

Record of Decision

Trust Acquisition of the 40-acre Yuba County site in Yuba County, California, for the Enterprise Rancheria of Maidu Indians of California

**U.S. Department of the Interior
Bureau of Indian Affairs
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Action: Record of Decision (ROD) for the approval of a fee-to-trust application for the 40-acre Yuba site (Preferred Alternative) in Yuba County, California, pursuant to 25 C.F.R. Part 151 for the Enterprise Rancheria of Maidu Indians of California (Tribe).

Summary: In August of 2002, the Tribe submitted a fee-to-trust application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) accept trust title to land totaling 40-acres in Yuba County, California (the Yuba site). The Tribe plans to construct a gaming facility, hotel, and parking facilities.

Pursuant to section 20 of the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2719(b)(1)(A), on September 1, 2011, the Assistant Secretary – Indian Affairs 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. The IGRA requires that the Governor concur in the determination which he did by letter dated August 30, 2012. The land can, therefore, be acquired in trust for the Tribe for the purpose of gaming pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465, as amended by the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202.

The proposed trust acquisition under the IRA (Proposed Action) was analyzed in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act (NEPA), under the direction and supervision of the BIA Pacific Regional Office. The Draft EIS (DEIS) was issued for public review and comment on March 21, 2008. After a comment period, a public hearing, and consideration and incorporation of comments received on the DEIS, the BIA issued the Final EIS (FEIS) on August 6, 2010. The DEIS and FEIS considered a reasonable range of alternatives and analyzed the potential effects of those alternatives, as well as feasible mitigation measures.

With the issuance of this ROD, the Department announces that the action to be implemented is the Preferred Alternative (Alternative A in the FEIS), which includes acquisition in trust of the 40-acre Yuba site and construction of a gaming-resort complex including a 207,760 square foot casino facility, 170-room hotel, surface and structured parking facilities, and corresponding mitigation measures. The Department has determined that this Preferred Alternative will best meet the purpose and need for the Proposed Action, in promoting the long-term economic self-sufficiency, self-determination and self-governance of the Tribe. Implementing this action will provide the Tribe with the best opportunity for attracting and maintaining a significant, stable, long-term source of governmental revenue, and accordingly, the best prospects

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

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

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1.0 INTRODUCTION

1.1 SUMMARY

The BIA is the Federal agency that is charged with reviewing and approving Tribal applications pursuant to the IRA and its implementing regulations at 25 C.F.R. Part 151 to acquire land in Federal trust. The BIA analyzed the potential environmental impacts of the proposed trust acquisition of the 40-acre Yuba site in an Environmental Impact Statement (EIS). The Draft EIS (DEIS), issued for public review on March 21, 2008, and the Final EIS (FEIS), issued August 6, 2010, considered various alternatives to meet the stated purpose and need and analyzed in detail potential effects of various reasonable alternatives. With the issuance of this Record Of Decision (ROD), the Department has determined that Alternative A, consisting of the acquisition of trust title to the 40-acre site, construction of an approximately 207,760 square foot casino, a 170-room hotel, ancillary infrastructure, and mitigation measures presented in Section 5.0 of the FEIS, is the Preferred Alternative to be implemented. The Department has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Action. The Department's decision to acquire trust title to the Yuba site is based on thorough review and consideration of the Tribe's fee-to-trust application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the DEIS; the FEIS; the administrative record; and comments received from the public, Federal, state, and local governmental agencies; and potentially affected Indian tribes.

Memoranda of Understanding (MOUs) were entered into between the Tribe and Yuba County (County) (December 17, 2002) and the City of Marysville (City) (August 16, 2005). Under the County and City MOUs, the Tribe agrees to provide one-time compensation (non-recurring contributions) to mitigate potential and perceived impacts of the proposed project on the County/City. The Tribe also agrees to compensate the County and City annually (recurring contributions) for potential and perceived project related impacts. The Tribe also agrees to a variety of non-monetary obligations.

Pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2719(b)(1)(A). on September 1, 2011, the Assistant Secretary – Indian Affairs 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. The IGRA requires that the Governor concur in the determination, which he did by letter dated August 30, 2012. The land can, therefore, be acquired in trust for the Tribe for the purpose of gaming pursuant to Section 5 of the IRA, as amended by the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202.

1.2 DESCRIPTION OF THE PROPOSED ACTION

Under the Proposed Action, the BIA would accept the 40-acre Yuba site in trust for the Tribe. On the parcels, the Tribe proposes to develop a gaming facility, a hotel, parking facilities, and associated facilities.

The Yuba site is located approximately 4 miles southeast of the Community of Olivehurst, near the intersection of Forty Mile Road and State Route 65, in Yuba County, California. The

casino-resort complex would include Class III gaming conducted in accordance with IGRA and Tribal-State Compact requirements and would consist of 91,000 square feet of gaming floor; restaurant and retail facilities and public space; and a 170-room hotel tower. Approximately 2,750 parking spaces would be provided for the project through a combination of surface parking (2,150) and development of a multi-level parking garage (600 spaces).

1.3 PURPOSE AND NEED

The Tribe requested that the Secretary acquire the 40-acres in trust for the Tribe in order for the Tribe to conduct tribal government gaming authorized under IGRA. One of IGRA's purposes is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governance." 25 USC §2702(1). The gaming tools afforded the Tribe by IGRA are among the most effective means by which the Tribe can meet the diverse and urgent economic needs of its members.

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

The purpose and need is as follows:

- Provide employment opportunities for tribal members and non-tribal community.
- Improve the socioeconomic status of the Tribe by providing a new revenue source that could be utilized to build a strong tribal government, improve existing tribal housing, provide new tribal housing, fund a variety of social, governmental, administrative, educational, health, and welfare services to improve the quality of life of tribal members, and to provide capital for other economic development and investment opportunities.
- Allow tribal members to become economically self-sufficient, thereby eventually removing tribal members from public-assistance programs.
- Fund local governmental agencies, programs, and services.
- Make donations to charitable organizations and governmental operations.
- Effectuate the Congressional purposes set out in IGRA.

The Proposed Actions are consistent with the BIA's mission, as well as the policies underlying the Federal statutory authorities in the IRA, IGRA, and BIA's implementing regulations, of promoting meaningful opportunities for economic development and self-sufficiency of the Tribe and its members, and furthering tribal self-governance and self-determination.

1.4 AUTHORITIES

Section 5 of the IRA, 25 U.S.C. § 465, provides the Secretary of the Interior with general authority to acquire land in trust status for Indian tribes in furtherance of the statute's broad goals of promoting Indian self-government and economic self-sufficiency. If a tribe is seeking to acquire land in trust, it must apply to the BIA and comply with the regulations in 25 C.F.R. Part 151, which implement the Secretary's trust acquisition authority in Section 5 of the IRA. This ROD records the decision by the Department to acquire in trust the 40-acre Yuba site in Yuba County, California, for the Tribe.

The IGRA was enacted in 1988 to regulate the conduct of Indian gaming and to promote tribal economic development, self-sufficiency and strong tribal governments. The IGRA generally prohibits gaming on lands acquired in trust after 1988, unless certain exceptions found in 25 U.S.C. § 2719 are met. The Section 20 exceptions are implemented through regulations found in 25 C.F.R. Part 292. Therefore, Section 20 of IGRA does not provide the Secretary of the Interior with the authority to acquire land in trust; rather, it allows gaming on certain lands once those lands are acquired into trust. If none of the exceptions in section 2719 apply, section 2719(b)(1)(A) of IGRA provides that gaming can still occur on the lands under the Secretarial two-part determination provision. Under the two-part determination process, the Secretary of the Interior may permit gaming to occur if the Secretary determines that gaming on the trust lands is 1) in the best interest of the Indian tribe and its members, and 2) not detrimental to the surrounding community. The state Governor must concur with the Secretary's determination.

1.5 PROCEDURAL BACKGROUND

The regulations in 25 C.F.R. Part 151 require compliance with the National Environmental Policy Act (NEPA). Accordingly, the BIA published a Notice of Intent (NOI) in the *Federal Register* on May 20, 2005, describing the Proposed Action and announcing the BIA's intent to prepare an EIS. The CEQ Regulations for implementing NEPA require a process referred to as "scoping" for determining the range of issues and alternatives to be addressed during the environmental review of a Proposed Action (40 C.F.R. §1501.7). The scoping process entails a determination of issues by soliciting comments from agencies, organizations, and individuals. In addition to accepting written comments, the BIA held a public scoping hearing on June 9, 2005 at the Marysville Elks Lodge, in Marysville, California to accept comments. During the NOI comment period, the BIA formally requested and received acceptance letters regarding Cooperating Agency participation from the United States Environmental Protection Agency (USEPA), National Indian Gaming Commission (NIGC), Yuba County, and the Tribe.

The Draft EIS was distributed to Federal, tribal, state, and local agencies and other interested parties for a 45-day review and comment period. The CEQ Regulations (40 C.F.R. §1506.10(c)) require that agencies provide at least 45 days for comments on a Draft EIS, subject to the provisions of 40. C.F.R § 1506.10(d). The USEPA published the Notice of Filing in the *Federal Register* on March 21, 2008. The Notice of Availability (NOA) published by the BIA on March 21, 2008, provided the time and location of the public hearing on April 9, 2008, to present the proposed project with alternatives to the public, and accept comments. The public comment period was also published in *The Sacramento Bee*, *Chico-*

Enterprise Record, *Oroville-Mercury Register*, and the *Appeal-Democrat* on the following dates: March 22 and 23, 2008.

The BIA received a total of 94 comment letters in addition to the comments received during the public hearing. Public and agency comments on the DEIS received during the comment period, including those submitted or recorded at the public hearing, were considered in the preparation of the FEIS. Responses to the comments received were provided in Appendix T of the FEIS and relevant information was revised in the FEIS as appropriate to address those comments. The NOA for the FEIS was published in the *Federal Register* on August 6, 2010 (**Attachment I** of this ROD). Consistent with the BIA NEPA Handbook, the NOA for the FEIS was also published in the local newspapers (*Chico-Enterprise Record* and the *Appeal-Democrat*) on August 6, 2010 (**Attachment I** of this ROD). The 30-day review period ended on September 7, 2010. The comments received during this period are included in **Attachment II** of this ROD. Responses to each public comment letter are also provided in **Attachment II** of this ROD.

2.0 ANALYSIS OF ALTERNATIVES

2.1 ALTERNATIVE SCREENING PROCESS

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

2.1.1 Alternatives Eliminated from Further Consideration

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

Alternative Sites for Gaming

The Highway 65 Alternative consisted of an alternative site for the development of a gaming facility and hotel. The 60-acre site is located about 1 mile north of the Yuba Site, in unincorporated Yuba County. The site was given serious consideration by the Tribe because it has access to Highway 65. However, the site was ultimately rejected from further consideration because it is zoned for agriculture, it has no infrastructure for development, and the Tribe was unable to secure investors for development on this site.

The Highway 99 Alternative consisted of an alternative site for the development of a gaming facility and hotel. The 213-acre site is located in between Chico and Oroville, about 9 miles northwest of Oroville, along Highway 99, in Butte County. The site is currently used for cattle grazing and primarily consists of grassland. The site was given serious consideration by the Tribe because it is substantial in size and has Highway 99 access. However, the site was ultimately rejected from further consideration because it contains numerous biologically sensitive resources, including wetlands and vernal pools. The site also has no existing water or wastewater infrastructure and the Tribe was unable to secure investors for development on this site.

The Highway 162 Alternative consisted of an alternative site for the development of a gaming facility and hotel. The 57-acre site is located within the City of Oroville, on the edge of the city limits (about 8 miles west of downtown). The site was given serious consideration by the Tribe because it has Highway 162 access and is located within the City of Oroville. However, the site was ultimately rejected from further consideration because it has no infrastructure for development and contains numerous biologically sensitive resources, including numerous wetlands and vernal pools.

