# United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 0 8 2008

The Honorable Carmella Icay-Johnson
Chairperson
Habematolel Pomo Band of Upper Lake
P.O. Box 516
Upper Lake, California 95485

Dear Chairperson Icay-Johnson:

On March 26, 2007, the Habematolel Pomo of Upper Lake of California (Tribe) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust two (2) parcels consisting of 11.24-acres of land located in Upper Lake, California, pursuant to the Indian Reorganization Act, 25 U.S.C. § 465 ("IRA"). The Tribe plans to commercially develop the parcels and offer Class III gaming pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA").

By memorandum dated August 4, 2008, the Regional Director, Pacific Region Office (PRO) transmitted to the Assistant Secretary - Indian Affairs (ASIA), his recommendation that the property be accepted into trust, along with the Tribe's request and supporting documentation in accordance with a July 19, 1990, Secretarial Directive, which requires all acquisitions for gaming purposes to be approved or disapproved by the ASIA. The duties of the ASIA were delegated to me on May 23, 2008, as the Acting Deputy Assistant Secretary for Policy and Economic Development.

We have completed our review of the Tribe's request, the supporting documentation in the administrative record, and the PRO's recommendation. For the reasons set forth below, it is our determination that the 11.24-acres be taken into trust. We have determined that this acquisition further meets the requirements and goals of the IRA. We have also determined that the administrative record adequately documents and analyzes each relevant provision of the IRA implementing regulations, 25 C.F.R. Part 151. This decision constitutes final agency action and therefore, pursuant to the regulations in 25 C.F.R. § 151.12(b), publication in the Federal Register will proceed.

## BACKGROUND

The Habematolel Pomo of Upper Lake of California is a federally recognized Indian Tribe located in Upper Lake, California. The Constitution of the Tribe was ratified by the qualified voters of the Tribe on April 17, 2004 and approved by the Secretary of the Interior on May 12, 2004. The tribal headquarters are located in Upper Lake, California.

The Habematolel Pomo of Upper Lake Executive Council Resolution No. 03-06-02 dated March 22, 2006, requests the Secretary to acquire in trust 60.55 acres. By Tribal Council Resolution No. 12.07-01 dated December 12, 2007, the Tribe reduced the acreage from 60.55 acres to 11.24 acres to exclude portions of the trust acquisition in order to accommodate environmental concerns raised by the California Department of Transportation and U.S. Bureau of Reclamation.

## DESCRIPTION OF THE PROPERTY

The land proposed for acquisition is referred to herein below and is situated in the unincorporated area, County of Lake, State of California, and is described as follows:

All that property within a portion of Section 7, Township 15 North, Range 9 West, M.D.B. & M., in the County of Lake, State of California, and being a portion of those lands described by those Grant Deeds to Luna Gaming-Upper Lake LLC, one filed February 15, 2006 as Document Number 2006003927, and one filed February 17, 2006 as Document Number 2006004152, Lake County Records, described as the following three parcels:

PARCEL ONE:

Beginning at a point on the southerly line of Ukiah Tahoe State Highway No. 20 that is South 83°56' East, measured along the southerly line of said State Highway 237.7 feet from the Northwest corner of Tract Two, as said Tract Two is described in that certain deed from Ruth C. Polk, a widow, and Elysse P. Twedt, her daughter, to Robert C. Polk, et ux, as joint tenants, dated August 6, 1959, and of record in Book 316 of Official Records of Lake County at Page 208, and running thence from said point of beginning South 12°57' West to a point that is due East of a point that is North 0°09' West 3009.76 feet from 1 ¼ -inch iron pipe that is West 653.07 feet from the center of Section 18, Township 15 North, Range 9 West, M.D.M.; thence East to the Southerly terminal end of that certain course given as North 12°50'30" East 1381.46 feet on said Polk deed; thence along the Easterly line of said Polk tract North 12°50'30" West 1381.46 feet to an iron pipe on the Southerly line of said Highway; and thence along the Southerly line of said Highway North 83°56' West 237.7 feet to the point of beginning.

