

ATTACHMENT III

COMMENTS AND RESPONSES ON THE FEIS

COMMENTS ON THE FEIS

Comment Letters received on the Final EIS are listed in **Table 1**, and provided in their entirety on the following pages. Issues specific to the FEIS are individually bracketed and numbered in the margins of the comment letters. Comments provided on the DEIS and then re-sent as FEIS comment letters are not re-addressed herein, unless new information or an explanation was provided. For duplicate letters, a reference is provided as to the letter number where bracketed responses are provided. Responses to the numbered comments are provided in the section following the comment letters.

TABLE 1
LIST OF COMMENTERS

	Name	Agency	Address	Date
Federal Agencies (F)				
F1	Kathy M. Goforth, Manager	USEPA, Region IX	75 Hawthorne Street San Francisco, CA 94105	9/13/10
F2	Daniel E. Lungren, Congressman	United State Congress	2339 Gold Meadow Way Suite 220 Gold River, CA 95670	9/3/2010
State Agencies (S)				
S1	Patty Brandt, Senior Legal Analyst	Office of the Attorney General, DOJ	1300 I Street, Suite 125 Sacramento, CA 94244	8/17/10
S2	Sara J. Drake, Senior Assistant Att. General	Office of the Attorney General, DOJ	1300 I Street, Suite 125 Sacramento, CA 94244	8/26/10
S3	Andrea Lynn Hoch, Legal Affairs Secretary	Office of the Governor	1300 I Street, Suite 125 Sacramento, CA 94244	9/13/10
S4	John Gendey, Chief	California Department of Transportation, D10	1976 E. Martin Luther King Jr. Blvd Stockton, CA 95201	9/9/10
Local Agencies (L)				
L1	Laura Hollender, City Attorney	City of Plymouth	9426 Main Street Plymouth, CA 95669	19-Aug
L2	Laura Hollender, City Attorney	City of Plymouth	9426 Main Street Plymouth, CA 95669	9/13/10
L3	Martha Jeanne Shaver, County Counsel	County of Amador	810 Court Street Jackson, CA 95642	9/13/10

	Name	Agency	Address	Date
L4	Kamal Atwal, Associate Transportation Engineer	Sacramento County- Department of Transportation	906 G Street, Suite 510 Sacramento, CA 95814	9/8/10
L5	Greg Baldwin, Chairman	Amador County Transportation Commission	11400 American Legion Drive Jackson, CA 95642	9/9/10
Private Entities/Organizations (P)				
P1	Audrey Souza	Private Citizen	P.O. Box 673 Sutter Creek, CA 95685	8/21/10
P2	Cheryl Schmit, Director	Stand Up for California	P.O. Box 355 Penryn, CA 95663	9/7/10
P3	Dueward W. Cranford II	Private Citizen	P.O. Box 794 Plymouth, CA 92825	N/A
P4	Dr. Elida A. Malick	Private Citizen	P.O. Box 264 Fiddletown, CA 95729	9/2/10
P5	Elida A. Malick and Thomas P. Infusino	No Casino in Plymouth	P.O. Box 82 Plymouth, CA 95669	9/10/10
P6	Richard D. Minnis	Private Citizen	P.O. Box 880 Plymouth, CA 95669	9/9/10
P7	Walter W. Dimmers	Private Citizen	18000 Burke Drive Plymouth CA 95669	9/3/10

FEDERAL AGENCIES (F)

COMMENT LETTERS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105

September 13, 2010

Dale Morris
 Regional Director
 Pacific Regional Office
 Bureau of Indian Affairs
 2800 Cottage Way
 Sacramento, CA 95825

Subject: Final Environmental Impact Statement, Lone Band of Miwok Indians 228.04 acre Fee-to-Trust Transfer Project and Casino Project, Amador County, California (CEQ # 20100316)

Dear Mr. Morris:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the Bureau of Indian Affairs (BIA) on July 2, 2008. We rated the DEIS's preferred Alternative A as Environmental Objections - Insufficient Information (EO-2) specifically objecting to: (1) water supply option 2, if implemented without the use of recycled water, due to impacts to groundwater in an existing overdrafted basin, and (2) wastewater disposal option 1 due to impacts to waters of the United States from the construction of a wastewater storage reservoir in a nearby canyon involving installation of a 75-foot earthen dam and diversion of an intermittent stream. EPA also expressed concerns regarding impacts to hydrology from the parking lot, which would surround a vernal pool on 3 sides. EPA is a cooperating agency on the project and also provided comments to BIA on the Administrative FEIS on January 12, 2009.

F1-01

The FEIS states that, for water supply option 2, recycled water would be used to meet the nonpotable water demands of Phase I of Alternative A, which is approximately one-third of the total water demand. We commend BIA and the Tribe for this commitment. The preferred water option for Phase II of the project (hotel complex and conference center), however, would require trucked water to meet the increased water demand. EPA expressed concerns regarding this aspect of the project, and continues to discourage project planning that depends on trucked water since it is inefficient and potentially unsustainable. We recommend that BIA and the Tribe scale the project to a size that the available on-site water supply could support.

F1-02

We are pleased that the FEIS indicates the preferred wastewater disposal option is option 2, which would dispose of treated wastewater to surface waters during the wet season under a National Pollutant Discharge Elimination System (NPDES) permit, obviating the need for constructing an earthen dam and diverting a creek for a storage reservoir. This option would

F1-03

avoid substantial impacts to waters of the U.S. as well as impacts to riparian vegetation. The Response to Comments in Appendix Y indicates that the treated effluent reservoir option would only be constructed if an NPDES permit is not obtained. We note that should the treated effluent reservoir option go forward, it would require a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers (Corps), which requires an alternatives analysis pursuant to CWA Section 404 (b)(1). EPA shares a regulatory role in the implementation of Section 404 of the CWA and would review the 404(b)(1) analysis. The Corps can only permit the Least Environmentally Damaging Practicable Alternative (LEDPA) for the discharge of fill material. If seasonal NPDES discharges would practicably accomplish the same purposes as the construction of a reservoir for treated effluent, then the reservoir alternative would not be the LEDPA and could not be permitted by the Corps. EPA looks forward to working with the Tribe on its NPDES permit. Please contact John Tinger of EPA Region 9's Water Division at (415) 972-3518 for assistance.

F1-03
Cont'd

F1-04

We appreciate the additional information regarding the conceptual groundwater monitoring plan and mitigation for potential future impacts to adjacent wells in the mitigation measures chapter of the FEIS; however, the plan lacks specificity regarding what the "not to exceed" maximum drawdown levels would be. Furthermore, the mechanism of implementation for the mitigation is not clear, including how the Tribe would coordinate with potentially impacted well owners. Contracting with a third party to implement this element of the plan should be considered.

F1-05

F1-06

The FEIS includes alternative site plans that reduce the development footprint of the parking lot through the use of a parking structure. These alternative plans are proposed as mitigation and are located in the mitigation measures chapter, while the description of the proposed action in Chapter 2 still contains the original site plans, so it is unclear how to interpret the inclusion of the alternative site plans in the FEIS. The ROD should clearly specify that the proposed action alternative, as described in Chapter 2, is being modified with the alternative site plans in Chapter 5. We strongly recommend BIA and the Tribe select the alternative site plans, and we commend their inclusion, as they would reduce the amount of impervious surface coverage by 25 acres and reduce impacts to the vernal pool.

F1-07

EPA appreciates the opportunity to review this FEIS. If you have any questions, please contact me at 415-972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov

Sincerely,



Kathleen M. Goforth, Manager
Environmental Review Office

cc: Johnny Jamerson, Chairperson, Ione Band of Miwok Indians
Sarah Norris, Environmental Planner, Ione Band of Miwok Indians

COMMENT LETTER F2

DANIEL E. LUNGREN
3RD DISTRICT, CALIFORNIA
COMMITTEE ON
HOMELAND SECURITY
COMMITTEE ON
THE JUDICIARY
COMMITTEE ON
HOUSE ADMINISTRATION
RANKING MEMBER

Congress of the United States
Washington, DC 20515

WASHINGTON OFFICE
2202 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5716
FAX: (202) 225-1258

DISTRICT OFFICE
2339 GOLD MEADOW WAY, SUITE 220
GOLD RIVER, CA 95670
(916) 859-9906
FAX: (916) 858-9976

E-MAIL: VOTER@DANLUNGREN.HOUSE.GOV
www.lungren.house.gov

SEP 8 PM 4 36

September 3, 2010 PACIFIC REGIONAL
OFFICE

Dale Risting
Acting Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Handwritten initials and date:
✓ [Signature]
9/15/10 [Signature]

Dear Director Risting,

Thank you for providing my District Office a CD copy of the Final Environmental Impact Statement for the Lone Band of Miwok Indians' Land Transfer and Casino Project.

The release of the Final EIS has triggered a public comment period of 30 days. Given the sheer volume of the EIS, a document of hundreds of pages long, and the complexity of the information contained therein, it is difficult to imagine that members of the public will be able to review the EIS, let alone provide constructive comments, in only 30 days. The Casino Project will have a tremendous impact on the community of Plymouth, which is in my Congressional District, and it is imperative that those affected by the Project be permitted the opportunity to offer meaningful input on this final determination. This simply will not be possible in the 30 days currently allotted.

✓ I respectfully request that an additional 30 days be added to the comment period currently scheduled to end on September 13, 2010, for a total of 60 days of public input, to ensure that my constituents have adequate time to review the Final EIS and provide quality feedback.

If you have any questions concerning this request or wish to speak with me or a member of my staff, please contact Chris O'Connor in my District Office at 2339 Gold Meadow Way, Suite 220, Gold River, CA 95670 or by phone at (916) 859-9906.

Sincerely,

Handwritten signature of Daniel E. Lungren

Daniel E. Lungren
Member of Congress

F2-01

STATE AGENCIES (S)

COMMENT LETTERS



EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 327-7707
Facsimile: (916) 322-5609
E-Mail: patry.brandt@doj.ca.gov

2010 AUG 19 PM 4:12

PACIFIC REGIONAL
OFFICE

August 17, 2010

Mr. John Rydzik
Department of the Interior
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Via e-mail to: john.rydzik@bia.gov,
original by U.S. mail.

RE: Ione Band of Miwok Indians Proposed 228.04 acre
Fee-to-Trust and Casino Project, Final Environmental Impact Statement

Dear Mr. Rydzik:

This letter is written on behalf of the Governor's Office to request additional time to review the above-referred Final Environmental Impact Statement ("FEIS") for any comments. Currently, any comments made by the Governor's Office are due to the Bureau of Indian Affairs by September 13, 2010. At this time, there is no decision whether any comments will be made.

The additional time is requested because the Deputy Attorney General assigned to review this document currently has a very heavy workload and further, is scheduled to be out of the office from August 26 until September 20, 2010, for his wedding and honeymoon. Additionally, the FEIS is an extremely large environmental document which consists of almost 3,500 pages and covers many technical areas, the very limited time of 30 days to review the FEIS simply does not allow enough time to properly review the whole environmental document.

At this time we are requesting an additional six weeks to review this environmental document, which is until Monday, October 25, 2010.

Thank you for your cooperation and immediate response to this request.

Sincerely,

PATTY BRANDT
Senior Legal Analyst

For EDMUND G. BROWN JR.
Attorney General

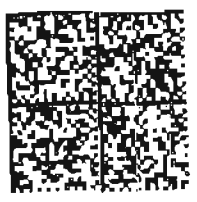
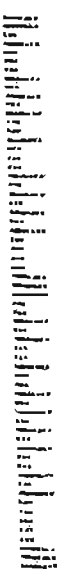
S1-01

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
P.O. BOX 944255
SACRAMENTO, CA 94244-2550



Mr. John Rydzik
Department of the Interior
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

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EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 324-5375
Facsimile: (916) 322-5609
E-Mail: sara.drako@doj.ca.gov

RECEIVED
PACIFIC REGIONAL
OFFICE

August 26, 2010

Mr. Dale Risling
Acting Regional Director
Department of the Interior,
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Via fax to: (916) 278-6099
original by U.S. mail.

DECISION NO
John lets discuss
Dale
no extension
response letter

RE: Ione Band of Miwok Indians Proposed 228.04 acre
Fee-to-Trust and Casino Project, Final Environmental Impact Statement

Dear Mr. Risling:

This letter is written on behalf of the Governor's Office to request that you reconsider your decision to deny this office's request for additional time to review the above-referred Final Environmental Impact Statement ("FEIS") for any comments. As you know, any comments made by the Governor's Office are due to the Bureau of Indian Affairs by September 13, 2010. Even though at this time there is no decision on whether any comments will be made, the Governor's Office is in need of additional time to review the environmental document.

In our previous letter, we requested additional time because the Deputy Attorney General assigned to review this Tribe's document has a very heavy workload and further was scheduled to be out of the office from August 26 until September 20, 2010, for his wedding and honeymoon. He was not able to review the FEIS before he left. Further, the FEIS is almost 3,500 pages and covers many technical areas, and the limited time of 30 days to review the FEIS simply does not allow enough time to properly review the whole environmental document.

In addition to the above reasons for an extension request, as you know, our office has received within one week's time, four substantial environmental documents to review that are critical to the State's interests. Those documents are:

1) FEIS for fee to trust, Hotel and Casino for the North Fork Rancheria, dated February 2009, received in our office August 6, 2010; comments due September 1, 2010;

2) FEIS for fee to trust, Hotel and Casino for Enterprise Rancheria, dated May 2009, received in our office August 6, 2010; comments due September 1, 2010;

S2-01

August 26, 2010

Page 2

3) DEIS for fee to trust, Resort Casino Project for Cloverdale, dated August 2010, received August 9, 2010; comments due October 13, 2010;

4) FEIS for fee to trust, Casino Project for the Lone Band, dated February 2009, received in our office August 13, 2010; comments due September 13, 2010.

You will note that all three of the FEISs, including the Lone Band's FEIS, are dated in February and May 2009. Despite that fact, the State is now being asked to review four very important environmental documents related to proposals to take land into trust for casinos at the same time. We have not requested an extension for the other three environmental documents, but believe that our request to extend the comment period for the Lone FEIS is more than reasonable under the circumstances.

The Governor's Office is requesting that you again consider this request for an extension of time for an additional six weeks to allow the attorney who is most knowledgeable to review this environmental document, which is until Monday, October 25, 2010.

Thank you for your cooperation and immediate response to this request.

Sincerely,


SARA J. DRAKE
Senior Assistant Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Michael R. Smith, Deputy Director, Bureau of Indian Affairs
Andrea Hoch, Legal Affairs Secretary, Office of the Governor



Reg Dir Dale D
 Dep Reg Dir _____
 Reg Adm Ofc _____
 Route DELRms ✓
 Response Required NO
 Due Date _____
 Memo _____ Ltr _____
 Other _____

OFFICE OF THE GOVERNOR

DATE: September 13, 2010 TIME: 9:58a

FAX NUMBER: (916) 978-6099

Number of Pages (including this cover page): 5

TO: Mr. Dale Risling, Acting Regional Director

AT: U.S. Department of the Interior, Bureau of Indian Affairs

FROM: Andrea Lynn Hoch, Legal Affairs Secretary

AT: Office of the Governor, State of California

SPECIAL INSTRUCTIONS:

Comment Letter by Governor's Office: Ione Band of Miwok Indians
Proposed Fee-to-Trust Acquisition and Casino Project, PEIS.

Original letter to follow via U.S. Mail.

If you have not received all pages of this facsimile, please contact:

Name: Cristi Caspers Telephone #: (916) 445-0873



OFFICE OF THE GOVERNOR

September 13, 2010

Via Facsimile (916) 978-6099 & U.S. Mail

Mr. Dale Risling
Acting Regional Director
Department of the Interior
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Re: One Band of Miwok Indians Proposed 228.04-Acre Fee-to-Trust
Acquisition and Casino Project Final Environmental Impact Statement

Dear Mr. Risling:

While this office appreciates the opportunity to comment on the Final Environmental Impact Statement (FEIS) dated February, 2009, for the fee-to-trust application and proposed casino project of the One Band of Miwok Indians (Tribe), it is regrettable that the request for additional time to comment made on this office's behalf has been denied by the Bureau of Indian Affairs. In addition to the personal circumstances of the attorney who has been responsible for review of the Draft EIS (DEIS), which were made known to the Bureau promptly following receipt of the FEIS and the Bureau's Notice of Availability on August 6, 2010, the length of the FEIS, approaching 3,500 pages and addressing many technical areas, presents an extreme challenge to proper review of the document within any 30-day period. Additionally, we note that three environmental documents for casino projects proposed by other California tribes were recently released for comment. Please be advised that we take seriously our role in reviewing these matters and attempt to provide thorough and thoughtful comments. We ask that in the future appropriate consideration be given to our requests for additional time to submit comments.

Our comments of the FEIS are detailed below.

S3-01

Mr. Dale Risling
 September 13, 2010
 Page 2

No demonstrated need for acquisition of Parcels 2 and 12.

Commenting on the DEIS in 2008, this office noted that there was no demonstrated need to acquire Parcels 2 and 12 into trust. Parcels 2 and 12 together account for slightly less than 20 acres of the proposed acquisition. The FEIS response states that these parcels "are necessary for sprayfields and other wastewater and groundwater mitigation measure, and to mitigate the aesthetic impacts of the project" (S6-05 at S-7.) Parcels 2 and 12, however, are located to the north of any sprayfields and other wastewater mitigation facilities identified in the wastewater disposal options. (Note that Figure 2-1, the Alternative A (Phase I) Site Plan, incorrectly refers to Figure 2-1 as supplying details on wastewater disposal options. The correct reference appears to be Figure 2-5.) Neither Figure 2-5 nor any other representation in the FEIS identifies any wastewater or groundwater mitigation measure, or mitigation of aesthetic impacts, that rely on trust status for either Parcel 2 or Parcel 12. Instead, all wastewater disposal and mitigation measures appear to be situated within Parcel 1. (FEIS Figs. 2-1, 2-5, 2-6, 2-7, 2-9, 2-11, 2-12.) The response also states that "[a]s the Tribe currently has no land in trust, there is a need for all of the project parcels to be taken into trust in order to promote Tribal economic development and self-sufficiency" (S6-05 at S-7). This response does not clarify the need for Parcel 2 or Parcel 12 to be included in the trust acquisition or enable the "hard look" at environmental consequences of proposed action, and at possible alternatives, that NEPA requires (*Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976)).

S3-02

Water Resources.

The FEIS response to this office's prior comments on water resources, concerning reliance on water supplies available to the City of Plymouth, indicates the cumulative analysis assumes no change in water supply to the in-city commercial parcels after they are taken into trust, and refers to the two water options identified in Section 2.0 of the DEIS. Option 2, which the FEIS now identifies as the preferred water supply option, anticipates relying on groundwater extraction rather than obtaining water from the municipal water supply (Option 1). It appears from the FEIS that the City of Plymouth would be able to satisfy some portion of its own and the project's future water needs through the Plymouth Pipeline, which was completed in October 2009, some months after the completion of the FEIS. Since the preferred option does not propose to rely on this source but rather on groundwater, the FEIS should more clearly identify the extent to which the City may be required to rely on some continued groundwater extraction to meet future municipal water needs. Otherwise, the FEIS' supposition that tribal groundwater pumping will allow the Tribe to meet its Alternative A Phase I potable water requirement (which the FEIS identifies as 98,000 gpd) appears uncertain, since the project's ability to realize its total firm yield (reported at approximately 116,640 gpd (FEIS 2-9) cannot be reliably anticipated. The FEIS, issued prior to the advent of the Plymouth Pipeline, reports the City pumping at the maximum rate to meet its then existing needs (FEIS 4.11-7), apparently resulting in an overdraft of the local basin (FEIS 4.3-10), and states that tribal pumping could increase the basin deficit.

S3-03

Mr. Dale Risling
September 13, 2010
Page 3

(FEIS 4.3-10.) The inquiry would appear to be even more critical with respect to Alternative A Phase II, since there appears to be no question that tribal groundwater extraction will be inadequate to meet Phase II's implied increase of about 18 percent in the project's potable water need, which the FEIS states will total 116,700 gpd. (FEIS 2-8, 2-21) Accordingly, the FEIS should be modified to reflect the feasibility of Option 2, taking into account the City's potential groundwater needs, if any, based on more current data from the period following the operation of the Plymouth Pipeline.

S3-03
cont'd

In addition, the effect of the project's intended use of groundwater on other users under Option 2, as applied to both Alternatives A and B, requires clarification. The FEIS states that tribal groundwater pumping "would not likely affect neighboring wells, although the potential for this impact does exist." (FEIS 4 3-10.) Clarifying information is required in order to permit an informed assessment of the practicality of identified tribal mitigation measures affecting other groundwater users. (FEIS 5-9 – 5-10.) Given the uncertainty over the City's future groundwater extraction needs, it is difficult to determine the likelihood of resort to these measures and how practical they may be.

S3-04

Problem gambling.

The DEIS concluded that there will be no impact on pathological and problem gambling within the County and surrounding areas because the region has been exposed to many forms of gambling, including destination casinos, for many years. This conclusion does not appear supported in the FEIS. Both the DEIS and the FEIS refer to a study by the National Gambling Impact Study Commission published eleven years ago, and apparently rely on the study's reference to the fact that, at that time, approximately 86 percent of Americans reported having gambled at least once during their lifetimes and 63 percent reported having gambled at least once during the previous year. (FEIS 4.7-8-9.) These facts are insufficient to support a conclusion that a regional population's exposure to gambling renders pathological and problem gambling a less-than-significant impact.

S3-05

In response to this office's comment on the DEIS's conclusion, the FEIS discusses a more recent study on gambling conducted by the California Research Bureau (CRB, Gambling in the Golden State: 1998 Forward (May 2006), identified in the comment, which noted the high percentage of calls to the California Council on Problem Gambling, Inc., generated by persons whose primary gambling preference was Indian casino gambling. (*Id.*, at p. 84.) The response suggests that the study did not take into account factors such as problem gambling education and other assistance offered at Indian casinos, and suggests that the higher percentage of callers attributable to Indian casinos may represent a more successful program of awareness and education compared to other types of legalized gambling. (FEIS S6-13 at S-9) While these comments may have merit, the FEIS does not seem to recognize the significance of the CRB

S3-06

Mr. Dale Risting
September 13, 2010
Page 4

study's findings, which is that individuals with a primary gambling preference for Indian casino gambling constitute the overwhelming majority of all such callers. (*Id.*, at p. 84.) Under these circumstances, exposure of the regional population to the existence of, for example, a tribal casino in nearby Jackson, or another proposed tribal casino in the vicinity of the nearby Tule, does not justify dismissal of problem gambling as a less-than-significant impact. In fact, such exposure is among the reasons the FEIS should evaluate problem and pathological gambling as a cumulative impact.

S3-06
cont'd

Crime.

The FEIS states that "[w]henver large volumes of people are introduced into a community, the volume of crime is expected to increase," and that "the criminal incidents would be expected to increase as with any other development of this size." (FEIS 4.7-10.) These impacts were determined to be "less than significant." The FEIS does not appear to consider evidence that in California, greater casino presence correlates with higher crime rates including aggravated assault and crimes of violence (CRB, *id.*, at p. 72) and that the kinds of crime that occur where the activities of persons commonly and collectively engaged in close quarters are most likely to engender anti-social behavior. The FEIS should consider such evidence and address criminal impacts specifically related to casinos.

S3-07

Other comments by State of California.

These comments do not constitute the entirety of the State's comments on the FEIS. State agencies with specific technical expertise on matters that have been, or should have been, addressed in the FEIS may provide additional comments in separate communications.

S3-08

Thank you for the opportunity to comment on the FEIS.

Sincerely,



ANDREA LYNN HOCH
Legal Affairs Secretary

DEPARTMENT OF TRANSPORTATION
DISTRICT 10
P.O. BOX 2048, STOCKTON, CA 95201
(1976 F. DR. MARTIN LUTHER KING JR. BLVD. 95205)
PHONE: (209) 948-7112
FAX: (209) 948-7164
TTY: 711



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September 9, 2010

10-AMA-49-PM 15.0
FEIS Comments
Ione Band of Miwok Indians
Land Transfer and Casino Project
SCH # 2008044002

Mr. Dale Risling, Acting Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Dear Mr. Risling:

The California Department of Transportation (Department) appreciates the opportunity to review and comment upon the Ione Band of Miwok Indians' Final Environmental Impact Statement (FEIS) dated February 2009), and the revised Traffic Impact Study (TIS) prepared by Dowling Associates, Inc. (November 2008). The FEIS addresses the environmental impacts for the proposed 228.04-Acre Fee-to-Trust Land Transfer and Casino Project in the City of Plymouth in Amador County, California. The FEIS discusses four 'build' alternatives - Casino (Alternative A) proposes a 120,000 square-foot casino, 250 room hotel, and a 30,000 square-foot convention center. The casino is to consist of 2,000 slot machines, 40 game tables, buffet, a specialty restaurant, sports bar, etc. Phase 1 would construct the casino and food-beverage facilities, while Phase 2 proposes to construct the hotel and convention center. Alternative B proposes a reduced-size casino with hotel. Alternative C proposes a further reduced-size casino. Alternative D proposes a retail development of 123,000 square-feet. The location of the proposed development would access State Route (SR) 49 in the City of Plymouth.

The Department provides the following comments from Caltrans District 10: (Please refer to Caltrans District 3's comment letter sent directly from their office for any highway facilities within their region.)

S4-01

Please refer to Site Plans. The site plan for Alternative A (Phase 1) shows the casino building situated immediately adjacent to the SR-49 right of way.

S4-02

- The Department advises that this site plan does not account for the ultimate right of way width, since the building location would restrict the right of way width necessary for roadway improvements.

S4-03

- The site plans show the main entrance for the proposed casino as SR-49/Randolph Drive with the east leg being the casino's main entrance.

S4-04

Mr. Ristig
 September 9, 2010
 Page 2

- The Department advises that the driveway, as shown on the site plan, has two significant operational and safety problems. The first is that the casino entrance is offset from the existing west leg of Randolph. The second problem is the proposed main entrance is too close to the existing Village Drive road connection.

S4-05

The following 'fair share' percentages are estimates based on current projections of existing and proposed developments that may contribute impacts to the identified locations requiring improvements. Although the TIS identifies that it followed Caltrans methodology when calculating the proportional share for adversely impacted intersection and highway segments, the calculations performed were not provided in the TIS or Appendices, and therefore cannot be verified at this time. With only the output provided, District 10 considers these values to be provisional. The Department reserves the right to revisit these percentage impacts during mitigation project development and may request revisions to the 'fair share' proportions as project cost responsibilities are assessed.

S4-06

Please refer to the Executive Summary, Table ES-1, Summary of Potential Environmental Effects, Mitigation Measures, and Significance; Mitigation Measures:

Mitigation Measure F, page xxxi, reads: "*SR49/Randolph Drive – Less than Significant, Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is as follows:*"

- Alternative A 100%*
- Alternative B 100%*
- Alternative D 100%*

S4-07

Mitigation Measure G, pages xxxi and xxxii, reads: "*Lalrobe (Amador)/SR 16 – Less than Significant, Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is as follows:*"

- Alternative A 100%*
- Alternative D 100%*

S4-08

Mitigation Measure K, page xxxiii, reads: "*SR88/Jackson Valley Road – Less than Significant, Install a Signal. Proportionate share calculation of this project impact using Caltrans methodology is as follows:*"

- Alternative A 43%*
- Alternative B 36%*
- Alternative C 27%*
- Alternative D 49%*

S4-09

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- The Department advises that the above mentioned intersections proposed for signal installations would also require accompanying geometric improvements including, but not limited to: dedicated left-turn lanes; right turn lanes; etc.

S4-10

Mitigation Measure I, page xxxiii, reads: *“SR88/Liberty Road – Less than Significant, Install a Signal and convert NB right-turn lane into shared through/right-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is as follows:”*

S4-11

- Alternative A 37%*
- Alternative B 30%*
- Alternative C 22%*
- Alternative D 42%*

- The Department advises that there is no existing second NB receiving lane. In order to operate correctly, this proposed mitigation would additionally require the construction of a second NB receiving lane with adequate downstream merge-distance and transition to a lane drop.

S4-12

Mitigation Measure O, page xxxiv, reads: *“SR49/Project Access Driveway – Less than Significant, Restrict left-turn out of driveway. Proportionate share calculation of this project impact using Caltrans methodology is as follows:”*

S4-13

- Alternative A 100%*
- Alternative B 100%*
- Alternative D 100%*

- The Department notes that although the driveway in Mitigation Measure O shows a restricted left-turn out of driveway, the TIS analysis and various site plans show left-turns out of this “Service Entrance” driveway to SR-49 are not restricted.

S4-14

- If this driveway access is being proposed, there needs to be a dedicated left-turn lane on the SB SR-49. The site plan does not show a SB SR-49 dedicated left-turn lane, however, the Traffix analysis shows that the analysis was performed using a SB SR-49 dedicated left-turn lane.

S4-15

- Additionally, there needs to be a dedicated right-turn lane on NB SR-49 for the right-turn movement to this proposed driveway access. The site plan and Traffix analysis show the NB right-turn movement as being from the through lane.

S4-16

Please refer to Executive Summary, Table ES-1, Summary of Potential Environmental Effects, Mitigation Measures, and Significance; Mitigation Measures.

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Mitigation Measure KK, pages xxxix and xl, reads: *“SR49 between Casino Entrance and Main Street - Less than Significant, Upgrade to Arterial Class II. Proportionate share calculation of this project impact using Caltrans methodology is as follows:”*

S4-17

Alternative A 100%

- The Department request additional information to clarify the project proponent assertion to “Upgrade to Arterial Class II”. Please explain the specific improvements or mitigations that are being proposed.

S4-18

Mitigation Measure LL, page xl, reads: *“SR49 between Casino Entrance and Main Street - Less than Significant, Widen from two to four lanes. Proportionate share calculation of this project impact using Caltrans methodology is as follow”*

S4-19

Alternative A 84%

Alternative B 80%

- The Department requests clarification for the following: The above mentioned proposed mitigation measure LL for Phase II Alternatives A and B states the mitigation is to “Widen from two to four lanes.” However, the mitigation measure for the Cumulative scenario for Alternatives A, B, C, and D, of this same road segment of SR-49 between Casino Entrance and Main Street, show conflicting mitigations. For this Cumulative scenario the mitigation measure DDD, SR-49 between Casino Entrance and Main Street, states “Widen from two to three lanes”. Please explain.

S4-20

Mitigation Measure OO, page xl, reads: *“SR49/SR 16 - Less than Significant, Add NB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is as follows:”*

S4-21

Alternative A 100%

Alternative D 100%

- The Department advises that there is no existing second receiving lane on WB SR-16. In order to operate correctly, this proposed mitigation would additionally require the construction of the second WB receiving lane with adequate downstream merge distance and transition to a lane drop.

S4-22

Mitigation Measure (Cumulative) NN, page xl, reads: *“SR49/Randolph Drive - Less than Significant, Add NB left-turn lane. Proportionate share calculation of this project impact using Caltrans methodology is as follows:”*

S4-23

Alternative D 100%

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- The Department advises that this proposed NB left-turn lane would have already been required as part of the opening day mitigation (Mitigation Measure F, SR/49/Randolph Dr. Install Signal) to install signal at the casino main entrance.

S4-24

Please refer to Executive Summary, Table ES-1, Summary of Potential Environmental Effects, Mitigation Measures, and Significance; Mitigation Measures.

Mitigation Measure (Cumulative) UU, page xlii, reads: "*SR88/Liberty Road - Less than Significant, Install a Signal and convert NB right-turn lane into shared through/right turn. Proportionate share calculation of this project impact using Caltrans methodology is as follows:*"

S4-25

- Alternative A 23%
- Alternative B 18%
- Alternative C 12%
- Alternative D 26%

- The Department advises that there is no existing second NB receiving lane. This proposed mitigation in order to operate correctly would additionally require construction of a second NB receiving lane with adequate downstream merge distance and transition to a lane drop.

S4-26

Mitigation Measure (Cumulative) VV, page xlii, reads: "*SR88/Victor Road (SR12) - Less than Significant, Convert SB right-turn lane into shared through/right turn lane. Proportionate share calculation of this project impact using Caltrans methodology is as follows:*"

S4-27

- Alternative A 9%
- Alternative B 7%
- Alternative C 5%
- Alternative D 11%

- The Department advises that even though there is a second SB receiving lane, the existing SB receiving lane does not have adequate merge distance to accommodate the SB right-turn only lane being revised to a through-right-turn lane. This proposed mitigation in order to operate correctly would require the lengthening of the existing SB receiving lane with adequate downstream merge distance and transition to a lane drop.

S4-28

Note: Please reference the Table in the Executive Summary (ES-1) for other mitigation projects on the State Highway System for their proportional share percentages, as the percentages shown in this letter are specific to operational comments provided by our Traffic Operations unit.

S4-29

Please refer to TIS, Figure 25, 2025, No Project Lane Geometry & PM Peak Hours Volumes. Intersection #15 SR88/SR12 (East) assumes an EB dual left-turn configuration.

S4-30

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- The Department notes that there is currently no programmed project to construct a dual left-turn at this intersection. Therefore, the TIS analysis should not have assumed an EB dual left-turn configuration to determine its impacts to this intersection. As a result the LOS values claimed for this intersection for the cumulative condition are incorrect.

S4-30
cont'd

Please refer to Appendix M, TIS, page 143. SR 16/Latroc Road is described as located in Sacramento County with a LOS D threshold.

S4-31

- This intersection is in Amador County and has a LOS C threshold.

Please refer to TIS, Figure 25, 2025, No Project Lane Geometry & Peak Hour Volumes. Intersection #8, SR16/Latrobe Road assumes a signalized intersection configuration.

S4-32

- There is no Tier I project to install a signal at this intersection. Therefore, the TIS analysis should not have assumed a signalized intersection. As a result, the LOS values based on a signalized intersection for the Cumulative condition are incorrect.

Please refer to Appendix M, TIS, page 4. SR-16, "Jackson Highway has 2' - 12' travel lanes with 8' paved shoulders and speed limit 55 mph..."

S4-33

- SR 16 from the Sacramento/Amador County line to the SR-49 junction is an Expressway with restricted access and is 65 mph.

Please refer to Appendix M, TIS, Section 3, pages 29 -30, Existing Plus Approved Projects (EPAP) condition.

S4-34

- The Department advises the six projects in Plymouth are unapproved. Therefore, they should not be included in the Approved Projects list as shown in TIS, Section 3, EPAP.

The TIS mentions in numerous places the 'implementation of the Lone Bypass...' as a component of various traffic mitigation efforts. The bypass is Tier II in the Amador County RTP (2004 update), and is currently unfunded and un-programmed.

S4-35

Local transportation planning emphasis should be placed upon improving local connectivity to reduce local circulation upon the State Highway System. Paths and routes for the use of non-motorized transport, along with internal roads should be designed with future connectivity in mind, with due consideration for this need with future development projects. Additional congestion management techniques and project alternatives are available that can reduce, if not alleviate, local development project impacts to transportation.

S4-36

It must be determined if grading would divert drainage from this proposed project and result in increased runoff to existing State facilities. This will not be allowed.

S4-37

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September 9, 2010
Page 7

An Encroachment Permit will be required for any work done within the Department's right of way. This work is subject to the California Environmental Quality Act. Therefore, environmental studies may be required as part of the encroachment permit application. A qualified professional must conduct any such studies undertaken to satisfy the Department's environmental review responsibilities. Ground disturbing activities to the site prior to completion and/or approval of required environmental documents may affect the Department's ability to issue a permit for the project. Furthermore, if engineering plans or drawings will be part of your permit application, they should be prepared in standard units.

S4-38

We suggest the Ione Band of Miwok Indians, City of Plymouth, Amador County Public Works, Amador County Transportation Commission, possibly the City of Ione, and the other two federally recognized tribes located in Amador County, the Jackson Rancheria of Mi-Wuk Indians and the Buena Vista Rancheria of Me-Wuk Indians, all continue to coordinate and consult with the Department to identify and address potential cumulative transportation impacts that may occur from this project, and/or for any other developments near this geographical location, and to discuss mitigation for these traffic impacts prior to project approval. This will assist us in ensuring that traffic safety and quality standards are maintained for the traveling public on existing and future state transportation facilities.

S4-39

Please forward the Lead Agency's Record of Decision and affiliated mitigation measures and supporting documentation to the California Department of Transportation, District 10-Transportation Planning Division, Attention ICR coordinator for mitigation monitoring.

S4-40

If you have any questions or would like to discuss these comments in more detail, please contact Kathleen McClafflin at (209) 948-7647(email: kathleen_mcclafflin@dot.ca.gov) or nic at (209) 948-7112.

Sincerely,

JOHN GEDNEY, Chief
Office of Rural Planning and Administration

- c: Scott Morgan, Senior Planner, State Clearinghouse
- c: Janielle Jenkins, Legal Affairs, Governor's Office
- c: Erik Norris, Consultant with PMC for City of Plymouth
- c: Roger Stuart, Engineer, Amador County Public Works
- c: Charles Field, Executive Director, Amador County Transportation Commission

LOCAL AGENCIES (L)

COMMENT LETTERS



City of Plymouth
CALIFORNIA

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Please advise

August 19, 2010

Dale Risling, Acting Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Subject: Request for 90-Day Extension to Review and Comment on FEIS for the Lone Band of Miwok Indians 228.4-Acre Fee-To-Trust Land Transfer and Casino Project, Amador County, California

Dear Mr. Risling,

The City of Plymouth (City) hereby requests that the period for review and comment on the Final Environmental Impact Statement (FEIS) for the Lone Band of Miwok Indians 228.04-Acre Fee-to-Trust Land Transfer and Casino Project be extended for a period of 90-days.

The Notice of Availability for the FEIS dated August 13, 2010 states that comments on the FEIS will be accepted until September 13, 2010. However, as you are aware the FEIS is extremely voluminous and numbers in the several thousands of pages. The City of Plymouth has limited staff time and resources and it would be an undue hardship for the City to review the FEIS and prepare an adequate response to the FEIS in 30 days.

We are aware that the Bureau of Indian Affairs, as the lead agency for the FEIS, has discretion to extend the minimum 30 day period pursuant to 40 CFR 1506.10(d).

The City of Plymouth appreciates your consideration of our request.

Very Truly Yours,

Laura Hollender
Plymouth City Attorney

L1-01



City of Plymouth CALIFORNIA

September 13, 2010

Dale Risling, Acting Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Subject: Comments on FEIS for the Lone Band of Miwok Indians 228.4-Acre Fee-To-Trust Land Transfer and Casino Project, Amador County, California

Dear Mr. Risling,

The following are the City of Plymouth's (City) comments on the Final Environmental Impact Statement (FEIS) for the Lone Band of Miwok Indians 228.04-Acre Fee-to-Trust Land Transfer and Casino Project. In a letter dated August 19, 2010, the City requested a 90-day extension to review and comment on the extremely voluminous FEIS. The City is extremely dismayed that this request was denied.

L2-01

The City's comments on the FEIS focus on several categories. First, we point out that the US Department of Interior (DOI) does not have the authority to place land in trust for the Lone Band of Miwok Indians (Tribe) based upon recent developments that are neither discussed, nor even acknowledged in the FEIS. Second, we list significant new information and changed circumstances since the issuance of the Draft Environmental Impact Statement (DEIS) relevant to the environmental concerns that bear on the proposed project and its impacts that were not discussed or analyzed in the FEIS as required by the National Environmental Policy Act (NEPA). The existence of this new information and changed circumstances requires the Bureau of Indian Affairs (BIA) to prepare a supplement to the FEIS pursuant to 40 CFR 1502.9(c)(1) prior to taking action to either adopt the FEIS and approve the project. Third, we point out some of the more egregious examples of the numerous occasions where the BIA has failed to adequately respond to the City's comments on the DEIS. Finally, the City of Plymouth respectfully requests that it be removed as a Cooperating Agency for this project.

L2-02

L2-03

L2-04

L2-05

1. BIA Does Not Have Authority to Place Land Into Trust for the Tribe

The City must bring to your attention several developments regarding (1) the ability of the DOI to place land in trust for the Tribe, and (2) the status of the Tribe as a Tribe that is eligible to have land placed in trust, which are not discussed or acknowledged in the FEIS. In the City's opinion, these developments make the proposed project unlawful, in that they prevent the DOI from taking land into trust for the Tribe, which is a fundamental premise of this project.

L2-06

In the Response to Comments, the FEIS incorrectly asserts, "[t]he Tribe's restored lands opinion is a separate process from the environmental review process. The purpose of the EIS is to determine the environmental impacts associated with the trust application, and not to discuss the provisions of the trust application itself." (Response S6-02.) This conclusion is inconsistent with the purpose and need to be set forth in the FEIS, which is for the BIA to "accept land into trust for the Tribe for gaming purposes to address the needs of the Tribe for economic development and diversification." (FEIS, p. 1-1.) If the Tribe's land cannot be taken into trust for gaming purposes, then the preferred alternative (Alternative A), along with Alternatives B and C cannot be implemented, and the entire environmental analysis needs to be re-done based on a project without gaming. As indicated in FEIS section 1.1.2, "[t]he proposed Federal actions analyzed by this Final EIS involve the BIA placing 228.04 +/- acres into federal trust for the Tribe and the NIGC approving the Tribal Government's Gaming Development and Management Contract . . ." If placing the land into trust for gaming purposes is not possible, then the federal actions analyzed in the EIS are moot.

L2-07

The FEIS must be modified to address the following two new developments. First, the 2006 Indian Lands Opinion upon which the BIA relies in concluding the land is eligible to be taken into trust for gaming purposes was reversed in 2009 by the Solicitor for the DOI. On January 16, 2009, David Bernhardt, the Solicitor of the DOI, wrote a memorandum to George T. Skibine, the Acting Deputy Assistant Secretary for Policy and Economic Development of the DOI. In that letter Mr. Bernhardt revoked the prior opinion issued by his office that the Lone Band of Miwok Indians is a "restored tribe" within the meaning of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. The memorandum states in pertinent part, that Mr. Bernhardt reviewed, "... the Associate Solicitor's 2006 Indian Lands opinion and have concluded that it was wrong. I have withdrawn and am reversing that opinion. It no longer represents the legal position of the Office of the Solicitor. The opinion of the Solicitor's Office is that the Band is not a restored tribe within the meaning of IGRA." (See copy of Mr. Bernhardt's memorandum attached hereto.) Consequently, the Tribe is not eligible to have land taken into trust for gaming purposes pursuant to 25 U.S.C. § 2719(a) and (b)(1)(B)(iii).

L2-08

Second, the FEIS fails to evaluate the tribe's eligibility to have land taken into trust under 25 U.S.C. § 465 based on the recent United States Supreme Court case of *Carrier v. Solazar*, 129 S.Ct. 1058 (2009). On February 24, 2009, the United States Supreme Court issued this landmark ruling reversing the DOI's prior interpretation of the Indian Reorganization Act ("IRA") (25 U.S.C. §§ 461, et seq.), and limiting the Secretary of Interior's ability to take land into trust on behalf of tribes under section 465 of the IRA. The *Carrier* decision effectively deprives DOI of the authority to take land into trust for a tribe that was not under federal jurisdiction in June of 1934 when the IRA was enacted.

L2-09

The FEIS fails to demonstrate that the Tribe was under federal jurisdiction in 1934. The Executive Summary, and Sections 1 and 3 of the FEIS refer to historical determinations by the BIA that the Tribe is eligible to have land placed into trust under the IRA. Specifically, the FEIS states that in 1972, BIA Commissioner Louis Bruce acknowledged the Tribe's federal recognition and agreed to accept land into trust on behalf of the Tribe, and that the Tribe's status as a federally recognized tribe was reconfirmed in 1994 by Assistant Secretary Ada Deer. Based on these historical facts, the FEIS states that in 2006, the BIA determined that the Tribe was eligible to have lands taken into trust as its initial reservation pursuant to 25 U.S.C. § 465. But the 1972 recognition by Commissioner Bruce does not suffice to show that the Tribe was under federal jurisdiction in 1934. Without such evidence, there is no indication that the Tribe is eligible to have land taken into trust under the IRA pursuant to *Carrier*. Consequently, the FEIS fails to provide authority for the DOI to take land into trust on behalf of the Tribe for any purpose. Inasmuch as the approval of the project is beyond the authority of the BIA and would be unlawful, the City requests that the processing of any application for this purposes and the continued review under NEPA cease immediately.

L2-10

2. **Significant New Circumstances and Information Requiring Preparation of Supplemental EIS**

NEPA regulations require that the BIA prepare a supplement to an FEIS if either of the following occur: (1) the federal agency makes substantial changes in the proposed action that are relevant to its environmental effects; and (2) there are significant new circumstances or information relevant to the environmental concerns that bear on the proposed action or its impacts. See 40 C.F.R. 15029(c)(1).

L2-11

Substantial changes in the proposed action and/or significant new circumstances or information that were not analyzed in the FEIS have occurred, and therefore the BIA is required to prepare a supplement to the FEIS.

FEIS Inappropriately Relies on Data and Information in Prior Versions of the City of Plymouth General Plan and the Amador County General Plan

Throughout the FEIS, the FEIS refers to data, information and analyses in outdated versions of the City of Plymouth General Plan and the Amador County General Plan. The City Council of the City of Plymouth adopted a new General Plan in 2009 and Amador County is currently in the process of updating their General Plan. All assumptions and conclusions made in the FEIS based upon data, information or analyses contained in the prior versions of the City and County general plans are no longer accurate. The information in the new City General Plan and the draft County general plans represents significant new circumstances and information relevant to the environmental concerns that bear on the proposed action or its impacts.

L2-12

The Response to Comments suggests that the City's comments on this issue asserts that the Lead Agency has no responsibility to update this information (or other information which has changed since the publication of the FEIS):

"The passage of time from the start of the NEPA process until its completion may mean that the information used as the basis for analysis that appeared to be the most appropriate baseline is superseded. To perform subsequent analyses would merely invite a continual repetition of the same sequence -- delay followed by assertion that the process should start once again with fresher data or a more recent baseline. Such repetitious exercises are not required." [Response L2-02, page L-3]

L2-13

The response to Comment L2-02 (which addresses several comments by a number of commentors) continues,

"The data within the DEIS has been reviewed and, where necessary, descriptions of the existing setting and technical analysis have been updated. The methodologies, assumptions, and impacts within the DEIS have been verified using the updated information. A supplemental document is neither necessary nor required as the updated studies and results have been included within the FEIS. For specific examples of updates within the FEIS, please refer to specific comments on individual topics below." [Response L2-02, pages L-3 and L-4]

These responses are entirely inadequate. Although the FEIS asserts that updating the document with "fresher data or a more recent baseline" would be a "repetitious exercise," the City notes that General Plans in Amador County are not frequently updated. The Amador County General Plan Land Use Element, for example, was last comprehensively updated in 1973 (source: <http://www.co.amador.ca.us/Modules/ShowDocument.aspx?documentId=380>). The City of Plymouth General Plan, updated in 2009, was last comprehensively updated in 1986. In both cases, more than 20 years elapsed between comprehensive updates—updating the FEIS to properly address each would not be a "repetitious exercise."

For example, the FEIS addresses consistency with outdated City of Plymouth General Plan policies (FEIS Section 4, Table 4.8-1, page 4.8-19). The analysis in the FEIS must be revised to address consistency with the newly adopted Land Use and other goals and policies of the City of Plymouth, including, but not limited to the following:

Land Use Guiding Principle GP3.1.1: Land uses should be arranged to minimize situations in which development on certain properties detracts from the enjoyment and value of surrounding and nearby properties.

Land Use Guiding Principle GP3.1.3: Development patterns should provide for transitions and buffering between various land use intensities. Where land uses of incompatible intensities abut, there should be adequate bufferyards to separate them.

L2-14

Land Use Guiding Principle GP3.1.5: New development or redevelopment on "in-fill" parcels in developed areas should maintain compatibility with existing uses and the prevailing land use pattern in the area.

Land Use Guiding Principle GP3.1.8: Future development and redevelopment should be planned and implemented with appreciation for the physical environment and natural features of the community and with recognition of potential physical constraints to ensure appropriate siting of various types of development. Urban development should not encroach into floodplain areas unless there is compliance with stringent floodplain management practices to maintain adequate capacity for storage and conveyance of flood waters.

Goal 3B: Maintenance of rural openness within and around the community

Goal 3C: Conservation of environmental resources through responsible development practices

Goal 3D: Management of the development pattern to avoid unnecessary encroachment of prime agricultural lands

Goal 3E: Improved compatibility between agricultural operations and urban development

Goal 3F: Protection of the economic contributing value of agriculture to the community

Goal 3G: Protection and management of environmental resources

Goal 3L: Enhanced compatibility between adjacent land uses

Goal 3N: Preservation of existing small town character

Goal 3S: Intergovernmental cooperation to achieve responsible development outcomes

Goal 3Y: Preservation of the natural landscape, urban tree cover, vegetated areas, and protection of sensitive resources

Goal 3Z: Improved land use policies and zoning practices to mitigate the impacts of intensive land uses on residential neighborhoods and other sensitive areas

Goal 3AA: Promotion of a land use pattern that clusters non-residential development at appropriate locations

Goal 3CC: Strengthened buffering requirements between different land use intensities

Goal 6K: Improvement of the collection, distribution, treatment, and conveyance systems commensurate with the demands of new development

Goal 6S: A compact pattern of growth that improves the efficiency of infrastructure systems and public service delivery.

Goal 6V: Growth that is timed and staged to occur parallel to the availability of reliable water sources.

Goal 8F: Discourage new development from occurring where it may generate noise pollution for existing or future residents

Goal 8G: Provide for the protection of excessive ambient noise levels in noise sensitive areas

Goal 8H: Take proactive measures to abate and attenuate noise

Goal 9A: Use established laws and guidelines to effectively mitigate the impacts of new development and, when appropriate, assess fees to fund mitigation measures.

L2-14
cont'd

In addition, because the outdated General Plan is used in the FEIS, the City is also concerned about the adequacy of projections of traffic, and demand for public services, which are tied to the build-out of the City (and surrounding unincorporated areas).

L2-15

Therefore, although the FEIS asserts that "... (t)he methodologies, assumptions, and impacts within the DEIS have been verified using the updated information," the City notes that the FEIS has not been updated to reflect the updated City of Plymouth and County of Amador general plans. As a result, technical studies in the FEIS may be inaccurate and could understate potential impacts and recommend inadequate mitigation.

L2-16

Therefore, the City recommends that the following:

- 1) The FEIS must be updated to reflect the updated City of Plymouth and County of Amador general plans.
- 2) All projections of future residential, commercial, and industrial build-out in Plymouth and surrounding unincorporated areas must be updated to reflect planned land uses and other policies as included in the updated City and County general plans.
- 3) All technical studies which are based on projections of future growth must be updated to reflect any corrections in projected build-out for the City or the surrounding unincorporated areas.

L2-17

L2-18

L2-19

FEIS Does Not Discuss or Acknowledge the Long Range Transportation Plan Submitted by Tribe to BIA

Earlier this year, it came to the City's attention that the Tribe had submitted a Long Range Transportation Plan ("LRTP") to the BIA dated March 12, 2010. The LRTP proposed the construction of a new road to serve a future residential development on land owned by Tribe in Amador County adjacent to the FEIS project site. The LRTP is not discussed or analyzed in the FEIS, and therefore it is unclear how the LRTP impacts this project. At the very least, it appears that the proposed new road cuts through the middle of the FEIS project site. The LRTP represents significant new circumstances and information relevant to the environmental concerns that bear on the proposed action or its impacts.

L2-20

The Lone Band of Miwok Indians is No Longer a Landless Tribe

The FEIS repeatedly refers to the Tribe as landless. Such statements are no longer accurate. While reviewing the LRTP, the City became aware the Tribe owns at least 47 acres in fee adjacent to the FEIS project site. Ownership of this land by the Tribe must be acknowledged and analyzed in the FEIS.

L2-21

The FEIS Fails to Address the Cumulative Impacts of Projects Currently Being Processed within the City of Plymouth

The cumulative impacts analysis in the FEIS (Section 4.11) fails to analyze the cumulative impacts of projects currently being processed in the City of Plymouth, including two large subdivision projects (1) Shenandoah Ridge, a 147 acre project consisting of 137 single family homes, a park and open space, and (2) Zinfandel, a 365 acre project consisting of 365 single family homes, parkland and open space. Perhaps this is not surprising in light of the fact that, as pointed out in Comment L4-246, the City was never even contacted for a list of current projects.

L2-22

The FEIS Fails to Adequately Address Changes to Availability of Solid Waste Disposal Services

Section 3.9.3 of the FEIS incorrectly asserts that the Amador Disposal Service, a subsidiary of Waste Connections Inc., provides solid waste collection services to Plymouth residents. The City's solid waste franchise was assigned to Aces Waste Management Inc., in June of this year. In addition, all references to the closed Buena Vista landfill should be removed. It has been closed for a number of years and will not be reopening. These changes represent significant new circumstances and information relevant to the environmental concerns that bear on the proposed action or its impacts.

L2-23

3. Inadequate Responses to City's Comments on DEIS

Many of the City's comments on the DEIS were not adequately responded to in the FEIS. Under NEPA, the lead agency is required to discuss opposing views and methodologies in the FEIS that were not adequately discussed in the DEIS and must indicate the lead agency's response to the issues raised. For example, if a methodology used in preparing a section of the EIS is called into question, then the lead agency must, in a substantial and meaningful manner, explain why the particular methodology was used and why an alternative methodology is not appropriate. See 40 CFR 1053.4(a)(5), 1509.9(b). In addition, the lead agency is required respond to all substantive comments by stating that the FEIS is sufficient or no further response is necessary. If the lead agency draws the former conclusion, it must state its reason and cite references. In general, if the lead agency decides not to respond to a comment, it must cite the sources, authorities, or reasons that support its position. See 40 CFR 1503.4(a)-(b). Below is summary of the City's comments that were not adequately responded to.