2.1.2 Non-Casino Alternatives

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

2.1.3 Alternative Casino Sites

Yuba site: The Yuba site is approximately 40 acres, located approximately 4 miles southeast of the Community of Olivehurst, near the intersection of Forty Mile Road and State Route 65, in Yuba County, California. The site is located entirely within unincorporated Yuba County. The site is currently undeveloped, and is presently used for hay farming. Surrounding land uses include agriculture, open space, and entertainment. The Sleep Train Amphitheatre is located just over one mile to the south along Forty Mile Road. Development on the Yuba site was analyzed in Alternatives A, B, and C of the EIS.

Butte site: The Butte site is approximately 40 acres and is located approximately 11 miles northeast of the City of Oroville, between the middle and south forks of the Feather River, in unincorporated Butte County, California. The site is undeveloped, with the exception of several residences located on-site. Rural residential uses make up the majority of surrounding land uses. Access to the Butte Site is gained through Craig Access road, a rugged and steep unpaved road, which begins at Lumpkin road, a paved two-lane road to the south. The Butte site is currently held in trust by the Federal Government.

The Butte site is characterized by predominantly forested area, scattered small residential developments, and some open spaces. The 40-acre site meets the minimum size requirement; however, the topography, existing conditions, and soil characteristics of the property make it difficult to accommodate a casino and ancillary components, such as a wastewater treatment plant (WWTP).

2.2 REASONABLE ALTERNATIVES CONSIDERED IN DETAIL

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

2.2.1 Alternative A – Proposed Project

Alternative A, the Proposed Project, consists of the following components: (1) placing approximately 40-acres into Federal trust status; (2) approval of a gaming development and management contract; and (3) development of a casino-hotel complex, including ancillary components such as parking and a WWTP. This alternative, which constitutes the Preferred Alternative (with incorporation of mitigation measures identified in the FEIS) and the Tribe's Proposed Project, most suitably meets all aspects of the purpose and need of the Proposed Action by promoting the Tribe's self-governance capability and long-term economic development. Components of Alternative A are described below.

Trust Title Acquisition: Alternative A consists of the conveyance of a 40-acre area of land into Federal trust status. The IRA authorizes the Secretary of the Interior to acquire land in trust for recognized Tribes.

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

Gaming Development and Management Contract: Congress enacted IGRA with the stated purpose of providing a statutory basis for the operation and regulation of gaming by Native American tribal governments. The NIGC, which was established by IGRA, has the authority to approve management contracts between tribal governments and outside management groups. Implementation of Class III gaming operations under Alternative A would require NIGC approval of the management contract between the Tribe and its management group.

Proposed Facilities: Alternative A would result in the development of a 207,760 square-foot gaming and entertainment facility and a 107,125 square-foot hotel on the 40-acre site. The gaming facility would include a casino floor, food and beverage areas (consisting of a buffet, specialty restaurant, and bars), lounge/banquet areas, offices, and a security area. The multi-story hotel facility would have 170 guest rooms. Regional access to the casino would be provided from SR 65.

The main casino complex would include: food and beverage services, small retail shops, administrative offices for gaming-related tribal activities, and the main gaming hall. The gaming facility would include the casino floor, food and beverage areas, back of house and support services, and public/miscellaneous areas and would operate 24-hours per day, 7-days

per week. Beverages and food would be served within a planned 250-seat buffet, a 90-seat gourmet restaurant, and a 175-seat coffee shop. The casino floor area would provide 91,000 square feet for gaming purposes. The hotel tower would have a total building space of approximately 107,125 square feet. Primary vehicle access to the Yuba site would be provided off Forty Mile Road.

Alternative A includes surface parking and a multi-level parking structure for a total of 2,750 spaces.

Water Supply: Water for domestic use, emergency supply, and fire protection would be provided by an on-site system consisting of a new on-site groundwater well, 750,000-gallon storage tank, and water distribution pump station. The groundwater well would be constructed to meet the recommended minimum firm groundwater supply of approximately 90 gallons per minute (gpm) or 122,000 gallons per day (gpd). The storage tank would be sized to provide emergency supply storage of two days of peak day domestic water demand (for the weekend), in addition to the recommended fire flow of 3,000 gpm for two hours. The pump station would maintain pressure in the distribution system through the use of two fixed-speed high-service pumps that are half the capacity of the projected flow requirement.

Wastewater Treatment and Disposal: Wastewater collection and treatment would be provided by piping wastewater to an existing WWTP, which would be expanded to accommodate the project wastewater. The WWTP consists of a collection system with up to three wet wells, two side-by-side force mains, headworks, four aeration ponds, and 46 acre-feet of storage in holding ponds. The pipeline between the casino facility and the existing WWTP, located approximately 1.1 miles to the east, would travel along existing unpaved roadways, except for necessary wetland and canal crossings, which would not be disturbed by the pipeline crossings. Jack and bore or other similar construction methods would be utilized to place the pipeline under the canals and wetlands. Treated effluent is disposed by border check flood irrigation to 13 acres of perennial grass hay crop. The existing WWTP is designed and permitted for an average flow of 170,000 gallons per day, however to accommodate the existing weekend flow and the additional weekend flow of 141,000 gpd from Alternative A, the WWTP would be expanded to have a capacity of 325,000 gpd.

Site Drainage: Stormwater runoff generated during the operation of the casino would be conveyed by a combination of storm drains and an on-site detention basin. A drainage plan has been developed for Alternative A, and is included as Figures 2-4 of the FEIS. Runoff from the project facilities would be directed through inlets from buildings or curb inlets on roadways into storm drain pipes. Prior to release into the open channels that lead to Kimball Creek, runoff would pass through sediment/grease traps that would filter out suspended solids, such as trash and soil sedimentation, oil, grease and other potential materials that could degrade surface water quality. An on-site detention basin would be developed to reduce the increased peak flows that would result from the introduction of impervious surfaces. The basin would assure that post development runoff peaks during operation will not exceed existing peak runoff volumes.

The Yuba site is located partially within a Federal Emergency Management Agency (FEMA) defined 100-year floodplain. Projects encroaching within a 100-year floodplain are required

by FEMA to be constructed a minimum of 1.0 foot above the estimated floodplain elevation. During construction fill would be placed to elevate the finished floor of the proposed gaming facility and hotel approximately 3.5 feet above the FEMA 100-year floodplain. Due to the location within the defined floodplain, the on-site detention basins have been sized to hold both displaced flood storage volumes and increased runoff rated through construction of on-site impervious surfaces.

Utilities: Power lines would be provided by Pacific Gas and Electric (PG&E) as part of the development of Alternative A. PG&E has an existing overhead electric line in the vicinity of the Yuba Site, currently providing electrical service to existing customers.

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

Fire Protection Services: The Tribe would contract with the Wheatland Fire Authority for fire protection and emergency medical services. The Tribe agreed to construct the gaming facility and all supporting buildings in accordance with standards no less stringent than those set forth in the Uniform Fire Code.

2.2.2 Alternative B – Reduced Casino

Alternative B consists of a smaller-scale version of Alternative A, without a hotel and pool. Alternative B is approximately 46 percent (148,515 sq. feet) of the total square footage of Alternative A. Fifteen hundred (1,500) parking spaces would be provided on surface lots.

The connection and expansion of the existing WWTP under Alternative B would not change in scope from the Proposed Project. Wastewater disposal would take place similar to that described above in Section 2.2.1. Water for domestic use, emergency supply, and fire protection would be provided by on-site well. Alternative B is estimated to require an average water demand of 85,000 gpd.

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

2.2.3 Alternative C - Retail Development

Alternative C consists of the development of an approximately 943,925-square-foot water park and hotel facility on the Yuba site. Under this alternative the NIGC would not approve a management contract between the Tribe and Yuba County Entertainment, LLC, and the Tribe

would likely need to seek another source of development funding as Yuba County Entertainment, LLC and its affiliates are not expected to support a development not related to a gaming operation.

Alternative C would include a hotel, a water park, two 18-hole miniature golf courses, a restaurant/arcade/office building, a 10-stall batting cage, and a go-cart racetrack. A stormwater detention system would be provided on-site to account for the increase in runoff created by increased impervious surfaces. Wastewater collection and disposal would take place, similar to those discussed above in Section 2.2.1. Given the different uses proposed for Alternative C, the provisions and payments within the MOUs would not apply to Alternative C.

2.2.4 Alternative D – Butte Site

Alternative D consists of the development of a casino-hotel resort at an alternative off-site location. Alternative D consists of a casino development located in Butte County, 11 miles east of the City of Oroville (Butte site). The casino would be developed on approximately 40 acres on the Butte site. The Butte site is currently held in trust by the BIA.

Alternative D Facilities: The resort would include a gaming area, a service bar, and a coffee shop/deli. Buildings totaling 20,312 square feet would be constructed, along with 200 surface parking spaces. Unlike development on the Yuba site, the current topography of the Butte site would require a considerable amount of earthwork activity to create a level site.

No detention basin is proposed due to the negligible increase in downstream flows resulting from the construction of the Alternative D casino and parking areas. Although a considerable amount of earthwork is assumed during construction, a “balanced” site would occur with no import or export of soil material. Approximately 5 acres of impervious surfaces would be created on-site. The development would not occur in the 100-year floodplain.

Infrastructure and Public Services: Water for domestic use, emergency supply, and fire protection would be provided by an on-site groundwater well and 400,000 gallon storage tank. The groundwater well would be constructed to meet the recommended minimum firm groundwater supply of approximately 20 gallons per minute (gpm) (or 17,000 gallons per day to meet proposed facility demands and existing residential home demands, as well as to provide additional capacity to allow cycling of the well pumps).

Wastewater treatment and disposal would be provided by a new WWTP with sprayfield disposal. To accommodate the projected weekend flow of 16,000 gpd, the WWTP design capacity would be 25,000 gpd. The WWTP would provide extended aeration activated sludge type secondary treatment suitable for land disposal of effluent. Disposal of effluent would occur on a 3-acre on-site spray field, with a 4 million gallon lined storage reservoir for seasonal storage.

Electrical service would be provided by PG&E. PG&E has an existing overhead electric line in the vicinity of the Butte Site, currently providing electrical service to existing residences. The Butte County Fire Department in cooperation with the California Department of Forestry and Fire Protection (CALFIRE) and the Butte County Sheriff's Department would provide

fire protection and law enforcement services to the Butte site. The Tribe would additionally employ trained security personnel for surveillance and patrol on-site.

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

2.2.5 Alternative E - No-Action Alternative

Under the No-Action Alternative, the Yuba site would not be placed into Federal trust for the benefit of the Tribe and the site would not be developed as described under the development alternatives. Land use jurisdiction of the Yuba site would remain with Yuba County and agricultural activities would continue to occur. Due to the Yuba County zoning designation as sports/entertainment, it is foreseeable and highly probable that in the future, some other form of commercial or entertainment based development would occur on the Yuba site. The site would be subject to guidelines within the Yuba County General Plan. Thus, little restriction exists for future development of the properties.

3.0 ENVIRONMENT IMPACTS AND PUBLIC COMMENTS

3.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN THE FEIS

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

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

Each of the alternatives considered in the FEIS was evaluated for the potential to impact environmental issues as required under NEPA, as well as the above environmental concerns raised during the EIS process. The evaluation of these project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact

assessments for the FEIS were accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the FEIS at the time of preparation. Alternative courses of action and mitigation measures were developed in response to the identified environmental concerns and substantive issues raised during the EIS process. A summary of the analysis of the environmental issues within the FEIS, including the issues raised during the EIS process, is presented below.

3.1.1 Land Resources

Topography – All development alternatives would involve clearing and grading. The Yuba site is essentially flat, and the result of on-site grading would not alter this characteristic. Excavated soils on the Yuba site would be incorporated into the site grading, created a “balanced” site with no import or export of site soils. The overall topography of the Yuba site, however, would remain essentially unchanged. The Butte site (Alternative D) would additionally incorporate onsite soils into the creation of a building pad to create a “balanced” site with no import or export of site soils. Operation of the alternatives would not cause significant disturbance to topography.

