, uneven terrain. It would be exceedingly difficult for the Tribe to engage in any form of economic development on its existing trust lands, whether through gaming or non-gaming activities. A casino at the Butte Site would result in minimal or no revenue for the Tribe (*FEIS*, pg. 2.47). Moreover, that parcel is currently used for residential purposes, such that any economic development at that site would result in the displacement of individuals from their home.

Yuba County strongly supports the Resort. Since economic development on the Butte Site would not be profitable, gaming on the Site is the only feasible option currently available to the Tribe for generating the income necessary for self-determination and a strong tribal government.

**§ 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.**

Pursuant to the requirements of the NEPA, an EA was prepared for the Tribe's application. The EA was made available for a 30-day public comment period in July 2004. As part of this process, the Tribe reviewed and responded to comments submitted by interested parties and included in its response information discussing detrimental impacts and plans to mitigate those impacts and concerns. Thereafter, the BIA, in consultation with the Tribe, decided to prepare an EIS to further analyze the environmental impacts which may result from the proposed action. In addition, the EIS analyzed four development alternatives and a no-action alternative.

The BIA published a Notice of Intent (NOI) in the *Federal Register* on May 20, 2005, describing

the proposed action, announcing the intent to prepare an EIS, and soliciting public input on the scope of the EIS. A scoping meeting was held in Marysville, California on June 9, 2005, during the NOI scoping period, which ended June 20, 2005. A scoping report was issued in November 2005.

On March 21, 2008, the BIA and the U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS). The NOA was also published in *The Sacramento Bee*, *Chico-Enterprise Record*, *Oroville-Mercury Register*, and the *Appeal-Democrat* between March 22-24, 2008. The NOA notified the public that the DEIS was available for review and solicited public comments during a 45-day comment period. The NOA also provided the time and location of the public hearing, which was held in Marysville, California on April 9, 2008.

The BIA received a total of 94 letters and public hearing statements during the comment period which are included in the FEIS. The regulations in 40 C.F.R. § 1503.4 require that "[a]ll substantive comments, or summaries thereof where the response has been exceptionally voluminous, should be attached to the final statement whether or not the comment is thought to merit individual discussion from the agency in the text of the statement." Therefore, all substantive comments have been included in the FEIS. Responses are provided in the FEIS for each substantive comment submitted during the comment period. These responses are provided within the "Response to Comments" document included within the Appendix to the FEIS and are reflected in appropriate modifications made throughout the text of the FEIS where necessary.

The BIA and EPA published a NOA for the FEIS in the *Federal Register* on August 6, 2010, marking the beginning of the 30-day review period after which the BIA may issue a Record of Decision (ROD) on the proposed action. The ROD will state what the decision is, identify all the alternatives considered in reaching the decision, and discuss preferences among alternatives based on relevant factors including economic and technical considerations and the BIA's statutory mission (40 C.F.R § 1505.2). The ROD also will identify and discuss all factors that were considered in making the decision and discuss whether all practicable mitigation measures have been adopted to minimize environmental effects. If all practicable measures are not adopted, the BIA must state why such measures were not adopted.

**(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 introduction of additional visitors to the area may result in an increase in the crime rate similar to what would occur with the introduction of a shopping mall or any other large development. However, research shows that communities with casinos are just as safe as communities that do not have casinos, and that no definitive link has been found between casino development and increased regional crime rates. (*PRO Binder 2, Exhibit 7, Tab R*).

Problem Gambling. The Memorandum of Understanding (County MOU) (*PRO Binder 1, Exhibit II, Tab E*) with Yuba County provides that the Tribe will expand the availability of

problem gambling services by contributing \$60,000 a year to a charitable organization in Yuba County dedicated to the prevention and treatment of problem gambling (*Id.*).

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

## **Infrastructure and Services<sup>11</sup>**

Libraries and Parks. The Resort's impact on the Yuba County's only public library and three parks would be minimal. Patrons to the Resort from outside the area are not expected to visit local libraries or parks, and local patrons are not expected to change their current use. Although the small number of employees expected to relocate to the area for work could slightly increase usage of the library and parks, the increase would be less than significant (*FEIS 4.7*).

