



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAY 24 2012**

Honorable Yvonne Miller  
Chairperson, Ione Band of Miwok Indians  
P.O. Box 699  
Plymouth, California 95669

Dear Chairperson Miller:

On November 11, 2005, the Ione Band of Miwok Indians (Band) submitted to the Bureau of Indian Affairs an application to acquire in trust approximately 228.04 acres of land, located near the City of Plymouth, in Amador County, California (Plymouth Parcels). The Band intends to develop a gaming facility on the property.

We have completed our review of the Band's request and supporting documentation. It is our determination that the Department of the Interior (Department) will acquire the 228.04-acre parcel in Amador County, California in trust for the Band for gaming purposes. The reasons for this determination are set forth more fully in the Record of Decision for this trust acquisition.

The decision is based on a thorough review and consideration of the Band's fee-to-trust application and related submissions; the applicable statutory and regulatory authorities governing acquisition of trust land; the eligibility of land for gaming; the Draft Environmental Impact Statement and the Final Environmental Impact Statement; the administrative record; and comments received from the public, Federal, State and local governmental agencies and potentially affected Indian tribes.

The Indian Gaming Regulatory Act (IGRA) generally prohibits Indian tribes from conducting gaming activities on lands acquired in trust after October 17, 1988, subject to several exemptions and exceptions. One such exception permits gaming on lands acquired in trust after that date where those lands constitute "the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). This exception is often referred to as the "Restored Lands" exception, and falls within a broader category under IGRA known as the "Equal Footing" exceptions.

In 2004, prior to submitting its fee-to-trust application, the Band requested a legal opinion from the Department as to whether the Plymouth Parcels would be eligible for gaming under IGRA's Restored Lands exception at 25 U.S.C. § 2719(b)(1)(B)(iii). In 2006, the Department determined that the Band is a "restored tribe" and that the Plymouth Parcels would qualify as restored lands under IGRA if they were acquired in trust for the benefit of the Band.

In 2008, the Department issued final regulations for determining whether lands acquired in trust after October 17, 1988 meet the statutory exceptions under IGRA (Part 292 regulations). These regulations went into effect on August 25, 2008. Importantly, the Part 292 regulations include a provision that states:

These regulations apply to final agency action taken after the effective date of these regulations except that these regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the National Indian Gaming Commission (NIGC) issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.

25 C.F.R. § 292.26(b).

The Department's 2006 determination constitutes a written opinion regarding the applicability of 25 U.S.C. § 2719 for land to be used for a particular gaming establishment under the Part 292 grandfather provision. Therefore, the particular criteria in the Part 292 regulations governing Restored Lands determinations do not apply to this particular trust application. I have relied upon, and adopted, the conclusions in the 2006 opinion, pursuant to 25 C.F.R. § 292.26(b). The Plymouth Parcels thus constitute "[restored] lands for an Indian tribe that is restored to Federal recognition" within the meaning of IGRA.

The Department will publish notice in the *Federal Register* of the Secretary's intent to accept the property in trust for the Band. Barring any legal challenge to this decision within the 30-day period set out in 25 C.F.R. § 151.12(b), the Department intends to accept the Plymouth Parcels into trust for the benefit of the Band. Please feel free to contact my office with any questions.

Sincerely,



Donald E. Laverdure  
Acting Assistant Secretary – Indian Affairs

## **Record of Decision**

**Trust Acquisition of the 228.04-acre Plymouth Site in Amador  
County, California, for the Ione Band of Miwok Indians**

**U.S. Department of the Interior  
Bureau of Indian Affairs  
May 2012**

## U.S. Department of the Interior

**Agency:** Bureau of Indian Affairs

**Action:** Record of Decision for the Trust Acquisition of the 228.04-acre Plymouth Site in Amador County, California, for the Ione Band of Miwok Indians.

**Summary:** In November of 2005, 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 228.04 acres in Amador County, California (the Plymouth Parcels). The Ione Band of Miwok Indians (Tribe) plans to construct a gaming facility, hotel, event and convention center, parking facilities, fire station, and a wastewater treatment plant (WWTP).

The proposed trust acquisition (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 April 18, 2008. After an extended comment period, a public hearing, and consideration and incorporation of comments received on the DEIS, the BIA issued the Final EIS (FEIS) on August 13, 2010. The DEIS and FEIS considered a reasonable range of alternatives that would meet the purpose and need for the proposal, and analyzed the potential effects of those alternatives, as well as feasible mitigation measures.

With the issuance of this Record of Decision (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 228.04-acre Plymouth Parcels and construction of a gaming-resort complex including a 120,000 square foot casino, 250-room hotel, 1,200-seat event and conference center, parking facilities, fire station, a WWTP, and corresponding mitigation measures including the modified features shown in Figures 5-1 and 5-2 of the FEIS. 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 a reservation land base and 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 environment, including potential impacts to local governments and other tribes, has adopted all practicable means to avoid or minimize environmental harm (including the

modified site plans that consolidate parking areas within a multi-story parking structure), and has determined that potentially significant effects will be adequately addressed by these mitigation measures, as described in this ROD. The Department also has determined that the Plymouth Parcels are eligible for gaming because they qualify as “restored lands” for a restored tribe under Section 20 of the Indian Gaming Regulatory Act.

The 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.

**For Further Information Contact:**

Mr. John Rydzik  
Chief, Division of Environmental, Cultural Resources Management and Safety  
Bureau of Indian Affairs  
2800 Cottage Way, Room W-2820  
Sacramento, California 95825

## Table of Contents

RECORD OF DECISION .....	1
TRUST ACQUISITION OF THE 228.04-ACRE PLYMOUTH SITE IN AMADOR COUNTY, CALIFORNIA, FOR THE IONE BAND OF MIWOK INDIANS .....	1
<b>1.0 INTRODUCTION .....</b>	<b>1</b>
1.1 Summary .....	1
1.2 Description of the Proposed Action .....	1
1.3 Purpose and Need .....	2
1.4 Authorities .....	3
1.5 Procedural Background .....	3
<b>2.0 ANALYSIS OF ALTERNATIVES .....</b>	<b>5</b>
2.1 Alternative Screening Process .....	5
2.1.1 Non-Casino Alternatives .....	5
2.1.2 Alternative Casino Sites .....	5
2.2 Reasonable Alternatives Considered in Detail .....	6
2.2.1 Alternative A – Preferred Casino-Resort Project (Proposed Action) .....	6
2.2.2 Alternative B – Reduced Casino with Hotel .....	10
2.2.3 Alternative C - Reduced Casino .....	10
2.2.4 Alternative D – Retail Development .....	10
2.2.5 Alternative E - No-Action Alternative .....	11
<b>3.0 ENVIRONMENT IMPACTS AND PUBLIC COMMENTS .....</b>	<b>11</b>
3.1 Environmental Impacts Identified in the FEIS .....	11
3.1.1 Land Resources .....	12
3.1.2 Water Resources .....	13
3.1.3 Air Quality .....	14
3.1.4 Biological Resources .....	15
3.1.5 Cultural Resources .....	16
3.1.6 Socioeconomic Conditions and Environmental Justice .....	17
3.1.7 Resource Use Patterns .....	18
3.1.8 Public Services .....	18
3.1.9 Other Values .....	19
3.1.10 Indirect Effects .....	21
3.1.11 Growth-Inducing Effects .....	21
3.1.12 Cumulative Effects .....	22
3.1.12 Unavoidable Adverse Effects .....	22
3.2 Comments on the FEIS and Responses .....	23
<b>4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S) .....</b>	<b>23</b>
<b>5.0 PREFERRED ALTERNATIVE .....</b>	<b>23</b>
<b>6.0 MITIGATION MEASURES .....</b>	<b>24</b>
6.1 Land Resources .....	25

6.2	Water Resources.....	27
6.3	Air Quality .....	29
6.4	Biological Resources.....	32
6.5	Cultural Resources .....	34
6.6	Socioeconomic Conditions and Environmental Justice .....	35
6.7	Resource Use Patterns.....	35
6.8	Public Services.....	43
6.9	Other Values.....	44
6.10	Mitigation Measures That are Not Adopted.....	47
<b>7.0</b>	<b>ELIGIBILITY FOR GAMING PURSUANT TO THE INDIAN GAMING REGULATORY ACT.....</b>	<b>47</b>
<b>8.0</b>	<b>ACQUISITION OF LAND IN TRUST PURSUANT TO THE INDIAN REORGANIZATION ACT .....</b>	<b>49</b>
8.1	25 C.F.R. § 151.3: Land Acquisition Policy .....	49
8.2	25 C.F.R. § 151.10(a): Statutory Authority for the Acquisition.....	50
8.2.1	Legal Analysis of “Under Federal Jurisdiction” in 1934.....	50
8.2.2	Application of the Two-Part Inquiry to the Ione Band .....	53
8.2.3	Conclusion.....	58
8.3	25 C.F.R. § 151.10(b): The Need of the Individual Indian or Tribe for Additional Land .....	59
8.4	25 C.F.R. § 151.10(c): The Purposes for Which the Land Will Be Used .....	59
8.5	25 C.F.R. § 151.10(e): If the Land to Be Acquired Is In Unrestricted Fee Status, the Impact on the State and Its Political Subdivisions Resulting From the Removal of Land from the Tax Rolls .....	60
8.6	25 C.F.R. § 151.10(f): Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise .....	60
<b>9.0</b>	<b>DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE.....</b>	<b>60</b>
9.1	The Preferred Alternative Results in Substantial Beneficial Impacts .....	61
9.2	Preferred Project with Reduced Gaming Area (Alternative B) and with Reduced Gaming and No Hotel (Alternative C) Restricts Beneficial Effects.....	62
9.3	Retail Development Alternative (Alternative D) Severely Restricts Beneficial Effects... ..	62
9.4	No-Action Alternative Fails to Meet Purpose and Need for Action .....	63
<b>10.0</b>	<b>SIGNATURE .....</b>	<b>63</b>

## **1.0 INTRODUCTION**

### **1.1 SUMMARY**

In November of 2005, the Tribe, which is landless, submitted a fee-to-trust application to the BIA, requesting that the Department accept trust title to land totaling 228.04 acres in Amador County, California (Plymouth Parcels). The Tribe plans to construct a gaming facility, hotel, event and convention center, parking facilities, fire station, wastewater treatment plant (WWTP), and associated facilities.

The proposed trust acquisition of the 228.04-acre Plymouth Parcels was analyzed in an Environmental Impact Statement (EIS) prepared by the BIA. The Draft EIS (DEIS), issued for public review on April 18, 2008, and the Final EIS (FEIS), issued August 13, 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 228.04-acre site, construction of an approximately 120,000 square foot casino, a 250-room hotel, a 30,000 square foot convention facility, ancillary infrastructure, and mitigation measures presented in Section 5.0 of the FEIS including the modified site plan (Figures 5-1 and 5-2 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 also has determined that under Section 20 of IGRA, the Tribe may game on the Plymouth Parcels, once held in trust, because they will qualify as “restored lands” for a restored Tribe. The Department’s decision to acquire trust title to the Plymouth Parcels and the Department’s determination that the property is eligible for gaming is based on thorough review and consideration of the Tribe’s fee-to-trust application and materials submitted there within; 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.

### **1.2 DESCRIPTION OF THE PROPOSED ACTION**

Under the Proposed Action, the BIA would accept the 228.04-acre Plymouth Parcels into trust for the Tribe.<sup>1</sup> On the Parcels, the Tribe proposed to develop a gaming facility, a hotel, an event and convention facility, surface parking facilities, fire station, WWTP, and associated facilities. The site plan for the Proposed Action was subsequently updated prior to the release of the FEIS to reduce surface area parking by incorporating a parking structure into project design. The updated site plan was incorporated into the Proposed Action as a mitigation measure in Section 5.2.5 of the FEIS to reduce impacts to waters of the U.S. in response to comments received on the DEIS.

The Plymouth Parcels are located in the northwest part of Amador County approximately 35 miles east of the City of Sacramento, and approximately 17 miles south of the City of Placerville. The property is located immediately adjacent and east of State Route (SR) 49,

---

<sup>1</sup> A legal description of the Amador Parcels is incorporated by reference from Section VIII of the Tribe’s November 2005 fee-to-trust application.



which provides regional access to the area, two and one-half miles north of the junction of SR 16 with SR 49. Eight of the twelve parcels (10.28± acres) are located within the City of Plymouth (City), while the remaining four parcels (217.76± acres) are located on unincorporated land within Amador County. The casino-resort complex would include Class III gaming conducted in accordance with the Indian Gaming Regulatory Act (IGRA) and Tribal-State Compact requirements and would consist of 65,000 square feet of gaming floor; 35,000 square feet of restaurant and retail facilities and public space; 30,000 square feet of convention and multi-purpose space (with seating for up to 1,200); and an five story, 250-room hotel. In accordance with the updated site plan, approximately 2,965 parking spaces would be provided for the project through a combination of surface parking (1,800) and development of a five-level parking garage (1,165 spaces). The project would be developed in two phases, with the casino and restaurant complex, portions of the surface parking, development of the parking garage, and auxiliary facilities constituting Phase I, and the development of the hotel, convention and conference center, and additional surface parking constituting Phase II.

### **1.3 PURPOSE AND NEED**

In consideration of the present state of the Tribe and its increasing membership, it is necessary that the Tribe regain an ancestral land base upon which it can become self-sufficient. The history of the Tribe and the modern-day needs of the Tribe and its tribal membership provide a strong basis for acquiring lands under 25 U.S.C. § 465, wherein Congress granted to the Secretary of the Interior the authority to acquire lands in trust for Indian tribes.

Without stable economic development, the Tribe will remain unable to meet its need for economic development, self-sufficiency, and self-governance, and will be unable to provide its quickly growing Tribal member population with employment and educational opportunities and critically needed social services.

The purpose and need is as follows:

- Increased employment opportunities for tribal members;
- Improvement of the socioeconomic status of the Tribe; improvement of existing tribal housing; construction of new tribal housing; funding for a variety of social, governmental, administrative, educational, health and welfare services to improve the quality of life of tribal members;
- Capital for other economic development and investment opportunities;
- Restoration of a lost land base;
- Acquisition of land needed to exercise governmental powers; and
- Economic self-sufficiency, thereby eventually removing tribal members from public assistance programs.

The Proposed Action is consistent with the policies underlying the Federal statutory authorities in the Indian Reorganization Act and 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 Indian Reorganization Act (IRA) of 1934, 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 228.04-acre Plymouth Parcels in Amador 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 Section 20 of IGRA, 25 U.S.C. § 2719, are met. The Section 20 exceptions are implemented through regulations found in 25 C.F.R. Part 292. 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 acquired in trust after 1988. Because the Tribe has requested that the Plymouth Parcels be taken in trust for gaming, the Tribe must satisfy one of the IGRA Section 20 exceptions before it may game on the property. Here the relevant exception is the "restored lands" exception in Section 20(b)(1)(B)(iii), which allows gaming if the lands are taken in trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." This ROD records the Department's determination that the Plymouth Parcels are eligible for gaming under the "restored lands" exception in IGRA Section 20, such that the Tribe may game on the Plymouth Parcels once they are acquired in trust.

#### 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 November 7, 2003 describing the Proposed Action and announcing the BIA's intent to prepare an EIS. The Council on Environmental Quality's 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. A 30-day public comment period began with the publication of the NOI on November 7, 2003 in the *Federal Register* and ended on December 8, 2003. In addition to accepting written comments, the BIA held a public scoping hearing on November 19, 2003 at the Amador County Fairgrounds in Plymouth to accept comments. Approximately 150 people attended the public hearing and verbal comments were transcribed for the administrative record. During the 30-day NOI comment period, the BIA formally requested Cooperating Agency participation from the United States Environmental Protection Agency (USEPA), National Indian Gaming Commission (NIGC), California Department of Transportation (Caltrans), the City of Plymouth, and Amador County (County). The USEPA, the NIGC, and the City of Plymouth

Cooperating Agency status and serve as Cooperating Agencies for the development of the EIS. The County declined and Caltrans did not respond to the request.

On January 20, 2004, the BIA published a supplemental NOI in the *Federal Register* to announce an additional public scoping hearing with the comment period beginning on January 20, 2004 and ending on February 20, 2004. The BIA held a second public scoping hearing on February 4, 2004, at the Amador County Fairgrounds in Plymouth. Approximately 130 people attended the second public scoping hearing and verbal comments were transcribed for the administrative record. The issues that were raised during the NOI comment period have been summarized within the Ione Band of Miwok Indians Fee-to-Trust and Casino Project EIS Scoping Report published by the BIA in March 2004.

The DEIS was distributed to federal, tribal, state, and local agencies and other interested parties for a 75-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 DEIS, subject to the provisions of 40 C.F.R. § 1506.10(d). The DEIS addressed the issues and concerns summarized within the scoping report. The review and comment period began after the Notice of Availability (NOA) was published in the *Federal Register* on April 18, 2008 and ended on July 2, 2008. The NOA provided the time and location of the public hearing on May 21, 2008, to present the Proposed Action with alternatives to the public, and accept comments. Public notice was also published in *Amador Ledger Dispatch* on April 22 and May 20, 2008. Approximately 113 people attended the public hearing and verbal comments were transcribed for the administrative record.

The BIA received a total of 36 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 Volume III 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 13, 2010 (Volume 75, page 49486) (**Attachment I** of this ROD). Consistent with the BIA NEPA Handbook, the NOA for the FEIS was also published in the local newspaper (*The Amador Ledger Dispatch*) on August 13, 2010 (**Attachment II** of this ROD). The 30-day waiting period ended on September 13, 2010. The comments received during this period are included in **Attachment III** of this ROD. Responses to each agency comment letter (11 received) and public comment letter (7 received) are also provided in **Attachment III** of this ROD.