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

Seismicity – Seismic events and related structural damage and resulting hazard to public safety would be considered a less than significant impact, due to the alternatives location within an area of low severity seismic activity. Design of Alternative A and B would incorporate Uniform Building Codes (UBC) required for Seismic Zone 3. Alternative C and D include mitigation measures in the Mitigation Monitoring and Enforcement Plan (MMEP) within **Chapter 2** to reduce any impacts related to seismicity to a less than significant level.

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

3.1.2 Water Resources

Surface Water Drainage – Potential impacts from runoff changes due to the increase in impervious surfaces resulting from Alternatives A through D would be reduced through the minimization of impervious surfaces during the design phase: incorporation of storm drains, vegetative swales, and a sediment/grease trap in the project design, and development of an on-site detention basin (Yuba site) ensure off-site discharge rates would be approximately equivalent to pre-development runoff rates. With the incorporation of these design

components into Alternatives A through D, impacts would be reduced to less than significant levels.

Flooding – Under Alternatives A, B, and C, less than half of the hardscape proposed would be located within the 100-year floodplain. Proposed design plans would elevate the buildings and structures 3.5 feet in elevation above the footprint of the 100-year floodplain. Mitigation measures related to potential flooding on the Yuba site appears in the MMEP within **Chapter 2** to reduce impacts to a less than significant level.

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

Surface Water Quality – Construction of Alternatives A through D would result in ground disturbance, which could increase sediment discharge to surface waters during storm events, potentially reducing water quality. Construction also has the potential to generate waste materials that can be washed into nearby surface waters during storm events. In accordance with the requirements of the NPDES Permit, the Tribe would prepare and implement a SWPPP to control discharge of pollutants in stormwater. The SWPPP would incorporate appropriate best management practices (BMPs) to prevent degradation of surface water resources during construction. Through compliance with permit requirements, including incorporation of BMPs and mitigation measures within the MMEP in **Chapter 2**, impacts to water quality during construction of Alternatives A through D would be less than significant.

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

Groundwater – All development alternatives would increase the demand for groundwater, however these increases would not significantly deplete supplies or degrade water quality in violation of ground water standards or threaten public safety. Based on the presence of the large and productive groundwater basin underlying the Yuba site, the capacities of neighboring production wells, and the historic and current use of the site for irrigated irrigation, obtaining water supply through the incorporation of an on-site well would not significantly impact the basin. Alternative D, located on the Butte site, would result in a less than significant impact due to the relatively low rural demand of well withdrawals and the expected capacity of the on-site aquifers. Mitigation measures contained in the MMEP within **Chapter 2** would reduce these impacts to further reduce these less-than-significant impacts.

3.1.3 Air Quality

Construction Emissions – Emissions of ozone precursors nitrogen oxides (NO_x) and reactive organic gasses (ROGs) during implementation Alternatives A through C would exceed Feather River Air Quality Management District (FRAQMD) significance thresholds. Alternative D would exceed Butte County Air Quality Management District (BCAQMD) significance thresholds. Therefore, there would be a potentially significant impact to air

quality from the construction of Alternatives A through D. Mitigation measures are presented within **Chapter 2** to reduce construction emissions to less than significant levels.

Operational Emissions – All development alternatives would result in emissions during operation, primarily from traffic generated by the project. Mitigation has been incorporated within the MMEP in **Chapter 2** to reduce congestion and emissions totals so that significance thresholds are not exceeded.

3.1.4 Biological Resources

Wildlife and Habitats Alternatives A through C on the Yuba site would not impact USFWS designated habitats. The development of Alternative D would impact approximately 5.46 acres of the mixed woodland/chaparral community. This habitat provides soil and bank stabilization, water conservation, and wildlife habitat. Mitigation measures are presented within **Chapter 2** to reduce site specific impacts habitat to less than significant levels.

Waters of the U.S – Development of Alternatives A through C on the Yuba site would impact jurisdictional waters of the U.S. These alternatives would result in a potentially significant impact. Mitigation measures to reduce potential impacts to a less than significant level are identified in **Section 5.2.4**.

Impacts to jurisdictional waters would be unavoidable for Alternative D, as development would impact three intermittent streams on the Butte site. Mitigation measures are presented within **Chapter 2.0** to avoid or reduce site specific impacts to waters of the U.S. to less than significant levels.

Federally-Listed Special-Status Species – Alternatives on the Yuba site have the potential to impact the giant garter snake (*Thamnophis gigas*), a federally listed species that has the potential to occur on the Yuba site. Alternative D has the potential to impact two federally listed species, Layne’s ragwort and the California Red-legged frog.

Mitigation measures to avoid potential impacts to these special-status species are identified in **Chapter 2**.

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

3.1.5 Cultural Resources

Cultural Resources: Alternative D (Butte Site) contains one pre-historic resource and one historic resource and associated unknown artifacts. Though outside the area of impact, these resources have the potential to be inadvertently damaged or intentionally vandalized with development of Alternative D. Mitigation measures are presented within **Chapter 2** to

protect and preserve these resources. Alternatives A, B, and C would have no effect on known cultural resources, as the Yuba Site contains no known cultural resources. Additional mitigation measures are presented in **Chapter 2** for the treatment of unanticipated discoveries of archaeological sites at both the Yuba and Butte sites.

Paleontological Resources: No paleontological or unique geological resources are known to exist in the local area of the Alternative sites. Geologic formations that underlie the sites have a low probability of containing paleontological resources, and no impacts are expected. Mitigation measures are presented in the FEIS for the protection and preservation of unanticipated discoveries of paleontological resources.

3.1.6 Socioeconomic Conditions and Environmental Justice

Socioeconomic Conditions – Alternative A would result in the greatest economic stimulus to the region and would result in the greatest beneficial economic impact to the Tribe. All development alternatives would result in potential economic benefits for the Tribe and various regional municipalities. Benefits to these municipalities would result from the creation of jobs and payments in-lieu of taxes agreed to in the various MOUs. The greatest economic benefit for the Tribe and the most jobs would be created by development alternatives with gaming. The Tribe has agreed to contribute annual funds to compensate problem gambling service programs. With this contribution, effects to problem gambling services would be less than significant. However, the non-gaming alternative (Alternative C) would not cause social impacts potentially attributable to casinos (such as an increase in the incidence of problem/pathological gambling).

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

3.1.7 Resource Use Patterns

Transportation/Circulation – The development of Alternatives A through D would cause certain roadway segments and intersections in the vicinity of the proposed development sites to operate at an unacceptable Level of Service (LOS) (refer to Section 4.8 of the FEIS). Mitigation measures have been developed for the roadway segments and project intersections showing unacceptable LOS during operation of Alternatives A through D. With the incorporation of project mitigation measures described in **Chapter 2**, impacts to project roadways would be reduced to a less-than-significant level.

Land Use – Alternative A through C would replace the existing agricultural land use with development that is consistent with the existing planned land use designation. However, the development of the Yuba Site has the potential to result in land use compatibility impacts with nearby sensitive receptors as discussed in detail in EIS. These impacts would be reduced to a less than significant level through mitigation measures contained in **Chapter 2**. The development of Alternatives A through D would result in a noticeable increase in land use intensity, however no land use conflicts would occur as the Butte site is currently held in

Federal trust. These impacts would be reduced to a less than significant level through mitigation measures contained in **Chapter 2**.

Agriculture – Due to the inferior quality of land available for farming purposes, impacts to agriculture from the development of Alternative D would be less than significant. Given the generally poor quality of agricultural soils where development is proposed on the Yuba site, in combination with a Farmland Policy Protection Act (FPPA) score of 88, Alternatives A - C would have a less than significant impact on agriculture. Nonetheless, mitigation measures have been included in **Chapter 2** that would further reduce impacts to agriculture.

3.1.8 Public Services

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

Water – Since water supply for Alternatives A - D would be supplied wholly from on-site wells, a reduction in available capacity of the surrounding municipality's water facilities would not occur. Therefore, the effect on public water utilities would be less than significant.

Wastewater – On-site wastewater treatment options under Alternatives A - C would have no effect on local public service providers because collection and treatment would occur through a private existing WWTP located adjacent to the Yuba Site development area. By adding the wastewater flows to the existing WWTP, the plant would be near capacity. This impact would be significant and mitigation is provided in **Chapter 2**. Implementation of mitigation measures would reduce impacts to a less than significant level. The development and operation of an on-site WWTP on the Butte site would not create an impact to wastewater treatment providers under Alternative D.

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

Utilities – Adequate electrical, natural gas, and telecommunications facilities are available to serve Alternatives A - D and any upgrades or extensions would be funded by the Tribe. Thus, a less than significant impact to utilities would occur. Mitigation measures contained in **Chapter 2** would ensure this effect is mitigated to a less than significant level.

Public Health and Safety – Additional costs would be incurred for law enforcement and fire protection services to serve the added demands of Alternatives A - D, resulting in a significant impact. Mitigation measures in **Chapter 2** would reduce this impact to a less than significant level. Given that the Tribal-State Compact would require compliance with state food and

beverage handling standards and that the Safe Drinking Water Act (SDWA) would apply to trust land, a significant effect to public health and safety due to inadequate food and water safety precautions would not occur under Alternatives A, B, and D. Given that the SDWA would apply to trust land, a significant impact to public health and safety due to inadequate water safety precautions would not occur under Alternative C. For Alternative C a Tribal-State Compact would not be required and the terms of the Yuba County MOU would not apply. Any renegotiated MOU with the County is expected to contain the food and beverage handling and safe drinking water provisions noted under Alternative A. However, if such terms were not included in a renegotiated MOU or the MOU was not renegotiated, a potentially significant effect to public health could occur if Tribal food and beverage handling standards were inadequate. Mitigation measures contained in **Chapter 2** would ensure this effect is mitigated to a less than significant level.

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

3.1.9 Other Values

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

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

Visual Resources – The Yuba Site alternatives would result in the loss of open space and contribute to the urban setting. The project facilities are located within an area zoned for sports and entertainment uses with anticipated uses within this zone include racetracks and amphitheaters, which have the potential for extensive nighttime lighting. The siting of a proposed development on the Yuba Site is consistent with local land use regulations and views from scenic corridors would not be noticeably affected. Therefore, development of the site would not result in significant impacts to visual resources.

Light and glare from parking lots within all alternatives would be expected to trespass onto adjacent properties, resulting in a significant lighting impact. In addition, landscape amenities have been incorporated into the project design to complement buildings and parking areas, including raised landscaped areas and plantings of trees and shrubs. Finally, no local or State-

designated scenic corridors would be affected by the implementation of Alternatives A - D. Thus, effects to visual resources would be less than significant. Mitigation is identified in the FEIS that reduces lighting and glare impacts to a less-than-significant level.

3.1.10 Indirect Effects

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

3.1.11 Growth-Inducing Effects

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

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

3.1.12 Cumulative Effects

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

Potentially significant impacts to air quality would occur from future operational emissions under Alternative A and due to additional greenhouse gas emissions under all development alternatives. Mitigation measures in **Chapter 2** would ensure a less than significant cumulative air quality impact. Significant cumulative cultural resources impacts could occur if unknown cultural resources are discovered during construction. Mitigation measures in **Chapter 2** would ensure a less than significant cumulative cultural resources impact. The development of Alternatives A through D would cause certain roadway segments and intersections in the vicinity of the proposed casino to operate at an unacceptable LOS during

future cumulative conditions. Mitigation measures have been developed for the roadway segments and project intersections showing unacceptable LOS during operation of Alternatives A through D. With the incorporation of project mitigation measures described in **Chapter 2**, impacts to project roadways would be reduced to a less-than-significant level. The amount and types of hazardous materials that would be stored, used, and generated during the construction and operation of Alternatives A through D could have a potentially significant impact to the environment and public. Mitigation is included in **Chapter 2** to reduce potential impacts to a less than significant level.