Public Schools. The Resort will not have a significant impact on area schools; the children of a majority of the adults expected to work at the Resort already attend local schools in Yuba and Sutter Counties. Some employees will relocate to the area; however, those with children will increase local enrollment. Although enrollment in Yuba County schools is increasing, it is increasing at a lower rate than the state average. Both Yuba and Sutter Counties have relatively

---

<sup>11</sup> In its May 11, 2009 letter to the Director of the BIA Pacific Regional Office, Auburn raises several concerns relating to the impact of the Resort on its own infrastructure and public services. Nevertheless, Auburn has not demonstrated a sufficient nexus between the concerns it raises on these issues and their impact on its own community. *See infra* discussion at 31. Thus, Auburn has not demonstrated that the Resort would lead to a detrimental impact on the infrastructure and services within its own community. The Auburn Rancheria supplemental opposition letter dated May 11, 2009 (*PRO Binder 2, Exhibit 7, Tab S*). Auburn further asserted:

- The Secretary must complete the two-part determination before taking the Enterprise fee-to-trust request into trust and mentioned the DOI January of 2008 Memorandum with the requirements for taking off-reservation land into trust for gaming purposes.
- The development and operation of a gaming facility would be environmentally, socially, and economically detrimental to Auburn, as well as the greater community in and around the Yuba County lands.
- The subject lands are within "service area" legislatively granted to Auburn pursuant to the Auburn Restoration Act (*25 U.S.C. § 13001- 6(7)*).
- Auburn has stronger historical and current ties to the subject land. To allow this application would encroach upon Auburn's legal rights and sovereignty.
- Enterprise must use its existing lands for gaming, or seek other land to which it has historical and cultural ties.
- The Enterprise application does not meet the requisite criteria to obtain a favorable two-part determination from the Secretary.
- Enterprise has not provided justification for taking land into trust that is located approximately 50 miles from existing land base.
- The Auburn casino recently reduced its workforce. There was a hiring freeze in January 2009 and the tribe was forced to lay off almost 100 part-time employees. They recently decided to scale back on planned expansion. The Enterprise proposal would burden them with a significant negative economic impact.
- Enterprise Rancheria already has land available for gaming.
- The proposed land acquisition would violate land into trust guidance and the Environmental Impact Statement is inadequate.

small class sizes. Thus, the increase in school enrollment caused by the Resort should be adequately absorbed by area schools, resulting in a less than significant impact (*FEIS 4.7*).

Roads. The FEIS identifies several significant traffic levels of service related impacts on local and regional streets. The Tribe will undertake detailed traffic mitigation measures during the construction phase of the Resort and into the operational phase, spanning through the year 2025 (*FEIS 5.2.7*); *see also* MOU between Yuba County and Enterprise Rancheria.

Utilities. Pacific Gas & Electric (PG&E) supplies electricity and natural gas to Yuba County. Southern Bell Company provides telecommunications to that area. Electric services for the Resort would be provided by PG&E. The anticipated service demand resulting from the Resort may require an increase in substation capacity and an upgrade of the overhead lines resulting in a potentially significant impact. Mitigation measures require the tribe to be responsible for the fair share costs associated with the necessary upgrading and relocation of PG&E facilities (*FEIS 5.2.8*). The Tribe will pay fees to receive the necessary natural gas and telecommunication services.

Water Supply and Wastewater. An on-site water well and distribution system would be utilized for the water supply. No significant impacts to the environment would result from the use of this water system. The Resort will utilize an existing wastewater treatment and disposal facility located on an adjacent parcel, which would be expanded to accommodate the wastewater disposal demands. The FEIS concludes that there will be a less than significant impact as a result of any wastewater treatment operations. Nevertheless, the FEIS contains mitigation to ensure against water quality impacts from the wastewater treatment plant (*FEIS 2.2.1*).

Housing. The Resort may draw new households to Yuba County. However, this growth is not expected to place any undue burden on residential development in the area. New housing developments are already underway and are expected to absorb the increased population (*FEIS 4.7*).

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

As a general rule, lands acquired in trust on behalf of an Indian tribe are not subject to state and local land use requirements. Nevertheless, the Secretary will consider the compatibility of a proposed off-reservation gaming facility with local land uses when making a determination as to whether gaming would be detrimental to the surrounding community.

Residential Area. The Site is currently undeveloped and is located within a Sports and Entertainment Zone approved by Yuba County voters and incorporated into the Yuba County Master Plan.

Agricultural Areas. The land surrounding the Site is used in rural residential, agriculture, commercial, and SR-65 capacities, and such use will not be significantly impacted by the Resort (*FEIS Ex. Summary ES-1*)

Noise and Light. As analyzed in the EIS, the Resort features and mitigation measures would

ensure noise and light impacts are less than significant (*FEIS Appendix Q*).