PARCEL TWO

Beginning at a 1 ¼-inch iron pipe that is West 653.07 feet from the center of Section 18, Township 15 North, Range 9 West, M.D.M., and running thence from said point of beginning North 0°09' West 1504.88 feet; thence West to the Westerly line of that certain tract described as Tract Two in a deed from Ruth H. Polk and Elysse P. Twedt, her daughter, to Robert C. Polk, et ux, dated August 6, 1959, and of record in Book 316 of Official Records of Lake County at Page 208; thence along the Westerly line of said tract so conveyed to Robert C. Polk, et ux, South to the Southwest corner thereof; and thence along the South line of said tract so conveyed to Robert C. Polk, et ux, East 677.07 feet to the point of beginning.

PARCEL THREE:

Beginning at a point on the Southerly line of the Ukiah-Tahoe State Highway No. 20 that is South 12°57' West, from a point on the centerline of Section 7, Township 15 North, Range 9 West, M.D.M., that is West 317.2 feet from the center of said Section, and running thence from said point of beginning South 12°57' West to a point that is South 12°57' West 2311.5 feet from a point on the centerline of said Section that is West 317.2 feet from the center of said Section; thence West 219 feet to the East line of the lands formerly owned of record by Charles W. Sailor; thence along the East line of said former Sailor lands South 00°30' West 241.2 feet; thence along the Southerly line of said former Sailors lands North 82 ½° West 265.4 feet to the East line of Lot 4 of said Section 7, said last mentioned point being on the East line of said former Sailor lands; thence South, along the East line of said Lot 4 2.50 chains, more or less, to the Northwest corner of the East half of the Northwest quarter of Section 18, Township 15 North, Range 9 West, M.D.M.; thence South to a point that is due West of a point that is North 0°09' West 1504.88 feet from a 1 ¼-inch pipe that is West 653.07 feet from the center of said Section 18; thence East to said point that is North 0° 09' West 1504.88 feet from a 1 ¼- inch iron pipe that is West 653.07 feet from the center of said Section 18; thence North 0°09'West 1504.88 feet; thence East to a point that is South 12°57' West from a point on the Southerly line of said State Highway that is South 83°56' East 237.7 feet from the point of beginning; thence North 12°57' East to said point on the Southerly line of said State Highway that is South 83°56' East, measured along the Southerly line of said State Highway, 237.7 feet from the point of beginning; thence along the Southerly line of said State Highway North 83°56' West 237.7 feet to the point of beginning.

EXCEPTING THEREFROM all that portion lying Southerly of a line beginning at a point on the Easterly boundary line of those lands described as PARCEL ONE of said Document Number 2006003927, said point bears North 15°23'31" East (North 12°50'30" East per said Document) as shown on that map filed September 18, 2006, in Book 80 of Record of Surveys, Pages 23, 24 and 25, 302.47 feet from the Southeast corner of said PARCEL ONE, said corner being a ½" Rebar capped LS 7588 per said Record Survey Map; thence leaving said Easterly boundary line North 78°36'11" West 216.24 feet; thence South 72°22'05" West 260.75 feet to a point on the Westerly boundary line of those lands described by said Document Number 2006004152, having a bearing of South 13°39'30" West as shown on said Record of Survey Map (South 12°57' West per said Document), said point bears North 13°39'30" East 227.39 feet from the Southerly terminus of said boundary line, said terminus being a ½" rebar capped LS 7588 per said Record of Survey map, pursuant to that certain Lot Line Adjustment filed July 14, 2008, Instrument No. 2008012533, Official Records Lake County.

ALSO EXCEPTING THEREFROM all that portion of the above-described real property lying Northerly of a line running parallel with and 20.00 feet Southerly, measured at right angles, from the Southerly right-of-way line of State Highway 20, as said highway is depicted on that certain Record of Survey filed September 18, 2006, in Book 80 of Records of Surveys at pages 23-25.

## TITLE TO THE PROPERTY

The commitment for title insurance issued by Fidelity National Title Company, No. 06-175102576 as amended, dated July 17, 2008, reflects the title to be vested in Luna Gaming – Upper Lake, L.L.C.