3.1.12 Unavoidable Adverse Effects

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

3.2 COMMENTS ON THE FEIS AND RESPONSES

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

4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)

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

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

5.0 PREFERRED ALTERNATIVE

For the reasons discussed herein, the Department has determined that Alternative A (the Proposed Project) is the Preferred Alternative. Of the alternatives evaluated within the EIS,

Alternative A would best meet the purposes and need for action. The tribal government facilities and casino-hotel described under Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the tribal government. Under such conditions, the tribal government would be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Tribe, its members, and local communities with greater opportunities for employment and economic growth. Alternative A would also allow the Tribe to implement the highest and best use of the property. Finally, while Alternative A would have slightly greater environmental impacts than either of the environmentally preferred alternatives, those alternatives do not meet the purpose and need for the Proposed Action to the same extent as Alternative A, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD.

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

A non-gaming entertainment development on the Yuba site would have limited competitive ability to draw patrons from the greater population centers within Yuba County and the Highway 65 corridor compared to the gaming alternatives. In addition, based on peak-hour traffic patterns for retail centers compared to gaming operations, Alternative C also would likely have equal to and in certain instances greater traffic impacts during peak hours than would Alternative A.

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

6.0 MITIGATION MEASURES

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

6.1 LAND RESOURCES

Seismicity

None recommended

6.2 WATER RESOURCES

Flooding

- A. Increases in downstream flooding will be prevented by reducing surface runoff from the site. Surface runoff will be minimized by implementing the following measures:
 1. Where feasible, all areas outside of buildings and roads shall be kept as permeable surfaces, either as vegetation or high infiltration cover such as mulch, or gravel, or turf block;
 2. Pedestrian pathways shall use a permeable surface where possible, such as crushed aggregate or stone with sufficient permeable joints (areas between stone or brick if used); and
 3. Rooftops shall drain to either embedded cisterns or surrounding vegetated areas to maximize infiltration prior to concentrating runoff.
- B. The Tribe and operator(s) of the on-site developments shall maintain open lines of communication with the State Reclamation Board and the local flood control district to ensure as much notice as possible is given in the event of a pending flood action that affects the site.
- C. Prior to construction, plans shall be made available to the State Reclamation Board for review in order to confirm that storage volumes and conveyance patterns have not changed in a way that conflicts with the terms of the inundation easement.

Construction Impacts

As required and enforced by the USEPA under the Clean Water Act (CWA), prior to construction a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared that addresses water quality impacts associated with construction and on-going operation of a project. Permanent water quality maintenance features shall be incorporated into the project design and operation. Water quality control measures identified in the SWPPP shall include, but not limited to, the following:

- D. Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.
- E. Temporary erosion control measures (such as silt fences, fiber rolls, vegetated swales, a velocity dissipation structure, staked straw bales, temporary revegetation, rock bag dams, and sediment traps) shall be employed for disturbed areas.

- F. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.
- G. Construction area entrances and exits shall be stabilized with crushed aggregate.
- H. Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.
- I. Petroleum products shall be stored, handled, used, and disposed of properly.
- J. Construction materials, including topsoil and chemicals shall be stored, covered, and isolated to prevent runoff losses and contamination of groundwater.
- K. Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.
- L. Sanitary facilities shall be provided for construction workers.
- M. Disposal facilities shall be provided for soil wastes, including excess asphalt produced during construction.
- N. The Tribe shall educate all workers in the proper handling, use, cleanup, and disposal of all chemical materials used during construction activities and provide appropriate facilities to store and isolate contaminants.
- O. The Tribe shall educate all contractors involved in the project on the potential environmental damages resulting from soil erosion prior to development by conducting a pre-construction conference. Copies of the project's erosion control plan shall be distributed at this time. All construction bid packages; contracts, plans and specifications shall contain language that requires adherence to the plan.
- P. Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.
- Q. Creating construction zones and grading only one part of a construction zone at a time shall minimize exposed areas. If possible, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone.
- R. Utility installations shall be coordinated to limit the number of excavations.
- S. Preserving as much natural cover, topography, and drainage as possible shall protect disturbed soils from rainfall during construction. Trees and shrubs shall not be removed unnecessarily.
- T. Disturbed areas shall be stabilized as promptly as possible, especially on long or steep slopes. Recommended plant materials and mulches shall be used to establish

- protective ground cover. Vegetation such as fast-growing annual and perennial grasses shall be used to shield and bind the soil. Mulches and artificial binders shall be used until vegetation is established. Where truck traffic is frequent, gravel approaches shall be used to reduce soil compaction and limit the tracking of sediment onto roadways.
- U. Surface water runoff shall be controlled by directing flowing water away from critical areas and by reducing runoff velocity. Diversion structures such as terraces, dikes, and ditches shall collect and direct runoff water around vulnerable areas to prepared drainage outlets. Surface roughening, berms, check dams, hay bales, or similar devices shall be used to reduce runoff velocity and erosion.
 - V. Sediment shall be contained when conditions are too extreme for treatment by surface protection. Temporary sediment traps, filter fabric fences, inlet protectors, vegetative filters and buffers, or settling basins shall be used to detain runoff water long enough for sediment particles to settle out.
 - W. Topsoil removed during construction shall be carefully stored and treated as an important resource. Berms shall be placed around topsoil stockpiles to prevent runoff during storm events.
 - X. All necessary permits and approvals shall be obtained, including a NPDES Phase II General Permit for Storm Water Discharges from Construction Activities.

General Operation Measures

- Y. Storm drains shall be equipped with silt and oil traps to remove oils, debris, and other pollutants. Storm drain inlets shall also be labeled “No Dumping—Drains to Streams and Rivers.”
- Z. The parking lot shall be designed to allow storm water runoff to be directed to vegetative filter strips to help control sediment and to control non-point source pollution, where possible.
- AA. Permanent energy dissipaters shall be included for drainage outlets.
- BB. The Tribe shall create, utilize, and update as necessary a maintenance plan for all Best Management Practices (BMPs).
- CC. The project detention basin shall be designed to provide effective water quality control measures. Design and operational features of the drainage basins will include:
 1. The drainage basins shall be designed to provide the maximum detention time for settling of fine particles.
 2. Maximize the distance between basin inlets and outlets to reduce velocities.
 3. Establish maintenance schedules for periodic removal of sedimentation, excessive vegetation, and debris that may clog basin inlets and outlets.

- DD. The operator of the wastewater treatment plant shall comply with operator standards/certification as would be required for an operator of a similarly sized plant in the state of California.
- EE. On-site backup power generation shall be provided to run the collection system and necessary plant pumps and aerators to control odors during power outages.
- FF. The following manuals/plans shall be completed within 6 months of construction of the wastewater treatment plant: an Operations and Maintenance Manual that must include an emergency response plan and operation/maintenance records; a sludge disposal plan; a domestic waste spill prevention, emergency response, containment, and spill cleanup waste products disposal plan; a runoff-prevention plan/off-site aerosol prevention plan; and a hazardous materials spill prevention, emergency response, containment, and disposal plan.

Groundwater

- GG. The Tribe shall implement the following water conservation measures:
 1. Low flow faucets and/or aerators in the hotel;
 2. Low flow showerheads and/or aerators in the hotel;
 3. Voluntary towel re-use by hotel guests;
 4. Low flow faucets in public areas;
 5. Use of pressure washers and brooms (water broom) instead of hoses for cleaning;
 6. Garbage disposal on-demand;
 7. Incorporate re-circulating cooling loop for water cooled refrigeration and ice machines wherever possible; and
 8. Serve water to customers only upon request.

6.3 AIR QUALITY

Construction Impacts

- A. Construction equipment exhaust emissions shall not exceed Feather River Air Quality Management District (FRAQMD) Regulation III. Rule 3.0, Visible Emissions limitations.
- B. The primary contractor shall be responsible to ensure that all construction equipment is properly tuned and maintained prior to and for the duration of onsite operation.
- C. The primary contractor shall be responsible to ensure that all construction equipment are equipped with a diesel oxidizer catalyst and use aqueous diesel fuel.
- D. The primary contractor shall be responsible to ensure that all construction equipment minimizes idling time to 5 minutes.
- E. The primary contractor shall utilize existing power sources (e.g., power poles) or clean fuel generators rather than temporary power generators where feasible.
- F. The primary contractor shall only use low VOC paints and coatings.

- G. The primary contractor shall develop a traffic plan to minimize traffic flow interference from construction activities. The plan may include:
- a. Advance public notice of routing, use of public transportation, and satellite parking areas with a shuttle service.
 - b. Scheduling of operations affecting traffic for off-peak hours.
 - c. Minimizing obstruction of through-traffic lanes.
 - d. Providing a flag person to guide traffic properly and ensure safety at construction sites.
- H. The primary contractor shall be responsible to prepare a Fugitive Dust Control Plan. The Fugitive Dust Control Plan shall include the following Fugitive Dust Control Mitigation Measures:
- a. All grading operations on a project should be suspended when winds exceed 20 miles per hour or when winds carry dust beyond the property line despite implementation of all feasible dust control measures.
 - b. Construction sites shall be watered as necessary to prevent fugitive dust violations.
 - c. Construction sites and staging areas shall be located as far as feasible from existing residence in close proximity to the site to reduce wind blown dust emissions.
 - d. An operational water truck shall be on-site at all times. Water shall be applied as needed to control dust and to prevent visible emissions violations.
 - e. On-site dirt piles or other stockpiled particulate matter shall be covered, wind breaks installed, and water and/or soil stabilizers employed to reduce wind blown dust emissions. Incorporate the use of approved non-toxic soil stabilizers according to manufacturer's specifications to all inactive construction areas.
 - f. All transfer processes involving a free fall of soil or other particulate matter shall be operated in such a manner as to minimize the free fall distance and fugitive dust emissions.
 - g. Apply approved chemical soil stabilizers according to the manufacturers' specifications, to all-inactive construction areas (previously graded areas that remain inactive for 96 hours) including unpaved roads and employee/equipment parking areas.
 - h. To prevent track-out, wheel washers shall be installed where project vehicles and/or equipment exit onto paved streets from unpaved roads. Vehicles and/or equipment shall be washed prior to each trip. Alternatively, a gravel bed may be installed as appropriate at vehicle/equipment site exit points to effectively remove soil buildup on tires and tracks to prevent/diminish track-out.
 - i. Paved streets shall be swept frequently (water sweeper with reclaimed water recommended; wet broom) if soil material has been carried onto adjacent paved, public thoroughfares from the site.
 - j. Limit traffic speeds on all unpaved surfaces to 15 miles per hour or less and reduce unnecessary vehicle traffic by restricting access. Provide appropriate training, on-site enforcement, and signage.

- k. Reestablish ground cover on the construction site as soon as possible and prior to final occupancy, through seeding and watering.
- l. No open burning of vegetative waste (natural plant growth wastes) or other legal or illegal burn materials (trash, demolition debris, et. al.) may be conducted at the site. Vegetative wastes shall be chipped or delivered to waste energy facilities (permitted biomass facilities), mulched, composted, or used for firewood.
- m. Trucks hauling soil or loose materials shall be covered or have a freeboard of two feet.

