



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF AVAILABILITY

FINDING OF NO SIGNIFICANT IMPACT FOR PROPOSED TRUST ACQUISITION OF TWO FEE PARCELS

HABEMATOLEL POMO OF UPPER LAKE, CALIFORNIA

(FORMERLY THE UPPER LAKE BAND OF POMO INDIANS OF UPPER LAKE RANCHERIA OF (CALIFORNIA))

LAKE COUNTY, CALIFORNIA

Notice is hereby given that the Bureau of Indian Affairs (BIA), Pacific Regional Office, has prepared a Finding of No Significant Impact (FONSI), dated June 2008, for the proposed trust acquisition of two parcels encompassing a total of 11.24 acres (proposed site), by the United States for the Habematolel Pomo of Upper Lake, California (Tribe). The site is located within portions of Sections 7 and 18, Township 15 North, Range 9 West, of the "Upper Lake California" U.S. Geological Survey 7.5' minute topographic quadrangle within unincorporated Lake County, immediately south of the community of Upper Lake, adjacent to and south of State Route (SR) 20, and east of SR-29. Based on the analysis and impacts discussed in the May 2007 Draft Environmental Assessment (EA), comments received during the public review period, subsequent response to those comments, the Tribe's request for a reduction in the size of the proposed site to be taken into trust, and the subsequent Final EA developed in response to comment, the BIA has determined that the Proposed Action would not result in significant impacts to the quality of the human environment; therefore, an Environmental Impact Statement is not required.

The proposed Federal actions are the transfer of two parcels totaling 11.24 acres into trust by the United States for the benefit of the Tribe pursuant to section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, and the approval by the National Indian Gaming Commission of a gaming management contract pursuant to section 2711 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* The proposed site originally encompassed 56 acres but at the request of the Tribe was reduced to 11.24 acres to address concerns regarding floodplain management and Lake County's ability to implement the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project. The purpose of the Proposed Action is to restore the Tribe's land base, to improve the Tribe's socio-economic status, and assist the Tribe in moving toward economic self-sufficiency. The foreseeable consequence of the Proposed Action is the development of an approximately 76,750 square-foot gaming and hotel facility, of which approximately 40,000 square feet is proposed for the casino area consisting of a casino floor, food and beverage areas, entertainment lounge, casino support areas, a retail area, administration and security areas (Proposed Project). Additional supporting infrastructure is planned including access roads and

parking areas. The reduction in the trust boundary does not alter the scope and size of the Proposed Project analyzed in the Tribe's EA.

For information or to obtain a copy of the FONSI or EA, please contact Patrick O'Mallan, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978-6044. Copies of the FONSI and FEA are also available for public review at the following locations: Upper Lake Rancheria Tribal Office, 375 East Hwy 20, Suite I, Upper Lake CA 95485, telephone (707) 275-0737; Upper Lake Library, 310-2nd Street, Upper Lake, CA 95485, telephone (707) 275-2049; and the Lakeport Library, 1425 North High Street, Lakeport, CA 95453, telephone (707) 263-8817; an electronic version of the FONSI and EA may be viewed at <http://www.upperlakeea.com/>.



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FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED TRUST ACQUISITION OF TWO FEE PARCELS FOR THE HABEMATOLEL POMO OF UPPER LAKE, CALIFORNIA (FORMERLY THE UPPER LAKE BAND OF POMO INDIANS OF UPPER LAKE RANCHERIA OF (CALIFORNIA))

AGENCY

Bureau of Indian Affairs

ACTIONS

Finding of No Significant Impact

SUMMARY

The Habematolel Pomo of Upper Lake, formerly the Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to approve the acquisition in trust of 11.24 acres of fee land to restore a land base for the Tribe, with the foreseeable consequences of the action being the development of a casino complex including hotel and associated support facilities on the subject property (Proposed Project). The application originally encompassed 56 acres, but at the request of the Tribe, was reduced to 11.24 acres to address concerns regarding floodplain management and Lake County's ability to implement the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project. The land requested for trust acquisition is located south across SR-20 from the community of Upper Lake in Lake County. The property is located less than one mile from the former Upper Lake Rancheria, within the Tribe's historic territory. The Tribe is federally recognized and is currently landless. The United States Department of the Interior finalized a restored lands opinion on November 21, 2007. The opinion states that the Proposed Project site would fall within the Indian Gaming Regulatory Act's restored lands exception to the prohibition of gaming on lands acquired after October 17, 1988. Therefore, if the Secretary of the Interior accepts the parcels into trust, the Tribe may conduct gaming on the project site. The National Indian Gaming Commission (NIGC), Office of General Counsel, concurs with the opinion.

Based upon the analysis and recommended mitigation measures documented in the May 2007 Draft Environmental Assessment (EA), comments received during the public review period for the Draft EA, the subsequent responses to those comments, the Tribe's request for a reduction in the size of the proposed site to be taken into trust, and the subsequent development of a Final

EA, the BIA has reached a Finding Of No Significant Impact (FONSI). This finding constitutes a determination that the Proposed Action, and subsequent development of the Proposed Project, is not a federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement (EIS) is not required.