On June 5, 2008, the Regional Solicitor, Pacific Southwest Region, Sacramento, California raised concerns regarding a Grant of Easement and Agreement dated August 29, 1959 and a document entitled Resolution No. 00-15, Maintenance Area No. 17-Lake County, recorded August 15, 2000, in Lake County as Document No. 00-013349. On July 24, 2008, the PRO submitted a supplemental request for Preliminary Title Opinion to the Regional Solicitor with a copy of a document recorded in the County which addresses the concerns raised by the Regional Solicitor. By memorandum dated July 29, 2008, the Regional Solicitor indicates that title to the property conforms to Departmental procedures.

## COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

Section § 2719 of IGRA prohibits gaming on land acquired in trust after October 17, 1988, but provides several exceptions. One exception is for lands "taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719 (b)(1)(B)(iii). On November 21, 2007, the Office of the Solicitor, Division of Indian Affairs, concluded that the Tribe qualifies as "an Indian tribe that is restored to Federal recognition" and that the acquisition of the parcels qualifies as "the restoration of lands" under IGRA. The Office of the Solicitor determined that the Tribe is a restored Tribe because it had been recognized by the federal government, terminated, and again recognized by the federal government. It also determined that the land is considered restored because, given the factual circumstances, the acquisition is within a reasonable amount of time after the Tribe's restoration and the Tribe has a geographical and historical connection to the land. The National Indian Gaming Commission (NIGC), Office of General Counsel, concurs with this opinion. We also agree with the Office of the Solicitor in its conclusion and analysis, and therefore have determined the Tribe may conduct gaming on this property pursuant to 25 U.S.C. § 2719 (b)(1)(B)(iii) and the implementing regulations set forth in 25 C.F.R. 292.7- 292.12.

The Habematolel Pomo of Upper Lake's Class II and III Tribal Gaming Code was approved by the NIGC on October 4, 2005.

At this time the Tribe does not have an approved Tribal-State compact with the State of California. However, there is no requirement in IGRA that a compact be in place before land is acquired in trust. *See* 25 U.S.C. § 2719(c).

## COMPLIANCE WITH 25 C.F.R. PART 151

The authority for acquiring the land is section 465 of the IRA. The implementing regulations are set forth in 25 C.F.R. Part 151. We have determined that the administrative record supports the trust acquisition as being in accordance with the IRA and regulations.

### A. 25 C.F.R. 151.3. Land acquisition policy.

As a matter of statute and regulation, the Secretary may acquire land in trust for a tribe under 25 C.F.R § 151.3(a)(3) when the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The Regional Director has determined that the acquisition of the 11.24 acre parcel satisfies 25 C.F.R § 151.3(a)(3) and that the land is needed by the Tribe to facilitate tribal self-determination and economic development *(OIG Exhibit 1)*.

We concur with the Regional Director's determination because the Tribe currently has no land held in trust for the benefit of its members and no reservation over which to exercise sovereign powers. There is no question that acquiring the land in trust for the Tribe is necessary to facilitate tribal self-determination and economic development.

### B. 25 C.F.R. 151.10(a). The existence of statutory authority for the acquisition and any limitations contained in such authority.

The statutory authority used by the Tribe to acquire the land in trust is the IRA, 25 U.S.C. 465; *see also* 25 U.S.C. § 2202.

### C. 25 C.F.R. 151.10(b). The need of the individual Indian or tribe for additional land.

Pursuant to the California Rancheria Act (Act of August 18, 1958; 72 Stat. 619, as amended), the United States terminated the federally recognized Habematolel Pomo of Upper Lake of California revoking its Constitution and distributing the Tribe's assets.

In 1975, the Tribe filed suit in Federal District Court challenging the termination of the Tribe and the Upper Lake Rancheria. *Upper Lake Pomo Ass'n., et at. V. James Watt, et.al., Case No. C-75-0181-SW.*

The Tribe reorganized under the IRA in 1998, and its Constitution was formally approved in a Secretarial Election in 2004. The acquisition of the 11.24 acres, which are located 1.04 miles from the boundaries of the former Upper Lake Rancheria, will represent the Tribe's initial land base since the restoration of its federal recognition. As explained above, we have determined that the Tribe needs these parcels to facilitate tribal self-determination and self-governance.