Operational Impacts

- I. The Tribe shall orient building structures to the north for natural cooling and the use of appropriate landscaping that maximizes the potential of passive solar design principles where feasible.
- J. The Tribe shall incorporate shade trees, adequate in number and proportional to project size, throughout the site to reduce building heating and cooling requirements.
- K. The Tribe shall provide for the use of energy-efficient lighting and process systems such as, low-NOx water heaters, furnaces, and boiler units.
- L. The Tribe shall ensure streets shall be designed to maximize pedestrian access to transit stops where feasible.
- M. The Tribe shall include bus shelters at transit access points where deemed appropriate by Yuba-Sutter Transit Authority.
- N. The Tribe shall provide preferential parking spaces for carpools.
- O. The Tribe shall provide preferential parking spaces for vanpools.
- P. The Tribe shall incorporate transit-use incentives such as subsidized transit passes and flexible work schedules to encourage transit use and trip reduction.
- Q. The Tribe shall ensure the use of clean fuel vehicles in vehicle fleet where practicable.
- R. The Tribe shall contribute to construction of off-site park and ride lots as deemed feasible and appropriate by Yuba and Sutter transportation planning agencies.
- S. The Tribe shall provide on-site pedestrian facility enhancements such as walkways, benches, proper lighting, vending machines, and building access, which are physically separated from parking lot traffic.

- T. The Tribe shall feature alternative work schedules, where practical, that allow for work hours that are compressed into fewer than five days (e.g., 9/80; 4/40; or 3/36 hour schedules); or allow Flextime schedules.
- U. The Tribe shall provide transit amenities (e.g., bus turnouts, passenger benches, or shelters) where deemed appropriate by local transportation planning agencies.
- V. The Tribe shall provide transportation (e.g. shuttles) to major transit stations and multi-modal centers.
- W. The Tribe shall use battery or electric powered landscape equipment where feasible.
- X. The Tribe shall install electrical outlets on the exterior walls of all commercial buildings to promote the use of electric powered landscape equipment.
- Y. The Tribe shall schedule goods movement for off-peak hours, when feasible to reduce vehicle idling and traffic congestion.
- Z. The Tribe shall adopt a Vehicle Idling Policy requiring all vehicles under company control (including tribally-owned vehicles, contract vehicles, vendor vehicles, and delivery vehicles) to adhere to a 5 minute limit on idling time. The Tribe shall implement the Vehicle Idling Policy by placing signage at strategic locations explaining the policy, training key employees on the policy, and including the policy in contractual language where applicable.
- AA. One or more of the following measures will be implemented to reduce NO_x, ROG, and PM₁₀ emissions to less than the FRAQMD thresholds, which would result in a less than significant impact to Alternatives A, B, and C. **Table 5-1** shows the reductions necessary for each alternative.
 - a. Pave or resurface unpaved roadway(s) or roadway(s) in a deteriorated state within the Sacramento Valley Air Basin, which have a minimum daily vehicle count of 100 vehicles.
 - b. Contribute to a program to retrofit residential fireplaces that do not meet USEPA certification standards within the Sacramento Valley Air Basin.
 - c. Purchase low emission buses to replace older municipal or school buses used within the Sacramento Valley Air Basin.
 - d. Purchase hybrid vehicles to replace existing governmental fleet vehicles within the Sacramento Valley Air Basin.
 - e. Purchase and install on-site or within the Sacramento Valley Air Basin; a photovoltaic array, wind powered energy, and/or other form(s) of renewable energy.
 - f. Contribute a fair share percentage to the synchronization of traffic signals within the Sacramento Valley Air Basin.
 - g. Purchase Emission Reduction Credits that are available from sources within the Sacramento Valley Air Basin.

Odor Impacts

- BB. The wastewater treatment plant expansions will be constructed with comprehensive odor control facilities, including the injection of odor control oxidants at the sewage lift station and construction of covered headworks with odor scrubber at the wastewater treatment plant.
- CC. Spray drift from the wastewater treatment plant or spray disposal field will not migrate out of the plant's property boundaries. Water Quality mitigation measures DD-FF shall be implemented to ensure that migration does not occur.
- DD. Spray field irrigation will cease when winds exceed 30 mph.

Toxic Air Contaminants Impacts

- EE. Proposed commercial land uses (e.g., loading docks) that have the potential to emit toxic air emissions shall be located as far away as feasibly possible from existing and proposed sensitive receptors in accordance with CARB's Air Quality and Land Use Handbook.
- FF. Air intakes associated with the heating and cooling system for buildings shall not be located next to potential TAC-emitting locations (e.g., loading docks) in accordance with CARB's Air Quality and Land Use Handbook.

Indoor Air Quality Impacts

- GG. The Tribe shall ensure that ventilation of outdoor air is consistent with ASHRAE Standard 62-1999 under all operating conditions.
- HH. The Tribe shall ensure that comfort levels are acceptable to most occupants, and consistent with ASHRAE Standard 55-1992, under all operating conditions.
- II. The Tribe shall ensure that significant expected sources of pollutant emissions are isolated from occupants using physical barriers, exhausts, and pressure controls.
- JJ. The Tribe shall ensure that outdoor air entering the building is protected from contamination from local outdoor sources and from building exhausts and sanitation vents.
- KK. The Tribe shall ensure that provisions are made for easy access to HVAC equipment requiring periodic maintenance.
- LL. The Tribe shall ensure that occupant exposure to construction contaminants is minimized using protocols for material selection, preventive installation procedures, and special ventilation and pressure control isolation techniques.

- MM. The Tribe shall ensure the use of low-emitting building products pursuant to Integrated Waste Management Board's Section 01350 where feasible.
- NN. The Tribe shall provide notice of the health effects of secondhand smoke exposure to employees upon hire.
- OO. The Tribe shall prominently place placards periodically throughout the casino that summarize the health effects of secondhand smoke. The Tribe shall provide further information about the health effects of secondhand smoke to customers upon request.
- PP. Utilize separate air handling and filtration systems for smoking and non-smoking areas of the property.
- QQ. Prohibit all employees from smoking inside the casino building.
- RR. Utilize state-of-the-art HVAC systems that minimize the impact of second-hand smoke.
- SS. Allow smoking in the amusement park only in smoking designated areas.
- TT. Prohibit all employees from smoking anywhere other than in smoking designated areas.

Climate Change

As noted in **FEIS Table 5-1**, a less than significant cumulative impact to global climate change would result after the implementation of Water Resources Mitigation Measure GG 1 and Mitigation Measure UU, below.

- UU. Buses and other commercial diesel-fueled vehicles shall comply with the California Air Resource Board's (CARB) Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling (California Code of Regulations, Title 13, Division 3, Article 1, Chapter 10, Section 2485), which requires that the driver of any diesel bus shall not idle for more than 5 minutes at any location, except in the case of passenger boarding where a 10 minute limit is imposed, or when passengers are onboard.

In addition, implementation of the following mitigation measures is recommended to further reduce climate change impacts.

- VV. The Tribe shall plant trees and vegetation on-site. The addition of photosynthesizing plants would reduce atmospheric CO₂, because plants use CO₂ for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the building; thus reducing heat absorption, reducing air conditioning needs and saving energy.
- WW. The Tribe shall use energy efficient appliances.

- XX. Environmentally preferable materials shall be used to the extent practical for construction of facilities.
- YY. The Tribe shall enroll in the ClimateSmart program that is offered to PG&E customers to reduce their indirect GHG emissions from electrical generation to zero. PG&E provides electricity uses with the opportunity to become “carbon neutral” under the ClimateSmart program.
- ZZ. The developer shall use low-emitting building products pursuant to Integrated Waste Management Board’s Section 01350 where feasible.
- AAA. Implementation of operational Mitigation Measures J through GG would reduce GHG emissions by reducing vehicle miles traveled, energy and water usage, and encouraging the use alternative transportation.
- BBB. The Tribe shall require the use of energy efficient lighting, which would reduce indirect GHG emissions.
- CCC. The Tribe shall use solar hot water heaters where feasible. The use of solar hot water heaters would reduce project related GHG emissions by reducing electrical energy usage
- DDD. The Tribe shall consider purchasing carbon credits under a cap and trade program to reduce the project’s carbon footprint.

6.4 BIOLOGICAL RESOURCES

Federally Listed and Other Sensitive Species

Giant Garter Snake

- A. Construction activities within the identified habitat for giant garter snake shall be avoided as identified in the Giant Garter Snake Report, August 2005 (**FEIS Appendix H**). The U.S. Fish and Wildlife Service (USFWS) guidelines for giant garter snake avoidance and minimization will be followed.
- B. All construction activity associated with the installation of the wastewater pipeline, within the adjacent roadbed, shall be conducted between May 1 and October 1. This is the active period for giant garter snakes and the potential for direct effects are lessened because the snakes are actively moving and capable of avoiding danger.
- C. Construction personnel shall participate in a USFWS approved worker environmental awareness program. Under this program, workers shall be informed about the presence of giant garter snakes and habitat associated with the species and that unlawful take of the animal or destruction of its habitat is a violation of the Act. Prior to construction activities, a qualified biologist approved by the Service shall instruct all construction personnel about: (1) the life history of the giant garter snake; (2) the importance of irrigation canals, marshes/wetlands, and seasonally flooded areas. such as rice fields, to the giant garter snake; (3) sensitive areas, detailing limits of the construction area, showing workers the designated buffers, and explaining why they must stay out of the

buffers. Proof of this instruction shall be submitted to the Sacramento Fish and Wildlife Office.

- D. No more than 24-hours prior to start of construction activities (site preparation and/or grading), the southern portion of the project area adjacent to the ditch shall be surveyed for the presence of giant garter snake. If construction activities stop on the site for a period of two weeks or more, a new giant garter snake survey should be completed no more than 24-hours prior to the re-start of construction activities.
- E. A qualified biologist shall conduct monitoring for giant garter snake during construction within the identified giant garter snake boundary area. If a snake is encountered during construction activities, the monitoring biologist shall have the authority to stop construction activities until appropriate corrective measures have been completed or it is determined that the snake will not be harmed. Giant garter snakes encountered during construction activities should be allowed to move away from construction activities on their own. Capture and relocation of trapped or injured individuals can only be attempted by personnel or individuals with current USFWS recovery permits pursuant to section 10(a)1(A) of the Act.
- F. A qualified biologist shall be available for monitoring for giant garter snakes throughout the duration of construction.
- G. Establish fencing prior to construction to demarcate the construction area and prevent encroachment of construction personnel and equipment into adjacent habitats for sensitive species
- H. Prior to the commencement of pipeline construction activities to occur between May 1 and October 1, construction fencing would be installed along the southern and northern extents of upland habitat, which border the irrigation canal and seasonal wetland in order to maintain construction activities within the construction zone easement. Upon completion of construction, permanent fencing would be installed along the border of the seasonal wetland buffer and associated upland habitat on the Yuba site. This fencing will prohibit access by pedestrians and motor vehicles to the giant garter snake aquatic and upland components. Proper signage, spaced at approximately 100-foot intervals, will convey the idea that (1) the area is sensitive and preserved habitat, and (2) management will ensure the integrity of the preserved area.
- I. The USFWS recommends that plastic mono-filament netting (erosion control matting) not be used for erosion control. Snakes may become entangled in it. Acceptable substitutes include coconut-coir matting or tackified hydroseeding.

- J. Implementation of best management practices (BMPs) to prevent the accidental release of disturbed soils, fuel, oil, or other materials associated with construction activities into sensitive habitats.
- K. Pre-construction surveys for giant garter snake shall be completed by a qualified biologist along the South Yuba Water District irrigation ditch to follow the USFWS guidelines.
- L. The mitigation and avoidance measures referenced and/or contained within the Biological Opinion issued by the USFWS (**FEIS Appendix H**) shall be applied to the WWTP area.

Swainson's Hawk

- M. If project construction is to occur during the nesting season (approximately March – August), pre-construction surveys for active Swainson's hawk nests within ¼ mile of proposed construction areas shall be conducted by a qualified biologist.
- N. Conducting construction activities within ¼ mile of active Swainson's hawk nests shall be avoided. If construction activities are to occur within ¼ mile of an active nest, a qualified biologist shall monitor construction activities and any active nest sites. The monitoring biologist shall have the authority to stop any construction activities that are adversely affecting nesting behavior and may result in nest failure.
- O. Impacts to potential foraging habitat for Swainson's hawk shall be mitigated according to the guidelines identified in the California Department of Fish and Game's *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California*.
- P. Replacement foraging habitat for Swainson's hawk shall be provided at a ratio of 0.5 acres of land for each acre of urban development authorized under subdivision entitlements. Land protected under this requirement must be located within 10 miles of the construction site and may be protected through fee title acquisition or a conservation easement on agricultural lands or other suitable habitats acceptable to the California Department of Fish and Game and the County of Yuba or as otherwise approved by the Community Development Director.