BACKGROUND

The Tribe seeks to transfer 11.24 acres of land into federal trust for the development of a casino complex including hotel and associated infrastructure. The purpose and need for action of the Proposed Action is to assist the Tribe in meeting the objectives of restoring a tribal land base in a region historically inhabited by the Tribe, and providing the Tribe with a long-term, viable, and sustainable revenue base that would be used to:

- Strengthen the Tribal government;
- Fund a variety of social, housing, governmental, administrative, educational, and health and welfare services to improve the quality of life of Tribal members; and
- Provide capital for other economic development and investment opportunities.

The proposed acquisition would significantly alleviate high unemployment rates among Tribal members. The Tribe currently has 188 members and an unemployment rate for the Tribe's labor force of 62 percent, which is well above the unemployment rate of 6.8 percent for Lake County. With an anticipated employment of approximately 200 persons, development of the casino complex would provide employment opportunities for Tribal members and others in the community.

DESCRIPTION OF THE PROPOSED PROJECT

The Proposed Action consists of two main components: a request that the Interior Department acquire portions of two parcels totaling 11.24 acres in trust, and a request that the NIGC approve a management contract for a casino. Originally, the Tribe's trust application consisted of 56 acres and encompassed the balance of the two parcels being taken into trust and two additional parcels south of the proposed casino site, although no development was planned within these southern parcels. The Tribe's Draft EA analyzed the impacts of the Proposed Project, including the potential impacts of placing all four parcels into trust. Based on comments received during the public review period, the Tribe amended its trust application to include only a portion of the two northern parcels. The reduction in overall trust acreage does not result in additional impacts as the size of the casino and hotel development remains unchanged, and it eliminates concerns of local and State agencies as discussed below.

The foreseeable result of the BIA's action would be the development of an approximately 76,750 square-foot casino and associated facilities, including a hotel (Proposed Project, analyzed as

Alternative A). The casino would include a gaming floor, food and beverage areas, entertainment lounge, support areas, a retail area, and administration and security areas. The alteration of the trust area does not impact the scope and size of the Proposed Project.

The Proposed Project at full build-out would include a three-story hotel with up to 60 hotel rooms. The first floor would contain the lobby, hotel administration offices, and meetings rooms. The second and third floors would contain guest rooms. Along with 500 parking spaces for guests and employees, the site would also be developed to allow up to 20 RV parking spaces connected to sanitary services.

After the release of the Draft EA, the Tribe entered into good-faith negotiations with the Upper Lake County Water District (ULCWD) for water service. Based on discussions between the Tribe and the ULCWD, in accordance with the MOU, the current municipal delivery system, including storage, would be inadequate to serve the Proposed Project and mitigation would be required. The ULCWD distribution and storage system would require new storage and connection lines to provide adequate pressure to serve the Proposed Project. Based on the results of the analysis, the Tribe decided Water Service Option 2 from the EA, which includes the development of an on-site water supply, treatment, and distribution system, is the preferred water service option for the following reasons:

- Connection to the ULCWD (Water Service Option 1) would result in potentially significant impacts to the ULCWD distribution system;
- Significant impacts to the ULCWD distribution system would require mitigation by the Tribe through the development of extensive and costly improvements to the ULCWD storage and distribution system; and
- The timing and cost of CEQA analysis for the development of the improvements, and annexation of the project site into the ULCWD service area was deemed to be significant.

ALTERNATIVES CONSIDERED

The BIA considered several alternatives that are described in the EA and summarized below. In addition to Alternative A described above, a Non-Gaming Alternative and a No-Action Alternative were evaluated in full detail in the EA. Three alternative sites (Pear Orchard, West Sacramento Property, and the former Rancheria site) were considered, but ultimately eliminated from further consideration.

1. Alternative B Vineyard/Non-Gaming Alternative: The BIA would take the property into trust and the Tribe would continue to manage the land as a vineyard. The site would be assessed for cultivation viability and an Operations Plan would be developed to ensure the most current vineyard farming techniques are implemented, which include reduced dependency on pesticides, herbicides, and fertilizers. The vines would be cultivated during the typical harvest season and grapes sold to winemakers throughout

the region. Approval of a gaming management contract from the NIGC would not be requested under this alternative.

Alternative B would result in fewer environmental impacts than the Proposed Project; however, Alternative B would provide the Tribe with fewer economic benefits. This alternative would not satisfy the purpose and need for action because of the limited income the Tribe could generate. Alternative B would not generate revenue sufficient for desired Tribal programs such as health care, education, and economic growth and development and would provide limited employment opportunities.