L2-24

Comment #	Issue	Comment on Response/FEIS
L4-03 L4-21	Groundwater impacts, including impacts to adjacent wells	A major concern over mitigation measures was addressed with the response to comment F1-09 and the changes to FEIS §5.2. However, implementation of these measures relies on language in the Record of Decision (ROD), mentioned in comment L4-272. Public notice and an opportunity to comment on the ROD will not be provided. If the City has a concern regarding the enforceability of the mitigation measures, its only recourse is to appeal the Record of Decision. Similar to this concern, in §5.2.3 Water Resources, mitigation measure D related to groundwater monitoring, the USEPA was deleted as a participant in the development and implementation of the groundwater monitoring plan. The City believes a neutral party, such as EPA, should be a participant.
L4-67, 68 L4-202, 209, L4- 212	Groundwater pumping rates, wastewater land disposal, overall project water balance	The comments noted are examples of many throughout the FEIS that are inter-related; for purposes of brevity, the inadequacy of the responses is summarized below. The project water balance is scattered throughout the document and technical appendices and has not been properly coordinated, documented and updated for the FEIS. This leads to the appearance that the design assumptions and analysis have been

L2-25

L2-26

L2-27

		<p>adjusted (albeit inconsistently) to match the project's water needs. For example:</p> <ol style="list-style-type: none"> 1. The DEIS used a groundwater safe yield of 83 gpm (119,520 gpd) and the FEIS uses 81 gpm (116,640 gpd) in response to critical comments, but is not reflected in Appendix B, the Water/Wastewater Feasibility Study. 2. It appears the FEIS (p. 2-8) does not acknowledge the water loss associated with potable water treatment (assumed to be 6.25% in Appendix B, Fig. 6-2). 3. Backwash water associated with the water treatment plant is not accounted for in the wastewater stream. 4. Table 6-1 in Appendix B shows Alt. A, Ph. 1 water demand at 108,000 gpd while FEIS page 2.8 says 98,000 gpd. 5. Table 6-1 and Figure 4 in Appendix B are internally inconsistent – Alt. A total water demand with recycled water use is shown as 128,500 gpd in the Table and 116,700 gpd in the Figure. 6. The storage and disposal water balance at the end of Appendix B only covers Phase 1. 7. As commented earlier, the water balance assumes zero percent inflow and infiltration. The response notes the design will use standard engineering techniques, which would include some, possibly small, allowance for I&I. 	<p>L2-27 cont'd</p> <p>L2-28</p> <p>L2-29</p> <p>L2-30</p> <p>L2-31</p> <p>L2-32</p> <p>L2-33</p> <p>L2-34</p>
<p>L4-212, 300 L4-312</p>	<p>Spray field and leach field suitability</p>	<p>While the leach field absorption capacity is estimated in Appendix S, the FEIS does not document the ability of the spray fields to absorb water. Based on examination of the water balance in Appendix B, it appears 0.5 gpd/ft² is being used. This is 2 ½ times the percolation rate for subsurface disposal and over five times the rate used in the water balance for the City's spray fields, which are also located in hilly terrain.</p> <p>In Appendix T, the soil survey, the soil in the area of the proposed spray field is noted to have "very high"</p>	<p>L2-35</p> <p>L2-36</p>

		runoff rates (p. 24). Similarly, the last conclusion in Appendix S (p. 15) also notes "...very poor vertical transport..." in this area.	L2-36 cont'd
L4-317, 336	Surface water discharge	<p>The FEIS indicates that the Tribe will obtain an NPDES permit from the USEPA and provides some data to support a permit application. The City believes the information provided in the FEIS is insufficient for that purpose and requests that the FEIS either be revised to provide the necessary information to evaluate the project, or, at a minimum, acknowledge that further environmental review, and associated public review and input, will be a part of the permit process.</p> <p>For example, the FEIS does not contain:</p> <ul style="list-style-type: none"> • An estimate of the actual flow and/or annual volume to be discharged • An analysis of the build-up of salts in the waste stream, which will be exacerbated by the use of recycled water for in-building use (such as toilets). • An analysis of the dilution and hydraulic impact on the unnamed tributary to Dry Creek. 	L2-37 L2-38
F1-01, F1-06	Water Supply Concerns	<p>The FEIS changes the preferred alternative for water supply from connecting to the City's water system to utilizing on-site wells.</p> <p>The City and the U.S. EPA (EPA) raised issues with the adequacy of the pumping tests to determine the impact on the regional water supply and the current state of the groundwater being in overdraft. In the response to comments (see F1-01 – F1-06), the FEIS does not adequately address the accuracy of the pumping test data regarding duration of the tests and recharging of the groundwater.</p> <p>The EPA raised concerns regarding trucking water based on the EPA's experience with similar proposals by other tribes and strongly recommends</p>	L2-39 L2-40 L2-41

		<p>against trucking water to the site. The response in the FEIS still includes five truck trips per day of 10,000 gallons of water daily during peak summer days. Five truck trips on still creates a potentially significant Impact, which the FEIS does not adequately address.</p> <p>Although the FEIS has switched from the City water supply option to on-site wells option, the project still relies on the existence of the Plymouth Pipeline project as a mitigation measure. The Amador Water Agency comments (L3-1) indicate that the project was not designed with the casino project in mind. The FEIS assumes that the use of on-site wells negates the need to address impacts on the project, but there may still be some impacts, such as increased demand from housing created for employees who relocate to Plymouth.</p>	<p>L2-41 cont'd</p> <p>L2-42</p>
L4 101-103, F-11, F-16	Wastewater disposal system	<p>The City and EPA raised concerns regarding the proposed wastewater disposal system. The EPA was particularly concerned about the use of a reservoir as a secondary wastewater disposal option. In comment F1-16, the EPA states, "EPA has objections to, and strongly recommends against, construction of the wastewater storage reservoir." The FEIS states that the reservoir would only be constructed if a surface water discharge permit is not obtained. (F1-11.) Issuance of the permits is not guaranteed, and the City raised concerns regarding the discharge that calls into question whether the permits could be obtained (L4-101-103.) The response to these concerns was merely to state that the Tribe would be seeking the permits, which, combined with the EPA issue with the reservoir, fails to adequately address the impacts of the on-site wastewater impacts.</p>	L2-43
L4-6, L4-88	Impact on Housing Market	<p>The City raised the issue of the Impact on the local housing market of infusing large numbers of low-paid workers in or near the City. (L4-6, L4-88.) The responses indicate a complete lack of understanding of the difficulties with commuting to Plymouth from</p>	L2-44

		<p>outlying areas. The FEIS states, "the construction of new housing may result from the Proposed Project but would not be required due to the proximity of major urban areas to the project site. . . ."</p> <p>(Response L4-06.) The "major urban areas" are essentially Sacramento and its outlying areas, which are not accessible from Plymouth for someone without a car and are impractical to access even with a car for someone in a low-paying job as the gas costs would be prohibitive. Other nearby communities are also very small and not easily accessible, particularly in inclement weather or without a car. The project will undoubtedly have a significant impact on the local housing market given the practical issues with obtaining housing in outlying areas.</p>
F1-29, F1-31	Enforcement of Mitigation Measures	<p>The City and EPA raised the issue of enforcement of the proposed mitigation measures. (See, e.g. F1-29, F1-31.) Because the Tribe is a sovereign government, enforcement is very limited and include enforcement by the National Indian Gaming Commission (NIGC) of the Tribe's gaming ordinance and enforcement by the Tribe of its own environmental ordinances. (Responses F1-29, F1-31.) NIGC is not adequately staffed nor does it have the environmental expertise to enforce issues relating to environmental compliance. This basically leaves self-enforcement by the Tribe as the only enforcement mechanism. The Tribe has not provided any waiver of sovereign immunity that would allow for it to be sued if it fails to follow the mitigation measures. Moreover, the FEIS uses vague phrases such as the Tribe "is committed to pursuing water discharge during the winter months," and the Tribe is "committed to maximizing the use of recycled water." (Responses F1-03, F1-07.) These phrases indicate intent, but do not provide any enforceability.</p>
S6-12	Impact on Local Schools	<p>The FEIS does not commit to on-going revenue to local schools to mitigate the impact of the project on the schools. Rather, it states that the Tribe "will</p>

L2-44
 cont'd

L2-45

L2-46

		<p>make a contribution to the school district in lieu of property tax revenues that would be lost" by placing the land into trust. (S6-12.) It does not indicate how much it will contribute or whether the amount is a single sum or ongoing payment</p>
<p>L4-23, L4-81</p>	<p>Loss of Transient Occupancy Taxes</p>	<p>The City raised the issue of its loss of transient occupancy taxes (TOT) if the land is taken into trust and the Shenandoah Inn is no longer subject to the TOT. (L4-23, L4-81.) The response states that "tax revenues lost to the City or County would be offset by compensation provided by the Tribe directly to Amador County, and by new sales tax revenues that would be generated as a result of purchases made by the casino/hotel operation for local goods and services." (Response L4-23.) This response does not evaluate the amount of TOT currently paid to the City and how the Tribe would compensate for that loss; instead, it focuses on reimbursement to the County and general sales revenue. Consequently, there is no mitigation for the impact on the City</p>
<p>L4-246</p>	<p>Environmental/Cumulative Impacts of Projects in Plymouth</p>	<p>In comment L4-246 to the DEIS, the City raised the issue that it was not contacted for a list of projects currently being processed in the City. This continues to be a significant oversight as there are major residential projects currently being processed by the City, which could have significant cumulative impacts that have not been addressed in the FEIS. The response to our comment (Response L4-246) is inadequate and refers the City to the response to comment L2-192. Response to comment L2-192 then refers to the response to comment S4-03 and states that Amador County was contacted for a list of projects in Plymouth. Response to comment S4-03 discusses how the list of projects obtained from Amador County is included in the revised traffic study (Appendix M of the FEIS). This response utterly fails to respond to the City's concerns. Not only is the City unclear if the Amador County was able to give a complete list of current projects within the City, all of the potential environmental impacts of City's current projects, including</p>

L2-46
 cont'd

L2-47

L2-48

		cumulative impacts, continue to not be addressed in the FEIS.
L4-165	Traffic mitigation measures and payment for implementation	<p>The City is concerned that necessary improvement projects (whether they are shown as 100% Tribal responsibility or only a percentage) will not be funded by the Tribe once the land is placed into trust. Although the California Department of Transportation (CalTrans) is the primary agency responsible for State Highways, many projects on State Highways are implemented in which a local agency is the project sponsor. (For example, the City of Plymouth is the sponsor for an improvement project at the intersection of Hwy 49 and Main Street which is currently in the preliminary engineering and environmental review phases and construction funding is yet to be determined). The corresponding mitigation measure "P" (on page 5-22) should clarify that local agencies are to be participants in determining Tribal participation in project costs. Conflicting language throughout Appendix M, Section 7 regarding this participation should be amended.</p> <p>Related to "Fair Share" calculations, the FEIS (Traffic Impact Study, Appendix M) refers Caltrans methodology. However:</p> <ul style="list-style-type: none"> • The referenced Caltrans methodology specifically states that "The methodology below is neither intended as, nor does it establish, a legal standard for determining equitable responsibility and cost of a project's traffic impact..." The FEIS implies the percentages shown are fixed. • The Appendix does not contain any tables or detail as to how the percentages presented were actually calculated. And, how the Caltrans formula has been applied is unclear. For example: <ul style="list-style-type: none"> ○ The formula for the project's percentage "P" is a function of project traffic, forecast traffic at "build-out" and existing

L2-48
 cont'd

L2-49

L2-50

L2-51

		<p>plus approved projects (EPAP) traffic. Yet the FEIS shows the same percentage share at Main/49 (22%) for two different project scenarios at two different time frames – 2010 EPAP + Alt. A. Phase 1 and 2013 EPAP + Alt. A. Phases 1&2.</p> <ul style="list-style-type: none"> o It is not stated if the percentages were calculated based on the weekday (Friday) or Saturday traffic or some combination. <ul style="list-style-type: none"> • In addition, the traffic mitigation measure that the Tribe pay its "fair share," has proven to be inadequate in other tribal casino projects because the casino project has a major impact on the roads, but the impact only mitigated if and when enough other non-tribal projects are built in the near future that require construction of the necessary road improvements. History has shown that typically, the fair share is paid, the impacts are significant, but the improvements are never built unless the tribe voluntarily contributes enough money and works directly with CalTrans to make the Improvements. • Finally, as noted above, the FEIS and specifically the traffic analysis rely on capacity improvements that are yet to be built that will, in part, be funded by local and regional traffic impact fees. In addition to mitigating project specific impacts, the project should contribute toward overall system improvements through payment of traffic impact fees in the City of Plymouth and Amador County Transportation Commission Regional Traffic Mitigation Fees.
L4-166	Impacts to surrounding area/roads	<p>The "revised" traffic impact analysis (which is an entirely new study done by a different firm than the original) still contains a number of deficiencies; specifically:</p> <ul style="list-style-type: none"> • The study relies on the previous (and out-dated) trip distribution assumptions. • The study does not include segment analysis of secondary county roads that are used for

L2-51
 cont'd

L2-52

L2-53

L2-54

L2-55

L2-56

		<p>through travel, such as Old Sacramento Road/Main Street and Shenandoah/Fiddletown Road.</p> <ul style="list-style-type: none"> The study assigns traffic to the roadway network apparently by hand (App. M, p 53) rather than using a traffic model which is the typical standard of practice. This method appears to ignore the major attraction of Shenandoah Valley wineries and tourist venues in relation to casino/hotel traffic. For example, at the Main/49 intersection, Figure 14 for project traffic on a Saturday afternoon peak hour, leaving the Valley and turning left to the casino, shows a volume of only 2 vehicles. The study lists a number of "approved projects" (Table 10) in the Plymouth area that, are in fact, not yet approved. While it may be appropriate to include them in the cumulative analysis as they are included in the City's General Plan, they certainly will not be built, and possibly not even approved, in the near future 2010 or 2013 scenarios. These projects are Arroyo Woods, Cottage Knoll, Shenandoah Ridge, Zinfandel, Oak Glen, and Shenandoah Springs. (Zinfandel and Shenandoah Ridge are the only two projects currently moving forward in the City approval process). 	<p>L2-56 cont'd</p> <p>L2-57</p> <p>L2-58</p>
L4-147, L4-254	Economic Impact of Infusion of Low Income Jobs	The DEIS and FEIS assume that the infusion of new jobs will have only beneficial impacts on the City. But the bulk of the jobs at the casino and hotel will be low income, menial labor jobs, including kitchen staff, wait staff, housecleaners, other hotel staff, etc. The FEIS needs to evaluate the impact on the local economy of low income jobs, not based on an average of the full-time employees, which artificially inflates the actual average income	L2-59
P17-76	Addition of two parcels to project after NOI published and scoping sessions on project held	Two parcels totaling approximately 20 acres were added to the project after the Notice of Intent was published in the Federal Register and after scoping sessions on the project were held. This omission distorted the public perception of the total acreage	L2-60

		<p>to be included in the project from the very beginning of the environmental process. Response to Comment P17-76 provides that "[t]he exclusion of two parcels from the NOI to prepare an EIS for the project does not prejudice the participation of any party in the environmental review process or the ability of any party to comment upon the environmental impacts associated with the project alternatives and proposed mitigation measures." This response is entirely inadequate. The public should not be expected to constantly check the project description and project status to see if additional lands have been added to the project. Instead, at the very beginning of the environmental process a revised Notice of Intent reflecting the inclusion of the 20 additional acres to the project should have been published and new scoping meetings should have been held.</p>
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L2-60
cont'd

4. Request to Remove Plymouth as a Cooperating Agency for the Project

On June 26, 2008, the City Council adopted Resolution No. 2008-15 prohibiting government-to-government relations with the Lone Band of Miwok Indians. Pursuant to Resolution No. 2008-15, the City respectfully requests that it be removed as a Cooperating Agency for the project. The City is fundamentally opposed to this project and does not wish to be associated with the project as a Cooperating Agency.

L2-61

Very Truly Yours,



Laura Hollender
Plymouth City Attorney

NIELSEN, MERKSAMIER
PARRINBLO, MUEHLER & NAYLOR, LLP

CATHY CHRISTIAN
ATTORNEY AT LAW



1415 L STREET, SUITE 1209
SACRAMENTO, CALIFORNIA 95814
(916) 446-6752
FAX (916) 446-6186

cchristian@nmgolaw.com
SAN RAFAEL OFFICE
(415) 389-6800

SEL
PACIFIC RE
OFFL

County Administration Center
810 Court Street
Jackson, CA 95642
Telephone (209) 223-6366
FAX (209) 223-4286

Martha Jeanne Shaver, County Counsel
Gregory Gilott, Deputy
Jennifer K. Magee, Deputy
Angela Creach, Paralegal
Julia Brown, Administrative Legal Secretary

September 13, 2010

Dale Rising, Acting Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

RE: FEIS Comments, Ione Band of Miwok Indians' Casino Project

Dear Mr. Rising:

Amador County appreciates the opportunity to provide comments on the Final Environmental Impact Statement (Final EIS) for the Ione Band of Miwok Indians 228.04-Acre Fee-to-Trust Land Transfer and Casino Project. These comments identify issues that need to be considered by the Bureau of Indian Affairs (BIA) in consideration of the adequacy of the Final EIS.

L3-01

The mission of elected officials and staff of Amador County is to maintain and protect the quality of life for our residents. Our review of potential projects strives to ensure the safety of Amador County residents; maintain the quality of life for Amador County residents by protecting our infrastructure, environment, agriculture, historical integrity, and open space areas; and ensure the cost effective operation of County services without undue and unfair financial burdens on County residents. This mission underscores the importance of the environmental review process, which, as required by the National Environmental Policy Act (NEPA), must include an analysis of all of the direct and indirect environmental impacts of the proposed project alternatives.

L3-02

In preparing comments on the Draft EIS in July 2008, the County identified and documented serious deficiencies in the Draft EIS. Much of the data included in the Draft EIS, including the technical appendices, was created in 2004. The Final EIS includes updates to some of these data; however, much of the data remain outdated. For data that have been updated, significant changes have been made to the analysis that the public has been deprived of the opportunity to review and comment. For example, the updated traffic analysis included in Appendix M of the Final EIS has been prepared by a completely different consulting firm (Dowling Associates) from the traffic report included in the Draft EIS (TY Lin International/CCS). Not surprisingly, the conclusions of the revised traffic analysis in the Final EIS differ substantially from those identified in the Draft EIS and contain many concerns.

L3-03

The Executive Summary included in the Final EIS purports to identify the areas of controversy associated with the proposed project. Four areas of controversy are identified in the Final EIS, including water, problem gambling, crime, and traffic. The preparers of the Final EIS clearly did not review the comments coverletter 9.13.10 Final EIS.docx

L3-04

received during the Draft EIS scoping process or the comments received from responsible agencies and the public on the Draft EIS. As identified in these comments, almost all aspects of the proposed action are controversial and the dismissal of the public's concerns, as represented by this truncated list, undermines the credibility of the document.

L3-04
Cont'd

The most egregious deficiency in the Final EIS is related to the shifting descriptions of the project alternatives. For the three casino alternatives described in the Draft EIS, all included a casino building located directly adjacent to SR 49 with surface parking lots located to the north and east. However, the Final EIS includes substantially divergent development scenarios for each of the casino alternatives.

L3-05

The Bureau of Indian Affairs' pattern of reducing the mitigation commitments identified in the Draft EIS, which occurs throughout Chapter 5 of the Final EIS, is inappropriate, disappointing and inconsistent with the intent of NEPA.

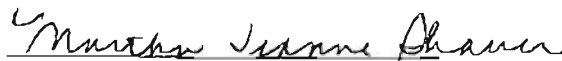
L3-06

In making its comments on the Draft EIS, the County devoted significant time and resources reviewing the Draft EIS in an attempt to point out those areas where updated information and additional analysis are needed to adequately address the impacts of the proposed action. We therefore incorporate our comments on the Draft EIS to the extent those comments refer to areas where no changes were made. While some revisions were made in the FEIS, the bulk of the changes were cosmetic and did not meaningfully address the County's concerns. Moreover, the changes to the project description were made without opportunity to comment on the impacts of the revised project. These changes were not analyzed and mitigated in the FEIS, which again is disappointing and inconsistent with the intent of NEPA.

L3-07

We look forward to working with the Bureau of Indian Affairs staff in resolving the issues identified in this letter. Thank you for the opportunity to provide these comments. If you have any questions regarding the issues raised by the County, please contact the undersigned, Martha Shaver, County Counsel, at (209) 223-6366.

Respectfully,


Martha Jeanne Shaver

Cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Dan Lungren
Governor Arnold Schwarzenegger
Assemblymember Alyson Huber
Members, Amador County Board of Supervisors
County Administrative Officer Charles Hey
County Counsel Martha Shaver
Cathy Christian, Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP



County of Amador

FEIS Comments Ione Band of Miwok Indians Land Transfer and Casino Project

County of Amador
Martha J. Shaver, County Counsel
810 Court Street
Jackson, CA 95642
Telephone: (209) 223-6366

**Comments on the Final Environmental Impact Statement
for the Ione Band of Miwok Indians' 228.04-Acre
Fee-to-Trust Land Transfer and Casino Project**

To Whom It May Concern:

Amador County appreciates the opportunity to provide comments on the Final Environmental Impact Statement (FEIS) for the Ione Band of Miwok Indians 228.04-Acre Fee-to-Trust Land Transfer and Casino Project. These comments identify issues that need to be considered by the Bureau of Indian Affairs (BIA) in order to provide an FEIS that is compliant with NEPA for the proposed project.

L3-08

General Comments

The mission of elected officials and staff of Amador County is to maintain and protect the quality of life for our residents. Our review of potential projects strives to ensure the safety of Amador County residents; maintain the quality of life for Amador County residents by protecting our infrastructure, environment, agriculture, historical integrity, and open space areas; and ensure the cost effective operation of County services without undue and unfair financial burdens on County residents. This mission underscores the importance of the environmental review process, which, as required by the National Environmental Policy Act (NEPA), must include an analysis of all of the direct and indirect environmental impacts of the proposed project alternatives.

L3-09

In preparing comments on the Draft EIS in July 2008, the County identified and documented serious deficiencies in the Draft EIS. Much of the data included in the Draft EIS, including the technical appendices, was created in 2004. The FEIS includes updates to some of these data; however, much of the data remain outdated. For data that have been updated, significant changes have been made to the analysis that the public has been deprived of the opportunity to review and comment. For example, the updated traffic analysis included in Appendix M of the FEIS has been prepared by a completely different consulting firm (Dowling Associates) from the traffic report included in the Draft EIS (TY Lin International/CCS). Not surprisingly, the conclusions of the revised traffic analysis included in the FEIS differ substantially from those identified in the Draft EIS.

L3-10

Traffic improvements that were required in the Draft EIS to mitigate significant traffic impacts have been removed from the FEIS (e.g., Preston /SR 124, Church/Main), intersection improvement requirements have been reduced (e.g., Sunrise Boulevard/SR 16), and new traffic improvements have been identified (e.g., widen SR 16 between Latrobe Road and SR 124 from two lanes to three lanes, and widen SR 16 between SR 124 and SR 49 from two lanes to four lanes). A roadway widening of the magnitude identified in the FEIS for SR 16 will clearly have significant environmental impacts that

L3-11

have not been adequately disclosed in the FEIS. By ignoring significant Amador County roadway-segment impacts in the Draft EIS, disclosing these impacts in the FEIS, and then identifying a substantial roadway expansion that will require significant habitat removal, including the removal of numerous oak trees, the public disclosure requirements of NEPA have been clearly violated.

L3-11
Cont'd

The Executive Summary included in the FEIS purports to identify the areas of controversy associated with the proposed project. Four areas of controversy are identified in the FEIS including water, problem gambling, crime, and traffic. The preparers of the FEIS clearly did not review the comments received during the Draft EIS scoping process or the comments received from responsible agencies and the public on the Draft EIS. As identified in these comments, almost all aspects of the proposed action are controversial and the dismissal of the public's concerns, as represented by this truncated list, undermines the credibility of the document.

L3-12

The FEIS' pattern of reducing the mitigation commitments identified in the Draft EIS, which occurs throughout Chapter 5 of the FEIS, is inappropriate, disappointing and is inconsistent with the intent of NEPA. Activities that appeared to be a commitment now are modified by phrases such as "to the extent feasible," or "where feasible and when reasonable." No explanation is provided as to why this language has been inserted into the mitigation measures or who will determine if the mitigation measures are feasible or reasonable. This "watering-down" of the air quality mitigation measures substantially diminishes their effectiveness. The FEIS cannot reasonably assume that the project's significant impacts will continue to be reduced to a less-than-significant level with this awkward and inappropriate mitigation language revision.

L3-13

Project Description and Alternatives

One of the most egregious deficiencies in the FEIS is related to the shifting descriptions of the project alternatives. For the three casino alternatives described in the Draft EIS, all included a casino building located directly adjacent to SR 49 with surface parking lots located to the north and east. However, the FEIS includes substantially divergent development scenarios for each of the casino alternatives

L3-14

For example, the description of Alternative A in the FEIS includes a site development plan that identifies the casino building located adjacent to SR 49 with surface parking (Figure 2-1). However, Figure 2-6 identifies a completely different development footprint with the main casino building located east of Village Drive and the development of a 5-story parking garage. The hotel and conference center, which would have been blocked to a large degree from SR 49 by the casino building, are relocated to the north in a substantially more prominent location and the hotel tower would be clearly visible from SR 49. Alternatives B and C also include two conflicting site plans that have different development footprints and different development components (e.g., surface parking versus multi-story parking garages).

L3-15

The FEIS references on page 2-5 that updated site plans and renderings are included in Appendix Y of the FEIS, but no explanation is provided in Chapter 2 as to why two radically different site plans are included for each of the casino alternatives. It is unclear, based on the conflicting site plans included in the FEIS, what project is actually being proposed. Without clarity regarding the actions being proposed, it is unreasonable for the Bureau of Indian Affairs to assume the public understands what action the Bureau will consider approving in the Record of Decision.

L3-16

The site plan identified for Alternative A in Figure 2-6 of the FEIS includes a larger casino building, more parking spaces and a larger hotel/conference center than identified in the Draft EIS. The development footprint clearly extends further to the south, resulting in greater land disturbance and additional oak tree removal. However, the impact analysis included in Chapter 4.0 of the FEIS does not acknowledge these changes. The construction of a 5-story parking garage would have environmental impacts substantially different from those anticipated with surface parking (e.g., visual degradation, potential geotechnical instability, emergency vehicle access and evacuation). Nowhere in the FEIS are these impacts disclosed.

L3-17

Land Resources

No Analysis of Effect of Wastewater Reservoir Construction on Floodplain – The FEIS response to the extensive concerns voiced by the County relative to the potential for dam failure is vague and not supported with any quantitative data. Our concerns regarding inundation in the event of dam failure remain. The FEIS response fails to justify the conclusion that construction of a 75-foot tall, 25-40 foot wide earthen dam would not be a significant impact to onsite topography.

L3-18

Water Resources

Project Would Constitute 33 Percent of City's Water Supply – Water Supply Option 1 for the proposed project includes connecting to the City of Plymouth's municipal water supply system. In connecting to this system, the project is projected to use 33 percent of the City's average daily water supply during full buildout. However, no analysis is provided regarding the ability of the City's water system to meet this increased demand or the environmental impacts associated with allocating such a large volume of water to the proposed project. This increased water supply demand would have long-term implications on the City's ability to meet its own water supply requirements. The City's water is supplied from both surface and groundwater sources, and as described below, the City's groundwater resources are overdrafted. A 33 percent increase in City water demand could have serious impacts on the City's groundwater and surface water resources, particularly during prolonged droughts. The FEIS needs to include a much more detailed discussion of the City's municipal water supply system and what the long-term effects of the proposed project would be on this system.

L3-19

Use of Existing Wells – Responses to comment L2-45 and L2-46 indicate use of wells and hauled water to be the preferred option. It is suggested that the Plymouth pipeline

L3-20

would reduce groundwater demand by the City of Plymouth, offsetting potential impacts by the project. It is not clear that the location of the area impacted by wells serving the city coincides with the area potentially impacted by the project. There is no discussion of baseline conditions or potential impacts that may result from the project. The Draft EIS states that a groundwater monitoring program would be developed with BIA and USEPA (it appears that USEPA was stricken from section 5.2.3 (D) of the FEIS) to detect significant impacts to offsite wells. The threshold of significance is not defined.

L3-20
Cont'd

Mitigation in the event of significant offsite impacts includes alteration of the Tribe's pumping regime, payment to have offsite wells deepened or replaced, connection of the impacted user to the tribe's water supply, having water hauled to the impacted user, and decreasing the tribe's reliance on groundwater and increased use of hauled water. No source is identified from which to haul water. There is no discussion of connection to a piped water supply as mitigation nor is curtailment or cessation of business mentioned as mitigation. There is no indication of whether hauled water was considered in the traffic analysis. The response to comment L2-55 does not realistically quantify potential truck trips for hauled water nor are sources identified from which to haul. Doing so would help evaluate whether there may be other impacts related to traffic congestion or safety concerns or to water availability from the identified source(s).

L3-21

The U.S. Environmental Protection Agency (USEPA) stated in their comments on the Draft EIS that they had "Environmental Objections" and "Environmental Concerns" due to insufficient information being provided regarding the project's water supply and wastewater disposal options. USEPA states that, "The groundwater basin is currently in overdraft, and it is not clear from limited pump testing that there is sufficient long-term capacity to provide a reliable water source if recycled water use is not maximized. Additionally, based on our knowledge of Tribal experiences, the use of trucked water is not likely to be feasible and is not recommended." USEPA's concerns regarding the use of trucked water have been disregarded in the FEIS, as the project continues to assume the use of trucked water to offset the project's inadequate water supply.

L3-22

USEPA raised concerns in their comment letter regarding the long-term reliability of the proposed groundwater supply due to a boundary condition that could affect long-term well performance. The Draft EIS indicates that groundwater on the project site primarily occurs in confined chambers at depth in the fractured bedrock zones, creating a unique groundwater chamber that allows for limited recharge from surface water infiltration. However, the long-term yields were calculated using an approach that assumes a significant percentage of recharge will reach the aquifer. This assumption is inappropriate.

L3-23

Pumping Assumptions Are Not Supported -- The FEIS does not directly address the potential for failure of one or more wells, nor does it provide a quantitative description of intended pumping rates and run time vs recovery time for the wells. The FEIS does not address the concern that the methodology used to estimate maximum daily and average daily water demand may result in underestimation of true water demand.

L3-24

The FEIS response to comment L2-51 suggests reverse osmosis (RO) water treatment would produce approximately 10,000 gallons per day of brine which would be hauled to a treatment facility. More information should be provided documenting the efficiency of the RO unit, whether only a portion of the water supply is to be so treated, and where the brine would be disposed.

L3-25

The FEIS response to comment L2-52 assumes that the wastewater treatment facility will at all times produce effluent compliant with Title 22 standards. It is unrealistic to expect any such system to be failsafe. The Thunder Valley Casino wastewater treatment plant is of a similar design and has had difficulty maintaining compliance. The wastewater facility serving the Jackson Rancheria, though not of a similar design, has undergone redesigns and expansions as problems developed necessitating significant offsite hauling of wastewater at times. Provision of reasonable storage or other alternatives to discharge and recycled water use in the event of noncompliance are not discussed.

L3-26

The FEIS does not address the potential for impacts due to pumping two or three wells simultaneously. The Draft EIS assumed the use of rotational pumping of the project's groundwater wells to allow recharge of the groundwater wells to occur. This assumes that two of the three wells would be pumped continuously, on a rotational basis, to allow one well the opportunity to recover. However, with rotational pumping, the combined yield of the project wells would not be sufficient to meet the project's water demands.

L3-27

The FEIS concludes that based on pump tests described in Appendix B, the combined long-term yield of the project's three proposed groundwater wells is 81 gallons per minute (gpm) or 116,640 gallons per day. The specific well yields are 10 gpm for Well M1, 37 gpm for Well M3, and 34 gpm for Well H1. In order to accommodate the proposed rotational pumping, the continuous well yields for two of the three wells, pumping continuously, would range from 44 gpm to 71 gpm, depending upon the individual wells being pumped. Table 6-1 included in Appendix B of the FEIS identifies the required pumping rate for Phase I of Alternative A as 75 gallons per minute (gpm) and for Phase II as 90 gpm. Based on the identified need in the Draft EIS for groundwater recharge to maintain the recommended well yields and the project's proposed use of rotational pumping to ensure this recharge occurs, the proposed groundwater pumping would be insufficient to meet the needs of both Phase I and Phase II of the Proposed Action (Alternative A).

L3-28

The project proposes to supplement the groundwater supply by importing water to the project site in water tanker trucks. Based on the above water supply deficiency, between 3 and 27 water truck deliveries would be required per day during Phase I of the Proposed Action and between 14 and 33 water truck deliveries would be required per day during Phase II, assuming 2,000 gallons per truck. Depending upon this volume of water deliveries per day to supply the proposed casino and hotel complex would be unsustainable over the long-term, would result in unmitigated traffic impacts, and is inconsistent with good public policy.

L3-29

Surface Discharge of Wastewater Could Degrade Local Surface Waters – The PEIS has not addressed concerns about degradation of surface waters. The response to comment L2-60 suggests that the existence of an NPDES permit will prevent water quality impacts. An NPDES permit allows direct discharge, significantly increasing the potential for water quality impacts in the event of plant upset or equipment malfunction. Such upset or malfunction may not be immediately recognized or, once discovered, may not be readily corrected. Recognition of potential impact and discussion of realistic mitigation is imperative.

L3-30

Wastewater Disposal Impacts on Groundwater Quality Inadequately Evaluated – The FEIS response to comment L2-62 states that compliance with an NPDES permit for wastewater discharge would ensure that the treated effluent meets established water quality objectives. The FEIS fails to acknowledge that non-compliance is not an uncommon occurrence and that direct discharge of non-compliant wastewater poses a substantial risk to public health and the environment.

L3-31

The response to comment L2-63 assumes that the area influenced by water supply wells for the City of Plymouth and the area influenced by supply wells for the project are identical. The text description within the document suggests otherwise; this inconsistency should be clarified and resolved.

L3-32

The response to comment L2-64 should provide a better description of the details of the groundwater-monitoring program offered as mitigation including, but not limited to, a description of baseline conditions, water quality constituents to be monitored, significance thresholds triggering additional mitigation, and verification of success of the additional mitigation measures. The monitoring program should be subject to the oversight of a regulatory agency, not just the BIA; it appears the USFPA was stricken from section 5.2.3 (D) of the FEIS. The monitoring program should also be subject to review and input from the public.

L3-33

The response to comment L2-65 does not provide information regarding the hydraulic capacity of the proposed disposal site. Appendix S provides a recommended maximum rate of 0.2 gallons per square foot per day for the application of tertiary treated wastewater for subsurface disposal. There is no recommended rate of application for spray application nor is there a clear description of the hydraulic capacity of the proposed disposal sites to document disposal capacity of spray fields and/or subsurface disposal.

L3-34

Groundwater Impacts from Construction of Unlined Wastewater Reservoir Are Not Evaluated or Mitigated – The response to comment L2-66 indicates that potential impacts to groundwater quality were addressed in the geotechnical analysis, Appendix E. There is no information in that document addressing the concern that the unlined reservoir could impact groundwater quality. In the absence of a reservoir, lack of storage for non-compliant effluent in the event of plant upset is a concern.

L3-35

The FEIS fails to address the potential for beneficial reuse of reclaimed water off-site.

L3-36

The response to comment L2-70 cites regulatory and permitting standards that would apply to the wastewater treatment plant. The same or similar standards apply to other wastewater facilities, but this has neither guaranteed compliance nor prevented impacts. Non-compliance, sometimes resulting in adverse impacts to ground and surface waters, has been documented at wastewater treatment facilities within Amador County and throughout the state. This reality should be recognized by the preparer of the document, and some meaningful discussion of monitoring and true mitigation should be provided.

L3-37

Air Quality

Mitigation Measures Have Been Modified To Become Essentially Meaningless – The Draft EIS includes specific mitigation measures to reduce the project’s anticipated significant air quality impacts. However, instead of being required, the text of both the construction and operational air quality mitigation measures has been modified in the FEIS to include the caveat, “where feasible and when reasonable.” No explanation is provided as to why this language has been inserted into the mitigation measures or who will determine if the mitigation measures are feasible or reasonable. This “watering-down” of the air quality mitigation measures substantially diminishes their effectiveness. The FEIS cannot reasonably assume that the project’s significant air quality impacts will continue to be reduced to a less-than-significant level with this mitigation language revision.

L3-38

Libraries and Parks

Inadequate and Contradictory Assessment of Impacts to Libraries and Parks – As in the Draft EIS, the FEIS does not present any analysis or assessment of the extent of impacts to libraries or parks; it simply asserts on page L-41, without providing any substantiating analysis, that the potential impacts “would be less than significant because only a limited number of employees would reside in the area or relocate, and patrons would not frequent these facilities because of the entertainment nature of the proposed project.” This assumption that a limited number of employees would reside in the area or relocate is contradictory to statements elsewhere in the FEIS; specifically, the FEIS addresses impacts to local schools where they promise monetary contributions. The FEIS acknowledges that 819 new employees annually are expected to reside in Amador County, resulting in approximately 410 students requiring education from county schools (page 4.7-7). The County pointed out that elsewhere in the Draft EIS there were assertions regarding the likelihood of lower-paid employees seeking to relocate and that it would have an effect on library services but the FEIS ignores the County’s comments. A detailed assessment still needs to be performed to determine the impacts to libraries and parks. Furthermore, it is anticipated that if an assessment were performed, the impacts would likely extend beyond the Plymouth branch due to the fact that employees would reside throughout Amador County and may utilize other library facilities.

L3-39

The FEIS similarly simply declares that the impacts to parks would be less-than-significant without performing an actual assessment. Furthermore, it is anticipated that if an assessment were performed, the impacts would likely extend beyond adjacent open

L3-40

space and parks due to the fact that employees would reside throughout Amador County and may utilize other parks and park facilities. The assumption that patrons would not use county parks is unsubstantiated; on the contrary, patrons who are vacationing in Amador County because of the casino entertainment that is available may also use the local parks.

L3-40
Cont'd

Finally, the County previously commented that the Draft EIS failed to specify proposed mitigation measures despite acknowledging that mitigation would be incorporated to reduce impacts to libraries and parks to a less-than-significant level. The FEIS response was simply to remove the statement "with incorporation of mitigation" and now claim that "this [impact on libraries and parks] is considered a less-than-significant impact" without providing a detailed analysis to support that claim. As stated above, the Tribe's claim that a limited number of employees would reside in the area or relocate is contradictory to the Tribe's statements provided elsewhere in the FEIS. A detailed assessment still needs to be performed to determine the impacts to libraries and parks. The Tribe should develop mitigation measures for libraries and parks after conducting a thorough analysis of need, or explain why no mitigation is necessary based on the results of that thorough analysis.

L3-41

Problem and Pathological Gambling

Problem and Pathological Gaming Impacts Dismissed -- The FEIS reiterates the limited, conclusory statements in the Draft EIS that the Proposed Project "is not expected to substantially increase the prevalence of problem gamblers." No attempt was made to meaningfully address the numerous studies indicating contradictory results, nor was an attempt made to quantify the impacts of problem or pathological gambling on Amador County's population or its social service network. The proposed contribution of \$10,000 not as mitigation but to provide resources to an unnamed organization to accommodate services that might be needed to address problem gambling is laughable. As pointed out in the County's response to the Draft EIS, this amount would fund approximately 200 therapist hours, compared with the Tribe's estimates of 3,400,000 patron visits per year. Almost all pathological gamblers seriously consider suicide. Sixty percent will commit a criminal offense, and twenty percent will appear before the judicial system. It is by no means obvious that more than a doubling of the local gambling facilities would not result in any marginal increase in social effects.

L3-42

The gambling industry in California has grown exponentially over the last twenty years with the most substantial growth associated with the expansion of tribal casinos. Gambling revenues in California have risen since 1997 from \$2.5 billion to an estimated \$143 billion in 2003 (Associated Press, 2003; Dunstan, 1997). There are presently 53 tribal casinos with more than 54,000 slot machines operating throughout California. Estimates indicate that tribal gambling generates approximately \$5 billion dollars annually (Associated Press 2003). A small portion of this amount (3%) is directed to the State in the development of services for California's problem gamblers. The FEIS's proposed contribution of \$10,000 to provide resources to address problem gambling is

L3-43

not a meaningful response to the social ills that the community will face: domestic violence, abuse, depression, homelessness, divorce and joblessness.

L3-43
Cont'd

Crime

FEIS Ignores Substantial Increases in Crime Resulting From the Proposed Gaming Activities – The FEIS fails to address the increased crime that will occur with the Proposed Project. Based upon statistical comparisons with other identified casinos, reasonable estimates can be determined, but the FEIS has failed to do so. Instead of making a meaningful attempt to identify the nature and magnitude of increased crime, the FEIS makes unsupported statements that roving security patrols will prevent criminal activity, or that unidentified, to-be-negotiated payments to law enforcement will mitigate any increase in crime. The FEIS has failed to obtain and consider available statistics (such as statistics compiled by the Amador County Sheriff's Office showing a dramatic increase in criminal activity and ACSO response following the disbanding of the Jackson Rancheria Tribal Police Force), and has opted to fill the FEIS with vague statements indicating that impacts and mitigations cannot be identified at this time or are not available. These statements are inaccurate and demonstrative of an attempt to evade articulating impacts and identifying appropriate mitigations.

L3-44

The FEIS makes the assertion that the presence of parking staff and unarmed security guards will reduce criminal activity. This is a preposterous assertion, one that is unsubstantiated and is easily refuted by readily available statistics, including the above-mentioned information relative to dramatic increases in criminal activity and calls to ACSO following the elimination of the Jackson Rancheria Tribal Police Force.

L3-45

Loss of Tax Revenues – The FEIS makes statements to indicate that sales tax increases will generate sufficient revenues to off-set and mitigate other lost revenues. If the FEIS cannot reasonably identify the impacts created by its casino, it surely cannot project sufficient sales tax revenues being generated to off-set other lost revenues.

L3-46

Smoking

No Analysis of Impact of Allowing Smoking in the Casino – The FEIS does not dispute the County's comments on the severity and importance of the health issues and costs that accompany second-hand smoking. However, the sole response is to state that the casino will post signs and hand out brochures.

L3-47

In 2006, the California Air Resources Board classified secondhand smoke as a "Toxic Air Contaminant" in the same category as asbestos, cyanide, arsenic, and car exhaust which can lead to serious illness and death. Secondhand smoke seeps into and out of open windows and doors, shared ventilation systems, ceiling crawl spaces and gaps around electrical wiring, light fixtures, plumbing, ductwork and even baseboards. The U.S. Surgeon General says there is no safe level of exposure to secondhand smoke. Secondhand smoke exposure is toxic and causes cancer, heart disease, adult and childhood asthma and sudden infant death syndrome (SIDS). To assume that signs

L3-48

posted in the lobby would mitigate a problem as serious as second-hand smoke would be laughable if it were not tragic.

L3-48
Cont'd

Other Social Impacts

Need for Analysis of Social Costs – The County's response to the Draft EIS detailed the numerous social costs associated with the Proposed Project and asked that they be reviewed, analyzed and mitigated. The FEIS did not address the increase in domestic violence incidents involving project patrons and employees as well as resulting services demands (law enforcement response, battered women's shelter services, child welfare services, court intervention, probation, etc). Child abuse and neglect stemming from parent/guardian's absences due to patronage at the project and/or subsequent behavior toward children because of gambling losses or increased consumption of alcohol were ignored. Likewise, the FEIS did not address the increases in elder abuse, particularly fiduciary abuse due to problem and/or pathological gambling, nor did it estimate the number of individuals and families who would require Cal Works or General Assistance as a result of loss of income due to gambling.

L3-49

Child Care

Inadequate Response to Need for Child Care Facilities at the Casino – The FEIS does not address the impact regarding child care. The recent Child Care Needs Assessment for Amador County shows the overall unmet need for licensed child care in the County to be 58% overall – more than 1,000 children currently going without licensed care whom we estimate to need it because their parents are in the workforce. The overall demand for child care would surely increase if local residents with families are employed at the casino, and the demand for off-hour care would greatly increase.

L3-50

The Jackson Rancheria showed foresight in providing child care for its employees, particularly by providing 24/7 care. It is unlikely that they would have been able to attract needed employees without providing such care. If the casino proposes to pull from the "local labor pool," the children of those workers need to be cared for while they work. The existing supply of child care provides very little for evening, overnight and weekend care. The current system cannot absorb additional demand without additional facilities.

L3-51

Transportation/Traffic

We have reviewed the transportation related elements of the FEIS and offer the following comments, intended to supplement our previous comments on *Final Traffic Study for: Lone Band of Miwok Indians – Casino/Hotel Proposal (Dowling Associates, Inc., November 2008)*:

L3-52

1. The traffic count data used in the revised traffic impact study prepared by Dowling Associates, Inc. dated November 7, 2008 (the "TIA") as well as the FEIS appears to be two years old. Typical industry standards recommend traffic counts be no more than one to two years old when the document goes through

the public review process. Traffic count data is used as the basis for existing and near-term scenarios. Utilization of baseline count data greater than one year old may not correctly identify base conditions and therefore not accurately identify significant traffic impacts and required mitigation measures.

L3-52
Cont'd

2. In the FEIS, phase 1 and phase 2 are analyzed as years 2010 and 2013. Since the TIA is already two years old, the project opening years seem unlikely. Since ambient growth is utilized in determining future year traffic volumes, the analysis may misstate project impacts. The analysis must be revised to reflect more feasible opening years.

L3-53

3. Based on our review of the *Amador County Regional Transportation Plan (RTP) Update* dated September 2004 and the *Amador County Traffic Study Guidelines* dated July 2006, acceptable level of service (LOS) should be modified to LOS D for the following study intersections:

- SR 124/Shakeley Lane/Preston Avenue;
- Preston Avenue/Main Street; and
- Church Street/Main Street.

L3-54

This comment applies to all analysis scenarios. Revise traffic analysis and determine based on applicable thresholds of significance if significant impacts are forecast, potentially requiring additional mitigation measures.

4. Based on our review of the *Amador County Regional Transportation Plan (RTP) Update* dated September 2004 and the *Amador County Traffic Study Guidelines* dated July 2006, acceptable LOS should be modified to LOS C for the study roadway segment of SR 49 between Main Casino Entrance and SR 49/SR 16 Junction. This comment applies to all analysis scenarios. Revise traffic analysis and determine based on applicable thresholds of significance if significant impacts are forecast, potentially requiring additional mitigation measures.

L3-55

5. Based on our review of the *Amador County Regional Transportation Plan (RTP) Update* dated September 2004 and the *Amador County Traffic Study Guidelines* dated July 2006, acceptable LOS should be modified to LOS D for the following study roadway segments:

- SR 124 between SR 16 and Tonzi Road;
- SR 124 between Tonzi Road and SR 104;
- SR 104 between SR 124 and Main Street;
- SR 104 between Main Street and Church Street; and
- SR 124 between Main Street and SR 88

L3-56

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|-----|--|-----------------|
| 6. | This comment applies to all analysis scenarios. Revise traffic analysis and determine based on applicable thresholds of significance if significant impacts are forecast, potentially requiring additional mitigation measures. | L3-56
Cont'd |
| 7. | Cumulative conditions analysis analyzes year 2025 conditions. The current accepted cumulative year for Caltrans analysis is 2035. Since the majority of the study facilities are Caltrans facilities, the cumulative conditions analysis should be revised to present 2035 conditions. While Page 2 of the TIA indicates year 2035 analysis was prepared, all other long-range dates in the TIA use 2025. Please resolve the apparent discrepancy. | L3-57 |
| 8. | Page 20, based on Table 8, the deficient study roadway segment list is missing the segment of SR 16 between SR 124 and SR 49. Please update the traffic analysis accordingly. | L3-58 |
| 9. | Page 30, fourth paragraph explains the study intersection LOS was calculated using the TRAFFIX and Synchro software packages. Based on LOS analysis data contained in Appendix A, it seems as though TRAFFIX was the only software used for the LOS analysis. Please update the traffic analysis accordingly. | L3-59 |
| 10. | Page 27 and Page 41, the TIA indicates an ambient growth rate is utilized to derive year 2013 traffic volumes, however, no ambient growth rate is applied during derivation of year 2010 conditions. Please clarify and/or update the traffic analysis accordingly. | L3-60 |
| 11. | Page 51, the traffic analysis utilizes the ITE <i>Trip Generation Manual</i> , 7 th Edition (2003) to estimate daily and peak hour hotel trips. Please update the analysis to utilize the more recent ITE <i>Trip Generation Manual</i> , 8 th Edition (2008). | L3-61 |
| 12. | Page 53, provide trip rates for land uses where ITE <i>Trip Generation Manual</i> is referenced. The use of ITE <i>Trip Generation Manual</i> , 8 th Edition (2008) may modify trip generation for the shopping center and hotel land uses. | L3-62 |
| 13. | Page 51, the last paragraph explains ITE Land Use Code 310 (Hotel) is utilized to calculate hotel trips while the footnotes in Tables 16 and 17 make reference to ITE Land Use Code 320 (Motel). Since the proposed use is a hotel, please update the trip generation tables to reflect ITE Land Use Code 310. This typographical item does not appear to change the trip generation calculations. Please revise accordingly. | L3-63 |

<p><i>Mitigation Measures Have Been Revised and Significantly Weakened</i> – Traffic signals that were required in the Draft EIS to mitigate significant traffic impacts have been removed from the FEIS (e.g., Preston /SR 124, Church/Main), intersection improvement requirements have been reduced (e.g., Sunrise Boulevard/SR 16), and new traffic improvements have been identified (e.g., widen SR 16 between Latrobe Road and SR 124 from two lanes to three lanes, and widen SR 16 between SR 124 and SR 49 from two lanes to four lanes). A roadway widening of the magnitude identified in the FEIS for SR</p>	L3-64
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16 will clearly have significant environmental impacts that have not been adequately disclosed in the FEIS. By ignoring significant Amador County roadway-segment impacts in the Draft EIS, disclosing these impacts in the FEIS, and then identifying a substantial roadway expansion that will require significant habitat removal, including the removal of numerous oak trees, the public disclosure requirements of NEPA have been clearly violated.

L3-64
Cont'd

Text changes were made to the traffic mitigation measures in the FEIS that step back from the commitment to implement appropriate intersection and roadway improvements identified in the Draft EIS. The FEIS traffic mitigation measures include the following new language: "Actual funding mechanisms for impact mitigation shall be determined through negotiations at the time of project implementation." By deferring the project's commitment to funding traffic improvements to future negotiations, the effectiveness of the mitigation measures cannot be determined at this time and the FEIS cannot conclude that significant project traffic impacts will be reduced to a less-than-significant level when the Proposed Action is implemented.

L3-65

Incorrect Categorization of Unapproved Projects as Approved Projects – In the FEIS, a number of unapproved projects were counted as approved projects, therefore skewing the Tribe's fair share contribution. These matters are more particularly described in the comment letter from John Gedney, Chief, Office of Rural Planning and Administration, California Department of Transportation District 10 dated September 9, 2010. The comments and observations in this letter are incorporated herein by reference.

L3-66

Land Use Patterns

Inadequate Analysis of Land Use Compatibility Issues; Project Inconsistency with General Plan and Zoning Designations – The FEIS response to the issue of inadequate analysis of land use compatibility issues is insufficient. The response continues to contend the project is "generally consistent with both local and county plans." It overlooks the fact the "revised" Alternative A is now proposed to be located on land in the County's jurisdiction, not the city's jurisdiction; the impact of this change has not been addressed. A casino is not consistent with the County's R-S, Residential-Suburban General Plan designation and the "RIA," Single Family Residential and Agricultural zoning designation on the property where the casino facility is located. Moreover, the reference to inconsistency issues being addressed by mitigation measure 5.2.8AAA is completely wrong. That mitigation measure addresses road issues in an adjoining county and has nothing to do with mitigating parcels that are not consistent with local plans.

L3-67

The response also does not address the potential effects of incompatible land uses between the casino and the existing and proposed land uses on neighboring properties. The response states the "FEIS states that there are certain parcels are [sic] not consistent with local plans" but is silent on the impacts on surrounding properties by placing an incompatible land use in an area designated for low density residential, agricultural and mining uses.

L3-68

Incorrect Density and Allowed Use Assumptions – The FEIS is again incorrect in its discussion of density and allowed land uses. The “X,” Special Use District zoning does not allow anything with a use permit in the R-S, general plan designation. The uses allowed are those “not otherwise prohibited by law,” the law being the general plan, and so the uses must be consistent with the R-S designation. A hotel, commercial parking lot, and casino are not consistent with R-S. Appropriate uses listed are “single family residential, agricultural and schools, parks, etc.” The County’s zoning code was last updated in 2004, 2006 and 2007, not 2002 as stated in the EIS. The density for the R-S, general plan classification is 5 acres if served by a well (see Policy 23 of Land Use Element) and 1 acre if served by a public water supply. The R 1 A zone district parcel size minimum is 5 acre if the project is served by a well, and 1 acre if served by a public water supply (see County Code Section 19.24.045).

L3-69

Other Resource Use Patterns

Failure to Evaluate Proposed Expansion of Mining Operations and Effects on Mineral Resources on the Project Site – The FEIS completely fails to address the fact that there is an application “on hold” to *expand* current mining operations onto what is now the proposed casino site. This factor, along with the fact the historic gold district runs through the eastern side of the property, indicates the existence of mineral resources of value on the property. No evaluation of the potential impacts has been provided.

L3-70

Public Services – Water

FEIS Does Not Show Availability of Water from City of Plymouth – The response to comment L2-223 indicates that the preferred alternative would be use of groundwater wells (with some reliance on hauled water, per the text). Though not preferred, connection to the Amador Water Agency pipeline now supplying Plymouth has not been ruled out. Possible connection to this water source should be evaluated to determine what potential impacts exist and whether there may be appropriate mitigation.

L3-71

Public Services – Wastewater

No Examination of Regional Alternatives – The response to comment L2-224 regarding lack of examination of regional wastewater alternatives suggests that this concept was addressed in the response to comment L2-38. It is not. The FEIS states that the Tribe has throughout the environmental review process expressed its willingness to enter into agreement with the City and/or County, but there is no documentation of any such contact or inquiry. Furthermore, the response to comment L2-225 restates determination to deal with wastewater on-site without exploring any regional alternative.

L3-72

Public Services – Fire and Emergency Services

The FEIS Continues to Fail to Adequately Address Offsite Impacts to Fire and Emergency Service Providers – Mutual aid from an onsite casino department does not mitigate ACPD’s and other fire jurisdictions inability to handle the offsite call volume

L3-73

caused by the Proposed Project. The suggested terms for a mutual aid agreement in Appendix F (4.4) provides for help only when requested by the responsible agency at an emergency situation requiring resources in excess of those at scene of the incident. This type of agreement works well when the responsible party has sufficient personnel and equipment at the scene to control an emergency until help arrives. That is not always the case in a rural county fire department staffed mainly with volunteers, who at times will have no resources available for a timely response to an emergency. In recognition of this factor, the fire agencies in Amador County are dispatched as needed by the Emergency Command Center regardless of jurisdiction, as a closest available resource until sufficient personnel and equipment to mitigate the emergency has arrived on scene. Any onsite tribal fire department must be included and participate in the existing dispatch system to help mitigate the impacts from increased offsite calls.

L3-73
Cont'd

The response to the request to quantify the staffing level of the onsite fire station points to Section 2.0 of the FEIS, which states "The Tribal Fire Department would be staffed at a minimum, with three persons, 24 hours a day." Appendix F (4.1) of the FEIS provides that initial fire/EMS response will be four persons. Clarification is needed.

L3-74

Described Fire Command Center Is Too Small – The response states that the size of the proposed Fire Command Center is consistent with the International Building Code (Code). This is correct; Chapter 9 of the Code provides that a "Fire Command Center" be a minimum of 96 square feet. However a Fire Command Center is defined in the Code as "the principle attended or unattended location where the status of detection, alarm communications and control systems is displayed, and from which the system(s) can be manually controlled", and is not intended to be used as a Fire/EMS dispatching and 911 coordination center as described in Appendix F (4.5) of the FEIS.

L3-75

FEIS Appendix F (2.1) Applicable Code should be updated to reflect that the Proposed Project will comply with the latest editions of California codes in effect at the time of construction.

L3-76

Public Services – Law Enforcement

Impact of Lack of Uniformed, Armed Tribal Police Force – The FEIS makes the assertion that the presence of parking staff and unarmed security guards will mitigate impacts to law enforcement to a less than significant level. This is a preposterous assertion, one which is easily refutable by readily available statistics. The FEIS goes further and states that the presence of armed tribal police reducing crime and reducing law enforcement impacts is unsubstantiated. This statement is completely inaccurate and can be substantiated by current statistical data collected by ACSO.

L3-77

Increased Demand for Service from Amador County Sheriff's Office – The FEIS states mitigation to the Sheriff's Office will be made for the impacts within the City of Plymouth and at the Proposed Project. This is wholly insufficient as it fails to address the off-site impacts created by the Proposed Project, which have already been identified as significant and disclosed by the County based upon our experience with the Jackson Rancheria Casino.

L3-78

The Law Enforcement Services Agreement between the ACSO and the City of Plymouth calls for the City to provide their \$100,000 COPS Grant monies to the ACSO for patrol and dispatch services. Due to ever increasing personnel costs, these funds only allow for 6/10 of a full-time deputy for police services to the City. These funds do not cover all other ACSO expenses incurred for police services including investigations, coroner, civil, jail, administration, etc. Additionally, forty five days after the signing of the gaming compact, the Amador County Sheriff's Office contract with the City of Plymouth terminates, thus mitigation for casino impacts in the City of Plymouth and those areas of the casino which are within the city limits may or may not be made to the Amador County Sheriff's Office.

L3-79

With regard to facilities to house law enforcement agencies, the FEIS (Section 3.9.5) discusses a long abandoned facility that the ACSO shared with the local fire department, which was never adequate for the purpose. This section also discusses response time for both emergency and non-emergency calls for service. This information is based upon 6 year old data and therefore is no longer valid.