**D. 25 C.F.R. 151.10(c). The purposes for which the land will be used.**

The Tribe proposes to develop an approximately 76,750 square-foot gaming facility and hotel facility on a portion of the site after it is conveyed into federal trust. The casino/hotel will include a 40,000 square foot casino area consisting of a casino floor, food and beverage areas, entertainment lounge, casino support areas, a retail area, and administration and security areas. The primary access to the casino/hotel will be from State Route 20.

Along with 500 parking spaces for guests and employees, the site would also be developed to allow up to 20 RVs to park and connected to sanitary services.

The Office of the Solicitor has determined that the land is eligible for gaming pursuant to 25 U.S.C. § 2719 § 2719 (b)(1)(B)(iii) and therefore the purpose of the acquisition is fulfilled.

**E. 25 C.F.R. 151.10(e). If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls.**

According to the County of Lake Administrative Office, the 07/08 assessed taxes for APN 004-010-340 was $1,290.71 and $537.79 for APN 004-010-350 *(PRO Volume 3, Tab F)*.

Lake County and the Tribe have negotiated a Memorandum of Understanding (MOU) dated June 11, 2006, *(PRO Volume. 2, Tab E)* that anticipates and addresses the impact on county and special district budgets and services. In the MOU, the Tribe has agreed to make payment in lieu of property taxes and special assessments to the County. The County has concluded that the contributions referenced in the MOU are sufficient to mitigate any potential non-recurring and recurring impacts of the project on the county and neighboring community, including any potential impacts on county infrastructure, public services, social services, transportation, and law enforcement.

The Tribe has also entered into an MOU dated November 29, 2006, *(PRO Volume 2 Tab F)* with the Northshore Fire Protection District (NFPD) to mitigate the impact of the project on emergency and fire services. The Tribe has agreed to make annual payments of $80,000 and to observe other mitigation measures to ensure safety on the subject property. The NFPD has agreed to provide emergency and fire services to the Tribe including, but not limited to: fire and hazard response; paramedic and ambulatory services; public service response; fire investigation service, and; fire protection and inspection services.

The Tribe and the Lake County Sanitation District have entered into a Mainline Extension and Connection Agreement (Agreement) dated July 10, 2007, *(PRO Volume 2 Tab G)* which sets forth the terms and conditions for the Tribe to connect to the District's sewer collection system. The District agrees to allow the Tribe to connect to its wastewater collection and treatment system and to provide initial sewer service to the property. The Tribe agrees to pay all fees associated with the initial connection and services provided by the District, in accordance with

the terms stated in the Agreement. Therefore, we have determined the impact of the land acquisition on the State and its political subdivisions has been adequately considered.

**F. 25 C.F.R. 151.10(f). Jurisdictional problems and potential conflicts of land use which may arise.**

Tribal jurisdiction in California is subject to P.L. 83-280; therefore, there will be no change in criminal jurisdiction. The Tribe will assert civil/regulatory jurisdiction because the land, once in trust, is Indian Country pursuant to 18 U.S.C. § 1151. The Tribe has entered into three intergovernmental agreements which are the result of the Tribe's community outreach efforts, and incorporate input from the State and local governments. For instance, the MOUs require the Tribe to comply with State building code standards and make payments to NFPD to offset fire service impacts.

**G. 25 C.F.R. 151.10(g). If the land to be acquired is in fee status whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.**

The subject property does not contain any natural resources requiring BIA management assistance. The Tribe will be required to pay for whatever municipal services that may be required in connection with the newly acquired property. The tribe has entered into MOU's that appropriately outline jurisdictional obligations of the affected parties.