**Zoning.** The proposed Resort would be consistent with local zoning ordinances. The Sports and Entertainment Zone is a 900 acre area zoned for purposes of sports and entertainment purposes, including a NASCAR racetrack, outdoor amphitheater, hotels, and other compatible uses. The proposed Resort is compatible with the other contemplated uses, and will cover only 40 acres of the 900 acre Zone.<sup>12</sup> By letter dated December 17, 2002, “Yuba County has found that the Tribe’s proposed uses for the property are consistent and compatible with the County general plan and zoning of the property” (*FEIS, Appendix C*).

### **County MOU Provisions**

In the MOU between the Tribe and Yuba County, the Tribe has agreed to provisions intended to mitigate potential impacts of the Resort on the social structure of the community, infrastructure, services, housing, community character, and land use patterns of the surrounding community.

As noted above, the Site is located within a small section of a much larger special Zone created for development projects of a similar nature. In its MOU with Yuba County, the Tribe has agreed to:

- comply with both the Yuba County Master Plan and the current zoning for the Site;
- adopt and comply with standards no less stringent than state public health standards for food and beverage handling, and shall provide a copy of said standards to Yuba County;
- allow inspection of food and beverage services by Yuba County health inspectors during normal hours of operation;
- adopt and comply with standards no less stringent than water quality and safe drinking water standards applicable in California by operation of either state or Federal law, and shall provide a copy of said standards to Yuba County;
- adopt and comply with building standards no less stringent than applicable building codes, fire codes, plumbing, electrical and related codes applicable in the Yuba County;
- adopt and comply with standards no less stringent than any County ordinances and California state laws dealing with fire safety pertaining to the operation of the resort hotel, gaming facility and ancillary facilities;
- enter into a binding agreement with the Plumas-Brophy Fire District or another fire protection district located within the Yuba County prior to the opening to the public of any facility located on the Site, or will make other private arrangements in lieu of an agreement with an existing fire protection district, for the provision of fire and emergency medical services both on the Site as well as any emergency medical services arising out of the operation of the Tribe's business operations on the Site. This fire district agreement or other private arrangement will insure that there is an adequate level of fire protection and emergency service available in accordance with any and all Federal, state and/or

---

<sup>12</sup> On December 16, 2002, the City Council for the City of Wheatland adopted a resolution opposing the Tribe’s proposed gaming facility at the Site. In its resolution, the City Council found, “there is no mention of a casino in Measure R and a casino is not in keeping with the promise, purpose, or intention of Measure R[.]” It likewise resolved that a class III gaming facility on the Site is “not consistent with the intention, purpose, and spirit of [the establishment of the Sports and Entertainment Zone] nor the promise made to the voters.” The City of Wheatland’s resolution of opposition is discussed further below.

- local standards that apply;
- prohibit persons under the age of 21 years from entering and remaining in any area in which gaming activities are being conducted; and
- enter into agreements with Yuba County relating to investigation, jurisdictional or other similar issues.

Further, as pointed out by the Chairman of the Yuba County Board of Supervisors in a December 17, 2002, letter to former Secretary of the Interior Gale Norton, Yuba County and the Tribe have negotiated a MOU that more than adequately mitigates all anticipated impacts of the proposed development (*PRO Binder 1, Exhibit 2, Tab E*).

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

**Economic Development and Income**

The construction and operation of the Resort is expected to stimulate economic development in the surrounding communities. Yuba County is one of the poorest regions in the United States. In June 2004, it was reported that the Yuba-Sutter metropolitan area had the third highest unemployment rate among the Nation's 331 metropolitan areas.

Only nine other metropolitan areas had jobless rates of at least ten percent; Yuba-Sutter's jobless rate was 14.9 percent. California's overall jobless rate for the corresponding period was nearly half that of the Yuba-Sutter metropolitan area. The unemployment rate for January 2009 in Yuba County alone rose to 17.9 percent. Commercial development in Yuba County is currently lagging. The Resort will provide a much needed boost to the commercial economy, which will increase demand for retail and office employment.

The increased economic activity is expected to result in increased tax revenue to Yuba County, as well as the cities of Marysville and Olivehurst. There also will be increased revenue to Yuba County as a result of the contributions the Tribe will make pursuant to the MOU.