In February 2004, the Tribe and the City of Plymouth entered into a Municipal Services Agreement (MSA) for the development of the Plymouth Casino Project. The County of Amador sued the City of Plymouth (with the Ione Band as an intervener and appellant) on the grounds that the City did not comply with the California Environmental Quality Act (CEQA) when approving the MSA. The California Superior Court for the County of Amador invalidated the MSA, finding that the agreement constituted the City's approval of its provision of municipal services such that the MSA was subject to the requirements of CEQA and that the City should have initiated a CEQA review of its decision to enter into the MSA, as the conditions within the agreement required City approvals for infrastructure

improvements that qualified as a “project” under CEQA. The Court did not invalidate the City’s authority to enter into another MSA with the Tribe that does not constitute the approval of a “project” under CEQA, and the City retains the authority to enter into such an agreement. The Court of Appeals for the Third Appellate District upheld the Superior Court’s decision on April 17, 2007. *See County of Amador v. City of Plymouth*, 149 Cal. App. 4th 1089 (3d Dist. 2007). The Tribe petitioned the California Supreme Court for review of that decision, but its Petition for Review was denied on July 11, 2007, rendering the Court of Appeal’s decision final. Accordingly, the original MSA is now invalid, but the Tribe remains willing to negotiate with the City for a new agreement.

## **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) feasibility; and 3) ability to reduce environmental impacts.

#### **2.1.1 Non-Casino Alternatives**

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

#### **2.1.2 Alternative Casino Sites**

Plymouth Parcels Site: The Plymouth Parcels consists of 12 contiguous parcels of land, comprising a 228.04± acre project site located in the northwest part of Amador County approximately 35 miles east of the City of Sacramento, and approximately 17 miles south of the City of Placerville. The property is located immediately adjacent and east of SR 49, which provides regional access to the area, two and one-half miles north of the junction of SR 16 with SR 49. Eight of the twelve parcels (10.28± acres) are located within the City of Plymouth, while the remaining four parcels (217.76± acres) are located on unincorporated land within Amador County. The property was selected for its economic viability and historical connection to the Tribe. Some of the project parcels are comprised of vacant lands which have never been developed, while others are developed and include a commercial hotel and residential structures. Cattle grazing and surface mining operations currently occur on the site. Casino development on the Plymouth Parcels was analyzed in Alternatives A, B, and C of the EIS.

Jackson Valley Road Site: The Jackson Valley Road Site is located on an approximately 40-acre parcel off Jackson Valley Road outside of the City of Lone in an unincorporated area of Amador County. Historically, the Tribe has attempted to obtain this land, but the Federal Government has never been able to secure the title for the property. The site was evaluated for its ability to meet the Tribe's purpose and need and environmental suitability for development. The site was not further considered for several reasons, as described below.

In determining the gaming facility design, it was determined that to best achieve the expected customer experience, the casino would require a minimum of 40-acres of relatively level and vacant land. The Jackson Valley Road Parcel is characterized by predominantly forested area, scattered small 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 unable to accommodate the casino and ancillary components, such as a WWTP.

While the majority of the site has the level terrain required for the facility, there are substantial hills in the center and southern portions of the site. The hill in the center would restrict the facility to the edges of the property, limiting the amount of buffer between the casino and surrounding properties. The southern portion of the property is located in a designated Zone A flood zone (FEMA). Zone A is used to define an area that corresponds to the 100-year floodplains that are determined by the Federal Emergency Management Agency (FEMA) in Flood Insurance Rate Studies. Federal Executive Order 11988 requires the BIA to evaluate Federal actions taken in a floodplain. If an agency proposes to allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplain.

There are approximately seven residences currently located on the site. Displacing these existing residents from the property may not be possible. If the development were to occur on this site, trees and other vegetation would have to be cleared away (to a greater extent than the Plymouth Parcels). This would be a detrimental loss to the natural habitat and aesthetics of the area.

According to the National Resource Conservation Service (NRCS), the majority of the soil is not ideal for construction. The soils are limited by their shrink-swell characteristics and tendency to corrode steel and concrete. Thus, the Jackson Valley Road site alternative was eliminated through the screening process from detailed consideration within the EIS.

## **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 – Preferred Casino-Resort Project (Proposed Action)**

Alternative A, the Proposed Action, consists of the following components: (1) placing approximately 228.04 acres into Federal trust status; (2) approval of a gaming development and management contract; and (3) development of a casino-resort 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 and BIA's Proposed Action, most suitably meets all aspects of the purpose and needs 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 228.04-acre area of land into Federal trust status. The IRA authorizes the Secretary of the Interior to acquire land in trust for federally recognized Tribes.

The land transfer would be made in accordance with the procedures set forth in 25 C.F.R. Part 151. The Tribe's 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. Further discussion of the Secretary's authority under Section 5 is discussed in Section 8.0 of this Record of Decision.

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. Because 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 addressed. 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 120,000 square-foot gaming facility, a 166,500 square-foot hotel and a 30,000 square-foot event/conference center on the 228.04-acre site. The gaming facility would include a casino floor, food and beverage areas (consisting of a buffet, specialty restaurant, bar, and coffee bar), meeting space, guest support services, offices, and security area. The 5-story hotel facility would have 250 guest rooms and the event/conference center would have seating for 1,200 people. Access to the casino would be provided from SR 49.

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. Beverages and food would be served within a planned 250-seat buffet, a 100-seat specialty restaurant, a 50-seat sports bar, and a 10-seat coffee bar with service counter. Other components of the gaming facility would include meeting space, guest support services, offices, and security area. The casino floor area would provide 65,000 square feet for gaming purposes. The 5-story hotel building would have a total building space of approximately 166,500 square feet. The main casino driveway would provide primary vehicle access to the hotel. The event center would be a single-story building and occupy approximately 30,000 square feet. Hotel employees would staff the event center.

A revised site plan has been developed for Alternative A (refer to **Section 6** of this ROD), which include the development of a parking structure to reduce the development footprint of the parking lot surrounding jurisdictional wetland habitats. Refer to Figures 5-1 and 5-2 of the FEIS for the updated site plans for Phase I and Phase II of Alternative A, respectively.

Alternative A includes surface parking and a 5-level parking structure for a total of 2,965 spaces, which include 40 spaces for recreational vehicles and 11 spaces for buses. Approximately 25 percent of the total parking spaces for full build-out of Alternative A would be sized to accommodate compact vehicles.

Water Supply: Based on the lack of an agreement between the City and the Tribe regarding future water supplies, the Tribe has selected to meet potable water demands through groundwater development as the Preferred Water Option. Three groundwater wells are located on the Plymouth Parcels. Based on pumping tests, the total sustained yield of the groundwater wells is estimated to be approximately 116,640 gallons per day (gpd), or 81 gallons per minute (gpm). The three wells would be pumped in rotation to allow the groundwater reservoirs to recharge between pumping periods. To meet average and peak hour demands with the use of a rotational pumping schedule, water would be pumped to two 1.0 million gallon water tanks. The rotational scheme would entail pumping of the higher producing wells during times of peak occupancy (such as evenings during summer months on weekdays and weekends). During times of low occupancy (such as overnight during the winter during weekdays) the lower producing wells would be pumped.

Wastewater Treatment and Disposal: The Tribe and the City of Plymouth have not reached an agreement that would allow for the project facilities to connect to the City's municipal wastewater conveyance and treatment system. The Tribe has therefore committed to provide wastewater conveyance, treatment, reuse, and disposal through the construction and operation of a new, independent on-site wastewater treatment plant (WWTP), which would meet or exceed Federal and State standards. Based on unit treatment capacity and to allow for peak flows and redundant capacity for full build-out, the WWTP would be constructed to provide an average day capacity of 200,000 gpd. The WWTP would treat wastewater produced by the project facilities and would not service additional flows beyond those identified for this alternative. Wastewater would be treated using a membrane bioreactor (MBR) system. The MBR system is a state-of-the-art, advanced wastewater treatment process that utilizes membrane technology, comparable to that used for production of potable water. Biosolids produced by the WWTP would be dewatered and trucked off-site for disposal at a licensed landfill. Appendix B of the FEIS further describes the design of the WWTP. Treated water would be used for irrigation and toilet flushing and would be stored in a 750,000 gallon recycled water tank prior to use. This recycled water tank would assure that an adequate reserve capacity is available and recycled water does not mix with potable water in the WWTP. One hundred percent of wastewater flows would be treated to a level that meets the Title 22 of the California Code of Regulations, Division 4, Chapter 3, Water Recycling Criteria standards (Title 22 Standards) definition of tertiary treated recycled water (recycled water), making the water suitable for all recycled water uses and effluent disposal strategies identified for the project.

Under the Preferred Disposal Option, treated wastewater would be disposed of during dry weather through landscape irrigation, sprayfields, and subsurface disposal through leachfields and during the wet season through surface water discharge. Surface water discharge would occur on the Plymouth Parcels to an unnamed tributary of Dry Creek. A National Pollutant Discharge Elimination System (NPDES) permit from the USEPA would be required for the discharge of treated wastewater to the unnamed stream.

Site Drainage: Stormwater runoff generated during the operation of the casino would be conveyed by a combination of open channels, storm drains, and culverts. A drainage plan has been developed for Alternative A, and is included as Figure 2-6 of the FEIS. Runoff from the project facilities would be directed into vegetated swales or through inlets from buildings or curb inlets on roadways into storm drain pipes. Prior to release into the open channels that lead to Little Indian Creek (tributary to the Cosumnes River), 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. The proposed parking lots would be landscaped with mulched plantings or grass and would serve as bioretention areas to initially treat storm water runoff. Vegetative swales would serve as energy dissipaters and filtering mechanisms for runoff generated on-site prior to release into the site drainage channels. A detention basin would be developed on-site to reduce the increased peak flows that would result from the introduction of impervious surfaces. This basin would assure that post development runoff peaks from the operation of Phase I (and Phase II) will not exceed existing peak runoff volumes. All of the proposed facilities would be constructed outside of the 100-year floodplain.

Utilities: All new and existing utility lines (power lines, cable lines, phone lines, etc.) would be placed underground, as part of the development of Alternative A. Lighting fixtures on the project facilities would be generally consistent with the City's design guidelines specified in the *1997 Downtown Revitalization Strategy*. Lighting features will be downcast where applicable to prevent light pollution onto neighboring properties with non-commercial land uses. This downcast lighting produced will be directed away from surrounding areas and onto the Plymouth Parcels. Signage identifying the entrances to the facilities would be the minimum size and have the minimum lighting required to safely advertise to vehicles along SR 49 the entrances to the development.

Law Enforcement: Prior to operation of Phase I, 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 will 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. Tribal security personnel would work cooperatively with the Amador County Sheriff's Office (ACSO), which provides general law enforcement services to the City on a contract basis. The ACSO 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).

Fire Protection Services: To provide fire protection and emergency medical services for Alternative A, the Tribe would develop and staff an independent fire station on the Plymouth Parcels prior to the operation of Phase I. The fire station would be located immediately south



of the southern driveway, which would provide ingress and egress to SR 49. At a minimum, the on-site fire station would be equipped with a 1,750-gpm quint (combination fire engine and ladder truck), a 1,500-gpm fire engine with pump capacity and 750-gpm grass fire/foam truck (for wildfire suppression/protection and vehicle fires). The Tribal Fire Department would be staffed, at a minimum, of 4 persons, 24 hours a day, 7 days a week. All the members of the Tribal Fire Department, including the Chief Officer, would be trained to a minimum level of Fire Fighter I standards as defined in 1001 National Fire Protection Association (NFPA) standard for Fire Fighter Professional Qualifications, Chapter 5, 2002 edition. In addition to being trained professional fire fighters under the 1001 NFPA standard, the members of the Tribal Fire Department will be trained to a Paramedic (advanced life support) level under California licensure to provide First Responder emergency medical services.

### **2.2.2 Alternative B – Reduced Casino with Hotel**

Alternative B is similar to Alternative A in most respects, such as the request for the placement of the Plymouth Parcels into trust and approval of a gaming management contract. Like Alternative A, Alternative B also includes the development of a casino-resort, 250-room hotel, event and convention center, water supply facilities, wastewater treatment and disposal facilities, fire department, and site drainage features. However, under Alternative B, the main casino building would be reduced by 16 percent to accommodate less gaming spaces.

Under Alternative B, the infrastructure components related to water supply, wastewater treatment, utilities, law enforcement, and fire protection are similar to those described under Alternative A. Refer to the description of each component under Alternative A (**Section 2.2.1** of this ROD) for more detail. Refer to Figures 5-3 and 5-4 of the FEIS for the updated site plans for Phase I and Phase II of Alternative B, respectively.

### **2.2.3 Alternative C - Reduced Casino**

Alternative C consists of development of a reduced size casino-resort complex without the hotel or event/conference center proposed under Alternative A. Alternative C is similar to Alternatives A and B in most respects, entailing the placement of the property into trust and approval of a gaming management contract. Operation of the casino-resort, project construction, water supply, wastewater treatment and disposal, and site drainage would be similar to Alternatives A and B.

Under Alternative C, the infrastructure components related to water supply, wastewater treatment, utilities, law enforcement, and fire protection are similar to those described under Alternative A. For Alternative C, refer to the description of each component under Alternative A (**Section 2.2.1** of this ROD) for more detail. Refer to Figure 5-5 of the FEIS for the mitigated site plan for Alternative C.

### **2.2.4 Alternative D – Retail Development**

Alternative D is a non-gaming alternative that would result in the development of a retail center on the Plymouth Parcels. Under this alternative, land would still be placed into trust by

the BIA. However, as there would be no gaming under this alternative, there would be no approval of a gaming development and management contract by the NIGC.

Alternative D Facilities: Under Alternative D, retail and restaurant developments would be developed on Parcels #3 through #11. The development would have a horseshoe-like shape with the open end facing to the east of the Plymouth Parcels. All storefronts would face inward toward the parking facilities with no fronts open to SR 49. The horseshoe-like shape would consist of smaller in-line stores with two large anchor stores on each end. Parking for Alternative D would be located east of the retail outlet and would provide a total of 617 parking spaces.

Infrastructure and Public Services: Water supply distribution under Alternative D is similar to that described under Alternative A. Wastewater generated by Alternative D would be treated by an on-site WWTP to be developed by the Tribe. Under Alternative D, there are two options for the disposal of treated wastewater. Option 1 would utilize sprayfields and ground disposal. Option 2 would consist of surface water discharge or a combination of surface water discharge and ground disposal. These two options are similar to those described under Alternative A. However, under Option 1, a winter storage reservoir would not be required under Alternative D.

Under Alternative D, the infrastructure components related to water supply, wastewater treatment and disposal (except for the winter storage reservoir proposed under Alternatives A through C), utilities, law enforcement, and fire protection are similar to those described under Alternative A. For Alternative D, refer to the description of each component under Alternative A (**Section 2.2.1** of this ROD) for more detail.

### **2.2.5 Alternative E - No-Action Alternative**

Under the No-Action Alternative, the Plymouth Parcels 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 Plymouth Parcels would remain with the City and Amador County. The existing residences would remain on the Plymouth Parcels and surface mining activities would continue to operate. The parcels located within the City limits are designated as Urban Commercial on the City's General Plan Future Land Use Map. The remaining parcels within that are located within the County (and designated within the City's sphere of influence) are designated as Agricultural parcels. It is anticipated, that the parcels within the City limits could ultimately be developed with commercial enterprises.

## **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 surrounding 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:

- Water Supply
- Wastewater Treatment
- Biological Resources (including waters of the U.S.)
- Socioeconomic Conditions
- Transportation and Traffic
- Visual Resources
- Public Health and Safety
- 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 (A through D) would involve clearing and grading. The project design of Alternatives A through C ensures that the major topographic features (i.e., steep hills) would be preserved. Alternative D requires more fill compared to the other alternatives due to construction of stable engineered building pads. With design provisions for each alternative to reduce grading and clearing to the extent possible, impacts to topography under Alternatives A and D are less than significant. Under Alternative E, major grading may be necessary on the site and the steep hills may be altered if residential or commercial development were to occur. Through compliance with regulatory requirements, impacts from non-tribal development on the proposed site would be less than significant.

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 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 Alternative 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). Impacts to soils under Alternative E from non-tribal development would be less than significant with required compliance with the State's NPDES general permit and required SWPPP.

Seismicity – There are no known fault traces mapped on the Plymouth Parcels, and the Plymouth Parcels are not within the Alquist-Priolo Zone, therefore, no significant seismic impacts for any of the alternatives would occur.

Mineral Resources – Alterations of the land resources used under any 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 – Impacts from runoff changes from the increase in impervious surfaces resulting from Alternatives A through D would be reduced through minimization of impervious surfaces (as indicated in Figures 5-1 and 5-2 of the FEIS); incorporation of storm drains, vegetative swales, and a sediment/grease trap in the project design, and development of a detention basin ensuring 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. Non-tribal development that occurs under Alternative E would be required to follow State, City, and County policies regarding erosion control and storm water control/quality. Compliance with these provisions would ensure impacts to the existing drainage system and downstream drainages are less than significant.

Flooding – Less than one acre of Parcel #3 is within Flood Zone A, an area with a one percent annual chance flooding for which no base flood elevations have been determined. Development of Alternatives A through D would not occur in this portion of the Plymouth Parcels; therefore, no adverse impacts associated with flooding or floodplain management would occur. Non-tribal development that occurs under Alternative E would be required to comply with State and local flood policies, which include the prevention of any development within or the alteration of floodplains. Development of Alternative E would therefore result in no impact associated with flooding and floodplain management.