With no leases, rights of ways or any other trust transactions forthcoming, any additional responsibilities resulting from this transaction will be minimal. This trust acquisition will optimally result in increased tribal self-sufficiency and less dependence on the Interior Department. Therefore, the Regional Director has determined that the BIA is equipped to discharge any additional responsibilities.

**H. 25 C.F.R. 151.10(h). The extent of information to allow the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.**

An Environmental Assessment (EA) of the proposed property to be acquired in trust was prepared by Analytical Environmental Sciences and completed in June 2008. A Finding of No Significant Impact (FONSI) was issued on July 18, 2008 (*OIG Exhibit 3).*

A Phase I contaminant survey was completed on March 19, 2008, and it was concluded that no contaminants were present on the site, and that there are no obvious signs of any effects of contamination. The Pacific Regional Director's concurrence is dated March 26, 2008 *(PRO Volume 3, Tab K.4).* An updated contaminant survey will need to be completed and certified before the land is taken into trust because the existing contaminant survey is outdated. We have accordingly determined that the acquisition complies with the National Environmental Policy Act.

**I. 25 C.F.R. 151.11(b). The location of the land relative to state boundaries, and its distance from the boundaries of the Tribe's reservation.**

Section 151.11(b) provides that as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the Tribe's justification of anticipated benefits from the acquisition, and give greater weight to the concerns raised by the State and local governments having regulatory jurisdiction over the land to be acquired in trust.

The subject property is located in Northern California, County of Lake, City of Upper Lake, approximately 50 miles east of the Pacific Coast and roughly 150 miles west of the Nevada state border. The property is also located approximately 1.04 miles from the exterior boundaries of the former Upper Lake Rancheria, as established in the judgment entered in Upper Lake Pomo Ass'n v. James Watt. Because the Tribe currently has no reservation, we have determined that section 151.11(b) is inapplicable.

**J. 25 C.F.R. 151.11(c). Where land is being acquired for business purposes, the Tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.**

The Tribe plans to commercially develop the parcels and offer Class III gaming in accordance with IGRA. In conjunction with gaming, the proposed project anticipates a 60-room hotel, 20 RV spaces and food and beverage service.

The Tribe has entered into an agreement *(PRO Volume 1, Tab D)* dated February 15, 2006 to purchase the subject property. The term of the agreement is for three years from the date of the agreement with an option to extend the option period for one extension period of one year if governmental approvals are still pending or if approval is being litigated.

According to the Gaming Market Assessment, August 2005 (*PRO Volume 1, Tab C*) prepared for this project, 350 machines and 5 gaming tables are recommended for the casino. On the basis of this recommendation, it is anticipated that the tribe will realize a positive cashflow during its first full year of operation. The debt service for the capital investment is projected at $22.5 million. It is anticipated that the debt incurred by the Tribe for this project will be paid in full after seven years of operation. We have determined that the anticipated economic benefits from gaming have been adequately demonstrated.

**K. 25 C.F.R. § 151.11(d). Consultation with the State of California and local governments having regulatory jurisdiction over the land to be acquired regarding potential impacts on regulatory, jurisdiction, real property taxes, and special assessments.**

On February 21, 2008 *(PRO Volume 3, Tab A)*, the PRO issued notice of, and sought comments regarding the fee-to-trust application from the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit (who in turn distributed the notice to the Resources Agency; Dept. of Conservation; Dept. of Parks and Recreation; Dept. of Water Resources; Dept. of Fish & Game; Fish & Game Region 2; Native American Heritage Commission; Caltrans – Division of Aeronautics; Caltrans – IGR; California Highway Patrol; Cal EPA; Air Resources Board; State Water Resources Control Board; Regional Water Quality Control Board; Health and Human Services); State of California, Deputy Attorney General; State of California, Deputy Legal Affairs; James Peterson, Office of the Honorable Dianne Feinstein; Lake County Treasurer/Tax Collector; Lake County Planning Department; Lake County Department of Public Works; Lake County Board of Supervisors; Northshore Fire Protection District; Lake County Sheriff's Department; Guidiville Rancheria; Middletown Rancheria; Robinson Rancheria; Scotts Valley Rancheria; Sulpher Bank Rancheria.