**Employment**

The construction and operation of the Resort will create both critically-needed permanent positions and temporary construction jobs. The FEIS estimates that the number of permanent positions at the Resort will be in excess of 1,900 jobs, and that an additional 400 permanent jobs will be created in the surrounding area as a result of increased spending and sales throughout the area. Additionally, construction of the Resort will create approximately 1,300 temporary construction jobs. In the MOU, the Tribe has agreed to comply with both Fair Labor Standards Act and California's Minimum Wage Act. The Tribe has also agreed in the MOU that the Tribe's operation of a class III gaming Resort will be subject to the same workplace health, safety and fair employment provisions set forth in the State of California's 1999 Model Compact.<sup>13</sup>

<sup>13</sup> The MOU between the Tribe and Yuba County refers to the "model compact now in effect between the State of California and other Indian tribes conducting gaming operations in California. County MOU at 6. The Department is aware that a number of states begin negotiations of class III tribal-state gaming compacts by utilizing a template

Regardless of any changes made to the Model Compact, the Tribe will adopt policies and standards that are no less stringent than federal workplace and occupational health and safety standards, Federal and State laws covering workplace discrimination (*FEIS Appendix M*).

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

**Costs of Impacts and Sources of Revenue.**

The Site is located in Yuba County near the City of Marysville (City). The Tribe anticipates that impacts from the Resort would result in certain costs to Yuba County and the City. In order to mitigate the effects of these costs on Yuba County and the City, the Tribe entered into the Yuba County MOU and the City MOU, (collectively, "MOUs").

At the time they entered into each MOU, the Tribe, the County, and the City projected the capital and annual costs of various impacts of the Resort on their respective governments and the surrounding communities. The Tribe agreed in separate MOUs to make capital and annual contributions to the County and the City, as well as to certain non-profit groups, which were intended, in the aggregate, to equal or exceed the costs of the impacts of the Resort on Yuba County, the City, and the surrounding communities. The Resort is also expected to generate additional tax and other revenues for Yuba County, the City, and surrounding communities (*FEIS Table 4.7.11*). The Tribe asserts that the payments it will make pursuant to the separate MOUs, together with the additional tax and other revenues which the government entities will receive as a result of the economic impact of the Resort, will be more than sufficient to cover the costs of the impacts of the Resort on Yuba County, the City, and the surrounding communities (*FEIS Table 4.7.11*).

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

Removal of the Site from Yuba County's property tax rolls would result in loss of approximately \$39,880 in annual property taxes (*Yuba County Assessor's Office, 2008-2009, PRO Binder 2, Exhibit 4*). The FEIS projects increased tax revenues to local governments of approximately \$9,000,000 during the construction phase, and \$11,500,000 once the Resort is operating (*Appendix M – Socio-Economic, Growth Inducing and Environmental Justice Impact Study, pp. 17 & 24*).

Thus, the projected loss of revenue to local governments in the form of property taxes and development fees will be more than off-set by the increased governmental tax revenues resulting from both the construction and operation phases of the Resort. In addition, through MOUs with local governments, the Tribe has agreed to make various payments to both Yuba County and the City which would further compensate them for Resort impacts.

with boilerplate provisions. Nevertheless, the Department reviews each tribal-state gaming compact on a case-by-case basis, as it is executed by a particular tribe and a particular state, to ensure that it complies with IGRA and other Federal law.

### **Resort-Induced Costs for Law Enforcement.**

The FEIS projects that the Resort will create a demand for three additional law enforcement personnel, a new patrol car, and related law enforcement equipment to mitigate impacts on the Sheriff's Department. According to the FEIS, annual expenditures for this purpose will not exceed \$750,000. Yuba County has agreed that the MOU, "more than adequately mitigates all anticipated impacts of the proposed development," in part through "providing revenue to support public services to the property" (*FEIS Appendix B*).

### **Resort-Induced Costs for Fire Protection.**

The Site is within the service area of the Wheatland Fire Protection Authority (*FEIS Appendix M, p25*). The FEIS states the Tribe shall enter into a binding agreement with the Wheatland Fire Authority and another fire protection district located with Yuba County. Implementation of the mitigation measures will reduce potentially significant fire protection impacts to a less than significant level. A neighborhood substation, ongoing staffing and related fire suppression equipment are needed to mitigate the impacts of the Resort (*FEIS 5.2.8*). The Tribe is interested in negotiating a fire services agreement with the Wheatland Fire Authority and has had preliminary discussions with the Chief. Both parties agree that the details of such an agreement are best negotiated once the facility is fully designed so that the parties can fully anticipate the specific type of equipment, personnel, and facilities that will be needed to service the Resort.

### **Resort-Induced Costs for Emergency Medical Services.**

The Resort is not expected to result in significant increased costs to Yuba 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 Yuba County for emergency medical services are included in the figures for annual fire protection, law enforcement and general administrative services (*FEIS 5.2.8*); see also *MOU between Yuba County and Enterprise Rancheria at (PRO Binder 1, Exhibit 1, Tab E paragraph 5)*.