2. Alternative C – No-Action Alternative: Under Alternative C, the site would not be placed in trust for the Tribe and a casino/hotel would not be developed on site. No action would be required from the BIA. Lake County would continue to exercise land use jurisdiction over the site. Most likely, the site would eventually be developed consistent with County zoning. For this analysis, it was assumed the existing vineyard would remain active.

This alternative would not meet the purpose and need for action as no economic benefits would arise from the BIA selecting Alternative C. Under Alternative C, the site would remain subject to Lake County's land use jurisdiction. Alternative C would not enable the Tribe to achieve economic self-sufficiency, nor would it allow the Tribe to develop housing, recreational, or educational programs to the extent the Tribe desires.

3. Pear Orchard Site Alternative: The Pear Orchard Property is a 17-acre site located at 9275 West SR-29, south of the SR-20/SR-29 intersection outside of the Community of Upper Lake. The Pear Orchard Property is located about one mile west of the proposed project site.

The Tribe evaluated this property for environmental impacts and eliminated the site from further consideration due to the flood-prone nature of the site and the presence of cultural resources.

4. West Sacramento Property: The West Sacramento Property is located on the southeast corner of the intersection of Reed Avenue and Interstate 80 (I-80) in West Sacramento. The parcel that was under consideration in this alternative is 84 acres and is in an area zoned for heavy commercial and retail use. This alternative would have included a 200,000-square-foot casino gaming floor and a 400-room hotel.

Community objection, objections from other Tribes, and the location of the site within an urban area prevented the Tribe from pursuing this location further.

ENVIRONMENTAL IMPACTS

ENVIRONMENTAL ASSESSMENT

A Draft EA was completed in May 2007 for the Proposed Action and project alternatives. The Draft EA was distributed for public review from June 2, 2007, to July 2, 2007, during which time the BIA received 11 substantive comment letters. The BIA received two requests, one each from

the California Department of Water Resources and the California Department of Justice, for a two-week extension of the comment period to July 16, 2007. The BIA approved the requests, and comment letters were received from both agencies prior to the deadline. No comment letters were received from the general public or private entities.

The Final EA dated April 2008 documents the potential impacts of the Proposed Action. The Final EA analyzed potential impacts of the Proposed Project as well as two alternatives to the casino project, including a No-Action Alternative. Within the Final EA, potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns (transportation, land use, and agriculture), public services, and other values (visual, noise, and hazardous materials) were evaluated, with the following conclusions:

- A. Impacts to land resources would be less than significant. The lands surrounding the site are either already zoned for compatible development (across SR 20 to the north) or agricultural land covered by Williamson Act contracts that restrict use to agricultural operations. As discussed in **Section 4.5.1** of the Final EA, the development of similar size casino elsewhere in Lake County has not lead to significant cumulative impacts to surrounding land use. Further, the implementation of the recommendations of the Site Grading, Drainage, and Erosion Control Plan and protective measures discussed in **Section 2.1.3** would ensure implementation of the Proposed Project would not adversely impact land resources. **See EA Sections 2.1.3, 4.1.1, and 5.1.**
- B. Impacts to water resources would be less than significant. With well production rates in the Upper Lake region averaging 300 gallons per minute (gpm); groundwater flow would be more than adequate for the Proposed Project. The groundwater assessment (**Appendix S** of the EA) revealed that the lowest production rate of the 18 wells identified within the study would be approximately 28 gpm, which would meet the projected water demand of the Proposed Project. Groundwater monitoring data from the California Department of water Resources for the past 17 years from a well located approximately 400 yards to the north of the project site indicates groundwater levels may fluctuate over a year, but recharge typically occurs by the following year to approximately the same level, around 3-6 feet below ground level. Groundwater use by the Proposed Project would have a less-than-significant affect on groundwater resources. In accordance with the Memorandum of Understanding (MOU) with Lake County (**Appendix A** of the EA), the Tribe would participate in the Water Conservation Retrofit Program, which includes the use of low flow fixtures within the facilities, further reducing the impact of the Proposed Project on groundwater resources. Compliance with the terms of the MOU provided in **Section 2.1.2** and the Grading, Drainage, and Erosion Control Plan (**Appendix H** of the EA) would reduce surface water and water quality impacts to less-than-significant levels. **See EA Sections 2.1.2 and 4.1.2.**