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, 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 plan 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 outlined in Sections 6.1 and 6.2 of this ROD, impacts to water quality during construction of Alternatives A through D would be less than significant. Development that occurs under Alternative E would be required to comply with the Central Valley Regional Water Quality Control Board (CVRWQCB) water quality objectives as well as City/County General Plan policies. Impacts associated with anticipated commercial and/or residential development under Alternative E would be less than significant.

Wastewater Disposal – Wastewater from the Alternative A through D WWTP facilities would be treated to a level that meets the Title 22 Standards. Storage and disposal of treated effluent could result in discharges to surface waters, which could potentially impact surface water quality. In part as a result of issues raised during the EIS process, Wastewater Disposal Option 2 was selected as the preferred option. This option entails dry weather discharge through landscape irrigation, sprayfields, and subsurface disposal and surface water discharge during rainy weather to a tributary of Dry Creek under a NPDES permit from the USEPA. This option would result in fewer environmental impacts than Option 1 (storage reservoir option). The NPDES permit would include additional discharge limitations that would ensure that the treated effluent meets established water quality objectives and is of sufficient quality to support beneficial uses of the receiving water. A sampling and monitoring program is provided as mitigation for sprayfield and landscape irrigation and subsurface disposal to reduce the impacts to surface and groundwater quality to less-than-significant levels. Non-tribal development under Alternative E would be required to connect to the City’s WWTP; this is discussed in **Section 3.1.8** below.

Groundwater – In response to issues raised during the EIS process, and because the Tribe does not have an existing agreement with the City, Water Supply Option 2 has been selected as the preferred option. Under this option, the Tribe will utilize two on-site wells and one off-site well and two 1-million gallons storage tanks to meet potable water demands. Based on comments received on the DEIS, the Tribe would implement a groundwater-monitoring program in consultation with the BIA. To reduce the potable water demands of Alternative A through C, the Tribe would develop the facilities with dual plumbing to maximize recycled water use. The incorporation of mitigation measures identified in **Section 6.2** of this ROD would ensure potential effects to groundwater resources from development of an on-site groundwater supply system proposed under Alternatives A through D would be less-than-significant. Non-tribal development under Alternative E would connect to the City’s water supply system. Therefore, non-tribal commercial and or residential development under Alternative E would result in no impact to groundwater resources.

### **3.1.3 Air Quality**

Construction Emissions – Emissions of ozone precursors nitrogen oxides (NO<sub>x</sub>) and reactive organic gases (ROGs) during implementation Alternatives A through D would not exceed Clean Air Act (CAA) General Conformity thresholds; therefore, there would be a minimal adverse effect to air quality from the construction of Alternatives A through D. Through compliance with the National Emissions Standards for Hazardous Air Pollutants (NESHAP) reporting and operating requirements as regulated under the Federal Clean Air Act, the demolition of structures during the development of Alternatives A through D that may contain asbestos would have a less than significant impact on air quality. The impacts to air quality from construction of Alternatives A through D would be less than significant. Under Alternative E, the Plymouth Parcels may be developed in the future, at which time construction of the future project would likely emit ozone precursors ROG and NO<sub>x</sub>, as well as, other criteria air pollutants (CAPs).

Operational Emissions – Emissions of ozone precursors NO<sub>x</sub> and ROGs from the operation of Alternatives A through D would not exceed CAA General Conformity thresholds; therefore,

there would be a minimal adverse effect to air quality. Under Alternative E, the Plymouth Parcels may be developed and operated in the future, at which time the operation of any future project would likely result in the emission of ozone precursors ROG and NO<sub>x</sub> as well as other CAPs.

### 3.1.4 Biological Resources

Wildlife and Habitats –There are no known United States Fish and Wildlife Service (USFWS) designated critical habitats within the project area of Alternatives A through D. The majority of the habitat disturbance during development would occur in annual grassland habitat. These areas present limited resources for wildlife and are currently subject to disturbance from existing forms of land use, specifically cattle grazing. On-site oak savannah, oak woodland, and riparian woodland provide habitat for several migratory bird species. Measures to mitigate for adverse effects to trees within these habitat types, including avoidance and fencing, are provided. After mitigation, impacts to wildlife and habitats under each of the development alternatives would be reduced to less than significant. Non-tribal development under Alternative E would be required to comply with general plan provisions on resource conservation and with the California Department of Fish and Game provisions. With regulatory requirements restricting impacts to biological resources, non-tribal development would result in less-than-significant impacts to wildlife and habitat.

Waters of the U.S. –Alternatives A through D would impact potentially jurisdictional wetland features. In response to issues raised during the EIS process, and consultation with the USEPA, mitigated site plans have been developed for Alternatives A through C, which include the development of a parking structure to reduce the development footprint of the parking lot adjacent to jurisdictional wetland habitats. Refer to Figures 5-1 and 5-5 of the FEIS. Additional mitigation measures identified in the FEIS including compensatory wetland creation in another location and BMPs related to Land Resources that would further reduce impacts to wetlands and waters of the U.S. to a less-than-significant level. With regulatory requirements restricting impacts to biological resources, non-tribal development under Alternative E would result in less-than-significant impacts to waters of the U.S.

Federally-Listed Special-Status Species – Five federally-listed special-status species have the potential to occur within the Plymouth Parcels: vernal pool fairy shrimp (VPFS) (*Branchinecta lynchi*), valley elderberry longhorn beetle (VELB) (*Desmocerus californicus dimorphus*), vernal pool tadpole shrimp (VPTS) (*Lepidurus packardii*), California red-legged frog CRLF) (*Rana aurora draytonii*), and the California tiger salamander, central population (CTS) (*Ambystoma californiense*). The BIA concluded that while the Proposed Action may affect, it is not likely to adversely affect the five federally-listed species and initiated consultation in a memorandum to dated June 6, 2005, with the USFWS in accordance with Section 7 of the Endangered Species Act (ESA). The USFWS responded with a memorandum dated August 12, 2005, which requested additional information regarding the potential for federally-listed special-status species to occur on the Plymouth Parcels. In response to the memorandum from the USFWS, an updated Section 7 consultation package was sent to the USFWS which contained a revised Biological Assessment, a 2007 CRLF Habitat Assessment and a 2010 CRLF Survey Report, a 2003 CTS Habitat Assessment, a 2010 Stream Assessment, and the 2005 and 2007 90-Day Reports of Vernal Pool Branchiopods. The completed protocol-level surveys for VELB, CRLF, CTS, and the vernal

pool species (including 2 years of completed wet season surveys) document negative findings for the listed species.

In addition to the species mentioned above, the 2010 Stream Assessment for the Proposed Action evaluated the potential for impacts to listed salmonids which could be affected by the proposed discharge of tertiary treated wastewater effluent to an on-site tributary to Dry Creek. The assessment discusses the existing hydrology of the Plymouth Parcels and evaluates potential project effects of the proposed discharge to the physical habitats, biological resources (including special status species), and beneficial uses of the proposed receiving waters. Three federal sensitive fish species (all anadromous) were determined to potentially occur in Dry Creek as a result of the special status species searches: Central Valley steelhead (*Oncorhynchus mykiss*) federally threatened (FT), fall run Central Valley Chinook salmon (*Oncorhynchus tshawytscha*) federally endangered (FE), and spring run Central Valley Chinook salmon (*Oncorhynchus tshawytscha*) (FE). Based on stream assessment field observations, literature searches, high level (tertiary) of treatment that would be provided, and the fact that the proposed discharge is above the point of anadromy, the BIA concludes that the proposed project is not likely to adversely affect federally-listed fish species.

After completion of the updated Section 7 consultation package, the BIA concluded that the original conclusion in the 2005 consultation package was accurate to state that while the Proposed Action may affect, it is not likely to adversely affect the following listed species: VELB, CTS, and CRF. Additionally, the Plymouth Parcels have been surveyed over two seasons for vernal pool species, and based on the results of those surveys and the fact that the two vernal pools on the site would be completely avoided by the modified project facilities, the BIA concludes that the Proposed Action would have no effect on any vernal pool listed species. Furthermore, for the reasons stated above, BIA concludes that the Proposed Action is not likely to adversely affect federally listed fish species.

Migratory Birds –The construction of Alternatives A through D may include the removal of trees and vegetation and earth grading which, if phased during nesting seasons, have the potential to adversely affect the nesting activity of the migratory species. Development of Alternatives A through D may have moderate adverse effects on nesting migratory birds. However, mitigation measures including preconstruction surveys, establishment of setbacks, and monitoring, would reduce such effects to a less than significant level. With regulatory requirements restricting impacts to biological resources, non-tribal development under Alternative E would result in less-than-significant impacts to migratory birds.

### **3.1.5 Cultural Resources**

Evaluation of the historic resources identified on the Plymouth Parcels found that they were also ineligible for inclusion to the National Register of Historic Places (NRHP). Development of Alternatives A through D would, therefore, result in a less-than-significant impact to cultural resources. The State Historic Preservation Officer has concurred with the BIA's determination that project development on the Plymouth Parcels under Alternatives A through D would not adversely affect historic properties (refer to Appendix K of the FEIS). Mitigation is provided in the event of unexpected discovery that would reduce impacts to as yet undiscovered cultural resources less than significant, including compliance with the

NHPA, Native American Graves Protection and Repatriation Act, and Archaeological Resource Protection Act.

No known paleontological resources have been reported within or in the immediate vicinity of the Plymouth Parcels. Therefore, no adverse effects would occur from the development of Alternatives A through D.

Non-tribal developments under Alternative E would be required to comply with State and local regulations regarding cultural and paleontological resources, resulting in less than significant impacts.

### **3.1.6 Socioeconomic Conditions and Environmental Justice**

Socioeconomic Conditions – Construction of Alternatives A through D would result in the employment of construction workers and is considered a beneficial impact. Due to the existing labor force in surrounding communities, the number of available vacant residential units, the limited amount of new construction expected, and that new housing is expected to be located over a wide geographic area, the potential effects to housing would be less than significant. The development proposed under Alternatives A through D would benefit the Tribe, as it would generate new income and tribal members would have access to new jobs. The creation of employment opportunities on the reservation would also benefit local residents. Additional students that would attend schools in Amador County School District (District) as a result of Alternatives A through E may place additional demands on the District. Based on issues raised during the EIS process, payments to the District were included within a Municipal Services Agreement (MSA) between the Tribe and the City. The MSA was later voided in court and the Tribe requested BIA incorporate the payment provisions of the MSA as mitigation in the EIS. Therefore, payment of school impact fees to the District in an amount to be agreed upon between the Tribe and the District was included in the FEIS to mitigate effects that may occur as a result of development of Alternatives A through D. This would reduce impacts to a less than significant level. Although an additional casino in Amador County under Alternatives A through C is not expected to substantially increase the prevalence of problem gamblers, in accordance with issues raised during development of the EIS the Tribe has agreed to make an annual contribution to an organization or organizations to address problem gambling issues.

Environmental Justice – Development of Alternatives A through D would benefit all communities within proximity of the Plymouth Parcels by creating employment opportunities that would be primarily filled by the local labor market. These communities would not be disproportionately adversely impacted. A less-than-significant effect would result.

Under Alternative E, the scope of socioeconomic impacts that would result depends on the land use development. Residential development would result in substantial housing impacts, whereas commercial development would generate expenditures and employment similar to Alternative D, discussed above. The beneficial socioeconomic impacts of the magnitude discussed above for Alternatives A through C would not occur under non-tribal commercial development.



### 3.1.7 Resource Use Patterns

Transportation/Circulation – In response to issues raised on the DEIS, a revised Traffic Impact Analysis (TIA) was prepared and included as Appendix M and summarized in Section 4.8 of the FEIS. Specifically, the analysis and study areas were revised in response to comments on the DEIS and in consultation with local jurisdictions. As stated in the revised TIA, 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 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 and for intersections meeting the Manual on Uniform Traffic Control Devices (MUTCD) signal warrant during operation of Alternatives A through D (refer to **Section 6.7** of this ROD). With the incorporation of project mitigation measures, impacts to project roadways would be reduced to a less-than-significant level. Under Alternative E, no casino would be built; however, the site may be utilized for other purposes in the future. The traffic conditions under Alternative E would be as described for the baseline conditions for each target year; however, future traffic increases may occur due to future approved projects.

Land Use –Proposed land uses for Parcels #4 through #11, would be consistent with the City of Plymouth General Plan and Zoning Commercial Designations. Parcels #8 and #9 are currently developed with a land use (single-family dwelling) that is inconsistent with the City General Plan designation for the parcels. Alternative A would replace this use with a casino parking area that would be consistent with the existing planned land use designation. Though consistent with the City General Plan, the development of the City Parcels would result in a noticeable increase in land use intensity, however for Alternatives A through D, this would be a less than significant impact. Development on lands currently under jurisdiction of the County would also result in a noticeable increase in land use intensity. Under Alternative E, non-tribal development would be required to be consistent with City and County zoning and general plan provisions and would result in less-than-significant impacts relating to land use.

### 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 – As discussed in **Section 3.1.2** of this ROD, Water Supply Option 2 has been selected as the preferred option. Development of Alternatives A through D with Water Supply Option 2 would have no impact on the City’s water supply. Through compliance with the environmental review process, as well as City and County requirements, non-tribal development under Alternative E would have a less-than-significant impact on the water supply.

Wastewater – An on-site WWTP would be built to treat wastewater discharged from developments planned under Alternatives A through D. With the development of on-site wastewater treatment, no connection to municipal wastewater treatment would be required to

develop Alternatives A through D, and therefore there would be no effect to municipal services.

Solid Waste – Impacts to regional waste disposal and related services would be less than significant and mitigation measures including the preparation of a Waste Management Plan, installation of recycling containers, and the adoption of universal waste disposal practices would further reduce any impacts to the waste stream. Non-tribal development and associated generation of solid waste under Alternative E would not result in adverse impacts to solid waste facilities.

Utilities – Connection to the electrical grid would require upgrade of the existing power transmission lines. Mitigation to reduce potential impacts to less-than-significant levels consists of funding the upgrade of the power lines to support the demands of the project. Impacts associated with power usage would be further reduced through the implementation of the air quality mitigation measures by increasing the energy efficiency of Alternatives A through D. Implementation of Alternative A through D would result in a less-than-significant impact to telecommunications. Non-tribal development on the Plymouth Parcels under Alternative E would be required to upgrade the existing power lines, similar to that of the development alternatives addressed above. With the associated upgrades of the existing power lines, non-tribal development would result in a less-than-significant impact on electrical systems.

Public Health and Safety – The development of Alternatives A through C would increase the number of full-time equivalent (FTE) officers needed in the Amador County Sheriff's Office, the number of staff working at the Amador County District Attorney's Office, and possibly California Highway Patrol and other law enforcement and emergency services operating in Amador County. This is a potentially significant impact. In response to issues raised during the EIS process, mitigation measures including in lieu payments were included within the MSA. Once voided, these payments were included as mitigation measures within the DEIS and carried over to the FEIS. In addition, the implementation of responsible alcohol policies and installation of lighting and signage to decrease loitering would reduce effects to law enforcement and emergency services to a less-than-significant level. A less-than-significant effect is expected for Alternative D and no mitigation is required.

With residential development assumed for the project site, Alternative E would result in an increased need for fire protection and emergency medical services. However, the Tribe would not fund the construction or operation of an on-site fire station. With increased service calls and no additional fire station, impacts associated with non-tribal development would be significant to fire protection and emergency medical services.

### **3.1.9 Other Values**

Noise – In response to issues identified during the EIS process, a noise assessment was conducted to further address potential impacts related to noise. Based on the results of the assessment, construction activities under Alternatives A through D would result in short-term increases in the local ambient noise environment in excess of the 5 dB threshold of significance. Mitigation provided in the FEIS would limit construction activities to normal daytime hours. Operational noise impacts from the use of mechanical equipment, on-site

deliveries, and transportation sources were assessed in the noise analysis. Because the estimated distance from the development to the nearest off-site residence is approximately 500 feet, the mechanical equipment noise from the casino or retail development would not be approach significant noise levels at the nearest sensitive noise receptor. However, loading dock noise would be more than 5 dBA above existing nighttime levels in this area. Mitigation is proposed, including the construction of sound barriers to reduce this effect to a less-than-significant impact. Project related traffic noise level increases would not exceed the threshold of 5 dBA above the equivalent continuous noise level (Leq) along any of the off-site project segments analyzed. Under Alternatives A through C, parking areas in the southwestern and northwestern portion of the Plymouth Parcels have the potential to increase off-site noise levels. For Alternative D, no mitigation would be needed for residences to the northwest, but residences to the southwest would need noise attenuation. Earthen berms would be constructed as mitigation to reduce the effect of on-site traffic noise on nearby residences to below an average Leq of 45 decibels, resulting in a less-than-significant impact. Impacts resulting from Alternative E would be less than significant due to compliance with local regulations required by non-tribal projects.

Hazardous Materials – Existing mine tailings were the only recognized environmental condition on the Plymouth Parcels. The areas adjacent to the mine tailings would not be developed under Alternatives A through D and a 50-foot setback would be established, surrounding the mine tailings. Leaving the mine tailings in place does not pose an immediate risk to human health and the environment. Mitigation measures describing the capping of mine tailings are provided to reduce impacts to less-than-significant levels. Incorporation of the BMPs for containment of accidental releases would reduce impacts from Alternatives A through D to a less-than-significant level. During operation of Alternatives A through D, effects to the environment or public are considered to be less than significant. Mitigation includes provisions for the proper disposal of commercial universal waste, and would ensure impacts from generation and disposal of universal wastes are less than significant. Compliance with Federal petroleum storage regulations would ensure that storage of diesel fuel for emergency generators and bulk propane on-site would be less than significant. Under Alternative E, long-term development would increase use of low levels of hazardous materials ranging from cleaning products at commercial developments to household hazardous materials such as pesticides, paints, and automobile fluids. The increase in hazardous materials use over the long-term on the Plymouth Parcels would be less than significant.