### **Resort-Induced Costs for Roads.**

The Tribe intends to pay Yuba County for any traffic impact fees and to contribute its fair share to the cost of improvements to roadways, intersections and ramps. The Tribe also intends to pay for improvements by Yuba County of pedestrian and bike facilities along Forty Mile Road (*FEIS 5.2.7*).

### **Resort-Induced Costs Related to Pathological and Problem Gambling.**

The County MOU provides that no less than \$60,000 is to be given annually to a charitable organization dedicated to the treatment and prevention of pathological gambling disorders located in or providing services within Yuba County.

### **Revenues for Yuba County and the City of Marysville under their respective MOUs with the Tribe.**

## **Yuba County MOU**

In the Yuba County MOU, the Tribe has agreed to make the following contributions to Yuba County to mitigate potential non-recurring costs and impacts of the Resort on Yuba County and the surrounding community:

- A payment of \$697,120 in lieu of development fees that would otherwise be required under Yuba County ordinance to mitigate the development costs that Yuba County will bear; and,
- Payments in lieu of taxes to reimburse Yuba County for services and infrastructure and to further mitigate the impact on Yuba County. These graduated payments will total at least \$83,000,000 over twenty years.<sup>14</sup>

Further, the MOU states that anticipated impacts of class III gaming at the site can be mitigated through a binding and enforceable agreement that the Tribe is willing to enter into.

## **City MOU<sup>15</sup>**

The Tribe has agreed to make contributions to the City of Marysville to defray expenses incurred as a result of class III gaming at the site. The Tribe's contributions under this MOU will be:

- \$110,000 to defray City Expenses; and,
- Other recurring payments to assist in defraying additional expenses associated with the Resort, which will total \$4,822,977.85 over fifteen years.

## **Other Sources of Revenue**

The Tribe expects that the Resort will be an important economic stimulus to Yuba County and the surrounding communities. The increased tax revenue that Yuba County and local taxing authorities will receive from such increased business activity constitutes an additional source of revenue to mitigate the costs of impacts from the Resort.

Also, the Tribe intends to enter into MOUs or other agreements with various additional governmental entities, such as the California Department of Transportation and other nearby towns that would be impacted by the development. (*PRO Binder 1, Exhibit 1, p. 34*). In the negotiations regarding such MOUs, the Tribe and such government entities will estimate the cost of impacts on such government entities not covered by the MOU. Any such contributions which the Tribe agrees to make pursuant to such agreements or arrangements would constitute an additional source of revenues to such governmental entities to mitigate the costs of impacts from

---

<sup>14</sup> The schedule for Payments in Lieu of Taxes (PILTs) in the County MOU is as follows: \$800,000 for the First Year of Operation; \$1 million for the Second Year of Operation; \$1.4 million for the Third Year of Operation; \$2.2 million for the Fourth Year of Operation; \$3.4 million for the Fifth Year of Operation; \$5 million for the Sixth Year of Operation; and, \$5 million, adjusted by the Consumer Price Index for consumers in the San Francisco-Oakland-San Jose area over the amount paid by the Tribe for the sixth year. County MOU at 3.

<sup>15</sup> PRO Binder 1, Exhibit 2, Tab F.

the Resort.

Because the Tribe intends to conduct class III gaming at the Resort, it must enter into a tribal-state gaming compact with the State of California prior to commencing gaming operations. 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.**

The Tribe will adopt and fund responsible gambling and self-limitation policies as further described below:

**Responsible Gambling Policies.**

As discussed previously, the Tribe is committed to ensuring that its patrons and employees understand the importance of responsible gambling, 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. *See MOU between Yuba County and Enterprise Rancheria at (PRO Binder 1, Exhibit 1, Tab E, pg 8, paragraph 9).* 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. *(FEIS 5.2.4).*

**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 and receiving direct mail marketing promotions. 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 agreed in the MOU to make annual contributions of no less than \$60,000 to a charitable organization to be used for education and the treatment and prevention of problem gambling and gambling disorders. *(PRO Binder 1, Exhibit 1, Tab E).*

**(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 Site lies within the Tribe's aboriginal and historical area in the Feather River Drainage Basin and is an area to which the Tribe maintains a significant historical connection previously recognized by other Federal and State agencies. (*PRO Binder 1, Exhibit II, Tab A*).

As noted above, the United Auburn Indian Community (Auburn) has asserted that the Site lies within its own aboriginal and historic territory. Auburn has not provided any information indicating that development of the Resort would have a negative impact on its asserted cultural connection to the Site.

Assuming that Auburn has a historical connection to the Site, Enterprise Rancheria has committed to mitigating impacts on cultural resources (*FEIS 5.2.5*). Auburn has not submitted any evidence that Enterprise Rancheria’s mitigation efforts would be insufficient.