L3-80

The FEIS (Section 3.9.5) discusses the history of the current ACSO jail facility and accurately describes the overcrowding issues we still face today. However, there is no discussion of the potential impacts to jail space, staffing or program needs to deal with the increased impacts caused by a Tribal casino that serves alcohol. Recent data shows that visitors to the current Jackson Rancheria, which does not serve alcohol, are directly responsible for over 10% of the daily ACSO jail population 24/7/365. Contrary to the FEIS, the ACSO and the County of Amador have been working with the state to acquire funding for the building of a new 165 bed jail facility and have acquired property for that purpose.

L3-81

Mitigation Measures Included in the FEIS for Law Enforcement Are Wholly Inadequate – Throughout the FEIS, it is stated that the Tribe will negotiate fees to be paid to compensate for increased law enforcement services. Negotiating fees to be paid by the Tribe is not synonymous with mitigating impacts created by the Proposed Project. If the FEIS cannot reasonably identify the law enforcement impacts created by the Proposed Project, it cannot be reasonably assumed that sufficient mitigations will be provided.

L3-82

Additionally, the FEIS implies that law enforcement impacts created by the Proposed Project are off-set by mitigations received from other area casinos. This is wholly unsubstantiated, inaccurate and inappropriate.

L3-83

The mitigation measures included in the FEIS are non-specific, ambiguous and qualified by such terms as "where feasible and when reasonable," without specifying who or how the determination is made that a mitigation is either "feasible" or "reasonable."

L3-84

Specific problems with law enforcement proposed mitigation measures are as follows:

- Item G states that the Tribe shall adopt a responsible alcohol beverage policy consisting of requesting identification and refusing to serve those who have had enough to drink. This policy would be discussed with both the ACSO and the CHP.

This is not a sufficient mitigation measure, as it is well documented that such policies do not substantially impact the number of drunk drivers that are arrested after leaving establishments with similar policies. The impacts of drunk drivers through accidents and injuries will have a significant impact on the resources of the ACSO, the CHP, as well as other emergency services such as fire, EMS, and the local hospital.

L3-85

- Item H states that all parking areas will be well lit and patrolled by security guards and monitored by parking staff that will aid in the prevention of crime. While well intentioned, it is the experience of the ACSO that security, lighting, and even video surveillance, does not sufficiently mitigate the impact of crimes that are committed in or around parking areas. ACSO response will still be required on a routine basis.

L3-86

- Item I states that exterior areas surrounding the gaming facilities shall have no loitering signs in place, be well lit, and patrolled by security guards to aid in the prevention of crimes related to loitering. It is unclear what crimes are being referred to; however, such mitigation efforts will be insufficient to significantly reduce the need for ACSO response to crimes that will occur in these areas.

L3-87

- Item J states that the Tribe shall provide traffic control and signage and traffic control staff, when they feel it is appropriate, to reduce the impacts of offsite parking. Any offsite parking will create opportunities for criminal acts to take place away from the project site, even though they would still be related to the project operation and therefore require appropriate mitigation.

L3-88

- Item K relates to impacts to non-ACSO county criminal justice agencies and states the Tribe shall negotiate in good faith to provide "reasonable payment" for services to mitigate impacts to these agencies. There is no further comment required other than the costs reimbursed must be actual costs of the necessary resources.

L3-89

- Item L states that the Tribe shall make "reasonable payments" to the county to provide for 6.5 ACSO Deputies for 24/7 coverage plus necessary equipment. This item also calls for the Deputies to be based in Plymouth where in fact there is no suitable office space for them. The decision as to how to best deploy resources is at the determination of the Sheriff and no one else. It is not stated who makes the determination of what is reasonable payment. ACSO must receive actual cost reimbursement for those resources required to mitigate the impacts of this project.

L3-90

Item L fails to address the impacts of this project on other aspects of the ACSO, including but not limited to, investigative services, coroner, jail impacts on bed space, fees and staffing, civil services, records processing etc. All of these impacts can be determined and also need to be mitigated.

L3-91

Item L further fails to address the significant impacts on the ACSO for all off-site activities that will inevitably result from visitors traveling to and from the project site. These include increased vehicle accidents, coroners cases, crimes committed in transit, drunk driving, narcotics, etc. Recent experience has documented that such activities can double the number of ACSO Deputies provided for in this FEIS for mitigation.

L3-92

- Item M states that the Tribe will provide payments to the CHP to mitigate the impacts on their operations. The number of CHP resources provided could impact the workload of the ACSO Deputies if they are insufficient.

L3-93

- Item N states the Tribe will make a "reasonable contribution" to Amador County for the increased costs of emergency dispatching. All police, fire and medical dispatching is provided by the ACSO. The mitigation will also require the costs of new equipment, and perhaps new space needs as the current facility is already at capacity. Again the mitigation must be for actual costs associated with dispatching impacts caused by the project.

L3-94

FEIS Does Not Adequately Address Impacts to Amador County District Attorney's Office – The FEIS states that "Alternative A would have an impact on the caseload of the Amador District Attorney's (DA) Office." We agree. The FEIS continues that the District Attorney processes criminal referrals from the ACSO. Again, we agree, but that is only one agency that we receive criminal referrals from. Using our experience with the Jackson Rancheria as a reference, with the Plymouth casino we can expect to receive criminal referrals from the Jackson, Sutter Creek and Ione Police Departments, as well as the California Highway Patrol.

L3-95

The FEIS appears to be only willing to consider crimes committed at the Plymouth casino in assessing impact to the ACDA, hence their continued recitation of data produced by the ACDA in the Draft EIS showing that of the County's total of 1,248 criminal filings in 2003, 135 were committed at the Jackson Rancheria. However, as our office's analysis of the total of 1,754 cases filed in 2007 indicates, at least 268 were directly associated with the Jackson Rancheria and represented 15.3% of our total 2007 caseload. The 2007 data represented a 100% increase over the 2003 Jackson Rancheria crime data used in the DEIS and is a more accurate reflection of actual impact.

L3-96

The FEIS states that the "... impact from Alternative A is expected to be similar to that of the Jackson Rancheria." This conclusion ignores the factors that the ACDA discussed in its response to the Draft EIS. Alternative A provides for a casino that will operate up to 2,000 slot machines and 40 gaming tables. In comparison, the Jackson Rancheria casino operates only 1,500 slot machines and slightly more gaming tables (44). The Plymouth casino will serve alcohol and the Jackson Rancheria does not. Undoubtedly, the presence of alcohol will increase

L3-97

the number of casino-related criminal referrals, particularly for off-site vehicular offenses. Until recently, the Jackson Rancheria had a tribal police force in addition to 100 unarmed security guards. The proposed Plymouth casino will not have a tribal police force. As our office stated in the DEIS, the import of this fact is that the lack of a tribal police force may lead to an increase in calls to ACSO for assistance because the security guards are ill-equipped to handle situations that armed tribal police officers can handle. We will be unable to assess the impact that the disbanding of the Jackson Rancheria tribal police force has had on the number of calls to ACSO for assistance until mid-2011, when most of the casino-related criminal cases originating in 2010 have been resolved in court.

L3-97
Cont'd

The mitigation measures described in the FEIS are vague, ambiguous and inadequate as applied to the ACDA. The Tribe's proposed Responsible Alcoholic Beverage Policy, while appreciated, will still allow the sale and consumption of alcohol. The FEIS still does not address where alcohol will be available within the Plymouth casino, hotel and convention center. Increased access to alcohol will increase consumption. The FEIS does not indicate what compensation they believe is reasonable payment in mitigation of impacts to the ACDA. The FEIS doesn't acknowledge what impacts it believes the Plymouth casino will create for the ACDA. The FEIS seeks to limit the true impacts to the ACDA by only considering on-site criminal activity—not off-site criminal activity that can be directly attributed to the casino. The Tribe changed their position in the FEIS to delete language indicating their agreement to annually review the amount of payment to the ACDA. This one-time payment approach ignores the fact that ACDA's cost of providing services will rise significantly over the life of the agreement thus assuring that the gap between the Plymouth casino's impact and adequate mitigation will continue to grow larger.

L3-98

Impacts to Public Defender Services – The Draft EIS did not address impacts the casino will have on public defender ("PD") services. The FEIS contains one conclusory statement in Section 4.9: The significant impacts anticipated to the ACSO and the ACDA would also result in significant impact to other County law enforcement services including the probation office, Public Defenders office, and to court services. Mitigation has been included in Section 5.2.9 to provide monetary compensation to reduce potential impacts."

L3-99

Although the FEIS has been updated in Sections 4.9 and 5.2.9 to include the PD's Office, the FEIS performs no analysis and provides no specific information on expected caseload increases or resulting staffing impacts. Acknowledging that there will be significant impacts but not specifically identifying those impacts is insufficient. Also, Appendix R estimates costs for the Amador County Sheriff's Office and Amador County District Attorney's office but fails to estimate costs for PD services.

L3-100

With respect to Public Defender services, Section 5.2.9 of the FEIS specifically mentions only the PD's Office. The Tribe must acknowledge the specific distinction between the PD's Office and PD services. As explained in the County's comments provided on the DEIS, the County contracts for PD services so there will be impacts that will be felt by the PD's Office as well as the County for all PD services, including but not limited to costs associated with appointments made outside of the County's contracts for PD services, investigators, expert witnesses, psychological testing and any other legal

L3-101

services the County is legally obligated to pay for under the "Public Defender" budget. Also, Appendix R estimates costs for the Amador County Sheriff's Office and Amador County District Attorney's office but fails to estimate costs for PD services.

L3-101
Cont'd

Furthermore, no specific information is provided on County administrative staffing impacts. Acknowledging that there will be significant impacts but not specifically identifying those impacts is insufficient. The Tribe simply offers "Impacts to the County's General Service Administration (GSA) would be mitigated through the funding measures identified in Section 5.2.9 of the FEIS for the specific law enforcement agencies that would potentially be impacted by the project alternatives." GSA is not a law enforcement agency and the County's administrative responsibilities as they relate to PD services in their entirety are not handled by law enforcement agencies.

L3-102

(NOTE: Due to County reorganization in 2010, the responsibilities of GSA, as they relate to PD services, have shifted to the Public Services Agency.)

Impacts to Other Law Enforcement Programs Are Neither Assessed Nor Mitigated – Although Comment L2-294 is beyond those comments specific to PD services, the comment should be addressed here as it may affect mitigation of impacts to PD services. The Tribe asserts that since their patrons will be from other local casinos, mitigation will already be in place through mitigations provided by other casinos. While it might be assumed that *some* of their patrons would be from the local Jackson Rancheria casino (as that is the only casino currently operating in Amador County), there are no mitigation measures or compensation that is received for the impacts caused by the Jackson Rancheria specifically on PD services. Therefore, mitigation requirements for PD as well as other law enforcement services should not be predicated on the assumption that the impacts are mitigated by contributions from other venues. Furthermore, the cumulative effect of having multiple casinos in close proximity to one another would likely result in new impacts as patrons engage in "casino hopping". Since the Tribe proposes to serve alcohol and patrons will be traveling between casinos, the resulting effect will be increased crime and traffic accidents occurring both on-and-off Tribal lands. These "new" impacts have not already been mitigated for.

L3-103

Most importantly, the mitigations for law enforcement that were provided in the Draft EIS have now been watered down to insignificance by changes in the FEIS. Where previously it was proposed that the exact amount of compensation to mitigate the effects on law enforcement would be negotiated and subject to review each year, now the FEIS provides only that the Tribe will provide *reasonable* payment that will not be subject to review.

L3-104

While the FEIS does acknowledge that there will be significant impacts to the Probation Department, there is no analysis of the nature or extent of those impacts. As above, the mitigation measures, although amended to include payment for Probation Department services, have been significantly weakened by a commitment only to "negotiate" for "reasonable" compensation, which is not subject to review if costs change.

L3-105

The FEIS should describe in detail the functions and responsibilities of the ACSO, the CHP, local police departments, the Probation Department, the Public Defenders Office, and the Superior Court, as it has done for the ACDA's Office in the Draft EIS.

L3-106

Mitigation Measures for Impacts to Public Services Are Vague, Non-Specific, and Inadequate – Mitigation Measures 5.2.9 (J, K, L, M, and N) under Public Health and Safety all use negotiations with County and City agencies to determine the mitigations and “contributions” from the Tribe for various additional services that will be needed for the proposed action (Alternatives A-D). These mitigation measures lack any specific payment information and hold no guarantee that an agreement will be met in order to ensure that the project's adverse effects are properly mitigated; therefore, the public cannot be assured that necessary services will be made available upon project completion.

L3-107

Public Services – Miscellaneous

FEIS Does Not Evaluate Increased Demands on Health Care – The FEIS does not address the issue of increased demands on health care by simply stating that it will provide insurance coverage for its employees.

L3-108

A review of the literature shows evidence of a strong correlation between low income wage earners and the need for local subsidized healthcare services. The US Department of Health & Human Services Agency for Healthcare Research & Quality states, “Among all non elderly full-time workers, insurance status varied by income. Full-time low income workers were less likely than full-time middle income workers and high income workers to have private health insurance coverage. Full-time low income workers were more likely than other groups to have public coverage or to be uninsured. The study further goes on to state that in 2005-2006, the subgroups with the lowest rates of private coverage (highest rates of uninsured) included: Hispanic, had less than a high school education, were not U.S. citizens or worked in leisure/hospitality/other services. The UC Berkeley Center for Labor Research and Education Research Brief, 2007, clearly illustrates these findings in the table below:

L3-109

Source of Insurance Coverage by Income for Non-elderly in California, 2005

FPL	100-200% FPL	201-250% FPL	251-300% FPL	301%-400% FPL	Over 400% FPL
Employment Based	32.6%	55.2%	66.7%	74.2%	82.7%
Non employment (Individual based)	3.9%	6.8%	7.6%	7.1%	8.5%
Public Funded	36.7%	19.6%	13.6%	8.0%	3.0%
Uninsured	26.8%	18.4%	12.1%	10.7%	5.8%

The 2009 Family size and Annual Income Level Chart: 250 % of Federal Poverty Level (FPL) for a family of 4 is a yearly gross income of \$55,128, while a family of 6 can make

a yearly income up to \$73,836. The UCLA Center for Health Policy Research suggests that most Californians with incomes at or below 200% of the poverty level may not be able to contribute any resources toward their healthcare and that partial subsidies are needed for many families with incomes well above the 300% of the poverty line.

L3-109
Cont'd

In 2006 the state of Wisconsin funded a study looking at the hidden cost of low-wage jobs and found that despite these families' commitment to work, the researchers found heavy reliance on public funding to make ends meet. The most important and expensive support to year-round working families is medical assistance, which accounted for 38% of the money. These costs are both hidden and public because the local community directly and indirectly pays in order to fill in the gap between what work pays and what families need in order to survive.

L3-110

Low-income workers cause an increase in assistance, including health care assistance. This factor has not been recognized, analyzed or evaluated in the FEIS.

L3-111

Disregard of Need for Hazardous Materials Emergency Response Team – The FEIS response to comment L2-310 is quite disturbing. Rejecting out of hand the possible need for a hazardous materials emergency response team for a facility of this size is irresponsible and exhibits a disregard both for the customers the Proposed Project intends to serve and the community in which the facility will be located.

L3-112

Food Safety Issues Are Not Addressed – The response to comment L2-311 provides no additional information regarding food safety. Reference to Appendix U, Tribal Gaming Ordinance, provides no additional information. Food handling is inferred rather than explicit in the section 12 statement, "The Tribal Council shall adopt standards that assure adequate protection of the environment and the public health and safety." The EIS should clarify what the standards are and how they will be implemented.

L3-113

Noise

Incorrect Assumptions Regarding Noise Impacts on Nearby Residences and Businesses – The response to Comment L2-313 included in the FEIS ignores the project's noise impacts on residents and businesses located closer than 100 feet to the roadways affected by casino traffic. The response implies that the increase in noise levels attributable to project traffic at 100 feet would be the same at 50 feet and 25 feet because the baseline noise conditions would proportionally increase. However, no analysis is provided to support this assertion.

L3-114

Noise levels clearly increase the closer a person is to the noise source so it is a specious argument to conclude that the increase in traffic noise associated with the project would be the same regardless of the distance to the receptor. Based on the high volume of traffic anticipated to be generated by the proposed project on local roadways, the noise analysis needs to specifically document the anticipated noise level increases for residents and businesses located in close proximity to the affected roadways and to identify specific mitigation measures to ensure these impacts are reduced to a less-than-significant level.

L3-115

Hazards and Hazardous Materials

Newly Added Appendix O Does Not Address Acknowledged Hazardous Material Issues – Appendix O, Phase I Hazardous Materials Study, which was missing from the Draft EIS, has now been added. The Findings and Conclusions section of Appendix O acknowledges several exceedences for arsenic in bulk soil samples collected from mine tailings within the project boundary in 2008. It states that exceedences for arsenic are common in the foothills of Northern California but shows arsenic levels in three background samples to be 8 – 10 mg/kg. There is the potential that the Proposed Project may increase potential for exposure of the public to unsafe levels of arsenic. The document recommends placing a soil cap on the tailings and avoiding disturbance but there is no discussion of further investigation, sampling, or mitigation of areas planned for development. A Preliminary Endangerment Assessment is necessary to discover the extent and concentrations of constituents of concern and to evaluate the efficacy of any proposed mitigation before approving a project that exposes the public to dangerous levels of hazardous materials. These are serious issues that warrant recirculation of the Draft EIS, since the material was not provided until the FEIS was issued

L3-116

Aesthetics

New Project Increases Impacts to the County's Unique Visual Resources Beyond Draft EIS Impacts – Detailed comments were provided on the Draft EIS regarding the adverse impacts of the proposed casino and hotel/conference center on the unique visual resources located along the scenic State Route 49 corridor. The project would introduce a multi-story hotel, event center, surface parking lots, substantial casino infrastructure, and substantial changes in the site's topography within a predominantly rural area. The project would indisputably result in a significant change in the area's visual character and the visual mitigation measures identified in the Draft EIS do little to reduce this adverse impact. In response to the concerns raised by the County and other commenters, the FEIS concludes that the project's visual impacts would be minimized through the preservation of existing trees and vegetation. In other words, not every tree will be removed from the property, therefore, the impacts are not significant.

L3-117

The FEIS states that the planting of landscaping will break up and soften the massing of the proposed casino building. However, this conclusion ignores the proposed height of the building and the proposed multi-story hotel. Due to the scale of the proposed facilities, there is no possible way for landscaping to screen the facilities from State Route 49.

L3-118

In addition, the project footprint included in the Draft EIS has been substantially altered and a five-story parking garage has been added to the project, which would be directly visible from State Route 49 and from residents within the City of Plymouth. New project renderings are included in Appendix Y of the FEIS. Not only do these renderings directly conflict with the renderings included in Chapter 2 of the FEIS but they represent a completely different project that is clearly out of scale with the rural character of State

L3-119

Route 49 in Amador County. It is inappropriate to respond to community concerns regarding a project's adverse visual impacts by substantially increasing the intensity, scale and massing of a project in the FEIS.

L3-119
Cont'd

COMMENT LETTER L4



Municipal Services Agency
Department of Transportation
Michael J. Ponzio, Interim Director

Steven Szalay, Interim County Executive
Paul J. Fish, Agency Administrator

County of Sacramento

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2010 SEP 13 PM 4
PACIFIC REGIONAL
OFFICE
September 8, 2010

Mr. Dale Risling
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

DECLIN

SUBJECT: COMMENTS ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT
(FEIS) FOR THE IONE BAND OF MIWOK INDIANS CASINO PROJECT.

Dear Mr. Risling:

The Sacramento County Department of Transportation has reviewed the FEIS for the Ione Band of Miwok Indians Casino project. We appreciate the opportunity to review this document. We would ask the project proponent and permitting agency to enter into an agreement with County of Sacramento to pay its fair share or 100% obligations for the transportation related mitigation measures as identified in the FEIS. Please contact us to start this agreement and our staff will gladly facilitate the discussions.

L4-01

We look forward to working with the project proponent and Bureau of Indian Affairs regarding this project. Should you have any questions, please feel free to contact me at (916) 875-2844 or arwalk@saccounty.net.

Sincerely,

Kamal Arwal, P.E., T.E.
Associate Transportation Engineer
Department of Transportation

KAL

- c: Dan Shoeman, DOT
- Dean Blank, DOT
- Matt Darrow, DOT
- Angie Raygan, DOT
- Bob Davison, County Engineering

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ACTC
AMADOR COUNTY
TRANSPORTATION COMMISSION



DECEMBER 30

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September 9, 2010

Dale Risling, Acting Regional Director
Bureau of Indian Affairs
Pacific Region
2800 Cottage Way
Sacramento, CA. 95825

Mr. Risling,

The Amador County Transportation Commission (ACTC) has received notification that the Ione Band of Miwok Indians' has released the Final Environmental Impact Statement for its proposed fee-to-trust transfer, casino project.

The proposed project includes transferring 228.04 acres of land in Plymouth into tribal trust in order to construct a casino, event center, hotel, and other support facilities. The project's Traffic Impact Study (TIS) identifies a host of impacts to the local and regional roadway network for each of the project's alternatives and proposes relevant mitigations for said impacts.

The ACTC's staff has reviewed this TIS in order to comment on the project's potential impacts to the region's transportation system and has identified the two principle concerns it has:

1) The list of other currently approved projects used to establish the proposed casino's anticipated impacts is incorrect. as the TIS lists several projects that have not yet been approved by either City or County government. This error has resulted in the TIS incorrectly identifying the project's impacts and effectively reduces the "fair share" contribution calculated to off-set the tribe's impacts to affected transportation facilities.

L5-01

2) The TIS does not specify the implementation measures that will be used to ensure that the proposed mitigations will actually be constructed, but simply refers to future agreements required by the Governor relevant to the Tribe's desired gaming compact. While gaming compacts negotiated by the Governor's Office have traditionally included conditions requiring the tribe negotiate impact mitigations with the relevant jurisdictions in the form of Cooperative and/or Intergovernmental Services Agreement, the Commission is not aware of any such detailed agreement.

L5-02

Given these two overarching concerns, the ACTC requests that the Bureau of Indian Affairs, as the lead agency for this project, convene a meeting with affected jurisdictions to discuss these details.

Sincerely,

Greg Baldwin
Greg Baldwin, Chairman
Amador County Transportation Commission

Cc: Amador County, City of Plymouth, Ione Band of Miwok Indians

AGTIC
AMADOR COUNTY
TRANSPORTATION COMMISSION

135 SUMMIT STREET, SUITE 1
JACKSON, CA 95642-2319

Dale Risling
Acting Regional Director
Bureau of Indian Affairs
Pacific Region
2800 Cottage Way
Sacramento, CA 95825



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PRIVATE ENTITIES AND ORGANIZATIONS (P)

COMMENT LETTERS

COMMENT LETTER P1

Andrey Sorza
P.O. Box 673
Sutter Creek, CA 95685-0673

EIS COMMENTS

TO THE BAND of MIWOK-INDIANS
LAND TRANSFER & CASINO project.

SIRS. Having been born (1922) and
raised in Plymouth, as was my
father and paternal grandparents,
I feel the proposed casino is
unnecessary, too many already,
and unacceptable as I know
there has never been any
Indian ground around Plymouth.

I am definitely against
allowing any Indian tribe
to purchase ground for any
use.

My great hope is that
no purchase of ground
around Plymouth is
considered for any

Indian use

✓ Verena No

Andrey Sorza

Box 673

Sutter Creek, CA

95685

P1-01

Andrey Gerasimov
PO Box 471
Shaw Creek, CA 95968



ETIMUE TOLD YRIS

Duke Rishby
ACTING Regional Director
BUREAU of INDIAN AFFAIRS
Pacific Region

2800 Cottage Way
Sacramento, CA
95834

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Stand Up For California!
“Citizens making a difference”

www.standupca.org

P.O. Box 355
Penryn, CA 95663

September 7, 2010

Dale Risling, Acting Regional Director
Bureau of Indian Affairs
Pacific Region
2800 Cottage Way
Sacramento, Ca. 95825

RE: FEIS Comments, Lone Band of Miwok Indians, Casino Project, Amador County

Dear Acting Director Risling:

On May 20, 2008, the Department of the Interior issued its final Rules and Regulations, Federal Register Vol. 73 No. 98 Tuesday, addressing the long overdue regulatory process for Section 20 of the Indian Gaming Regulatory Act.

Section 292.10 of the regulations defines how a tribe qualifies as having been restored to federal recognition. Section 292.10 clarifies the language in the Indian Gaming Regulatory Act, 25 U.S.C. Section 20 2710 (b)(1)(B)(i) – (iii). The Lone Band of Miwok was administratively reaffirmed; the Band does not meet the legal threshold of any exception for gaming in the Indian Gaming Regulatory Act.

The Lone Band of Miwok was “reaffirmed” by Asst. Secretary Ada Deer in 1994. It would appear that such an administrative action violates the Administrative Procedures Act 25, CFR, Part 83 regulations. Further, in light of the Feb. 2009 United States Supreme Court ruling, *Carciari v. Salazar*, the Lone Band was not recognized prior to 1934 as a federally recognized Band and therefore not eligible to have land acquired in trust by Secretarial Authority.

Stand Up For California! views this application as waste of BIA resources, tribal resources and the scarce taxpayers dollars of Amador County. This application from the very beginning presented issues that should have been addressed prior to the process of applying to transfer fee land into trust. Our organization hopes that in the future the BIA will recognize the need to

P2-01

P2-02

carefully review whether or not a tribe meets the legal threshold of an exception before beginning a financially crushing process.

This application does not meet the regulatory standards presented in 25 CFR 292.10 or in Section 20 of the Indian Gaming Regulatory Act. **This application should be immediately denied.**

P2-02
Cont'd

Sincerely,



Cheryl Schmit - Director
916-663-3207

cherylschmit@att.net
www.standupca.org

✓ DECEMBER 10

Dueward W. Cranford II
P.O. Box 794
Plymouth, California 95669

FEIS Comments, Ione Band of Miwok Indians, Land Transfer and Casino Project

To: Dale Risling, Acting Regional Director
Pacific Regional Office, BIA
2800 Cottage Way
Sacramento, Ca. 92825

From: Dueward W. Cranford II, U. S. Sovereign Citizen residing in Amador County

Subject: FEIS Comments, Ione Band of Miwok Indians, Land Transfer and Casino Project

Opening Comments and General Observations

Director Risling, for you and the Environmental Protection Agency (EPA) and the Bureau of Indian Affairs (BIA) to have submitted this Final Environmental Impact Study for comment speaks to an apparent continuing willingness of the BIA Pacific Regional Office (BIA PRO), the (BIA), the Department of the Interior (DOI) and the National Indian Gaming Commission (NIGC) to facilitate the approval of a highly questionable proposed casino for a counterfeit group of persons, calling themselves the Modern Ione Band. The continuing and consistent lack of integrity and apparent absence of ethics engaged in by a number of individuals at these agencies becomes even more apparent with their unwillingness to adequately address the many substantive comments submitted about the gross inadequacy of the 2008 DEIS by submitting this FEIS which remains filled with outdated, inaccurate, contradictory, misleading and false information and data about the Ione Band pursuant to their restored lands Fee to Trust application and proposal to build a casino pursuant to the IGRA.

P3-01

Additionally, the issuance of the FEIS after the restored lands opinion was declared wrong, was reversed, and was withdrawn in January 2009 by Solicitor Bernhardt, after the February 24, 2009 decision of the Supreme Court in the Carcieri case, and after the March 31, 2009 decision of the Supreme Court in the Hawaii case appears to be done without regard to common sense, reason, authority or the law unless a new restored lands opinion has been authored, and Carcieri has been "fixed", and there is evidence never presented in either the Fee to Trust Application, the DEIS or the FEIS that the Ione Band was under federal jurisdiction in 1934, and that the Executive Branch or any of its agencies has authority to take land into trust in California for the Ione Band. I am not aware that any of the aforementioned actions have taken place. If any have taken place please provide appropriate citations or direction to the documents confirming that any of the aforementioned actions have been completed.

P3-02

With limited time to review your responses to comments to the DEIS I will not endeavor to include in the FEIS comments related to all your responses which my time limited review has found in most cases simply do not answer the questions asked or do not adequately address the issues raised. Therefore I will provide comment on a few of what I believe are the most important and egregious portions of the FEIS and will include my previous comments on the DEIS edited to exclude those questions and issues that have been, in my opinion, answered or adequately addressed.

P3-03

Comments on the Cover Sheet:

I will begin my FEIS comments with the date on the cover sheet. Based on the date of February 2009 on the cover sheet, am I to conclude that the FEIS was originally to be issued in February 2009 instead of 18 months later in August 2010? What specifically are the reasons for the 18 month discrepancy between the cover sheet date (February 2009) and the August 2010 timeframe? Hopefully, the relevance of my concern and comments will be understood by whoever might be responding to the following questions should the EPA, the BIA, the NIGC, or the DOI actually respond to any of these questions or comments.

P3-04

1. Is this Final EIS related to or associated with the Ione Band's November 2006 Fee to Trust Application for Class III gaming pursuant to the Indian Gaming Regulatory Act (IGRA)? This is a YES or NO question and requires only a YES or NO reply. *(Based on the information on the Cover Page I believe the answer is YES but I want your reply.)*

P3-05

2. If the answer to Question 1 is NO under what other application of any type or authority is this Final EIS being processed?

P3-06

3. Is the EPA aware that Solicitor David J. Bernhardt withdrew and reversed the 2006 Carl J. Artman restored lands opinion for the Ione Band in January 2009? Again, this is a YES or NO question. Copy of the January 16, 2009 Solicitor Bernhardt's memo attached so you are now aware.

P3-07

4. Is the EPA and/or the BIA and/or the Ione Band aware that, according to the January 2009 Bernhardt memo, it is the opinion and legal position of the Solicitor's Office that the Ione Band is not a restored tribe within the meaning of the IGRA? Again this is a YES or NO question and if your reply is NO provide a detailed explanation.

P3-08

5. Did the January 2009 Bernhardt memo have anything to do with the decision to delay the issue of this FEIS for 18 months from February 2009 to August 2010? Again, this is a YES or NO question. If NO please explain in detail what caused the 18 month delay.

P3-09

6. What other factors beside Solicitor Bernhardt's withdrawal and reversal of the Ione Band's restored lands opinion contributed to the 18 month delay?

P3-10

Comments on Executive Summary

The following is from the Executive Summary and raises several questions which follow the excerpt.

INTRODUCTION

The Ione Band of Miwok Indians (hereafter, the "Tribe") consists of approximately 652 members, of which approximately 350 are voting members. The Tribe is governed by a General Council with the day-to-day governance conducted by a 5-member tribal council, as authorized in the Tribal Constitution, which was adopted by the General Council on August 10, 2002. The Tribal Constitution was approved by the Department of the Interior, Bureau of Indian Affairs (BIA) on September 6, 2002. The Tribe presently has no land in trust and is eligible to acquire land for reservation purposes. In 1972, BIA Commissioner Louis Bruce acknowledged the Tribe's federal recognition and agreed to accept land into trust on behalf of the Tribe. In 1994, BIA Assistant Secretary Ada Deer reaffirmed the Bureau's commitment to bring land into trust and declare a reservation for the Tribe.

On page 1.6 of the Introduction it is stated that the tribe has an increasing membership yet the approximate number of members (652) and voting members (350) remains unchanged from the DEIS of more than 2 years ago. There is nothing in this FEIS that supports the statement that the Ione Band has an increasing membership. Therefore, I request the number of members as of two different dates that document that the Ione Band does in fact have an increasing membership.

P3-11

To the statement that the tribe presently has no land in trust and is eligible to acquire land for reservation purposes I ask the following. By what authority is this tribe eligible to have land taken into trust in light of the Carcieri decision? The BIA or DOI has never provided any documentation that indicates that this tribe was under federal jurisdiction in 1934 and that the Ione Band voted on the IRA. Without this documentation or a reference to the documentation as part of this PEIS, the FEIS should be withdrawn until such time as the tribe is eligible to have land taken into trust. Further the finding of the Supreme Court in the March 31, 2009 Hawaii case casts serious doubts on whether the Federal Government or any of its agencies have authority to take land from a Sovereign State without consent of the State and my reading finds no authority for the taking of land from a Sovereign State present in the U.S. Constitution.

P3-12

P3-13

The statement that Commissioner Bruce agreed to accept land into trust is incomplete and misleading as to the fact that Commissioner Bruce agreed to accept one certain parcel of land near Ione which is still owned by 12 individual members of the Ione Band and other members of the Ione Band. The action by Ada Deer in 1994 where she reaffirmed a portion of the Bruce letter was to accept into trust that same certain parcel near Ione. Despite continued questioning, the DOI has never provided any explanation why this land was never accepted into trust in the past 37+ years by the very agency that purports to help and assist tribes. Additionally, nowhere in the March 22, 1994 letter from Ada Deer or in the 1972 letter from Louis Bruce was there any mention of declaring a reservation for the Ione Band. The information presented in this paragraph is incomplete, misleading and false.

P3-14

Comments on Section 1.0

The following is from the Introduction Section 1.0 and incomplete, misleading, and false statements included in the Executive Summary Introduction are repeated here while including even more questionable statements.

1.1 INTRODUCTION

The Ione Band of Miwok Indians (Tribe) is a federally recognized Indian Tribe with approximately 652 members, of whom approximately 350 are voting members. The Tribe is governed by a General Council with day-to-day governance conducted by a 5-member Tribal Council, as authorized in the Tribal Constitution. The Constitution was adopted by the General Council on August 10, 2002 and the Department of the Interior, Bureau of Indian Affairs (BIA) on September 6, 2002.

P3-15

The Tribe has no trust land. The Tribe proposes that the BIA accept land into trust for the Tribe for gaming purposes to address the needs of the Tribe for economic development and diversification. In 1972, BIA Commissioner Louis Bruce acknowledged the Tribe's Federal recognition and agreed to accept land into trust on behalf of the landless Tribe. In 1994, BIA Assistant Secretary Ada Deer reaffirmed the Bureau's commitment to bring land into trust and declare a reservation for the Tribe. In

2006, the BIA determined that the Tribe is eligible to have lands taken into trust as its initial reservation pursuant to 25 U.S.C. § 465. The purpose of the Proposed Action is to take substantive action to meet the Tribe's need for land which the BIA has committed to fulfill. BIA letters regarding this issue are provided in Appendix A.

P3-15
Cont'd

The Ione Band was not landless in 1972 when Commissioner Bruce agreed to accept their ~40 acres near Ione which the Ione Band had acquired title in fee to through a quiet title action. The Ione Band owned land (40 acres near Ione) in 1972 which they still own and the Band now owns an additional 47+ acres in fee near Plymouth. To continue to state that the Ione Band is landless is simply a false statement. The 47 acres was purchased in November 2007 which would seem to provide adequate time to include this information in the April 2008 DEIS and surely provide enough time to include this information in the August 2010 FEIS. Attempts to portray this tribe as not able to provide for its members might prove more difficult if the cost of their property purchases were included in the FEIS. Perhaps the nearly \$3,000,000.00 spent to purchase property in the past 3+ years might have been better spent addressing the needs of tribal members. The question is where did the money come from for the purchase of these properties and why weren't any of the 12 parcels in the fee to trust application purchased? Perhaps a check of EPA GAP Grant records would show whether the "landless" Ione Band has ever used their 40 acres near Ione to apply for and receive EPA grant monies.

P3-16

In 2008 when the Notice of Intent for the DEIS was published the public was grossly misinformed with blatantly false information in the Federal Register that the Ione Band owned the ~228 acres in fee when in fact they did not own a single one of the twelve parcels in fee. If in fact, this statement were to have been true it would have been a direct contradiction of the all the references in the DEIS that the Ione Band was landless. Attempts to have the Department correct and reissue the notice was denied and the public was informed by George Skibine and others that the Band was in the process of procuring the properties. As of August 2010 the Band has not purchased a single one of the twelve parcels. The responses the public received to an obviously and easily provable false statement from the 2008 Federal Register Notice were just more male bovine excrement from the DOI, BIA, NIGC and EPA. These agencies have consistently demonstrated little interest in the accuracy and integrity of the notices, documents, and reports they provide to the public and this FEIS is simply more evidence of their aversion to the truth and facts about the Ione Band and their apparent willingness to promote this casino proposal and restored lands fee to trust application with outdated, inaccurate, contradictory, false and misleading information.

P3-17

I believe the 2 parcel numbers excluded from scoping and included in the DEIS and FEIS are Parcel #12 and Parcel #2 based on the acreages provided in the DEIS. Your response at P17-76; "The exclusion of two project parcels from the NOI to prepare an EIS for the project does not prejudice the participation of any party in the environmental review process or the ability of any party to comment upon the environmental impacts associated with the project alternatives and proposed mitigation measures." is the response provided to comments and questions related to the fact that scoping included 10 parcels while the FEIS included 12 parcels. However, your response at P17-141; "Refer to Figure 1-3 (Aerial Parcel Map) in Section 1.0 and Figure 2-7 (Alternative A Phase II Site Plan) within Section 2.0 of the DEIS. Several project components would potentially be located on Parcel #1 (including sprayfields, leachfields, the wastewater treatment plant, and the wastewater disposal line) and Parcel #2 (water supply well). No facilities would be located on Parcel #12 of the project site." indicates that a water supply well is located on Parcel #2 and no facilities are located on Parcel 12. The existence of a water supply well on parcel #2 would be pertinent, relative, and important as to the viability of the proposed casino project at scoping. Further if parcel 12 is not needed for any facilities related to the casino and

P3-18

if no tribal housing is planned why is it included in the Fee to Trust Application? It should be a simple exercise to explain why these two parcels were added after scoping and prior to the development of the DEIS and said explanation is requested.

P3-18
Cont'd

If the facilities that would "potentially" be located on Parcel #1 are not ultimately located on Parcel #1 what would be located on Parcel #1 and on what other Parcel #'s would the facilities potentially not located on Parcel #1 potentially be located? After seven years one would think that the actual location of facilities would be known beyond "potential" locations. Have all the possible combinations of potential location of facilities including spray fields, leach fields, the wastewater treatment plant, and the wastewater disposal line been evaluated in this FEIS?

P3-19

Your statement that in 2006 the BIA determined that the tribe is eligible to have land taken into trust as its initial reservation was highly questionable in the DEIS in 2008 and is even more questionable now. The legal landscape related to the fee to trust process has undergone substantive change since 2008 with the Supreme Court decision in Carcieri. The Lone Band's status as a restored tribe suffered a serious, if not fatal, setback with the withdrawal and reversal of the Lone Band's 2006 restored lands opinion by Solicitor David Bernhardt in January 2009. For the statement that the BIA determined in 2006 that the tribe is eligible to have land taken into trust to remain in the introduction of the FEIS is a clear indicator that the EPA and lead agency BIA are not interested in presenting the facts related to the Lone Band and their Fee to Trust Application for restored lands for a casino which is the reason for the EIS in the first place. The fact is that the document on which the BIA's determination that the tribe is eligible to have lands taken into trust pursuant to their Fee to Trust Application for "restored" lands no longer exists pursuant to the withdrawal and reversal of the BIA's 2006 determination by Solicitor David Bernhardt because that determination was wrong.

P3-20

For the EPA to have responded to every question or comment concerning the accuracy and integrity of the information related to FTT process, or the history of the Lone Band in the DEIS with a no response required is difficult to understand given the fact that the January 16, 2009 memo that Solicitor David Bernhardt sent to George Skibine and NIGC contained the following.

"We are now in the process of reviewing the preliminary draft Final Environmental Impact Statement for the Plymouth parcel. As a result, I determined to review the Associate Solicitor's 2006 Indian lands opinion and have concluded that it was wrong. I have withdrawn and am reversing that opinion. It no longer represents the legal position of the Office of the Solicitor. The opinion of the Solicitor's Office is that the Band is not a restored tribe within the meaning of IGRA."

P3-21

Odd that EPA's response to every comment raising any issue related to the 2006 restored lands opinion or the fee to trust process is "This comment is outside the scope of NEPA. No response required." when the very instructions on responding to the FEIS identifies the Project as a Casino Project and the title on the Title Page informs the reader that it is a 228.04 Acre FEE TO TRUST Land Transfer and Casino Project. This response is even more difficult to understand given the fact that Department of the Interior Solicitor David Bernhardt while reviewing the preliminary draft Final Environmental Impact Statement for the Lone Band determined to review and reverse and withdraw a "wrong" opinion that was the very basis for the Lone Band's restored lands fee to trust application for a casino and the only reason for preparation and continued processing of this EIS. Apparently, Solicitor Bernhardt did not believe that issues related to the fee to trust process and the Lone band were outside the scope of his review of the preliminary draft Final Environmental Impact Statement as part of NEPA.

P3-22

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P3-18
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P3-22

Are there any plans to build tribal housing anywhere on the 228.04 acres?

P17-103 As stated in Section 1.0 of the DEIS, the Tribe is landless and therefore there are no existing Tribal housing developments. The housing situation for the Tribe would be improved because members would have the wherewithal to obtain adequate housing or improve their current housing situation. There are no plans to build tribal housing at this time, as the Tribe does not currently have the economic means.

P3-27
Cont'd

In the purpose and need section the public is informed that there is need to improve existing tribal housing yet in the reply to my question I am informed that there are no existing tribal housing developments so the statement in purpose and need that there is need to improve existing tribal housing is misleading and false, yet it remains in the FEIS.

P3-28

Again the FEIS states that the tribe is landless which is simply false. To my general question about where new tribal housing might be constructed the question is only answered concerning the +228 acres while ignoring the +47 acres the tribe purchased in November 2007 near the +228 acre site. This +47 acre site is relevant to the purpose and need beyond the false statement that the tribe is landless in that in April of 2010 the Ione Band published a public notice soliciting comment on a proposed road project. A reading of the Proposed Project at paragraph 1.5 of a document titled "Long Range Transportation Plan for the Ione Band of Miwok Indians" provided by the Tribe finds the following; "Future phases includes internal roadways and infrastructure for 125 single family homes by 2020 and internal roadways and infrastructure for an additional 125 single family homes (for a total of 250 single family homes on the specific Tribal Fee Land) by 2030." And at paragraph 2.4.1 of the same document; The Tribal Fee Land (Project land) is proposed to include 125 single family homes for the Ione Band of Miwok Indians by 2020 and an additional 125 single family homes (total of 250) by 2030. The response to my question if not false is certainly misleading and incomplete due to the outdated nature of the information in this FEIS.

P3-29

Reading further in Para. 2.4.1 of the transportation document finds the following; "The Ione Band currently has 40 existing single family homes for the Ione Band so the total available in 2030 would be 315 single family homes." (How 315 is arrived at is not known as 250 + 40 would only result in 290 single family homes by 2030) If this statement is accurate how do you explain your incomplete and inadequate response to my question about the location of any existing tribal housing? According to the Ione Band, as of April 2010 the Ione Band had 40 existing single family homes somewhere, which should have been included in their August 2010 FEIS. Again the information in this FEIS is false, misleading, incomplete, inadequate and outdated. Why is there no mention in the FEIS about the +47 acres, the existing 40 single family homes, or the plan to build 250 homes by 2030 as part of history of the Ione Band or included in the purpose and need section of the FEIS?

P3-30

1.3 Overview Of The Environmental Review Process

The following is found within 1.3; "The BIA exercises final approval authority over the EIS and related documentation, and has furnished guidance during development of the EIS and has participated in the preparation process. Prior to release of this Final EIS, the BIA independently reviewed the EIS for content including context and intensity of potential environmental effects resulting from development of each proposed alternative and associated mitigation measures." It is not stated as to the extent of the BIA's review but it is inferred from the language that it might include more that the context and intensity of potential environmental effects resulting from development of each proposed alternative and associated mitigation measures. However, at response **P17-112** the following is found; "The BIA

P3-31

was involved in the NEPA document preparation, and reviewed every section of the scoping report, DEIS, and the FEIS prior to release to the public." Therefore, based on these statements, the BIA is responsible for the integrity, correctness, accuracy, and adequacy of ALL the content of the DEIS and FEIS. Additionally, in response P17-138 the following is found; "The NIGC, as cooperating agency, has reviewed the DEIS and will review the FEIS." The BIA is well aware that much of the information included in this section and others is false, misleading, incomplete, inadequate, and outdated which is a dereliction of its duty as the lead agency and the NIGC also is well aware that much of the information included in this section and others is false, misleading, incomplete, inadequate, and outdated which is a dereliction of its duty as a cooperating agency. As an example, the BIA knows that the Ione Band is not landless, that the Ione Band's fee to trust application is an application for restored lands and they know that the restored lands opinion for the Ione Band has been withdrawn and reversed, and that the Ione Band is not eligible to have land taken into trust due to their non participation in 1934 in the Indian Reorganization Act and yet the BIA continues to provide via this FEIS what they know to be false, misleading, incomplete, inadequate, and outdated information about the Ione Band and their proposed casino project. The NIGC based on the withdrawal and reversal of the restored lands opinion and the facts related to the action by Solicitor Bernhardt in informing the NIGC Acting General Counsel is aware that the Ione Band is not landless or restored and the NIGC is also aware of the impact the Supreme Court decision in Carcieri had on fee to trust for gaming. Further evidence of the NIGC's knowledge of that the restored lands opinion is that the opinion which was on the website from at least 2007 through a portion of 2009 has been removed from the NIGC's website.

P3-31
Cont'd

1.4 Regulatory Requirements, Permits, Approvals and Consultation

My comments on the DEIS related to Table 1-1 (P17-122) included a request that the approval of the Tribal State Compact by the California be included which has not been included but I was informed in the response (P17-122) that "Alternatives A through C cannot be used for Class III gaming without the approval of a Compact by the Secretary of the Interior. This requirement has been added to Table 1-1 of the EIS.". While the approval of a Tribal State Gaming Compact has been added the approval required by the California State Legislature and requested by me to be included has not been included. Please explain why my specific request to have the approval of the California State Legislature was not properly responded to and included in the FEIS. I must question the capability and expertise of the BIA and EPA to adequately administer this process when such a straightforward comment is responded to in the dismissive manner of this response.

P3-32

Comments on Water Supply Option 2 (the preferred water option)

Water demand estimates for this project were vague and poorly presented in the DEIS and this has not changed in the FEIS. In fact the FEIS responses to comments actually contain within the responses contradictory information related to water supply. The following statement in Section 4.3 for water supply option 2 of both the DEIS and the FEIS. "The three wells located on or adjacent to the project site would be pumped in rotation to allow groundwater to recharge between pumping periods." Despite multiple comments and requests for a pumping schedule indicating how the wells would be pumped in rotation in my DEIS comments no such pumping schedule is presented in the FEIS. This is important based on a statement in the DEIS and amended in the FEIS to state that the water demand for Phase I and Phase II is 116,640 gpd. From this same paragraph; "As discussed in Section 3.3 the safe yield of the wells is estimated to be approximately 81 gpm which translates to 116,640 gpd. The 81 gpd only translates to 116,640 gpd if all three wells are pumped 24 hours a day. I now refer back to the statement that the three wells will be pumped in rotation to allow groundwater to recharge between pumping periods. Please explain the rotational pumping scheme or schedule where groundwater can

P3-33

recharge between pumping periods when all three wells must be pumped continuously twenty four hours a day to meet the alleged daily demand of 116,640 gpd.

P3-33
Cont'd

Attempts to respond to my comments and comments of others concerned with the data and plan presented in the DEIS can be found in several of the responses. For further comments I now introduce the EPA responses found at P17-178, P17-196, L2-49, and F1-02. Response to P17-178 is "Refer to the response to Comment L2-49 for a discussion of the rotational pumping strategy that would be implemented." and response to P17-196 is "Refer to the response to Comment F1-02 regarding the pumping scheme of the groundwater wells.". Response at Comment L2-49 reads as follows "In Section 4.3 of the DEIS it is stated that the Project wells "would be pumped in rotation to allow groundwater to recharge between pumping periods". This rotation schedule is simply an operational strategy to enhance well efficiency by providing periods of non pumping and dynamic water recovery. It was not intended to decrease the cumulative sustainable yield of the three wells (total recommended yield of 81 gpm), but instead was proposed as a more efficient means of producing the recommended yields of the wells. The rotation would involve pumping two of the wells concurrently at rates that are higher than the recommended yields, while the third well is allowed to recover. The effectiveness of the strategy would be monitored and evaluated and the strategy would be refined, as appropriate, to optimize well efficiency and reduce impacts." While I have several comments on the L2-49 response, let us now include a portion of the response from F1-02. "The results of the pumping tests indicate the local drawdown from these wells is minimal and potential impacts to the regional groundwater table can be maintained by utilizing a rotational pumping schedule as described below.

P3-34

The three project wells would be pumped at the recommended long term yields, which consists of 10 gpm for well M1, 37 gpm well M3, and 34 gpm for H1, and the wells would be pumped in rotation to allow additional groundwater recharge between pumping periods."

These two responses are contradictory. It is obvious that the response to the EPA (F1-02) is quite different than the response delivered to Amador County (L2-49). Without a rotational pumping schedule it is simply impossible to determine any number of gallons per day (gpd) that can be delivered from the three wells. However, it is possible to state with certainty that if the wells are pumped in rotation at the recommended long term yields as discussed in F1-02 it is IMPOSSIBLE to deliver 116,640 gpd and without the trucking of water it is not possible to provide the amount of water required for the proposed project which is not 116,640 gpd but 128,500 as referenced in Table 6-1 of Appendix B. According to the EPA, the trucking of water is not recommended based on EPA's knowledge of tribal experience with trucked water yet the tribe insists on trucking water.

P3-35

As a response L2-49 simply stands in stark contrast to anything presented in the DEIS or the FEIS and appears to simply be a cover up response to somehow rescue the inability of the wells to produce the amount of water necessary for the project. Even with this response it is not possible to determine whether the wells will deliver the needed amount of water since no information is provided as to how far above the recommended safe long term yield of the wells they are to be pumped or for what lengths of time or even which two wells would be pumped concurrently. From my reading of the well pumping testing it appears that a no time during the testing conducted from December 2003 to August 2004 were any of the three wells pumped concurrently. Additionally, I will include your response to a comment I made related to current well data for wells in the surrounding area referenced in the DEIS and FEIS. At comment P17-173 "The information from the well logs is summarized and included within Appendix C of the FEIS. The well reports are actually well completion reports required when wells are developed and reported to the permitting agency (Amador County Health Department). While the depth and construction data would not change over time, as a new well completion report would be

P3-36

required for physical changes to the well, the production rates and water levels may change over time." Based on this comment and the fact that the well data in the FEIS is nearly 7 years old and does not include any data related to new wells or data that any of the neighboring wells may have gone dry, experienced reduced production, or been deepened to find new sources of water. The method used to come to the conclusion that the wells H1, M1, M3 will produce 116,640 gpd is seriously flawed because not one single rotational pumping schedule has been provided that indicates that 116,640 gpd can be delivered from the wells.

P3-36
Cont'd

Under no circumstance should any alternative included in this FEIS be approved except No Action until data based on well pumping data that simulates any concurrent pumping proposed is completed and made available for evaluation and comment and from which a more accurate amount of water delivery can be determined. In 4.3 it is clearly stated that the safe yield of the three wells is an ESTIMATED APPROXIMATION and the water needs a project of this size and scope with its enormous negative impacts on a small community like Plymouth must be based on something more than an ESTIMATED APPROXIMATION of the safe yield of the wells derived from data that is more than 6 years old and where no concurrent pumping tests were conducted. No pumping schedule has been included because it is impossible to produce the 116,640 gpd if the three wells are pumped in rotation at the recommended safe yield levels and there is no concurrent pumping data to support any concurrent pumping or a pumping schedule that includes concurrent pumping in the FEIS.

P3-37

The following are from P17-154; What is the source of water to be trucked? What is the amount of water to be trucked? What is the size of trucks? How many trips a day are anticipated? The response to P17-154 gives reason for additional comments and questions.

P3-38

P17-154 As addressed in Section 2.0 of the DEIS, the Tribe is in receipt of a will-serve letter from Aeropure, which states its ability to provide a stable supply of water for 5 to 10 years (Appendix D of the FEIS). Although the source of Aeropure's water is unknown, Aeropure is a licensed water hauler and the demands of the project alternatives would be required to fall within the water rights of Aeropure. The 8% of potable water demand that would be supplied via truck would account for approximately 10,000 gallons per day (gpd), or the equivalent of five water truck trips per day. Generally, water trucks carry approximately 2,000 gallons.

P3-39

A reading of the referenced Aeropure letter finds it dated May 20, 2004 which means it is more than 6 years old which is important given the fact that the letter contains the following: "Aeropure Water has been in the water delivery business for over 17 years and can guarantee a five to ten year water supply for your project regardless of how the political winds blow.". Is the delivery guaranteed for 5 or 10 or some number of years in between? The letter indicates that the amount of water to be delivered is 50,000 to 60,000 gallons per day not the 10,000 gpd included as part of the current water option #2 which causes me to ask, how much water has the tribe contracted for from Aeropure if any? I would have thought that sometime in the time between May 2004 and November 2007 and/or August 2010 that a more recent letter could have been provided. Just another example of the outdated information in this FEIS.

P3-40

3.6 Cultural Resources - Ione Band of Miwok Indians

At page 3.6.6 it is stated that "The Ione Band of Miwok Indians has continuously used and occupied the lands located in Amador County, the town of Plymouth, and the surrounding areas as part of their traditional territory." This statement seems to contradict statements found in a brief filed by the Department of Interior in Case 1:03-cv-01231-RBW, Document 66 Filed 04/27/2007. *Italicized*

P3-41

portions are not from the brief but are simply clarifying comments by me.

From Page 6: In addition, Ione's common land base, which it successfully quieted title to, demonstrates that Ione's members lived in a centralized geographic location. And the members live in this centralized geographic location which happens to be 40 acres about 5 miles southwest of the city of Ione and not on any lands in or near Plymouth.

From Page 7: Indeed, the Ione were not, as Plaintiff suggests, merely individual Indians living in a California town. The Band lived on an Indian Rancheria, composed almost exclusively of Indian residents, who worked on a ranch that was contiguous to the Rancheria. This land is the same property where they have lived continuously and collectively until the present. This is the land where the Ione Band has lived continuously since before 1916 and collectively until the present. Again, not landless.

From page 8: In the Ione decision, the Assistant Secretary stated that she was acting to correct a failure to complete an acquisition of land to be held in trust authorized by the Commissioner of Indian Affairs in 1972. A reference to Assistant Secretary Ada Deere's action in 1994. A failure by the Department that continues to this day without explanation.

More than 37 years after Commissioner Bruce agreed to take the 40 acres into trust and more than 15 years after Assistant Secretary Ada Deere acted to correct a failure by the BIA and DOI to take the 40 acres into trust those 40 acres are still not in trust without any explanation from the BIA or DOI as to what either agency has done or is doing to complete what Commissioner Bruce authorized in 1972 and Assistant Secretary Ada Deere corrected in 1994. The Historic Ione Band, the one that has occupied the 40 acres near Ione are still waiting for the BIA and DOI to take their land into trust while the BIA and DOI are now attempting to take 228.04 acres into trust pursuant to a fee to trust application for restored lands for a group of people who, despite their and the BIA claims to contrary, are not the Ione Band. With access to a multitude of National Archive documents related to the Ione Band I find nothing in those documents indicating that the Ione Band was ever associated with the town of Plymouth or with any properties in close proximity of Plymouth. If any such documents exist please include them in the Cultural Resources section of the FEIS.