According to the PRO's policy, all federally recognized Indian tribes within the county that the proposed acquisition property is located, are notified of the written request to have lands accepted into trust. However, the Big Valley Rancheria did not receive notice during general distribution. To remedy this situation, the PRO faxed the Notice to the Big Valley Tribe on July 23, 2008 *(PRO Volume 3, Tab P)* and provided them with the opportunity to comment. The Big Valley Tribe responded by letter of the same date *(PRO Volume.3, Tab Q)* pledging their support for the Habematolel Pomo of Upper Lake's project.

In response to the PRO's notification for consultation, comments were recieved from the following entities:

***1. Letter dated March 21, 2008, from the State of California, Department of Justice, Attorney General (AG)*** *(PRO Volume 3 Tab B).*

*The State requested a 30-day extension of the comment period. Alternatively, the AG requested that BIA consider withdrawing the Notice to coordinate a lot line adjustment with the county to eliminate any uncertainty about which particular land is subject to trust acquisition.*

*BIA did not withdraw the Notice; however, did grant an extension of the comment period to April 29, 2008.*

***Letter dated April 29, 2008, from the Office of the Governor, State of California,*** *(PRO Volume 3 Tab G) summarized as follows:*

*The regulatory criteria governing off-reservation acquisitions require the Secretary to consider, among other things, the purpose for which the land will be used. Here, the subject property is located outside the Tribe's Rancheria boundaries and the Tribe intends to develop a gaming facility on the site. The Tribe's acquisition application is*

*premised upon the subject land, should it be taken into trust, falling within the "restored lands" exception to the Indian Gaming Regulatory Act's (IGRA) prohibition against gaming on trust land acquired after October 17, 1988. (Tribe's Fee-to-Trust Application, Mar. 27, 2006, and Fee-to-Trust Application Amendment and Supplement, Dec. 14, 2007; see 25 U.S.C. § 2719(b)(1)(B)(iii).) On November 21, 2007, the Department of the Interior's Office of the Solicitor (Solicitor) issued an opinion—without notice to the State or an opportunity to comment-that the proposed acquisition would fall within IGRA's restored lands exception. (Associate Solicitor-Indian Affairs Kaush Arha, memorandum to Carl J. Artman, Assistant Secretary-Indian Affairs, Nov. 21, 2007(Solicitor's Mem.).) The Acting Principal Deputy Assistant Secretary—Indian Affairs recently testified to Congress that when an "acquisition is intended for gaming, consideration of the requirements of [IGRA] are simultaneously applied to the decision whether to take land into trust." Indeed, the BIA appears to rely upon the Indian Lands determination in evaluating the proposed land use. (Notice at 3; see 25 C.F.R. Parts 151.11(a), 151.10(c).) Therefore, it seems appropriate to comment on the proposed acquisition and the Solicitor's opinion at this time.*

*We note at the outset that our review has been constrained by difficulty we have had receiving the documents needed to fully assess the land acquisition. The BIA refused our request for a copy of the Solicitor's November 21, 2007 Indian lands opinion, and it was not until March 19, 2008 that we ultimately received a copy from the Solicitor. In addition, we have Freedom of Information Act requests for records that still are pending. We did receive some documents on April 25, 2008, from the BIA that we currently are reviewing. Therefore, we reserve the right to supplement these comments after we have had an opportunity to review all relevant documents requested from the BIA and Solicitor.*

*Conclusion. While the Tribe is technically landless, the restored lands exception is intended to put a tribe back to its former position (TOMAC v. Norton, supra, 433F.3d at p. 865), and provide some sense of parity between tribes that had been disbanded and those that had not" (City of Roseville v. Norton, supra, 219 F. Supp.2d at p. 161). The 1983 Judgment created a road map for the distributees to regain recognition and have their land restored to trust but they elected not to do so.*

*Base on the foregoing analysis, the Solicitor's conclusion that the lands meet IGRA's restored lands exception does not appear to be supported by the record, and until these significant issues are resolved, the Secretary should not proceed with this land acquisition.*