**(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**

Class III gaming on the Site was the subject of an advisory vote on the Yuba County ballot in November 2005 as “Measure G”<sup>16</sup> (*PRO Binder 2, Exhibit 7, Tab D*). The results of the advisory vote in Measure G were 51.8 percent opposing development of gaming at the Site, and 48.2 percent supporting gaming on the Site.

**Local Support**

Notwithstanding the 2005 advisory vote, the Tribe’s proposed Resort enjoys strong local support. The following local governmental entities and organizations have expressed support for the Project:

- Yuba County (through its MOU with the Tribe)
- City of Marysville (through its MOU with the Tribe)
- Yuba Sutter Chamber of Commerce;
- The Marysville Business Improvement District;
- The Olivehurst Public Utility; and,
- The Yuba-Sutter Economic Development Corporation.

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

---

<sup>16</sup> The precise language of the question presented to voters in Measure G was, “Should a destination resort/hotel and American Indian gaming casino be located within the sports/entertainment zone on Forty Mile Road in the County of Yuba?” [www.co.yuba.ca.us/departments/bos/documents/agendas/2005](http://www.co.yuba.ca.us/departments/bos/documents/agendas/2005).

**(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 16, 2009, the PRO sent a letter to the Tribe regarding the required documentation needed to fully analyze the Tribe's request for gaming on off-reservation lands. On the same day, the PRO initiated the consultation process through a letter to the State and local governmental offices. The following entities and individuals received letters providing notice of the consultation process. Their responsiveness to the consultation notice is also set forth below. (*PRO Binder 2, Exhibit 7*):

- Legal Affairs Secretary, Office of the Governor – Responded
- Deputy Attorney General, State of California – No response
- District Director, Office of Senator Diane Feinstein – No response
- Yuba County Board of Supervisors, County of Yuba – Responded in support of the Resort
- Mayor, City of Auburn – No response
- Mayor, City of Lincoln – No response
- Mayor, City of Rocklin – No response
- Mayor, City of Roseville – No response
- Mayor, City of Gridley – No response
- Mayor, City of Live Oak – No response
- Mayor, City of Marysville – No response
- Mayor, City of Yuba City – No response
- City Manager, City of Wheatland – Responded in opposition to the Resort
- Placer County, Board of Supervisors – No response
- Sacramento County, Board of Supervisors – No response
- Yolo County, Board of Supervisors; - No response
- Sutter County, Board of Supervisors – Responded in opposition to the Resort
- Butte County, Clerk of the Board – No response
- Nevada County Board of Supervisors – No response
- Colusa County Board of Supervisors – No response
- Auburn – Responded in opposition to the Resort

The response from the Office of the Governor of the State of California referred to its previous comments for the Tribe's February 2008 DEIS and related land acquisition application, dated May 5, 2008 and January 30, 2009. The Governor's office stated that the earlier comments contained sufficient information for the Secretary to determine whether the proposed gaming development would or would not be detrimental to the surrounding communities (*PRO Binder 2, Exhibit 7, Tab O*).

The response of the Yuba County Board of Supervisors included a summary statement (*PRO Binder 2, Exhibit 7, Tab I*) that Yuba “County had entered into an MOU with the Tribe that mitigates potential impacts associated with the proposed casino and identified structures.”

The response of the Mayor, City of Wheatland, indicated that the City Council opposed the

“proposed casino Resort” and attached Wheatland City Council Resolution 54-02 as evidence of opposition (*PRO Binder 2, Exhibit 7, Tab J*). As noted above, the City Council resolution indicated that a casino was not the type of entertainment originally envisioned for the 900-acre Zone. Rather, the City Council believes that the Zone was created for a NASCAR racing facility and amphitheater. The amphitheater has been built and is currently in operation; however, a racing facility has not been built and plans for one in the future are uncertain.

James Gallagher responded on behalf of the Sutter County Board of Supervisors opposing the Resort (*PRO Binder 2, Exhibit 7, Tab M*). Mr. Gallagher referred to the “proposal [a]s an egregious form of ‘reservation shopping’ . . .” and Sutter County will not be adequately compensated for a loss of tax revenue. Mr. Gallagher lists traffic and crime as probable negative impacts. As discussed previously however, any loss of tax revenues will be mitigated by payments from the Tribe to Yuba County pursuant to the MOU.