With respect to any historical connection to the land in and around Plymouth the DEIS offered nothing beyond unsupported general statements that fail to provide any information from which any reasonable person could conclude that the Ione Band, so named due to the fact that they lived and worked in and around Ione not Plymouth, had any connection to Plymouth. All questions related to any potential finding that might actually indicate the Ione Band or any other Band of Miwok used the 228.04 acres were referred to Appendix K which is withheld due to the alleged confidential and sensitive nature of information contained in Appendix K. If this area were important to the Ione Band you might think that a EIS conducted on a portion of the 228.04 acres and lands adjacent to and in the immediate vicinity as part of the Pioneer Project would have received substantial contact or comment from the Ione Band after the agency conducting the 2001 EIS contacted the Ione Band. The Ione Band did not even respond and there is a good reason. This area and this specific property was not important to the Ione Band until they and their long since departed out of state investor decided it would be a good location for a casino. A careful reading of the section finds nothing of substance to support any historical connection to the 228.04 acres and in fact the only artifacts identified are related to mining. I submit that there is nothing in the Appendix K which supports any connection to the Ione Band of Miwok and any historical connection found in Appendix K to the land in and around Plymouth is as manufactured as their modern day connection as found in the "wrong" Artman restored lands opinion

P3-41
Cont'd

P3-42

P3-43

where Associate Solicitor Artman wrote. "Many of the Band's members live in the surrounding area and the Band has used facilities in the City of Plymouth to hold governmental meetings in recent years establishing a modern connection to the area." This modern connection as opined by Assoc. Solicitor Artman is a false and misleading statement as part of an artificial and transparent attempt to create a modern connection where none exists and the historical connection to Plymouth is simply non-existent as well. While the area contains much historical evidence related to mining it contains nothing related to the Ione Band of Miwok.

P3-43
Cont'd

This concludes my comments related to this FEIS and it is a certainty that the outdated, inaccurate, contradictory, false and misleading information and data contained in this FEIS will continue to be challenged. Unfortunately, with the opportunity to properly respond to the many legitimate, fact-based concerns provided via multiple Federal, State, Local and Public comment letters to the DEIS and correct and/or update the many inadequacies and inaccuracies in the FEIS the EPA, BIA, and NIGC have chosen to ignore those with expressed concerns. The agencies have once again failed in their responsibility to provide the public and our elected and appointed officials with accurate, truthful, fact-based information and data on which to make an informed decision.

P3-44


In closing I include the following excerpt from the DOI Office of Ethics webpage which seems to be unread and unused by some members of the BIA PRO, the BIA, the NIGC, and the DOI.

Fraud or false statements in a Government matter

An employee shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry. Special attention is required in the certification of time and attendance reports, applications for employment, requests for travel reimbursement, and purchase orders and receiving forms. 18 U.S.C. § 1001; 43 CFR § 20.510

P3-45

As part of these comments I submit my comments on the DEIS excluding those comments which received an adequate response to my questions and issues on the following pages.

Submitted by D.W. Cranford II 
P.O. Box 794
Plymouth, Ca. 95669

Attachments: Solicitor David J. Bernhard's January 16, 2009 Memo

Amador County Assessor Records for the Ione Band

P3-46

Excerpts from the March 12, 2010 Long Range Transportation for the Ione Band

**Selected Comments on the DEIS submitted as part of FEIS Comments,
Ione Band of Miwok Indians Land Transfer and Casino Project**

To be blunt, this DEIS, like the fee to trust application and Artman opinion, is an absolute abomination. It is an affront to the history of the Ione Band, it makes a mockery of fact and truth, it is an insult to the public, it is a failure of the public trust and it should be an embarrassment to anyone who participated in its preparation or authorized its release for public comment. Outdated, incomplete,

inaccurate, mistake filled, and filled with misleading and false statements that misrepresent the facts and history of the Ione Band hardly do justice in describing the contents of this DEIS.

Nowhere can one find a detailed project description as required by the NEPA and the contents are not only outdated, incomplete, inaccurate, misleading and false; they are organized in a such a way as to discourage review and comment, especially if one were limited to use of the on line version where moving from one section to another required many screens. Hard copies were not readily available and in fact some requesters of hard copies were informed that a hard copy was available at a cost of \$175.00. This process as administered by the BIA Pacific Regional Office has been and continues to be one that appears to have every intention of ramming a casino down the throats of an unwilling community in Plymouth and Amador County. More than four years for the tribe to prepare this DEIS and only 75 days for public comment. A request for an additional 25 days from our Congressman, Dan Lungren, was denied and the public hearing held just 33 days after the Federal Notice was a sham with those finding significant and numerous issues with the DEIS allowed only three minutes to vocalize their findings. Three minutes is not time enough to identify and speak to many issues found on page 1-1 of the Introduction let alone with the document itself.

Due to the many undocumented, false, fictitious, misleading, and fraudulent statements contained in this DEIS which have previously been brought to the attention of the Bureau of Indian Affairs Pacific Regional Office, the Bureau of Indian Affairs Central Office, the Office of Inspector General, the Secretary of Indian Affairs, the Secretary of Interior, the Office of Indian Gaming and various members of Senate and Congressional staff I believe that continued use of these undocumented, false, fictitious, misleading, and fraudulent statements related to this project would constitute knowingly and willfully falsifying, concealing, or covering up material facts related to the Ione Band, Ione Band lands, Ione Band leadership and membership, Ione Band history as well as this proposed casino project in documented statements, representations, and writings including this DEIS, the Fee to Trust Application, the Artman restored lands Opinion, the briefs filed by the Department of Interior in the Muwekma Ohlone case in the D.C. District Court and the Federal Register Notice for this DEIS. The following excerpt, which seems to be unread and unused by BIA PRO, BIA, DOI and Solicitor's Office, is from the Department of Interior Office of Ethics webpage.

Fraud or false statements in a Government matter

An employee shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry. Special attention is required in the certification of time and attendance reports, applications for employment, requests for travel reimbursement, and purchase orders and receiving forms. 18 U.S.C. § 1001; 43 CFR § 20.510

My comments on selected and specific sections and pages and questions related to those selected and specific sections and pages of the DEIS are found on the following pages.

Executive Summary, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Introduction, Page i

Recent estimates based on public statements by tribal leaders place the number of members at over 700. Is the actual number of members known as of some date such as January 1, 2008? Please provide the actual number of members as of a date sometime in 2008.

If the Ione Band has no trust land does the Ione Band of Miwok own any fee land? If yes please include all assessor parcel numbers for all properties owned in fee by the tribe as of April 18, 2008.

Has the Ione Band at any time publicly stated since January 1, 2003 that it is landless or included a statement that it is landless in public documents or documents provided to the public by the Ione Band or their investor? Please provide reference to all instances where the Ione Band has represented to the public that it is landless.

As of April 18, 2008, the date of the Federal Register Notice for the DEIS did the Ione Band hold in fee any of 228.04 acres which the tribe has applied to have taken into trust? If yes, please provide all documents supporting this statement. If no, please explain why this statement with no basis in fact or truth was included in the notice to the public.

The tribe's eligibility to acquire land in and adjacent to Plymouth for a reservation is based on what supporting documents? Please provide all the documents that support this statement.

In the DEIS it is stated that Commissioner Bruce agreed to accept land into trust on behalf of the Tribe. In the letter addressed to Nicolas Villa Sr. and the Ione Band of Miwok Commissioner Bruce states that "As the Commissioner of Indian Affairs, I therefore, hereby agree to accept by relinquishment of title or gift the following described parcel of land to be held in trust for the Ione Band of Miwok Indians:..." a description of one specific parcel then follows. Please correct this statement in the final EIS to read that Commissioner Bruce agreed to accept the 40 acre parcel near Ione into trust on behalf of the Tribe.

Commissioner Bruce's 1972 letter contains specific direction that the Sacramento Area BIA office assist in the preparation of a document containing a membership roll and governing papers which conform with the Indian Reorganization. Please include this membership roll and papers in the appendix with the Bruce letter or include an explanation with supporting documents as to why these documents cannot be included. If no documents are available please explain why Commissioner Bruce's specific directions have not been carried out in the past 36 years.

Was the Ione Band included on the list of tribes eligible for reorganization under the 1934 Indian Reorganization Act (IRA)? Was the Ione Band or were any members of the Ione Band contacted pursuant to the 1934 IRA? If yes to either question, please provide all documents indicating that the Ione Band was on the list of tribes eligible for reorganization in 1934 or that the Ione Band or any member was contacted pursuant to the 1934 IRA.

The DEIS states that Secretary Ada Deer reaffirmed the Bureau's commitment to bring land into trust and declare a reservation for the Tribe. This is not accurate and is a misrepresentation of the facts. Based on a reading of the Ada Deer reaffirmation letter of March 22, 1994 addressed to Nicolas Villa Jr., Secretary Deer, like Commissioner Bruce agreed to accept by relinquishment or gift the following described parcel of land to be held in trust for the Ione Band of Miwok Indians. The described parcel is the same specific parcel described in the Bruce letter. Please correct this statement in the final EIS. Nowhere in the March 22, 1994 letter does Secretary Deer refer to or even use the word reservation.

The reference to a reservation by Secretary Deer is contained in a July 14, 1994 letter where she is responding to a memorandum from the Area Director, Sacramento Area Office in which the Area Director apparently requested clarification of the March 22, 1994 letter. The declaring of a reservation was suggested as part of an alternative action to the taking of the specific parcel into trust and was not addressed directly to the Tribe but to the Sacramento Area Director. An accurate representation of the content of the letters is requested in the Final EIS. Additionally, please include all letters from Ada Deer to the Tribe or to the Sacramento Area Director in the Final EIS as well as all letters from the Tribe or from the Sacramento Area Director to Ada Deer.

Please explain why the specific 40 acre parcel described by Commissioner Louis Bruce and which both he and Secretary Deer agreed to take into trust for the Ione Band has not been taken into trust in the last 36 years? Please provide all documents supporting the explanation.

Does the EIS address in any way the unforeseeable consequences of Tribal actions related to the development and operation of one of the four related commercial alternatives? How will the tribe address any unforeseen consequences related to the development and operation of one of the four related commercial alternatives?

Executive Summary, Introduction, Page ii

Is grazing lands the only surrounding land uses south and east of the proposed site?

Are there any mining operations or mining claims south and east of the proposed site? If yes, please include this information in a new DEIS for public comment.

Executive Summary, Purpose and Need, Page ii

What is the current employment status of Ione Band members? Please include the number eligible for employment and number employed.

What is the history of employment status of Ione Band members since 2002?

Are there any Department of Labor data / statistics available on Ione Band employment? If yes please include this information and explain any large or unusual changes in employment numbers.

How many Ione Band members currently live in Amador County?

How many Ione Band members currently live outside Amador County?

How many Ione Band members currently live within 25 miles of the proposed Casino? Within 50 miles?

What are the current sources and amounts of revenue for the tribe?

Have revenues to the "landless" Ione Band led by Matt Franklin ever included EPA funds?

Did the "landless" Ione Band use the 40 acre parcel near Ione to apply for any EPA funds?

What current social and educational programs are available to tribal members through Federal, BIA, State, County, City, or private entities?

How many members currently use any social and educational programs available through Federal, BIA, State, County, City, or private entities?

What other economic opportunities have been explored? Please provide a list of other economic opportunities explored by the tribe with supporting documents.

Executive Summary, Alternatives, Alternative A, Page ii

Will the potentially reclaimed water storage tank be required or not? (Only 5 years to plan this)

Executive Summary, Alternatives, Alternatives Considered but Eliminated

When did the tribe consider the alternative 40 acre site?

Please provide all documents relating to any studies or analysis done in consideration of the 40 acre site?

Since the current proposal requires the removal of trees and vegetation and displacement of existing residents please provide analysis why this does not disqualify the current land as a viable site?

What is the extent of tree and vegetation removal required on the 40 acre site?

Are the residents that would be displaced members of the Ione Band? If yes, why are these residents not willing to be temporarily displaced in order to provide their tribe with a stable sustainable source of employment and revenue to be used to support social and educational programs for the elderly, the poor, and younger Tribal members? If no, why are they living on the 40 acres and why are they members of the tribe?

Are there any other casinos proposed within 5 miles of the 40 acre parcel that requires ancillary components such as a reservoir or wastewater treatment facility that requires more than 40 acres?

Please provide documentation that ancillary components such as reservoir or wastewater treatment plant are required if a casino were built on the 40 acre parcel and that the property is not capable of handling such components?

How much of the 40 acre property is located partially within the 100 year floodplain? Please provide documentation that some part the 40 acre parcel is actually in the 100 year floodplain and include the amount of the land that is within the 100 year floodplain.

Executive Summary, Table ES 1 Groundwater Use AA, AB, AC, AD, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

What would be the increase in groundwater use under these alternatives?

Why is the monitoring program being developed by the Tribe in consultation with the BIA and EPA only? Any monitoring program must include participation by off site users and the final EIS should include a monitoring program that allows for the participation of off site users.

The monitoring of the wells and reporting of the results must be completed by an unbiased third party and available to the public.

Has any monitoring of the on site wells been implemented in the past 4 years? If yes, please include this monitoring data. If no explain why not.

What process would be used to determine if *significant* effect to off site groundwater users occurs? Who makes the determination? What criteria will be used?

How does monitoring the existing wells on the project site help determine whether off site wells are being significantly affected? Please explain and provide data that verifies that monitoring on site wells is an effective method of determining that off site wells are being adversely affected?

Will off site wells be included in the monitoring program? Off site wells must be included in any monitoring program.

How often will the monitoring occur or data be collected, documented, and reviewed? Please provide a draft of what the monitoring program process will entail in new DEIS for public comment.

Will the data be available to off site users?

Have other monitoring programs for wells in the Plymouth area been undertaken that have been completed or are still in process that indicate that the pumping of groundwater at the levels required by the project or that current levels of pumping by the City of Plymouth would in fact significantly affect off site wells?

Are any off site wells currently being monitored by any well monitoring program?

Have all the wells that might be potentially affected been identified? Please include all wells that the tribe believes might be affected in a new DEIS for public comment.

Has well data for all wells that might be affected been collected? If yes, please include these wells and data in a new DEIS for public comment.

Will there be a requirement that the tribe alter or stop its groundwater pumping regime? This must be a requirement in the mitigation.

Where is the pumping regime for each alternative defined? Please include the pumping regime in a new DEIS for public comment.

Will the tribe be required to pay for a new well or deepening existing wells? This must be a requirement in the mitigation. Please include in a new DEIS for public comment.

Are the pre project consumptive uses for off site wells known? If not how could the tribe or anyone know whether the pre project use is recovered fully? Does this mean that if an off site user had a 50 gpm well and it went dry due to tribal groundwater use the tribe will replace the well with 50 gpm well? Explain fully what this mitigation measure really means.

The offsite user will be connected to the tribes water supply. Are you serious? Do you mean the off site user will be connected to the very source of water that caused their well to go dry? Connected permanently or temporarily? At what cost to the off site user if any? What affect will this have on other off site users? Has this potential demand for water been included in the project's water demand table? If this potential demand has not been included please include in a new DEIS for public comment.

Are any permits required for off site delivery of water by truck? If yes, will the tribe obtain the permits? When?

Is there a documented pumping regime for the three wells? Please provide the pumping regime in a new DEIS for public comment.

Section 1.0 The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Section 1.1 Introduction

Is the exact number of tribal members known as of any date such as January 1, 2008?

How many members were eligible to vote in the last election?

Is acting Regional Director Amy Dutschke a member of the Ione Band?

How many of acting Regional Director Amy Dutschke's relatives are members of the Ione Band?

While the tribe has no trust land or reservation does the tribe own any fee land? Please include information about any fee land holdings of the tribe as of April 18th, 2008 in a new DEIS for public comment.

Was the lone Band landless in 1972 when Louis Bruce agreed to accept a specific 40 acre parcel into trust for the Ione Band or had the lone Band acquired title to the property through a quiet title action? If the lone Band was not landless in 1972 please explain how the Matt Franklin led Ione Band has claimed to be landless for at least the past 5 years.

Is there documentation that supports the statement that the BIA determined in 2006 that the tribe is eligible to have lands taken into trust as its initial reservation pursuant to 25 USC § 465? Please delete this statement or include supporting documents in a new DEIS for public comment.

Is the tribe eligible to have lands taken into trust as its initial reservation for gaming under the Indian Gaming Regulatory Act (IGRA)? If yes, please explain and if no, please explain in a new DEIS for

public comment.

1.1.1 Project Location

Did the two scoping sessions noticed and conducted in 2003 and 2004 include all 12 parcels totaling 228.04 acres? If yes please provide the notices in a new DEIS for public comment. If no, please explain why all 12 parcels totaling 228.04 acres were not included.

Explain why the scoping sessions were noticed and conducted on 10 parcels totaling 208 acres and include in a new DEIS for public comment.

When will scoping be conducted for the two parcels totaling nearly 20 acres be notices and completed?

Why would scoping not be required on these parcels? Please explain and include in a new DEIS for public comment.

1.1.3 Ione Band of Miwok Indians

How recently was the tribe restored to recognition? Please include documents that support official action by the U.S. Congress or the Department of Interior to restore the Ione Band? Please provide the official notification sent to the Ione Band informing the Ione Band that it was TERMINATED and the official notification sent to the Ione Band informing the Ione Band that it was RESTORED in a new DEIS for public comment.

Please explain the lack of tribal land statement in light of fact that the Department of Interior agreed to accept land the Ione Band owned in 1972 into trust in 1972 and again in 1994? What happened to that land?

What, if anything, was the tribe been using for a tribal land base from 1972 to 2002 and what if anything has the tribe been doing to acquire a land base from 1972 to 2002?

What exactly does uncertain organization and status mean? How long has the status been uncertain? Why was the status uncertain? How long was organization of the tribe uncertain? Why was the organization uncertain?

Why would the DOI in 1972 and 1994 agree to take land into trust for a tribe whose organization and status was uncertain? Please explain.

Why was the organization and status uncertain given the specific instructions contained in the Bruce letter in 1972? Please explain in detail and provide supporting documents.

Is this proposed casino project the only source of economic opportunity, employment, education, housing, and other services for tribal members?

Are tribal members not eligible for economic programs, education programs, housing programs, and other services from the Bureau of Indian Affairs, the Federal Government, State Government, County Government, City Government and other entities? Please explain why the Ione Band needs more opportunity than is offered through all the programs available from the above listed agencies and the United States economy.

Specifically, what developments related to gaming does the tribe plan to develop on this site?

Specifically, what are the kinds and magnitudes of the unmet needs of members related to employment, education, and socioeconomic needs? Please provide information as to what specific needs are not being met and why these needs cannot be met through all the incentive programs available from the BIA, Federal, State, County, City governments and other private entities.

Has any determination been made to quantify the revenue stream required to meet the unmet

employment, education, and socioeconomic needs of the tribal members? Please provide this data.

Would this initial reservation be the result of a Section 83 action and decision?

In order for land acquired after October 12, 1988 to be eligible for gaming as an initial reservation the tribe must have successfully completed the Section 83 Acknowledgement process. Has the Ione Band completed the Section 83 Process? Did the Ione Band ever attempt to complete the Section 83 process? If yes, was the tribe successful?

While there may be much land that could be within a tribes ancestral territory; as a restored tribe proposing to engage in Class III gambling a tribe must show a historical connection and modern connection to the restored lands. Please provide the documents supporting any connection historical or modern of the Ione Band to the Plymouth site.

Is there any evidence that the Ione Band resided on the Plymouth site since pre colonial times or at any time? If yes please provide the evidence which has been verified by at least two independent archeologists, ethno historians or other experts.

Are there any documents that support that the Ione Band has lived on or near the 40 acre parcel described in the 1972 Louis Bruce letter since the early 1900's and that this land has been the acknowledged land base for the Ione Band for a hundred years or more? If yes, please correct the statement that the tribe was without benefit of any type of tribal land base.

Specifically, how near is the Plymouth site to where treaties were negotiated?

If the tribe remains landless to this day what happened to the 40 acres near Ione? Has the tribe recently (in the past 12 months) purchased any land in or near Plymouth?

How many parcels of land does the "landless" Ione Band own in fee besides the 40 acre parcel near Ione? Please include all information about any land or parcels the Ione Band owns.

Section 1.2 Purpose and Need

Are there means other than gambling that could meet the diverse and urgent needs of the tribal members?

Specifically, what is the diversity of needs of Ione Band members?

Specifically, what needs are urgent and why are they urgent?

Why are these diverse and urgent needs not being met with current programs available from the BIA, Federal, State, County, City, private entities, the tribal government, and by the members themselves?

Given the fact that this proposed project is now 5 years old with no end in sight how have the urgent needs been met in past years and how will they be met in the coming years when no casino is built?

In order to consider the present state of the tribe we need to know the present condition of the tribe. Please include this information in detail.

At what rate is membership increasing and why? Please provide a history of membership since at least 1972.

What is the history of the tribe? Please include a detailed documented history of the Ione Band.

What specifically in the history of the tribe, and the modern day needs of the tribe and its tribal membership provide a strong basis for acquiring the lands in and near Plymouth?

What employment and educational opportunities and critically needed social services will the tribe provide that are not generally already available?

Specifically, what critical social services are needed?

Will this proposed project actually increase tribal employment or just increase employment opportunities?

How many tribal members will actually hold real jobs in the casino if the casino project were built?

What is the current socioeconomic status of the tribe?

If the tribe is landless, specifically what tribal housing will be improved and where is it now located?

Where will new tribal housing be constructed?

Are there any plans to build tribal housing anywhere on the 228.04 acres?

How many tribal members live in or within 10 miles of Plymouth? 25 miles? 50 miles?

Specifically, what kind of welfare services would be needed after the proposed casino is operating?

Why would any welfare services be needed after the proposed casino is operating?

How much capital would be available for investment after the diverse, urgent and critical needs of the tribe are met?

Specifically, what other developments are planned and are these development planned in or near Plymouth? What is the Environmental Impact of these planned developments?

Will the revenue stream generated by the casino project not be sufficient to meet the needs of the tribe and the tribal government so that additional developments are needed? If no, why are the additional developments needed?

What governmental powers of the tribe require acquiring land beyond the 40 acres in Ione ?

How many members are currently enrolled to receive or are receiving public assistance funds?

Section 1.3 Overview of the Environmental Review Process

Does the following statement indicate a conflict of interest by the BIA? If no, please explain why not.

“The BIA exercises final approval authority over the EIS and related documentation, and has furnished guidance during development of the EIS and has participated in the preparation process.”

While the BIA “assumed” the “Lead Agency” role for the completion of the EIS could the Lead Agency role have been assumed by another agency?

Specifically, what guidance was furnished?

Specifically, how did the BIA participate in the process?

Have any of the employees of the tribal Fee to Trust Consortium operating at the BIA PRO participated or been involved in preparing the EIS?

Has the Ione Band contributed to the Fee to Trust Consortium operating out of the BIA Pacific Regional Office?

Did the Inspector General find that this Fee to Trust Consortium to be in fact a “conflict of interest” in a September 2006 report?

On April 18, 2008 was the Acting Regional Director of the BIA Pacific Regional Office a member of the Ione Band?

Is the current Acting Regional Director of the BIA PRO a member of the Ione Band?

Have any former Acting Regional Directors of the BIA PRO been members of the Ione Band?

Have any relatives of present or former BIA PRO Directors or Acting Directors been members of the Ione Band? If yes, how many

Are any relatives of present or former BIA PRO Directors or Acting Directors current members of the Ione Band? If yes, how many

Was the Notice of Intent to prepare an EIS published in the Federal Register on November 7th, 2003 for 12 parcels and 228.04 acres? If no, how many parcels and how many acres were described by the November 7th, 2003 Notice?

Please explain why this DEIS includes parcels and acreages properties not included in the November 7, 2003 NOI?

Please explain why this DEIS includes parcels and acreages not included in the January 20, 2004 NOI?

If this is a decision on the Fee to Trust Application, how can a decision on the FTT be made since the application as noticed in November of 2006 was incomplete with more than 20 documents withheld from public review and comment including the Artman restored lands opinion?

When will the public be allowed to comment on the restored lands opinion, that was listed as an exhibit for the FTT Application but was withheld from comment?

Section 1.4 Scoping

Why were two scoping sessions held?

Was a public hearing on the Ione Band of Miwok Indians Fee to Trust and Casino Project EIS Scoping Report required? If yes, when was the hearing held?

Table 1 - 1

Is a compact approved by the California State Legislature required? Please include this approval in Table 1-1.

Is this a complete list of approvals needed?

SECTION 2.0 Alternatives, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

2.0 Description of Project Alternatives

2.2.1 Alternative A – Proposed Casino and Hotel

Where in Phase I of Table 2-1 are the associated facilities included? ie parking, water, wastewater, fire protection etc.

Table 2-1 is nothing more than a list of the buildings, their purpose and square footage. A more comprehensive table that actually indicates the phases of development is required and must be included in the FEIS.

Development Standards Phases I and II

How would the tribes development in compliance with the building code standards described in this section be verified? Please explain. Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance to the building code standards?

After the tribe issues a certificate of occupancy is the tribe liable for any injuries suffered as a result of shoddy workmanship or non compliance to building / construction standards?

How will verification that the tribe has adopted and is complying with standards no less stringent than

state public health standards for food and beverage handling be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

How will verification that the tribe has adopted and is complying with standards no less stringent than Federal air quality, water quality, and safe drinking water standards be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

How will verification that the tribe has adopted and is complying with standards no less stringent than Federal workplace and occupational health and safety standards be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

How will verification that the tribe has adopted and is complying with applicable Federal laws regarding public health and safety be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

What does make "reasonable provisions for adequate" emergency, fire, medical, and related relief and disaster services for patrons and employees of the gaming facility actually mean?

What liability is the tribe subject to for not "reasonably" providing "adequate" emergency, fire, medical, and related relief and disaster services for patrons and employees of the gaming facility?

While designing a sprinkler system to comply with applicable is commendable the question is will the system as installed actually comply with the applicable codes?

Will the automatic fire detection and alarm system located throughout the buildings that triggers the emergency voice alarm signaling systems comply with applicable codes as installed?

Phase I Land Trust Action

Were parcels 2 and 12 listed in Table 2-2, Trust Parcels, included in the two Scoping sessions? If no, was a scoping session ever conducted these two parcels? If yes please explain how the scoping session acreages were listed at ~208 acres in the Federal Register Notice and the DEIS Federal Register Notice is for ~228 acres?

If these two parcels and ~20 acres are to be included in the fee to trust application is scoping required for these parcels? If no please cite applicable U.S. Code and Code of Federal Regulations. If, yes, when will the scoping session be held and when will it be noticed in the Federal Register?

Are any facilities, buildings, wells being used for this project located on either of the two parcels not included in the previous scoping sessions? If yes, what specifically is located on either parcel that will be used.

Was compliance with Section 20 of the Indian Gaming Regulatory Act included in the tribes incomplete fee to trust application in November 2006? If yes, where in the tribe's Fee to Trust Application would one find documentation that the tribe is in compliance with Section 20? If, no why was the documentation not included and when will this compliance to Section 20 be included in the tribes fee to trust application?

Has a final Department decision been made that the Ione Band's fee to trust application is compliant

with Section 20 of the Indian Gaming Regulatory Act? If yes please provide the documents that indicate a final decision has been made.

Since the DEIS states that the BIA determined in September 2006 that the Ione Band is eligible for an initial reservation which part of Section 20 must the Ione Band comply with in its Fee to Trust Application? Two Part or Land Settlement or Initial Reservation or Restored Lands

Is the Ione Band eligible for an initial reservation for gaming per the Indian Gaming Regulatory Act?

Management Contract

What process will the NIGC use to look at the overall effect the project will have on human health?

Where is the data and analysis related to the project's affects on human health?

Does the NIGC provide regulatory oversight on Class III tribal gaming operations to ensure the integrity of the games subsequent to the CRIT (Colorado River Indian Tribes) decision?

Does the tribe currently have any contract with any management company or any other entity to assist with funding?

Why is the management company required to comply with the terms of IGRA and NIGC regulatory requirements related to the operation of the TRIBAL gambling facility? Why is the Tribe not required to comply? Is the Tribe liable for non compliance?

Casino Complex

Will any portion of any casino complex facilities be located on parcels 1, 2, or 12? ie wells, spray fields, reservoirs etc.

What small retail shops and how many?

What kind of alcohol (beer, wine, liquor) would be served throughout the casino?

When will the responsible alcoholic beverage policy be developed and adopted? This policy should be part of any mitigation measures and must be included in the DEIS and FEIS.

Water Demand and Supply

Option 1

How was it determined that the total water demand for Phase I Option I with or without use of recycled water would be met by the City of Plymouth's municipal water supply? Please include this analysis.

Did the water demand estimates for the year 2025 for the City of Plymouth include the use of water for a casino complex? Please include a more up to date estimate?

Was the pipeline project designed to meet the water demand needs of the City of Plymouth or the needs of this casino complex project?

Option 2

What is the source of water to be trucked? What is the amount of water to be trucked? What is the size of trucks? How many trips a day are anticipated?

Is pumping at rate of 83 gpm 24 hours a day required to sustain a yield of 119,520 gpd?

In what rotation and for what time frames would the 3 wells (M1, M3, and H1) be pumped? Please include the pumping schedule for the wells.

Was the approximately 10,000 gpd of brine included in the water demand estimates Table 2-6? If so where?

How was it determined that 70% of demand for Phase I can be met by groundwater wells? Please include this analysis or a reference to the location of this analysis?

Is May 20, 2004 the most recent will serve letter from Aero Pure?

What is planned beyond the 5 to 10 year guarantee of delivery of water from Aero Pure?

Section 3.0 Description of the Affected Environment, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Section 3.3 Water Resources

3.3.3 Groundwater

Groundwater Usage

On what data is the statement that the City of Plymouth obtains its water supply from two groundwater wells located near the intersection of Burke Drive and Fiddletown that produce approximately 175 gallons a minute?

Have these two wells been tested and shown to have a long term yield of approximately 175 gpm?

On what data is the statement that two additional wells located north of the City produce flows of approximately 250 gpm?

Have these two wells been tested and shown to have a long term yield of approximately 250 gpm?

Does each well produce 250 gpm or is the combined flow of the two wells 250 gpm?

It is not stated that the City of Plymouth owns or receives water from the two wells producing 250 gpm so does the City of Plymouth receive any water from these two wells? If yes in what quantity.

How many wells does the City of Plymouth use to supply City water?

Has the City ever had to limit pumping from any of its wells due to excessive drawdown in the well? If this has happened please include this information as part of the history of water use in the basin. A group with a historical and modern connection to Plymouth planning to build a casino should know this information.

How much of an overdraft in the groundwater basin has over pumping by the City of Plymouth caused?

Are there other wells in the groundwater basin evaluated by Ketrion other than the wells included in the DEIS? How many wells have been drilled in the basin since 2004? How many wells in the basin have gone dry or become unusable due to lack of water since 2004?

If more than one season of above average rainfall is needed to make up for the identified groundwater deficit, how many would be needed? This is important since California is now in a drought.

How large is the identified groundwater deficit? Has the deficit increased since 2004? If yes by how much?

Did you make any attempt to collect any data to measure the impact of the groundwater deficit to other groundwater users in the basin? For example how many wells within one mile of the City of Plymouth's wells have had to be deepened or new wells drilled?

Why is there nothing in this section relating to the number of wells within Watershed 1 within 2 miles of the proposed project?

How many wells are located within Watershed 1 within two miles of the project site?

You reference the 36 wells and well reports for Watershed 2. Please include these reports as an

appendix.

How long ago were the wells drilled? How are the wells used?

Is the data from the well reports current?

Did you follow up with any of the 36 users to verify that the data from the well reports was still accurate?

Project Site

At page 3.3-9 we read “Due to the unique geology of the project site and outlying areas, no single groundwater basin exists.” Please explain or provide data to support this statement since at page 3.3-8 you included the following; “Together these four wells represent the majority of the water usage for the basin...” (Ketrone, 2004) and “Increased pumping by the City has led to an overdraft of groundwater in the basin even in years of average rainfall.” (Amador County, 2007)

Does this mean that there may be multiple basins? If yes how many basins have been identified.

Table 3.3-4 Long Term Well Yields indicates that the recommended total long term yields (gpm) for wells M1 (10 gpm), M3 (38 gpm), and H1 (35 gpm) is 83 gpm. At page 2-10 it is stated that the total sustained yield of these three wells is 119,520 gpd, and that the three wells will be pumped in rotation to allow for recharge between pumping periods but no pumping schedule is provided. 83 gpm x 60 minutes gives a result 4,980 gph and 4,980 gph x 24 hours gives a result of 119,520 gpd. This above described scenario raises several questions.

Will all three wells be pumped at 83 gpm when they are being pumped in the pumping schedule?

At what rate will the wells be pumped?

Have any of the wells been pumped at or above 83 gpm during step drawdown, constant rate, or constant yield/drawdown testing or at any time?

If the wells are pumped in rotation at the long term yield rates of 10 gpm, 38 gpm, and 35 gpm it would appear that the maximum daily yield of the wells would be less than $38 \times 60 \times 24$ or 54,720 gallons.

If the wells were each pumped for 8 hours and rested 16 hours it would appear that the maximum daily yield would be 39,840 gpd.

There are many potential pumping schedules that will produce a different amount of gallons per day so please provide the pumping schedule with pumping rates that verifies that the daily long term yield of three wells is 119,520 gpd.

3.9 Public Services

3.9.1 Municipal Water Supply

If yes, how long has the City of Plymouth been under the building moratorium?

How many building permits are currently available in the City of Plymouth?

According to the General Plan in place in 2004 was the Arroyo Ditch determined to be the City of Plymouth's primary source of water?

Was the Arroyo Ditch purchased by the City from the County in 1987 or did the City only purchase the right to maintain and operate the Ditch? Please include the purchase agreement that supports this statement.

Is the City's growth limited because of a too small storage tank or an unreliable water supply?

If the City had a larger storage tank would the building moratorium be lifted so the City could accommodate future growth?

“This water supply nearly meets existing average day demands of 205 gallons per minute (gpm), but does not meet existing summer or maximum day demands of over 450gpm.” $205 \text{ gpm} \times 60 \text{ mins} \times 24\text{hr}$ gives a result of 295,200 gpd or 107.4 million gallons annually.

If the water supply does not meet the existing summer maximum day demands has the City of Plymouth ever run out of water during summer months? If yes, provide documentation and if no, please explain this statement.

You state that annual water sales peaked at 72.4 million gallons in 2004 (198,000 gpd). How are water sales relevant to water supply when you have already provided data the water supply nearly meets the water demand of 205 gpm or 107.4 million gallons annually?

What is the current number of building permits available in the City of Plymouth?

It appears that data from this section is from 2004 and years prior and therefore its accuracy as to current conditions must be questioned as to the amount of groundwater the City removes from the basin. Please provide updated water data from 2007?

Will the AWA pipeline as currently designed deliver sufficient water to supply the City of Plymouth with enough water to meet the demand for proposed projects not including the Casino?

Groundwater

Please provide data to support the statement that approximately 50% of the 87 wells south of the City of Plymouth produce greater than 50 gpm. Where are these wells located? What is the long term yield of these wells? When were the wells drilled? How far south of the City?

4.3 Water Resources

Groundwater

There appears to be a typo of 81 gpm when it should be 83 gpm. 81 gpm delivers 116,640 gpd not 119,520 gpd.

Please explain how the three wells will deliver 119,520 gpd if they are pumped in rotation.

If necessary pumping by the City of Plymouth has led to an overdraft of groundwater in the local basin please explain how an increase of more than 40% ($295,000 \text{ gpd City of Plymouth} / 119,520 \text{ Tribe}$ 40.48%) would contribute to the existing overdraft of groundwater in the local basin and results in a less than significant effect?

3.6 Cultural Resource

3.6.3 Regional Archaeology

While this section makes for interesting reading, is there any history of archaeological excavations in or near Plymouth that are related in any way to the Ione Band of Miwok? If yes please at least include a statement in this section that such a relationship exists?

3.6.4 Ethnography

Is there any physical evidence that the village of Yuleyumne was located where the City of Plymouth is located currently? Was Yuleyumne a permanent village? Was Yuleyumne actually located at the confluence of the Middle and South Fork of the Cosumnes River?

Unlike other mining towns Plymouth is not situated on a river or creek. What was the source of water that supported the village of Yuleyumne? How far is it to the nearest source of water from Plymouth?

How many other, if any, Miwok villages are located where there is no source of water in close proximity in all seasons of the year including summer?

Please include the Levy information and documents with the context of the comment in the Appendices.

Ione Band of Indians

Exactly what lands in Plymouth has the Ione Band continuously used and occupied? Continually used and occupied since what date?

How long has the Ione Band been associated with, continually lived on, occupied, and used lands southeast of Ione?

When the United States attempted to buy land for the Ione Band early in the 20th century did they attempt to buy land in or near Plymouth or did they attempt to buy land southeast of and near Ione where the Ione Band lived?

What lands have ancestors of the present day Ione Band occupied in Amador County since 1840? Please support this statement with documentation.

What is meant by around Amador County? Alpine, Calaveras, El Dorado, Sacramento and San Joaquin Counties are not Amador County and if the ancestors of the present day Ione Band are from those counties then they should site their casino in one of those counties.

Is there a letter from Ada Deer clarifying that it was her intent to recognize the Indians on the land near Ione? If yes, please include a reference to this letter and include the letter in the appendices.

Is there a letter from Ada Deer that verifies that the primary reason the Ione Band was reaffirmed was their ownership of the land near Ione? If yes, please include a reference to this letter and include the letter in the appendices.

Is the Federal Recognition of the Ione Band by Louis Bruce in 1972 based on the fact that the Ione Band had obtained title to the 40 acres near Ione? If no, please explain.

Did Ada Deer ever restrict attendance at Ione Band tribal meetings or meetings organizing the tribe to those who lived on the 40 acres near Ione or in Amador County?

How many current members live in Amador County not counting the members of the Historic Ione Band who live on the 40 acres near Ione?

Has tribal chairman Matt Franklin ever lived in Amador County or on the 40 acres near Ione? Has Vice Chairman Jamerson ever lived on the 40 acres near Ione?

What is the problem, if any, with the title to property held by named individuals of the Historic Ione Band and other members of the Ione Band that would prevent the United States from taking the land into trust?

Was the Ione Band ever instructed by any agency of the United States as to what needed to be changed on the deed so the United States could accept the property in trust? If yes, why has this not happened?

3.6.5 Historical Context of the Project Area

Is there any reference to the Ione Band that could be included in this section? Please explain why nothing related to the Ione Band was included in the historical context of the project area.

3.6.6 Cultural Resources

Did Windmiller and / or Osanna contact the present day Ione Band of Miwok as part of their study and 2001 Pioneer Mine Project Report?

If the present day Ione Band of Miwok was contacted by Windmiller / Osanna did they respond to the contact?

If the present day Ione Band of Miwok did reply please include their reply and if they did not reply please explain how a project in an area of such historical and cultural importance to the Ione Band did not warrant a reply in 2001 but is now so closely associated with and vitally important to the Ione Band.

The records search also revealed the presence of cultural resources recorded in close proximity to the project area. Are these cultural resources related to the Ione Band?

Does close proximity to the project area mean that the resources are not on the 228.04 acres?

Approximately what distance is defined by close proximity?

Field Survey Methods and Results

Did ECORP find anything related to the Ione Band of Miwok Indians in their survey? If yes, please describe what was found that related directly to the Ione Band.

Based on the statement that “None of the isolates recorded within the project area display any exceptional qualities.” and that Table 3.6-1 does not list a single cultural resource that appears to have any connection to the Ione Band is it accurate to say that the project area contains nothing of cultural importance to the Ione Band beyond its value as a casino site? If no, please explain.

Contemporary Resources

Were any of the contemporary resources related in any significant way or any importance to the Ione Band prior to 2003? If yes please explain the relationship and why it was significant?

Native American Consultation Results

How many letters were sent and to what Native American Contacts?

How was the project described in the letters?

How many replies were received and how many were no comment and how many expressed no concern?

What reasons were given as to why there was no concern expressed concerning the project?

Appendix B Wastewater and Water Study – This The information in this appendix is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

2.0 Projected Flows

Why are general assumptions being used? Are there no documented project, facility designs from which to work? If there are no project facility designs from which to work please explain. If there are project facility designs from which to work explain why general assumptions are being used.

Please explain why the analysis begins with estimates on wastewater flows because wastewater flows are more available than water usage information? I do not believe that wastewater flows are available and that water usage information is not? Please explain why estimated water usage information is not available and estimated waster water flows are available.

Is this a standard method / practice in the industry to calculate water usage? If not why was it used for the DEIS?

2.1 Wastewater Flows

What facility programs were used to calculate the wastewater flows? What facility design documents

were used?

How accurate are the estimates obtained using this method and these facility programs? Is the accuracy based on facility designs?

Why were assumed flows from other similar casinos used and not the actual flows? From what other similar casinos were “assumed” flows used? How similar were these casinos?

Why is it not known whether the casino and hotel heating and air conditioning system will include cooling towers? Why is this critical design information not available?

Is the size of cooling towers and amount of water they require known for other “similar” facilities?

2.2 Water Demands

Table 2-6 – is the water demand for the Brine included here? If not please include the water demand for water brine and update the table.

Is there any data available that supports the statement that similar facilities operating in California have historically recycled 40% of the wastewater flow for recycled water use? Please provide this data.

3.5 Water Facilities

“Due to the limited amount of available water supply in proximity to the project site, a multitude of supply sources are anticipated to be required to meet the various alternative's water demands. The proposed sources of water for the project site include onsite wells and off site wells, as well as trucking water.”

How limited is amount of available water supply in proximity to the project site?

What portion of the water demand will be met with on site wells?

What portion of the water demand will be met with off site wells?

What portion of the water demand will be met with trucked water?

Is it stated any where in this report that the demand for water for the project will be met by groundwater from 3 onsite wells? (see page 4-3-8 & 4-3-9)

3.5.1 Water Treatment Plant

The iron and manganese sludge will be disposed at what local sanitary landfill?

Water Storage Tank and Pump Station

Have the projects fire flow requirements been determined? If no why not? If yes, please include the required fire flow requirements.

Please provide tank sizes for no use of recycled water and for use of recycled water?

Wastewater Facility

5.2.1 Membrane Bioreactors

How many MBR's are in operation in California?

Do these MBR's comply with or meet CEQA standards for wastewater treatment?

How reliable are MBR's? Please provide operation and maintenance history data from actual users.

Page 5-6 Are the average day flows for other surrounding casinos actual flows, or assumptions, or estimates?

6.0 Conclusions - The information in this section is inaccurate, incomplete, obsolete and needs to

be edited until it is accurate, complete and up to date.

Table 6-1 Summary of Demands and Flows - According to the DEIS 119,520 gpd is the potable water demand for Phase I & II Alternative A using recycled water while this table indicates this demand to be 128,500 gpd. Please explain the misrepresentation of the potable water demand in the DEIS for use of recycled water as well as the demand without use of recycled water? Please explain all differences in the amounts of water demand required contained in Table 6-1 with the water demand presented in the DEIS.

Figure 6-1, Figure 6-2 Do these Flow Diagrams include the water loss from the Cooling Towers?

Why is the amount of water to be trucked not included in the DEIS while it is included here?

How many trips required to truck 80,780 gpd?

Appendix B Pumping Tests Sustainability Analysis for Wells H1, M1, and M3, and Evaluation of Water Quality

2.1 Hydrology/Geology

Page 4 These 96 wells are very likely located on the eastern side of Plymouth not the Western. Please check this and change as necessary. If these 96 wells include the wells of the community of Burke Ranch are there any Well Logs available that indicate how many if any of these wells have needed to be deepened or new wells drilled by the property owners since 2003? Please include this data.

Have the wells in Burke Ranch been plotted? This is development of 5 to 7 acre parcels and a plot of these wells and their proximity to the project should be included.

Please provide data to support statement that approximately 50% of these wells are reported to produce more than 50 gpm? When were these wells drilled? When was the last time these wells were tested?

Is it possible that some of these wells no longer produce 50 gpm providing they did in the first place?

How many of these wells produce 10 gpm or less?

3.1.6 Measurement of Discharge Rate

Table 3-4 indicates that well M3 Discharge Rate test was performed at 60gpm for 188 mins and 70 gpm for 60 mins. At 3.1.6 it is stated that no meter calibrated above 50gpm was available, how was the 60 and 70 gpm rates for M3 determined?

4.2 Recommended Long Term Well Yield

This approach assumes that sufficient precipitation will occur and that a significant percentage of recharge will reach the aquifer. It also assumes that the interconnected fracture network extends beyond the radius of influence created during the test, and that these fractures have sufficient storage to produce sustainable yields. However, these conditions may not be realized.

What is the impact to the long term yield of M1, M3, and H1 if these conditions are not realized?

What is the impact to neighboring wells if these conditions are not realized?

Well M1, M3, H1 – what are the remaining degrees of uncertainty inherent these wells?

Why are the Lower Limits not used as the recommended Long Term Yields for wells M1, M3, and H1?

Since 2004 what has prevented additional testing to determine the actual long term yields?

Why wait until the first year of production to determine the actual long term yields when it could have been done anytime since 2004? Based on the data presented in the DEIS I believe it is impossible for the three wells (M1, M3, H1) to produce the 128,000 gpd required for this project.

The need for additional wells can be assessed to meet the required water demands. The need for additional wells is obvious based on the data provided. No data has been presented that demonstrates that M1, M3, and H1 can meet the water demand needs or is the trucking of water not needed?

5.0 Statement of Liability (dated October 20, 2004)

This Report was written to document testing activities related to estimating the long term yield of water from certain wells at the Site based on a limited number of observation points and limited duration tests. Further investigation, testing, and data analysis can reduce the inherent uncertainties associated with this type of testing. The Report is based on factual information obtained from Analytical Environmental Services, and others, that has been assumed to be correct, accurate, and complete. Applied Engineering does not guarantee the correctness, accuracy, or completeness of those data.

Why is the number of observation points limited and duration of tests limited? Was there not enough time between 2004 and 2008 to conduct more testing of longer duration?

What are the inherent uncertainties associated with this type of testing?

What is level of uncertainty based on the limited observation points and limited duration tests used for this Report?

Is there a Statement of Liability from Analytical Environmental Services? If no, why not?

Appendix O Phase 1 - The information in this appendix is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

1.7 Walk-Over Site Reconnaissance

Were Parcels 2 & 12 included in the Scoping Sessions

2.6 Aerial Photographs

Does the 1962 aerial photograph show any evidence of a sawmill on any of the properties or having been on any of the properties ?

2.9 Historical Uses of the Project Parcels

Were any of the parcels or any portion of the parcels used for a sawmill?

Section 3.0 Site Reconnaissance and Interviews

Appendix A Environmental Data Report – Database Search - The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Executive Summary page 4. It is simply not believable that the sites listed could not be mapped due to poor or inadequate address information. Please explain why these well known local sites were not mapped.

Appendix R Economic Impact Study - The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Has this document or a previous version been included on a list of documents listed as part of the fee to trust application but that was withheld from public review and comment?

With respect to the following comment on page 26 concerning zoology; “Surveys of the study area in September and November 2003 did not reveal the presence of any nesting raptor or migratory bird species, or the presence of old nests.” I have several questions and comments. To begin raptors nest during the spring months, generally April and May, and not in September and November. Surveying for nesting raptors during September and November speaks to a potential lack of expertise in the

surveyor. Please explain why no surveys were done in the past 4 years during months when raptors are breeding and nesting. More importantly, why was this survey of the area pertinent to this DEIS done in September and November of 2003 prior to any scoping session being conducted? Is this information in the DEIS from another Environmental Study for some other project? Perhaps the environmental study completed for a proposed project named the Pioneer Project is the source for the information in this DEIS. Surveys for the parcels in the 22.04 acres must be conducted and completed at the proper times and seasons of the year to properly evaluate the impact this proposed casino complex will have on flora and fauna.

Lastly, with respect to the absence of a required formal development proposal. If such a proposal has been submitted the public in Plymouth is not aware or in receipt of such a proposal. The MFIB has released public relations flyers with general descriptions but at no time has the public been provided with a formal development plan and it would appear that some of the firms retained to provide evaluation of the project impacts have not received such information either. It is clear that the firm providing waste water and water demand analysis does not know whether cooling towers will be used as part of a heating and/or cooling system used in the project as they had to assume that cooling towers would be used. This is but one of many examples that could be cited where assumptions and estimates are required in the impact analysis and assessment for lack of a formal development proposal.

Does the analysis of 3 and 4 year old data generally found in this DEIS meet the requirement of the gaming checklist found at Page 4 I. 151.10.g? If yes please explain.

I would be remiss if I did not include some comment on alternative sites for this project. I will propose two alternatives, one in Sacramento and one in Stockton. In Sacramento, there have been several very costly unsuccessful efforts by the City to revitalize the K Street Mall. Everything a casino needs may already exist in terms of infrastructure. Mass transit is in place and access to Interstates 5 and 80 is less than 5 minutes away with easy access from highways 99 and 50. No need to build restaurants and hotels as many are located in and near K Street. This is a site that would require less capital, create less impact to the environment and could potentially be an asset to the City if casinos are indeed the economic engines they claim to be. The second proposal in Stockton has no specific area identified but with several areas in Stockton in need of economic revival I believe that the tribe could present a proposal where the tribe would work cooperatively with the city. The tribe would build only a casino and then the City and private business would provide the hotels, restaurants, and shops in the area surrounding the casino with less environmental impact than in Plymouth. Both these proposals are much more a win win for a tribe, a city, and private business willing to work cooperatively. There is but one fly in the ointment for the MFIB relating to both these proposals. Their well documented history of misrepresenting themselves as the landless restored Ione Band of Miwok will surely follow them where ever they might make another proposal – no matter the merit that such a proposal might have for all concerned.

This concludes my questions and comments and I would hope that the response to all DEIS comments be more timely than the response to comments submitted by citizens, citizens groups, City, County and State governments related to the inadequate and incomplete November 2006 Fee to Trust Application. It has been nearly 18 months since comments were submitted and no response has been received pursuant to those comments from the BIA PRO Director or any other official source.

Given the fact that the process acquiring land in trust for gambling allows a limited number of days for public comment with no apparent time limit for response I would expect that I could receive answers supported by current data and documents to my several questions as well as a comprehensive response to my comments on this DEIS within 180 days. This is a much more generous limit of time

than the 75 days allowed by the BIA for review and comment on this massive DEIS. If the requested response cannot be provided within 180 days please provide reason for the inability to provide the requested response by letter or email no later than 180 days from July 2, 2008 or by December 29th, 2008.

Additionally, selected citizen, and city, county and state government comments on the Fee to Trust Application in 2007 were improperly and unethically submitted directly to the law firm of Holland & Knight (the firm then representing the MFIB) by then BIA PRO Director Clay Gregory for review and comment back to Director Gregory. While the process requires that the Regional Director provide the Tribe with copies of comments on their fee to trust application nowhere is there any requirement for the Regional Director to provide copies of fee to trust comments directly to the Tribe's law firm or tribal attorneys and there is most certainly no requirement that the Director request comment from the Tribes law firm or tribal attorneys. To the contrary the process requires that the Director make such review and comment independently. Independent comment which has not been forthcoming for nearly 18 months and "independent" comment from a BIA PRO regional director now appears unlikely given the fact that the then Regional Director received the comments he requested from the tribe's law firm of Holland & Knight via memo from Rory Delwig. Due to that most unprofessional and unethical action engaged in by then Director Gregory, I now make specific request that my comments on this DEIS not be submitted directly to the MFIB's law firm or their attorneys for review and/or comment.

Should you have any questions related to these questions and comment please contact me using the contact information that follows.

Respectfully Submitted,

D.W. Cranford II



P.O. Box 794

Plymouth, Ca. 95669

209 245 4588

plymouthbutch@hotmail.com

Dr. Elida A. Mallick
Box 264
Fiddletown, CA 95729
September 02, 2010

add ✓
Decks
NO

To: Dale Risling, Acting Regional Director
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

Re: FEIS, lone Band of Miwok Indians, Land Transfer and Casino Project

P16-03 "As stated in Section 3.7 of the DEIS, the lone Band of Miwok Indians has 652 members. The basis of the commenter's reference to "approximately 85 members" is unclear."

Original Comment: Explain the increase in membership of approximately 85 members to the current number.

Section 3.7.1, Socioeconomic Characteristics of the lone Band of Miwok Indians, makes the unclear and unsupported statement that this tribal band has 652 members. Yet, it is common knowledge that the band of Indians known historically as the lone Band of Miwok Indians that reside on tribal land in lone, California is a small group that has generally numbered about 85 to 90 individuals. While the original comment may have been unclear, the BIA (Bureau of Indian Affairs) as the experts in analysis of this Tribal group and their project would have been expected to know the original tribal membership numbers and if they did not know, they should have known. The BIA could certainly have surmised from the commenter's request that an increase in membership had occurred, possibly with the prospect of a casino project, and could have researched how the tribe arrived at its current enrollment number.

No response to comment.

P16-04 and P16-05 "Refer to the response to Comment P16-03 regarding Tribal membership. Details regarding Tribal membership criteria are not necessary for an analysis of socioeconomic impacts associated with the project alternatives."

Original Comment: Provide documentation to support that the over 500 individuals newly added to the tribe qualify as legitimate tribal members according to tribal charter and enrollment criterion. And Document the City or town of primary residence of the 652 tribal members.

The entire purpose of the proposed project is, ostensibly, to achieve economic independence for this tribal group. It goes directly to purpose to determine how many tribal members are expected to be impacted by this project. And, conversely, the greater the number of tribal

P4-01

P4-02

members the greater the size of the project needed to support this group. If the BIAS makes a statement that the tribe is over 500 members more than the citizens of Amador County have ever known about in the past, then it seems reasonable to explain that increase in tribal size and verify the legitimacy of those members for if those numbers are bogus as suspected then the project scope should diminish in size and perhaps in ultimate need.

While details regarding Tribal membership criteria are not necessary for analysis of socioeconomic impacts, verifying the legitimacy of the tribal membership is pertinent to the scope of the project needed if not its very existence.

Later in this section AES makes the statement that many tribal members live in the City of Plymouth. The community is unaware of any tribal members that live in the City of Plymouth and takes this opportunity to ask for verification of that statement. No answer to this part of the comment has been provided.

P16-06 "The survey asked Tribal members about their employment and income status. The results are an accurate depiction of the 32% of the Tribe that responded to the survey."

Original Comment: What type of survey was conducted and was this survey of a standard recognized in the data collection industry as being accurate?"

No response to comment.

P16-08 "The survey consisted of a questionnaire of personal information regarding employment and income status. The questionnaire was distributed directly to Tribal members and estimates derived from the responses provided are the most recent and accurate information available."

Original Comment: What measures were put into place to ensure accuracy of the data collected and to guard against individuals falsifying data in order to skew the results?

The statement describing the survey as being the most recent and accurate information available is highly questionable as the survey in discussion was conducted in 2004, 6 years ago, while the responses to the DEIS were prepared by November of 2008 leaving AES 4 years to collect more recent and accurate information.

No response to comment.

P16-09 "This data was based on the questionnaire distributed to the Tribe, of which 32% responded. Therefore, this value is representative of the 32% of the Tribe that responded."

Original Comment: Demonstrate the data that supports this estimate. ("It has been estimated that about 81-percent of all members have incomes below the national median income level.")

P4-02
cont'd

P4-03

P4-04

P4-05

The statement in the DEIS says that 81-percent of all members have incomes below the national median income level. It does not indicate in the portion of text that we are taking about the 32% of the Tribe that responded to the survey.

P4-05
cont'd

The text should have been corrected to clarify this point.

P16-11 " ...The employment and income data presented is not based on state data, but rather a questionnaire distributed to the Tribe in 2004. This data represents the most recent employment and income data available from the Tribe."

Original Comment: It is now 2008; produce more timely data to support these descriptions of employment and income.

P4-06

Data of employment and income was not updated in 2008 as requested and has not been updated as of the release of this FEIS in 2010. Furthermore, it has not been explained why state data would have been ignored and tribal data, especially with such a small sample size responding, used preferentially.

Did not modify analysis as requested.

P16-19 "This is a general statement provided for background information on the Tribe. It is not used to determine a potential impact; therefore, providing further details is not necessary in the socioeconomic analysis."

Original Comment: In the Section entitled Tribal Attitudes, Expectations, Lifestyle and Culture, AES made that statement, "Both the Tribal government and individual Tribal members participate in area political and social activities." Commenter asked the following: 1. Document and provide proof to support this statement.

P4-07

While it may be true that detailing Tribal background is not necessary to the socioeconomic analysis itself, it is reasonable to expect verification and support for a statement that the BIA has itself made in the text in order to authenticate the truthfulness of that statement.