Burrowing Owl

- Q. A qualified biologist shall conduct a pre-construction survey for burrowing owls within the 30 days prior to construction activities to establish the status of this species on the site. If ground-disturbing activities are delayed or suspended for

more than 30 days after the pre-construction survey, the site shall be resurveyed. If burrowing owls are detected within approximately 500 feet of the site, a qualified biologist shall be consulted to develop measures to avoid “take” of this species prior to the initiation of any construction activities. Avoidance measures may include the establishment of buffers and biological monitoring.

Nesting Raptors and Migratory Birds

- R. If construction activities are to occur during the nesting season (approximately March-September), pre-construction surveys for nesting raptors shall be conducted by a qualified biologist within 500 feet of the proposed construction areas. If active nests are identified in these areas, a qualified biologist shall be consulted to develop measures to avoid “take” of active nests prior to the initiation of any construction activities. Avoidance measures may include the establishment of buffers and biological monitoring.
- S. If removal of any woody vegetation is to be conducted during the nesting season (approximately March – September), a pre-construction survey for active migratory bird nests within proposed disturbance areas shall be conducted by a qualified biologist within two weeks to one month prior to vegetation removal. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the site shall be resurveyed. If active migratory bird nests are identified, vegetation removal that would disturb these nests shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No active nests shall be disturbed without a permit or other authorization from the USFWS.

Waters of the U.S.

- T. A 2.27-acre palustrine emergent wetland was identified by AES biologists as a potentially jurisdictional water of the U.S. Final jurisdictional determination is pending U.S Army Corps of Engineers (USACE) approval. This wetland feature shall be avoided, if possible, through modifications in the project design for the casino within the Yuba Site. Prior to commencement of construction activities, workers will be informed of the importance of marshes, wetlands, and seasonally flooded areas. During construction activities, temporary construction fencing shall be installed around the perimeter of the wetland so that inadvertent impacts to this area will be avoided. If impacts to the palustrine emergent wetland become unavoidable, the feature shall be mitigated by rehabilitating or constructing wetland habitats either on site or at an appropriate off-site location. A USACE Section 404 Clean Water Act (CWA) permit shall be obtained prior to

any discharge into the jurisdictional feature. Compensatory mitigation shall occur at a minimum of a 1:1 ratio, as required by the USACE.

- U. The four seasonal emergent wetlands and the intermittent drainage within the WWTP expansion area are potentially jurisdictional features. These features shall be avoided through project design to completely avoid impacts to wetlands.
- V. The following measures are recommended to further avoid any potential impacts to wetlands and waters of the U.S.:
 - a. Temporary fencing shall be installed around wetland and any intermittent drainage features that are outside of the construction area. Fencing shall be located 50 feet from the edge of wetlands and riparian habitats and installed prior to any construction. The fencing shall remain in place until all construction activities on the site have been completed.
 - b. Construction activities in the vicinity of any USACE jurisdictional features shall be conducted during the dry season to minimize erosion.
 - c. Staging areas shall be located away from the areas of wetland habitat that are fenced off. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion (e.g. with tarps, silt fences, or straw bales).
 - d. Standard precautions shall be employed by the construction contractor to prevent the accidental release of fuel, oil, lubricant, or other hazardous materials associated with construction activities into jurisdictional features. A contaminant program shall be developed and implemented in the event of release of hazardous materials as part of the projects' NPDES permit.
 - e. If impacts to waters of the U.S. and wetland habitat become unavoidable, these features shall be mitigated by creating or restoring wetland habitats either on site or at an appropriate off-site location. A USACE 404 permit shall be obtained prior to any discharge into jurisdictional features. Compensatory mitigation shall occur at a minimum of 1:1 ratio, as required by the USACE.

6.5 CULTURAL RESOURCES

- A. Any inadvertent discovery of archaeological resources, shall be subject to Section 106 of the National Historic Preservation Act (NHPA) as amended (36 C.F.R. 800), the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC 3001 et seq.), and the Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa-mm). Specifically, procedures for post review discoveries without prior planning pursuant to 36 C.F.R. 800.13 shall be followed.
- B. All work within 50 feet of the find shall be halted until a professional archaeologist, or paleontologist if the find is of a paleontological nature, can assess the significance of the find. If any find is determined to be significant by the archaeologist, or paleontologist as appropriate, then representatives of the Tribe and the BIA Regional Archaeologist shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards.
- C. If human remains are discovered during ground-disturbing activities on tribal lands, pursuant to NAGPRA Section 10.4 Inadvertent Discoveries, the tribal official and BIA regional archaeologist will be contacted immediately. No further disturbance shall occur until the tribal official and BIA regional archaeologist have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA regional archaeologist will notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.

6.6 SOCIOECONOMIC CONDITIONS AND ENVIRONMENTAL JUSTICE

- A. It is recommended that the casino participate in responsible gaming practices and provide information to gamers and employees with regards to identifying and treating problem gaming.
- B. Maintain a database of past criminal offenders and bar their presence from the property.
- C. Maintain undercover security personnel to monitor unusual behavior in the casino and parking areas.
- D. Coordinate with local law enforcement agencies to identify and apprehend petty crime suspects.

6.7 TRANSPORTATION/CIRCULATION

Where roadway segments and intersections are shown as having an unacceptable LOS with

the addition of traffic from the project alternatives (and caused at least in part from project traffic) the Tribe shall pay for a proportionate share of costs for the recommended mitigation.

Note that more detail on the below traffic mitigation measures, including an estimate of LOS after mitigation, can be found in **FEIS Appendix N**.

- A. The Tribe shall work with the County to provide transit service to the site, if feasible.
- B. The Tribe shall consult with the County about the possibility of lowering speed limits along Forty Mile Road.
- C. The Tribe shall pay the County traffic impact fee, to the extent that equivalent fees are not paid for under a MOU with the County.
- D. **North Site Access Traffic Signal.** Although a traffic signal is not necessary from an LOS standpoint, a signal could be installed, subject to the agreement of the County, to minimize potential for vehicular conflicts involving heavy vehicles entering and exiting the existing ranch driveway opposite the Yuba Site. Should a traffic signal be installed at the North Site Access, video detection should be provided on the existing ranch driveway approach as well as a relatively long green time for turning movements to be made to/from the ranch driveway to account for slow-moving ranching equipment.
- E. The Tribe shall contribute its fair share to widening the following roadways by a total of 24 feet (one additional through lane per direction):

Near Term

- SR-65 between First Street and Main Street (Wheatland) – The Tribe shall contribute its fair share to the Wheatland by-pass, which would decrease traffic volumes on SR-65 through Wheatland and is, therefore, the preferred measure to alleviate traffic congestion in the Wheatland area (see **FEIS Figure 5-1**), or contribute its fair share to making the following changes if feasible: widen the section of SR-65 between First Street and Main Street in Wheatland, which would also require that the four lane section be tapered back to two lanes immediately north of First Street and south of Main Street. This would require a 250-foot widening approach taper and a 200-foot two lane per direction roadway section on the southbound approach to the First Street intersection and on the northbound approach to the Main Street intersection. In the other directions, a 200-foot four lane section and a 480-foot merge section would be required as shown in **FEIS Figure 5-2**.

Cumulative Year

- McGowan Parkway from SR-65 to Donald Drive - This section of roadway shall be widened by 12 feet on each side from the SR-65 interchange to Donald Drive. Although the traffic analysis only indicates the road should be widened

to an area west of SR-70, to avoid merging two lanes of traffic into one through an intersection, the widening should be provided westward through the Donald Drive intersection (see **FEIS Figure 5-3**).

- F. The Tribe shall contribute its fair share towards the implementation of improvements to the intersections/ramps detailed in **FEIS Table 5-3**.
- G. Should the County wish to encourage the development of pedestrian and bicycle facilities along Forty Mile Road, the Tribe shall pay a fair share of the development of such facilities adjacent to the project site.
- H. Should the County wish to encourage the development of transit service to the Forty Mile Road area / Amphitheatre area; the Tribe shall pay a fair share of the development of such facilities if they allow for transit access to the Yuba Site.
- I. The Tribe shall cooperate with the California Highway Patrol (CHP) and amphitheater staff to ensure the facilitation of traffic along Forty Mile Road during amphitheater events.

6.8 PUBLIC SERVICES

Wastewater Service

- A. The Tribe should participate in discussions with agencies in the County regarding a regional solution to wastewater treatment at the request of the County. This may include the consideration of connecting to one of the current wastewater treatment providers when and if service becomes available to the Yuba site. Note that should a future regional solution be proposed, appropriate evaluation would be required under applicable Federal and State environmental requirements.

Solid Waste

- B. The Tribe shall install a trash compactor for cardboard and paper products.
- C. The Tribe shall install recycling bins throughout the facilities for glass, cans, and paper products.
- D. Decorative trash and recycling receptacles will be placed strategically throughout the area of the Yuba Site or Butte Site, as appropriate, to encourage people not to litter at the facilities.
- E. Security guards shall be trained to discourage littering on site.

Electricity, Natural Gas, and Telecommunications

- F. The Tribe shall be responsible for a fair share of costs associated with any relocation of existing PG&E facilities to accommodate the proposed development and traffic improvements. Appropriate funds shall be made available to conduct any necessary relocation and to construct any system upgrades required by the project.

Public Health and Safety

- G. The Tribe shall adopt the following provisions in an MOU with the County or Tribal State-Compact:
- The Tribe shall adopt and comply with standards no less stringent than state public health standards for food and beverage handling.
 - The Tribe shall adopt and comply with standards no less stringent than water quality and safe drinking water standards applicable to California, by operation of either state or federal law.
 - The Tribe shall adopt and comply with building standards no less stringent than applicable building codes, fire codes, plumbing, electrical, and related codes applicable in the County by either state law or County codes.
 - The Tribe shall 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.
 - The Tribe shall adopt and comply with standards no less stringent than Federal work place and occupational health and safety standards.
- H. The Tribe shall coordinate closely with the USEPA regarding the development of a baseline and operational monitoring program in compliance with the Safe Drinking Water Act.

Law Enforcement

- I. The Tribe shall enter into an MOU or provide for a similar agreement to reimburse the affected law enforcement department for the provision of law enforcement services. This agreement would include compensation for increased equipment or staffing needs from the development.
- J. The Tribe shall pass an ordinance creating a standard policy encouraging responsible drinking and designated driver programs. As part of this policy, the gaming and entertainment facility employees serving alcohol shall undergo Responsible Beverage Service Training (RBST), also known as "server training." RBST educates managers, servers, and sellers at alcohol establishments about strategies to avoid illegally selling alcohol to underage youth or intoxicated patrons. The goal of RBST is to decrease the number of illegal alcohol sales to underage youth and intoxicated patrons through education programs. Information provided in server training must at a minimum include:
- The importance of checking age identification of customers who appear to be under age 30.
 - How to identify fake IDs and what to do once a fake ID is confiscated.
 - How to recognize situations in which adults are buying alcohol for underage youth.

- How to refuse sales to individuals who may supply alcohol to underage youth.
- How to identify intoxicated customers.
- How to refuse service to underage youth and intoxicated customers.

Fire Protection / Emergency Medical Service

- K. The Tribe shall enter into a binding agreement with the Wheatland Fire Authority (formerly Plumas-Brophy Fire District) or another fire protection district located within the County of Yuba, or make arrangements in lieu of an agreement for the provision of fire and emergency medical services to the Yuba Site. This agreement would include compensation for increased equipment, staffing, or station needs from the development.
- L. An EMT certified staff person and emergency defibrillator shall be available on site during the hours of operation.