The response from Auburn described its primary concerns as (1) having possible negative economic impacts, and (2) the “infringement on Auburn territory” (*PRO Binder 2, Exhibit 7, Tab S*). Auburn did not provide an economic analysis to support its claim of negative economic impact. The proposed Site for the Enterprise Resort is 21.4 miles from Auburn’s gaming facility located in Lincoln, California.<sup>17</sup>

**(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 6, 2009, requesting that the Tribe respond to the comments. Attorneys for the Tribe responded to the comments by letter to the Regional Director dated May 5, 2009 (*PRO Binder 2, Exhibit 7, Tab R*). The potential impacts on both infrastructure and the social structure were the issues most commonly identified by the commenter’s. The Tribe’s response asserted that the requirements within the MOUs will mitigate all potential impacts of its gaming facility (*PRO Binder 2, Exhibit 7, Tab R*).

## **§ 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,**

<sup>17</sup> This distance was calculated by using the shortest distance travelled between Auburn’s existing gaming facility and the Site.

if any, on the following areas within 60 days of receiving the letter:

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

The consultation letter included all elements required by Department regulations. (*See PRO Binder 2, Exhibit 7*).

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

IGRA 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. 25 U.S.C. § 2719. 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. *Id.*

Congress also established limited exceptions to this prohibition. The first category of exceptions, known as the "equal footing" exceptions, were intended to permit more recently recognized tribes with an equal opportunity to engage in gaming. A second type of exception, known as the "Secretarial Determination," or "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. Babbit*, 214 F.3d 941 (7<sup>th</sup> Cir. 2000).<sup>18</sup>

---

<sup>18</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).

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

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

In my review of the record, I am satisfied that development of the Resort will likely result in a significant increase in the funds available to the Tribe's government. The annual net income of the Resort is projected to be approximately \$15 million in its first year of operations, increasing to approximately \$46.2 million in the seventh year of operations. This will result in a projected annual cash flow to the Tribe's government of approximately \$6.6 million in the first year of the Resort's operation, increasing to approximately \$19.3 million in the seventh year of operation.<sup>19</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 three-fold positive impact on the Tribe and its citizens. 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.

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 presents significant employment opportunities for tribal citizens. The construction and operation of the Resort is projected to result in 1,300 temporary construction jobs, and more than 1,933 permanent jobs. Given that a majority of tribal citizens live within 40 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

---

<sup>19</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).

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.

The Site is located 36 miles from the Tribe's existing headquarters in Oroville, California. 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 40-acre Enterprise 1 parcel situated in a remote, mountainous area atop steep, uneven terrain – are unlikely to support economic development on a scale approaching that of the Resort. Moreover, those existing lands are currently used for residential purposes, making significant economic development at Enterprise 1 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 existence of this historical connection is confirmed by the fact that it has been recognized by both the United States Army Corps of Engineers and the State of California.

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

**B. The proposed Resort would not be detrimental to the surrounding community, including nearby Indian tribes.**

**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 Yuba County or the adjacent local units of government. To the contrary, the facts presented to me indicate that any financial burdens imposed upon Yuba County and local units of government are sufficiently mitigated by provisions contained in separate MOUs executed between the Tribe and Yuba County, and between the Tribe and the City of Marysville.

Under its MOU with Yuba County, the Tribe will pay a one-time fee of \$697,120 in lieu of development fees that would otherwise be required under Yuba County ordinance. The Tribe will also make payments in lieu of taxes to Yuba County which would result in \$83 million in county revenues over a period of 20 years.

Under its MOU with the City of Marysville, the Tribe will make a payment of \$110,000 to defray City expenses. The Tribe will also assist the City in defraying additional expenses associated with the Resort, which will generate approximately \$4.8 million for the City over a period of 15 years.

I want to note that the Department has no authority to approve or disapprove any of the MOUs entered into by the Tribe. 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 deference to the business judgment of the tribe regarding what is in its own best interest.<sup>20</sup> See *infra*, footnote 20. I have explained above the reasons for which I have determined the proposed Resort is in the Tribe's best interest.

The record before me also supports the proposition that development of the Resort is compatible with existing and anticipated land use in the area. Yuba County has designated the 900-acre area surrounding the Site as a Sports and Entertainment Zone, which includes an existing outdoor amphitheater that hosts large events. Another contemplated use of the Zone was the construction of a professional auto-racing facility. The construction of the contemplated auto-racing facility would involve the development of a substantial portion of the Zone, for the actual racing surface, a parking lot, and related amenities.