Responses not supported by citation to reasons, sources, or authorities.

P16-20 "As stated in the response to Comment P16-05, details regarding the residences of Tribal members are not necessary for an analysis of socioeconomic impacts associated with the project alternatives."

Original Comment: 2. Document the primary residences addresses for all tribal members and notating those new to the tribe since 2003.

P4-08

While details regarding the residences of Tribal members may not be necessary for an analysis of socioeconomic impacts associated with the project alternatives, an understanding of how many Tribal members could potentially move into the area near the proposed project location is

essential to the determining the impacts associated with the proposed project. There was no response to the comment nor support for the statements by citation or authority.

P4-08
cont'd

P16-21 and P16-22 "Potential impacts to schools from the project alternatives were evaluated in Section 4.7 of the DEIS. Providing further detail on the number of Tribal members' children attending school in Amador and Sacramento County is not necessary to assess potential impacts to schools."

Original Comment: 1. Document and demonstrate the number of tribal children attending school in Amador vs. Sacramento County. Document child enrollment in Amador County Schools. 2. Document child enrollment in Amador County schools for new tribal members (since 2003).

P4-09

The original comment was seeking to verify the truthfulness of the statement by the BIA that Tribal children attend local schools. There was no request made in this comment to discuss impacts to school from the project alternatives. While detailing the number of Tribal members' children attending local schools may not be necessary to assess potential impacts to schools, this section of the EIS is discussing the "Socioeconomic Profile of the Lone Band of Miwok Indian" and the commenter is seeking some form of proof that the comment by the BIA is in fact a true statement. There was no response to the comment nor support for the EIS statement by citation of authority.

P16-24 "As discussed in the response to Comment P16-13; further detail regarding the employment status of the tribal members is not necessary for an analysis of the socioeconomic impacts associated with the project alternatives."

Original Comment: Document by some verifiable method, i.e. tax records or other, the exact number of Tribal members employed by local business and if these Tribal members are new to the Tribe since 2003.

P4-10

No reasonable response to comment was made.

P16-26 "All data and analysis of the City contained in the EIA and DEIS are relevant and accurate because of the data sources and assumptions used in these reports."

Commenter has attempted throughout questions posed of the DEIS to ascertain exactly what those "data sources are" and to be shown the calculations and other analysis that lead to the "assumptions made in the reports" based on the data. To date this information has not been forthcoming.

P4-11

No reasonable response to comment was made.

P16-64 "Although tribes are not required to do so, the Tribe would provide most workers with benefits, including health insurance and workers compensation. This practice would be enforced by Tribal ordinance."

P4-12

Original Comment: Tribal governments are not required to adhere to State and Federal worker protection requirements. How will the provisions in the above statement be legally enforceable?

The original statement in the DEIS made reference to "workers." The response to comment reference is to "most workers" reducing the original text in the DEIS to an even more nebulous and unclear state. Now we must ask which workers will be excluded from benefits and worker protections. Secondly, enforcement by Tribal ordinance does not protect the non-Tribal community employed in casinos and therefore provides the data that the Tribe does not intend to be a fair and accountable employer in the eyes of the law.

P4-12
cont'd

Response does not answer the comment regarding legal enforceability.

P16-72 "Refer to the responses to Comments P18-55, P18-69, and P16-71 regarding the school impact fees.

Original Comment: On what basis is the onetime payment of \$107,610 considered sufficient to reduce impacts on the school to a less than significant level.

Comment P18-55 refers the reader to P17-67 through P17-90. There is no mention of school impact fees in these sections.

Comment P16-71 reads, "The impact is considered "less than significant" because the schools would not lose any funding."

Ultimately there has been no response to this comment and no supporting citations to reason, sources, or authorities.

P4-13

P16-73, 74, and 75

All comments requesting validation of statements made by the BIA that money for school impacts will mitigate impacts to a less than significant level. None of these comments have been responded to and no supporting citations to reason, sources, or authorities provided.

P4-14

P16-95 "The statement that the commenter is referring to is not related to residential development, but to the introduction of a commercial facility. A comparison of a commercial development to a residential development is not relevant to the crime impact analysis."

Original Comment: Referring to the DEIS text, "Whenever large volumes of people are introduced into a community, the volume of crime is also expected to increase. This holds true for the introduction of any large-scale development." 1. Provide documentation that reflects similar effects on local communities from the introduction of Class III gaming establishments compared to the introduction of residential development.

The commenter noted that the text of the DEIS did not specify commercial development and was seeking to gather information possibly distinguishing the differing impacts between planting a casino in this small, rural community or allowing it to develop in a more balanced fashion with small scale commercial and residential neighborhoods. The comparison is not

P4-15

essential to the discussion as an academic matter but is relevant to the discussion in terms of potential impacts.

P4-15
cont'd

No response to comment.

P16-96 "As discussed in Section 4.7, communities without casinos are as safe communities with casinos because an increased rate of crime results from the introduction of a larger volume of people in an area and not particularly from casino facilities."

P4-16

Original Comment: Considering that Amador County has itself experienced a significant increase in crime in the area of casino (Jackson Rancheria); provide specific case studies demonstrating the contention that non-casino communities are as safe as casino communities."

No response to comment nor support by citation to reasons, sources, or authorities.

P16-98 "As discussed in the response to Comment P16-97, the Tribe would make payments to the ACSO to provide for additional staffing and equipment that would be needed as a result of the selected project alternative. If the Tribe initiates further development in the future, it will remain in contact with local agencies regarding law enforcement needs.

P4-17

Original Comment: Since Tribal entities are exempt from County and City general plan policies and implementation procedures as well as zoning regulations and other development regulations, they fall completely outside of the parameters of planned growth. Explain the above statement ("Increased tax revenues resulting from Alternative A would fund expansion of law enforcement services required to accommodate planned growth.") in this context and how Counties and Cities are expected to accommodate, in terms of law enforcement, growth on Tribal land that is completely unplanned and uncontrolled.

The response to comment, "...remain in contact with local agencies regarding law enforcement needs," is in essence a non-answer to the question. Remaining in contact with local agencies is not an appropriate response regarding mitigation of additional staffing and equipment needs at the level of law enforcement. The BIA in preparing this document knows, or should know that law enforcement needs near casinos are real and serious and must be spelled out in legally binding agreements.



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Comments on the FEIS

"Ione Band of Miwok" Indians' Casino Project

Submitted September 10, 2010

By

**No Casino in Plymouth
P.O Box 82
Plymouth, CA 95669**

Reg Dir	<u>Dale</u>	<u>D</u>
Dep Reg Dir		<u>T</u>
Reg Adm Ofcr		
Route	<u>DECRMS</u>	
Response Required	<u>NO</u>	
Due Date		
Memo		<u>Ltr</u>
Tele		<u>Other</u>
	<u>John P. DeLoach</u>	<u>D</u>

Dale Risling
Acting Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

9/10/10

RE: Comments by No Casino In Plymouth on FEIS for "Ione Band of Miwok" Casino Project

Dear Director:

Over two years ago, members of No Casino In Plymouth submitted comments on the Draft EIS for the "Ione Band of Miwok" Casino Project. Recently we received copies of the Final EIS. We have reviewed the Final EIS. We find that the BIA's responses to our comments are not legally adequate.

P5-01

Following in Section 1, you will find comments letter on the Final EIS from our members Dueward W. Cranford II, Dr. Elida Malick, Dick Minnis, Patrick Henry, and Walter Dimmers. These letters explain both major flaws that remain in the technical analyses in the EIS, and the inadequate responses to public comments. Because the BIA's responses to so many comments are flawed, in Section 2 you will find matrices summarizing the repeated failures of the BIA to adequately respond to public comments. Finally, in Section 3 you will find a guide to reference materials on the enclosed DVD. These materials both verify the factual assertions made in our comments, and validate our concerns regarding the impacts of the proposed project.

P5-02

The casino is proposed in the wrong place, at the wrong time, and by the wrong agency.

P5-03

It makes no sense to locate a casino, with all of its urban service needs, in a small rural town without urban services. The casino is proposed in the wrong place. That is why the proposed casino in the Bay Area (Richmond) has so much less impact on its surroundings.

P5-04

It makes no sense to approve A Third casino in rural Amador County, miles away from its urban patrons, when the price of gas is \$3.25 a gallon, and the entire world is struggling to reduce greenhouse gas emissions to avert the catastrophes associated with global climate change. This project is not a twenty-first century solution to anyone's problems.

P5-05

By way of contrast, the CHIPS project, an outgrowth of the Amador - Calaveras Consensus Group, is training and employing Native Americans to work in the forest removing brush and small trees that pose a fire risk. Those small log and biomass materials are in turn used to manufacture value added products for sale, such a rustic furniture, compost, and power plant fuel. The CHIPS project not only helps the

P5-06

economic condition of Native Americans, it helps the rest of the community by reducing fire risk, providing useful products, and promoting energy independence. The BIA would do better and get farther by considering these types of win-win economic development alternatives, rather than trying to force unwanted casinos down the throats of small rural towns.

P5-06

Finally, the casino project is in the hands of the wrong agency. Despite 40 years of practice, Department of the Interior remains ill equipped to successfully produce environmental review documents in compliance with NEPA. Over the last couple of years, the agencies of the Department of Interior have been repeatedly rebuked by the courts for improperly stating the purpose and need for a project, for not evaluating the effectiveness of mitigation measures, and for not properly responding to public comments. Despite these repeated judicial rebukes, the BIA seems determined to repeat these very same violations in this EIS.

P5-07

The proposed rural casino project is an idea whose time has passed. Now is time for the BIA to join the twenty-first century. Now is time for the BIA join with rural communities to seek economic solutions that embrace opportunities to improve our environment rather than destroy it. Now is time for the BIA to seek economic solutions that unite our communities rather than divide them. Saying no to this ill advised casino project, and joining the Amador - Calaveras Consensus Project, would be good first steps in this direction.

P5-08

Sincerely,



Thomas P. Infusino, Esq.
P.O. Box 792
Pine Grove, CA 95665
(209) 295-8866
tomi@voicano.net



Elida Malick, Director
No Casino in Plymouth
P.O. Box 82
Plymouth, CA 95669

P.S. Please retain a copy of the comments, the matrices, and the DVD of reference material for the administrative record.

SECTION 1: COMMENT LETTERS ON THE FEIS

Dueward W. Cranford II
P.O. Box 794
Plymouth, California 95669

**FEIS Comments, Ione Band of Miwok Indians, Land Transfer and
Casino Project**

To: Dale Risling, Acting Regional Director
Pacific Regional Office, BIA
2800 Cottage Way
Sacramento, Ca. 92825

From: Dueward W. Cranford II, U. S. Sovereign Citizen residing in Amador County

Subject: **FEIS Comments, Ione Band of Miwok Indians, Land Transfer and Casino Project**

Opening Comments and General Observations

Director Risling, for you and the Environmental Protection Agency (EPA) and the Bureau of Indian Affairs (BIA) to have submitted this Final Environmental Impact Statement for comment speaks to an apparent continuing willingness of the BIA Pacific Regional Office (BIA PRO), the (BIA), the Department of the Interior (DOI) and the National Indian Gaming Commission (NIGC) to facilitate the approval of a highly questionable proposed casino for a counterfeit group of persons, calling themselves the Modern Ione Band. The continuing and consistent lack of integrity and apparent absence of ethics engaged in by a number of individuals at these agencies becomes even more apparent with their unwillingness to adequately address the many substantive comments submitted about the gross inadequacy of the 2008 DEIS by submitting this FEIS which remains filled with outdated, inaccurate, contradictory, misleading and false information and data about the Ione Band pursuant to their restored lands Fee to Trust application and proposal to build a casino pursuant to the IGRA.

Additionally, the issuance of the FEIS after the restored lands opinion was declared wrong, was reversed, and was withdrawn in January 2009 by Solicitor Bernhardt, after the February 24, 2009 decision of the Supreme Court in the Carcieri case, and after the March 31, 2009 decision of the Supreme Court in the Hawaii case appears to be done without regard to common sense, reason, authority or the law unless a new restored lands opinion has been authored, and Carcieri has been "fixed", and there is evidence never presented in either the Fee to Trust Application, the DEIS or the FEIS that the Ione Band was under federal jurisdiction in 1934, and that the Executive Branch or any of its agencies has authority to take land into trust in California for the Ione Band. I am not aware that any of the aforementioned actions have taken place. If any have taken place please provide appropriate citations or direction to the documents confirming that any of the aforementioned actions have been completed.

With limited time to review your responses to comments to the DEIS I will not endeavor to include in the FEIS comments related to all your responses which my time limited review has found in most cases simply do not answer the questions asked or do not adequately address the issues raised. (See *State of California v. Block* (9th Cir. 1982) 690 F.2d 753 (responses must be a "good faith reasoned analysis"); and *Navajo Nation v. United States Forest Service* (2007) 9th Cir. Nos. 06-15371, 06-15436, 06-15455 (brief responses don't constitute a reasonable discussion of the issue, and fail to articulate why such a discussion is unnecessary).)

Therefore I will provide comment on a few of what I believe are the most important and egregious portions of the FEIS and will include my previous comments on the DEIS edited to exclude those questions and issues that have been, in my opinion, answered or adequately addressed.

Comments on the Cover Sheet:

I will begin my FEIS comments with the date on the cover sheet. Based on the date of February 2009 on the cover sheet, am I to conclude that the FEIS was originally to be issued in February 2009 instead of 18 months later in August 2010? What specifically are the reasons for the 18 month discrepancy between the cover sheet date (February 2009) and the August 2010 timeframe? Hopefully, the relevance of my concern and comments will be understood by whoever might be responding to the following questions should the EPA, the BIA, the NIGC, or the DOI actually respond to any of these questions or comments.

1. Is this Final EIS related to or associated with the Lone Band's November 2006 Fee to Trust Application for Class III gaming pursuant to the Indian Gaming Regulatory Act (IGRA)? This is a YES or NO question and requires only a YES or NO reply. *(Based on the information on the Cover Page I believe the answer is YES but I want your reply.)*
2. If the answer to Question 1 is NO under what other application of any type or authority is this Final EIS being processed?
3. Is the EPA aware that Solicitor David J. Bernhardt withdrew and reversed the 2006 Carl J. Artman restored lands opinion for the Lone Band in January 2009? Again, this is a YES or NO question. Copy of the January 16, 2009 Solicitor Bernhardt's memo attached so you are now aware.
4. Is the EPA and/or the BIA and/or the Lone Band aware that, according to the January 2009 Bernhardt memo, it is the opinion and legal position of the Solicitor's Office that the Lone Band is not a restored tribe within the meaning of the IGRA? Again this is a YES or NO question and if your reply is NO provide a detailed explanation.
5. Did the January 2009 Bernhardt memo have anything to do with the decision to delay the issue of this FEIS for 18 months from February 2009 to August 2010? Again, this is a YES or NO question. If NO please explain in detail what caused the 18 month delay.
6. What other factors beside Solicitor Bernhardt's withdrawal and reversal of the Lone Band's restored lands opinion contributed to the 18 month delay?

Comments on Executive Summary

The following is from the Executive Summary and raises several questions which follow the excerpt.

INTRODUCTION

The Lone Band of Miwok Indians (hereafter, the "Tribe") consists of approximately 652 members, of which approximately 350 are voting members. The Tribe is governed by a General Council with the day-to-day governance conducted by a 5-member tribal council, as authorized in the Tribal Constitution, which was adopted by the General Council on August 10, 2002. The Tribal Constitution was approved by the Department

of the Interior, Bureau of Indian Affairs (BIA) on September 6, 2002. The Tribe presently has no land in trust and is eligible to acquire land for reservation purposes. In 1972, BIA Commissioner Louis Bruce acknowledged the Tribe's federal recognition and agreed to accept land into trust on behalf of the Tribe. In 1994, BIA Assistant Secretary Ada Deer reaffirmed the Bureau's commitment to bring land into trust and declare a reservation for the Tribe.

On page 1.6 of the Introduction it is stated that the tribe has an increasing membership yet the approximate number of members (652) and voting members (350) remains unchanged from the DEIS of more than 2 years ago. There is nothing in this FEIS that supports the statement that the Ione Band has an increasing membership. Therefore, I request the number of members as of two different dates that document that the Ione Band does in fact have an increasing membership.

To the statement that the tribe presently has no land in trust and is eligible to acquire land for reservation purposes I ask the following. By what authority is this tribe eligible to have land taken into trust in light of the *Carcieri* decision? The BIA or DOI has never provided any documentation that indicates that this tribe was under federal jurisdiction in 1934 and that the Ione Band voted on the IRA. NEPA requires that the EIS cite the documents that support its factual statements. (40 CFR 1502.21, 1502.24.) These underlying documents must be accessible and available to the public. (*Save the Niobrara River Association v Andrus* (1977) 483 F.Supp.844, 850-851.) Without this documentation or a reference to the documentation as part of this FEIS, the FEIS should be withdrawn until such time as the tribe is eligible to have land taken into trust. Further the finding of the Supreme Court in the March 31, 2009 Hawaii case casts serious doubts on whether the Federal Government or any of its agencies have authority to take land from a Sovereign State without consent of the State and my reading finds no authority for the taking of land from a Sovereign State present in the U.S. Constitution.

The statement that Commissioner Bruce agreed to accept land into trust is incomplete and misleading as to the fact that Commissioner Bruce agreed to accept one certain parcel of land near Ione which is still owned by 12 individual members of the Ione Band and other members of the Ione Band. The action by Ada Deer in 1994 where she reaffirmed a portion of the Bruce letter was to accept into trust that same certain parcel near Ione. Despite continued questioning, the DOI has never provided any explanation why this land was never accepted into trust in the past 37+ years by the very agency that purports to help and assist tribes. Additionally, nowhere in the March 22, 1994 letter from Ada Deer or in the 1972 letter from Louis Bruce was there any mention of declaring a reservation for the Ione Band. The information presented in this paragraph of the FEIR is incomplete, misleading and false.

Comments on Section 1.0

The following is from the Introduction Section 1.0 and incomplete, misleading, and false statements included in the Executive Summary Introduction are repeated here while including even more questionable statements.

1.1 INTRODUCTION

The Ione Band of Miwok Indians (Tribe) is a federally recognized Indian Tribe with approximately 652 members, of whom approximately 350 are voting members. The Tribe is governed by a General Council with day-to-day governance conducted by a 5-member Tribal Council, as authorized in the Tribal Constitution. The Constitution was

adopted by the General Council on August 10, 2002 and the Department of the Interior, Bureau of Indian Affairs (BIA) on September 6, 2002.

The Tribe has no trust land. The Tribe proposes that the BIA accept land into trust for the Tribe for gaming purposes to address the needs of the Tribe for economic development and diversification. In 1972, BIA Commissioner Louis Bruce acknowledged the Tribe's Federal recognition and agreed to accept land into trust on behalf of the landless Tribe. In 1994, BIA Assistant Secretary Ada Deer reaffirmed the Bureau's commitment to bring land into trust and declare a reservation for the Tribe. In 2006, the BIA determined that the Tribe is eligible to have lands taken into trust as its initial reservation pursuant to 25 U.S.C. § 465. The purpose of the Proposed Action is to take substantive action to meet the Tribe's need for land which the BIA has committed to fulfill. BIA letters regarding this issue are provided in Appendix A.

The Lone Band was not landless in 1972 when Commissioner Bruce agreed to accept their ~40 acres near Lone which the Lone Band had acquired title in fee to through a quiet title action. The Lone Band owned land (40 acres near Lone) in 1972 which they still own and the Band now owns an additional 47+ acres in fee near Plymouth. To continue to state that the Lone Band is landless is simply a false statement. The 47 acres was purchased in November 2007 which would seem to provide adequate time to include this information in the April 2008 DEIS and surely provide enough time to include this information in the August 2010 FEIS. Attempts to portray this tribe as not able to provide for its members might prove more difficult if the cost of their property purchases were included in the FEIS. Perhaps the nearly \$3,000,000.00 spent to purchase property in the past 3+ years might have been better spent addressing the needs of tribal members. The question is where did the money come from for the purchase of these properties and why weren't any of the 12 parcels in the fee to trust application purchased? Perhaps a check of EPA GAP Grant records would show whether the "landless" Lone Band has ever used their 40 acres near Lone to apply for and receive EPA grant monies.

In 2008 when the Notice of Intent for the DEIS was published the public was grossly misinformed with blatantly false information in the Federal Register that the Lone Band owned the ~228 acres in fee when in fact they did not own a single one of the twelve parcels in fee. If in fact, this statement were to have been true it would have been a direct contradiction of the all the references in the DEIS that the Lone Band was landless. Attempts to have the Department correct and reissue the notice were denied and the public was informed by George Skibine and others that the Band was in the process of procuring the properties. As of August 2010 the Band has not purchased a single one of the twelve parcels. The responses the public received to an obviously and easily provable false statement from the 2008 Federal Register Notice were just more male bovine excrement from the DOI, BIA, NIGC and EPA. These agencies have consistently demonstrated little interest in the accuracy and integrity of the notices, documents, and reports they provide to the public and this FEIS is simply more evidence of their aversion to the truth and facts about the Lone Band and their apparent willingness to promote this casino proposal and restored lands fee to trust application with outdated, inaccurate, contradictory, false and misleading information.

I believe the 2 parcel numbers excluded from scoping and included in the DEIS and FEIS are Parcel #12 and Parcel #2 based on the acreages provided in the DEIS. Your response at P17-76; "The exclusion of two project parcels from the NOI to prepare an EIS for the project does not prejudice the participation of any party in the environmental review process or the ability of any party to comment upon the environmental impacts associated with the project alternatives and proposed mitigation

measures." is the response provided to comments and questions related to the fact that scoping included 10 parcels while the FEIS included 12 parcels. However, your response at P17-141; "Refer to Figure 1-3 (Aerial Parcel Map) in Section 1.0 and Figure 2-7 (Alternative A Phase II Site Plan) within Section 2.0 of the DEIS. Several project components would potentially be located on Parcel #1 (including sprayfields, leachfields, the wastewater treatment plant, and the wastewater disposal line) and Parcel #2 (water supply well). No facilities would be located on Parcel #12 of the project site." indicates that a water supply well is located on Parcel #2 and no facilities are located on Parcel 12. The existence of a water supply well on parcel #2 would be pertinent, relative, and important as to the viability of the proposed casino project at scoping. Further if parcel 12 is not needed for any facilities related to the casino and if no tribal housing is planned why is it included in the Fee to Trust Application? It should be a simple exercise to explain why these two parcels were added after scoping and prior to the development of the DEIS and said explanation is requested.

If the facilities that would "potentially" be located on Parcel #1 are not ultimately located on Parcel #1 what would be located on Parcel #1 and on what other Parcel #'s would the facilities potentially not located on Parcel #1 potentially be located? After seven years one would think that the actual location of facilities would be known beyond "potential" locations. Have all the possible combinations of potential location of facilities including spray fields, leach fields, the wastewater treatment plant, and the wastewater disposal line been evaluated in this FEIS?

Your statement that in 2006 the BIA determined that the tribe is eligible to have land taken into trust as its initial reservation was highly questionable in the DEIS in 2008 and is even more questionable now. The legal landscape related to the fee to trust process has undergone substantive change since 2008 with the Supreme Court decision in *Carcieri*. The Ione Band's status as a restored tribe suffered a serious, if not fatal, setback with the withdrawal and reversal of the Ione Band's 2006 restored lands opinion by Solicitor David Bernhardt in January 2009. For the statement that the BIA determined in 2006 that the tribe is eligible to have land taken into trust to remain in the introduction of the FEIS is a clear indicator that the EPA and lead agency BIA are not interested in presenting the facts related to the Ione Band and their Fee to Trust Application for restored lands for a casino which is the reason for the EIS in the first place. The fact is that the document on which the BIA's determination that the tribe is eligible to have lands taken into trust pursuant to their Fee to Trust Application for "restored" lands no longer exists pursuant to the withdrawal and reversal of the BIA's 2006 determination by Solicitor David Bernhardt because that determination was wrong.

For the EPA to have responded to every question or comment concerning the accuracy and integrity of the information related to FTT process, or the history of the Ione Band in the DEIS with a no response required is difficult to understand given the fact that the January 16, 2009 memo that Solicitor David Bernhardt sent to George Skibine and NIGC contained the following.

"We are now in the process of reviewing the preliminary draft Final Environmental Impact Statement for the Plymouth parcel. As a result, I determined to review the Associate Solicitor's 2006 Indian lands opinion and have concluded that it was wrong. I have withdrawn and am reversing that opinion. It no longer represents the legal position of the Office of the Solicitor. The opinion of the Solicitor's Office is that the Band is not a restored tribe within the meaning of IGRA."

Odd that EPA's response to every comment raising any issue related to the 2006 restored lands opinion or the fee to trust process is "This comment is outside the scope of NEPA. No response required." when the very instructions on responding to the FEIS identifies the Project as a Casino Project and the title on

the Title Page informs the reader that it is a 228.04 Acre FEE TO TRUST Land Transfer and Casino Project. This response is even more difficult to understand given the fact that Department of the Interior Solicitor David Bernhardt while reviewing the preliminary draft Final Environmental Impact Statement for the Lone Band determined to review and reverse and withdraw a "wrong" opinion that was the very basis for the Lone Band's restored lands fee to trust application for a casino and the only reason for preparation and continued processing of this EIS. Apparently, Solicitor Bernhardt did not believe that issues related to the fee to trust process and the lone band were outside the scope of his review of the preliminary draft Final Environmental Impact Statement as part of NEPA.

An EIS's form, content, and preparation must foster "both informed decisionmaking and informed public participation." (*Friends of Southeast's Future v. Morrison* (9th Cir. 1998) 153 F.2d 1059, 1062-1063, quoting *California v. Block* (9th Cir. 1982) 690 F.2d 753, 761.) By presenting incomplete, misleading, and inaccurate information about the legal feasibility of proposed project, this EIS fails to inform the public and decisionmakers.

Based on the limited information available to the public it is reasonable to conclude that without the 2006 restored lands opinion there is no fee to trust application for restored lands for a casino and no need to do an environmental impact study for a proposed casino until such time as the now serious and substantive issues related to the Lone Band's lack of a restored lands opinion and fee to trust application for restored lands for a casino are fully resolved.

The EPA, and the BIA as the lead agency and the NIGC as a cooperating agency may have refused to respond to the comments and concerns about the restored lands opinion and the fee to trust process but the Office of the Solicitor and the Supreme Court have not refused to address these issues. Perhaps it would be in the best interest of the EPA to immediately withdraw this FEIS to avoid potentially serious legal ramifications related to providing misleading, false or fraudulent information in a government matter unless of course the BIA, NIGC, or DOI has provided EPA with evidence that the Lone Band is landless, is restored, and eligible to have land taken into trust for a casino pursuant to the IGRA.

1.1.1 Project Location. Of course you would not want the public or any official in Washington D.C. to know that the proposed casino is less than 12 miles from the Jackson Casino, or less than 12 miles from the approved Buena Vista casino, or include the distances to the Red Hawk (< 25 miles) and Thunder Valley (< 50 miles) and Black Oak (< 50 miles) as these facts related to the project location might provide a more complete and real picture of the project location as well as put the location in proper perspective with respect to the overpopulation and overexposure of Indian casinos in the surrounding predominately rural areas. As a result of this failure to disclose, the EIS suffers from an inadequate analysis of cumulative impacts, especially on air quality and greenhouse gas emissions in the Mountain Counties Air Basin.

1.1.3 Lone Band of Miwok Indians. The number of false and misleading statements in only three paragraphs is truly astounding. The Lone Band is not recently restored to recognition and has not lacked for tribal land. A review of the history uncertain organization status will find this is attributed to two major factors. 1. Ineptness of the BIA and 2. Tribal infighting. The tribe is not without benefit of any type of land base and has owned 40 acres near Lone since 1972. A check of EPA GAP grant records will find that this "landless" Lone Band has applied for and received GAP grant monies using the 40 acres near Lone during the very time they have claimed they are landless in their FTT application and during the time that the EIS was in process at EPA. (Copies of these grants available on request should the EPA not be able to locate these records) Taking more than 6 years to move from scoping to a FEIS could hardly be considered moving with deliberate dispatch. The tribe has not been without a land base

since at least 1972 and the final statement that the "Tribe..... remains landless to this day," in this paragraph is patently and blatantly false.

1.2 Purpose And Need. Pursuant to the Carcieri decision the authority of the Secretary has been severely limited and it is clear based on the lack of documents provided by the tribe related to their participation in the 1934 IRA that the Secretary of the Interior may not be authorized to take land into trust. The last paragraph alludes to a quickly growing Tribal member population which is not substantiated with any updated tribal membership numbers in the FEIS. Under purpose and need we are informed that improvement of existing Tribal housing and construction of new Tribal housing is one of the reasons for the tribe to acquire lands in trust. Based on the response to one of my questions of the DEIS this statement requires further comment. My questions are found at P17 103 of the FEIS comment letter section and the response is found at P17-103 of the FEIS Response to Comments.

If the tribe is landless, specifically what tribal housing will be improved and where is it now located?

Where will new tribal housing be constructed?

Are there any plans to build tribal housing anywhere on the 228.04 acres?

P17-103 As stated in Section 1.0 of the DEIS, the Tribe is landless and therefore there are no existing Tribal housing developments. The housing situation for the Tribe would be improved because members would have the wherewithal to obtain adequate housing or improve their current housing situation. There are no plans to build tribal housing at this time, as the Tribe does not currently have the economic means.

In the purpose and need section the public is informed that there is need to improve existing tribal housing yet in the reply to my question I am informed that there are no existing tribal housing developments so the statement in purpose and need that there is need to improve existing tribal housing is misleading and false, yet it remains in the FEIS. These contradictory statements in the EIS do not reflect a good faith reasoned response to my comment. (*California v. Block* (9th Cir. 1982) 690 F.2d 753.)

Again the FEIS states that the tribe is landless which is simply false. To my general question about where new tribal housing might be constructed the question is only answered concerning the +228 acres while ignoring the +47 acres the tribe purchased in November 2007 near the +228 acre site. This +47 acre site is relevant to the purpose and need beyond the false statement that the tribe is landless in that in April of 2010 the Lone Band published a public notice soliciting comment on a proposed road project. A reading of the Proposed Project at paragraph 1.5 of a document titled "Long Range Transportation Plan for the Lone Band of Miwok Indians" provided by the Tribe finds the following; "Future phases includes internal roadways and infrastructure for 125 single family homes by 2020 and internal roadways and infrastructure for an additional 125 single family homes (for a total of 250 single family homes on the specific Tribal Fee Land) by 2030.". And at paragraph 2.4.1 of the same document, The Tribal Fee Land (Project land) is proposed to include 125 single family homes for the Lone Band of Miwok Indians by 2020 and an additional 125 single family homes (total of 250) by 2030. The response to my question if not false is certainly misleading and incomplete due to the outdated nature of the information in this FEIS.

Reading further in Para. 2.4.1 of the transportation document finds the following; "The Lone Band currently has 40 existing single family homes for the Lone Band so the total available in 2030 would be

315 single family homes." (How 315 is arrived at is not known as 250 + 40 would only result in 290 single family homes by 2030) If this statement is accurate how do you explain your incomplete and inadequate response to my question about the location of any existing tribal housing? According to the Ione Band, as of April 2010 the Ione Band had 40 existing single family homes somewhere, which should have been included in their August 2010 FEIS. Again the information in this FEIS is false, misleading, incomplete, inadequate and outdated. Why is there no mention in the FEIS about the +47 acres, the existing 40 single family homes, or the plan to build 250 homes by 2030 as part of history of the Ione Band or included in the purpose and need section of the FEIS? If the neighboring construction of the 250 homes is contingent on the construction and success of the casino, and the casino needs the housing for workers or guest, these related projects should have been considered in a single EIS.

1.3 Overview Of The Environmental Review Process

The following is found within 1.3; "The BIA exercises final approval authority over the EIS and related documentation, and has furnished guidance during development of the EIS and has participated in the preparation process. Prior to release of this Final EIS, the BIA independently reviewed the EIS for content including context and intensity of potential environmental effects resulting from development of each proposed alternative and associated mitigation measures." It is not stated as to the extent of the BIA's review but it is inferred from the language that it might include more than the context and intensity of potential environmental effects resulting from development of each proposed alternative and associated mitigation measures. However, at response P17-112 the following is found; "The BIA was involved in the NEPA document preparation, and reviewed every section of the scoping report, DEIS, and the FEIS prior to release to the public." Therefore, based on these statements, the BIA is responsible for the integrity, correctness, accuracy, and adequacy of ALL the content of the DEIS and FEIS. Additionally, in response P17-138 the following is found; "The NIGC, as cooperating agency, has reviewed the DEIS and will review the FEIS." The BIA is well aware that much of the information included in this section and others is false, misleading, incomplete, inadequate, and outdated which is a dereliction of its duty as the lead agency and the NIGC also is well aware that much of the information included in this section and others is false, misleading, incomplete, inadequate, and outdated which is a dereliction of its duty as a cooperating agency. As an example, the BIA knows that the Ione Band is not landless, that the Ione Band's fee to trust application is an application for restored lands and they know that the restored lands opinion for the Ione Band has been withdrawn and reversed, and that the Ione Band is not eligible to have land taken into trust due to their non participation in 1934 in the Indian Reorganization Act and yet the BIA continues to provide via this FEIS what they know to be false, misleading, incomplete, inadequate, and outdated information about the Ione Band and their proposed casino project. The NIGC, based on the withdrawal and reversal of the restored lands opinion and the facts related to the action by Solicitor Bernhardt in informing the NIGC Acting General Counsel, is aware that the Ione Band is not landless or restored and the NIGC is also aware of the impact the Supreme Court decision in *Carcieri* had on fee to trust for gaming. Further evidence of the NIGC's knowledge of that the restored lands opinion is that the opinion which was on the website from at least 2007 through a portion of 2009 has been removed from the NIGC's website.

1.4 Regulatory Requirements, Permits, Approvals and Consultation

My comments on the DEIS related to Table 1-1 (P17-122) included a request that the approval of the Tribal State Compact by the California be included which has not been included but I was informed in the response (P17-122) that "Alternatives A through C cannot be used for Class III gaming without the approval of a Compact by the Secretary of the Interior. This requirement has been added to Table 1-1 of the EIS." While the approval of a Tribal State Gaming Compact has been added the approval

required by the California State Legislature and requested by me to be included has not been included. Please explain why my specific request to have the approval of the California State Legislature was not properly responded to and included in the FEIS. I must question the capability and expertise of the BIA and EPA to adequately administer this process when such a straightforward comment is responded to in the dismissive manner of this response.

Comments on Water Supply Option 2 (the preferred water option)

Water demand estimates for this project were vague and poorly presented in the DEIS and this has not changed in the FEIS. In fact the FEIS responses to comments actually contain within the responses contradictory information related to water supply. The following statement in Section 4.3 for water supply option 2 of both the DEIS and the FEIS. "The three wells located on or adjacent to the project site would be pumped in rotation to allow groundwater to recharge between pumping periods." Despite multiple comments and requests for a pumping schedule indicating how the wells would be pumped in rotation in my DEIS comments no such pumping schedule is presented in the FEIS. This is important based on a statement in the DEIS and amended in the FEIS to state that the water demand for Phase I and Phase II is 116,640 gpd. From this same paragraph; "As discussed in Section 3.3 the safe yield of the wells is estimated to be approximately 81 gpm which translates to 116,640 gpd. The 81 gpm only translates to 116,640 gpd if all three wells are pumped 24 hours a day. I now refer back to the statement that the three wells will be pumped in rotation to allow groundwater to recharge between pumping periods. Please explain the rotational pumping scheme or schedule where groundwater can recharge between pumping periods when all three wells must be pumped continuously twenty four hours a day to meet the alleged daily demand of 116,640 gpd.

Attempts to respond to my comments and comments of others concerned with the data and plan presented in the DEIS can be found in several of the responses. For further comments I now introduce the EPA responses found at P17-178, P17-196, L2-49, and F1-02. Response to P17-178 is "Refer to the response to Comment L2-49 for a discussion of the rotational pumping strategy that would be implemented." and response to P17-196 is "Refer to the response to Comment F1-02 regarding the pumping scheme of the groundwater wells." Response at Comment L2-49 reads as follows "In Section 4.3 of the DEIS it is stated that the Project wells "would be pumped in rotation to allow groundwater to recharge between pumping periods". This rotation schedule is simply an operational strategy to enhance well efficiency by providing periods of non pumping and dynamic water recovery. It was not intended to decrease the cumulative sustainable yield of the three wells (total recommended yield of 81 gpm), but instead was proposed as a more efficient means of producing the recommended yields of the wells. The rotation would involve pumping two of the wells concurrently at rates that are higher than the recommended yields, while the third well is allowed to recover. The effectiveness of the strategy would be monitored and evaluated and the strategy would be refined, as appropriate, to optimize well efficiency and reduce impacts." While I have several comments on the L2-49 response, let us now include a portion of the response from F1-02. "The results of the pumping tests indicate the local drawdown from these wells is minimal and potential impacts to the regional groundwater table can be maintained by utilizing a rotational pumping schedule as described below.

The three project wells would be pumped at the recommended long term yields, which consists of 10 gpm for well M1, 37 gpm well M3, and 34 gpm for H1, and the wells would be pumped in rotation to allow additional groundwater recharge between pumping periods."

These two responses are contradictory. It is obvious that the response to the EPA (F1-02) is quite different than the response delivered to Amador County (L2-49). Again, contradictory statements in

the EIS about water supply do not provide the "environmental full disclosure" required by NEPA. (*Friends of Southeast's Future v. Morrison* (9th Cir. 1998) 153 F.2d 1059, 1062-1063, quoting *California v. Block* (9th Cir. 1982) 690 F.2d 753, 761.)

Without a rotational pumping schedule it is simply impossible to determine any number of gallons per day (gpd) that can be delivered from the three wells. However, it is possible to state with certainty that if the wells are pumped in rotation at the recommended long term yields as discussed in F1-02 it is IMPOSSIBLE to deliver 116,640 gpd and without the trucking of water it is not possible to provide the amount of water required for the proposed project which is not 116,640 gpd but 128,500 as referenced in Table 6-1 of Appendix B. According to the EPA, the trucking of water is not recommended based on EPA's knowledge of tribal experience with trucked water yet the tribe insists on trucking water.

As a response L2-49 simply stands in stark contrast to anything presented in the DEIS or the FEIS and appears to simply be a cover up response to somehow rescue the inability of the wells to produce the amount of water necessary for the project. Even with this response it is not possible to determine whether the wells will deliver the needed amount of water since no information is provided as to how far above the recommended safe long term yield of the wells they are to be pumped or for what lengths of time or even which two wells would be pumped concurrently. From my reading of the well pumping testing it appears that a no time during the testing conducted from December 2003 to August 2004 were any of the three wells pumped concurrently. Additionally, I will include your response to a comment I made related to current well data for wells in the surrounding area referenced in the DEIS and FEIS. At comment P17-173 "The information from the well logs is summarized and included within Appendix C of the FEIS. The well reports are actually well completion reports required when wells are developed and reported to the permitting agency (Amador County Health Department). While the depth and construction data would not change over time, as a new well completion report would be required for physical changes to the well, the production rates and water levels may change over time." Based on this comment and the fact that the well data in the FEIS is nearly 7 years old and does not include any data related to new wells or data that any of the neighboring wells may have gone dry, experienced reduced production, or been deepened to find new sources of water. The method used to come to the conclusion that the wells H1, M1, M3 will produce 116,640 gpd is seriously flawed because not one single rotational pumping schedule has been provided that indicates that 116,640 gpd can be delivered from the wells.

Under no circumstance should any alternative included in this FEIS be approved except No Action until data based on well pumping data that simulates any concurrent pumping proposed is completed and made available for evaluation and comment and from which a more accurate amount of water delivery can be determined. In 4.3 it is clearly stated that the safe yield of the three wells is an ESTIMATED APPROXIMATION and the water needs a project of this size and scope with its enormous negative impacts on a small community like Plymouth must be based on something more than an ESTIMATED APPROXIMATION of the safe yield of the wells derived from data that is more than 6 years old and where no concurrent pumping tests were conducted. No pumping schedule has been included because it is impossible to produce the 116,640 gpd if the three wells are pumped in rotation at the recommended safe yield levels and there is no concurrent pumping data to support any concurrent pumping or a pumping schedule that includes concurrent pumping in the FEIS.

The following are from P17-154: What is the source of water to be trucked? What is the amount of water to be trucked? What is the size of trucks? How many trips a day are anticipated? The response to P17-154 gives reason for additional comments and questions.

P17-154 As addressed in Section 2.0 of the DEIS, the Tribe is in receipt of a will-serve letter from Aeropure, which states its ability to provide a stable supply of water for 5 to 10 years (Appendix D of the FEIS). Although the source of Aeropure's water is unknown, Aeropure is a licensed water hauler and the demands of the project alternatives would be required to fall within the water rights of Aeropure. The 8% of potable water demand that would be supplied via truck would account for approximately 10,000 gallons per day (gpd), or the equivalent of five water truck trips per day. Generally, water trucks carry approximately 2,000 gallons.

A reading of the referenced Aeropure letter finds it dated May 20, 2004 which means it is more than 6 years old which is important given the fact that the letter contains the following; "Aeropure Water has been in the water delivery business for over 17 years and can guarantee a five to ten year water supply for your project regardless of how the political winds blow." Is the delivery guaranteed for 5 or 10 or some number of years in between? The letter indicates that the amount of water to be delivered is 50,000 to 60,000 gallons per day not the 10,000 gpd included as part of the current water option #2 which causes me to ask, how much water has the tribe contracted for from Aeropure if any? I would have thought that sometime in the time between May 2004 and November 2007 and/or August 2010 that a more recent letter could have been provided. Just another example of the outdated information in this FEIS.

3.6 Cultural Resources - Lone Band of Miwok Indians

At page 3.6.6 it is stated that "The Lone Band of Miwok Indians has continuously used and occupied the lands located in Amador County, the town of Plymouth, and the surrounding areas as part of their traditional territory." This statement seems to contradict statements found in a brief filed by the Department of Interior in Case 1:03-cv-01231-RBW, Document 66 Filed 04/27/2007. *Italicized portions are not from the brief but are simply clarifying comments by me.*

From Page 6: In addition, lone's common land base, which it successfully quieted title to, demonstrates that lone's members lived in a centralized geographic location. And the members live in this centralized geographic location which happens to be 40 acres about 5 miles southwest of the city of lone and not on any lands in or near Plymouth.

From Page 7: Indeed, the lone were not, as Plaintiff suggests, merely individual Indians living in a California town. The Band lived on an Indian Rancheria, composed almost exclusively of Indian residents, who worked on a ranch that was contiguous to the Rancheria. This land is the same property where they have lived continuously and collectively until the present. This is the land where the lone Band has lived continuously since before 1916 and collectively until the present. Again, not landless.

From page 8: In the lone decision, the Assistant Secretary stated that she was acting to correct a failure to complete an acquisition of land to be held in trust authorized by the Commissioner of Indian Affairs in 1972. A reference to Assistant Secretary Ada Deere's action in 1994. A failure by the Department that continues to this day without explanation.

More than 37 years after Commissioner Bruce agreed to take the 40 acres into trust and more than 15 years after Assistant Secretary Ada Deere acted to correct a failure by the BIA and DOI to take the 40 acres into trust those 40 acres are still not in trust without any explanation from the BIA or DOI as to what either agency has done or is doing to complete what Commissioner Bruce authorized in 1972 and Assistant Secretary Ada Deere corrected in 1994. The Historic Lone Band, the one that has occupied the 40 acres near lone are still waiting for the BIA and DOI to take their land into trust while the BIA

and DOI are now attempting to take 228.04 acres into trust pursuant to a fee to trust application for restored lands for a group of people who, despite their and the BIA claims to contrary, are not the Lone Band. With access to a multitude of National Archive documents related to the Lone Band I find nothing in those documents indicating that the Lone Band was ever associated with the town of Plymouth or with any properties in close proximity of Plymouth. If any such documents exist please include them in the Cultural Resources section of the FEIS. NEPA requires that the EIS cite the documents that support its factual statements. (40 CFR 1502.21, 1502.24.) These underlying documents must be accessible and available to the public. (*Save the Niobrara River Association v. Andrus* (1977) 483 F.Supp 844, 850-851.)

With respect to any historical connection to the land in and around Plymouth the DEIS offered nothing beyond unsupported general statements that fail to provide any information from which any reasonable person could conclude that the Lone Band, so named due to the fact that they lived and worked in and around Lone not Plymouth, had any connection to Plymouth. All questions related to any potential finding that might actually indicate the Lone Band or any other Band of Miwok used the 228.04 acres were referred to Appendix K which is withheld due to the alleged confidential and sensitive nature of information contained in Appendix K. If this area were important to the Lone Band you might think that an EIS conducted on a portion of the 228.04 acres and lands adjacent to and in the immediate vicinity as part of the Pioneer Project would have received substantial contact or comment from the Lone Band after the agency conducting the 2001 EIS contacted the Lone Band. The Lone Band did not even respond and there is a good reason. This area and this specific property was not important to the Lone Band until they and their long since departed out of state investor decided it would be a good location for a casino. A careful reading of the section finds nothing of substance to support any historical connection to the 228.04 acres and in fact the only artifacts identified are related to mining. I submit that there is nothing in the Appendix K which supports any connection to the Lone Band of Miwok and any historical connection found in Appendix K to the land in and around Plymouth is as manufactured as their modern day connection as found in the "wrong" Artman restored lands opinion where Associate Solicitor Artman wrote. "Many of the Band's members live in the surrounding area and the Band has used facilities in the City of Plymouth to hold governmental meetings in recent years establishing a modern connection to the area." This modern connection as opined by Assoc. Solicitor Artman is a false and misleading statement as part of an artificial and transparent attempt to create a modern connection where none exists and the historical connection to Plymouth is simply non-existent as well. While the area contains much historical evidence related to mining it contains nothing related to the Lone Band of Miwok.

This concludes my comments related to this FEIS and it is a certainty that the outdated, inaccurate, contradictory, false and misleading information and data contained in this FEIS will continue to be challenged. Unfortunately, with the opportunity to properly respond to the many legitimate, fact-based concerns provided via multiple Federal, State, Local and Public comment letters to the DEIS and correct and/or update the many inadequacies and inaccuracies in the FEIS the EPA, BIA, and NIGC have chosen to ignore those with expressed concerns. The agencies have once again failed in their responsibility to provide the public and our elected and appointed officials with accurate, truthful, fact-based information and data on which to make an informed decision.

In closing I include the following excerpt from the DOI Office of Ethics webpage which seems to be unread and unused by some members of the BIA PRO, the BIA, the NIGC, and the DOI.

Fraud or false statements in a Government matter

An employee shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry. Special attention is required in the certification of time and attendance reports, applications for employment, requests for travel reimbursement, and purchase orders and receiving forms. 18 U.S.C. § 1001; 43 CFR § 20.510

As part of these comments I submit my comments on the DEIS excluding those comments which received an adequate response to my questions and issues on the following pages.

Submitted by D.W. Cranford II
P.O. Box 794
Plymouth, Ca. 95669

Attachments: Solicitor David J. Bernhardt's January 16, 2009 Memo

Amador County Assessor Records for the Ione Band

Excerpts from the March 12, 2010 Long Range Transportation for the Ione Band

**Selected Comments on the DEIS submitted as part of FEIS Comments,
Ione Band of Miwok Indians Land Transfer and Casino Project**

To be blunt, this DBIS, like the fee to trust application and Artman opinion, is an absolute abomination. It is an affront to the history of the Ione Band, it makes a mockery of fact and truth, it is an insult to the public, it is a failure of the public trust and it should be an embarrassment to anyone who participated in its preparation or authorized its release for public comment. Outdated, incomplete, inaccurate, mistake filled, and filled with misleading and false statements that misrepresent the facts and history of the Ione Band hardly do justice in describing the contents of this DEIS.

Nowhere can one find a detailed project description as required by the NEPA and the contents are not only outdated, incomplete, inaccurate, misleading and false; they are organized in a such a way as to discourage review and comment, especially if one were limited to use of the on line version where moving from one section to another required many screens. Hard copies were not readily available and in fact some requesters of hard copies were informed that a hard copy was available at a cost of \$175.00. This process as administered by the BIA Pacific Regional Office has been and continues to be one that appears to have every intention of ramming a casino down the throats of an unwilling community in Plymouth and Amador County. More than four years for the tribe to prepare this DEIS and only 75 days for public comment. A request for an additional 25 days from our Congressman, Dan Lungren, was denied and the public hearing held just 33 days after the Federal Notice was a sham with those finding significant and numerous issues with the DEIS allowed only three minutes to vocalize their findings. Three minutes is not time enough to identify and speak to many issues found on page 1-1 of the Introduction let alone with the document itself.

Due to the many undocumented, false, fictitious, misleading, and fraudulent statements contained in this DEIS which have previously been brought to the attention of the Bureau of Indian

Affairs Pacific Regional Office, the Bureau of Indian Affairs Central Office, the Office of Inspector General, the Secretary of Indian Affairs, the Secretary of Interior, the Office of Indian Gaming and various members of Senate and Congressional staff I believe that continued use of these undocumented, false, fictitious, misleading, and fraudulent statements related to this project would constitute knowingly and willfully falsifying, concealing, or covering up material facts related to the Ione Band, Ione Band lands, Ione Band leadership and membership, Ione Band history as well as this proposed casino project in documented statements, representations, and writings including this DEIS, the Fee to Trust Application, the Artman restored lands Opinion, the briefs filed by the Department of Interior in the Muwekma Ohlone case in the D.C. District Court and the Federal Register Notice for this DEIS. The following excerpt, which seems to be unread and unused by BIA PRO, BIA, DOI and Solicitor's Office, is from the Department of Interior Office of Ethics webpage.

Fraud or false statements in a Government matter

An employee shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry. Special attention is required in the certification of time and attendance reports, applications for employment, requests for travel reimbursement, and purchase orders and receiving forms. 18 U.S.C. § 1001; 43 CFR § 20.510

My comments on selected and specific sections and pages and questions related to those selected and specific sections and pages of the DEIS are found on the following pages.

Executive Summary, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Introduction, Page i

Recent estimates based on public statements by tribal leaders place the number of members at over 700. Is the actual number of members known as of some date such as January 1, 2008? Please provide the actual number of members as of a date sometime in 2008.

If the Ione Band has no trust land does the Ione Band of Miwok own any fee land? If yes please include all assessor parcel numbers for all properties owned in fee by the tribe as of April 18, 2008.

Has the Ione Band at any time publicly stated since January 1, 2003 that it is landless or included a statement that it is landless in public documents or documents provided to the public by the Ione Band or their investor? Please provide reference to all instances where the Ione Band has represented to the public that it is landless.

As of April 18, 2008, the date of the Federal Register Notice for the DEIS did the Ione Band hold in fee any of 228.04 acres which the tribe has applied to have taken into trust? If yes, please provide all documents supporting this statement. If no, please explain why this statement with no basis in fact or truth was included in the notice to the public.

The tribe's eligibility to acquire land in and adjacent to Plymouth for a reservation is based on what supporting documents? Please provide all the documents that support this statement.

In the DEIS it is stated that Commissioner Bruce agreed to accept land into trust on behalf of the Tribe. In the letter addressed to Nicolas Villa Sr. and the Ione Band of Miwok Commissioner Bruce states that "As the Commissioner of Indian Affairs, I therefore, hereby agree to accept by relinquishment of title or gift the following described parcel of land to be held in trust for the Ione Band of Miwok Indians..."

a description of one specific parcel then follows. Please correct this statement in the final EIS to read that Commissioner Bruce agreed to accept the 40 acre parcel near Lone into trust on behalf of the Tribe. Commissioner Bruce's 1972 letter contains specific direction that the Sacramento Area BIA office assist in the preparation of a document containing a membership roll and governing papers which conform with the Indian Reorganization. Please include this membership roll and papers in the appendix with the Bruce letter or include an explanation with supporting documents as to why these documents cannot be included. If no documents are available please explain why Commissioner Bruce's specific directions have not been carried out in the past 36 years.

Was the Lone Band included on the list of tribes eligible for reorganization under the 1934 Indian Reorganization Act (IRA)? Was the Lone Band or were any members of the Lone Band contacted pursuant to the 1934 IRA? If yes to either question, please provide all documents indicating that the Lone Band was on the list of tribes eligible for reorganization in 1934 or that the Lone Band or any member was contacted pursuant to the 1934 IRA.

The DEIS states that Secretary Ada Deer reaffirmed the Bureau's commitment to bring land into trust and declare a reservation for the Tribe. This is not accurate and is a misrepresentation of the facts. Based on a reading of the Ada Deer reaffirmation letter of March 22, 1994 addressed to Nicolas Villa Jr., Secretary Deer, like Commissioner Bruce agreed to accept by relinquishment or gift the following described parcel of land to be held in trust for the Lone Band of Miwok Indians. The described parcel is the same specific parcel described in the Bruce letter. Please correct this statement in the final EIS. Nowhere in the March 22, 1994 letter does Secretary Deer refer to or even use the word reservation.

The reference to a reservation by Secretary Deer is contained in a July 14, 1994 letter where she is responding to a memorandum from the Area Director, Sacramento Area Office in which the Area Director apparently requested clarification of the March 22, 1994 letter. The declaring of a reservation was suggested as part of an alternative action to the taking of the specific parcel into trust and was not addressed directly to the Tribe but to the Sacramento Area Director. An accurate representation of the content of the letters is requested in the Final EIS. Additionally, please include all letters from Ada Deer to the Tribe or to the Sacramento Area Director in the Final EIS as well as all letters from the Tribe or from the Sacramento Area Director to Ada Deer.

Please explain why the specific 40 acre parcel described by Commissioner Louis Bruce and which both he and Secretary Deer agreed to take into trust for the Lone Band has not been taken into trust in the last 36 years? Please provide all documents supporting the explanation.

Does the EIS address in any way the unforeseeable consequences of Tribal actions related to the development and operation of one of the four related commercial alternatives? How will the tribe address any unforeseen consequences related to the development and operation of one of the four related commercial alternatives?

Executive Summary, Introduction, Page ii

Is grazing lands the only surrounding land uses south and east of the proposed site?

Are there any mining operations or mining claims south and east of the proposed site? If yes, please include this information in a new DEIS for public comment.

Executive Summary, Purpose and Need, Page ii

What is the current employment status of Lone Band members? Please include the number eligible for employment and number employed.

What is the history of employment status of Lone Band members since 2002?

Are there any Department of Labor data / statistics available on Ione Band employment? If yes please include this information and explain any large or unusual changes in employment numbers.

How many Ione Band members currently live in Amador County?

How many Ione Band members currently live outside Amador County?

How many Ione Band members currently live within 25 miles of the proposed Casino? Within 50 miles?

What are the current sources and amounts of revenue for the tribe?

Have revenues to the "landless" Ione Band led by Matt Franklin ever included EPA funds?

Did the "landless" Ione Band use the 40 acre parcel near Ione to apply for any EPA funds?

What current social and educational programs are available to tribal members through Federal, BIA, State, County, City, or private entities?

How many members currently use any social and educational programs available through Federal, BIA, State, County, City, or private entities?

What other economic opportunities have been explored? Please provide a list of other economic opportunities explored by the tribe with supporting documents.

Executive Summary, Alternatives, Alternative A, Page ii

Will the potentially reclaimed water storage tank be required or not? (Only 5 years to plan this)

Executive Summary, Alternatives, Alternatives Considered but Eliminated

When did the tribe consider the alternative 40 acre site?

Please provide all documents relating to any studies or analysis done in consideration of the 40 acre site?

Since the current proposal requires the removal of trees and vegetation and displacement of existing residents please provide analysis why this does not disqualify the current land as a viable site?

What is the extent of tree and vegetation removal required on the 40 acre site?

Are the residents that would be displaced members of the Ione Band? If yes, why are these residents not willing to be temporarily displaced in order to provide their tribe with a stable sustainable source of employment and revenue to be used to support social and educational programs for the elderly, the poor, and younger Tribal members? If no, why are they living on the 40 acres and why are they members of the tribe?