Visual Resources – Development of Alternatives A through D would result in the change of views for both north and south bound travelers along SR 49; however, design features incorporated into Alternatives A through D will ensure the project does not substantially degrade the visual character of the site and its surroundings. All lighting fixtures on the project facilities will be downcast to decrease light impacts to the surrounding vicinity to a less than significant level. As indicated in the updated site plan (Figure 5-2 in Section 5.2.5 of the FEIS), by moving the project farther away from SR-49 and providing landscaping along the property adjacent to 49, the visual impacts are softened such that visual impacts are less than significant. With the implementation of the mitigation measure for participation in Caltrans' Adopt-A-Highway Program, impacts to visual resources would be further reduced.

Under Alternative E, it is anticipated that the project site would eventually be developed with residential and/or commercial structures at a density greater than current conditions, consistent with existing land use designations. Based on long-term development, the rural character of the project site would most likely be transformed, significantly impacting existing visual resources. This development would be required to comply with the City and County general plan and zoning ordinances regarding visual resources, thereby reducing impacts to less-than-significant levels.

### **3.1.10 Indirect Effects**

Indirect Effects from Socioeconomic Conditions – As described in detail in Section 4.7 of the FEIS, Alternatives A through D would not result in significant indirect effects (effects caused by the action but occurring later in time or removed in distance). Indirect socioeconomic effects on the local and regional economy would result in beneficial effects to surrounding communities, creating jobs, expenditures on goods and services, and increasing demand for housing. Additionally, the Tribe will develop and implement a housing program to address the availability of affordable housing within Amador County. The housing program would coordinate its activities with Amador County and the City of Plymouth in order to further countywide planning efforts [refer to Mitigation Measure 5.2.7(C) of the FEIS].

Indirect Effects from Off-Site Traffic Mitigation – As described in detail in Section 4.12 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. With standard construction practices and specifications required by the NPDES permit program, Caltrans, Amador County, and/or the City of Plymouth, the intersection improvements identified under the project alternatives would result in less-than-significant effects to land resources. To address effects to sensitive habitat and species, biological surveys and appropriate avoidance and/or mitigation measures would be required to comply with the California Environmental Quality Act (CEQA). To address potential impacts to cultural resources, cultural surveys and appropriate avoidance and/or mitigation measures may be required to comply with the CEQA. Because some of the improvements may not be completed for 5-20 years, and as the actual extent of improvements may change due to the actual growth in traffic volume, mitigation has been identified to address the potential indirect effects to air quality, biological resources, socioeconomics, and noise.

### **3.1.11 Growth-Inducing Effects**

The creation of additional jobs within the County would result in an increase in housing demand within Amador and surrounding counties. In the long-term, most employees would likely continue to reside within their existing communities. However, some employees would choose to buy their first home or relocate within the County. Additionally, the increased demand for rental housing in the area could result in the construction of new housing units. Most increased demands for goods and services would be captured by existing businesses. However, it is likely that some existing businesses would expand and other businesses would be created as the result of the increase in commercial activity. As with residential development, commercial development would be subject to approval by local government according to land use plans and ordinances. Therefore, the Proposed Action and alternatives would not induce “disorderly” commercial growth either directly or indirectly.

### **3.1.12 Cumulative Effects**

#### Alternative A through D

The development alternatives when added to past, present, and reasonably foreseeable future actions would not result in significant cumulative impacts to air quality (except Green House Gases), agricultural resources, biological resources, cultural resources, hazardous materials, land resources, noise, public services, and visual resources with mitigation identified under the direct effects.

Green House Gas (GHG) emissions under Alternatives A through D when added to past, present, and reasonably foreseeable future actions would be cumulatively considerable. With the implementation of diesel anti-idling, participation in the State's 50 percent recycling goal, and increasing water use efficiency as mitigation measures, the development alternatives would conform to the state climate reduction strategies. Therefore, implementation of Alternatives A through D, with mitigation, would result in a less-than-significant cumulatively considerable impact to global GHG emissions and inventories.

Affordable housing impacts of Alternatives A through D when added to past, present, and reasonably foreseeable future actions would be cumulatively considerable. Mitigation for these effects consists of the development and implementation of a housing program to address the availability of affordable housing within Amador County. Therefore, implementation of Alternatives A through D, with mitigation, would result in a less than significant cumulatively considerable impact to affordable housing.

When added to past, present, and reasonably foreseeable future actions, development of Alternatives A through D would result an unacceptable Level of Service (LOS) in the cumulative year 2025 at various roadway segments and intersections in the vicinity of the Plymouth Parcels. As mitigation, the Tribe would be responsible for a certain share of the financial burden of implementing upgrades that would maintain traffic operations at an acceptable level. An estimate of these shares for each affected intersection is provided in **Section 6.7** of this ROD.

#### Alternative E

Under Alternative E, cumulative impacts from other development would still be experienced. If the Plymouth Parcels were developed by a non-tribal entity in the future, then the cumulative impacts would be similar to those described above for the no-project setting under each alternative.

### **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 13, 2010, the BIA received 11 comment letters from agencies and 8 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 for this project. A list of each comment letter and a copy of each comment letter received from the agencies and from interested parties re included within Attachment III. Specific responses to the comment letters are included in the Response to Comments document, which is also included in Attachment III.

### **4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)**

Either the Retail Development Alternative (Alternative D) or the No-Action Alternative (Alternative E) would result in the fewest effects to the biological and physical environment. Because the exact type of development that would occur under the No-Action Alternative cannot be predicted with certainty assumptions are required to assess whether it would result in similar, lesser, or greater impacts to the natural and human environment than the Proposed Action. Although environmental impacts are anticipated to occur under the No-Action Alternative in relation to future development on the site, these impacts are assumed to be less than those of the Proposed Action because future non-tribal development would be required to comply with County and City zoning ordinances and general plans, and accordingly would be environmentally preferred. The No-Action Alternative would not meet the stated purpose and need. Specifically, it would not provide a land base for the Tribe, which has no trust land, and therefore does not provide the Tribe with an area in which the Tribe may engage in 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 Amador County and the City of Plymouth than the development alternatives.

Of the development alternatives, Alternative D would result in the fewest adverse effects on the human environment. Alternative D 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 D would generate less revenue, and therefore reduce the number of programs and services the tribal government could offer tribal members and neighboring communities. Alternative D is the Environmentally Preferred 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 Action) is the Preferred Alternative. Of the alternatives evaluated within the EIS, Alternative A would best meet the purposes and need for action by promoting the long-term economic vitality, self-sufficiency, self-determination, and self-governance of the Tribe. The tribal government facilities and casino-resort complex described under Alternative A would provide the Tribe, which has no trust land, 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 stable and 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 greater environmental impacts than either of the environmentally preferred alternatives, those alternatives do not meet the purpose and need for the Proposed Action, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD.

Alternatives B and C, while less intensive than Alternative A, would require similar levels of mitigation for identified impacts (such as mitigation for impacts to wetlands and the regional roadway network); 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. Based on the limitations of the environmental resources in the area (such as the existing roadway network), 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 Plymouth Parcels, Alternative C would provide further limited opportunities for capital development to fund tribal programs.

The competitive market forces associated with commercial development, the amount of competitive commercial development within Amador County and the surrounding greater Sacramento area, and the location of the Plymouth Parcels make Alternative D (retail center development) less attractive than Alternative A from the standpoint of securing a long-term, sustainable revenue stream. A retail development on the Plymouth Parcels would have limited competitive ability to draw patrons from the greater population centers within Amador County and the Greater Sacramento area compared to the gaming alternatives. In addition, based on peak hour traffic patterns for retail centers compared to gaming operations, Alternative D also would likely have equal to and in certain areas greater traffic impacts during peak hours than would Alternative A.

In short, Alternative A is the alternative. It best meets the purposes and needs of the Tribe and the BIA while preserving the key natural resources of the Plymouth Parcels. 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 Mitigation Monitoring and Enforcement Plan (MMEP) (see Chapter 2.0 of the BIA's Decision Package).

## 6.1 LAND RESOURCES

- A. In compliance with the Clean Water Act, the Tribe shall apply for coverage under the USEPA's NPDES General Construction Permit (GCP). In compliance with permitting requirements, the Tribe shall develop a SWPPP that shall address water quality impacts associated with construction and operation of the project. Water quality control measures identified in the SWPPP shall include but not be limited to the following list. These measures shall be implemented where feasible.

### **Construction Measures**

1. Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.
2. 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.
3. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.
4. Construction area entrances and exits shall be stabilized with crushed aggregate.
5. Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures.
6. A spill prevention and countermeasure plan shall be developed, if necessary, which shall identify proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.
7. Petroleum products shall be stored, handled, used, and disposed of properly.
8. Construction materials, including topsoil and chemicals shall be stored, covered, and isolated to prevent runoff losses and contamination of groundwater.
9. Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.
10. Sanitary facilities shall be provided for construction workers.
11. Disposal facilities shall be provided for soil wastes, including excess asphalt produced during construction.
12. 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.
13. 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.

14. 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.
15. Creating construction zones and phasing construction through 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.
16. Utility installations shall be coordinated to limit the number of excavations.
17. 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.
18. 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 SR 49.
19. 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.
20. 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.
21. 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.
22. An independent storm water inspector would be hired by the Tribe to ensure all NPDES permitting requirements are being implemented. The inspector will have authority to require construction contractors as well as their subcontractors to stop work until all aspects of the NPDES permit are implemented.

### **Operational Measures**

23. 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."

24. 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.
  25. Permanent energy dissipaters shall be included for drainage outlets.
  26. The Tribe shall create, utilize, and update as necessary a maintenance plan for all BMPs for erosion and sediment control. BMPs will be selected and installed according to guidelines in the State of California Stormwater Quality Handbook and/or Caltrans Stormwater Quality Handbook.
- B. The existing water pipeline connecting the project wells will be evaluated for compliance with the Uniform Building Code (UBC). Sections and components of the existing pipeline that do not meet UBC standard shall be retrofitted with components complying with the UBC, Division IV, which covers earthquake design.

## 6.2 WATER RESOURCES

- A. In compliance with the Clean Water Act, the Tribe shall apply for coverage under the USEPA's NPDES GCP. In compliance with permitting requirements, the Tribe shall develop a SWPPP that shall address water quality impacts associated with construction and operation of the project. These measures are identified in **Section 6.1**.
- B. An NPDES permit shall be obtained for discharge of treated effluent into the Waters of the United States.
- C. As part of the overall water sampling and monitoring program for the WWTP a spray field monitoring plan shall be developed and implemented to ensure potential tail water is being captured and that no tail water is discharged to surface waters. The monitoring plan will include, but not be limited to the following:
1. Water from spray field drift shall not migrate out of the spray field boundary.
  2. All tail water and/or stormwater shall be collected and returned to the WWTP holding pond at all times when water is being applied to the spray disposal field.
  3. The Tribe shall use the spray fields only during periods of dry weather. The Tribe will not use the spray fields 24 hours prior to a forecasted rain event and will wait 24 hours after the rain event to return to spray field operation.
  4. A tail water capture system will be operated to capture all waste water runoff, as well as stormwater runoff that occurs 24 hours after the last application of wastewater to the spray fields.
  5. The spray fields shall not be operated during periods of high winds exceeding 30 mph.
  6. A controlled 100-foot buffer shall be maintained around the spray field operating area.

- D. The Tribe shall develop and implement a groundwater-monitoring program in consultation with the BIA. The purpose of the program shall be to monitor groundwater levels to determine if the Tribe's groundwater pumping practices are significantly affecting an off-site user of groundwater. In order to monitor groundwater levels the Tribe shall equip a number of existing wells on the Plymouth Parcels as monitoring wells. These wells shall not be used for groundwater supply. The Tribe shall develop additional monitoring wells if it is later determined that the developed monitoring wells are insufficient. Should off-site monitoring wells be developed, the Tribe shall ensure compliance with the State of California Department of Public Health requirements for well development and the California Department of Water Resources Bulletin 74-90: California Well Standards. A long-term monitoring plan shall be developed and shall include the siting, design and installation of monitoring wells appropriately placed between the Project wells and the nearest off-site wells, taking into consideration the topography, geology, hydrogeology, pump rates of offsite users, and planned future development. The monitoring plan shall identify the number of monitoring wells, the frequency and duration of monitoring, reporting requirements, and the selection of contractors to conduct the monitoring and prepare monitoring reports. Baseline groundwater elevations and water quality data would then be collected. This would be performed during the facility design and construction stage to allow for the monitoring to encompass an entire hydrogeologic cycle. In addition, variances to the baseline values along with "not to exceed" values would be established to ensure there are no significant impacts to offsite well owners.

If it is determined that off-site wells are significantly affected by the Tribe's pumping practices, the Tribe shall undertake one or more of the following measures:

1. The Tribe may alter its groundwater-pumping regime. This may include increasing the resting period or decreasing pumping rate of individual wells.
2. The Tribe may pay for an off-site user's well to be drilled deeper in order to recover pre-project consumptive use that was reduced or lost as the result of the Tribe's pumping practice. The determination regarding whether the groundwater user's pre-project consumptive use is reasonably determined to have been reduced or lost as the result of the Tribe's groundwater pumping practice shall be made by an engineer retained by the Tribe.
3. The Tribe may pay for the development of a new well to replace an off-site user's existing well that is no longer able to supply pre-project consumptive use as the result of the Tribe's pumping practice or financially compensate the impacts to the well owner through mutual agreement.
4. The Tribe may replace the water used by off-site user that is lost as the result of the Tribe's pumping practice through the import of water via tanker truck or, if practical, through the development of a connection to the municipal system.
5. The Tribe may selectively recharge portions of the basin impacted by the Tribe's wells.

6. The Tribe may decrease the project's reliance on groundwater and increase the importation of water via tanker truck.
- E. The three wells for obtaining groundwater shall be pumped in rotation to allow for recharge of the aquifer.
- F. The following additional conservation measures shall be implemented by the Tribe to further reduce water usage:
  1. Checking steam traps and ensuring return of steam condensate to boiler for reuse.
  2. Planting of drought resistant landscaping.
  3. Limiting boiler blowdown and adjusting for optimal water usage.
  4. Using low flow faucets and/or aerators in casino and hotel.
  5. Using low flow showerheads in hotel.
  6. Encouraging voluntary towel re-use by hotel guests.
  7. Using pressure washers and water brooms instead of hoses for cleaning.
  8. Using garbage disposal on-demand in restaurant.
  9. Incorporating a re-circulating cooling loop for water cooled refrigeration and ice machines in restaurants.
  10. Serving water to customers on request at restaurant.
- G. A sampling and monitoring program for the WWTP shall be developed and implemented with oversight by USEPA in accordance with the Clean Water Act. Treated effluent shall be monitored to determine the efficacy of the treatment process and to assure compliance with the NPDES permit.

### **6.3 AIR QUALITY**

#### **Construction Impacts**

- A. The Tribe will follow USEPA, Region 9, reporting and operating requirements in compliance with the National Emissions Standard for Hazardous Air Pollutants (NESHAP) for asbestos as regulated under the Federal Clean Air Act.
- B. The Tribe shall control emissions of volatile organic compounds (VOCs), NOx sulfur oxides (SOx), and CO whenever reasonable and practicable by requiring all diesel-powered equipment be properly maintained and minimize idle time to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions.

- C. The following mitigation measures shall be implemented where feasible and when reasonable to reduce particulate matter emission from construction activities:
1. Water all active construction areas at least three times daily during dry weather.
  2. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
  3. Pave or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
  4. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
  5. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
  6. Hydroseed or apply (non-toxic) soil stabilizes to inactive construction areas (previously graded areas inactive for 10 days or more).
  7. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
  8. Limit traffic speeds on unpaved roads to 15 miles per hour.
  9. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  10. Replant vegetation in disturbed areas as quickly as possible.
  11. Install windbreaks, or plant trees/vegetative windbreaks at windward side(s) of construction areas.
  12. Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour.
  13. Limit the area subject to excavation, grading and other construction activity at any one time.
- D. The Tribe shall ensure through contract requirements that all development contractors locate construction staging areas on the east side of the project site away from residents. This would reduce sensitive receptor exposure to diesel particulate matter (DPM).
- E. The Tribe shall ensure through contract requirements that development contractors establish activity schedules designed to minimized traffic congestion around the construction site. This mitigation measure would reduce idling; thus, reducing NOx, ROG, and DPM emissions.
- F. The Tribe shall ensure through contract requirements that all contractors use only construction vehicles and heavy equipment that are equipped with, at a minimum, USEPA-approved emission control devices. This mitigation measure would reduce NOx, ROG, and DPM emissions.

- G. The Tribe shall limit outdoor construction activities at the project site to Monday through Saturday between the hours of 6 a.m. to 6 p.m.