- C. Impacts to air quality would be less than significant. Compliance with the terms of the MOU provided in **Section 2.1.2** would further reduce air quality impacts. **See EA Sections 2.1.2, 4.1.3, and 5.3.**
- D. Impacts to biological resources would be less than significant. Having considered biological resources impacts during project design/planning, best management practices (BMPs) incorporated into the Proposed Project and proposed mitigation measures would ensure that impacts to biological resources are not significant. **See EA Sections 2.1.3, 4.1.4, and 5.4.** A letter dated May 24, 2007, concurring with the results of the EA was received from the U.S. Fish and Wildlife Service.
- E. There would be no significant impacts to known cultural resources. Mitigation measures would reduce impacts to unknown cultural resources to less-than-significant levels. **See EA Sections 4.1.5 and 5.5.** A letter dated May 25, 2007, concurring with the results of the EA was received from the California State Office of Historic Preservation.
- F. Impacts to socioeconomics would be reduced to a less-than-significant level. The Tribe has taken into consideration impacts to Lake County, including loss of property taxes, by entering into an MOU with Lake County. Socioeconomic impacts would be reduced to less-than-significant levels through compliance with the terms of the MOU provided in **Section 2.1.2.** **See EA Sections 2.1.2, 4.1.6, and 5.6.**
- G. Impacts to transportation would be less than significant. Having incorporated changes to the project description as a result of consultation with Caltrans, compliance with the terms of the MOU provided in **Section 2.1.2** and proposed mitigation measures developed in consultation with Caltrans would further reduce impacts to the transportation networks. **See EA Sections 2.1.2, 2.1.3, 4.1.7, and 5.7.**
- H. There would be no significant land use impacts. **See EA Section 4.1.7.**
- I. Impacts to agriculture would be less than significant. Compliance with the terms of the MOU provided in **Section 2.1.2** would further reduce impacts to agriculture. **See EA Sections 2.1.2, 4.1.7, and 5.7.**
- J. Impacts to public services would be reduced to less-than-significant levels. Having considered public services impacts during project design/planning, compliance with the terms of the MOUs with the Lake County and the Northshore Fire Protection District, BMPs incorporated into the Proposed Project, and proposed mitigation measures would reduce impacts to public services to less-than-significant levels. Further, there will be no impacts to the municipal water system as the Proposed Project includes development of onsite wells to meet potable water demands (see ground water discussion above). The Tribe has also entered into an agreement with the Lake County, Special Districts, to connect to the existing Upper Lake Connection Area wastewater system and has paid a full impact fee to offset the project's fair share of upgrading of pumping plants and the maintenance of the existing sewer lines. **See EA Sections 2.1.2, 2.1.3, and 4.1.8.**
- K. Impacts to visual resources will be less than significant. Compliance with the terms of the MOU provided in **Section 2.1.2** would further reduce visual resource impacts. **See EA Sections 2.1.2, 4.1.8, and 5.9.**

- L. Impacts associated with noise would be reduced to less-than-significant levels. Having considered noise impacts (including noise levels during construction) during project design/planning, the incorporation of additional BMPs into the project description would reduce noise impacts to less-than-significant levels. **See EA Section 4.1.9.**
- M. Impacts associated with hazardous materials would be reduced to less-than-significant levels. Having considered hazardous materials impacts (including hazardous materials generation and use during construction) during project design/planning, BMPs incorporated into the Proposed Project would reduce hazardous materials impacts to less-than-significant levels. **See EA Sections 2.1.3, 4.1.9, and 5.9.**
- N. Cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, environmental justice, land use, agriculture, public services, visual resources, noise and hazardous materials would be less than significant. Having considered transportation networks impacts during project design/planning, BMPs incorporated into the Proposed Project, and mitigation measures would reduce cumulative impacts to less-than-significant levels. **See EA Sections 2.1.2, 2.1.3, 4.4, and 5.0.**
- O. There would be no significant growth-inducing or other indirect effects. **See EA Section 4.5**

BIA Consultation with Other Agencies

Biological Resources

A Biological Assessment was submitted to the U.S. Fish and Wildlife Service (USFWS) on April 26, 2007, along with a letter requesting initiation of informal consultation under Section 7 of the Endangered Species Act. The letter also requested concurrence with the determination that the project is not likely to adversely affect three federally listed species (valley elderberry longhorn beetle, California red-legged frog, and bald eagle). The USFWS responded in a memorandum dated May 24, 2007, concurring with the determination that the species would not be adversely affected. Since no adverse effects were identified, Section 7 consultation requirements have been completed and formal consultation is not necessary.

A wetland delineation was submitted to the U.S. Army Corps of Engineers (USACE) on April 26, 2007. A site visit was conducted on June 6, 2007, with USACE staff to verify delineated wetlands. Following discussions with USACE, an addendum to the wetland delineation was submitted to USACE on September 6, 2007, to address off-site impacts associated with roadway improvements. The BIA received a verification letter from the USACE dated February 1, 2008, (identification number SPK-2007-01653), concurring with Figure 9 of the delineation of the waters of the United States prepared for the Proposed Project.

Cultural Resources

A cultural resources report was prepared for the project site, analyzing the potential impacts of the Proposed Action to cultural resources. No prehistoric or historic-period cultural resources were identified within the Area of Potential Effect, road right of way, or along the construction corridor of the wastewater pipeline as part of the records search and field survey. Consequently, no adverse changes to known cultural resources would occur as a result of the Proposed Project. The EA recognizes the potential to impact previously undiscovered cultural resources and recommended mitigation in the case of accidental discovery. These mitigation measures are included as a component of the Proposed Project. The BIA received a letter from the State of California, Office of Historic Preservation on May 27, 2007, concurring with the findings of the cultural report.