The development of a class III gaming facility on 40 acres within that Zone is consistent with the anticipated use of the area. The County had intended to construct large entertainment facilities on 900 acres to draw both local and outside visitors. Such development was likely to result in construction activities, heavy traffic, light, noise, and other impacts similar to those associated with development of a class III gaming facility. While the City of Wheatland is likely correct that the County did not originally intend to use the Sports and Entertainment Zone for the development of a tribally-owned gaming facility, the impacts of the Tribe's proposed development are well within the range originally anticipated when the Zone was established, and are consistent with the intended use of the property, as confirmed by Yuba County.

The FEIS published on August 6, 2010, also indicates that the Tribe has worked with the local communities to identify and mitigate any environmental impacts of the proposed Resort. Thus, I find that development of the Resort would not result in a detrimental impact to the environment in the area.

In a 2005 advisory vote, Yuba County voters narrowly voted against "Measure G," in opposition to the Tribe's proposed Resort. Neither IGRA nor the Department's regulations speak directly to the weight accorded to local advisory votes where a tribe is seeking to have land acquired in trust on its behalf for off-reservation gaming. The Department's regulations, at 25 C.F.R. § 292.18(g) allow the Secretary to consider "[a]ny other information that may provide a basis for a Secretarial Determination whether the proposed gaming facility would or would not be detrimental to the surrounding community."

<sup>20</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.

The Department must give weight to the democratically-expressed will of affected voters as one of many factors when considering a tribal application for off-reservation gaming. Nevertheless, the Department's regulations speak directly to intergovernmental agreements as evidence that the proposed gaming facility would not be detrimental to the surrounding community. See 25 C.F.R. § 292.18(g). Thus, the Department must also give substantial weight to the Tribe's MOU with both Yuba County and the City of Marysville.

The governing bodies of both Yuba County and the City of Marysville are comprised of representatives elected by voters. Those governing bodies have continued to engage in a relationship with the Tribe for the past six years, notwithstanding the results of Measure G. These continuing relationships indicate that there is strong local support for the Project.

The weight of the evidence in the record strongly indicates that the Tribe's proposed gaming facility in Yuba 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. Nearby Indian Tribes**

The United Auburn Indian Community operates an existing gaming facility on trust lands within 25 miles of the proposed site. Therefore, Auburn is a "surrounding community" under our regulations; and, I must determine whether the Enterprise Rancheria's proposed gaming facility would be detrimental to Auburn. See 25 C.F.R. § 292.2.

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 trust lands acquired after October 17, 1988.

The Department will not approve a tribal application for off-reservation gaming where a nearby Indian tribe demonstrates that it is likely to suffer a detrimental impact as a result. Nevertheless, IGRA does not guarantee that tribes operating existing facilities will continue to conduct gaming free from both tribal and non-tribal competition. See *Sokaogon*, 214 F.3d at 941 (7th Cir. 2000).

Auburn operates its own successful class III gaming facility in Lincoln, California. Mere 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 on Auburn.

Auburn has also submitted evidence that it has a historical connection to the area surrounding the Site. This evidence includes the fact that Yuba County lies within its Service Area. The Department cannot presume that the existence of a tribal service area establishes an exclusive tribal historical connection to that area. Auburn has not presented any specific evidence that is sufficient to demonstrate that it has an exclusive significant historical connection to the Site. It is quite possible that Auburn has its own historical connections to the Site; but, both the United States and the State of California have formally acknowledged the Enterprise Rancheria's significant historical connections to the lands in the vicinity of the Site.<sup>21</sup> Even if Auburn

---

<sup>21</sup> The Lone Band of Miwok Indians – a federally recognized tribe headquartered in Lone, California – has also acknowledged the Enterprise Rancheria's historical connection to the Site. See Letter from Lone Band Chairman

presented greater evidence suggesting a stronger historical connection to the Site, it has not submitted any concrete evidence, nor provided any analysis, indicating that the Tribe's proposed class III gaming facility would have a detrimental impact on its own community as a result. Auburn has also submitted comments describing the potential negative environmental impacts of the proposed Resort. As I indicated above, the FEIS indicates that the Tribe is prepared to mitigate the environmental impacts of its proposed Resort. Moreover, Auburn has not submitted sufficient evidence or analysis that would establish a nexus between the asserted environmental impacts and a detrimental impact on its own community.

For the foregoing reasons, I have determined that the Tribe's proposed class III gaming Resort in Yuba County would not have a detrimental impact on the United Auburn Indian Community.

#### **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, and officials of nearby Indian tribes.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Echo Hawk". The signature is fluid and cursive, with a large initial "L" and "E".

Larry Echo Hawk

Assistant Secretary – Indian Affairs

cc: Glenda Nelson, Chairwoman  
Enterprise Rancheria of Maidu Indians of California