6.9 NOISE

- A. Tour buses operated in proximity to existing residences shall not be allowed to park with idling engines for more than 15 minutes in daytime hours, or more than 5 minutes at nighttime (10 p.m. to 7 a.m.).
- B. Construction activities within a half-mile of existing noise sensitive uses shall be limited to daytime hours (7 a.m. to 10 p.m.).
- C. Engine-powered construction equipment shall be fitted with adequate mufflers and enclosures as supplied by the manufacturer and maintained in good condition.
- D. Engine-powered construction equipment located adjacent to residences for more than five days of continuous use should be shielded from those residences by temporary barriers blocking line of sight between the source and receiver.
- E. To ensure mitigation of noise produced by the Sleep Train Amphitheatre, guest lodging shall be designed to ensure that interior noise levels do not exceed 45 dB L_{dn} or an average interior hourly noise level of 35 dBA during concerts in nighttime hours (between 10 p.m. to 7 a.m.).
- F. Noise mitigation measures shall be implemented to ensure that the future traffic noise level inside the house described in FEIS Section 4.10.1 does not exceed 45 dB L_{dn}. The following measures must be implemented in order to meet this standard:
 - Replace existing windows with acoustically rated windows having a minimum STC rating of 35:

- Provide mechanical ventilation and air conditioning to allow residents to close doors and windows for the required acoustical isolation at any time of the year while ensuring adequate fresh air exchange;
- Provide adequate weather-stripping at existing exterior doors;
- Provide fiberglass attic insulation if none is present; and
- Install acoustical baffles (sound traps) at attic vents facing the roadway.

6.10 HAZARDOUS MATERIALS

- A. The Tribe shall include the following requirement in construction contract specifications for construction activities associated with the project:
 - a. If contaminated soil and/or groundwater are encountered or if suspected contamination is encountered during project construction, work shall be halted in the area, and the type and extent of the contamination shall be determined. A qualified professional, in consultation with appropriate regulatory agencies, shall then develop an appropriate method to remediate the contamination. If necessary, the Tribe shall implement a remediation plan in conjunction with continued project construction.
- B. Hazardous materials used on-site shall be stored, handled, and disposed of according to Federal, state, and manufacturer's guidelines.

6.11 VISUAL RESOURCES

- A. Engine-powered construction equipment and staging areas located adjacent to residences for more than 5 days of continuous use should be shielded from those residences by temporary barriers blocking line of sight between the source and receiver.
- B. Lighting equipment shall be directed away from existing residences in close proximity should it be necessary during construction activities.
- C. Uplighting shall only be allowed to illuminate an on-site structure. Uplighting similar to that shown in FEIS Figure 2-2 that only serves to illuminate the night sky shall not be permitted.

6.12 MITIGATION MEASURES THAT ARE NOT ADOPTED

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

7.0 TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

The procedures and policies concerning the Secretary's exercise of discretion for acquiring lands in trust for Indian tribes and individuals are set forth in 25 U.S.C. § 465 and 25 C.F.R. Part 151. The BIA's evaluation of the Tribe's fee-to-trust request based on the applicable criteria is provided below.

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. Part 151.3(a)(3) when the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. The BIA has determined that the acquisition of the 40 acres satisfies 25 C.F.R. Part 151.3(a)(3), and that the land is necessary to facilitate tribal self-determination and economic development.

The Tribe proposes to develop the Site for recreation and tourism by constructing a casino and hotel resort (Resort). The Resort will generate income to fund tribal programs and will generate employment for tribal members. The IGRA requires that net revenues from the gaming facility be used "to fund tribal government operations or programs to provide for the general welfare of the tribe and its citizens. [and] to promote tribal economic development." Accordingly, the trust acquisition would promote tribal economic development, self-sufficiency, and strong tribal government consistent with federal policy as expressed under 25 U.S.C. § 2702, and consistent with the requirements of 25 C.F.R. § 151.3.

B. 25 C.F.R. 151.10. Notification of State and Local Governments

By correspondence dated November 26, 2008, comments on the potential impacts of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments were solicited from the following state and local political subdivisions:

State Clearinghouse, Office of Planning and Research
Office of the Governor, Legal Affairs Secretary
State of California, Department of Justice;
James Peterson, Office of the Honorable Dianne Feinstein;
Yuba County Board of Supervisors, County of Yuba;
Yuba County Assessor;
County of Yuba, Planning Department;
Yuba County Sheriff's Department;
County of Yuba, Department of Public Works.

In response to the notification, comments were received from the following entities:

- 1. By letter dated December 10 and 11, 2008, from State of California, Department of Justice, Attorney General Office.**

The State requested a 30-day extension of the comment period and requested a copy of the fee-to-trust application. On December 15, 2008, BIA responded with a copy of the application and granted the extension to January 30, 2009.

Letter dated January 9, 2009, from State of California, Department of Justice, Attorney General Office.

The State requested a copy of all comment letters, memo, e-mails, notes or other correspondence received by the BIA. Patty Brandt from the State's Office made an appointment for January 14, 2009, to review the fee-to-trust files and tab the copies she wanted. The BIA copied the documents tabbed and notified the State they were ready to be picked up on January 15, 2009.

By letter dated January 30, 2009, from the Office of the Governor, State of California, summarized as follows:

- The State stated the Tribe failed to demonstrate the need for additional land under the 25 C.P.R. §§ 151.10(b) and 151.11(a) regulations.
- Also, stated the application is premature to proceed until the Indian Lands Determination is complete under Section 2719 (b)(1)(A), which allows a tribe to conduct gaming on trust lands acquired after October 17, 1988.
- Plus, the State feels the Secretary should reject the application until the outstanding issues regarding the DEIS (25 C.F.R. §§ 151.10(h) and 151.11(a)) are resolved.
- The State also mentioned additional information is needed to evaluate other guidance memoranda criteria (daily commutable distance).

By letter dated April 10, 2009 Enterprise Rancheria responded to the comments submitted by the Office of the Governor.

- The Tribe stated that their trust application clearly puts forth the need for additional lands, as required under 25 C.F.R. Part 151 regulations.
- The Tribe also mentioned that the Enterprise 1 trust property is eligible for gaming; the real question is whether the Tribe could ever engage in gaming on the parcel. As for the Indian Lands Determination, the Tribe agrees that it is appropriate for the Secretary to wait before making a determination to take the land into trust until the Governor has been provided the opportunity to concur in a separate determination by the Secretary under Section 20(b)(1)(A) of IGRA.
- As for the guidance memorandum and the daily commute, the Tribe stated the concern raised is that the farther the economic enterprise (a gaming facility) is from the reservation, the greater the potential for it to negatively impact reservation life. Of course, this assumes that a significant reservation population exists, which certainly does not reflect the circumstances of the Tribe. The commutable distance for the Enterprise Tribe does not affect the tribe for the Yuba Site since it is only 36 linear miles from Enterprise 1.

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2. By letter dated December 9, 2008, from the Native American Heritage Commission office.

The Commission stated they have no comment to the fee-to-trust application.

3. By letter dated January 15, 2009, from the City of Wheatland. The City had three primary concerns on the fee-to-trust project.

- adverse economic influence related to rapidly urbanizing area, traffic, and circulation and fire protection services.

The Tribe responded by letter dated April 10, 2009.

- The City is located approximately 6 miles from the Yuba Site with its sphere of influence approximately 3 miles from the Site.
- According to California Department of Finance estimates, the City has a population of 3,513, up from 2,275 residents in the 2000 Census.
- The City's recent growth is consistent with growth experienced in other parts of Yuba County as a result of a sharp increase in residential housing.
- However, the housing boom ended abruptly last year, construction has come to a standstill, and Yuba County is now experiencing rising double-digit unemployment and among the highest foreclosure rates in the Nation.
- While the City may be planning to extend its jurisdictional reach and engage in rapid development, such plans at this juncture are speculative, and are likely to remain so in the current economic climate.
- The City claims that the Project "will adversely impact the City's ability to develop urbanized neighborhoods and commercial centers, and to revitalize its downtown." Yet nothing in the draft EIS evidences how the Tribe's development of a 40-acre parcel located approximately 6 miles from the City will create such adverse impacts. To the contrary, according to Appendix M of the draft EIS, the Project is expected to directly create over 1300 construction jobs and over 1900 permanent positions. Most of these jobs are expected to be filled by nearby residents, including residents of the City, and will result in increased economic activity in the City and elsewhere. According to Appendix M, the large induced expenditures that would be generated from the proposed project on the Yuba site would have an overall positive effect on the surrounding areas. This finding is bolstered by the views of those spearheading other local development efforts. They consistently cite the need to bring local entertainment options to Yuba County in order to attract new businesses as a reason to support the Tribe's proposed facility. Thus, rather than hinder the City's vision, the Project may be the City's best hope for transforming its vision into reality.

- Further, the City's attempts to distinguish between large and small casinos and urban and rural locations are misguided. The distinctions are both confused – the Project under the City's own definition would be a small, not a large, project – and, more importantly, irrelevant under Federal law. The only relevance of the urban versus rural distinction is in the context of California Governor Schwarzenegger's Proclamation on Indian Gaming dated May 18, 2005. In his proclamation, the Governor indicated that he would not concur in a Secretarial two-part determination under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act if the proposed site was within an urban area of 100,000 residents or more. The entire County of Yuba has only 60,129 residents (2000 Census). Thus, the Yuba Site satisfies the Governor's criteria for concurrence with respect to being within a rural area. In addition, the Yuba Site is particularly well-suited for the proposed development in that it lies within an area already zoned for sports and entertainment.
- Finally, the Tribe and the City have met several times recently to negotiate a Memorandum of Understanding for the purposes of mitigating potential impacts on the City. Regardless of the outcome, the Tribe remains committed to entering into agreements with the appropriate jurisdiction to pay for mitigation measures and services identified in the final EIS and Record of Decision for the Project or in the MOU with the County. The Tribe looks forward to working with the City and other local jurisdictions to mitigate Project impacts and bring jobs and economic development to the area.

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

Section 151.10(a) requires consideration of the existence of statutory authority for the acquisition and any limitations on such authority.

In *Carcieri v. Salazar*, 555 U.S. 279 (2009), the United States Supreme Court held that the Secretary's authority to acquire land in trust for Indian tribes pursuant to Section 5 of the IRA extended only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934. We have evaluated the applicability of *Carcieri* to the Tribe's application and have determined that the Secretary is authorized to acquire land in trust for the Tribe under 25 U.S.C. § 465.

The IRA is a statute of general applicability. Congress provided an opt-out provision in Section 18 of the Act, where a majority vote of Indians of the reservation voting at a special election called by the Secretary of the Interior could opt out of the Act. 25 U.S.C. § 478. In 1983, Congress enacted the Indian Land Consolidation Act, 96 Stat. 2515 (1983) (codified as amended at 25 U.S.C. § 2202), which amended the IRA to provide that Section 5 of the IRA applies to "all tribes notwithstanding section 18 of such Act," including Indian tribes that voted to reject the IRA. As the Supreme Court stated in *Carcieri*, this amendment "by its terms simply ensures that tribes may benefit from [Section 5] even if they opted out of the IRA pursuant to [Section 18], which allowed tribal members to reject application of the IRA to their tribe." 555 U.S. at 394-95.

As indicated in the report prepared in 1947 by Theodore H. Haas, Chief Counsel for the United States Indian Service, a majority of the adult Indians residing at the Tribe's Reservation voted to reject the IRA at a special election duly held by the Secretary on June 12, 1935.¹ The calling of a Section 18 election at the Tribe's Reservation conclusively establishes that the Tribe was under federal jurisdiction for *Carciari* purposes. Despite the vote to reject the IRA at such election, the later-enacted amendment to the IRA makes clear that Section 5 applies to Indian tribes whose members voted to reject the IRA. Thus, the Secretary is authorized to acquire land in trust for the Tribe under Section 5 of the IRA.