Summary of MOU provisions, BMPs, and Mitigation Measures:

BMPs and mitigation measures are included in the EA to either reduce significant impacts to a less-than-significant level, to further reduce already less-than-significant impacts, or both. To ensure that the mitigation measures required to reduce significant impacts to a less-than significant-level are enforceable, the mitigation measures are either included as an integral part of the project description, required by Federal law, or enforceable through the MOUs between the Tribe and the County of Lake (**Appendix A** of the EA) and the Northshore Fire Protection District (**Appendix K** of the EA).

The following is a summary of BMPs and mitigation measures contained in the EA:

Land Resources

- The Site Grading, Drainage and Erosion Control Plan (**Appendix H** of the EA) shall be implemented and include the provisions pertaining to the Proposed Project.

Water Resources

- The Site Grading, Drainage and Erosion Control Plan (**Appendix H** of the EA) shall be implemented and include the provisions pertaining to the Proposed Project.
- Prior to the implementation of the Proposed Project and in accordance with the MOU with the County of Lake, when approved, a Notice of Intent will be submitted to the USEPA to apply for coverage for on- and off-site construction activities associated with the Proposed Project under the Nationwide Phase I NPDES Permit for general construction activities with greater than five-acres of ground disturbance. As part of the requirements for coverage, the Tribe would have a Stormwater Pollution Prevention Plan (SWPPP) developed. The SWPPP shall outline specific BMPs that would be incorporated into construction of the Proposed Project. The BMPs are designed to reduce potential impacts to surface water quality from construction activities, particularly from siltation and contamination from construction materials. BMPs selected for the site shall include, but not be limited to, the following:

- Vegetation existing on the site shall be retained where possible. Grading activities shall be limited to the immediate development area;
- Temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be employed for disturbed areas;
- No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months;
- Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures;
- Best Management Practices shall be employed by the construction contractor to prevent the accidental release of disturbed soils, fuel, oil, lubricant, or other potentially hazardous materials associated with construction activities into wetland habitats;
- A containment program shall be developed and implemented in the event of release of hazardous materials;
- Staging areas shall be located away from Waters of the U.S. and wetland habitats that are to be preserved. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas;
- Excess excavated soil shall be used on-site or disposed of at a regional landfill or other appropriate facility; and
- Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion (e.g. silt fences, straw bales).

Air Quality

- The construction contractor will be required to follow standard techniques for dust suppression. These include, but are not limited to, watering of access roads and active construction sites, application of surfactants to exposed soils, limiting truck speeds on unpaved surfaces, and prohibiting grading activities in wind speeds exceed 25 mph.
- The Tribe agrees to make efforts to prevent nuisance to the residents of land adjacent to the project site and to motorists on State Highway 20.
- The facility would be designed to avoid exposure of hazardous agricultural toxins to casino patrons.
- Carpooling and/or ridesharing would be encouraged amongst employees of the Proposed Project.

Biological Resources

- Waters of the U.S. and wetland areas as denoted through consultation with the USACE, shall be protected, and orange construction fencing shall be erected to ensure avoidance.

- If construction activities occur during the nesting season (approximately March-September), pre-construction surveys for nesting bird species shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. If active nests are identified in these areas, the USFWS shall be consulted to develop measures to avoid disturbing active nests prior to the initiation of any construction activities. Avoidance measures may include the establishment of buffers and biological monitoring. No trees shall be removed.

Cultural Resources

- Prior to the start of construction, a set of engineering drawings shall be provided to a senior archaeologist designated by the Tribe. The senior archaeologist, in consultation with the Tribal monitor, would then determine those areas where construction work would require monitoring. This information would then be provided to the job superintendent or foreman, who would then be responsible for notifying the monitors twenty-four hours in advance of work being performed in areas requiring monitoring.
- In the event of discovery of significant archaeological resources, a Memorandum of Agreement (MOA) would be developed and executed by the appropriate consulting parties and supported by the design and implementation of a Historic Properties Treatment Plan (HPTP) to mitigate impacts before land disturbing activities in the area of discovery would be allowed to resume.
- The Tribe shall include the following requirement in construction contract specifications for construction activities on the site:

In the event that any prehistoric, historic, or paleontological resources (including but not limited to obsidian or chert flakes and or tools, locally darkened midden, ground-stone artifacts, deposits of shell, dietary bone, or human burials) are discovered during construction-related earth-moving activities, all work within 50 feet of the resources shall be halted and the Tribe shall consult with a qualified archaeologist or paleontologist and the BIA Regional Archaeologist to assess the significance of the find;

- If any find were determined to be significant by the qualified archaeologist and BIA Regional Archaeologist, then representatives from the Tribe, the qualified archaeologist and/or paleontologist, and BIA Regional Archaeologist would meet to determine the appropriate course for action; and

If human remains are discovered or suspected, California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98.