***The tribe responded to the Governor's comments by letter dated May 14, 2008** (PRO Volume 3 Tab J). The Department of Interior ("Interior") must disregard the comments and proceed expeditiously with the Tribe's FTTA for three reasons. First, the comments do not address procedural or substantive issues regarding the Tribe's FTTA as required*

*by 25 C.F.R. § 151.11. Instead, the comments focus exclusively on the previously issued Opinion by the Solicitor's Office that the land subject to the FTTA constitutes the Tribe's restored Indian land. Second, the comments inaccurately claim the State lacked an opportunity to review the information relevant to the Tribe's land restoration prior to the issuance of the Opinion. In fact, the Tribe provided the State with copies of all documentation submitted to Interior several months before the Opinion was issued, but the State never submitted comments. Third, Interior must disregard the comments because all of the issues raised by the State have already been researched and scrutinized by the Office of the Solicitor, and the Opinion is well reasoned in fact and law. Therefore, in accordance with the federal government's fiduciary obligations [responsibilities] to the Tribe, Interior must proceed to take the Tribe's land into trust without further delay.*

***2. Letter dated March 25, 2008 from the County of Lake, Board of Supervisors** (PRO Volume 3 Tab D). The County of Lake expressed its appreciation for the manner in which the Habematolel Tribe has endeavored to work with the County, government to government, to resolve the issues associated with trust acquisition and the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project (Project).*

*The Tribe's current proposal includes placing into trust 11.24 acres of land, all of which are above the 100 year flood plan of the lake. Their letter dated 3/24/08, attached hereto, offered assurances that eliminate any concerns the County may have regarding the impact this proposal may have to the Project. Therefore, the County has no objection to the Tribe's proposal to place their lands into trust.*

***3. Letter dated March 25, 2008 from the California Regional Water Quality Board, Central Valley Region** (PRO Volume 3 Tab C). The property transfer and subsequent development may pose a significant threat on the local surface and ground water quality, during and after construction, and by the ongoing discharge of domestic and/or industrial wastewater either to surface water or land. Mitigation measures for water quality impacts are normally determined with more information that describes the project and a detailed engineering design provided in a Report of Waste Discharge (CWC Section 13260).*

*It is difficult to tell what mitigation measures are necessary without a complete description of the project. However, our prior experience with a project of this size and in this location would require the following: 1) Construction Stormwater Permit; 2) Industrial Stormwater Permit; 3) Water Quality Certification – Wetlands (If a permit is required due to the disturbance of wetlands.); 4) Section 404 Permit (If the project will involve the discharge of dredged or fill material into navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed.); 5) Dewatering Permit (the proponent may be required to file a permit); and, 6) Waste Discharge Requirements (The California Water Code Section 13260 requires the submittal of a*

*Report of Waste Discharge (RWD) at least 150 days prior to discharging wastewater at a facility).*

***4. Letter dated March 26, 2008 from the Department of Transportation** (PRO Volume 3 Tab E). The Caltrans District 1 Office of Community Planning submitted comments for the traffic impact study for the proposed casino project, which were incorporated into the Tribe's Environmental Assessment. The implementation of our previously requested mitigation measures is anticipated to reduce any impacts from the casino development to less than significant levels.*

*We request that, prior to accepting the proposed property into trust by the United States, the following mitigation measure from our February 14, 2007 letter be implemented:*

*The traffic mitigation improvements at the project entrance/frontage on Route 20 will require a right of way dedication of approximately 12 feet-the exact number is based on the approved cross-section design. The conceptual cross section, from the centerline of the State highway south, is expected to consist of: 7 feet for half the width of the left-turn pocket; a 12-foot travel lane; a 12-foot right-turn lane; a 5-foot shoulder (unstriped) for bicycles; a 6-foot sidewalk; and 10 feet for utilities. All roadway and pedestrian facilities will need to be designed and constructed to State standards before the State will accept dedication.*

*A twelve-foot wide strip of the subject parcel adjacent to the existing State highway right of way should remain in fee title ownership until highway mitigation has been constructed to State standards and is dedicated for public use. Any physical improvements identified for highway mitigation can be installed at the time that the casino is constructed.*