### **Operational Impacts**

- H. The Tribe shall provide on-site pedestrian facility enhancements such as walkways, benches, property lighting, and building access, which are physically separated from parking lot traffic.
- I. Buses and other commercial diesel-fueled vehicles shall comply with the California Air Resource Board's 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. Furthermore, the Tribe shall provide a "Drivers Lounge" for bus and truck drivers to discourage idling.
- J. The Tribe shall install electrical outlets at the loading dock(s) of the development for refrigeration trucks. By providing electrical outlets to refrigeration trucks they will not need to idle, thus reducing emissions.
- K. The Tribe shall encourage and facilitate the use of 'carpools' by construction workers, facility employees, and patrons. Encouraging and facilitating carpools would reduce the number of trips to and from the development, which would reduce operational emissions.
- L. The Tribe shall provide signs that inform patrons that smoking is allowed at the facility and shall provide nonsmoking areas. The Tribe shall also provide pamphlets to employees on the health risk from second-hand smoke.
- M. The Tribe shall ensure the installation of solar, low-emission, central, or tank less water heaters; wall insulation; and energy efficient appliances in the project facilities where feasible and when reasonable that shall exceed California Title 24 energy requirements.
- N. The Tribe shall require the use of energy efficient lighting where feasible and when reasonable, which would reduce indirect greenhouse gas emissions.
- O. The Tribe shall install water efficient water heaters, toilets, showers heads, ice machines, and faucets where feasible and when reasonable.
- P. The Tribe shall develop an alternative energy plan, which shall include installation of photovoltaic cell arrays where feasible and when reasonable. Potential locations for the photovoltaic cell arrays include the parking structure and other facility rooftops.

## 6.4 BIOLOGICAL RESOURCES

### Habitats

- A. Project site plans shall be modified to avoid or minimize impacts to oak trees to the extent feasible. During construction, oak trees that are not to be considered impacted shall be enclosed in 4 foot high temporary construction fencing, installed at least 1 foot outside the dripline of all oak trees located in the vicinity of active construction. Encroachment into fenced areas shall not be permitted until all construction has been completed.
- B. Removal of oak trees with a diameter at breast height (dbh) of 5 inches or greater, shall be avoided to the extent feasible. If avoidance is not possible, oak trees with a dbh between 5 inches and 24 inches shall be replaced at a 2:1 ratio and oak trees with a dbh greater than 24 inches shall be replaced at a 3:1 ratio. Replacement plantings shall be a minimum of 1 gallon in size and shall be monitored for 7 years, consistent with Section 21083.4 of the Public Resources Code. Any failed oak tree plantings shall be replaced.
- C. Project site plans shall be modified to avoid or minimize impacts to riparian woodland habitat to the extent feasible. Temporary fencing shall be installed around riparian woodland habitat outside of construction areas. Fencing shall remain in place until all construction activities within the vicinity of the protected riparian area are complete. Impacted riparian areas shall be either restored or mitigated for by enhancement of riparian habitat within the property at a 1:1 ratio. Restored and/or enhanced riparian woodland habitats shall be monitored for a period of 5 years.
- D. Invasive plant species of concern for Amador County and the State of California shall not be used for landscaping development of the proposed project. Management of the spray fields for wastewater disposal shall be conducted in a way that will discourage the growth of exotic and invasive plant species. Horticultural species of concern in Amador County and the State of California that shall not be included for use in the landscaping plan include, but are not limited to: iceplant (*Carpobrotus edulis*), periwinkle (*Vinca major*), all brooms (*Cytisus* spp., *Spartium* spp.), pampasgrass (*Cortadaria selloana*), cottoncaster (*Cotoneaster* spp.), scarlet wisteria (*Sesbania punicea*), English and Algerian Ivy (*Hedera* spp.), black acacia (*Acacia melanoxylon*), Russian olive (*Elagnus angustifolia*), *Myoporum laetum*, black locust (*Robinia pseudoacacia*), Chinese tallow tree (*Sapium sebiferum*), Brazilian and Peruvian pepper tree (*Schinus terebinthifolius* and *S. molle*), and fountain grass (*Pennisetum setaceum*).

### Waters of the U.S.

- E. A formal delineation of waters of the U.S. occurring within the proposed project area shall be submitted to the U.S. Army Corps of Engineers (USACE) for verification prior to the commencement of construction activities.
- F. Project site plans shall be modified and parking areas for Alternatives A through C shall be reduced through the development of a parking structure to avoid or

minimize impacts to jurisdictional waters of the U. S. and wetland habitats to the extent feasible. Mitigated site plans have been developed for Alternatives A through C, which include the development of a parking structure to reduce the development footprint of the parking lot surrounding jurisdictional wetland habitats. Refer to **Figures 5-1 and 5-2** of the FEIS for the preliminary site plans for Phase I and Phase II of Alternative A, respectively. Refer to **Figures 5-3 and 5-4** of the FEIS for the mitigated site plans for Phase I and Phase II of Alternative B, respectively. Refer to **Figure 5-5** of the FEIS for the mitigated site plan for Alternative C.

- G. A Department of the Army permit shall be obtained from the USACE prior to the discharge of any dredged or fill material within jurisdictional wetlands and other waters of the U.S. In addition, Water Quality Certification shall be obtained from the USEPA.
- H. Unavoidable impacts to waters of the U.S., including wetlands and wetland habitat, shall be mitigated by creating or restoring wetland habitats either onsite or at an USACE approved off-site location. Compensatory mitigation shall occur at a minimum of 1:1 ratio and shall be approved by the USACE prior to any fill into jurisdictional features. As required by the 404 permit, a wetland mitigation and restoration plan shall be prepared by a qualified biologist for any wetland habitat to be created or restored on site. This plan will describe the mitigation ratio, location of restoration, size and type of native vegetation to be used, and a monitoring and maintenance schedule consistent with the new USEPA and USACE rule, shall include a 5 year monitoring plan that has an 80 percent success criteria for vegetative cover with native plants. Off site mitigation shall be conducted through the purchase of credits through a USACE approved mitigation bank. These measures will adhere to the USEPA Rule guidelines which take into account all aquatic resource functions of the impacted wetlands to the watershed as a whole, the likelihood of success, and time lag of establishment.
- I. If the Tribe conducts construction activities in the vicinity of any jurisdictional wetland feature it shall do so during the dry season (April 15 through October 15), to the extent reasonable, to minimize potential erosion.
- J. Temporary fencing shall be installed around wetland and intermittent drainage features and associated riparian woodland that is outside of the construction area. Fencing shall be located as far as feasible from the edge of wetlands and riparian habitats and installed prior to any construction. The fencing shall remain in place until all construction activities have been completed.
- K. Staging areas shall be located away from the areas of wetland, intermittent drainage and riparian 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. tarps, silt fences, straw bales).



- L. BMPs 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. As part of the project's NPDES permit, a contaminant program shall be developed and implemented in the event of release of hazardous materials.

### **Migratory Birds**

- M. If tree disturbance or other project-related activities are to occur during the nesting season (approximately March – September), pre-construction surveys for all nesting migratory bird and raptor species shall be conducted within 500 feet of the proposed construction areas by a qualified biologist. If active nests are identified in these areas, the USFWS shall be consulted to develop measures to avoid any “take” of active nests prior to commencing tree removal or project related activities. Avoidance measures may include the establishment of buffers and biological monitoring. If active nests are identified within trees proposed for removal or disturbance, removal or disturbance shall be postponed until after the nesting season or after a qualified biologist had determined that the young have fledged and are independent of the nest site.
- N. The Tribe shall contribute to the funding of the environmental review and mitigation for traffic improvements identified in **Section 6.7**. The contribution shall be based on the amount of traffic generated by land uses on the 228.04± acre site as a percentage of the overall traffic volume. In the case of improvements that are identified within this document as the sole responsibility of the Tribe, the Tribe's contribution would provide 100 percent of the necessary funds. The Tribe's contribution shall include the cost of preparing environmental documents and the cost of mitigation for biological resources, including but not limited to purchases of land, contributions to mitigation banks or programs, and restoration of habitat. The Tribe's contribution shall be provided to the agency undertaking the improvement (e.g. Caltrans, Amador County, City of Plymouth).

### **6.5 Cultural Resources**

- A. In the event of any inadvertent discovery of archaeological resources during construction related earth-moving activities, all such finds shall be subject to Section 106 of the NHPA as amended (36 CFR 800). Once the land has been taken into trust for the Tribe, the inadvertent discovery of archaeological resources would also be subject to the Native American Graves Protection and Repatriation Act (25 USC 3001 et seq.) and the Archaeological Resources Protection Act of 1979 (16 USC 470 aa-mm). Specifically, procedures for post-review discoveries without prior planning found in 36 CFR 800.13 shall be followed. The following shall apply to the inadvertent discovery of both archaeological and paleontological resources: All work within 50 feet of the find shall be halted until a professional archaeologist, or paleontologist as appropriate, can assess the significance of the find. If any find is determined to be significant by the archaeologist, or the paleontologist, then representatives of the Tribe and BIA shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action.

- B. If human remains are discovered during ground-disturbing activities on Tribal lands, pursuant to the Native American Graves Protection and Repatriation Act and the implementing regulations found at 43 CFR 10 Section 10.4, *Inadvertent Discoveries*, the County coroner, the tribal official and the BIA representative shall be contacted immediately (on non-tribal land, the BIA representative does not need to be called). No further disturbance shall occur until the County coroner, tribal official, and BIA representative have made the necessary findings as to the origin and disposition (on non-tribal land, no BIA representative is present). If the remains are determined to be of Native American origin, the coroner shall notify the Native American Heritage Commission, which shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.
- C. Implementation of **Mitigation Measure 6.4(N)** will reduce impacts associated with off-site roadway improvements and potential impacts to cultural resources.

## 6.6 SOCIOECONOMIC CONDITIONS AND ENVIRONMENTAL JUSTICE

- A. The Tribe shall pay an annual contribution of \$10,000 to an organization or organizations selected in consultation with the California Office of Problem and Pathological Gambling, to address problem gambling issues.
- B. Commencing at the time of the fee-to-trust transfer of the project site, the Tribe shall pay an annual contribution equal to the annual property tax prior to conveyance to the City of Plymouth and Amador County to address lost property tax revenues. The amount of payment shall be subject to annual review by the Amador County Assessor, with any adjustments made with concurrence by the Tribe.
- C. The Tribe will develop and implement a housing program to address the availability of affordable housing within Amador County. The housing program would coordinate its activities with Amador County and the City of Plymouth in order to further countywide planning efforts.
- D. The Tribe shall contribute to school impact fee revenues to mitigate potential fiscal effects to the Amador County Unified School District by paying a one-time payment of \$107,610 to the School District or such other amount as may be negotiated between the Tribe and the School District.

## 6.7 RESOURCE USE PATTERNS

### Transportation

#### *Access*

- A. The Tribe shall require at least three tribal security personnel to be educated in traffic control procedures. These security personnel will perform traffic control at the access roads during special events at the event center to make sure that when fire/emergency vehicles need to leave the site, traffic control is provided at the exit of the service entrance to allow smooth movement of emergency vehicles.

### *Construction*

- B. The Tribe shall prepare a Traffic Management Plan (TMP) to identify which lanes require closure, where night construction is proposed, and other standards set forth in the *Manual on Uniform Traffic Control Devices for Streets and Highways* (US DOT FHWA, 2003). The TMP shall be submitted to each affected local jurisdiction and/or agency.
- C. Prior to the finalization of construction plans, the Tribe shall work to notify all potentially affected parties in the immediate vicinity of the project site. Notification shall include a construction schedule, exact location of construction activities, duration of construction period, and alternative access provisions.
- D. Also prior to the finalization of construction plans, the Tribe shall work with emergency service providers to avoid restricting emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the construction schedule, exact location of construction activities, duration of construction period, and any access restrictions that could impact emergency response services. Traffic Management Plans shall include details regarding emergency service coordination. Copies of the TMPs shall be provided to all affected emergency service providers.

### *Operation-Phase I*

Without the jurisdiction to implement off-site mitigation measures, the only feasible mitigation available to the Tribe is to provide funding for recommended roadway improvements. Various study roadway intersections and segments currently operate under unacceptable conditions (according to the corresponding jurisdictional agency) without the project. Therefore, the Tribe would contribute a share of the required funding proportionate to the level of impact associated with the trips added by the project alternatives. Under Caltrans guidelines this proportionate share contribution to recommended roadway improvements are considered appropriate mitigation to reduce the impact of a proposed project. Actual funding mechanisms for impact mitigation shall be determined through negotiations at the time of project implementation.

Mitigation measures are summarized below and are provided in more detail in the revised TIA (Appendix M of the FEIS). Proportionate share contributions for the Preferred Alternative are provided where applicable. As neither the Tribe nor BIA have jurisdictional authority to implement traffic improvement projects outside of the trust site boundaries, the following mitigation measures (6.6E through 6.6NNN) are recommended to reduce off-reservation impacts of the Preferred Alternative, and would be implemented after all requisition approvals are received from the agency(s) with jurisdiction over the roadways.

- E. SR 49/Main Street  
Install a signal. Construct NB and WB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.  
  
Construct SB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

- F. SR 49/Randolph Drive  
Install a signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- G. Latrobe (Amador)/SR 16  
Install a signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- H. SR 104 (Preston)/SR  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.
- I. Preston Avenue/ Main Street  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.
- J. Main Street / SR 124 (Church)/SR 104 (Main)  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.
- K. SR 88 / Jackson Valley Road  
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 43 percent.
- L. SR 88 / Liberty Road  
Install a Signal, convert NB right-turn lane into shared through/right-turn, and construct a second NB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 37 percent.
- M. SR 16 / Grant Line Road  
Add NB and SB left-turn lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.
- N. Sunrise Boulevard/SR 16  
Convert SB right-turn lane into a shared through/right-turn. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.
- O. SR 49/Project Access Driveway  
Restrict left-turn out of driveway. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

- P. SR 16 between Bradshaw Road and Excelsior Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 17 percent.
- Q. SR 16 between Sunrise Boulevard and Grant Line Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.
- R. SR 16 between Grant Line Road and Dillard Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.
- S. SR 16 between Dillard Road and Stonehouse Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.
- T. SR 16 between Stonehouse Road and Ione Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- U. SR 16 between Latrobe Road (Amador) and SR 124  
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 74 percent.
- V. SR 16 between SR 124 and SR 49  
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 97 percent.
- W. SR 104 between SR 124 and Main Street  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.
- X. SR 104 between Main Street and Church  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 22 percent.
- Y. SR 124 between Main Street and SR 88  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 31 percent.
- Z. SR 88 between SR 124 and Liberty Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 26 percent.

- AA. SR 88 between Liberty Road and SR 12 (east)  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 19 percent.
- BB. SR 88 between SR 12 (east) and Tully Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.
- CC. SR 88 between Tully Road and SR 12 (west)  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 20 percent.
- DD. SR 88 between SR 12 (west) and Kettleman Lane  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 19 percent.

*Operation-Phase II*

- EE. SR 16 / Ione Road  
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- FF. SR 16 / Grantline Road  
Add NB and SB left-turn lanes. Proportionate share calculation of this project impact using Caltrans methodology is 10 percent.  
  
Add NB and SB right-turn lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- GG. SR 16 / Sunrise Boulevard  
Convert SB right-turn lane into a shared through/right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 9 percent.  
  
Add NB right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- HH. SR 49 / Pleasant Valley Road  
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- II. SR 49 between Casino Entrance and Main Street  
Upgrade to Arterial Class II. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- JJ. SR 49 between Casino Entrance and Main Street  
Upgrade to Arterial Class II. Proportionate share calculation of this project impact using Caltrans methodology is 84 percent.

*Operation-Cumulative*

- KK. SR 49/Main Street  
Install a signal. Construct NB left-turn and WB right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 33 percent.
- LL. SR 49/SR 16  
Add NB left-turn lane and second WB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- MM. SR 124/SR  
Install a signal. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- NN. SR 104 (Preston)/SR 124  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 55 percent.
- OO. Preston Avenue/ Main Street  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 69 percent.
- PP. Main Street / SR 124 (Church)/SR 104 (Main)  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 72 percent.
- QQ. R 88 / Jackson Valley Road  
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 56 percent.
- RR. SR 88 / Liberty Road  
Install a Signal, convert NB right-turn lane into shared through/right-turn lane, and construct a second NB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 23 percent.  
  
Construct separate WB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- SS. SR 88 / Victor (SR 12)  
Convert SB right-turn lane into shared through/right-turn lane, and lengthen SB receiving lane. Proportionate share calculation of this project impact using Caltrans methodology is 9 percent.

- TT. SR 88 /Kettleman Lane  
Install EB dual left-turn lanes and SB through lane. Proportionate share calculation of this project impact using Caltrans methodology is 10 percent.
- UU. SR 16 / Grant Line Road  
Convert EB right-turn lane into shared through /right-turn. Proportionate share calculation of this project impact using Caltrans methodology is 29 percent.
- VV. Sunrise Boulevard/SR 16  
Convert EB right-turn lane into a shared through/right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 31 percent.
- WW. SR 16/Bradshaw Road  
Add NB and SB through lane, an EB left-turn lane, two EB and WB through lanes. Proportionate share calculation of this project impact using Caltrans methodology is 8 percent.  
  
Construct a WB right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- XX. SR 49/Pleasant Valley Road  
Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is 49 percent.
- YY. SR 88 (N)/Elliot Road  
Convert SB right-turn lane into shared through/right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is 5 percent.
- ZZ. SR 49 between Casino Entrance and Main Street  
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 55 percent.
- AAA. SR 16 between Bradshaw Road and Excelsior Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.
- BBB. SR 16 between Sunrise Boulevard and Grant Line Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 38 percent.
- CCC. SR 16 between Grant Line Road and Dillard Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 69 percent.