The Native American Graves Repatriation Act (NAGPRA), 18 U.S.C. § 1170 *et seq.*, requires consultation with the BIA for the excavation of burial sites, and sets up procedures by which federal agencies and museums holding remains and cultural artifacts will repatriate them. If a burial site is discovered, all federal requirements will be met pursuant to NAGPRA.

Socioeconomic Conditions

- After the parcels are acquired in trust, the Tribe would make an annual base payment to the County General Fund in lieu of paying property taxes for the property. The amount of the annual payment shall be equivalent to the amount that would otherwise be due to the County if the property were subject to standard property taxes consistent with the customary assessment procedures used by the County Assessor and consistent with the Constitution of the State of California.
- The Tribe agrees to make an annual contribution of \$5,000 each year for the first two years, and \$10,000 each year thereafter, to the Lake County Marketing Program, which the County would use for advertising and promoting Lake County tourism, including local agritourism.
- The Tribe agrees to the following employment practices:
 - Compliance with Federal Workplace and Occupational Health and safety Standards;
 - Compliance with federal and state discrimination laws for employment of persons who work for the Tribe's project conducted on the property regarding race, color, religion, national origin, gender, sexual orientation, age, or disability;
 - Participation in the State of California statutory workers' compensation system, or the creation and maintenance of a similar system;
 - Compliance with all applicable State workers compensation laws for independent contractors doing business with the Tribe;
 - Participation in the State of California program for providing unemployment compensation benefits and unemployment compensation disability benefits including compliance with the provisions of the California Unemployment Insurance Code, or the Tribe may establish an equivalent program; and
 - Compliance with the Fair Labor Standards Act for employee wages and California minimum wage laws, or the Tribe may establish an equivalent program.
- The Tribe agrees to work closely with Lake County to implement a Responsible Gaming Program. As mitigation, the program would include the following:
 - Signage would be placed on the casino floor and back-of-house so that employees always know where to refer customers requesting assistance;
 - Responsible gaming information brochures and on-hold messages would be provided by the Tribe. Help line phone numbers would be provided on all websites, player cards, and directories;
 - Self-ban agreements would be offered to guests upon request;
 - Tribe would join the California Council on Problem Gaming; and

During hours of operation, a person trained to identify problem gambling behavior, assess lethality, and provide educational information, as well as provide information on problem gambling treatment including referral to local problem gambling counselors would be on staff.

Transportation Networks

- The Tribe agrees to offset any County maintenance or electricity costs with respect to any Caltrans improvements required because of the Proposed Project.
- Access and alternative transportation improvements are proposed within the Traffic Impact Study (TIS) performed for the Proposed Project, included as **Appendix E** of the EA. The recommended improvements have been reviewed by Caltrans. Caltrans has provided comments on the TIS and planned improvements, which is provided as **Appendix M** of the EA. Planned improvements include:
 - A six-foot wide sidewalk and a 5-foot wide Class II bike lane shall be constructed along the northern perimeter of the project site (**Figure 2-5**). The Tribe shall pay for construction to have the sidewalk continued along the northern perimeter of the park up to the crosswalk at the intersection of SR-20 and Government Street;
 - In response to comments received from Caltrans (**Appendix M** of the EA), lighting shall be installed at the access road into the Proposed Project, and the Tribe shall pay for lighting to be installed at the crosswalk at the intersection of SR-20 and Government Street in accordance with Section II.L.(1) of the MOU with the County;
 - For access into the site, the Tribe shall pay to have the center, two-way turn lane re-striped into a left turn pocket;
A right turn pocket will be constructed at the access road into the Proposed Project. The right turn pocket would provide 98 feet for deceleration;
 - The Tribe shall dedicate a right-of-way along the northern perimeter of the project site, approximately 20-feet wide to Caltrans;
 - All roadway improvements shall be constructed according to state standards; and
 - The Tribe will negotiate, in good faith, an MOU with Caltrans regarding maintenance of roadside.
- Landscaping adjacent to the access and egress points of the project site shall be kept low-lying in order to maintain adequate stopping site distance for vehicles exiting and entering the facility.
- Although the warrant analysis of SR-20 for turn pockets was negative, the Tribe shall install both a left turn and right turn pocket in accordance with Caltrans standards for a 55 mph zone.

Public Services

Water Supply

- Consistent with the Lake County MOU the Tribe has negotiated in good faith with the Upper Lake County Water District (ULWD) on the possibility of providing water to the project site.
- The Tribe will install an on-site water supply system in accordance with the following mitigation measures:
 - Water quality standards would be adopted by the Tribe and would be no less stringent than Federal Water Quality and Federal Safe Drinking Water Act standards;
 - Inspections of the drinking water supply system and drinking water quality by USEPA would be conducted to ensure compliance with the Tribe's safe drinking water standards noted above;
 - Evidence of these inspections shall be provided to the County upon written request; and
 - Potentially significant public health issues that arise would be approached in a cooperative manner with the County to resolve the issue.