D. 25 C.F.R. 151.10(b). Need Of The Tribe For Additional Land

The Tribe has limited land holdings. The United States purchased two 40-acre tracts of land in 1915 called Enterprise 1 and Enterprise 2. Enterprise 1 has only been used for limited residential purposes. The property is located approximately 10 miles east of Orville, accessed only by a dirt road in a remote and sparsely populated area. The property as whole is not appropriate for housing or other buildings, because some of the land contains steep slopes. Currently, the Tribe has approximately 823 tribal members. Enterprise 1 is not sufficient for tribal housing needs, tribal government or economic development purposes.

In 1964, Congress enacted Public Law 88-453, which authorized the sale of Enterprise 2 to the State of California to be submerged under Lake Oroville which was created by the construction of the Oroville Dam as a part of the State water plan. The sale was completed in January 1965. No alternative reservation land was ever acquired for the Tribe.

With such limited land holdings, the Tribe has been unable to exercise many of its sovereign powers. The Tribe's office is located on non-Indian fee land, and there is no usable land base for tribal housing programs of any kind or economic development. The Tribe needs the subject parcel held in trust in order to better exercise its sovereign responsibility to provide economic development to its tribal citizens.

E. 25 C.F.R. 151.10 (c) Purpose For Which The Land Will Be Used.

The Tribe proposes to develop the site for recreation/tourism by constructing a casino, hotel, and parking structure. The casino and hotel resort would include a main gaming hall with 1,700 machines, food and beverage services, retail space, banquet/meeting space, administrative space, pool, and spa. 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 pool area, an exercise room, and an arcade. Approximately 2,750 parking spaces would be provided for the casino/hotel resort, with 600 of those spaces within a multi-level parking structure.

¹ Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.* (1947) at 15.

F. 25 C.F.R. 151.10 (e) Impact On The State And Political Subdivisions Resulting From The Removal Of The Tax Rolls.

According to the 2007-2008 tax statements, the amount assessed for APN: 014-280-095 was \$39,021.02. The property will be exempt from the category of taxation if the parcel is taken into trust. That loss will be mitigated per the MOU with the County of Yuba. The Tribe entered into an MOU with Yuba County on December 17, 2002, to make contributions to mitigate the costs and impacts of the Project on the County and the surrounding community. The Tribe subsequently entered into an MOU with the City of Marysville on August 16, 2005, to mitigate potential non-recurring cost and impacts by contributing to the City. The State of California will also benefit significantly from the receipt of a percentage of the net win from Class III gaming devices, in a future gaming compact with the Tribe.

The Tribe estimates that the number of permanent positions at the Facility will be in excess of 1,900 permanent jobs, and that an additional 600 jobs will be created in the surrounding area as a result of increased spending and sales of services throughout the area. Additionally, construction of the facility will create approximately 1,300 temporary construction jobs. The increased economic development is expected to result in increased income to the County and the Cities of Marysville and Olivehurst in the form of increased tax revenues. There will also be increased revenue to the County because of the significant contributions which the Tribe has agreed to make pursuant to the MOU. In consideration of the preceding, it is our determination that the benefits that will be provided from the proposed land use far outweigh any financial loss to applicable taxing jurisdictions.

G. 25 C.F.R. 151.10 (f) Jurisdictional Problems And Potential Conflicts Of Land Use Which May Arise.

The Tribe does not anticipate any significant problems or conflicts as a result of the intended land use and removal from State and local jurisdiction. The County has found that the Tribe's proposed use of the property is consistent and compatible with the County's general plan and the zoning of the property. The Tribe recognizes that all Indian Country within California is subject to P.L. 83-280; therefore, there will be no change in criminal jurisdiction. The Tribe will assert civil/regulatory jurisdiction.

The Tribe has stated that they will pay for any additional impact coming from a gaming facility. To this end, the Tribe has worked cooperatively to enter into a Memorandum of Understanding with the County of Yuba and/or the City of Marysville, wherein the Tribe would agree to mitigate all of the impacts that the development of the casino may have on the surrounding area. In anticipation of impacted services, the Tribe has authorized the following expenditures:

1. Tribe agreed to waive certain sovereignty rights allowing for any unresolved disputes, within 30 days to go to the American Arbitration Association in accordance with its Commercial Arbitration Rules.
2. A one-time fee of \$697,120 to Yuba County.

3. Payment in-lieu of taxes beginning at \$800,000 for the first year of operation up to \$5,000,000 during the sixth year of operation, and then annually adjusted by the Consumer Price Index of a maximum of 4 percent for the County.
4. At least \$565,000 of "in-lieu tax" payments beginning in the first year of operation would be allocated for law enforcement and \$60,000 a year to fund gambling disorders to a charitable organization dedicated to the treatment and prevention of gambling disorders.
5. Agreement by Tribe to adhere to all local, State and Federal laws pertaining to workplace safety, health, and fair employment practices.
6. Agreement by Tribe to pay prevailing wages for all jobs associated with the construction of the facility.
7. The Tribe will make contributions to the City of \$250,000 for two years, after which the annual contribution shall increase by an annually compounded rate of 4 percent for the remainder of this agreement through the third to the fifteen year.
8. Recurring payments to the City to help the City defray additional expenses associated with the Project. These graduated payments will total \$4,822,977.85 over 15 years.

As previously stated, the Tribe has entered into MOUs with the County and the City of Marysville which are the result of the Tribe's community outreach efforts, and incorporates input from the State and local governments. For instance, the MOUs require the Tribe to comply with State building code standards.

H. 25 C.F.R. 151.10(g) Whether the Bureau Of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition.

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.

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 Department of the Interior. As such, the Bureau of Indian Affairs will administer any additional responsibilities that may result from this acquisition.

I. 25 C.F.R. 151.10 (h) The Extent To Which The Applicant Has Provided Information That Allows The Secretary To Comply With NEPA and Hazardous Substances Determinations.

The National Environmental Policy Act requires that a public environmental review process be accomplished prior to an agency's approval of any Federal action. Prior to making a decision, the BIA as the lead agency under NEPA and five cooperating agencies must ensure that it has analyzed and addressed the environmental effects of acquiring lands in trust.

The BIA prepared an environmental assessment (EA) that analyzed the potential environmental effects of the proposed action. The EA was made available for public comments in July 2004. Upon consideration of the public and agency comments received during the 30-day public comment period, the BIA, in consultation with the Tribe, decided to prepare an EIS to further analyze the environmental effects which may result from the proposed action. Additionally, the EIS analyzed a reasonable range of alternatives, including 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 BIA's 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 comment (scoping) period, which ended June 20, 2005. A scoping report was issued in November 2005.

A Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) was published by the BIA and U.S. Environmental Protection Agency (USEPA) on March 21, 2008. The NOA was also published in *The Sacramento Bee*, *Chico-Enterprise Record*, *Oroville-Mercury Register*, and the *Appeal-Democrat* between March 22 and 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 comment letters and public hearing statements during the comment period. The Final EIS (FEIS) includes a list of all comment letters received and statements made at the public hearing. The regulation at 40 C.F.R. § 1503.4 requires that, "All 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 and appropriate.

The BIA and USEPA will publish a NOA for the FEIS in the *Federal Register* 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.

602 DM 2. Land Acquisitions: Hazardous Substances Determination.

In accordance with the Departmental Policy Manual (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" approved September 15, 2008, reflecting that there were no hazardous materials or contaminants found at the property. An additional site inspection will be conducted by BIA staff prior to acceptance of the land in trust.

J. 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.

The subject property is located in northern California, 4 miles southeast of the community of Olivehurst, County of Yuba, approximately 125 miles east of the Pacific Coast and roughly 75 miles west of the Nevada State border. Additionally, the property proposed for acquisition is located approximately 36 miles from the Tribe's only parcel and somewhat longer by car.

K. 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 parcel and offer Class II and Class III gaming at the proposed facility. In conjunction with gaming, the proposed project anticipates a 170-room hotel, a pool area, an exercise room, and an arcade. Approximately 2,750 parking spaces would be provided for the casino hotel resort, with 600 of those spaces within a multi-level parking structure. The Tribe has entered into a purchase agreement dated May 31, 2002 to purchase the subject property. On February 6, 2002, the Seller and Buyer have entered into a Memorandum of Agreement Gaming Development and Management Agreements, pursuant to which Seller and Buyer agreed to jointly develop a tribal gaming operation on a portion of the Seller's property to be acquired by the Tribe. The Tribe presently lacks the resource to acquire tribal land and to develop and operate a tribal gaming facility and enterprise thereon and desires to retain the services of a developer and manager to assist the Tribe in acquiring land, securing financing, and developing, managing and operating Class II and Class III gaming activities and related facilities on tribal land.

8.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE

The Department has determined that it will implement the Preferred Alternative (Alternative A). This decision has been made based upon the environmental impacts identified in the FEIS and corresponding mitigation, a consideration of economic and technical factors, and

the identified purpose and need. Of the alternatives evaluated in the EIS, Alternative A would best meet the purpose and need for action. The casino-hotel complex described under Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government and to fund necessary mitigation for development of economic ventures. This would enable the tribal government to establish, fund, and maintain governmental programs that offer a wide range of health, education and welfare services to tribal members, as well as provide the Tribe, its members and local communities with greater opportunities for employment and economic growth. Accordingly, the Department will implement the Preferred Alternative subject to implementation of the mitigation measures identified in Chapter 2.

8.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS

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

- Needed revenues to the Tribe to allow it to begin to meet the Tribe's and its members' significant needs and to help develop the political cohesion and strength necessary for tribal self-sufficiency, self-determination and strong tribal government.
- Estimated construction cost of \$150,000,000, with approximately 1,300 jobs generated over the entire construction period and an average 1,933 workers during operation.
- Direct economic impact to local economy would be approximately \$165,400,090.
- Construction of the Preferred Alternative is expected to result in one-time tax revenues of \$17,402,417, of which 48 percent would be received by the Federal Government and 52 percent would be received by the California and Yuba County local governments.
- Operation of the Preferred Alternative is expected to result in annual tax revenues of \$18,238,517, of which 37 percent would be received by the Federal Government and 63 percent would be received by the California and Yuba County local governments.
- Generation of annual and one-time revenues to the State of California through the Tribal State Compact.

8.2 ALTERNATIVE B RESTRICTS BENEFICIAL EFFECTS

The reduced intensity alternative (Alternative B) would generate less revenue than the Preferred Alternative. As a result, it would restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. Due to a lesser amount of new development, the effects on the natural and physical environment would be slightly less under Alternative B than those created by the Preferred Alternative. This

alternative would result in a similar level of impacts after mitigation. The BIA believes the reduced economic and related benefits of Alternative B make it a less viable option that would fulfill the purpose and need of the Proposed Action to a lesser degree than the Preferred Alternative. Accordingly, the BIA has selected the Preferred Alternative over Alternative B.

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

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

8.4 ALTERNATIVE D WOULD RESULT IN INCREASED SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

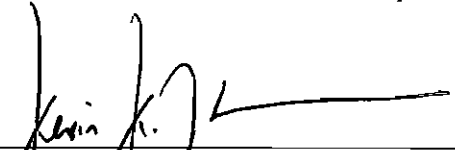
Unlike the Proposed Action, the Alternative D is reasonably expected to result in potentially significant impacts on biological resources, cultural resources, land use resources, land resources, traffic safety, and noise, as discussed in the **FEIS Section 4**. Accordingly, the BIA has selected the Proposed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

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

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

9.0 SIGNATURE

By my signature, I indicate my decision to implement the Preferred Alternative and acquire the Yuba site in trust for the Enterprise Rancheria of Maidu Indians of California.



Kevin K. Washburn
Assistant Secretary – Indian Affairs

Date: **NOV 21 2012**