- DDD. SR 16 between Dillard Road and Stonehouse Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 48 percent.
- EEE. SR 16 between Latrobe Road (Amador) and SR 124  
Widen from two to three lanes. Proportionate share calculation of this project impact using Caltrans methodology is 60 percent.
- FFF. SR 16 between SR 124 and SR 49  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 57 percent.
- GGG. SR 104 between SR 124 and Main Street  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 60 percent.
- HHH. SR 104 between Main Street and Church Street  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 63 percent.
- III. SR 124 between Main Street and SR 88  
Implement the Ione Bypass as identified in the 2004 Amador County RTP Update. Proportionate share calculation of this project impact using Caltrans methodology is 82 percent.
- JJJ. SR 88 between SR 124 and Liberty Road  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 21 percent.
- Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- KKK. SR 88 between Liberty Road and SR 12 (east)  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 19 percent.
- Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.
- LLL. SR 88 between SR 12 (east) and Tully Road  
Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

MMM. SR 88 between Tully Road and SR 12 (west) (NB and SB Couplets)  
Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is 10 percent.

NNN. SR 88 between SR 12 (west) and Kettleman Lane  
Widen from four to six lanes. Proportionate share calculation of this project impact using Caltrans methodology is 100 percent.

## **6.8 PUBLIC SERVICES**

### **Construction Related Solid Waste**

- A. The Tribe shall create and maintain an aggressive Waste Management Plan that implements recycling strategies to voluntarily meet State recycling and diversion requirements. The Waste Management Plan shall include the installation of a trash compactor for cardboard and paper products, and the placement of recycling bins throughout the facilities for glass, cans and paper products.
- B. Environmentally preferable materials shall be acquired to the extent practical for construction of facilities.

### **Operational Solid Waste**

- C. A trash compactor shall be installed for cardboard and paper products.
- D. Recycling bins shall be installed throughout the facilities for glass, cans and paper products.
- E. The Tribe shall adopt universal waste recycling requirements similar to California's Universal Waste Rule.

### **Electricity, Natural Gas, and Telecommunication**

- F. The Tribe will fund the upgrade of the existing lines in accordance with PG&E engineers' recommendations.

### **Public Health and Safety**

#### *Law Enforcement*

- G. The Tribe shall adopt a Responsible Alcoholic Beverage Policy that shall include, but not be limited to, requesting identification and refusing service to those who have had enough to drink. This policy shall be discussed with the California Highway Patrol and the ACSO.
- H. All parking areas shall be well lit to prevent areas that would not be visible by patrolling security guards, and monitored by parking staff, and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other related criminal activity.

- I. Exterior areas surrounding the gaming facilities not designed as patron waiting areas shall have “No Loitering” signs in place, shall be well lit to increase the visibility of security features (cameras and guards), and shall be patrolled regularly by roving security guards. This will aid in the prevention of illegal loitering and all crimes that relate to, or require, illegal loitering.
- J. The Tribe shall provide traffic control with appropriate signage and the presence of traffic control staff when appropriate. This will aid in the prevention of off-site parking, which could create possible security issues.
- K. The Tribe shall provide payments to Amador County to mitigate increased costs to the Amador County District Attorney’s Office, Probation Department, Public Defenders Office, and Superior Court system as they relate to law enforcement actions generated by the selected project alternative. Prior to commencement of operations, the Tribe shall negotiate in good faith to provide reasonable payment for services with Amador County.
- L. The Tribe shall make payments to the County to provide for one Amador County Sheriff’s Deputy to be based in Plymouth on a 24 hours a day/ 7 days a week basis. This would require the addition of 6.5 officers. Financial compensation shall include the equipment necessary for the full staffed officers. Prior to commencement of operations, the Tribe shall negotiate in good faith to provide reasonable payment for services with Amador County.
- M. The Tribe shall provide payments to the CHP to mitigate potential impacts to CHP services in the area associated with the operation of the selected project alternative. Prior to commencement of operations, the Tribe shall negotiate in good faith to provide reasonable payment for services with the CHP.

*Emergency Call Taking and Dispatching*

- O. The Tribe shall negotiate in good faith to make a reasonable contribution to Amador County to cover increased operating costs of emergency dispatching in Amador County including dispatching contracted through the State that is attributable to the operation of the selected project alternative.

**6.9 OTHER VALUES**

**Noise**

- A. Outdoor construction activities shall be limited to the hours of 6 a.m. to 6 p.m., Monday through Saturday.
- B. Earthen berms shall be constructed to reduce the effect of on-site traffic noise on nearby residences to below an average (Leq) of 45 decibels at level A attenuation (dBA). For Alternatives A, B, and C the earthen berms shall be designed to reduce noise levels from parking lot activities on residences to the northwest by 4 dBA and designed to reduce parking lot noise on residences to the southwest by 8 dBA. For

Alternative D, no earthen berm would be needed for residences to the northwest, but residences to the southwest would need attenuation of 14 dBA.

- C. Earthen berms shall be constructed on the west end of the service court to block the line of site between the loading dock areas and the off-site residences to the west. In combination with the berms identified in above in (B), these berms need to reduce loading dock noise below 45 Leq at the nearest off-site residential receptor.
- D. Roof mounted mechanical equipment shall be designed and installed so that noise levels from the mechanical equipment shall not exceed 45 Leq at existing residential property lines.
- E. The Tribe shall contribute to the funding of the environmental review and mitigation for traffic improvements identified in **Section 5.2.8**. The contribution shall be based on the amount of traffic generated by land uses on the 228.04± acre site as a percentage of the overall traffic volume. In the case of improvements that are identified within this document as the sole responsibility of the Tribe, the Tribe's contribution would provide 100 percent of the necessary funds. The Tribe's contribution shall include the cost of preparing environmental documents and the cost of mitigation for traffic noise, including but not limited to the installation of sound walls. The Tribe's contribution shall be provided to the agency undertaking the improvement (e.g. Caltrans, Amador County, City of Plymouth).

#### **Hazards and Hazardous Materials**

- F. Personnel shall follow written standard operating procedures (SOPs) for filling and servicing construction equipment and vehicles. These SOPs address storage and use of hazardous materials and would be implemented during both construction and operation of the casino. The SOPs, which are designed to reduce the potential for incidents involving the use and storage of hazardous materials, shall include the following where feasible and when reasonable:
  - 1. Refueling shall be conducted only with approved pumps, hoses, and nozzles.
  - 2. Catch-pans shall be placed under equipment to catch potential spills during servicing.
  - 3. All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
  - 4. Vehicle engines shall be shut down during refueling.
  - 5. No smoking, open flames, or welding shall be allowed in refueling or service areas.
  - 6. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
  - 7. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.

8. Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, State, and Federal regulations.
  9. All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure. All maintenance and refueling areas shall be inspected monthly. Results of inspections shall be recorded in a logbook that shall be maintained on-site.
  10. Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.
  11. Any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order.
- G. The amount of hazardous materials used in project construction and operation shall be consistently kept at the lowest volumes needed.
- H. During project operation, the least toxic material capable of achieving the intended result will consistently be used. These materials include industrial strength cleaners, detergents, pesticides, and degreasers. All potentially toxic materials would be used as directed according to Federal labeling requirements. All materials shall be kept within their original containers and at no time would the labels be removed from the original containers.
- I. A hazardous materials and hazardous waste minimization program shall be developed, implemented, and reviewed annually by the Tribe to determine if additional opportunities for hazardous materials and hazardous waste minimization are feasible, for both project construction and operation. A copy of the hazardous waste minimization program and a full inventory of flammable and hazardous materials will be provided to the Amador County Fire Department.
- J. The contractor shall be requested to avoid and minimize the use of hazardous materials and petroleum products during the project's construction to the fullest extent practicable.
- K. The Tribe shall minimize the use of pesticides and toxic chemicals to the greatest extent feasible in landscaping or use less toxic alternatives, such as integrated pest management techniques.
- L. The existing on-site residences shall be assessed for lead based paint and asbestos containing materials prior to demolition. The assessments will be performed by a licensed inspector. If lead-based paint or asbestos containing materials are found, the materials will be removed from the site according to local, State, and Federal requirements. All applicable Occupational Safety and Health Administration (OSHA) regulations shall be complied with.
- M. As part of the WWTP design, hazardous materials used for disinfection of water and treated effluent would be fully stored in the chemical room of the WWTP operations

- building. The storage and chemical metering facilities shall be located inside a chemical spill containment area, sized to contain 150 percent of the storage volume in case of an unintentional release. To the extent feasible, chemicals shall be stored as dry material in sealed containers, and then in a 50-gallon mixing tank when needed.
- N. In the event that contaminated soil and/or groundwater are encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or a qualified individual can assess the extent of contamination. If contamination is determined to be significant, representatives of the Tribe shall consult with USEPA to determine the appropriate course of action, including the development of a Sampling Plan and Remediation Plan if necessary.
- O. The Tribe shall establish a vegetative cover over mine tailings with California Flannelbush (*Fremontodendron californicum*), Yerba Santa (*Eriodictyon crassifolium*), Coyote Brush (*Baccharis pilularis*), or similar native plants used for soil stabilization/erosion control prior to public access to the project development. The Tribe will ensure the vegetative cover is maintained providing full coverage of the mine tailings. Additionally, the tailings area shall be fenced off to prevent public access.

### **Visual Resources**

The Tribe shall participate in Caltrans' Adopt-A-Highway Program to provide litter removal on one or more highway segments in the vicinity of the project site.

### **6.10 MITIGATION MEASURES THAT ARE NOT ADOPTED**

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. All mitigation measures identified in the FEIS have been adopted.

### **7.0 ELIGIBILITY FOR GAMING PURSUANT TO THE INDIAN GAMING REGULATORY ACT**

The Tribe intends to develop a gaming facility on the 228.04 acres of land, located in Plymouth, Amador County, California. Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719, prohibits gaming on land acquired in trust after October 17, 1988, but provides several exceptions to the general prohibition. Under § 2719(b)(1)(B)(iii) land that is the restoration of lands for an Indian tribe that is restored to Federal recognition is exempt from the general prohibition. For the reasons stated below, we believe that the lands that are the subject of the fee-to-trust application qualify as "Indian lands" within the meaning of IGRA on which the Tribe could conduct gaming once the lands are acquired in trust by the Department.

IGRA prohibits gaming on lands acquired after October 1988 unless:

- A. The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or
- B. Lands are taken into trust as part of—
  - i. A settlement of a land claim,
  - ii. The initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or
  - iii. The restoration of lands for an Indian tribe that is restored to Federal recognition.

25 U.S.C. § 2719(b)(1).

In May 2008, the Department published regulations for “Gaming on Trust Lands Acquired after October 17, 1988,” (Part 292 regulations). The regulations became effective on August 25, 2008. Section 292.26(b) of the Part 292 regulations states:

[T]hese regulations apply to final agency action taken after the effective date of these regulations except that these regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the National Indian Gaming Commission (NIGC) issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.

In 2004, prior to submitting its fee-to-trust application, the Band requested a legal opinion from the Department as to whether the Plymouth Parcels would be eligible for gaming under IGRA's Restored Lands exception at 25 U.S.C. § 2719(b)(1)(B)(iii). In 2006, the Department determined that the Band is a “restored tribe” and that the Plymouth Parcels would qualify as restored lands under IGRA if they were acquired in trust for the benefit of the Band.

The Department's 2006 determination constitutes a written opinion regarding the applicability of 25 U.S.C. § 2719 for land to be used for a particular gaming establishment under the Part 292 grandfather provision. Therefore, the particular criteria in the Part 292 regulations governing Restored Lands determinations do not apply to this particular trust application. I have relied upon, and adopted, the conclusions in the 2006 opinion pursuant to 25 C.F.R. § 292.26(b). The Plymouth Parcels thus constitute “[restored] lands for an Indian tribe that is restored to Federal recognition” within the meaning of IGRA.

Specifically, and as set forth in more detail in the Department's 2006 determination, we believe that the history of the Tribe's relationship with the United States is unique and complex. The evidence shows that the Department intended in 1916 to acquire land for the

Indians at Lone. The actions of the Department in furtherance of its efforts to acquire land for the Indians at Lone are not conclusive as to the Tribe's recognized tribal status. However, in 1972, Commissioner Bruce sent a letter that amounted to recognition for the Tribe in accordance with the practices of the Department at the time. The positions subsequently taken by the Department in Federal court and before the IBIA against the Tribe were wholly inconsistent with that position, and as such manifest a termination of the recognized relationship. Assistant Secretary Deer's review of the matter and reaffirmation of Commissioner Bruce's position amounts to a restoration of the Tribe's status as a recognized Tribe. Under the unique history of its relationship with the United States, and as allowed under the Part 292 grandfather provision, the Tribe should be considered a restored tribe within the meaning of IGRA.

In order to conduct gaming on the land, not only must the Tribe be considered a restored tribe within the meaning of IGRA, but the land being acquired must also be considered restored lands. The IGRA does not define what constitutes restored lands.

The Department's 2006 determination also found that the land being acquired is in an area that is historically significant to the Tribe. It is within a few miles of several historic tribal burial grounds and the site where some of the Tribe's ancestors signed a treaty. Many of the Tribe's members live in the surrounding area and the Tribe has used facilities in the City of Plymouth to hold governmental meetings in recent years establishing a modern connection to the area. Finally, the proposed acquisition of the land is reasonably temporal to the date the Tribe was restored.

In summary, the Department had previously determined that the proposed acquisition would constitute restored lands for a restored within the meaning of the IGRA. This prior determination qualifies the Tribe for the Part 292 grandfather provision at 25 C.F.R. § 292.26(b). This ROD thus records the Department's determination that the Plymouth County parcels are eligible for gaming under the "restored lands" exception in IGRA Section 20, 25 U.S.C. 2719(b)(1)(B)(iii), such that the Tribe may conduct class II gaming on the Amador County parcels once they are acquired in trust. At this time, the Tribe does not have an approved Tribal-State compact with the State of California for class III gaming. However, there is no requirement in IGRA that a compact be in place before the land is acquired in trust.

## **8.0 ACQUISITION OF LAND IN TRUST PURSUANT TO THE INDIAN REORGANIZATION ACT**

The authority to acquire lands in trust for Indian tribes is found in 25 U.S.C. § 465. Section 465 is implemented through regulations found at 25 C.F.R. Part 151.

### **8.1 25 C.F.R. § 151.3: LAND ACQUISITION POLICY**

The Secretary may acquire land in trust for a tribe 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 228.04 acres of parcels satisfies 25 C.F.R. § 151.3(a)(3), and that the land is necessary to facilitate tribal self-determination and economic development.



## 8.2 25 C.F.R. § 151.10(A): STATUTORY AUTHORITY FOR THE ACQUISITION

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

The statutory authority used by the Department to acquire the land in trust is Section 5 of the IRA, 25 U.S.C. § 465. Section 5 gives the Secretary broad authority to acquire land in trust for Indian tribes “within or without existing reservations...for the purpose of providing land for Indians...” Section 5 provides that title to any land so acquired shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired. Section 5 contains no specific limitations on acquiring lands in trust for the Tribe.

### 8.2.1 LEGAL ANALYSIS OF “UNDER FEDERAL JURISDICTION” IN 1934

In the Department’s record of decision regarding the Cowlitz Tribe of Indians’ fee-to-trust application (December 17, 2010), we concluded that the text of the IRA does not define or otherwise establish the meaning of the phrase “under federal jurisdiction.” Nor does the legislative history clarify the meaning of the phrase. Because the IRA does not unambiguously give meaning to the phrase “under federal jurisdiction,” the Secretary must interpret that phrase in order to continue to exercise the authority delegated to him under section 5 of the IRA.<sup>2</sup> The canons of construction applicable in Indian law, which derive from the unique relationship between the United States and Indian tribes, also guide the Secretary of the Interior’s interpretation of any ambiguities in the IRA.<sup>3</sup> Under these canons, statutory silence or ambiguity is not to be interpreted to the detriment of Indians. Instead, statutes establishing Indian rights and privileges are to be construed liberally in favor of the Indians, and ambiguities are to be resolved in their favor.<sup>4</sup>

The discussion of “under federal jurisdiction” also must be understood against the backdrop of basic principles of Indian law that define the Federal Government’s unique and evolving relationship with Indian tribes. The Supreme Court has long held that “the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that [the Supreme Court] consistently described as ‘plenary and exclusive.’”<sup>5</sup> The Indian Commerce Clause also authorizes Congress to regulate commerce “with the Indian tribes,” U.S. Const.,

---

<sup>2</sup> The Secretary receives deference to interpret statutes consigned to his administration. See *Chevron v. NRDC*, 467 U.S. 837, 844 (1984); *United States v. Mead Corp.*, 533 U.S. 218, 230-31 (2001); see also *Skidmore v. Swift*, 323 U.S. 134, 139 (1944) (agencies merit deference based on “specialized experience and broader investigations and information” available to them).

<sup>3</sup> *Yankton Sioux Tribe v. Kempthorne*, 442 F. Supp. 2d 774, 783 (D.S.D. 2006); *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan*, 369 F.3d 960, 968, 971 (6<sup>th</sup> Cir. 2004) (*Grand Traverse III*). This canon is “rooted in the unique trust relationship between the United States and the Indians.” *Montana v. Blackfeet Tribe*, 471 U.S. 756, 766 (1988). See also, *Chickasaw Nation v. U.S.*, 534 U.S. 84 (2001) (quoting *Montana v. Blackfeet Tribe*, 471 U.S. at 766).

<sup>4</sup> *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 200 (1999); see also *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992).

<sup>5</sup> *United States v. Lara*, 541 U.S. 193, 200 (2004); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813 (1993) (If Congress possesses legislative jurisdiction then the question is whether and to what extent, Congress has exercised that undoubted jurisdiction); *Morton v. Mancari*, 417 U.S. 535, 551-52 (1974) (“The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself.”).

art. I, § 8, cl. 3, and the Treaty Clause grants the President the power to negotiate treaties with the consent of the Senate. U.S. Const., art. II, § 2, cl. 2. Pursuant to U.S. Const., art. VI, cl. 2, treaties are the law of the land.