Are there any other casinos proposed within 5 miles of the 40 acre parcel that requires ancillary components such as a reservoir or wastewater treatment facility that requires more than 40 acres?

Please provide documentation that ancillary components such as reservoir or wastewater treatment plant are required if a casino were built on the 40 acre parcel and that the property is not capable of handling such components?

How much of the 40 acre property is located partially within the 100 year floodplain? Please provide documentation that some part the 40 acre parcel is actually in the 100 year floodplain and include the amount of the land that is within the 100 year floodplain.

Executive Summary, Table ES 1 Groundwater Use AA, AB, AC, AD, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

What would be the increase in groundwater use under these alternatives?

Why is the monitoring program being developed by the Tribe in consultation with the BIA and EPA only? Any monitoring program must include participation by off site users and the final EIS should include a monitoring program that allows for the participation of off site users.

The monitoring of the wells and reporting of the results must be completed by an unbiased third party and available to the public

Has any monitoring of the on site wells been implemented in the past 4 years? If yes, please include this monitoring data. If no explain why not.

What process would be used to determine if *significant* effect to off site groundwater users occurs? Who makes the determination? What criteria will be used?

How does monitoring the existing wells on the project site help determine whether off site wells are being significantly affected? Please explain and provide data that verifies that monitoring on site wells is an effective method of determining that off site wells are being adversely affected?

Will off site wells be included in the monitoring program? Off site wells must be included in any monitoring program.

How often will the monitoring occur or data be collected, documented, and reviewed? Please provide a draft of what the monitoring program process will entail in new DEIS for public comment.

Will the data be available to off site users?

Have other monitoring programs for wells in the Plymouth area been undertaken that have been completed or are still in process that indicate that the pumping of groundwater at the levels required by the project or that current levels of pumping by the City of Plymouth would in fact significantly affect off site wells?

Are any off site wells currently being monitored by any well monitoring program?

Have all the wells that might be potentially affected been identified? Please include all wells that the tribe believes might be affected in a new DEIS for public comment.

Has well data for all wells that might be affected been collected? If yes, please include these wells and data in a new DEIS for public comment.

Will there be a requirement that the tribe alter or stop its groundwater pumping regime? This must be a requirement in the mitigation.

Where is the pumping regime for each alternative defined? Please include the pumping regime in a new DEIS for public comment.

Will the tribe be required to pay for a new well or deepening existing wells? This must be a requirement in the mitigation. Please include in a new DEIS for public comment.

Are the pre project consumptive uses for off site wells known? If not how could the tribe or anyone know whether the pre project use is recovered fully? Does this mean that if an off site user had a 50 gpm well and it went dry due to tribal groundwater use the tribe will replace the well with 50 gpm well? Explain fully what this mitigation measure really means.

The offsite user will be connected to the tribes water supply. Are you serious? Do you mean the off site user will be connected to the very source of water that caused their well to go dry? Connected permanently or temporarily? At what cost to the off site user if any? What affect will this have on other off site users? Has this potential demand for water been included in the project's water demand

table? If this potential demand has not been included please include in a new DEIS for public comment.

Are any permits required for off site delivery of water by truck? If yes, will the tribe obtain the permits? When?

Is there a documented pumping regime for the three wells? Please provide the pumping regime in a new DEIS for public comment.

Section 1.0 The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Section 1.1 Introduction

Is the exact number of tribal members known as of any date such as January 1, 2008?

How many members were eligible to vote in the last election?

Is acting Regional Director Amy Dutschke a member of the Ione Band?

How many of acting Regional Director Amy Dutschke's relatives are members of the Ione Band?

While the tribe has no trust land or reservation does the tribe own any fee land? Please include information about any fee land holdings of the tribe as of April 18th, 2008 in a new DEIS for public comment.

Was the Ione Band landless in 1972 when Louis Bruce agreed to accept a specific 40 acre parcel into trust for the Ione Band or had the Ione Band acquired title to the property through a quiet title action? If the Ione Band was not landless in 1972 please explain how the Matt Franklin led Ione Band has claimed to be landless for at least the past 5 years.

Is there documentation that supports the statement that the BIA determined in 2006 that the tribe is eligible to have lands taken into trust as its initial reservation pursuant to 25 USC § 465? Please delete this statement or include supporting documents in a new DEIS for public comment.

Is the tribe eligible to have lands taken into trust as its initial reservation for gaming under the Indian Gaming Regulatory Act (IGRA)? If yes, please explain and if no, please explain in a new DEIS for public comment.

1.1.1 Project Location

Did the two scoping sessions noticed and conducted in 2003 and 2004 include all 12 parcels totaling 228.04 acres? If yes please provide the notices in a new DEIS for public comment. If no, please explain why all 12 parcels totaling 228.04 acres were not included.

Explain why the scoping sessions were noticed and conducted on 10 parcels totaling 208 acres and include in a new DEIS for public comment.

When will scoping be conducted for the two parcels totaling nearly 20 acres be notices and completed?

Why would scoping not be required on these parcels? Please explain and include in a new DEIS for public comment.

1.1.3 Ione Band of Miwok Indians

How recently was the tribe restored to recognition? Please include documents that support official action by the U.S. Congress or the Department of Interior to restore the Ione Band? Please provide the official notification sent to the Ione Band informing the Ione Band that it was TERMINATED and the official notification sent to the Ione Band informing the Ione Band that it was RESTORED in a new DEIS for public comment.

Duplicate - Refer to Comment Letter P3

Please explain the lack of tribal land statement in light of fact that the Department of Interior agreed to accept land the Ione Band owned in 1972 into trust in 1972 and again in 1994? What happened to that land?

What, if anything, was the tribe been using for a tribal land base from 1972 to 2002 and what if anything has the tribe been doing to acquire a land base from 1972 to 2002?

What exactly does uncertain organization and status mean? How long has the status been uncertain? Why was the status uncertain? How long was organization of the tribe uncertain? Why was the organization uncertain?

Why would the DOI in 1972 and 1994 agree to take land into trust for a tribe whose organization and status was uncertain? Please explain.

Why was the organization and status uncertain given the specific instructions contained in the Bruce letter in 1972? Please explain in detail and provide supporting documents.

Is this proposed casino project the only source of economic opportunity, employment, education, housing, and other services for tribal members?

Are tribal members not eligible for economic programs, education programs, housing programs, and other services from the Bureau of Indian Affairs, the Federal Government, State Government, County Government, City Government and other entities? Please explain why the Ione Band needs more opportunity than is offered through all the programs available from the above listed agencies and the United States economy.

Specifically, what developments related to gaming does the tribe plan to develop on this site?

Specifically, what are the kinds and magnitudes of the unmet needs of members related to employment, education, and socioeconomic needs? Please provide information as to what specific needs are not being met and why these needs cannot be met through all the incentive programs available from the BIA, Federal, State, County, City governments and other private entities.

Has any determination been made to quantify the revenue stream required to meet the unmet employment, education, and socioeconomic needs of the tribal members? Please provide this data.

Would this initial reservation be the result of a Section 83 action and decision?

In order for land acquired after October 12, 1988 to be eligible for gaming as an initial reservation the tribe must have successfully completed the Section 83 Acknowledgement process. Has the Ione Band completed the Section 83 Process? Did the Ione Band ever attempt to complete the Section 83 process? If yes, was the tribe successful?

While there may be much land that could be within a tribes ancestral territory; as a restored tribe proposing to engage in Class III gambling a tribe must show a historical connection and modern connection to the restored lands. Please provide the documents supporting any connection historical or modern of the Ione Band to the Plymouth site.

Is there any evidence that the Ione Band resided on the Plymouth site since pre colonial times or at any time? If yes please provide the evidence which has been verified by at least two independent archeologists, ethno historians or other experts.

Are there any documents that support that the Ione Band has lived on or near the 40 acre parcel described in the 1972 Louis Bruce letter since the early 1900's and that this land has been the acknowledged land base for the Ione Band for a hundred years or more? If yes, please correct the statement that the tribe was without benefit of any type of tribal land base.

Specifically, how near is the Plymouth site to where treaties were negotiated?

If the tribe remains landless to this day what happened to the 40 acres near Ione? Has the tribe recently (in the past 12 months) purchased any land in or near Plymouth?

How many parcels of land does the "landless" Ione Band own in fee besides the 40 acre parcel near Ione? Please include all information about any land or parcels the Ione Band owns.

Section 1.2 Purpose and Need

Are there means other than gambling that could meet the diverse and urgent needs of the tribal members?

Specifically, what is the diversity of needs of Ione Band members?

Specifically, what needs are urgent and why are they urgent?

Why are these diverse and urgent needs not being met with current programs available from the BIA, Federal, State, County, City, private entities, the tribal government, and by the members themselves?

Given the fact that this proposed project is now 5 years old with no end in sight how have the urgent needs been met in past years and how will they be met in the coming years when no casino is built?

In order to consider the present state of the tribe we need to know the present condition of the tribe. Please include this information in detail.

At what rate is membership increasing and why? Please provide a history of membership since at least 1972.

What is the history of the tribe? Please include a detailed documented history of the Ione Band.

What specifically in the history of the tribe, and the modern day needs of the tribe and its tribal membership provide a strong basis for acquiring the lands in and near Plymouth?

What employment and educational opportunities and critically needed social services will the tribe provide that are not generally already available?

Specifically, what critical social services are needed?

Will this proposed project actually increase tribal employment or just increase employment opportunities?

How many tribal members will actually hold real jobs in the casino if the casino project were built?

What is the current socioeconomic status of the tribe?

If the tribe is landless, specifically what tribal housing will be improved and where is it now located?

Where will new tribal housing be constructed?

Are there any plans to build tribal housing anywhere on the 228.04 acres?

How many tribal members live in or within 10 miles of Plymouth? 25 miles? 50 miles?

Specifically, what kind of welfare services would be needed after the proposed casino is operating?

Why would any welfare services be needed after the proposed casino is operating?

How much capital would be available for investment after the diverse, urgent and critical needs of the tribe are met?

Specifically, what other developments are planned and are these development planned in or near Plymouth? What is the Environmental Impact of these planned developments?

Will the revenue stream generated by the casino project not be sufficient to meet the needs of the tribe and the tribal government so that additional developments are needed? If no, why are the additional developments needed?

What governmental powers of the tribe require acquiring land beyond the 40 acres in Ione ?

How many members are currently enrolled to receive or are receiving public assistance funds?

Section 1.3 Overview of the Environmental Review Process

Does the following statement indicate a conflict of interest by the BIA? If no, please explain why not. "The BIA exercises final approval authority over the EIS and related documentation, and has furnished guidance during development of the EIS and has participated in the preparation process."

While the BIA "assumed" the "Lead Agency" role for the completion of the EIS could the Lead Agency role have been assumed by another agency?

Specifically, what guidance was furnished?

Specifically, how did the BIA participate in the process?

Have any of the employees of the tribal Fee to Trust Consortium operating at the BIA PRO participated or been involved in preparing the EIS?

Has the Ione Band contributed to the Fee to Trust Consortium operating out of the BIA Pacific Regional Office?

Did the Inspector General find that this Fee to Trust Consortium to be in fact a "conflict of interest" in a September 2006 report?

On April 18, 2008 was the Acting Regional Director of the BIA Pacific Regional Office a member of the Ione Band?

Is the current Acting Regional Director of the BIA PRO a member of the Ione Band?

Have any former Acting Regional Directors of the BIA PRO been members of the Ione Band?

Have any relatives of present or former BIA PRO Directors or Acting Directors been members of the Ione Band? If yes, how many

Are any relatives of present or former BIA PRO Directors or Acting Directors current members of the Ione Band? If yes, how many

Was the Notice of Intent to prepare an EIS published in the Federal Register on November 7th, 2003 for 12 parcels and 228.04 acres? If no, how many parcels and how many acres were described by the November 7th, 2003 Notice?

Please explain why this DEIS includes parcels and acreages properties not included in the November 7, 2003 NOI?

Please explain why this DEIS includes parcels and acreages not included in the January 20, 2004 NOI?

If this is a decision on the Fee to Trust Application, how can a decision on the FTT be made since the application as noticed in November of 2006 was incomplete with more than 20 documents withheld from public review and comment including the Artman restored lands opinion?

When will the public be allowed to comment on the restored lands opinion, that was listed as an exhibit for the FTT Application but was withheld from comment?

Section 1.4 Scoping

Why were two scoping sessions held?

Was a public hearing on the Ione Band of Miwok Indians Fee to Trust and Casino Project EIS Scoping Report required? If yes, when was the hearing held?

Table 1 - I

Is a compact approved by the California State Legislature required? Please include this approval in Table 1-I.

Is this a complete list of approvals needed?

SECTION 2.0 Alternatives, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

2.0 Description of Project Alternatives

2.2.1 Alternative A – Proposed Casino and Hotel

Where in Phase I of Table 2-1 are the associated facilities included? ie parking, water, wastewater, fire protection etc.

Table 2-1 is nothing more than a list of the buildings, their purpose and square footage. A more comprehensive table that actually indicates the phases of development is required and must be included in the FEIS.

Development Standards Phases I and II

How would the tribes development in compliance with the building code standards described in this section be verified? Please explain. Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance to the building code standards?

After the tribe issues a certificate of occupancy is the tribe liable for any injuries suffered as a result of shoddy workmanship or non compliance to building / construction standards?

How will verification that the tribe has adopted and is complying with standards no less stringent than state public health standards for food and beverage handling be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

How will verification that the tribe has adopted and is complying with standards no less stringent than Federal air quality, water quality, and safe drinking water standards be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

How will verification that the tribe has adopted and is complying with standards no less stringent than Federal workplace and occupational health and safety standards be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

How will verification that the tribe has adopted and is complying with applicable Federal laws regarding public health and safety be accomplished?

Who will verify? How often? Will reports or inspection results be available to the public?

What liability is the tribe subject to for non compliance?

What does make "reasonable provisions for adequate" emergency, fire, medical, and related relief and disaster services for patrons and employees of the gaming facility actually mean?

What liability is the tribe subject to for not "reasonably" providing "adequate" emergency, fire, medical, and related relief and disaster services for patrons and employees of the gaming facility?

While designing a sprinkler system to comply with applicable is commendable the question is will the system as installed actually comply with the applicable codes?

Will the automatic fire detection and alarm system located throughout the buildings that triggers the emergency voice alarm signaling systems comply with applicable codes as installed?

Phase I Land Trust Action

Were parcels 2 and 12 listed in Table 2-2, Trust Parcels, included in the two Scoping sessions? If no, was a scoping session ever conducted these two parcels? If yes please explain how the scoping session acreages were listed at ~208 acres in the Federal Register Notice and the DEIS Federal Register Notice is for ~228 acres?

If these two parcels and ~20 acres are to be included in the fee to trust application is scoping required for these parcels? If no please cite applicable U.S. Code and Code of Federal Regulations. If, yes, when will the scoping session be held and when will it be noticed in the Federal Register?

Are any facilities, buildings, wells being used for this project located on either of the two parcels not included in the previous scoping sessions? If yes, what specifically is located on either parcel that will be used.

Was compliance with Section 20 of the Indian Gaming Regulatory Act included in the tribes incomplete fee to trust application in November 2006? If yes, where in the tribe's Fee to Trust Application would one find documentation that the tribe is in compliance with Section 20? If, no why was the documentation not included and when will this compliance to Section 20 be included in the tribes fee to trust application?

Has a final Department decision been made that the Ione Band's fee to trust application is compliant with Section 20 of the Indian Gaming Regulatory Act? If yes please provide the documents that indicate a final decision has been made.

Since the DEIS states that the BIA determined in September 2006 that the Ione Band is eligible for an initial reservation which part of Section 20 must the Ione Band comply with in its Fee to Trust Application? Two Part or Land Settlement or Initial Reservation or Restored Lands

Is the Ione Band eligible for an initial reservation for gaming per the Indian Gaming Regulatory Act?

Management Contract

What process will the NIGC use to look at the overall effect the project will have on human health?

Where is the data and analysis related to the project's affects on human health?

Does the NIGC provide regulatory oversight on Class III tribal gaming operations to ensure the integrity of the games subsequent to the CRJT (Colorado River Indian Tribes) decision?

Does the tribe currently have any contract with any management company or any other entity to assist with funding?

Why is the management company required to comply with the terms of IGRA and NIGC regulatory requirements related to the operation of the TRIBAL gambling facility? Why is the Tribe not required to comply? Is the Tribe liable for non compliance?

Casino Complex

Will any portion of any casino complex facilities be located on parcels 1, 2, or 12? ie wells, spray fields, reservoirs etc.

What small retail shops and how many?

What kind of alcohol (beer, wine, liquor) would be served throughout the casino?

When will the responsible alcoholic beverage policy be developed and adopted? This policy should be part of any mitigation measures and must be included in the DEIS and FEIS.

Water Demand and Supply

Option 1

How was it determined that the total water demand for Phase I Option I with or without use of recycled water would be met by the City of Plymouth's municipal water supply? Please include this analysis.

Did the water demand estimates for the year 2025 for the City of Plymouth include the use of water for a casino complex? Please include a more up to date estimate?

Was the pipeline project designed to meet the water demand needs of the City of Plymouth or the needs of this casino complex project?

Option 2

What is the source of water to be trucked? What is the amount of water to be trucked? What is the size of trucks? How many trips a day are anticipated?

Is pumping at rate of 83 gpm 24 hours a day required to sustain a yield of 119,520 gpd?

In what rotation and for what time frames would the 3 wells (M1, M3, and H1) be pumped? Please include the pumping schedule for the wells.

Was the approximately 10,000 gpd of brine included in the water demand estimates Table 2-6? If so where?

How was it determined that 70% of demand for Phase I can be met by groundwater wells? Please include this analysis or a reference to the location of this analysis?

Is May 20, 2004 the most recent will serve letter from Aero Pure?

What is planned beyond the 5 to 10 year guarantee of delivery of water from Aero Pure?

Section 3.0 Description of the Affected Environment, The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Section 3.3 Water Resources

3.3.3 Groundwater

Groundwater Usage

On what data is the statement that the City of Plymouth obtains its water supply from two groundwater wells located near the intersection of Burke Drive and Fiddletown that produce approximately 175 gallons a minute?

Have these two wells been tested and shown to have a long term yield of approximately 175 gpm?

On what data is the statement that two additional wells located north of the City produce flows of approximately 250 gpm?

Have these two wells been tested and shown to have a long term yield of approximately 250 gpm?

Does each well produce 250 gpm or is the combined flow of the two wells 250 gpm?

It is not stated that the City of Plymouth owns or receives water from the two wells producing 250 gpm so does the City of Plymouth receive any water from these two wells? If yes in what quantity.

How many wells does the City of Plymouth use to supply City water?

Has the City ever had to limit pumping from any of its wells due to excessive drawdown in the well? If this has happened please include this information as part of the history of water use in the basin. A group with a historical and modern connection to Plymouth planning to build a casino should know this information.

How much of an overdraft in the groundwater basin has over pumping by the City of Plymouth caused?

Are there other wells in the groundwater basin evaluated by Ketron other than the wells included in the DEIS? How many wells have been drilled in the basin since 2004? How many wells in the basin have gone dry or become unusable due to lack of water since 2004?

If more than one season of above average rainfall is needed to make up for the identified groundwater deficit, how many would be needed? This is important since California is now in a drought.

How large is the identified groundwater deficit? Has the deficit increased since 2004? If yes by how much?

Did you make any attempt to collect any data to measure the impact of the groundwater deficit to other groundwater users in the basin? For example how many wells within one mile of the City of Plymouth's wells have had to be deepened or new wells drilled?

Why is there nothing in this section relating to the number of wells within Watershed 1 within 2 miles of the proposed project?

How many wells are located within Watershed 1 within two miles of the project site?

You reference the 36 wells and well reports for Watershed 2. Please include these reports as an appendix.

How long ago were the wells drilled? How are the wells used?

Is the data from the well reports current?

Did you follow up with any of the 36 users to verify that the data from the well reports was still accurate?

Project Site

At page 3.3-9 we read "Due to the unique geology of the project site and outlying areas, no single groundwater basin exists." Please explain or provide data to support this statement since at page 3.3-8 you included the following: "Together these four wells represent the majority of the water usage for the basin..." (Ketron, 2004) and "Increased pumping by the City has led to an overdraft of groundwater in the basin even in years of average rainfall." (Amador County, 2007)

Does this mean that there may be multiple basins? If yes how many basins have been identified.

Table 3.3-4 Long Term Well Yields indicates that the recommended total long term yields (gpm) for wells M1 (10 gpm), M3 (38 gpm), and H1 (35 gpm) is 83 gpm. At page 2-10 it is stated that the total sustained yield of these three wells is 119,520 gpd. and that the three wells will be pumped in rotation to allow for recharge between pumping periods but no pumping schedule is provided. 83 gpm x 60 minutes gives a result 4,980 gph and 4,980 gph x 24 hours gives a result of 119,520 gpd. This above

described scenario raises several questions.

Will all three wells be pumped at 83 gpm when they are being pumped in the pumping schedule?

At what rate will the wells be pumped?

Have any of the wells been pumped at or above 83 gpm during step drawdown, constant rate, or constant yield/drawdown testing or at any time?

If the wells are pumped in rotation at the long term yield rates of 10 gpm, 38 gpm, and 35 gpm it would appear that the maximum daily yield of the wells would be less than $38 \times 60 \times 24$ or 54,720 gallons.

If the wells were each pumped for 8 hours and rested 16 hours it would appear that the maximum daily yield would be 39,840 gpd.

There are many potential pumping schedules that will produce a different amount of gallons per day so please provide the pumping schedule with pumping rates that verifies that the daily long term yield of three wells is 119,520 gpd.

3.9 Public Services

3.9.1 Municipal Water Supply

If yes, how long has the City of Plymouth been under the building moratorium?

How many building permits are currently available in the City of Plymouth?

According to the General Plan in place in 2004 was the Arroyo Ditch determined to be the City of Plymouth's primary source of water?

Was the Arroyo Ditch purchased by the City from the County in 1987 or did the City only purchase the right to maintain and operate the Ditch? Please include the purchase agreement that supports this statement.

Is the City's growth limited because of a too small storage tank or an unreliable water supply?

If the City had a larger storage tank would the building moratorium be lifted so the City could accommodate future growth?

"This water supply nearly meets existing average day demands of 205 gallons per minute (gpm), but does not meet existing summer or maximum day demands of over 450gpm." $205 \text{ gpm} \times 60 \text{ mins} \times 24 \text{ hr}$ gives a result of 295,200 gpd or 107.4 million gallons annually.

If the water supply does not meet the existing summer maximum day demands has the City of Plymouth ever run out of water during summer months? If yes, provide documentation and if no, please explain this statement.

You state that annual water sales peaked at 72.4 million gallons in 2004 (198,000 gpd). How are water sales relevant to water supply when you have already provided data the water supply nearly meets the water demand of 205 gpm or 107.4 million gallons annually?

What is the current number of building permits available in the City of Plymouth?

It appears that data from this section is from 2004 and years prior and therefore its accuracy as to current conditions must be questioned as to the amount of groundwater the City removes from the basin. Please provide updated water data from 2007?

Will the AWA pipeline as currently designed deliver sufficient water to supply the City of Plymouth with enough water to meet the demand for proposed projects not including the Casino?

Groundwater

Please provide data to support the statement that approximately 50% of the 87 wells south of the City of Plymouth produce greater than 50 gpm. Where are these wells located? What is the long term yield of these wells? When were the wells drilled? How far south of the City?

4.3 Water Resources

Groundwater

There appears to be a typo of 81 gpm when it should be 83 gpm. 81 gpm delivers 116,640 gpd not 119,520 gpd.

Please explain how the three wells will deliver 119,520 gpd if they are pumped in rotation.

If necessary pumping by the City of Plymouth has led to an overdraft of groundwater in the local basin please explain how an increase of more than 40% (295,000 gpd City of Plymouth / 119,520 Tribe 40.48%) would contribute to the existing overdraft of groundwater in the local basin and results in a less than significant effect?

3.6 Cultural Resource

3.6.3 Regional Archaeology

While this section makes for interesting reading, is there any history of archaeological excavations in or near Plymouth that are related in any way to the Ione Band of Miwok? If yes please at least include a statement in this section that such a relationship exists?

3.6.4 Ethnography

Is there any physical evidence that the village of Yuleyumne was located where the City of Plymouth is located currently? Was Yuleyumne a permanent village? Was Yuleyumne actually located at the confluence of the Middle and South Fork of the Cosumnes River?

Unlike other mining towns Plymouth is not situated on a river or creek. What was the source of water that supported the village of Yuleyumne? How far is it to the nearest source of water from Plymouth? How many other, if any, Miwok villages are located where there is no source of water in close proximity in all seasons of the year including summer?

Please include the Levy information and documents with the context of the comment in the Appendices

Ione Band of Indians

Exactly what lands in Plymouth has the Ione Band continuously used and occupied? Continually used and occupied since what date?

How long has the Ione Band been associated with, continually lived on, occupied, and used lands southeast of Ione?

When the United States attempted to buy land for the Ione Band early in the 20th century did they attempt to buy land in or near Plymouth or did they attempt to buy land southeast of and near Ione where the Ione Band lived?

What lands have ancestors of the present day Ione Band occupied in Amador County since 1840? Please support this statement with documentation.

What is meant by around Amador County? Alpine, Calaveras, El Dorado, Sacramento and San Joaquin Counties are not Amador County and if the ancestors of the present day Ione Band are from those counties then they should site their casino in one of those counties.

Is there a letter from Ada Deer clarifying that it was her intent to recognize the Indians on the land near Lone? If yes, please include a reference to this letter and include the letter in the appendices.

Is there a letter from Ada Deer that verifies that the primary reason the Lone Band was reaffirmed was their ownership of the land near Lone? If yes, please include a reference to this letter and include the letter in the appendices.

Is the Federal Recognition of the Lone Band by Louis Bruce in 1972 based on the fact that the Lone Band had obtained title to the 40 acres near Lone? If no, please explain.

Did Ada Deer ever restrict attendance at Lone Band tribal meetings or meetings organizing the tribe to those who lived on the 40 acres near Lone or in Amador County?

How many current members live in Amador County not counting the members of the Historic Lone Band who live on the 40 acres near Lone?

Has tribal chairman Matt Franklin ever lived in Amador County or on the 40 acres near Lone? Has Vice Chairman Jamerson ever lived on the 40 acres near Lone?

What is the problem, if any, with the title to property held by named individuals of the Historic Lone Band and other members of the Lone Band that would prevent the United States from taking the land into trust?

Was the Lone Band ever instructed by any agency of the United States as to what needed to be changed on the deed so the United States could accept the property in trust? If yes, why has this not happened?

3.6.5 Historical Context of the Project Area

Is there any reference to the Lone Band that could be included in this section? Please explain why nothing related to the Lone Band was included in the historical context of the project area.

3.6.6 Cultural Resources

Did Windmiller and / or Osanna contact the present day Lone Band of Miwok as part of their study and 2001 Pioneer Mine Project Report?

If the present day Lone Band of Miwok was contacted by Windmiller / Osanna did they respond to the contact?

If the present day Lone Band of Miwok did reply please include their reply and if they did not reply please explain how a project in an area of such historical and cultural importance to the Lone Band did not warrant a reply in 2001 but is now so closely associated with and vitally important to the Lone Band.

The records search also revealed the presence of cultural resources recorded in close proximity to the project area. Are these cultural resources related to the Lone Band?

Does close proximity to the project area mean that the resources are not on the 228.04 acres? Approximately what distance is defined by close proximity?

Field Survey Methods and Results

Did ECORP find anything related to the Lone Band of Miwok Indians in their survey? If yes, please describe what was found that related directly to the Lone Band.

Based on the statement that "None of the isolates recorded within the project area display any exceptional qualities." and that Table 3.6-1 does not list a single cultural resource that appears to have any connection to the Lone Band is it accurate to say that the project area contains nothing of cultural importance to the Lone Band beyond its value as a casino site? If no, please explain.

Contemporary Resources

Were any of the contemporary resources related in any significant way or any importance to the Lone Band prior to 2003? If yes please explain the relationship and why it was significant?

Native American Consultation Results

How many letters were sent and to what Native American Contacts?

How was the project described in the letters?

How many replies were received and how many were no comment and how many expressed no concern?

What reasons were given as to why there was no concern expressed concerning the project?

Appendix B Wastewater and Water Study – This The information in this appendix is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

2.0 Projected Flows

Why are general assumptions being used? Are there no documented project, facility designs from which to work? If there are no project facility designs from which to work please explain. If there are project facility designs from which to work explain why general assumptions are being used.

Please explain why the analysis begins with estimates on wastewater flows because wastewater flows are more available than water usage information? I do not believe that wastewater flows are available and that water usage information is not? Please explain why estimated water usage information is not available and estimated waster water flows are available.

Is this a standard method / practice in the industry to calculate water usage? If not why was it used for the DEIS?

2.1 Wastewater Flows

What facility programs were used to calculate the wastewater flows? What facility design documents were used?

How accurate are the estimates obtained using this method and these facility programs? Is the accuracy based on facility designs?

Why were assumed flows from other similar casinos used and not the actual flows? From what other similar casinos were "assumed" flows used? How similar were these casinos?

Why is it not known whether the casino and hotel heating and air conditioning system will include cooling towers? Why is this critical design information not available?

Is the size of cooling towers and amount of water they require known for other "similar" facilities?

2.2 Water Demands

Table 2-6 – is the water demand for the Brine included here? If not please include the water demand for water brine and update the table.

Is there any data available that supports the statement that similar facilities operating in California have historically recycled 40% of the wastewater flow for recycled water use? Please provide this data.

3.5 Water Facilities

"Due to the limited amount of available water supply in proximity to the project site, a multitude of supply sources are anticipated to be required to meet the various alternative's water demands. The proposed sources of water for the project site include onsite wells and off site wells, as well as trucking

water."

How limited is amount of available water supply in proximity to the project site?

What portion of the water demand will be met with on site wells?

What portion of the water demand will be met with off site wells?

What portion of the water demand will be met with trucked water?

Is it stated anywhere in this report that the demand for water for the project will be met by groundwater from 3 onsite wells? (see page 4-3-8 & 4-3-9)

3.5.1 Water Treatment Plant

The iron and manganese sludge will be disposed at what local sanitary landfill?

Water Storage Tank and Pump Station

Have the projects fire flow requirements been determined? If no why not? If yes, please include the required fire flow requirements.

Please provide tank sizes for no use of recycled water and for use of recycled water?

Wastewater Facility

5.2.1 Membrane Bioreactors

How many MBR's are in operation in California?

Do these MBR's comply with or meet CEQA standards for wastewater treatment?

How reliable are MBR's? Please provide operation and maintenance history data from actual users.

Page 5-6 Are the average day flows for other surrounding casinos actual flows, or assumptions, or estimates?

6.0 Conclusions - The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Table 6-1 Summary of Demands and Flows - According to the DEIS 119,520 gpd is the potable water demand for Phase I & II Alternative A using recycled water while this table indicates this demand to be 128,500 gpd. Please explain the misrepresentation of the potable water demand in the DEIS for use of recycled water as well as the demand without use of recycled water? Please explain all differences in the amounts of water demand required contained in Table 6-1 with the water demand presented in the DEIS.

Figure 6-1, Figure 6-2 Do these Flow Diagrams include the water loss from the Cooling Towers?

Why is the amount of water to be trucked not included in the DEIS while it is included here?

How many trips required to truck 80,780 gpd?

Appendix B Pumping Tests Sustainability Analysis for Wells H1, M1, and M3, and Evaluation of Water Quality

2.1 Hydrology/Geology

Page 4 These 96 wells are very likely located on the eastern side of Plymouth not the Western. Please check this and change as necessary. If these 96 wells include the wells of the community of Burke Ranch are there any Well Logs available that indicate how many if any of these wells have needed to be deepened or new wells drilled by the property owners since 2003? Please include this data.

Have the wells in Burke Ranch been plotted? This is development of 5 to 7 acre parcels and a plot of

these wells and their proximity to the project should be included.

Please provide data to support statement that approximately 50% of these wells are reported to produce more than 50 gpm? When were these wells drilled? When was the last time these wells were tested?

Is it possible that some of these wells no longer produce 50 gpm providing they did in the first place?

How many of these wells produce 10 gpm or less?

3.1.6 Measurement of Discharge Rate

Table 3-4 indicates that well M3 Discharge Rate test was performed at 60gpm for 188 mins and 70 gpm for 60 mins. At 3.1.6 it is stated that no meter calibrated above 50gpm was available, how was the 60 and 70 gpm rates for M3 determined?

4.2 Recommended Long Term Well Yield

This approach assumes that sufficient precipitation will occur and that a significant percentage of recharge will reach the aquifer. It also assumes that the interconnected fracture network extends beyond the radius of influence created during the test, and that these fractures have sufficient storage to produce sustainable yields. However, these conditions may not be realized.

What is the impact to the long term yield of M1, M3, and H1 if these conditions are not realized?

What is the impact to neighboring wells if these conditions are not realized?

Well M1, M3, H1 – what are the remaining degrees of uncertainty inherent these wells?

Why are the Lower Limits not used as the recommended Long Term Yields for wells M1, M3, and H1?

Since 2004 what has prevented additional testing to determine the actual long term yields?

Why wait until the first year of production to determine the actual long term yields when it could have been done anytime since 2004? Based on the data presented in the DEIS I believe it is impossible for the three wells (M1, M3, H1) to produce the 128,000 gpd required for this project.

The need for additional wells can be assessed to meet the required water demands. The need for additional wells is obvious based on the data provided. No data has been presented that demonstrates that M1, M3, and H1 can meet the water demand needs or is the trucking of water not needed?

5.0 Statement of Liability (dated October 20, 2004)

This Report was written to document testing activities related to estimating the long term yield of water from certain wells at the Site based on a limited number of observation points and limited duration tests. Further investigation, testing, and data analysis can reduce the inherent uncertainties associated with this type of testing. The Report is based on factual information obtained from Analytical Environmental Services, and others, that has been assumed to be correct, accurate, and complete. Applied Engineering does not guarantee the correctness, accuracy, or completeness of those data.

Why is the number of observation points limited and duration of tests limited? Was there not enough time between 2004 and 2008 to conduct more testing of longer duration?

What are the inherent uncertainties associated with this type of testing?

What is level of uncertainty based on the limited observation points and limited duration tests used for this Report?

Is there a Statement of Liability from Analytical Environmental Services? If no, why not?

Appendix O Phase 1 - The information in this appendix is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

1.7 Walk-Over Site Reconnaissance

Were Parcels 2 & 12 included in the Scoping Sessions

2.6 Aerial Photographs

Does the 1962 aerial photograph show any evidence of a sawmill on any of the properties or having been on any of the properties ?

2.9 Historical Uses of the Project Parcels

Were any of the parcels or any portion of the parcels used for a sawmill?

Section 3.0 Site Reconnaissance and Interviews

Appendix A Environmental Data Report – Database Search - The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Executive Summary page 4. It is simply not believable that the sites listed could not be mapped due to poor or inadequate address information. Please explain why these well known local sites were not mapped.

Appendix R Economic Impact Study - The information in this section is inaccurate, incomplete, obsolete and needs to be edited until it is accurate, complete and up to date.

Has this document or a previous version been included on a list of documents listed as part of the fee to trust application but that was withheld from public review and comment?

With respect to the following comment on page 26 concerning zoology; "Surveys of the study area in September and November 2003 did not reveal the presence of any nesting raptor or migratory bird species, or the presence of old nests." I have several questions and comments. To begin raptors nest during the spring months, generally April and May, and not in September and November. Surveying for nesting raptors during September and November speaks to a potential lack of expertise in the surveyor. Please explain why no surveys were done in the past 4 years during months when raptors are breeding and nesting. More importantly, why was this survey of the area pertinent to this DEIS done in September and November of 2003 prior to any scoping session being conducted? Is this information in the DEIS from another Environmental Study for some other project? Perhaps the environmental study completed for a proposed project named the Pioneer Project is the source for the information in this DEIS. Surveys for the parcels in the 22.04 acres must be conducted and completed at the proper times and seasons of the year to properly evaluate the impact this proposed casino complex will have on flora and fauna.

Lastly, with respect to the absence of a required formal development proposal. If such a proposal has been submitted the public in Plymouth is not aware or in receipt of such a proposal. The MFIB has released public relations flyers with general descriptions but at no time has the public been provided with a formal development plan and it would appear that some of the firms retained to provide evaluation of the project impacts have not received such information either. It is clear that the firm providing waste water and water demand analysis does not know whether cooling towers will be used as part of a heating and/or cooling system used in the project as they had to assume that cooling towers would be used. This is but one of many examples that could be cited where assumptions and estimates are required in the impact analysis and assessment for lack of a formal development proposal.

Does the analysis of 3 and 4 year old data generally found in this DEIS meet the requirement of the gaming checklist found at Page 4 L 151.10.g? If yes please explain.

I would be remiss if I did not include some comment on alternative sites for this project. I will propose two alternatives, one in Sacramento and one in Stockton. In Sacramento, there have been several very costly unsuccessful efforts by the City to revitalize the K Street Mall. Everything a casino needs may already exist in terms of infrastructure. Mass transit is in place and access to Interstates 5 and 80 is less than 5 minutes away with easy access from highways 99 and 50. No need to build restaurants and hotels as many are located in and near K Street. This is a site that would require less capital, create less impact to the environment and could potentially be an asset to the City if casinos are indeed the economic engines they claim to be. The second proposal in Stockton has no specific area identified but with several areas in Stockton in need of economic revival I believe that the tribe could present a proposal where the tribe would work cooperatively with the city. The tribe would build only a casino, and then the City and private business would provide the hotels, restaurants, and shops in the area surrounding the casino with less environmental impact than in Plymouth. Both these proposals are much more a win win for a tribe, a city, and private business willing to work cooperatively. There is but one fly in the ointment for the MFIB relating to both these proposals. Their well documented history of misrepresenting themselves as the landless restored Ione Band of Miwok will surely follow them where ever they might make another proposal – no matter the merit that such a proposal might have for all concerned.

This concludes my questions and comments and I would hope that the response to all DEIS comments be more timely than the response to comments submitted by citizens, citizens groups, City, County and State governments related to the inadequate and incomplete November 2006 Fee to Trust Application. It has been nearly 18 months since comments were submitted and no response has been received pursuant to those comments from the BIA PRO Director or any other official source.

Given the fact that the process acquiring land in trust for gambling allows a limited number of days for public comment with no apparent time limit for response I would expect that I could receive answers supported by current data and documents to my several questions as well as a comprehensive response to my comments on this DEIS within 180 days. This is a much more generous limit of time than the 75 days allowed by the BIA for review and comment on this massive DEIS. If the requested response cannot be provided within 180 days please provide reason for the inability to provide the requested response by letter or email no later than 180 days from July 2, 2008 or by December 29th, 2008.

Additionally, selected citizen, and city, county and state government comments on the Fee to Trust Application in 2007 were improperly and unethically submitted directly to the law firm of Holland & Knight (the firm then representing the MFIB) by then BIA PRO Director Clay Gregory for review and comment back to Director Gregory. While the process requires that the Regional Director provide the Tribe with copies of comments on their fee to trust application nowhere is there any requirement for the Regional Director to provide copies of fee to trust comments directly to the Tribe's law firm or tribal attorneys and there is most certainly no requirement that the Director request comment from the Tribes law firm or tribal attorneys. To the contrary the process requires that the Director make such review and comment independently. Independent comment which has not been forthcoming for nearly 18 months and "independent" comment from a BIA PRO regional director now appears unlikely given the fact that the then Regional Director received the comments he requested from the tribe's law firm of Holland & Knight via memo from Rory Delwig. Due to that most unprofessional and unethical action engaged in by then Director Gregory, I now make specific request that my comments on this DEIS not be submitted directly to the MFIB's law firm or their attorneys for review and/or comment.

COMMENT P5-09
Duplicate - Refer to Comment Letter P3

Should you have any questions related to these questions and comment please contact me using the contact information that follows.

Respectfully Submitted,

D.W. Cranford II

P.O. Box 794

Plymouth, Ca. 95669

209 245 4588

plymouthbutch@hotmail.com

Dr. Elida A. Malick
Box 264
Fiddletown, CA 95729
September 02, 2010

To: Dale Risling, Acting Regional Director
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

Re: FEIS, Ione Band of Miwok Indians, Land Transfer and Casino Project

P16-03 "As stated in Section 3.7 of the DEIS, the Ione Band of Miwok Indians has 652 members. The basis of the commenter's reference to "approximately 85 members" is unclear."

Original Comment: Explain the increase in membership of approximately 85 members to the current number.

Section 3.7.1, Socioeconomic Characteristics of the Ione Band of Miwok Indians, makes the unclear and unsupported statement that this tribal band has 652 members. Yet, it is common knowledge that the band of Indians known historically as the Ione Band of Miwok Indians that reside on tribal land in Ione, California is a small group that has generally numbered about 85 to 90 individuals. While the original comment may have been unclear, the BIA (Bureau of Indian Affairs) as the experts in analysis of this Tribal group and their project would have been expected to know the original tribal membership numbers and if they did not know, they should have known. The BIA could certainly have surmised from the commenter's request that an increase in membership had occurred, possibly with the prospect of a casino project, and could have researched how the tribe arrived at its current enrollment number.

No response to comment.

P16-04 and P16-05 "Refer to the response to Comment P16-03 regarding Tribal membership. Details regarding Tribal membership criteria are not necessary for an analysis of socioeconomic impacts associated with the project alternatives."

Original Comment: Provide documentation to support that the over 500 individuals newly added to the tribe qualify as legitimate tribal members according to tribal charter and enrollment criterion. And Document the City or town of primary residence of the 652 tribal members.

The entire purpose of the proposed project is, ostensibly, to achieve economic independence for this tribal group. It goes directly to purpose to determine how many tribal members are expected to be impacted by this project. And, conversely, the greater the number of tribal

members the greater the size of the project needed to support this group. If the BIA makes a statement that the tribe is over 500 members more than the citizens of Amador County have ever known about in the past, then it seems reasonable to explain that increase in tribal size and verify the legitimacy of those members for if those numbers are bogus as suspected then the project scope should diminish in size and perhaps in ultimate need.

Just last year, the Department of the Interior's BLM was held in violation of NEPA for too narrowly defining its purpose and need, and thereby limiting the consideration of a reasonable range of alternatives.

"Agencies enjoy "considerable discretion" to define the purpose and need of a project. Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1066 (9th Cir.1998). However, "an agency cannot define its objectives in unreasonably narrow terms." City of Carmel-By-The-Sea v. United States Dep't. of Transp., 123 F.3d 1142, 1155 (9th Cir.1997). As the Friends court stated, "An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." Friends, 153 F.3d at 1066 (quoting Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C.Cir.1991), cert. denied, 502 U.S. 994, 112 S.Ct. 616, 116 L.Ed.2d 638 (1991)) (correction in original)." (National Parks Conservation Association v. Bureau of Land Management (2009) 9th Cir. Nos. 05-56814, 05-56815, 05-56843, 05-56832, 05-56908.)

"The BLM adopted Kaiser's interests as its own to craft a purpose and need statement so narrowly drawn as to foreordain approval of the land exchange.⁹ As a result of this unreasonably narrow purpose and need statement, the BLM necessarily considered an unreasonably narrow range of alternatives." (National Parks Conservation Association v. Bureau of Land Management (2009) 9th Cir. Nos. 05-56814, 05-56815, 05-56843, 05-56832, 05-56908.)

Despite this judicial rebuke, the Department of Interior's BIA seems destined to repeat this violation in this EIS.

While details regarding Tribal membership criteria are not necessary for analysis of socioeconomic impacts, verifying the legitimacy of the tribal membership is pertinent to the scope of the project needed if not its very existence. NEPA requires that the EIS cite the documents that support its factual statements. (40 CFR 1502.21, 1502.24.)

Later in this section AES makes the statement that many tribal members live in the City of Plymouth. The community is unaware of any tribal members that live in the City of Plymouth and takes this opportunity to ask for verification of that statement. No answer to this part of the comment has been provided.

P16-06 "The survey asked Tribal members about their employment and income status. The results are an accurate depiction of the 32% of the Tribe that responded to the survey."

Original Comment: "What type of survey was conducted and was this survey of a standard recognized in the data collection industry as being accurate?"

This is not a good faith response to the comment. .” (State of California v. Block (9th Cir. 1982) 690 F.2d 753.)

P16-08 “The survey consisted of a questionnaire of personal information regarding employment and income status. The questionnaire was distributed directly to Tribal members and estimates derived from the responses provided are the most recent and accurate information available.”

Original Comment: What measures were put into place to ensure accuracy of the data collected and to guard against individuals falsifying data in order to skew the results?

The statement describing the survey as being the most recent and accurate information available is highly questionable as the survey in discussion was conducted in 2004, 6 years ago, while the responses to the DEIS were prepared by November of 2008 leaving AES 4 years to collect more recent and accurate information.

No response to comment.

P16-09 “This data was based on the questionnaire distributed to the Tribe, of which 32% responded. Therefore, this value is representative of the 32% of the Tribe that responded.

Original Comment: Demonstrate the data that supports this estimate. (“It has been estimated that about 81-percent of all members have incomes below the national median income level.)

The statement in the DEIS says that 81-percent of all members have incomes below the national median income level. It does not indicate in the portion of text that we are taking about the 32% of the Tribe that responded to the survey.

The text should have been corrected to clarify this point.

P16-11 “...The employment and income data presented is not based on state data, but rather a questionnaire distributed to the Tribe in 2004. This data represents the most recent employment and income data available from the Tribe.”

Original Comment: It is now 2008; produce more timely data to support these descriptions of employment and income.

Data of employment and income was not updated in 2008 as requested and has not been updated as of the release of this FEIS in 2010. Furthermore, it has not been explained why state data would have been ignored and tribal data, especially with such a small sample size responding, used preferentially.

Did not modify analysis as requested.

P16-19 "This is a general statement provided for background information on the Tribe. It is not used to determine a potential Impact; therefore, providing further details is not necessary in the socioeconomic analysis."

Original Comment: In the Section entitled Tribal Attitudes, Expectations, Lifestyle and Culture, AES made that statement, "Both the Tribal government and individual Tribal members participate in area political and social activities." Commenter asked the following: 1. Document and provide proof to support this statement.

While it may be true that detailing Tribal background is not necessary to the socioeconomic analysis itself, it is reasonable to expect verification and support for a statement that the BIA has itself made in the text in order to authenticate the truthfulness of that statement.

Responses not supported by citation to reasons, sources, or authorities.

P16-20 "As stated in the response to Comment P16-05, details regarding the residences of Tribal members are not necessary for an analysis of socioeconomic impacts associated with the project alternatives."

Original Comment: 2. Document the primary residences addresses for all tribal members and notating those new to the tribe since 2003.

While details regarding the residences of Tribal members may not be necessary for an analysis of socioeconomic impacts associated with the project alternatives, an understanding of how many Tribal members could potentially move into the area near the proposed project location is essential to the determining the impacts associated with the proposed project. There was no response to the comment nor support for the statements by citation or authority. NEPA requires that the EIS cite the documents that support its factual statements. (40 CFR 1502.21, 1502.24.) These underlying documents must be accessible and available to the public. (Save the Niobrara River Association v. Andrus (1977) 483 F.Supp.844, 850-851.)

The BIA must provide a detailed evaluation of the growth inducing impacts of the proposed casino. In TOMAC v. Norton, 240 F.Supp.2d 45, 48-52 (D.C.2003) ("TOMAC II"), the BIA was enjoined from taking land into trust because in the environmental review, the BIA failed to explain its "conclusion that an increase of 5,600 new jobs, 800 new employees and their families, and related changes in physical development and natural resource use will not have a significant effect on a community of 4,600." Such a growth inducing impact analysis would begin with a verified understanding of how many Tribal members could potentially move into the area to work in the casino construction. The BIA refuses to provide such a verified estimate.

P16-21 and P16-22 "Potential impacts to schools from the project alternatives were evaluated in Section 4.7 of the DEIS. Providing further detail on the number of Tribal members' children attending school in Amador and Sacramento County is not necessary to assess potential impacts to schools."

Original Comment: 1. Document and demonstrate the number of tribal children attending school in Amador vs. Sacramento County. Document child enrollment in Amador County Schools. 2. Document child enrollment in Amador County schools for new tribal members (since 2003).

The original comment was seeking to verify the truthfulness of the statement by the BIA that Tribal children attend local schools. NEPA requires that the EIS cite the documents that support its factual statements. (40 CFR 1502.21, 1502.24.) These underlying documents must be accessible and available to the public. (Save the Niobraro River Association v. Andrus (1977) 483 F.Supp.844, 850-851.)

There was no request made in this comment to discuss impacts to school from the project alternatives. This section of the EIS is discussing the "Socioeconomic Profile of the Lone Band of Miwok Indian" and the commenter is seeking some form of proof that the comment by the BIA is in fact a true statement. There was no response to the comment nor support for the EIS statement by citation of authority.

P16-24 "As discussed in the response to Comment P16-13; further detail regarding the employment status of the tribal members is not necessary for an analysis of the socioeconomic impacts associated with the project alternatives."

Original Comment: Document by some verifiable method, i.e. tax records or other, the exact number of Tribal members employed by local business and if these Tribal members are new to the Tribe since 2003.

No reasonable response to comment was made.

P16-26 "All data and analysis of the City contained in the EIA and DEIS are relevant and accurate because of the data sources and assumptions used in these reports."

Commenter has attempted throughout questions posed of the DEIS to ascertain exactly what those "data sources are" and to be shown the calculations and other analysis that lead to the "assumptions made in the reports" based on the data. To date this information has not been forthcoming. NEPA requires that the EIS cite the documents that support its factual statements. (40 CFR 1502.21, 1502.24.) These underlying documents must be accessible and available to the public. (Save the Niobraro River Association v. Andrus (1977) 483 F.Supp.844, 850-851.)

No reasonable response to comment was made.

P16-64 "Although tribes are not required to do so, the Tribe would provide most workers with benefits, including health insurance and workers compensation. This practice would be enforced by Tribal ordinance."

Original Comment: Tribal governments are not required to adhere to State and Federal worker protection requirements. How will the provisions in the above statement be legally enforceable?

The original statement in the DEIS made reference to "workers." The response to comment reference is to "most workers" reducing the original text in the DEIS to an even more nebulous and unclear state. Now we must ask which workers will be excluded from benefits and worker protections. Secondly, enforcement by Tribal ordinance does not protect the non-Tribal community employed in casinos and therefore provides the data that the Tribe does not intend to be a fair and accountable employer in the eyes of the law.

Response does not answer the comment regarding legal enforceability.

P16-72 "Refer to the responses to Comments P18-55, P18-69, and P16-71 regarding the school impact fees.

Original Comment: On what basis is the onetime payment of \$107,610 considered sufficient to reduce impacts on the school to a less than significant level.

Comment P18-55 refers the reader to P17-67 through P17-90. There is no mention of school impact fees in these sections

Comment P16-71 reads, "The impact is considered "less than significant" because the schools would not lose any funding."

Ultimately there has been no response to this comment and no supporting citations to reason, sources, or authorities.

Just last year, the Department of the Interior was held in violation of NEPA for failure to assess whether proposed mitigation would be effective.

"An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective." "The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. (Methow Valley, 490 U.S. at 351-52, 109 S.Ct. 1835 (citing 42 U.S.C. § 4332(C)(1)). A mitigation discussion without at least some evaluation of effectiveness is useless in making that determination." (South Fork Band Council of Western Shoshone of Nevada v. United States Department of Interior (2009) 9th Cir. No. 09-15230.)

Despite this judicial rebuke, the Department of Interior's BIA seems determined to repeat the violation in this EIS.

P16-73, 74, and 75

All comments requesting validation of statements made by the BIA that money for school impacts will mitigate impacts to a less than significant level. None of these comments have been responded to and no supporting citations to reason, sources, or authorities provided.

P16-95 "The statement that the commenter is referring to is not related to residential development, but to the introduction of a commercial facility. A comparison of a commercial development to a residential development is not relevant to the crime impact analysis."

Original Comment: Referring to the DEIS text, "Whenever large volumes of people are introduced into a community, the volume of crime is also expected to increase. This holds true for the introduction of any large-scale development." 1. Provide documentation that reflects similar effects on local communities from the introduction of Class III gaming establishments compared to the introduction of residential development.

The commenter noted that the text of the DEIS did not specify commercial development and was seeking to gather information possibly distinguishing the differing impacts between planting a casino in this small, rural community or allowing it to develop in a more balanced fashion with small scale commercial and residential neighborhoods. The comparison is not essential to the discussion as an academic matter but is relevant to the discussion in terms of potential impacts.

No response to comment.

P16-96 "As discussed in Section 4.7, communities without casinos are as safe as communities with casinos because an increased rate of crime results from the introduction of a larger volume of people in an area and not particularly from casino facilities."

Original Comment: Considering that Amador County has itself experienced a significant increase in crime in the area of casino (Jackson Rancheria); provide specific case studies demonstrating the contention that non-casino communities are as safe as casino communities."

No response to comment nor support by citation to reasons, sources, or authorities.

P16-98 "As discussed in the response to Comment P16-97, the Tribe would make payments to the ACSO to provide for additional staffing and equipment that would be needed as a result of the selected project alternative. If the Tribe initiates further development in the future, it will remain in contact with local agencies regarding law enforcement needs.

Original Comment: Since Tribal entities are exempt from County and City general plan policies and implementation procedures as well as zoning regulations and other development regulations, they fall completely outside of the parameters of planned growth. Explain the above statement ("increased tax revenues resulting from Alternative A would fund expansion of law enforcement services required to accommodate planned growth.") in this context and how Counties and Cities are expected to accommodate, in terms of law enforcement, growth on Tribal land that is completely unplanned and uncontrolled.

The response to comment, "...remain in contact with local agencies regarding law enforcement needs," is in essence a non-answer to the question. Remaining in contact with local agencies is not an appropriate response regarding mitigation of additional staffing and equipment needs at the level of law enforcement. The BIA in preparing this document knows, or should know that law enforcement needs near casinos are real and serious and must be spelled out in legally binding agreements.

"Mitigation must be discussed in sufficient detail to ensure that the environmental consequences have been fairly evaluated." (*Carmel-By-The-Sea v. U.S. Department of Transportation* (1997, 9th Cir.) 123 F.3d 1142, 1154.) "A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." (*Neighbors of Cuddy Mountain v. U.S. Forest Service* (1998, 9th Cir.) 137 F.3d 1372, 1380.) NEPA requires that the agency discuss the expected efficacy of the mitigation, and provide factual support for this effectiveness. (*South Utah Wilderness Alliance v. Norton* (2003) 277 F Supp2d 1169.) The proposed mitigation discussion noted above falls short of this standard.

Conclusion

Earlier this year, the Department of the Interior was held in violation of NEPA for failures to adequately respond to EIS commenters. "The BLM neither responded to their considered comments "objectively and in good faith" nor made responsive changes to the proposed regulations. *Id.* "[P]ublic scrutiny [is] essential to implementing NEPA," 40 C.F.R. § 1500.1(b), and the BLM was required to "assess and consider both individually and collectively" the public comments received during the NEPA process and to respond to such in its Final EIS. *Id.* § 1503.4(a); see *Center for Biological Diversity*, 349 F.3d at 1167 (holding that the agency in that case violated NEPA when it failed "to disclose and discuss responsible opposing scientific viewpoints in the final statement"). We therefore conclude that the BLM violated NEPA by failing to take a "hard look" at the environmental consequences of the proposed regulatory amendments. (*Western Watersheds Project v. Kraayenbrink* (2010) 9th Cir. Nos. 08-35359, 08-35360.) After reviewing the BIA's response to the comments above, it appears that, despite 40 years of practice implementing NEPA, the Department of Interior and its agencies have yet to learn how to comply with the most basic tenants of the law.