Wastewater

According to the sanitary sewer collection system analysis, conducted by the Special Districts contract engineer, during negotiations between the Tribe and Lake County Special Districts:

- Maintenance needs to be performed on the force main to remove deposits and restore designed cross-section flow areas. The Tribe has paid approximately \$104,000 in restorative costs to Special Districts as the Tribe's fair share contribution to the necessary maintenance activities.
- Both pumps within Lift Station 17 should be upgraded to provide adequate flow. The Tribe has paid \$274,100 for pump replacement within Lift Station 17 to Special Districts as the Tribe's fair share contribution to the necessary upgrades.
- The Tribe shall pay all connection fees at the same rate as other commercial entities of similar size.

Solid Waste

- Solid waste generated by the facility shall be separated and diverted for recycling.
- Inert construction materials shall be recycled or diverted for reuse to the extent feasible.
- The Tribe would adopt a solid waste management plan that addresses recycling and solid waste reduction at the site. Measures adopted under this plan would be incorporated into the design of the casino/hotel. The measures would include, but not be limited to, installation of a trash compactor for cardboard and paper products, and installation of recycling bins throughout the casino/hotel for glass, cans, and paper products.

Recreation

- The Tribe shall negotiate in good faith with the County to develop a maintenance program to assist the County with upkeep of the park.

Law Enforcement

- As required by the MOU with Lake County, in-house security staff and the Lake County Sheriff's Department would provide law enforcement services on the site (**Appendix A** of the EA).
- The Tribe shall provide trained security staff to handle security issues during operating hours at the facility.
- The Tribe shall establish procedures to cover turnover of persons apprehended and arrested for suspected criminal activity to the custody of the Sheriff's Department.
- The Tribe and the County District Attorney Office shall work closely in order to prosecute any crimes within the facility.
- The Tribe shall enforce any child support orders for payment of child support by casino employees.
- All parking lots will be well lit and monitored by surveillance cameras and parked and/or roving security guards at all times during operation.
- Traffic control shall be provided with appropriate signage and peak-hour traffic control staff to prevent off-site parking.

Fire and Emergency Services

- The Tribe has entered into a separate MOU with the Northshore Fire Protection District for the provision of fire and emergency service to the Proposed Project (**Appendix K** of the EA).
- The Tribe shall provide a copy of its Emergency Evacuation Plan and any subsequent updates to the County Sheriff's Department and Fire Department prior to commencement of operations.
- The Tribe shall also be responsible for maintaining adequate emergency medical personnel in the Facility during all hours of facility operations.
- The casino shall be constructed on non-combustible materials and equipped with fire sprinklers.
- Paved access shall be provided to the buildings for use by emergency personnel. Fire hydrants shall be installed within the parking lot for use by fire fighters.
- Construction equipment and power tools shall be equipped with spark arrestors and maintained in good working order.
- The construction contractor shall keep all areas using spark-producing equipment free of dried vegetation and other fuels including the storage of combustible materials.
- The Tribe shall make annual payments of \$80,000 per year to supply the Northshore Fire Protection District (NFPD) with an emergency medical technician to offset impacts from the development of the Proposed Project. The first payment shall depend upon the date the property is taken into trust by the Department of the Interior.

- The Tribe shall provide a copy of its Emergency Evacuation Plan to the NFPD along with any updates or modifications to the plan.
- The evacuation plan for the Proposed Project shall not conflict with local emergency evacuation plans.

Visual Resources

- The Tribe shall design and construct exterior lighting that minimizes light ambience at night and would not design and construct spotlights for use at night.

Noise

- Hours of exterior construction shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Saturday. No exterior construction shall occur on Sundays.
- Fixed construction equipment (such as compressors and generators) and construction staging areas shall be located away from the residences located 500 feet southwest of the casino site.
- Signs shall be posted in areas visible to the public that detail permitted construction days and hours (stated above), day and evening job site contacts, and a public contact number for construction noise-related complaints.
- Sound barriers shall be constructed to break the line of site from residences R1 and R2 to the south parking lot behind the casino and the RV parking area. The barriers should be installed at the time of the opening of the south car parking lot and the opening of RV parking area. The barriers should be approximately 6 feet in height to reduce noise from the south car parking lot and 8 feet in height where needed to reduce noise from the RV parking area (i.e., the barrier height can vary in different locations). The barrier can be a masonry or concrete wall, an earthen berm (with or without plantings), or a wall on top of an earthen berm.
- Quiet hours shall be enforced in the RV parking lot from 10:00 p.m. to 7:00 a.m.
- Operation of RV generators shall be prohibited between 10:00 p.m. to 7:00 a.m. and provide electricity to the RV parking stalls to reduce RV reliance on on-board generators.