The Court also has recognized that “[i]nsofar as [Indian affairs were traditionally an aspect of military and foreign policy], Congress’ legislative authority would rest in part, not upon ‘affirmative grants of the Constitution,’ but upon the Constitution’s adoption of pre-constitutional powers necessarily inherent in any Federal Government, namely powers that this Court has described as ‘necessary concomitants of nationality.’”<sup>6</sup> In addition, “[i]n the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them...needing protection.... Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation....”<sup>7</sup> In order to protect Indian lands from alienation and third party claims, Congress enacted a series of Indian Trade and Intercourse Acts (“Nonintercourse Act”)<sup>8</sup> that ultimately placed a general restraint on conveyances of land interests by Indian tribes:

No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered pursuant to the Constitution.<sup>9</sup>

Indeed, in *Johnson v. M’Intosh*, the Supreme Court held that while Indian tribes were “rightful occupants of the soil, with a legal as well as just claim to retain possession of it,” the United States owned the lands in “fee.”<sup>10</sup> As a result, title to Indian lands could only be extinguished by the United States. Thus, “[n]ot only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States...the power and the duty of exercising a fostering care and protection over all dependent Indian communities....”<sup>11</sup> Once Congress has established a relationship with an Indian tribe, Congress alone has the right to determine when its guardianship shall cease.<sup>12</sup>

---

<sup>6</sup> *Lara*, 541 U.S. at 201.

<sup>7</sup> *Morton v. Mancari*, 417 U.S. at 552 (citation omitted).

<sup>8</sup> See Act of July 22, 1790, Ch. 33, § 4, 1 Stat. 137; Act of March 1, 1793, Ch. 19, § 8, 1 Stat. 329; Act of May 19, 1796, Ch. 30, § 12, 1 Stat. 469; Act of Mar. 3, 1799, Ch. 46, § 12, 1 Stat. 743; Act of Mar. 30, 1802, Ch. 13, § 12, 2 Stat. 139; Act of June 30, 1834, Ch. 161, § 12, 4 Stat. 729. In applying the Nonintercourse Act to the original states the Supreme Court held “that federal law, treaties, and statutes protected Indian occupancy and that its termination was exclusively the province of federal law.” *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670 (1974). This is the essence of the Act: that all land transactions involving Indian lands are “exclusively the province of federal law.” The Nonintercourse Act applies to both voluntary and involuntary alienation, and renders void any transfer of protected land that is not in compliance with the Act or otherwise authorized by Congress. *Id.* at 669.

<sup>9</sup> Act of June 30, 1834, § 14, 4 Stat. 729, now codified at 25 U.S.C. § 177.

<sup>10</sup> 21 U.S. (8 Wheat.) 543 (1823).

<sup>11</sup> *United States v. Sandoval*, 231 U.S. at 45-46; see also *United States v. Kagama*, 118 U.S. 375, 384-385 (1886).

<sup>12</sup> *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan*, 369 F.3d 960, 968 (6<sup>th</sup> Cir. 2004), citing *Joint Tribal Council of the Passamaquoddy Tribe v.*

Having closely considered the text of the IRA, its remedial purposes, legislative history, and the Department's early practices, as well as the Indian canons of construction, we construe the phrase "under federal jurisdiction" as entailing a two-part inquiry. The first part examines whether there is a sufficient showing in the tribe's history, at or before 1934, that it was under federal jurisdiction, *i.e.*, whether the United States had, in 1934 or at some point in the tribe's history prior to 1934, taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members – that are sufficient to establish or that generally reflect Federal obligations, duties, responsibility for or authority over the tribe by the Federal Government. Some Federal actions may in and of themselves demonstrate that a tribe was under Federal jurisdiction or a variety of actions when viewed in concert may achieve the same result.

For example, some tribes may be able to demonstrate that they were under Federal jurisdiction by showing that Federal Government officials undertook guardianship actions on behalf of the tribe, or engaged in a continuous course of dealings with the tribe.<sup>13</sup> Evidence of such acts may be specific to the tribe and may include, but is certainly not limited to, the negotiation of or entering into treaties, the approval of contracts between the tribe and non-Indians, enforcement of the Nonintercourse Acts (Indian trader, liquor laws, and land transactions); inclusion in federal census counts; and the provision of health, education, or social services to a tribe or individual Indians. Evidence also may consist of actions by the Office of Indian Affairs, which became responsible for the administration of the Indian reservations in addition to implementing legislation. The Office exercised this administrative jurisdiction over the tribes, individual Indians, and their lands. Such evidence may be further found in a tribe's petition for federal acknowledgment under 25 C.F.R. Part 83 and corresponding factual findings related to the decision acknowledging the tribe. There may, of course, be other types of actions not referenced herein that evidence the Federal Government's obligations, duties to, acknowledged responsibility for, or power or authority over a particular tribe.

Once having identified that the tribe was under Federal jurisdiction at or before 1934, the second part ascertains whether the tribe's jurisdictional status remained intact in 1934.<sup>14</sup> For purposes of deciding the instant application, it is not necessary to posit in the abstract the universe of action that might be relevant to such a determination. It should be noted, however, that the Federal Government's failure to take any action towards or on behalf of a tribe during a particular time period does not necessarily reflect a termination of its

---

*Morton*, 528 F.2d 370 (1<sup>st</sup> Cir. 1975); *see also United States v. Nice*, 241 U.S. 591, 598 (1916); *Tiger v. W. Investment Co.*, 221 U.S. 286 (1911).

<sup>13</sup> *See* Memorandum, Associate Solicitor, Indian Affairs 2 (Oct. 1, 1980) (re Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe); *see also United States v. John*, 437 U.S. 634, 653 (1978) (in holding that federal criminal jurisdiction could be reasserted over the Mississippi Choctaw reservation after several decades, the Court stated that the fact that federal supervision over the Mississippi Choctaws had not been continuous does not destroy the federal power to deal with them).

<sup>14</sup> For some tribes, evidence of being under federal jurisdiction in 1934 will be unambiguous, thus obviating the need to examine the tribe's history prior to 1934. For such tribes, there is no need to proceed to the second step of the two-part inquiry.

relationship with the tribe since only Congress can terminate such a relationship.<sup>15</sup> In general, however, the longer the period of time prior to 1934 in which the tribe's jurisdictional status is shown, and the smaller the gap between the date of the last evidence of being under Federal jurisdiction and 1934, the greater likelihood that the tribe retained its jurisdictional status in 1934. Correspondingly, the absence of any probative evidence that a tribe's jurisdictional status was terminated prior to 1934 would strongly suggest that such status was retained in 1934. As Justice Breyer discussed in his concurring opinion in *Carcieri*, a tribe may have been "under federal jurisdiction" in 1934 even though the Federal Government did not believe so at the time.<sup>16</sup>

Justice Breyer cited to a list of tribes that was compiled as part of a report issued 13 years after the IRA (the so-called Haas Report) and noted that some tribes were erroneously left off that list – because they were not recognized as tribes by Federal officials at the time – but whose status was later recognized by the Federal Government.<sup>17</sup> Justice Breyer further suggested that these later-recognized tribes nonetheless could have been "under federal jurisdiction" in 1934. He cited several post-IRA administrative decisions as examples of tribes that the BIA did not view as under Federal jurisdiction in 1934, but which nevertheless confirm the existence of a "1934 relationship between the tribe and federal government that could be described as jurisdictional."<sup>18</sup>

This interpretation of the phrase "under federal jurisdiction," including the two-part inquiry, is consistent with the remedial purpose of the IRA and with the Department's post-enactment practices in implementing the statute.

### **8.2.2 APPLICATION OF THE TWO-PART INQUIRY TO THE IONE BAND**

In the early 1900s, the Ione Band, like many California tribes, did not have its own reservation. This situation reflects the dramatic history of the Indians in California, who were conscripted by the Spanish and Mexican governments and then substantially displaced by invading settlers under U.S. rule. It was in this same time period (early twentieth century) that the United States began consistent efforts to acquire land in order to establish a reservation for the Band. This substantial undertaking is clear evidence of a jurisdictional relationship between the United States and the Ione Band and satisfies step one of the two-part inquiry described above. The government's efforts to establish a reservation for the Band continued well past 1934. Moreover, there was no disruption in the relationship between the United States and the Ione Band prior to and in 1934. The second part of the two-part inquiry thus is satisfied and supports the conclusion that the Ione Band was under Federal jurisdiction in 1934.

---

<sup>15</sup> See *Lara*, 541 U.S. at 200.

<sup>16</sup> *Carcieri*, 555 U.S. at 397-98.

<sup>17</sup> *Id.* at 1070.

<sup>18</sup> *Id.* (discussing Stillaguamish, Grand Traverse, and Mole Lake). Justice Breyer concurred with Justices Souter and Ginsburg that "recognized" was a distinct concept from "now under federal jurisdiction." However, in his analysis he appears to use the term "recognition" in the sense of "federally recognized" as that term is currently used today in its formalized political sense (*i.e.*, as the label given to Indian tribes that are in a political, government-to-government relationship with the United States), without discussing or explaining the meaning of the term in 1934.

## A. History of the Ione Band's Relationship with the United States

The Ione Band did not live on a federally-established reservation in 1934. Prior to that year, however, the United States began an effort to acquire land for the Band that could become its reservation.

The Band is a successor in interest to the signatories of Treaty J, one of 18 unratified treaties negotiated by the Federal Government with California Indians in the mid-1800s. The Band currently occupies a 40 acre tract of land southeast of Sacramento, California, in Amador County, approximately 8.5 miles west of Jackson, the county seat. The Band has occupied this land since before 1900.

In 1906, C. E. Kelsey, a special agent to the Commissioner of Indian Affairs, wrote a report on the conditions of Indians in California. Dated March 16, 1906, the report was the result of 8 months of hands-on research (much on horseback) by Special Agent Kelsey.<sup>19</sup> The report was needed in order to meet a Congressional mandate that the Commissioner “investigate . . . existing conditions of the California Indians and to report to Congress at the next session some plan to improve the same.”<sup>20</sup> As part of the report, Special Agent Kelsey undertook a census of the California Indians. In his census report, Kelsey identified 36 Ione Indians in Amador County and designated them as being “without land.”<sup>21</sup>

In a May 11, 1915, letter to the Commissioner of Indian Affairs, Special Agent John J. Terrell described in detail his efforts to negotiate a purchase for the Ione Band of their “Indian Village.”<sup>22</sup> Special Agent Terrell relayed the Band’s “great opposition to leaving their old home spot around which cluster so many sacred memories to this remnant band” and noted that, “[o]f all the Indians I have visited these have stronger claims to their ancient Village than any others.”<sup>23</sup> Special Agent Terrell further observed: “They have better and more extensive improvements, more especially in the erection of their large ‘Sweat-House.’”<sup>24</sup> In the letter, Special Agent Terrell also referred to many communications he had had with the land owner in an attempt to obtain an affordable price (he deemed the owner’s price of \$50 per acre a “hold-up,” and took credit for pushing back from the original \$100 per acre price) and with various Department employees (reporting on the negotiations, collecting unspent money to augment his funds, seeking approval for his plans).<sup>25</sup> Attached to the letter was a census of the Ione Band, presumably conducted by Special Agent Terrell, which indicated a total of 101 residents, much higher than Kelsey’s 36 inhabitants, but many of the names are the same.

By August 18, 1915, Special Agent Terrell received approval from the Department for a purchase based on a price of \$50 per acre and concluded that the land owner would not lower

---

<sup>19</sup> Report to Commissioner of Indian Affairs from Special Agent Charles E. Kelsey (March 21, 1906) (Census of Non-Reservation California Indians, 1905-1906) (Kelsey Report).

<sup>20</sup> Pub. L. No. 58-1479, 33 Stat. 1048, 1058 (1905).

<sup>21</sup> Kelsey Report at 7.

<sup>22</sup> Letter from John J. Terrell, Special Indian Agent, to Cato Sells, Commissioner of Indian Affairs I (May 11, 1915).

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 2-3.

<sup>25</sup> *Id.* at 1-4.

the price below that figure.<sup>26</sup> Special Agent Terrell reported in a letter to the Commissioner on that date that he had “requested [the land owner] to have prepared at earliest practicable [sic] date the required warranty deed conveying to the United States of America the 40 acres for the aggregate of \$2,000-00, accompanying same with proper abstract.”<sup>27</sup> This effort stalled, however, due to title problems. A May 2, 1916 letter from the Acting Assistant Commissioner of Indian Affairs to the Secretary of the Interior detailed problems with the abstract of title and the deed: the title covered “other land in addition to the 40 acres to be purchased” and the deed lacked a signature from the seller, revenue stamps, and a sufficient statement that the grantor was authorized to convey the parcel under its charter.<sup>28</sup> The Acting Assistant Commissioner recommended that the matter be referred to the Solicitor for the Interior Department.<sup>29</sup>

In a July 31, 1917 letter from Indian Service Inspector John J. Terrell to the Commissioner of Indian Affairs, Inspector Terrell expressed concern about the need to effect the proposed purchase of land noting “the sore disappointment to the Indians in the event this proposed purchase should fail and the exceeding great difficulty in removing these Indians, which would sooner or latter [sic] have to follow. . . .”<sup>30</sup> Inspector Terrell also related that the “chief of this band” explained that the Ione Band had always resided at that location.<sup>31</sup> On July 15, 1920, Superintendent O. H. Lipps and Special Supervisor L. F. Michaels conveyed to Commissioner of Indian Affairs Cato Sells a report, prepared over the course of 8 months beginning in September of 1919, regarding the condition of landless, non-reservation Indians in California.<sup>32</sup> The report included another census, which enumerated the “Ione group consist[ing] of 5 families – 19 people.”<sup>33</sup>

The 1923 Reno Indian Agency annual report identified the estimated Indian population in Amador County as including 150 Indians at “Ione, Enterprise and Richey, etc.”<sup>34</sup> The report also stated that the Indians did not have a reservation.<sup>35</sup> In correspondence to the Superintendent of Sacramento Agency in 1924 and 1925, the Assistant Commissioner of Indian Affairs referred to the earlier efforts to purchase land for the Ione Band and requested that the Superintendent give the purchase “early attention with a view to clearing the way for final action.”<sup>36</sup>

A 1927 report from Superintendent L. A. Dorrington to the Commissioner of Indian Affairs found the Ione Band population to be 46.<sup>37</sup> Superintendent Dorrington also reported that the

---

<sup>26</sup> Letter from John J. Terrell, Special Indian Agent, to Cato Sells, Commissioner of Indian Affairs 1 (Aug. 18, 1915).

<sup>27</sup> *Id.*

<sup>28</sup> Letter from Acting Assistant Commissioner of Indian Affairs to Secretary of the Interior 1 (August 18, 1915).

<sup>29</sup> *Id.* at 2.

<sup>30</sup> Letter from John J. Terrell, Indian Service Inspector, to Commissioner of Indian Affairs 1 (July 31, 1917).

<sup>31</sup> *Id.*

<sup>32</sup> Report to Cato Sells, Commissioner of Indian Affairs from O. H. Lipps, Superintendent and L. F. Michaels, Special Supervisor (June 15, 1920).

<sup>33</sup> *Id.* at 41.

<sup>34</sup> Reno Indian Agency, Annual Report 4 (1923).

<sup>35</sup> *Id.*

<sup>36</sup> Letter from E. B. Merritt, Assistant Commissioner of Indian Affairs, to L. A. Dorrington, Superintendent, Sacramento Agency, 1 (January 18, 1924).

<sup>37</sup> Report to Commissioner of Indian Affairs from L. A. Dorrington, Superintendent 2 (June 23, 1927).

effort “for the past several years” to purchase land for the Ione Band “has been tied up by legal procedure.”<sup>38</sup> A May 7, 1930, letter from Superintendent Dorrington to John Porter, who had written to Dorrington on behalf of the Ione Band, explained that “because of our inability to get a clear title to the land, the deal has not been closed.”<sup>39</sup> This problem persisted despite having negotiated with the owners of the parcel “for more than eight years.”<sup>40</sup>

A series of letters in 1933 described efforts by the Department to address this problem. On October 5, 1933, Superintendent O. H. Lipps wrote to the Commissioner of Indian Affairs about a meeting he had had with two residents of Amador County (one being the Chairman of the Board of County Supervisors) regarding how to provide land to landless Indians in the county, including those living near Ione.<sup>41</sup> Superintendent Lipps reported that local officials planned to hold a conference to discuss the issue of acquiring land for the Indians. The Chairman of the Board of County Supervisors had suggested that the United States sell its reservation land at Jackson, California and rancheria land at Buena Vista, California, and use the proceeds to purchase land for landless Indians in Amador County, which was closer to work and schools, and to provide water to each parcel.<sup>42</sup> The Commissioner promptly wrote back to Superintendent Lipps on December 4, 1933 inquiring about the planned local conference and whether there had been any outcome.<sup>43</sup> Shortly thereafter, Superintendent Lipps wrote to the Chairman of the Board of County Supervisors. Referencing a promise by the Chairman “to submit a plan for securing suitable land and building homes for the homeless Indians in your County,” Superintendent Lipps inquired “when we may expect it, together with an estimate of the cost.”<sup>44</sup> This conference did not produce a breakthrough.