From: Dick Minnis
P.O. Box 880
Plymouth, CA 95669

To: Dale Risling, Acting Regional Director
Pacific Regional Office, BIA
2800 Cottage Way
Sacramento, Ca. 92825

Date: 9/10/10

RE: Discrepancies: Ione Band of Miwok Final Environmental Impact Study,
Appendix M – Traffic Study (revised)

I. Overview.

An Environmental Impact Statement (EIS) must be a document with scientific integrity. NEPA demands an unbiased evaluation of environmental effects. (*NRDC v. Callaway* (1975) 524 F.2d 79.) Sources of information must be footnoted. (40 CFR 1502.24.) Study methodologies and model limitations must be disclosed and explained. (*Lands Council v. Powell* (2004, 9th Cir.) 395 F.3d 1019, 1036-1037.) Stale data cannot be used in an impact analysis to support an agency conclusion. (*Lands Council v. Powell* (2004, 9th Cir.) 395 F.3d 1019, 1035.)

One significant deficiency with this EIS concerns the scant 30 day time frame allocated for review. Such a limited period inhibits the public's ability to review and comment on the validity of such a lengthy document. This concern is amplified by the fact that the index for Appendix A (calculations) is listed in Appendix M and contains no page making it difficult if not impossible to find and verify calculations for specific data points.

The Draft EIS Traffic Study was a document developed with flawed methodology and inaccurate data and as such was worthless as a valid indicator for representing the degradation of Amador County's traffic profile as a result of this proposed casino project. To their credit, the Bureau of Indian Affairs required the Tribe to submit a revised traffic analysis for the Final EIS. Unfortunately, the Final EIS Traffic Study is as flawed as the original but in entirely different ways. There is a repetitive manipulation of the traffic data through assumptions and selective choices to reach an abstract under-representing both the volume of traffic and the effectiveness of mitigation measures. This is a worrying document that does not accurately represent the degradation to Amador County traffic flow that this proposed casino project will produce. It is a document with a conclusion one would expect a paid consultant to deliver to their client.

II. Existing Conditions.

The roadways delineated in the Existing Conditions section of the EIS become the basis for the roadways chosen for inclusion in the revised traffic study. These are the arterials and their intersections for which data was collected, forecasts made and mitigation measures considered. Although not stated explicitly, it is obvious the area of focus was directed at the routes between major population areas and the proposed site of the various casino alternatives. The problem with this approach lies within the cumulative nature of traffic. Like a small river constantly fed by even smaller streams the net effect can eventually become a much larger torrent of traffic.

The following omissions were highlighted in NCIP comments related to the draft EIS and inexplicably remain unaddressed in the revised traffic study:

- Fiddletown Rd. is the main access to the Plymouth area for Amador County upcountry residents or from Nevada via SR88 and Ridge Rd.
- Shenandoah Rd/SR16 connects with Hwy 50 east of Pollack Pines and is the logical route for the population living in the numerous communities southeast of Placerville. It is also the primary means for accessing over 30 wineries in the Shenandoah Valley.
- SR49 between Pleasant Valley Rd. and Miller Street which in sections is a tortuous two-lane road is also the major connector between Placerville and Plymouth. The intersections at both ends of this arterial are considered in detail but not the bottle neck in between.
- Old Sacramento Road which becomes Main Street within the Plymouth City Limits, connecting Latrobe and SR49 and is a faster route to the proposed casino location than connecting to SR16 then SR49.

It is illogical to assume the proposed casino would not generate traffic associated with these routes. Old Sacramento Road is the route of choice for locals heading for Latrobe and will undoubtedly be so for casino patrons. The Tribe has repeatedly touted the benefits of casino development for the wineries located on Shenandoah Rd/SR16 and should have included this arterial in the revised traffic study. Although associated with smaller traffic streams than those dealt with in the studied arterials leading from the Stockton and Sacramento population areas, these roads would unquestionably have an effect on the Level of Service (LOS) due to the cumulative nature of traffic. Would that effect be serious enough to require mitigation? We don't know, as they were not included in the revised traffic study. This omission is of particular concern regarding both the section of SR49 between Placerville and Plymouth and the section of Old Sacramento Rd between Latrobe and Plymouth due to the inadequacies of both those roadways in some areas.

It is essential to provide quantified and detailed information in the assessment of cumulative impacts across the impacted landscape. (See, *Ocean Advocates v. U.S. Army Corps of Engineers* (2005, 9th Cir.) 402 F.3d 846; *Lands Council v. Powell* (2004, 9th Cir) 395 F.3d 1019, 1035; *Habitat Education Center, Inc. v. Bosworth* (2005) 363 F.Supp.2d 1070, 1078.) The omission of these arterial roads is the first in a series of errors endemic in the revised traffic study.

II. Existing Plus Approved Project Conditions

A. 2010 Traffic Forecast.

The Final EIS uses 2008 traffic counts, industry standard methodology and reasonably accurate Caltrans estimates to generate traffic volumes for the 2010 LOS projections for selected intersections and roadway segments. As one would expect, there is a gradual deterioration of LOS designations the farther one moves away from the Plymouth vicinity and towards the Sacramento area with its larger population growth and greater development. The recent recession make these numbers somewhat overstated but that economic distortion will hopefully be temporary and the overall projections for 2010 are acceptable for a starting point of analysis.

B. 2013 Traffic Forecast.

Traffic studies take current data and using accepted methodologies attempt to forecast future Levels of Service. These projections require that various assumptions be made and the validity of the data is

dependent on the validity of the assumptions. Such a study can very easily become a case of garbage (data) in equals garbage (data) out. In a study where only the most advantageous criteria are selected for inclusion, the conclusion then becomes suspect. It is with the development of data for the 2013 projected traffic counts that one begins to see a subtle selection of criteria to achieve the desired results.

The 2013 EPAP (existing plus approved projects) analysis assumed the continued use of the 2010 EPAP roadway network, study intersections, intersection geometrics and intersection traffic control. The approved projects should only include planned developments and the specific road improvements associated with those developments. The analysis assumes a number of planned roadway improvements to be in place by 2013. However, all of the listed improvements are actually mitigation measures that will only occur if the planned casino project is approved. It is a highly questionable procedure to reduce the generated 2013 LOS forecasts by including mitigation measures at this point in the traffic analysis.

Further scrutiny of this issue is continued in Section V concerning the cumulative conditions. However, consider the reality of these assumptions. Appendix M lists only mitigation measures that are based on preliminary Caltrans fair-share calculations which totaled 100%. The rationale for inclusion at this point rests with the implied guarantee of the Caltrans calculations. However, in Section 5, page 25 of the EIS, the Tribe states that "actual funding mechanisms for impact mitigation shall be determined through negotiations at the time of project implementation." Does implementation mean a compact in place and the land in Trust? If so, then the Caltrans fair-share calculations aren't worth the paper they're printed on judging from California's past history in deal with mitigation funding for land already in Trust. The ability of a Tribe to hide behind the veil of Sovereign Immunity makes only those mitigation measures with an attached waiver of sovereign immunity worth considering as guaranteed. The EIS contains no such list. NEPA requires that an agency disclose the history of success and failure of similar projects. (*NRDC v. Grant* (1973) 355 F.Supp.280; *Sierra club v. Morton* (1975) 510 F.2d 813.) Specifically with regard to the mitigation component of a project, NEPA requires that the agency discuss the expected efficacy of the mitigation, and provide factual support for this effectiveness. (*South Utah Wilderness Alliance v. Norton* (2003) 277 F.Supp2d 1169.) Such a review of the efficacy of mitigation at past casino projects is missing from the FEIS

The probability of the entirety of the "100% Caltrans fair-share calculations" projects actually being completed is low and their inclusion in the 2013 EPAP LOS forecasts interjects a degree of uncertainty with the data. To label this section as a Non Project environment and then include project mitigating measures designed to improve LOS data is blatantly misleading. The use of mitigating measures to reduce non-project LOS data is the second in a series of errors endemic in the revised traffic study. Furthermore, since EIS forecasts for the various Casino construction scenarios, as well as the various mitigation measures are all cumulative based on the 2013 forecasts, then the LOS data contained in those sections is questionable as well. The entire traffic study then becomes one large unsubstantiated guess or a study with a deliberately understated conclusion.

IV. EPAP Plus Project Conditions.

One of the valid objections to the draft EIS Traffic Study contained in the NCIP response to that document was centered on the San Diego Area Governments (SANDAG) methodology for generating casino trip numbers based on gaming floor square footage and number of hotel rooms. In a tacit admission of the validity of that method the new traffic study attempts to generate a trip generation figure based on gaming floor square footage. The study selects 12 casinos and evaluates the data to develop a trip generation number. The study then rejects that number because the Trip Generation Handbook "recommends using a regression equation when there are 20 or more data points and a R^2 of greater than .75." By selecting only 12 casinos which resulted in a R^2 of .58 the study justifies this rejection and the subsequent use of a

weighted average for generation rates. Further justification is provided by claiming that the weighted average rate for the 12 casinos is greater than the rejected R^2 rate for those same selected casinos but this is a totally false and factually inaccurate conclusion. The study data was based on casino square footage but the SANDAG methodology also takes into account the number of hotel rooms. Alternatives A & B would generate an additional 2000 daily trips based on the size of the proposed 5 story hotel. Failure to account for hotel trip generation casts doubt on the validity of the selected trip generation rate. Furthermore Dowling Associates, Inc. chose the number of casinos selected and to deliberately choose a number that can then be rejected by the trip generation handbook is clearly stacking the deck. What would the trip generation number have been if 20 casinos had been included in the study and why wasn't the closest casino, the Jackson Rancheria, included? Data for the Jackson Rancheria could have been generated by simply looking at actual Caltrans average daily traffic counts over the time span of that Casino's construction and operation and correlating those numbers with actual gaming floor square footage. This would have provided a valid benchmark for any trip generation rates selected. In fact that correlation was done and submitted as part of NCIP objections to the draft EIS traffic analysis. The SANDAG methodology would have resulted in higher trip generation numbers and more severe degradation of roadway and intersection LOS forecasts.

Why should this matter when the EIS already renders a designation of "significant impact" to traffic resulting from the selected generation criteria. The answer resides in the mitigation solutions chosen to change the arrived at impact from significant to not significant. Generating more onerous and realistic trip data would make many of the selected mitigation solutions ineffective relegating the LOS of some intersections and roadway segments to an unacceptable status.

An agency is precluded from biasing analyses of alternatives in an EIS. The courts will not abide by such prejudicial agency behavior that renders impossible the fair and careful environmental evaluation that NEPA demands. (See *NRDC v. Calloway* (1975) 524 F.2d 79; *International Snowmobile Manufacturers' Association v. Norton* (2004) 340 F.Supp.2d 1249, 1261.) The net effect of the chosen assumptions in this FEIR is to essentially lower the bar, making claims of future mitigation plausible. These assumptions are the third in a series of errors endemic in the revised traffic study.

V. Cumulative Conditions.

A. Overview

Quoting from Section V of Appendix M of the EIS; "Cumulative conditions, or the future No Project condition, presents traffic conditions expected in 2025 without the proposed project." This standard technique requires the preparer to make certain assumptions about the future. To be credible those assumptions need to be grounded in reality or the validity of the derived data is highly suspect. This is particularly true in today's economic climate. With both the State and County Governments suffering severe budgetary constraints, it highly unlikely that some Appendix M assumptions can pass any reality check. If there is in fact no basis in reality for the assumed completion of these projects, then the LOS forecasts become worthless projections.

In developing this data, Appendix M refers to the SJCOG 2007 RTP (San Joaquin County Organization of Governments Regional Transportation Plan), the SACOG MTP 2035 (Sacramento Area Council of Governments Metropolitan Transportation Plan), and the 2004 Amador County RTP Update (Regional Transportation Plan) and to various road improvements "programmed in those documents and assumed to be in place for this (cumulative) condition." The word programmed is inferred with a certain connotation of certainty of timelines and funding that does not exist for every listed project if one peruses the referenced

documents themselves. While inclusion of funded and time lined projects is beneficial in arriving at valid LOS calculations, the inclusion of unfunded "wish-list" projects that have no reasonable chance of completion in the timeframe allotted serves only to skewer the results towards less onerous LOS projections. A number of questionable programmed projects (referenced in paragraphs B., C., and D. below) of the various Regional Traffic Plans are assumed to be sure things. The cumulative effects of their inclusion are the fourth in a series of errors endemic in the revised traffic study.

Additionally, Appendix M includes "roadway improvements that are assumed to be in place based on preliminary Caltrans fair share calculations which totaled 100% for 2010 and 2013 mitigation measures." To reiterate, road improvements intended as possible casino mitigation measures should not be included as part of the data intended to establish conditions in a no project environment. Particularly when the Tribe claims funding of these "100% Caltrans fair-share calculations" are actually subject to negotiated settlement. These improved roadway and intersection conditions dependent on mitigated measures belong in the mitigation section and their inclusion here artificially lowers the cumulative no project LOS data. Furthermore there is a concern that the beneficial effect of these assumed mitigations measures are being counted twice; once by lowering "no project" totals and then again in the mitigation section which is the area where they correctly belong. The inappropriate inclusion of these mitigation effects in the no project section is the fifth in a series of errors endemic in the revised traffic study.

B. SACOG MTP

The SACOG MTP 2035 has a 4 year funding look forward with specific funding sources identified for projects within that time frame. Phase two of the Missouri Flat interchange fits this description. Projects outside the 4 year timeframe are not guaranteed within the revenues expected but not yet identified by SACOG. With the exception of the widening of Sunrise Blvd to 6 lanes, none of the Appendix M roadway improvements listed as mitigation measure fall into the 4 year time frame according to a database provided by SACOG for SR49, SR16, Sunrise Blvd and Latrobe Road. In fact, all SR16 improvements east of Sunrise Blvd are programmed for development after the "cumulative condition 2025 timeframe. And their inclusion is troubling. SACOG maintains that their development will be dependent on available financing and are not in anyway guaranteed. The SACOG MTP 2035 financial forecast that would enable funding for these down line projects assumes a 2% increase in Federal highway funds every year and a 20% increase every 6th year. The forecast also assumes a 5% increase of Federal Trust Funds every year with an extra 5% every 6th year. No rational observer of the current financial environment in either Washington or California would consider these financial forecast valid yet the EIS basis much of its data on the assumption that numerous non-guaranteed projects would be unaffected by the current financial realities.

C. SJCOG RTP

The San Joaquin Council of Governments has an "Intelligent Transportation System" project list that is over 600 projects long. Projects are funded within a five year planning horizon with a 2 year update. Projects designated as Tier One are funded and those designated Tier Two projects are unfunded and not guaranteed. The section of SR12 which overlaps SR88 from west of Lockford to east of Clements is designated as a Tier one project and is slated for expansion from 2 to 4 lanes in 2016. There are no other scheduled Tier one projects for SR88. EIS mitigation measures that encompass an assumed improvement of SR88 to 6 lanes are bogus.

D. Amador Co. RTP

Section V of the 2004 Amador County RTP Update deals with the reality of programmed improvements in its regional traffic plan. To Quote Section V: "The Unconstrained Plan is the set of system-wide projects

and programs identified through the planning process without the consideration of the funding constraints that exist. The Unconstrained Plan would include all fundable ("Tier 1") projects and all unfundable ("Tier 2") projects shown on Table 5." The Appendix M assumption of SR16 improvement to 4 lanes between Stonehouse Road in Sacramento County and Ione Road is **not listed** in Table 5 of the Amador RTP either as a Tier 1 or Tier 2 project. It also does not appear on the SACOG MTP database. Its inclusion as a modifier of cumulative no project LOS forecasts is troubling.

E. Caltrans Fair Share Calculations

The various government agencies (referenced in paragraphs B., C., & D. above) repeatedly state that they are not necessarily going to actually improve road segments and intersections programmed into their various regional traffic plans unless funding becomes available. If the Tribe falls back on their sovereign immunity during negotiations and some projects, designated as 100% Caltrans fair-share calculations become less than 100%, then the difference negatively impacts the funding calculus of the various Government organizations. The net result would be a decrease in roadway projects and intersection improvements with a corresponding increase in LOS forecasts. To what degree this will happen is impossible to say but past Californian gaming history makes it a virtual certainty which becomes **sixth in a series of errors endemic** in the revised traffic study.

NEPA requires reasonable forecasting of impacts, and the disclosure of the risk of uncertainty regarding impacts. (*Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission* (1973) 481 F.2d 1079; *Northwest Indian Cemetery Protective Association v. Petersen* (1986) 795 F.2d 688.) This FEIS failed to disclose the great uncertainty associated with the completion of specific components of the road network assumed in the traffic model. Furthermore, the FEIS did not disclose the additional traffic impacts that would result from failure to complete those road network components. Instead, these issues were buried in model assumptions in technical analyses.

The Courts require that the agency take a "hard look" at the environmental consequences of the proposed action. A three part test is often used to determine if an agency took a "hard look". First, did the agency make a "good faith effort" to take environmental values into account by fully explaining in the EIS its inquiry, analysis and reasoning? Second, did the impact statement provide "environmental full disclosure" to members of the public, or did it contain vague, general, and conclusory reasoning? Third, does the EIS ensure the integrity of the decisionmaking process by preventing problems and criticisms from being "swept under the rug?" (*Silva v. Lynn (II)* (1973) 482 F.2d 1282.) By hiding the problems associated with funding the regional road network needed to mitigate the casino's traffic impacts, the BIA has failed to meet its "environmental full disclosure" obligation. Instead, BIA "swept under the rug" the serious traffic problems associated with the casino.

VI. Cumulative plus Project Conditions

The numbers and Levels of Service delineated in this section are invalid in that they are cumulative and are based on previous data that has been shown to be selectively biased to produce data more beneficial to the Tribes desired results. Stated another way, if the 2013 LOS projections are lower due to including mitigation measures in a section that is purportedly designed to establish condition prior to the casino project and if questionable program projects are included that stand little chance of being completed within the stated timeline, and if the methodology used to generate project conditions has also been selected to generate lower LOS data, then any cumulative projections based on those numbers will also be biased towards lower LOS forecast. Furthermore, the result is not arithmetic but geometric which means that the dismal Levels of Service portrayed in the various project scenarios would in actuality be far worse. This

progression of errors has the effect of dramatically lowering the bar for the required mitigation measures which may be exactly the intended result. This geometric skewing of the data is the **sixth** in a series of errors endemic in the revised traffic study.

VII. Mitigation Measures.

There are three different sections of mitigation considered:

- a section for Phase I of alternatives A,B,C and D
- a section for Phase II of Alternatives A and B
- a section for cumulative conditions which either repeat Phase I mitigation measures or expand on those measures as necessary

All told with some mitigation measures having two parts, there are 75 different roadway and intersection mitigation scenarios presented in Appendix M. The effect of the six previously noted errors endemic in this Traffic Study are cumulative and their overall consequence has been to significantly lower the validity of the forecast LOS estimates which need to be mitigated. That engineered lowering of the bar calls into question the validity of the mitigation measure that result in every scenario being assigned a "less than significant status" after implementation of the proposed project. An agency must have analytical data to support a conclusion that an impact is insignificant. (*Oregon Natural Desert Association v. Singleton* (1998) 47 F.Supp.2d 1182, 1193-1194; *Idaho Sporting Congress v. Thomas* (1998, 9th Cir.) 137 F.3d 1146, 1151; *Blue Mountain Biodiversity Project v. Blackwood* (1998, 9th Cir.) 161 F.3d 1208, 1214.) Because of the flaws in the traffic analysis of this FEIS, the BIA lacks the necessary data.

However, it is not necessary to consider each mitigation measure on an individual basis. Selection of a few will make the point. Appendix M uses the implementation of the Lone Bypass as the mitigation fix for 5 different problem areas. The Lone Bypass is Tier 2 unfunded project on Amador County's RTP "unconstrained" wish list. Depending on the scenario considered and the Casino Alternative in play (A, B, C, or D), the Tribe proposes to pay anywhere between 12% and 37% of the Lone Bypass as a mitigation measure. However, any percentage of zero is still zero but apparently the Tribe considers zero sufficient to reduce a finding of significant impact to one of less than significant.

One other example should suffice to illustrate the implausibility of most of this section. There are 12 Phase I scenarios mitigated by "100% Caltrans fair-share calculations." One of these is widening the section of SR16 from Stonehouse Rd to SR104 from two to four lanes. SACOG has identified a section of SR16 from South Watt to Sunrise Blvd for widening from two to four lanes at an estimated cost of \$110,800,000. Appendix M claims that the Tribe under "100% Caltrans fair-share calculations" will pick up the entire Tab for a section of SR16 over twice as long as that contemplated for widening by SACOG. (No wonder the Tribe inserted an escape clause stating that actual funding levels will be negotiated after the project is approved.) Appendix M suggests this irrational probability is sufficient to reduce a finding of significant impact to one of less than significant.

If the Tribe is allowed to use "100% Caltrans fair-share calculations" as an acceptable mitigation response then the Tribe should be required to fund these projects at these calculated levels. Inserting the requirement for negotiations to determine the funding level negates the literal meaning of "100% Caltrans fair-share calculations". The result is a deceptive and misleading reduction of traffic impacts by giving the appearance of appropriate mitigation measures where such measures may or may not exist depending on negotiations. This renders 12 of the mitigation measures unreliable and is the **seventh** in a series of errors endemic in the revised traffic study.

As noted above, NEPA requires that the BIA to discuss the expected efficacy of the mitigation proposed in the EIR, and to provide factual support for its alleged effectiveness. (*South Utah Wilderness Alliance v. Norton* (2003) 277 F.Supp2d 1169.) The EIS provides no financial feasibility analysis to demonstrate that theoretical road projects, relied upon for mitigation in traffic analysis, will actually be built. This is in sharp contrast to environmental reviews of other local projects, prepared under the parallel California Environmental Quality Act, that very candidly disclose that funding shortfalls will result in significant traffic impacts.

What will likely happen if this project is approved is that some major improvements on SR49 within close proximity of the casino will be implemented as will a smattering of turn lanes and a number of intersection signals. The overall implementation of the mitigation measures suggested by Appendix M will never occur because most simply can't pass a reality check. The residents of Amador County will be saddled with the resulting traffic quagmire.

VIII Revised Traffic Study Omissions

The omission of the following considerations is the **eighth** in a series of errors endemic in the revised traffic study.

A. Inter-Casino Traffic.

Appendix M mentions the proposed Shingle Springs Casino and the Buena Vista Casino in section 3 covering the existing plus approved projects conditions. It does not take into account inter-casino traffic as gaming patrons make the rounds attempting to change their luck or are just moving in between venues on some other pretext. Few visitors to the Shenandoah wine area visit a single winery and it is highly likely that gaming patrons would behave in a similar fashion. This would increase the casino trip generation totals and needs to be accounted for.

B. Additional approved projects

Section 3 of Appendix M delineates a long list of approved projects and the corresponding trip generation rates that were included in the EPAP condition. However, as previously mentioned, the traffic study ignores the impact of Shenandoah Rd. and this error is compounded by not including the new wineries under construction one of which is constructing a small amphitheater as a small concert venue. While the Sutter Creek Gold Rush Ranch and Golf Resort was not an approved project in time for inclusion in the original Appendix M, it was well enough along in its project review process to be included as a reasonably foreseeable. It is now approved. The very size of that development and the negative impact it will have on LOS forecasts demands inclusion. It is likely the combined effects of both projects will dwarf the effects of any EIS forecast made for those projects that deals with them independently. This is a matter of very serious concern.

C. Scheduled Special Events

Appendix M does not take into account the traffic congestion generated by three regularly scheduled events that consistently achieve high attendance figures. The LOS impact of the 4-day Amador County Fair, 2-day Big Crush Wine Festival and the 2-day Behind the Cellar Door Wine Festival are ignored. Not only will they negatively impact LOS forecasts during their scheduled time frames, but the unmitigated traffic congestion generated by the casino project will negatively impact these very important Amador County events.

D. Ione Band of Miwoks Long Range Transportation Plan (LRTP)

In March, 2010, the tribe submitted to the BIA a LRTP for fee-simple land owned adjacent to the proposed casino site. Notwithstanding the viability or even legality of eventually building 250 single family dwellings on 5 acres currently zoned in Amador County for a max of 5 homes, that level of development is the Tribe's stated intent in the LRTP. The failure to include the Tribe's own project in the cumulative project section of Appendix M is a major shortcoming. It appears to demonstrate a deliberate intent to present data in a selective manner that will not impact negatively on traffic LOS.

Earlier this year the Department of Interior was found in violation of NEPA for failure to evaluate the cumulative impacts of two projects. "[T]he BLM violated NEPA's mandate by failing to conduct a proper analysis of the cumulative impacts of the Amendment and the Pediment/Cortez Hills project on Western Shoshone cultural resources in the area. We therefore conclude that the BLM's approval of the Amendment was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A)." (*Te-Moak Tribe of Western Shoshone of Nevada v. United States Department of the Interior* (2010) 9th Cir. No. 07-16336.) It seems that, despite 40 years of practice implementing NEPA, the agency is still incapable of following the most basic tenants of the law.

LX. Conclusion

The progression of endemic errors introduced into Appendix M data starting with the 2013 LOS forecasts and continuing through to the omissions noted have effectively destroyed the legitimacy of using the Revised Traffic Study as a basis for making any authoritative decision on the validity of the EIS and the various Casino Alternatives proposed by the Tribe. The traffic study builds its case for mitigation by cherry-picking conditions and selecting overly generous if not misleading assumptions. Those choices have an arithmetic effect in under estimating traffic and over estimating mitigation measures. In a real world, the degradation of LOS would in fact be much worse than the study forecasts and many of the mitigation measures proposed would be far less effective in ameliorating those LOS conditions. Additionally, in several cases, their actual implementation would be extremely doubtful. The only project alternative that can logically be supported by Appendix M is the No Action Alternative.

"A patently inaccurate factual contention can never support an agency's determination that a project will have 'no significant impact' on the environment." (*Ocean Advocates v. U.S. Army Corps of Engineers* (2005, 9th Cir.) 402 F.3d 846.) The inaccurate factual contentions presented in the Revised Traffic Study provide ample evidence to contend any alternative other than "No Action" in another arena.

From: Patrick Henry
18210 Burke Drive
Plymouth, CA 95669
FEIS Ione Band of Miwok Indians
Land Transfer and Casino

To: Dale Rishing
Acting Regional Director
Pacific Regional Office of the
Bureau of Indian Affairs (BLA)

RE: Reply to Responses to Comment P-18 on Ione Band of Miwok India Casino DEIS.

The Comments on the DEIS submitted by "No Casino In Plymouth" included comments on the Air Quality and Greenhouse Gas analyses. The FEIS identifies these as comment P-18-128 through P-18-136

In responding to comments on a DEIS, an agency may modify alternatives, develop new alternatives, improve analyses, make factual corrections, and or explain why the comment warrants no further agency response. (40 CFR 1503.4.) The response must be a "good faith reasoned analyses." (*State of California v. Block* (9th Cir. 1982) 690 F.2d 753.) I find that the BLA's responses to our comments fail to meet these NEPA standards.

P5-12

There are three major reasons for this failure:

(1) Several of the issues raised in the comments on the DEIR deal with the inadequate traffic analysis. While the traffic analysis was revised, the revised analysis is still improper. (See the section of these FEIS comments entitled, Discrepancies: Ione Band of Miwok Environmental Impact Study, Appendix M – Traffic Study (revised).)

P5-13

(2) The majority of the responses are non-responsive. The responses to comments P18-128 to P18-130, and PB18-133- to P18-137 did not modify analyses as requested or correct factual errors. Also, the responses to comments P18-131 and P18-132 did not modify the proposed action as requested.

P5-14

(3) Sub-sections P 18-131 and P 18-132 state that the Federal and State Governments are not bound by regulations imposed on the private sector. Because the DOI/BIA has been given the responsibility to assist implementation of discriminatory legislation (i.e. IGRA) that may result in development of a privately owned casino, the response do not apply to the proposed project. Any such resulting casino does not qualify for less restrictive laws even though the DOI or BLA may qualify for such exemptions.

P5-15

From: Walter W. Dimmers
18000 Burke Dr.
Plymouth, Ca 95669

To: Mr. Dale Risling, Acting Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, Ca 95825

Date: Sept. 3, 2010

RE: Response to Comment P-10, Ione Band of Miwok Indians, Land Transfer and Casino Project FEIS.

I. The FEIS Format Obstructs Public Participation

The FEIS as presented is nearly impossible to evaluate. The electronic version is not manageable on a home computer. The multiple references of both the electronic and hard copy versions appear to have been designed to confuse, frustrate and confound the reader. An EIS's form, content, and preparation must foster "both informed decisionmaking and informed public participation." (*Friends of Southeast's Future v. Morrison* (9th Cir. 1998) 153 F.2d 1059, 1062-1063, quoting *California v. Block* (9th Cir. 1982) 690 F.2d 753, 761.) The format of this FEIS does not foster public participation, it obstructs public participation.

PS-16

In spite of the agency's deliberate attempts at gross obfuscation, the following comments are addressed to Section 4.10 Other Values from the DEIS - my letter identified as Comments Letter P-10. That letter is dated 6/18/08 and is hereby incorporated by reference. These responses also bring forward legal citation contained in letter P-18.

II. The Cumulative Noise Impacts are Not Properly Evaluated.

Response P10-03 does not cite specific changes in traffic but does state that no new noise measurements were made but in fact traffic has and will increase due to a significant increase in the number of new and planned wineries and planned housing developments in the immediate area. Clearly increases in traffic from these sources must be considered in any evaluation of noise in the area. This comment does not respond to legal citation contained in P11-03.

PS-17

It is essential to provide quantified and detailed information in the assessment of cumulative impacts across the impacted landscape. (See, *Ocean Advocates v. U.S. Army Corps of Engineers* (2005, 9th Cir.) 402 F.3d 846; *Lands Council v. Powell* (2004, 9th Cir) 395 F.3d 1019, 1035; *Habitat Education Center, Inc. v. Bosworth* (2005) 363 F.Supp.2d 1070, 1078.) To "consider cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service's decisions, can be assured that the Forest Service provided the hard look

PS-18

that it is required to provide." (*Neighbors of Cuddy Mountain v. U.S. Forest Service* (9th Cir. 1998) 137 F.3d 1372, 1379.) "[P]erfunctory references do not constitute analysis useful to a decisionmaker in deciding whether, or how, to alter the program to lessen the cumulative environmental impacts." (*NRDC v. Hodel* (1988) 865 F.2d 288, 299.)

P5-18
cont'd

"In a cumulative impact analysis, an agency must take a 'hard look' at all actions. An EA's analysis of cumulative impacts 'must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment." *Lands Council*, 395 F.3d at 1028. "General statements about 'possible effects' and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided." *Neighbors of Cuddy Mountain*, 137 F.3d at 1380. "[S]ome quantified or detailed information is required. Without such information, neither the courts nor the public can be assured that the [agency] provided the hard look that it is required to provide." [id. at 1379.] (*Te-Moak Tribe of Western Shoshone of Nevada v. United States Department of the Interior* (2010) 9th Cir. No. No. 07-16336.)

P5-19

III. The Noise Study Methodology is Flawed.

Response P10-04 indicates that measurements were made in January - during a period of low activity in the area. Any sensible study of traffic would have to be completed during the summer months when agricultural and tourist activity peaks.

P5-20

IV. The Effectiveness of Noise Mitigation is not Properly Evaluated.

"Mitigation must be discussed in sufficient detail to ensure that the environmental consequences have been fairly evaluated." (*Carmel-By-The-Sea v. U.S. Department of Transportation* (1997, 9th Cir.) 123 F.3d 1142, 1154.) "'A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.'" (*Neighbors of Cuddy Mountain v. U.S. Forest Service* (1998, 9th Cir.) 137 F.3d 1372, 1380.) NEPA requires that the agency discuss the expected efficacy of the mitigation, and provide factual support for this effectiveness. (*South Utah Wilderness Alliance v. Norton* (2003) 277 F.Supp2d 1169.)

P5-21

"An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective." "The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. (*Methow Valley*, 490 U.S. at 351-52, 109 S.Ct. 1835(citing 42 U.S.C. § 4332(C) (ii)). A mitigation discussion without at least some evaluation of effectiveness is useless in making that determination." (*South Fork Band Council of Western Shoshone of Nevada v. United States Department of Interior* (2009) 9th Cir. No. 09-15230.)

P5-22

Response P10-06 is not responsive to NEPA requirements nor is it responsive to the citation contained in P11-05

P10-07 Comment is not responsive to the question raised regarding compliance with UBC Chapter 35, California Administrative Code, Title 25, nor is it responsive to the case citation contained in response P11-05. Additionally, sound receptors located above and within the line of sight east of the proposed site will be impacted.

P5-23

Response P10-09 does not suggest any speed control changes for the highway section in question. The current speed limit at the project site is 45 mph. - not 30 mph as suggested in the response. "A patently inaccurate factual contention can never support an agency's determination that a project will have 'no significant impact' on the environment." (*Ocean Advocates v. U.S. Army Corps of Engineers* (2005, 9th Cir.) 402 F.3d 846.) The conclusion is arbitrary and capricious. Receptors on both the East and West side of Highway 49 inside and outside the city of Plymouth will be impacted. It is outrageous to ignore the obvious. Proper noise studies on this highway segment are essential and should be completed prior to the approval of the EIS.

P5-24

SECTION 2: RESPONSE TO COMMENT MATRICES

COMMENT P5-25

In responding to comments on a DEIS, an agency may modify alternatives, develop new alternatives, improve analyses, make factual corrections, and or explain why the comment warrants no further agency response. (40 CFR 1503.4.) The response must be a "good faith reasoned analyses." (*State of California v. Block* (9th Cir. 1982) 690 F.2d 753.)

It is unacceptable to provide brief responses that do not constitute a reasonable discussion of the issue, or that do not articulate why such a discussion is unnecessary. (*Navajo Nation v. United States Forest Service* (2007) 9th Cir. Nos. 06-15371, 06-15436, 06-15455.)

It is inappropriate to give short shrift to the concerns of commenters. The agency must respond to their considered comments "objectively and in good faith." Since "[P]ublic scrutiny [is] essential to implementing NEPA," 40 C.F.R. § 1500.1(b), an agency is required to "assess and consider both individually and collectively" the public comments received during the NEPA process and to respond to such in its Final EIS. (Id. § 1503.4(a); see *Center for Biological Diversity*, 349 F.3d at 1167.) An agency's failure to respond to comments constitutes a prejudicial abuse of discretion, because it demonstrates that the agency failed to take the requisite "hard look" at the environmental consequences of the proposed project. (*Western Watersheds Project v. Kraayenbrink* (2010) 9th Cir. Nos. 08-35359, 08-35360.)

This section includes matrices that summarize the flaws in the BIA's responses to comments on the DEIS.

Comment Number	No Response to Comment or No Answer	Response not supported by Citation	Did not modify analysis as requested or correct factual error	Did not modify proposed action as requested	Did not evaluate new alternative requested	Added Cause of Action
P17-1			X			
P17-2			X			
P17-3			X			
P17-4			X			
P17-5			X			
P17-6			X			
P17-7			X			
P17-8			X			
P17-9			X			
P17-10			X			
P17-11			X			
P17-12			X			
P17-13			X			
P17-14			X			
P17-15			X			
P17-16			X			
P17-17			X			
P17-18			X			
P17-19			X			
P17-20						
P17-21		X				
P17-22						
P17-23						X
P17-24						
P17-25		X				
P17-26			X			
P17-27			X			
P17-28				X		
P17-29				X		
P17-30				X		
P17-31				X		
P17-32			X			
P17-33			X			
P17-34			X			
P17-35			X			
P17-36			X			
P17-37		X				
P17-38						
P17-39						
P17-40						
P17-41		X				
P17-42		X				
P17-43		X				
P17-44		X				
P17-45						

Comment Number	No Response to Comment or No Answer	Response not supported by Citation	Did not modify analysis as requested or correct factual error	Did not modify proposed action as requested	Did not evaluate new alternative requested	Added Cause of Action
P17-46					X	
P17-47			X			
P17-48					X	
P17-49		X			X	
P17-50		X				
P17-51						
P17-52						
P17-53				X		
P17-54				X		
P17-55				X		
P17-56		X				
P17-57		X				
P17-58				X		
P17-59	X					
P17-60			X			
P17-61	X					
P17-62				X		
P17-63			X			
P17-64				X		
P17-65				X		
P17-66				X		
P17-67						
P17-68			X			
P17-69			X			
P17-70			X			
P17-71			X			
P17-72			X			
P17-73			X			
P17-74			X			
P17-75			X			
P17-76			X			
P17-77				X		
P17-78			X			
P17-79			X			
P17-80			X			
P17-81			X			
P17-82			X			
P17-83			X			
P17-84			X			
P17-85		X				
P17-86		X				
P17-87		X	X			
P17-88			X			
P17-89			X			
P17-90			X			

Comment Number	No Response to Comment or No Answer	Response not supported by Citation	Did not modify analysis as requested or correct factual error	Did not modify proposed action as requested	Did not evaluate new alternative requested	Added Cause of Action
P17-91			X			
P17-92			X			
P17-93			X			
P17-94			X			
P17-95		X				
P17-96		X				
P17-97		X				
P17-98			X			
P17-99		X				
P17-100				X		
P17-101		X				
P17-102		X				
P17-103			X			
P17-104		X				
P17-105		X				
P17-106		X				
P17-107		X				
P17-108		X				
P17-109			X			
P17-110		X				
P17-111						
P17-112				X		
P17-113			X			
P17-114			X			
P17-115			X			
P17-116						
P17-117						
P17-118			X			
P17-119			X			
P17-120						
P17-121						
P17-122						
P17-123		X				
P17-124				X		
P17-125		X				
P17-126		X				
P17-127		X				
P17-128		X				
P17-129		X				
P17-130		X				
P17-131						
P17-132						
P17-133		X				
P17-134		X				
P17-135			X			

Comment Number	No Response to Comment or No Answer	Response not supported by Citation	Did not modify analysis as requested or correct factual error	Did not modify proposed action as requested	Did not evaluate new alternative requested	Added Cause of Action
P17-136			X			
P17-137			X			
P17-138		X				
P17-139						
P17-140						
P17-141			X			
P17-142				X		
P17-143				X		
P17-144		X				
P17-145						
P17-146						
P17-147						
P17-148						
P17-149						
P17-150		X				
P17-151						
P17-152						
P17-153	X					
P17-154	X					
P17-155		X				
P17-156			X			
P17-157		X				
P17-158						
P17-159		X	X			
P17-160	X					
P17-161						
P17-162						
P17-163		X				
P17-164						X
P17-165		X				
P17-166		X				
P17-167		X				
P17-168		X				
P17-169						
P17-170						
P17-171						
P17-172						
P17-173					X	
P17-174					X	
P17-175						
P17-176						
P17-177		X				
P17-178			X			
P17-179						
P17-180						

Comment Number	No Response to Comment or No Answer	Response not supported by Citation	Did not modify analysis as requested or correct factual error	Did not modify proposed action as requested	Did not evaluate new alternative requested	Added Cause of Action
P17-181						
P17-182					X	
P17-183						
P17-184		X				
P17-185		X				
P17-186		X				
P17-187						
P17-188	X					
P17-189					X	
P17-190						
P17-191						
P17-192		X				
P17-193						
P17-194						
P17-195					X	
P17-196			X			
P17-197					X	
P17-198	X					
P17-199	X					
P17-200	X					
P17-201	X					
P17-202	X					
P17-203			X			
P17-204			X			
P17-205			X			
P17-206			X			
P17-207			X			
P17-208			X			
P17-209				X		
P17-210	X					
P17-211	X					
P17-212	X					
P17-213	X					
P17-214	X					
P17-215						
P17-216		X				
P17-217	X					
P17-218			X			
P17-219						
P17-220		X				
P17-221			X			
P17-222	X					
P17-223						
P17-224						
P17-225				X		

Comment Number	No Response to Comment or No Answer	Response not supported by Citation	Did not modify analysis as requested or correct factual error	Did not modify proposed action as requested	Did not evaluate new alternative requested	Added Cause of Action
P17-226						
P17-227						
P17-228			X			
P17-229						
P17-230			X			
P17-231						
P17-232						
P17-233			X			
P17-234			X			
P17-235			X			
P17-236						X
P17-237			X			
P17-238		X				
P17-239		X				
P17-240						
P17-241				X		
P17-242					X	
P17-243			X			
P17-244						
P17-245	X					
P17-246	X					
P17-247	X					
P17-248		X				
P17-249						
P17-250				X		
P17-251			X			

Comment number	No response to comment or did not answer question	Responses not supported by citation to reasons, sources, or authorities	Did not modify analysis as requested, or factual error	Did not modify proposed action as requested	Did not evaluate new alternative requested	Added cause of action
P16-01		X	X			
P16-02						
P16-03	X					
P16-04	X	X				
P16-05	X	X				
P16-06	X	X				
P16-07	X					
P16-08	X					
P16-09	X	X				
P16-10	X					
P16-11			X			
P16-12	X	X				
P16-13			X			
P16-14	X					
P16-15	X					
P16-16	X					
P16-17	X	X				
P16-18			X			
P16-19	X	X				
P16-20	X	X				
P16-21	X	X				
P16-22	X	X				
P16-22	X	X				
P16-23	X					
P16-24	X	X				
P16-25						
P16-26	X					
P16-27						
P16-28	X		X			
P16-29	X					
P16-30						
P16-31						
P16-32			X			
P16-33	X					
P16-34		X				
P16-35	X					
P16-36						
P16-37	X					
P16-38		X				

Comment number	No response to comment	Responses not supported by citation to reasons, sources, or authorities	Did not modify analysis as requested, or corrected factual error	Did not modify proposed action as requested	Did evaluate new alternative as requested	Added cause of action
P16-39	X					
P16-40			X			
P16-41						
P16-42	X					
P16-43						
P16-44						
P16-45						
P16-46						
P16-47						
P16-48			X			
P16-49		X				
P16-50						
P16-51	X					
P15-52						
P16-53	X		X			
P16-54	X					
P16-55						
P16-56						
P16-57						
P16-58	X					
P16-59	X					
P16-60	X					
P16-61	X					
P16-62						
P16-63	X					
P16-64	X					X
P16-65						
P16-66						
P16-67						
P16-68						
P16-69						
P16-70	X					
P16-71	X					
P16-72	X					
P16-73	X					
P16-74	X					
P16-75	X					
P16-76						

Comment Number	No response to comment or did not answer question	Responses not supported by citations to reasons, sources or authority	Did not modify analysis as requested or factual error	Did not modify proposed action as requested	Did not evaluate new alternative as requested	Added cause of action
P16-77	X					
P16-78	X	X				
P16-79	X	X				
P16-80						
P16-81						
P16-82	X					
P16-83	X					
P16-84	X					
P16-85						
P16-86						
P16-87						
P16-88						
P16-89						
P16-90	X					
P16-91	X					
P16-92	X					
P16-93	X					
P16-94	X		X			
P16-95	X					X
P16-96	X	X				
P16-97						
P16-98	X					X
P16-99						
P16-100						
P16-101	X					
P16-102	X					X
P16-103						
P16-104	X					
P16-105						
P16-106						
P16-107						
P16-108						
P16-109	X					
P16-110	X					
P16-111						
P16-112	X	X				

The responses to comments P12-1 through P12-46 are summarized in the following table. Several of the comments were considered valid by the BIA and resulted in a revised traffic study. However, the same problems exist within the "response to comments" as existed within the draft EIS itself. The SANDAG method has proven reliable in Southern California for rural casino traffic impacts and would work effectively in Amador County as well. Its validity is confirmed by the Jackson Rancheria data. The Draft EIS claims that their methodology actually achieves a trip generation rate greater than the SANDAG method but that claim is factually inaccurate. The SANDAG method accounts for Hotel rooms; both the draft EIS and final EIS conveniently omit the increase of 8 trips per hotel room. The skewed data is compounded when critical arterials are omitted. Additional arterial were included within the final EIS but numerous omissions still remain. The assumptions on traffic patterns based on probable travel from population centers fail the test of reality. People change patterns when the traffic deteriorates; who hasn't looked for a less congested route? The response that the Tribe's project isn't responsible for congestion caused by other events is bogus; as is there response that loss of business due to congested roadways is also not their responsibility. The proposed project and alternatives will increase traffic faster than Amador County can cope. The rate of increase would be driven by gaming development and that is the Tribe's responsibility. Trashing the viability of visitor dependent businesses that will lose revenue due to traffic congestion and then disowning responsibility for the loss of tax revenue is convenient when you intend to operate in a tax free environment.

Comment Number	No response to Comment	Response Not supported by citation	Did not modify Analysis or correct factual error	Did not modify proposed action as requested	Did not evaluate new alternative as requested	Added cause of Action	Response not Required to Comment	Criticism replied to in revised EIS
P12-1							X	
P12-2				X				
P12-3			X					
P12-4			X					
P12-5			X					
P12-6			X					
P12-7			X					
P12-8			X					
P12-9			X					
P12-10							X	
P12-11				X				
P12-12			X					
P12-13		X						
P12-14		X						
P12-15		X						
P12-16		X						
P12-17							X	

SECTION 3: GUIDE TO EXHIBIT FOLDERS ON DVD

Throughout the attached replies to the responses to comments on the EIS, there have been arguments that reference factual conditions. The DVD that accompanies these comments contains evidence that establishes these facts for the record. Please preserve a copy of these comments and the DVD of exhibits for the administrative record.

The comments on the traffic analysis note that there is huge uncertainty regarding the ability to fund the road projects the EIS relies upon for mitigation of traffic impacts.

Exhibit 1 is a folder containing the Sacramento, San Joaquin, and Amador County Regional Transportation Plans. These plans demonstrate that the regional road system the EIS relies upon for traffic impact mitigation is not funded.

Exhibit 2 is a folder containing traffic analyses, comments, findings of fact, and a financial feasibility analysis for the Gold Rush Development Project near Plymouth in Sutter Creek, California. These documents properly disclose the potentially significant traffic impacts that may result from development despite the failure to find funding for the needed road projects.

The comments discuss the viability of the BIA taking land in trust for a casino in light of a recent Supreme Court case.

Exhibit 3 is a file containing the news release from a Native American gaming web site noting that even the project sponsors believe that the case creates a legal barrier for their project.

The EIS recognizes that the casino project will produce air pollution emissions that contribute to cumulatively significant regional air pollution problems. In some instances, the EIS identifies mitigation measures. However, the EIS jumps to the conclusion that impacts are mitigated to a level of insignificance.

The proper analysis is to quantify the impact reduction associated with the mitigation. Identify the residual impact, and compare it to the threshold of significance to demonstrate that the impacts are in fact mitigated.

The EIS merely demonstrates conformity with a long-term plan to clean the air in the distant future. The EIS does not acknowledge the short-term significant impacts prior to regional attainment of the air quality standards. It does not mitigate these impacts to a level of insignificance.

To use long-term conformity to mask real short-term impacts is not the type of environmental full disclosure required by NEPA. The agency must instead evaluate the impacts in the manner used by the regional air quality districts. (See *Northwest Indian*

Cemetery Protection Association v. Peterson (9th Cir. 1986) 795 F.2d 688, 696 [NEPA violated when Forest Service used impact methodology that did not use state regulatory standards, and that masked the significance of cumulative impacts.]

Exhibit 4 is a folder containing the Sacramento and Bay Area guides for the environmental review of air quality impacts. These documents explain the proper analytical methodology.

Exhibit 5 is a folder containing the ozone attainment plans for the San Joaquin and Sacramento air basins, as well as other local air quality data. These plans reflect that, despite 40 years of clean air act implementation, these areas have failed to meet ambient air quality standards designed to protect human health. That is why it is arbitrary and capricious for the EIS to conclude that mere conformity with these plans will fully mitigate the air pollution impacts of the project.

Exhibit 6 is a file containing the CAPCOA guide for evaluation of greenhouse gas emissions, and the CEQA guidelines for the evaluation of greenhouse gas emissions, and the ARB Scoping Plan

The CAPCOA work identifies available models to quantitatively evaluate the greenhouse gas emissions from construction projects, from urban growth, from the energy these use, from stationary air pollution sources, and from and mobile air pollution sources. The work identifies suitable thresholds of significance, and includes a 45-page table listing feasible mitigation measures. It explains how to quantify the effectiveness of mitigation measures. With ghg emissions, the purchase of carbon offsets is an effective means to fully mitigate the impacts that should have been adopted by the BIA.

Instead, the EIS fails to include a complete list of appropriate mitigation measures for ghg emission, and fails to demonstrate that greenhouse gas emissions are mitigated by quantifying the effectiveness of the mitigation. It is irresponsible for the BIA to take such a cavalier approach to such a pressing international environmental disaster. To avoid or delay the devastating impacts of Global Climate Change, it will take a concerted effort on the part of every nation, every state, every local government, every citizen, and every agency, in the world; BIA included.

Our comments on the DEIS encouraged BIA to consider a broader set of project alternatives. We hoped they would consider an urban location served by public transit for the casino. This would reduce the traffic, air pollution, and greenhouse gas impacts. We also hoped the BIA would consider an economic development project that would improve conditions in Amador County for everybody, rather than for one group at the expense of others.

Exhibit 7 is a folder containing the EIS for an urban casino served by public transit in the Bay Area, and information about the CHIPS project in Calaveras County. The CHIPS project is an outgrowth of the Amador - Calaveras Consensus Group. The CHIPS program is training and employing economically disadvantaged Native

Americans to work in the forest removing brush and small trees that pose a fire risk. Those small log and biomass materials are in turn used to manufacture value added products for sale, such a rustic furniture, compost, and power plant fuel. A casino helps Native American economic conditions, at the expense of the rest of the community through traffic congestion, air pollution, public service declines, and gambling related social problems. CHIPS not only helps the economic condition of Native Americans, it helps the rest of the community by reducing fire risk, providing useful products, and promoting energy independence. BIA would do better and get farther by considering these types of win-win economic development alternatives, rather than trying to force unwanted casinos down the throats of small rural towns.

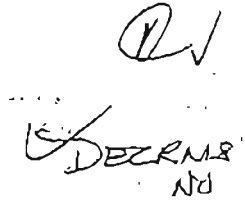
The comments raise questions about school costs.

Exhibit 8 provides information on school costs in California.

The comments raise concerns regarding public service impacts.

Exhibit 9 is the Municipal Services Review for Amador County.

Richard D. Mirmis
PO Box 880
(18060 Burke Drive)
Plymouth, CA 95669
209-245-3809



FEIS comments, Ione band of Miwok Indians,
Land transfer and casino project.

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Discrepancies: Ione Band of Miwok Environmental Impact Study, Appendix M – Traffic Study (revised)

I. Overview.

An Environmental Impact Statement (EIS) must be a document with scientific integrity. NEPA demands an unbiased evaluation of environmental effects. (*NRDC v. Callaway* (1975) 524 F.2d 79.) Sources of information must be footnoted. (40 CFR 1502.24.) Study methodologies and model limitations must be disclosed and explained. (*Lands Council v. Powell* (2004, 9th Cir.) 395 F.3d 1019, 1036-1037.) State data cannot be used in an impact analysis to support an agency conclusion. (*Lands Council v. Powell* (2004, 9th Cir) 395 F.3d 1019, 1035.)

P6-01

One significant deficiency with this EIS concerns the scant 30 day time frame allocated for review. Such a limited period inhibits the public's ability to review and comment on the validity of such a lengthy document. This concern is amplified by the fact that the index for Appendix A (calculations) is listed in Appendix M and contains no page making it difficult if not impossible to find and verify calculations for specific data points.

The Draft EIS Traffic Study was a document developed with flawed methodology and inaccurate data and as such was worthless as a valid indicator for representing the degradation of Amador County's traffic profile as a result of this proposed casino project. To their credit, the Bureau of Indian Affairs required the Tribe to submit a revised traffic analysis for the Final EIS. Unfortunately, the Final EIS Traffic Study is as flawed as the original but in entirely different ways. There is a repetitive manipulation of the traffic data through assumptions and selective choices to reach an abstract under-representing both the volume of traffic and the effectiveness of mitigation measures. This is a worrying document that does not accurately represent the degradation to Amador County traffic flow that this proposed casino project will produce. It is a document with a conclusion one would expect a paid consultant to deliver to their client.

P6-02

II. Existing Conditions.

The roadways delineated in the Existing Conditions section of the EIS become the basis for the roadways chosen for inclusion in the revised traffic study. These are the arterials and their intersections for which data was collected, forecasts made and mitigation measures considered. Although not stated explicitly, it is obvious the area of focus was directed at the routes between major population areas and the proposed site of the various casino alternatives. The problem with this approach lies within the cumulative nature of traffic. Like a small river constantly fed by even smaller streams the net effect can eventually become a much larger torrent of traffic.

P6-03

The following omissions were highlighted in NCTIP comments related to the draft EIS and inexplicably remain unaddressed in the revised traffic study:

- Fiddletown Rd. is the main access to the Plymouth area for Amador County upcountry residents or from Nevada via SR88 and Ridge Rd.
- Shenandoah Rd/SR16 connects with Hwy 50 east of Pollack Pines and is the logical route for the population living in the numerous communities southeast of Placerville. It is also the primary means for accessing over 30 wineries in the Shenandoah Valley.
- SR49 between Pleasant Valley Rd. and Miller Street which in sections is a tortuous two-lane road is also the major connector between Placerville and Plymouth. The intersections at both ends of this arterial are considered in detail but not the bottle neck in between.

P6-04

- Old Sacramento Road which becomes Main Street within the Plymouth City Limits, connecting Latrobe and SR49 and is a faster route to the proposed casino location than connecting to SR16 then SR49.

P6-04
cont'd

It is **illogical** to assume the proposed casino would not generate traffic associated with these routes. Old Sacramento Road is the route of choice for locals heading for Latrobe and will undoubtedly be so for casino patrons. The Tribe has repeatedly touted the benefits of casino development for the wineries located on Shenandoah Rd/SR16 and should have included this arterial in the revised traffic study. Although associated with smaller traffic streams than those dealt with in the studied arterials leading from the Stockton and Sacramento population areas, these roads would unquestionably have an effect on the Level of Service (LOS) due to the cumulative nature of traffic. Would that effect be serious enough to require mitigation? We don't know, as they were not included in the revised traffic study. This omission is of particular concern regarding both the section of SR49 between Placerville and Plymouth and the section of Old Sacramento Rd between Latrobe and Plymouth due to the inadequacies of both those roadways in some areas.

P6-05

The omission of these arterial roads is the **first in a series of errors endemic** in the revised traffic study.

P6-06

II. Existing Plus Approved Project Conditions

A. 2010 Traffic Forecast.

The Final EIS uses 2008 traffic counts, industry standard methodology and reasonably accurate Caltrans estimates to generate traffic volumes for the 2010 LOS projections for selected intersections and roadway segments. As one would expect, there is a gradual deterioration of LOS designations the farther one moves away from the Plymouth vicinity and towards the Sacramento area with its larger population growth and greater development. The recent recession make these numbers somewhat overstated but that economic distortion will hopefully be temporary and the overall projections for 2010 are acceptable for a starting point of analysis.

P6-07

B. 2013 Traffic Forecast.

Traffic studies take current data and using accepted methodologies attempt to forecast future Levels of Service. These projections require that various assumptions be made and the validity of the data is dependent on the validity of the assumptions. Such a study can very easily become a case of garbage (data) in equals garbage (data) out. In a study where only the most advantageous criteria are selected for inclusion, the conclusion then becomes suspect. It is with the development of data for the 2013 projected traffic counts that one begins to see a subtle selection of criteria to achieve the desired results.

P6-08

The 2013 EPAP (existing plus approved projects) analysis assumed the continued use of the 2010 EPAP roadway network, study intersections, intersection geometrics and intersection traffic control. The approved projects should only include planned developments and the specific road improvements associated with those developments. The analysis assumes a number of planned roadway improvements to be in place by 2013. However, all of the listed improvements are actually mitigation measures that will **only** occur if the planned casino project is approved. It is a highly questionable procedure to reduce the generated 2013 LOS forecasts by including mitigation measures at this point in the traffic analysis.