***The Tribe responded by letter dated May 9, 2008** (PRO Volume 3 Tab H). With regard to CalTrans activities, the Tribe has consulted with CalTrans on several occasions regarding the Tribe's proposed project along SR-20. Further, the Tribe is in receipt of a February 14, 2007, CalTrans correspondence which outlines the recommended traffic mitigation measures and identifies that any work within the State right of way will require an Encroachment Permit. A copy of the February 14, 2007, letter is included at Appendix M of the Tribe's Final Environmental Assessment.*

***5 Letter dated April 14, 2008 from the County of Lake Administrative Office** (PRO Volume 3 Tab K) stating that the 07/08 assessed taxes for APN 004-010-340 was $1,290.71 and $537.79 for APN 004-010-350. As for special assessments, the county indicated that there are special assessments, but none provide direct support to the County of Lake. Services provided directly by the County of Lake include law enforcement, review of permit applications, on-site inspections of agricultural operations, animal control and other general municipal services as may be required from*

*time-to-time.*

***6. Letter of support dated July7, 2008 from Congressman Mike Thompson** (PRO Volume 3 Tab M). The Tribe has done a remarkable job of garnering support in its pursuit of reestablishing a viable land base by entering into a comprehensive Memorandum of Understanding (MOU) with the County of Lake that ensures local environmental and public safety concerns are addressed and mitigated to the fullest extent. In addition to the MOU with Lake County, the Tribe has undertaken unprecedented measures by further negotiating agreements with local agencies for waste water and fire protection services which not only benefit the Tribe, but the entire community by ensuring that critical municipal systems are state of the art. Additionally, the Tribe recently modified its FTTA, at the request of Lake County, to account for the Middle Creek Flood Protection and Restoration Project which will ensure better water quality for Clear Lake and allow for much needed flood protection.*

*I firmly believe that the Tribe, as a landless sovereign Indian Nation with established historical and aboriginal ties to the Upper Lake area, possesses the inherent right to acquire and maintain a viable land base for its people. The Tribe's pending FTTA is but the first step in a long road to self sufficiency, self reliance and the reestablishment of a deserving land base for the people of the Habematolel Pomo of Upper Lake.*

***7. Letter dated July 23, 2008 from Big Valley Rancheria** (PRO Volume 3 Tab Q) pledging their support for the Tribe's project.*

In total, seven letters were received - one that disagrees with the *Restored Lands Determination* issued by the Office of the Solicitor; three letters of support; and three that were informational in nature regarding property taxes and measures that should be undertaken to mitigate against the project impacts to water resources and traffic.

The recommended mitigation measures from the California Regional Water Quality Board are individually addressed below in *Section H - The Extent To Which The Applicant Has Provided Information That Allows The Secretary To Comply With NEPA and Hazardous Substances Determinations – 151.10 (h).* As previously stated, the mitigation recommended by the Department of Transportation has been incorporated in the FEIS.

Accordingly, we have determined that appropriate consultation was conducted.

## TWO PART DETERMINATION UNDER SECTION 20 OF IGRA

The two-part determination pursuant to IGRA , 25 U.S.C. 2719(b)(1)(A), is not applicable because the land is being taken into trust "as part of the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719 (b)(1)(B)(iii). *See* discussion under Section V, *supra.*

## REGIONAL DIRECTOR'S RECOMMENDATION

By memorandum dated August 4, 2008, *(OIG Exhibit 1)* the Regional Director, Pacific Region, recommends that the property be accepted in trust for the benefit of the Habematolel Pomo of Upper Lake.

## DECISION

I am pleased to convey to you my final decision to acquire the 11.24 acres into trust on behalf of your Tribe. I have transmitted my decision to the Regional Director granting him authority to acquire the land in accordance with the applicable regulations and have proceeded with publication in the *Federal Register* of notice to acquire the land.

Sincerely,

George T. Skibine
Acting Deputy Assistant Secretary
for Policy and Economic Development