The next correspondence in the record related to the Ione Band is an April 29, 1941 letter from Edwin H. Hooper, Chief Clerk in Charge, Sacramento Indian Agency, to the Commissioner of Indian Affairs. This letter detailed the then recent efforts to purchase land for the Ione Band and described the impediments to that acquisition, including lack of clear title and problems involving “mineral rights and values.”<sup>45</sup>

The continuous efforts of the United States beginning in 1915 to acquire land for the Ione Band as a permanent reservation demonstrate a consistent “under federal jurisdiction” relationship between the Federal Government and the Ione. These efforts satisfy the first part of the Department’s two-part inquiry. Because this undertaking was continuous and not interrupted, and because no other events disrupted the relationship between the United States and the Band, the second part of the two-part inquiry also confirms the existence of a jurisdictional relationship in 1934.

## **B. Post-1934 Confirmations that Band was Under Federal Jurisdiction in 1934**

---

<sup>38</sup> *Id.*

<sup>39</sup> Letter from L. A. Dorrington, Superintendent to John Porter 1 (May 7, 1930).

<sup>40</sup> *Id.*

<sup>41</sup> Letter from O. H. Lipps, Superintendent, to Commissioner of Indian Affairs 1-2 (Oct. 5, 1933).

<sup>42</sup> *Id.* at 2.

<sup>43</sup> Letter from John Collier, Commissioner of Indian Affairs, to O.H. Lipps, Superintendent 1 (Dec. 4, 1933).

<sup>44</sup> Letter from O. H. Lipps, Superintendent, to Anson V. Prouty, Chairman of the Board of Amador County Supervisors 1 (Dec. 9, 1933).

<sup>45</sup> Letter from Edwin H. Hooper, Chief Clerk in Charge, to Commissioner of Indian Affairs 1 (April 29, 1941).

The substantial efforts by the United States to acquire land for the Ione Band have been noted and found significant in several other contexts. In the 1970s the Bureau of Indian Affairs recognized the Ione Band as an Indian tribe based on the 1915 and later efforts to acquire land for the Band. More recently, the United States District Court for the District of Columbia described these efforts to acquire land in an opinion regarding the Muwekma Tribe. *Muwekma Ohlone Tribe v. Salazar*, No. 03-1231, 2011 U.S. Dist. LEXIS 110400 (D. D.C. Sept. 28, 2011).

In the early 1970s California Indian Legal Services (CILS) became involved in efforts by the Ione Band to quiet title to the land they occupied and to get the Department to take the land in trust for the Band. On October 18, 1972, then Commissioner of Indian Affairs Louis R. Bruce wrote the Band acknowledging its request to have its forty acre parcel taken into trust and noting that the Secretary had authority to take land into trust under Section 5 of the IRA (25 U.S.C. § 465) and the Band had not voted to reject the IRA.<sup>46</sup> The Commissioner's letter directed the Region, then called an Area, to assist the Band in adopting a governing document under the IRA and agreed to accept the described land (the same 40 acres the United States sought to acquire starting in 1915) in trust for the Ione Band.<sup>47</sup> Unfortunately, the acquisition was never completed. The letter does recognize the Ione Band as an Indian tribe based on the 1915 determination by the United States to acquire land for the Band.<sup>48</sup> This conclusion was reaffirmed in a September 19, 2006 Indian Lands Determination written by Associate Solicitor Carl Artman, which found, *inter alia*, that the 1972 letter from Commissioner Bruce recognized the Ione Band as an Indian tribe.<sup>49</sup> This 2006 Determination represents the current policy of the Department: it was reinstated by the current Solicitor after having been withdrawn by a prior Solicitor in January 2009.<sup>50</sup>

The recognition of the Ione Band in 1972 by Commissioner Bruce supports the above conclusion that there was an under Federal jurisdiction relationship between the United States and the Ione Band. This is the case because the Bruce letter finds the efforts by the United States to acquire land for the Band beginning in 1915 and continuing past 1934 significant enough to warrant recognition of the Band.

In the course of deciding an issue involving another tribe, the United States District Court for the District of Columbia recently described the efforts by the United States to acquire land for the Ione Band as significant. In *Muwekma Ohlone Tribe v. Salazar*, the court accepted the Department's conclusion that the Ione Band has had a "long-standing and continuing governmental relationship with the United States."<sup>51</sup> The court took notice of a November 27, 2006 document filed by the Department entitled "Explanation to Supplement the

---

<sup>46</sup> Letter from Louis R. Bruce, Commissioner of Indian Affairs, to Nicholas Villa and the Ione Band of Indians 1-2 (Oct. 18, 1972).

<sup>47</sup> *Id.* at 2.

<sup>48</sup> *Id.* at 1-2.

<sup>49</sup> Memorandum from Carl J. Artman, Associate Solicitor, to James E. Cason, Associate Deputy Secretary (Sept. 19, 2006) (Indian Lands Determination).

<sup>50</sup> Memorandum from Hilary C. Tompkins, Solicitor, to Larry Echo Hawk, Assistant Secretary – Indian Affairs (July 26, 2011).

<sup>51</sup> *Muwekma*, 2011 U.S. Dist. LEXIS 110400 at \*81.



Administrative Record – Muwekma Ohlone Tribe.”<sup>52</sup> Upon examination, the *Muwekma* court concluded:

[T]he supplement to the administrative record . . . identifies a history of dealings between the federal government and the Ione. In 1915, a special agent for the BIA identified the Ione in a census conducted by the agency, and that “[t]he [f]ederal [g]overnment attempted to purchase land for” the Ione at that time. *Id.* at 7. The Department then noted that “the Indian Office obtained a deed and abstract of title for the purchase of land for the Ione[,] . . . and the Department provided the Office with a formal “Authority” for the purchase. *Id.* Documents in the record also reflect the federal government’s “extensive, but unsuccessful, effort[] to clear title to the land for the” Ione from 1915-1925. *Id.*<sup>53</sup>

Based on the Department’s “Explanation” document, the court accepted that the United States dealt with the Ione Band as a tribal entity – and not as a collection of individual Indians.<sup>54</sup> The *Muwekma* court’s acknowledgement of a government-to-government relationship between the United States and the Ione Band prior to 1934 further supports the conclusion that the Ione Band was under Federal jurisdiction in 1934.

### 8.2.3 Conclusion

The Ione Band was under Federal jurisdiction in 1934. This conclusion is confirmed by application of the Department’s two-part inquiry.

As noted above, the two-part inquiry first examines whether there is a sufficient showing in the tribe’s history, at or before 1934, that it was under Federal jurisdiction, *i.e.*, whether the United States had, in 1934 or at some point in the tribe’s history prior to 1934, taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members – that are sufficient to establish or that generally reflect Federal obligations, duties, responsibility for or authority over the tribe by the Federal Government.

The Federal Government’s jurisdictional relationship with the Ione Band began no later than 1915, when the Department decided and undertook substantial efforts to acquire land for the Ione Band as a permanent reservation. At a minimum, these efforts evince Federal obligations, duties, and responsibility for the Band. The fact that this Federal effort was not completed in 1934 does not disturb this conclusion; the question posed by *Carciari* is whether there was a jurisdictional relationship between the United States and a tribe in 1934, not the specific fruits of that relationship.

---

<sup>52</sup> *Id.* at \*42, \*81.

<sup>53</sup> *Id.* at \*83-84 (all citations are to “Explanation to Supplement the Administrative Record – Muwekma Ohlone Tribe”). The “Explanation to Supplement the Administrative Record - Muwekma Ohlone Tribe” is Exhibit 1 to Defendants’ Response to Plaintiff’s Statement of Material Facts as to Which There is No Genuine Dispute, *Muwekma Ohlone Tribe v. Kempthorne*, No. 1:03 CV 1231 (D. D.C. Mar. 16, 2007). The document, which provided a detailed explanation of the Department’s refusal to waive the Part 83 procedures for the Muwekma Tribe’s Federal recognition application, was signed by the Principal Deputy Assistant Secretary – Indian Affairs.

<sup>54</sup> *Id.* at \*85.

Once having identified that the tribe was under Federal jurisdiction at or before 1934, the second part of the inquiry is to ascertain whether the tribe's jurisdictional status remained intact in 1934.

In the case of the Ione Band, the Department's effort to acquire land for the Band as a permanent reservation continued up to and past 1934, as noted in the April 29, 1941 letter from Chief Clerk Hooper to the Commissioner of Indian Affairs.

The 1972 Louis R. Bruce letter and the 2011 determination of the *Muwekma* court also find the United States' efforts to acquire land for the Band significant. The Bruce letter recognized the Ione Band as an Indian tribe based on the 1915 determination by the United States to acquire land for the Band. In *Muwekma*, the court identified a longstanding and continuous government-to-government relationship between the United States and the Ione Band on the same basis.

### **8.3 25 C.F.R. § 151.10(B): THE NEED OF THE INDIVIDUAL INDIAN OR TRIBE FOR ADDITIONAL LAND**

Section 151.10(b) requires consideration of the "the need of the...tribe for additional land."

The Tribe has no reservation and no land in trust. Since it was restored to Federal recognition, the Tribe has lacked sufficient funds to purchase land and have that land placed in trust. As a result, the Tribe has been unable to provide for its people in ways similar to the surrounding community and surrounding Indian tribes because the Tribe has no sustainable economic base. Without trust land, the Tribe has had little opportunity for successful economic development and little chance at true self-governance. Placement of the Plymouth Parcels into trust will promote tribal self-determination, provide opportunities for economic development, and aid in the establishment of tribal government programs. The proposed trust acquisition will provide a land base from which the Tribe may exercise governmental powers and operate governmental programs to serve its membership, and will allow the Tribe to operate an enterprise which will provide the revenue for these programs.

The BIA has considered the Tribe's need for lands in trust status and finds that the Tribe has a demonstrable need to acquire the Plymouth Parcels in trust.

### **8.4 25 C.F.R. § 151.10(C): THE PURPOSES FOR WHICH THE LAND WILL BE USED**

Section 151.10(c) requires consideration of the purposes for which the land will be used.

As detailed in the FEIS, the Tribe proposes to construct a casino-resort complex that would include Class III gaming conducted in accordance with the IGRA and Tribal-State Compact requirements. The resort complex would consist of approximately 65,000 square feet of gaming floor; 35,000 square feet of restaurant and retail facilities and public space; 30,000 square feet of convention and multi-purpose space (with seating for up to 1,200); and a 5-story, 250-room hotel. Approximately 2,965 parking spaces would be provided for the project in surface parking lots and a five level parking structure located adjacent to the

proposed casino complex. The project would be developed in two phases, with the casino and restaurant complex, the parking structure, and auxiliary facilities constituting Phase I, and the development of the hotel, convention and conference center, and additional parking constituting Phase II.

The BIA finds that the stated purposes for which the land will be used appropriately meet the purpose and need for acquiring the lands in to trust.

#### **8.5 25 C.F.R. § 151.10(E): IF THE LAND TO BE ACQUIRED IS IN UNRESTRICTED FEE STATUS, THE IMPACT ON THE STATE AND ITS POLITICAL SUBDIVISIONS RESULTING FROM THE REMOVAL OF LAND FROM THE TAX ROLLS**

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

The potential fiscal impacts of the Preferred Alternative were comprehensively evaluated during negotiations of the now voided Municipal Services Agreement (MSA) and in the FEIS. As stated in the FEIS, the Tribe has incorporated the fiscal mitigation provisions of the voided MSA into FEIS. These provisions include payments, commencing at the time of the fee-to-trust transfer of the Plymouth Parcels, of an annual contribution equal to the current tax rate to the City of Plymouth and Amador County to address lost property tax revenues. The amount of payment shall be subject to annual review by the Amador County Assessor with any adjustments made with concurrence by the Tribe. The Department finds that the impacts of removing the subject property from the tax rolls are not significant because of the degree to which the Tribe's direct and indirect payments to the Amador County offset the loss of real property taxes that would occur.

#### **8.6 25 C.F.R. § 151.10(F): JURISDICTIONAL PROBLEMS AND POTENTIAL CONFLICTS OF LAND USE WHICH MAY ARISE**

Section 151.10(f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise.

The Plymouth Parcels are located partially within the City of Plymouth and partially within unincorporated Amador County. Accordingly, both the City of Plymouth and Amador County currently exercise land use jurisdiction over the Plymouth Parcels. Through the incorporation of the voided MSA provisions within the FEIS, the Tribe has agreed to address all major jurisdictional issues, including, but not limited to compensating the County Sheriff's Department, prosecuting attorney's office, courts, and schools that will provide public services on the Tribe's trust lands.

### **9.0 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 EIS and corresponding mitigation (including modification of the site plan to reduce surface parking through development of a multi-story parking structure), a consideration of economic

and technical factors, as well as the BIA's policy goals and objectives, and the purpose and need for the project. Of the alternatives evaluated in the EIS, Alternative A would best meet the purposes and needs of the BIA, consistent with its statutory mission and responsibilities, to promote the long-term economic vitality and self-sufficiency, self-determination and self-governance of the Tribe. The casino-resort complex described under Alternative A would provide the Tribe, which has no trust land, with a long deferred reservation land base and 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.

The Department is aware that completion of the project as detailed in Alternative A will require approval or other actions of Federal or local agencies. For Alternative A to be implemented, NIGC must approve the Gaming Management Contract, USEPA must grant general construction and discharge NPDES permits, USACE must concur with the wetland delineation and issue a CWA Section 404 permit for the fill of water of the U.S., and the USEPA must issue a CWA Section 401 certification. While the No-Action Alternative (Alternative E) and Retail Development Alternative (Alternative D) would result in lesser environmental impacts, these alternatives would limit the ability of the Tribe to facilitate and promote tribal economic development, self-determination and self-sufficiency. The No-Action Alternative would result in no net income or other economic benefits to the Tribe, and thus does not meet the stated purpose and need. Likewise, Alternative D, which has been identified in **Section 4.0** as the Environmentally Preferred Alternative, would substantially limit the beneficial effects that would otherwise be available to the Tribe and surrounding communities under the Preferred Alternative and would not substantially meet the purpose and need for the Proposed Action.

The Preferred Alternative results in substantially greater beneficial effects for the Tribe and surrounding communities than any of the other alternatives. Alternatives B and C, while less intensive than Alternative A, would require similar levels of mitigation for identified impacts while providing less revenue to fund mitigation. The additional impacts from the Preferred Alternative would be reduced to less than significant after the implementation of mitigation measures. Accordingly, the Department will implement the Preferred Alternative subject to the mitigation measures discussed in **Section 6.0**.

## **9.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS**

The Preferred Alternative reasonably is expected to result in beneficial effects for Amador County communities, the Tribe, and its members. Key beneficial effects include:

- Establishment of a land base for the Tribe, from which it can operate its tribal government and provide a variety of health, housing, education, social, cultural and other programs and services for its members, provide employment

opportunities for its members, and promote a sense of community and political cohesion.

- Generation of needed government revenues for the Tribe that will allow the Tribe to fund the governmental operations and programs required to meet Tribal needs, will provide capital for other economic development opportunities, and will allow the Tribe to achieve Tribal self-sufficiency, self-determination, and a strong, stable Tribal government.
- Generation of approximately 392 jobs over the entire construction period.
- Generation at the onset of operations of employment of 1,271 full-time equivalent jobs. Employees who earn tips are estimated to earn additional annual income. Approximately 60 percent of employees are anticipated currently to reside in Amador County.
- Increased off-site spending and economic opportunities benefiting local community members. Revenue from new in-state expenditures on goods and services is estimated to total tens of millions annually.
- Generation of annual and one-time revenues to the State of California through the Tribal State Compact.

## **9.2 PREFERRED PROJECT WITH REDUCED GAMING AREA (ALTERNATIVE B) AND WITH REDUCED GAMING AND NO HOTEL (ALTERNATIVE C) RESTRICTS BENEFICIAL EFFECTS**

The reduced intensity alternatives (Alternatives B and C) would generate less revenue than the Preferred Alternative. As a result, they 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 Alternatives B and C than those created by the Preferred Alternative. Both alternatives would result in a similar level of impacts after mitigation. The reduced economic and related benefits of Alternatives B and C make them less viable options 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 Alternatives B and C.

## **9.3 RETAIL DEVELOPMENT ALTERNATIVE (ALTERNATIVE D) SEVERELY RESTRICTS BENEFICIAL EFFECTS**

The Retail Development Alternative (Alternative D) is the Environmentally Preferred Alternative; however, implementation 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 reduced economic and related benefits of Alternative D make it a less viable option that would fulfill the purpose and need of the Proposed Action less than the Preferred Alternative. Additionally, based on the

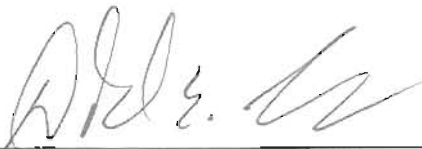
dynamic differences in patron behavior between gaming and commercial venues, Alternative D would result in greater trip generation and a higher percentage of trip generation at peak hours, subsequently increasing the potential for adverse traffic impacts and associated air quality emissions. Therefore, selection of Alternative D over the Preferred Alternative is not warranted.

#### **9.4 NO-ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED FOR ACTION**

Under the No-Action Alternative, it is reasonably foreseeable that the Plymouth Parcels would be developed with commercial and residential uses. The government revenue and employment impacts from such development would be relatively low, particularly compared to the government revenue and employment benefits of a casino. Because of this, City and County residents, the Tribe, and its members would not receive the economic and related benefits that the proposed casino is reasonably anticipated to provide. This would result in a continuation of the poor economic conditions and very limited economic opportunities of the Tribe and its members.

#### **10.0 SIGNATURE**

By my signature, I indicate my decision to implement the Preferred Alternative and acquire the Plymouth Parcels property in trust for the Ione Band of Miwok Indians.



\_\_\_\_\_  
Donald E. Laverdure  
Acting Assistant Secretary – Indian Affairs  
United States Department of the Interior

Date: 5-29-12