Hazardous Materials

- In the event that contaminated soil and/or groundwater are encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or a qualified individual can assess the extent of contamination. If contamination is determined to be significant representatives of the Tribe shall consult with USEPA to determine the appropriate course of action, including the development of a Sampling Plan and Remediation Plan if necessary.

- To reduce the potential for accidental releases, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment and shall not otherwise be stored onsite. Paint, thinner, solvents, cleaners, sealants, and lubricants used during construction shall be stored in a locked utility building, handled per the manufacturers' directions, and replenished as needed.
- Personnel shall follow written standard operating procedures (SOP's) for filling and servicing construction equipment and vehicles. The SOP's, which are designed to reduce the potential for incidents involving the hazardous materials, shall include the following:
 - Refueling shall be conducted only with approved pumps, hoses, and nozzles;
 - Catch-pans shall be placed under equipment to catch potential spills during servicing;
 - All disconnected hoses shall be placed in containers to collect residual fuel from the hose;
 - Vehicle engines shall be shut down during refueling;
 - No smoking, open flames, or welding shall be allowed in refueling or service areas;
 - Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill;
 - Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents;
 - Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with applicable local, state, and federal regulations;
 - All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure. All maintenance and refueling areas shall be inspected monthly. Results of inspections shall be recorded in a logbook that shall be maintained on site;
 - Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fuel for combustion. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak;
 - Any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order;
 - The amount of hazardous materials used in project construction and operation shall be kept at the lowest volumes needed;
 - The least toxic material capable of achieving the intended result shall be used to the extent practicable;
 - A hazardous materials and hazardous waste minimization program shall be developed, implemented, and reviewed annually by the Tribe to determine if

additional opportunities for hazardous materials and hazardous waste minimization are feasible, for both project construction and operation; and

- Use of pesticides and toxic chemicals shall be minimized to the greatest extent feasible in landscaping; or less toxic alternatives shall be used.

RESPONSE TO COMMENTS

The BIA received 11 substantive comment letters on the Draft EA. Several commenters requested clarification or expansion of various subjects in the EA. The BIA's response to comments contains appropriate clarification of these various subjects. No additional impacts were identified in the comments.

Several commenters were concerned with jurisdictional shifts over land use goals for the southern two parcels. Accordingly, the Tribe amended the trust application to only include portions of the two northern parcels. This eliminated the potential for the Proposed Project to adversely impact future flood control projects to be implemented by the County, the USACE, and the State.

The Governor's Office for the State of California requested supplemental information outside of the scope of NEPA. In response to the Governor's Office's comments, the Tribe has prepared a Tribal Environmental Impact Report (TEIR) Checklist. Where applicable, the checklist identifies the location within the EA that discusses each environmental subject area and provides appropriate expansion on those issues especially as they may relate to off-site impacts. This TEIR Checklist is referenced and included as part of the record. The Governor's Office requested further information regarding availability and quality of groundwater for the on-site groundwater supply option for the Proposed Project. A hydrological study has been completed consistent with the MOU with the County to further address this comment and is included as part of the TEIR Checklist. The study determined a sustained safe yield of 25 gpm would be feasible on the proposed project site based on records of adjacent wells. Based on the relatively low increased percentage of pumping compared to existing municipal pumping rates, the Proposed Project would not significantly impact the groundwater table and off-site groundwater wells.

Additionally, the BIA received comments requesting additional information regarding growth-inducing and noise-related impacts. Historical aerial photographs of areas surrounding two local Indian casinos were reviewed to determine growth-inducing impacts at those locations. The results of the analysis indicated the two local casinos have not resulted in growth-inducement in the area or alterations to adjacent land uses. Agricultural operations appear to remain constant throughout the previous 50 years on lands surrounding the casino sites. A noise study was prepared to address comments received on the EA. The noise study indicated that additional

BMPs would reduce construction-related and operational noise impacts from the Proposed Project to less-than-significant levels.

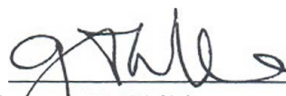
PUBLIC AVAILABILITY

This FONSI will be distributed to all persons and agencies who commented on the draft EA. Additionally, all persons and agencies on the EA mailing lists will receive a copy.

DETERMINATION

After review and independent evaluation, the BIA has determined that the proposed federal action, to approve the Habematolel Pomo of Upper Lake's request to take the proposed 11.24-acre site into trust for the purpose of operating a gaming facility, does not constitute a major federal action that would significantly affect the quality of the human environment within the meaning of NEPA. This conclusion is based on the analysis contained in the Draft and Final EAs, public comments made on the EA, the response to those comments, the mitigation imposed, and the entirety of the record available. Therefore, an Environmental Impact Statement is not required and the BIA is issuing this FONSI.

Issued in Washington D.C. this 18 day of July, 2008.


George T. Skibine

Acting Deputy Assistant Secretary for
Policy and Economic Development