P6-09

Further scrutiny of this issue is continued in Section V concerning the cumulative conditions. However, consider the reality of these assumptions. Appendix M lists only mitigation measures that are based on preliminary Caltrans fair-share calculations which totaled 100%. The rationale for inclusion at this point

P6-10

rests with the implied guarantee of the Caltrans calculations. However, in Section 5, page 25 of the EIS, the Tribe states that “actual funding mechanisms for impact mitigation shall be determined through negotiations at the time of project implementation.” Does implementation mean a compact in place and the land in Trust? If so, then the Caltrans fair-share calculations aren’t worth the paper they’re printed on judging from California’s past history in deal with mitigation funding for land already in Trust. The ability of a Tribe to hide behind the veil of Sovereign Immunity makes only those mitigation measures with an attached waiver of sovereign immunity worth considering as guaranteed. The EIS contains no such list

P6-10
cont'd

The probability of the entirety of the “100% Caltrans fair-share calculations” projects actually being completed is low and their inclusion in the 2013 EPAP LOS forecasts interjects a degree of uncertainty with the data. To label this section as a Non Project environment and then include project mitigating measures designed to improve LOS data is blatantly misleading. The use of mitigating measures to reduce non-project LOS data is the second in a series of errors endemic in the revised traffic study. Furthermore, since EIS forecasts for the various Casmio construction scenarios, as well as the various mitigation measures are all cumulative based on the 2013 forecasts, then the LOS data contained in those sections is questionable as well. The entire traffic study then becomes one large unsubstantiated guess or a study with a deliberately understated conclusion.

P6-11

IV. EPAP Plus Project Conditions.

One of the valid objections to the draft EIS Traffic Study contained in the NCIP response to that document was centered on the San Diego Area Governments (SANDAG) methodology for generating casino trip numbers based on gaming floor square footage and number of hotel rooms. In a tacit admission of the validity of that method the new traffic study attempts to generate a trip generation figure based on gaming floor square footage. The study selects 12 casinos and evaluates the data to develop a trip generation number. The study then rejects that number because the Trip Generation Handbook “recommends using a regression equation when there are 20 or more data points and a R^2 of greater than .75.” By selecting only 12 casinos which resulted in a R^2 of .58 the study justifies this rejection and the subsequent use of a weighted average for generation rates. Further justification is provided by claiming that the weighted average rate for the 12 casinos is greater than the rejected R^2 rate for those same selected casinos but this is a totally false and factually inaccurate conclusion. The study data was based on casino square footage but the SANDAG methodology also takes into account the number of hotel rooms. Alternatives A & B would generate an additional 2000 daily trips based on the size of the proposed 5 story hotel. Failure to account for hotel trip generation casts doubt on the validity of the selected trip generation rate. Furthermore Dowling Associates, Inc. chose the number of casinos selected and to deliberately choose a number that can then be rejected by the trip generation handbook is clearly stacking the deck. What would the trip generation number have been if 20 casinos had been included in the study and why wasn’t the closest casino, the Jackson Rancheria, included? Data for the Jackson Rancheria could have been generated by simply looking at actual Caltrans average daily traffic counts over the time span of that Casino’s construction and operation and correlating those numbers with actual gaming floor square footage. This would have provided a valid benchmark for any trip generation rates selected. In fact that correlation was done and submitted as part of NCIP objections to the draft EIS traffic analysis. The SANDAG methodology would have resulted in higher trip generation numbers and more severe degradation of roadway and intersection LOS forecasts.

P6-12

Why should this matter when the EIS already renders a designation of “significant impact” to traffic resulting from the selected generation criteria. The answer resides in the mitigation solutions chosen to change the arrived at impact from significant to not significant. Generating more onerous and realistic trip data would make many of the selected mitigation solutions ineffective relegating the LOS of some intersections and roadway segments to an unacceptable status. The net effect of the chosen assumptions is

P6-13

to essentially lower the bar, making claims of future mitigation plausible. These assumptions are the third in a series of errors endemic in the revised traffic study.

P6-13
cont'd

V. Cumulative Conditions.

A. Overview

Quoting from Section V of Appendix M of the EIS; "Cumulative conditions, or the future No Project condition, presents traffic conditions expected in 2025 without the proposed project." This standard technique requires the preparer to make certain assumptions about the future. To be credible those assumptions need to be grounded in reality or the validity of the derived data is highly suspect. This is particularly true in today's economic climate. With both the State and County Governments suffering severe budgetary constraints, it highly unlikely that some Appendix M assumptions can pass any reality check. If there is in fact no basis in reality for the assumed completion of these projects, then the LOS forecasts become worthless projections.

P6-14

In developing this data, Appendix M refers to the SJCOG 2007 RTP (San Joaquin County Organization of Governments Regional Transportation Plan), the SACOG MTP 2035 (Sacramento Area Council of Governments Metropolitan Transportation Plan), and the 2004 Amador County RTP Update (Regional Transportation Plan) and to various road improvements "programmed in those documents and assumed to be in place for this (cumulative) condition." The word programmed is inferred with a certain connotation of certainty of timelines and funding that does not exist for every listed project if one peruses the referenced documents themselves. While inclusion of funded and time lined projects is beneficial in arriving at valid LOS calculations, the inclusion of unfunded "wish-list" projects that have no reasonable chance of completion in the timeframe allotted serves only to skewer the results towards less onerous LOS projections. A number of questionable programmed projects (referenced in paragraphs B., C., and D. below) of the various Regional Traffic Plans are assumed to be sure things. The cumulative effects of their inclusion are the fourth in a series of errors endemic in the revised traffic study.

P6-15

Additionally, Appendix M includes "roadway improvements that are assumed to be in place based on preliminary Caltrans fair share calculations which totaled 100% for 2010 and 2013 mitigation measures." To reiterate, road improvements intended as possible casino mitigation measures should not be included as part of the data intended to establish conditions in a no project environment. Particularly when the Tribe claims funding of these "100% Caltrans fair-share calculations" are actually subject to negotiated settlement. These improved roadway and intersection conditions dependent on mitigated measures belong in the mitigation section and their inclusion here artificially lowers the cumulative no project LOS data. Furthermore there is a concern that the beneficial effect of these assumed mitigations measures are being counted twice; once by lowering "no project" totals and then again in the mitigation section which is the area where they correctly belong. The inappropriate inclusion of these mitigation effects in the no project section is the fifth in a series of errors endemic in the revised traffic study.

P6-16

B. SACOG MTP

The SACOG MTP 2035 has a 4 year funding look forward with specific funding sources identified for projects within that time frame. Phase two of the Missouri Flat interchange fits this description. Projects outside the 4 year timeframe are not guaranteed within the revenues expected but not yet identified by SACOG. With the exception of the widening of Sunrise Blvd to 6 lanes, none of the Appendix M roadway improvements listed as mitigation measure fall into the 4 year time frame according to a database provided

P6-17

by SACOG for SR49, SR16, Sunrise Blvd and Larobe Road. In fact, all SR16 improvements east of Sunrise Blvd are programmed for development after the “cumulative condition 2025 timeframe. And their inclusion is troubling. SACOG maintains that their development will be dependent on available financing and are not in anyway guaranteed. The SACOG MTP 2035 financial forecast that would enable funding for these down line projects assumes a 2% increase in Federal highway funds every year and a 20% increase every 6th year. The forecast also assumes a 5% increase of Federal Trust Funds every year with an extra 5% every 6th year. No rational observer of the current financial environment in either Washington or California would consider these financial forecast valid yet the EIS basis much of its data on the assumption that numerous non-guaranteed projects would be unaffected by the current financial realities

P6-17
cont'd

C. SJCOC RTP

The San Joaquin Council of Governments has an “Intelligent Transportation System” project list that is over 600 projects long. Projects are funded within a five year planning horizon with a 2 year update. Projects designated as Tier One are funded and those designated Tier Two projects are unfunded and not guaranteed. The section of SR12 which overlaps SR88 from west of Lockford to east of Clements is designated as a Tier one project and is slated for expansion from 2 to 4 lanes in 2016. There are no other scheduled Tier one projects for SR88. EIS mitigation measures that encompass an assumed improvement of SR88 to 6 lanes are bogus.

P6-18

D. Amador Co. RTP

Section V of the 2004 Amador County RTP Update deals with the reality of programmed improvements in its regional traffic plan. To Quote Section V: “The Unconstrained Plan is the set of system-wide projects and programs identified through the planning process without the consideration of the funding constraints that exist. The Unconstrained Plan would include all fundable (“Tier 1”) projects and all unfundable (“Tier 2”) projects shown on Table 5.” The Appendix M assumption of SR16 improvement to 4 lanes between Stonehouse Road in Sacramento County and Ione Road is not listed in Table 5 of the Amador RTP either as a Tier 1 or tier 2 project. It also does not appear on the SACOG MTP database. Its inclusion as a modifier of cumulative no project LOS forecasts is troubling.

P6-19

E. Caltrans Fair Share Calculations

The various government agencies (referenced in paragraphs B., C., & D. above) repeatedly state that they are not necessarily going to actually improve road segments and intersections programmed into their various regional traffic plans unless funding becomes available. If the Tribe falls back on their sovereign immunity during negotiations and some projects, designated as 100% Caltrans fair-share calculations become less than 100%, then the difference negatively impacts the funding calculus of the various Government organizations. The net result would be a decrease in roadway projects and intersection improvements with a corresponding increase in LOS forecasts. To what degree this will happen is impossible to say but past Californian gaming history makes it a virtual certainty which becomes sixth in a series of errors endemic in the revised traffic study.

P6-20

VI Cumulative plus Project Conditions

The numbers and Levels of Service delineated in this section are invalid in that they are cumulative and are based on previous data that has been shown to be selectively biased to produce data more beneficial to the Tribes desired results. Stated another way, if the 2013 LOS projections are lower due to including mitigation measures in a section that is purportedly designed to establish condition prior to the casino project and if questionable program projects are included that stand little chance of being completed within

P6-21

the stated timeline, and if the methodology used to generate project conditions has also been selected to generate lower LOS data, then any cumulative projections based on those numbers will also be biased towards lower LOS forecast. Furthermore, the result is not arithmetic but geometric which means that the dismal Levels of Service portrayed in the various project scenarios would in actuality be far worse. This progression of errors has the effect of dramatically lowering the bar for the required mitigation measures which may be exactly the intended result. This geometric skewing of the data is the sixth in a series of errors endemic in the revised traffic study.

P6-21
con't

VII. Mitigation Measures.

There are three different sections of mitigation considered:

- a section for Phase I of alternatives A,B,C and D
- a section for Phase II of Alternatives A and B
- a section for cumulative conditions which either repeat Phase I mitigation measures or expand on those measures as necessary

P6-22

All told with some mitigation measures having two parts, there are 75 different roadway and intersection mitigation scenarios presented in Appendix M. The effect of the six previously noted errors endemic in this Traffic Study are cumulative and their overall consequence has been to significantly lower the validity of the forecast LOS estimates which need to be mitigated. That engineered lowering of the bar calls into question the validity of the mitigation measure that result in every scenario being assigned a "less than significant status" after implementation of the proposed project.

However, it is not necessary to consider each mitigation measure on an individual basis. Selection of a few will make the point. Appendix M uses the implementation of the Lone Bypass as the mitigation fix for 5 different problem areas. The Lone Bypass is Tier 2 unfunded project on Amador County's RTP "unconstrained" wish list. Depending on the scenario considered and the Casino Alternative in play (A, B, C, or D), the Tribe proposes to pay anywhere between 12% and 37% of the Lone Bypass as a mitigation measure. However, any percentage of zero is still zero but apparently the Tribe considers zero sufficient to reduce a finding of significant impact to one of less than significant.

P6-23

One other example should suffice to illustrate the implausibility of most of this section. There are 12 Phase I scenarios mitigated by "100% Caltrans fair-share calculations" One of these is widening the section of SR16 from Stonehouse Rd to SR104 from two to four lanes. SACOG has identified a section of SR16 from South Watt to Sunrise Blvd for widening from two to four lanes at an estimated cost of \$110,800,000. Appendix M claims that the Tribe under "100% Caltrans fair-share calculations" will pick up the entire Tab for a section of SR16 over twice as long as that contemplated for widening by SACOG. No wonder the Tribe inserted an escape clause stating that actual funding levels will be negotiated after the project is approved. Appendix M suggests this irrational probability is sufficient to reduce a finding of significant impact to one of less than significant.

P6-24

If the Tribe is allowed to use "100% Caltrans fair-share calculations" as an acceptable mitigation response then the Tribe should be required to fund these projects at these calculated levels. Inserting the requirement for negotiations to determine the funding level negates the literal meaning of "100% Caltrans fair-share calculations". The result is a deceptive and misleading reduction of traffic impacts by giving the appearance of appropriate mitigation measures where such measures may or may not exist depending on negotiations. This renders 12 of the mitigation measures unreliable and is the seventh in a series of errors endemic in the revised traffic study.

P6-25

What will likely happen if this project is approved is that some major improvements on SR49 within close proximity of the casino will be implemented as will a smattering of turn lanes and a number of intersection signals. The overall implementation of the mitigation measures suggested by Appendix M will never occur because most simply can't pass a reality check. The residents of Amador County will be saddled with the resulting traffic quagmire.

P6-26

VIII. Revised Traffic Study Omissions

The omission of the following considerations is the eighth in a series of errors endemic in the revised traffic study.

P6-27

A. Inter-Casino Traffic.

Appendix M mentions the proposed Shingle Springs Casino and the Buena Vista Casino in section 3 covering the existing plus approved projects conditions. It does not take into account inter-casino traffic as gaming patrons make the rounds attempting to change their luck or are just moving in between venues on some other pretext. Few visitors to the Shenandoah wine area visit a single winery and it is highly likely that gaming patrons would behave in a similar fashion. This would increase the casino trip generation totals and needs to be accounted for.

P6-28

B. Additional approved projects

Section 3 of Appendix M delineates a long list of approved projects and the corresponding trip generation rates that were included in the EPAP condition. However, as previously mentioned, the traffic study ignores the impact of Shenandoah Rd. and this error is compounded by not including the new wineries under construction one of which is constructing a small amphitheater as a small concert venue. The Sutter Creek Gold Rush Ranch and Golf Resort was not an approved project in time for inclusion in Appendix M but the very size of that development and the negative impact it will have on LOS forecasts demands inclusion. It is likely the combined effects of both projects will dwarf the effects of any EIS forecast made for those projects that deals with them independently. This is a matter of very serious concern.

P6-29

C. Scheduled Special Events

Appendix M does not take into account the traffic congestion generated by three regularly scheduled events that consistently achieve high attendance figures. The LOS impact of the 4-day Amador County Fair, 2-day Big Crush Wine Festival and the 2-day Behind the Cellar Door Wine Festival are ignored. Not only will they negatively impact LOS forecasts during their scheduled time frames, but the unmitigated traffic congestion generated by the casino project will negatively impact these very important Amador County events.

P6-30

D. Lone Band of Miwoks Long Range Transportation Plan (LRTP)

In March, 2010, the tribe submitted to the BIA a LRTP for fee-simple land owned adjacent to the proposed casino site. Not with standing the viability or even legality of eventually building 250 single family dwellings on 5 acres currently zoned in Amador County for a max of 5 homes, that level of development is the Tribe's stated intent in the LRTP. The failure to include the Tribe's own project in the cumulative project section of Appendix M is a major shortcoming. It is inconceivable that the two proposed projects are not linked and once again, it appears to demonstrate a deliberate intent to present data in a selective manner that will not impact negatively on traffic LOS.

P6-31

LX. Conclusion

The progression of endemic errors introduced into Appendix M data starting with the 2013 LOS forecasts and continuing through to the omissions noted have effectively destroyed the legitimacy of using the Revised Traffic Study as a basis for making any authoritative decision on the validity of the EIS and the various Casino Alternatives proposed by the Tribe. The traffic study builds its case for mitigation by cherry-picking conditions and selecting overly generous if not misleading assumptions. Those choices have an arithmetic effect in under estimating traffic and over estimating mitigation measures. In a real world, the degradation of LOS would in fact be much worse than the study forecasts and many of the mitigation measures proposed would be far less effective in ameliorating those LOS conditions. Additionally, in several cases, their actual implementation would be extremely doubtful. The only project alternative that can logically be supported by Appendix M is the No Action Alternative.

P6-32

“A patently inaccurate factual contention can never support an agency’s determination that a project will have ‘no significant impact’ on the environment.” (*Ocean Advocates v. U.S. Army Corps of Engineers* (2005, 9th Cir.) 402 F.3d 846.) The inaccurate factual contentions presented in the Revised Traffic Study provide ample evidence to contend any alternative other than “No Action” in another arena.

P6-33

Mr. Dale Risling, Acting Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, Ca 95825

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Sept. 3, 2010

PACIFIC REGIONAL
OFFICE

FEIS Comments, Lone Band of Miwok Indians, Land Transfer and Casino Project

The FEIS as presented is nearly impossible to evaluate. The electronic version is not manageable on a home computer. The multiple references of both the electronic and hard copy versions appear to have been designed to confuse, frustrate and confound the reader. In spite of the deliberate attempts at gross obfuscation, the following comments are addressed to Section 4.10 Other Values from the DEIS - my letter identified as Comments Letter P-10. That letter is dated 6/18/08 and is hereby incorporated by reference. These responses also bring forward legal citation contained in letter P-18.

P7-01

P10-03 does not cite specific changes in traffic but does state that no new noise measurements were made but in fact traffic has and will increase due to a significant increase in the number of new and planned wineries and planned housing developments in the immediate area. Clearly increases in traffic from these sources must be considered in any evaluation of noise in the area. This comment does not respond to legal citation contained in P11-03.

P7-02

P10-04 Measurements were made in January - during a period of low activity in the area. Any sensible study of traffic would have to be completed during the summer months.

P7-03

P10-06 This comment is not responsive to NEPA requirements nor is it responsive to the citation contained in P11-05.

P7-04

P10-07 Comment is not responsive to the question raised regarding compliance with UBC Chapter 35, California Administrative Code, Title 25, nor is it responsive to the case citation contained in response P11-05. Additionally, sound receptors located above and within the line of sight east of the proposed site will be impacted.

P7-05

P10-09 Comments do not suggest any speed control changes for the highway section in question. The current speed limit at the project site is 45 mph. - not 30 mph as suggested in the comment. The conclusion is arbitrary and capricious. Receptors on both the East and West side of Highway 49 inside and outside the city of Plymouth will be impacted. It is outrageous to ignore the obvious. Noise studies on this highway segment are essential and should be completed prior to the approval of the EIS.

P7-06

✓

Respectfully submitted
Walter W. Dimmers
Walter W. Dimmers
18000 Burke Dr
Plymouth, Ca 95669

DEC 2010
N/A

RESPONSES TO COMMENTS ON THE FINAL EIS

RESPONSE TO COMMENTS ON THE FEIS

Each of the bracketed comments has been responded to within the following sections. If a response to a specific comment or issue has been provided within the ROD, the appropriate section of the ROD is referenced. Additionally, once an issue has been addressed in a response to a comment, subsequent responses to similar comments reference the initial response.

FEDERAL COMMENT LETTERS (F)

RESPONSE TO COMMENT LETTER F1 –UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DATED SEPTEMBER 13, 2010

F1-01 The BIA acknowledges the commenter's statement, which refers to their previous submittal of comments on the Draft Environmental Impact Statement (DEIS) on July 2, 2008 and the administrative draft of the FEIS on January 12, 2009. No response is required.

F1-02 Water trucking would be utilized to provide for the remaining eight (8) percent of estimated potable water demand under Phase II of Alternative A. These estimated truck trips do not account for the storage capacity that would be developed under the preferred option. Two 1 million gallon storage tanks would be constructed under the preferred option, which would effectively relieve groundwater pumping activity during periods of low water demand and provide water for fire emergency response. Therefore, the delivery of potable water by truck would serve to supplement the groundwater available via pumping, the potable water stored in the on-site storage tanks, and actual water demand levels. As discussed in **Section 5.0** of the ROD, Alternative A has been selected as the Preferred Alternative after weighing the potential environmental impacts with the ability to meet the purpose and need of the trust acquisition and associated development.

F1-03 The commenter expresses their support for the Tribe's acceptance of Wastewater Disposal Option 2, as indicated in the FEIS, since it would avoid substantial impacts to waters of the U.S. and riparian vegetation. Comment noted.

F1-04 The commenter states that if the treated reservoir option goes forward in lieu of a National Pollutant Discharge Elimination System (NPDES) permit, then the U.S. Environmental Protection Agency (USEPA) would share a regulatory role in reviewing the Clean Water Act (CWA) Section 404 permit for the reservoir required by the U.S. Army Corps of Engineers (USACE). Alternatively, the commenter states that an NPDES permit may be the Least

Environmentally Damaging Practicable Alternative (LEDPA) in comparison to the treated reservoir option and therefore would most likely be the preferred option of the USACE. The commenter states that the USEPA looks forward to working with the Tribe on its NPDES permit and provides their contact information. No response is required, comment noted. The BIA and the Tribe anticipate a NPDES permit will be obtained, as a similar Tribal casino project within the same discharging watershed using similar wastewater treatment technology was issued an NPDES permit by the USEPA in June of 2010.

F1-05 In response, the Tribe would develop and implement a groundwater monitoring program in consultation with the BIA. Section 5.2.3, page 5-9, of the FEIS states that baseline groundwater elevations and water quality data would be collected to aid in the design of well facilities; therefore, “not to exceed” values would be calculated based on the results of baseline groundwater testing and well facility design in accordance with USEPA regulations.

F1-06 The FEIS states that the Tribe would develop and implement a groundwater monitoring program in consultation with the BIA. As further described in Section 5.2.3, page 5-8, of the FEIS, the intended purpose of the groundwater monitoring plan program would be to monitor groundwater levels to determine if the Tribe’s groundwater pumping practices are significantly affecting an off-site groundwater user. Therefore, it is clear that the intention of the program is to prevent impacts to off-site groundwater users and so this comment serves mainly as an opinion of how the groundwater monitoring program should be implemented.

F1-07 The site plan depicted in Section 5.2 of the FEIS has been adopted by the Tribe as the revised Proposed Project. Figures 5-1 and 5-2 identify the revised project that would be developed during Phase I and Phase II, accordingly. Selection of the revised Proposed Project as the Preferred Alternative has been adequately addressed within the ROD.

RESPONSE TO COMMENT LETTER F2 – DANIEL LUNGREN, UNITED STATES CONGRESS, DATED SEPTEMBER 3, 2010

F2-01 The BIA provided a response to this letter on September 17, 2010; wherein the BIA did not approve the commenter’s request. The comment review period for the FEIS was established in compliance with the National Environmental Policy Act (NEPA).

STATE COMMENT LETTERS (S)

RESPONSE TO COMMENT LETTER S1 – EDMUND G. BROWN, JR. ATTORNEY GENERAL, GOVERNOR’S OFFICE, DATED AUGUST 17, 2010

S1-01 The BIA provided a response to this letter on August 31, 2010; wherein the BIA did not approve the commenter’s request. The comment review period for the FEIS was established in compliance with the NEPA.

RESPONSE TO COMMENT LETTER S2 – EDMUND G. BROWN, JR. ATTORNEY GENERAL, GOVERNOR’S OFFICE, DATED AUGUST 26, 2010

S2-01 The BIA provided a response to this letter on September 9, 2010; wherein the BIA did not approve the commenter’s request. The comment review period for the FEIS was established in compliance with the NEPA.

RESPONSE TO COMMENT LETTER S3 – EDMUND G. BROWN, JR. ATTORNEY GENERAL, GOVERNOR’S OFFICE, DATED SEPTEMBER 13, 2010

S3-01 The commenter gives thanks for the opportunity to comment on the FEIS even though their initial request for additional time to review the document was denied by the BIA. Comment noted.

S3-02 In response, all of the identified Parcels 1 through 12 are integral to the design of the Proposed Project alternatives, as noted in the DEIS and the FEIS, and therefore were included in the Tribe’s fee-to-trust application. For example, the FEIS includes Parcels 2 and 12, which are needed to accommodate the development of parking areas, domestic and recycled water storage tanks, and the proposed potable water line for the Proposed Project as described in Section 5.2.5 of the FEIS and shown in Figures 5-1 and 5-2 for the Preferred Alternative.

S3-03 At the time of the completion of the ROD, there are no planned meetings between the Tribe and the City of Plymouth (City) regarding connection to the City’s municipal water supply system. Therefore, Water Supply Option 1 is not considered a feasible alternative and Water Supply Option 2 was selected as the preferred water supply option. As discussed in the cumulative analysis within Section 4.11 of the FEIS, growth and water demand within the City would be limited by the availability of water from the Plymouth Pipeline project and groundwater supplies. Based on the 2008 Water Supply Assessment developed by the City, adequate water supplies exist through the 2030 planning horizon to meet existing and future demands. In consideration of anticipated growth, the 2008 WSA includes a commercial development within the water demand projection at the same location as the Preferred Alternative (with an acreage identified as 228 acres, which is the same as the proposed project site) and with similar components as the Preferred Alternative (roughly 120,000 square feet of commercial space, a 250 room hotel, and a 30,000 square foot event center). Based on these similarities, the WSA incorporates the Preferred Alternative into projected water demands and water supply assessment and the results of the WSA indicate adequate water supplies exist, including groundwater resources.

S3-04 Please refer to the responses and references to the FEIS on the groundwater monitoring program, which is contained under responses to **Comments F1-05** and **F1-06**.

S3-05 In response, the gambling study referenced in the FEIS provides national statistics on the frequency of gambling in adults and was not meant to represent the frequency of gambling in any specific local area. As described in Section 4.7 and shown in Executive Summary Table 1, the FEIS concludes that the development of a casino could impact social services by increasing

demands for assistance with problem gambling ; therefore, implementation of the following mitigation measure would reduce potential impacts of the Proposed Project to less than significant: *“The Tribe shall pay an annual contribution of \$10,000 to an organization or organizations mutually agreed upon by the Tribe and the BIA to address problem gambling issues.”*

S3-06 The referenced study (*Gambling in the Golden State: 1998 Forward*, California Research Bureau, May 2006) may be alternatively viewed as an indicator that high numbers of callers to the California Council on Problem Gambling indicate the accessibility of resources made available by Indian casinos for self help programs for problem gambling cases. As stated in the response to **Comment S3-05**, the Tribe has included annual contributions as part of its mitigation measures to provide resources for organizations such as those that provide assistance to persons with problem gambling. Additionally, the FEIS includes an analysis of the social costs of problem gambling and proposed mitigation in Section 4.11.1, page 4.11-17, of the Cumulative Impacts section.

S3-07 The commenter provides a summary of statements included in the FEIS on crime. The commenter suggests that the FEIS address criminal impacts specifically related to casinos. This comment was already submitted by the commenter in the letter from the Governor’s Office during the response to comment period on the DEIS and was adequately addressed in accordance with potential environmental impacts associated with such services. Please refer to the response to comments on the DEIS (S6-14) included in Appendix Y of the FEIS.

S3-08 The commenter states that their letter does not constitute the entirety of the State’s comments on the FEIS. The commenter gives thanks on the opportunity to comment on the FEIS. Comment noted.

RESPONSE TO COMMENT LETTER S4 – CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), DATED SEPTEMBER 9, 2010

S4-01 to S4-05

The main casino entrance for Alternative A Phase I would become the fourth leg of the existing intersection of SR-49 and Randolph Drive. The main casino entrance would be aligned with the existing Randolph Drive. The main casino entrance would be equal distant as the existing Randolph Drive is to the existing Village Drive.

S4-06 Comment noted and it is recognized that Caltrans may revisit the percentages of impacts during project implementation and may request revision to the fair share proportions as project cost responsibilities are assessed.

S4-07 to S4-10

Comment noted, however the mitigation measures were developed to reduce impacts to a less-than-significant level. The installation of a traffic control signal at these intersections (SR-

49/Randolph, Latrobe (Amador)/SR-16, and SR-88/Jackson Valley Road) would bring the level of service back to an acceptable level for all three intersections reducing the impact to a less-than-significant level. Additional geometric improvements are not needed at these intersections to further reduce impacts of the project alternatives.

S4-11 to S4-12

The suggested revision to the mitigation measure has been included in Mitigation Measure L in Section 6.7 of the ROD.

S4-13 to S4-16

In the original traffic analysis and various site plans it is correct that full movements are allowed out of the SR-49/Service Entrance Driveway. However, once the traffic analysis was completed it was found that this intersection would operate unacceptably and therefore Mitigation Measure O in Section 5.2.8 of the FEIS was developed and requires that left-turns out of this service entrance be restricted.

The traffic analysis for this intersection included a dedicated southbound SR-49 left-turn lane. This lane is not shown in the preliminary site plans, as the plans were developed prior to the development of the Traffic Impact Analysis (TIA) (Appendix M of the FEIS). The dedicated turn lane will be included in the final design site plans for the Preferred Alternative.

In addition, the traffic analysis for this intersection did not include a dedicated northbound SR-49 right-turn lane. The analysis of appropriate mitigation measure for this intersection did not indicate that a dedicated northbound SR-49 right-turn lane was necessary. The mitigation measure that was developed for this intersection (Mitigation Measure O in Section 5.2.8 of the FEIS) improved the operation reducing the impact to a less-than-significant level.

S4-17 to S4-18

As stated in the traffic report, the roadway classifications were identified from the technical appendices of the *Amador County Regional Transportation Plan Update* dated September 2004. An arterial class II would have a daily capacity of 18,900 vehicles per day and also is described as having 11 to 12 foot lanes, at least 2 foot shoulders, 40-60 percent no passing, and is along level-rolling terrain.

S4-19 and S4-20

Mitigation Measure LL in Section 5.2.8 of the FEIS was incorrectly reported in the text of the document, but was accurately reported in the TIA. Mitigation Measure LL should have read "upgrade to an arterial Class II" as indicated in Table 43 of Appendix M of the FEIS. An arterial Class II would still be two-lanes wide but would have 11 to 12 foot lanes, at least 2 foot shoulders, 40-60 percent no passing, and is along level-rolling terrain. Based on the above correction to Mitigation Measure LL, Mitigation Measure DDD in Section 5.2.8 of the FEIS for this roadway accurately indicates widening from two to three lanes would reduce the identified

impact to a less-than-significant level. Mitigation measure LL from Section 5.2.8 of the FEIS corresponds to Mitigation Measure JJ in Section 6.7 of the ROD. This mitigation measure has been updated to indicate the correct mitigation established for this intersection as reported in the TIA in Appendix M of the FEIS.

S4-21 to S4-22

The suggested revision to the mitigation measure has been included in Mitigation Measure LL in **Section 6.7** of the ROD.

S4-23 to S4-24

Mitigation Measure NN in Section 5.2.8 of the FEIS was incorrectly reported in the text of the document, but was accurately reported in the TIA. Mitigation Measure NN should have read “add NB (northbound) right-turn lane”. Also, Caltrans District 3 is correct that the proposed northbound left-turn lane would have already been required as part of the opening day mitigation, Mitigation Measure F. However, since Mitigation Measure NN applies only to Alternative D and not the Preferred Alternative, it is not included in **Section 6.7** of the ROD and will not be adopted.

S4-25 to S4-26

The suggested revision to the mitigation measure has been included in Mitigation Measure RR in Section 6.7 of the ROD.

S4-27 to S4-29

The suggested revision to the mitigation measure has been included in Mitigation Measure SS in Section 6.7 of the ROD.

S4-30 The San Joaquin Council of Governments *2007 RTP* was used to determine which improvements should be considered for the cumulative condition in San Joaquin County for the cumulative analysis in Section 4.11 of the FEIS. Only Tier 1 projects were considered. Therefore, the SR-88 Bypass in San Joaquin County (using the alternative with the one-way couplet in the town of Lockeford and 4-lanes along SR-88 between SR-12 East and SR- 12 West) was assumed to be completed in the cumulative condition. This alternative was chosen from the three alternatives based on professional experience conducting other studies for San Joaquin County and, per San Joaquin County, this was the alternative that was assumed in other studies conducted in the county. The lane geometry in the TIA for the study intersections for this alternative were the same as the *State Route 88 Bypass Project Study Report* conducted in June 2006 (PSR Report), including the lane geometry of TIA intersection #15 (SR-88/SR-12) which included an eastbound dual left-turn lane.

S4-31 There are actually two intersections that were analyzed in the traffic study which are both identified as SR-16/Latrobe Road. The intersection of SR-16/Latrobe Road located in Amador County is intersection # 8 in the TIA and has an acceptable level of service of “C”. The other

- SR-16/Latrobe Road intersection that was analyzed in the TIA is located in Sacramento County and identified as intersection # 23 in the TIA, which has an acceptable level of service of “D”. The Sacramento County intersection of SR-16/Latrobe Road is correctly identified in Appendix M on page 143 of the TIA.
- S4-32 This is correct that in Figure 25 (2025 No Project Lane Geometry and Peak Hour Volumes), intersection #8 was assumed to be signalized even though it is not a Tier 1 project. The reason the intersection was analyzed as a signalized intersection is because it is required as part of the opening day mitigation (Mitigation Measure G) for the casino development.
- S4-33 The Jackson Highway roadway description in the TIS is a description of the roadway in the immediate vicinity of the project site.
- S4-34 Each of the jurisdictions was contacted to determine which projects should be included in the 2010 Existing Plus Approved Project (2010 EPAP) scenario. These projects are either approved projects or projects that are planned. The six projects in Plymouth were included in the in the 2010 EPAP analysis because they were requested by Caltrans District 10 staff. The Caltrans District 10 comment letter on the DEIS dated June 10, 2008 specifically stated that the TIA analysis should incorporate the six recent proposed projects in Plymouth, which would increase traffic volumes on SR-49 in the City. The six projects that Caltrans District 10 stated in the letter were the Zinfandel, Shenandoah Ridge, Shenandoah Springs, Cottage Knoll, Arroyo Woods, and Oak Glen residential projects.
- S4-35 According to the *2004 Amador County Regional Transportation Plan Update* dated September 2004, the Ione Bypass is also in the Tier 1 funding plan. The comment letter on the DEIS from the Office of Board of Supervisors (Board) dated July 2, 2008 states that mitigation measures in certain areas within the City of Ione may be deemed infeasible. The Board goes on to state that the Tribe should consider payment towards the construction of the Ione Bypass as mitigation for these impacts. Therefore, the mitigation measure for impacts within the City of Ione along the roadway segments of Main Street, Church Street, Preston Avenue, and Ione Street was identified as the construction of the Ione Bypass. These mitigation measures are also consistent with Amador County’s General Plan policies 1B (12), 1B (17), and 1B (18), which states that impacts shall be mitigated through payment of the regional traffic mitigation fee for improvements identified in the Tier 1 or 2 funding plan. In addition, according to the *City of Ione General Plan* Policy CIR-1.4, the roadways of Main Street, Church Street, Preston Avenue, and Ione Street are allowed to operate at LOS F.
- S4-36 Comment noted. The project site is located adjacent to the State highway system and developing connectivity to non-State roadways is not feasible at the time of planned operation of the casino. With a majority of the project site remaining open space, regardless of the development alternative, internal roadways may be developed in the future to accommodate future adjacent

development projects to reduce the need to utilize SR-49 to access the site. At this time, no additional access roadways are necessary as the surrounding properties are currently open space. Alleviation of transportation impacts from local development is the responsibility of the local jurisdiction (either the City or County depending upon the location of the development).

- S4-37 Comment noted. A drainage plan has been developed for the project alternatives and is included in Appendix G of the FEIS. The drainage features are summarized in Section 2.0 of the FEIS. As discussed there within, stormwater runoff generated during the operation of the development alternatives (Alternative A through D) would be conveyed by a combination of open channels, storm drains, and culverts to an on-site detention basin. This basin would assure that post development off-site runoff peaks from the operation of the casino would not exceed pre-development off-site peak runoff volumes. Therefore, off-site stormwater flows during operation of the selected alternative would not adversely impact State stormwater conveyance systems.
- S4-38 Comment noted. The issuance of an encroachment permit is included in Table 1-1 in Section 1.4 of the FEIS. The table outlines potential permits, approvals, and consultations required to implement the Proposed Action. Compliance with the California Environmental Quality Act (CEQA) may be required to implement off-reservation mitigation measures, which may include the development of associated environmental studies. If warranted, these studies would be conducted prior to development of project features that may trigger the encroachment permit.
- S4-39 Suggestion noted and the Tribe has been made aware of the request. At this time there is no planned meeting between the various government and Tribal entities in the County to address cumulative traffic and transportation impacts.
- S4-40 The BIA will forward a copy of the ROD, which includes adopted mitigation measures, to the Caltrans, District 10 Transportation Planning Office in attention of the IGR coordinator.

LOCAL COMMENT LETTERS (L)

RESPONSE TO COMMENT LETTER L1 – CITY OF PLYMOUTH, CALIFORNIA, DATED AUGUST 19, 2010

- L1-01 The commenter requests a time extension of 90 days to review the FEIS. The BIA provided a response to this letter on August 31, 2010; wherein the BIA did not approve the commenter's request. The comment review period for the FEIS was established in compliance with the NEPA.

RESPONSE TO COMMENT LETTER L2 – CITY OF PLYMOUTH, CALIFORNIA, DATED SEPTEMBER 13, 2010

- L2-01 The commenter expresses dismay that the time extension previously requested in their letter dated August 19, 2010 was not approved by the BIA; however, commenter states that they intend to comment on the FEIS. Comment noted.

- L2-02 The commenter fails to describe the recent developments that are the subject of this comment. Therefore, a detailed response is not possible.
- L2-03 The commenter does not describe the significant new information or changed circumstances that are referenced. More detail would be needed to provide a response to this comment.
- L2-04 The commenter states their intention to point out examples of occasions where the BIA has failed to adequately respond to the City's comments on the DEIS. Responses to specific examples are provided as appropriate.
- L2-05 The commenter requests that the City of Plymouth be removed from their role as Cooperating Agency for the project. The responsibilities for Cooperating Agencies have been completed based on submittal of the City's comment letter. The request to be removed as Cooperating Agency for the NEPA process is noted in the record through submittal of the City's comment letter and this corresponding response.
- L2-06 The commenter is of the opinion that the Department of the Interior (DOI) should not take land into trust for the Tribe and will deliver an explanation further in their letter. Comment noted. The purpose of the EIS and associated NEPA process is to address the environmental impacts of the Tribe's request for the trust acquisition. The acquisition application itself is not a component of the NEPA review process. All alternatives within the EIS may be feasible (including trust acquisition and gaming) as the decisions on the Tribe's status and associated restored lands decision is currently under review.
- L2-07 First, as explained previously in the response to comments on the DEIS (Appendix Y of the FEIS), the purpose of the EIS is to examine the environmental setting and potential environmental impacts of the Proposed Project alternatives. In short, the purpose of the preparation of the FEIS is to satisfy the requirements of NEPA regarding potential environmental impacts of the Proposed Project; the purpose and need defined in the FEIS represents the Tribe's justification for implementation of the Proposed Project and trust application. The commenter misquotes and misinterprets the purpose and need presented in the FEIS in their comment. The purpose and need for the Proposed Project is defined in the FEIS in Section 1.2, page 1-7, 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.”* Second, a wide range of alternatives to meet the stated purpose and need including reduced casino alternative, non-casino alternatives, and alternative development configurations were considered in the DEIS and FEIS.

Council on Environmental Quality (CEQ) regulations at 40 CFR § 1502.2(d) specifically state that “*Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the [National Environmental Policy] Act and other environmental laws and policies.*” The FEIS has fulfilled the requirements of NEPA and the commenter’s suggestion that the EIS be redone is unjustified since the FEIS thoroughly analyzes environmental impacts associated with several project alternatives, including non-gaming alternatives.

L2-08 through L2-10

This comment is outside of the scope of NEPA. The purpose of the preparation of the FEIS is to satisfy the requirements of NEPA regarding potential environmental impacts of the Proposed Project and not to discuss the provisions of the trust application.

L2-11 The FEIS was developed in compliance with the CEQ Regulations (CEQ, 40 CFR Parts 1500 through 1508) implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*). Based on the comments received on the DEIS, the BIA has expanded discussions throughout the FEIS to improve various descriptions of the project alternatives (Section 2.0) and existing environmental setting (Section 3.0) and to clarify and improve the discussion of conclusions within the environmental consequences section (Section 4.0) of the FEIS. The changes made to the DEIS constituting the FEIS are consistent with CEQ Regulation 40 CFR 1503.4. Further, the FEIS was prepared in accordance with the BIA’s NEPA Handbook and remains consistent with the guidelines included therein. As a result, a supplement to the FEIS is not warranted.

L2-12 As provided in Section 8.0 of the FEIS, the City General Plan Update is referenced as a resource utilized to develop the FEIS. The General Plan Update was not approved by the City until late 2009, months after the FEIS was completed. Additionally, the FEIS references various draft documents for the Amador County (County) General Plan Update. At this time the County General Plan Update has not been approved by the Board of Supervisors. According to the County’s website, the latest information indicates that the Draft Housing Element went before the Board of Supervisors for review on November 9, 2010. The Draft Housing Element on the website is dated October 2010. Because the FEIS contains information available at the time of its development from the City’s and County’s general plans and no updates to either plan had been approved by the time the FEIS was completed, the information contained within the current General Plan documents do not constitute significant new circumstances and information relevant to the environmental concerns associated with the Tribe’s request for the trust acquisition and subsequent development of the casino-resort project. The conclusions within the FEIS are as accurate based on the information available at the time the FEIS was developed. Changes within the FEIS were utilized to update the DEIS with the most current information available. Similar comments were presented on the DEIS and were subsequently addressed, please refer to the response to **Comment L2-02** in Appendix Y of the FEIS.

- L2-13 The response to Comment L2-02 in the FEIS indicates that if an update of the information within an EIS would not result in changes to the conclusions within the EIS, then the update is not required solely for the purpose of providing a more updated document to the public. Refer to the response to **Comment L2-11** regarding the updated General Plans for the City and County.
- L2-14 Refer to the responses to **Comments L2-11** and **L2-12** regarding the timing of completion of the FEIS, adoption of the City's General Plan Update, and review of new data and requirement to provide recently updated documents.
- L2-15 Refer to the responses to **Comments L2-11** and **L2-12**. The analysis of traffic impacts and public services demands as detailed in the FEIS contain the most recent information available at the time the FEIS was completed.
- L2-16 Refer to the responses to **Comments L2-11** and **L2-12**.
- L2-17 through L2-19
Refer to the responses to **Comments L2-11** and **L2-12**. A supplemental FEIS is not required as updating the baseline information would not change the conclusions within the FEIS and therefore the updated information within the General Plan Updates that were developed after the FEIS was completed do not constitute significant new information relevant to environmental concerns.
- L2-20 Similar to the response to **Comments L2-11** and **L2-12**, the Long Range Transportation Plan was completed in March of 2010, over a year after the completion of the FEIS.
- L2-21 As discussed in Section 1.0 of the FEIS, the Tribe does not have lands held in trust by the BIA and is therefore considered a landless Tribe. The term "landless" explicitly references only trust lands and the ability of the Tribe to assert tribal sovereignty and self-government in relation to the statutory authority of the BIA.
- L2-22 The commenter mentions projects currently being processed within the City. As discussed in response to comments on the DEIS (Appendix Y of the FEIS), an updated approved projects list was utilized to determine impacts to environmental resources, in particular to traffic impacts. During development of the Traffic Impact Analysis (TIA) for the FEIS, the planning departments for Amador, Sacramento, and San Joaquin Counties were contacted to obtain approved projects with the potential to add vehicle trips to the study roadway network. These counties, with the inclusion of El Dorado County, were contacted to update the list of planned projects within the revised TIA. The approved projects surrounding the City were included within the list obtained from Amador County and were thereby incorporated into the impact analysis.

- L2-23 The commenter presents a change in solid waste for the City that occurred in June of 2010. The FEIS was completed in February of 2009. Please refer to the response to **Comments L2-11** on the FEIS.
- L2-24 The commenter feels that their previous comments on the DEIS were not adequately addressed and states that they will provide their explanation in the following pages. Comment noted.
- L2-25 The commenter states that if the City has a concern regarding the enforceability of mitigation outlined within the ROD, then the City's only recourse is to appeal the ROD. In response, public comments and review were solicited for the mitigation measures presented in the DEIS and again in the FEIS, providing adequate opportunity for public review in accordance with the requirements of NEPA.
- L2-26 This change reflects the removal of the USEPA as a collaborator on the development and implementation of the groundwater monitoring plan; however, it does not remove the USEPA's role as federal regulatory agency. In this way, the USEPA may better serve as a neutral regulatory authority. Under the Proposed Project, development activities on trust land would be performed in compliance with and under the regulatory authority of the USEPA.
- L2-27 Updates to the estimates provided on water and wastewater analysis in the FEIS are a result of responses to comments on the DEIS and verification of known data to the extent possible.
- L2-28 The safe yields of the on-site groundwater wells are described in the *Pumping Tests and Sustainability Analysis for Wells H1, M1, and M3, and Evaluation of Water Quality*, provided as Appendix C of the FEIS. The update in the proposed safe yield from 83 gallons per minute (gpm) to 81 gpm does not significantly alter the design of the proposed potable water system as outlined in the Water and Wastewater Feasibility Study (Appendix B of the FEIS).
- L2-29 The commenter provides a caption included in Figure 6-2 of Appendix B of the FEIS. The reason the note from this caption is not described in Section 2.0 of the FEIS is because this section serves primarily as a summary of the technical data contained in Appendix B. Further, Section 2.0 of the FEIS mainly discusses estimates associated with the proposed alternatives and is not intended to provide extensive details (i.e. the diagram shown in Figure 6-2 of Appendix B).
- L2-30 This comment is very brief and lacks specifics; therefore it is unclear what exactly is being asked. Backwash water from water treatment would be accounted for in the capacity of the WWTP.
- L2-31 The water demands presented in the beginning of the water demand discussion in Section 2.2.1 of the FEIS are taken from Table 2-6 of Appendix B. These numbers indicate the demand of the project, regardless of source. The commenter references Table 6-1 of Appendix B. This table indicates the amount of water needed to meet the anticipated water demands provided in Table 2-6, accounting for the 10,000 gallon loss from treatment under Water Supply Option 2. These

losses were accounted for in the discussion of Water Supply Option 2 (which incorporates the additional 10,000 gallons per day needed to be pumped to account for treatment losses and are correctly addressed within the FEIS).

- L2-32 Comment noted; this discrepancy does not significantly alter the conclusions of the FEIS and therefore does not impact release of the ROD.
- L2-33 Comment noted; this discrepancy does not significantly alter the conclusions of the FEIS and therefore does not impact release of the ROD.
- L2-34 Comment noted; this discrepancy does not significantly alter the conclusions of the FEIS and therefore does not impact release of the ROD.
- L2-35 The commenter references the site specific study conducted to assess percolation rates on the project site, and then states that the FEIS does not document the ability of the spray fields to absorb water. This statement on spray fields is factually incorrect. Typically, spray fields are not used as an “absorption” method of wastewater disposal, but are used as an evaporative method for disposal. The commenter mentions leach fields and spray fields when discussing subsurface disposal so the actual intent of the comment is unclear because the effectiveness of leach fields (subsurface disposal) and sprayfields (evaporative disposal) depend on different physical characteristics.
- L2-36 Comment noted. Wastewater Disposal Options 1 and 2 were developed due to the lack of ability to dispose of all of the generated wastewater via subsurface disposal. As indicated in Section 2.2.1 of the FEIS, the Tribe has selected Wastewater Disposal Option 2 (surface water discharge under a federal NPDES permit) as the preferred wastewater disposal option. Since a similar permit was issued to a Tribe in the same watershed using the same wastewater treatment technology, a year-round discharge permit is anticipated.
- L2-37 A NPDES permit is anticipated to be issued by the USEPA, as a similar permit was issued to a Tribe in the same watershed with similar wastewater treatment facilities as those proposed for the Preferred Alternative. The permitting process allows for public review as mentioned by the commenter and additional analysis may be required. The Stream Assessment (Appendix V of the FEIS) has been updated (AES, 2010¹) to provide additional information to the USEPA for the permitting process as well as the US Fish and Wildlife Service (USFWS) to complete consultation requirements under Section 7 of the Endangered Species act. The updated Stream Assessment was included in an updated Section 7 consultation package sent the USFWS, which also contained a revised Biological Assessment, a 2007 CRLF Habitat Assessment and a 2010 CRLF Survey Report, a 2003 CTS Habitat Assessment, and the 2005 and 2007 90-Day Reports of Vernal Pool Branchiopods.

¹ AES, 2010. Stream Assessment Ione Band of Miwok Indians Casino Project. November, 2010

- L2-38 Wastewater disposal requirements are summarized in Table 5-8 of Appendix B of the FEIS. Assuming maximum recycling within the casino, wastewater disposal demands for the Preferred Alternative would average 90,000 gallons per day. The permit issued in the same watershed, which was referred to in the response to **Comment L2-36**, does not include discharge volume limitations. It is therefore anticipated that the permit granted to the Tribe for the Preferred Alternative will not include discharge volume restrictions. As discussed in Section 4.3 of the FEIS, a NPDES permit would include 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 (refer to Section 3.9.2 of the FEIS). The treated effluent would meet all discharge limitations for all constituents. This conclusion is supported by the quality of effluent typically produced by membrane bioreactor (MBR) wastewater treatment facilities, and the treatment of the water supply to lower total dissolved solids (TDS), iron, and manganese present in the well water (refer to Section 4.9 of the FEIS for additional details). The NPDES permit would also require monitoring of the treated effluent prior to discharge to ensure that the treated effluent meets all applicable standards.
- L2-39 The commenter incorrectly states that the preferred water supply option changed. Until the release of the FEIS, a preferred water supply option was not identified by the Tribe. As discussed in Section 2.2.1 of the FEIS, the Tribe has selected Water Supply Option 2 (on-site groundwater wells) as the preferred option to meet potable water demands for the Preferred Alternative.
- L2-40 The commenter states that the responses provided to Comments F1-01 to F1-06 submitted on the DEIS (Appendix Y of the FEIS) are not adequately addressed. However, the commenter does not provide a specific explanation as to why the responses are inadequate. The USEPA (to whom the City refers to in this comment) did not state in its comment letter on the FEIS that their previously comments on this issue were not adequately addressed.
- L2-41 The commenter states that water trucking represents a significant impact which is not adequately addressed in the FEIS. Trucking of water (approximately 5 trips per day during peak demands as indicated in Section 2.0 of the FEIS) does not represent a significant impact on the environment. While the USEPA expressed concerns regarding trucking, it did not object to the analysis contained in the FEIS. The objections to the Preferred Alternative in the DEIS were related to a lack of information on the Tribe's commitment to utilize recycled water (which the Tribe has since committed to as presented in the FEIS) and on Wastewater Disposal Option 1 (the Tribe has since committed to the preferred Wastewater Disposal Option 2 as indicated in the FEIS).
- L2-42 The commenter again states that the preferred water supply option has changed (refer to the response to **Comment L2-39**) and that mitigation within the FEIS relies on the existence of the Plymouth Pipeline project. Section 5.0 of the FEIS outlines the mitigation which has been incorporated into the ROD. There are no mitigation measures that rely on the existence of the

Plymouth Pipeline or incorporate the Plymouth Pipeline into the Preferred Alternative and preferred Water Supply Option 2.

- L2-43 The issuance of an NPDES permit is likely, based on the issuance of a similar permit within the same watershed for a similar project with similar treatment technology. It is highly unlikely that the wastewater reservoir (Wastewater Disposal Option 1) would be required to be developed. As stated in the FEIS and the ROD, the Tribe has committed to implement the preferred Wastewater Disposal Option 2.
- L2-44 The commenter provides qualitative arguments that implementation of the Preferred Alternative would result in substantial impacts associated with low-income housing. This comment is similar to a previous comment submitted by the commenter on the DEIS. This comment was adequately addressed in the response to Comment L4-06 in Appendix Y of the FEIS.
- L2-45 The commenter states that the National Indian Gaming Commission (NIGC) does not have the staff or the expertise to enforce environmental compliance issues. However, this comment does not provide evidence to illustrate this assertion. The NIGC will have ongoing regulatory authority over all aspects of the gaming operation.
- L2-46 The commenter states that the mitigation of impacts to schools does not indicate how much or whether the amount is a single sum or ongoing payment. Mitigation Measure 5.2.7(D) of the FEIS (which has been incorporated into the ROD) specifically states that a one-time payment of \$107,610 shall be provided to the Amador County School District or such other amount as may be agreed to by the Tribe and the district. The information requested is included within Section 5.0 of the FEIS.
- L2-47 The City's loss of transient occupancy taxes would not lead to environmental impacts, which is the focus of the EIS. The information provided in the FEIS provides background on the Tribe's willingness to mitigate impacts, both monetary and environmental.
- L2-48 Refer to the response to **Comment L2-22** regarding regionally-occurring projects and the FEIS.
- L2-49 The commenter expresses concern that traffic mitigation measures will not be implemented. Traffic mitigation has been incorporated into the ROD. Ultimate approval of off-reservation traffic mitigation measures will be the responsibility of the jurisdictional agency, which is the California Department of Transportation (Caltrans). While other agencies can "sponsor" roadway improvement projects under Caltrans jurisdiction, Caltrans ultimately has the responsibility approving such projects. The Tribe will therefore work with Caltrans to implement identified mitigation measures. NEPA and the Council on Environmental Quality require mitigation measures to be recommended through the environmental review process, even if implementation is reliant upon action from a separate agency or authoritative body other than the Lead Agency.

- L2-50 The commenter states that the presentation of fair share costs for traffic mitigation appears as a fixed cost. However, the language in the mitigation measures identifies the specific improvement necessary to mitigate the impact and presents the “(p)roportionate share calculation of this project impact using Caltrans methodology.” This phrase does not indicate a fixed fair share cost. Furthermore, as discussed in Section 5.0 of the FEIS, prior to the development of the proposed traffic mitigation measures, actual funding mechanisms for impact mitigation shall be determined at the time of project implementation. This statement clearly indicates the presented fair share calculations are not fixed but representative of potential fair share contribution requirements.
- L2-51 The fair share contributions for each identified traffic mitigation measure were calculated using the existing Caltrans methodology at the time the Traffic Impact Analysis (TIA) was developed. As discussed in response to **Comment L2-50**, actual funding mechanisms for impact mitigation shall be determined through negotiations at the time of project implementation. The appendices and information within the revised TIA of the FEIS, including the presentation of the mitigation measures, does not prejudice the ability of any party to comment upon the transportation-related impacts associated with the project alternatives and proposed mitigation measures. The comments received on the revised TIA and FEIS were reviewed and considered during development of the ROD.
- L2-52 The commenter provides anecdotal evidence that fair share contributions are not adequate mitigation of identified impacts to traffic. The commenter feels that for other tribal casino projects there are not enough non-casino projects to contribute the additional shares needed to complete the construction of traffic improvements. Conversely, a fair share of less than 100 percent indicates other non-casino projects have already been identified and the impact requires mitigation because of the cumulative affect of the projects. Should the other projects not be implemented (and associated trips not added to the roadway network), the cumulatively considerable significant impacts of the Preferred Alternative may not be experienced. The commenter states that the improvements are never built unless the Tribe contributes all of the funds to implement the improvements. On the contrary, it is standard industry practice for developers (including Indian Tribes) to make fair share contributions for roadway improvement projects.
- L2-53 Comment noted. Specific mitigation measures have been identified for impacts to the roadway network from the Preferred Alternative and are adequately presented in the FEIS. Contribution to a traffic impact fee may be considered in future agreements, but at this time is not anticipated.
- L2-54 Commented noted. The subsequent specific comments presented in the letter are addressed below.

- L2-55 The commenter states that the trip distribution assumptions are out-dated but does not indicate why or how the assumptions should be adjusted. The TIA was completed in 2008 using the appropriate reference documents and traffic patterns.
- L2-56 The study roadway segments were selected in part based on comments received on the DEIS. The trip distribution was selected based on comments received as well as anticipated traffic patterns and routes that would introduce a minimum of 50 trips to project intersections (50 new trips is a Caltrans indicator of the need for a TIA and is often used to determine if an intersection should be included within a TIA).
- L2-57 First, the commenter’s statement that the TIA assigned traffic to the roadway network “by hand” is unclear as the referenced page clearly indicates that the trips were independently assigned to the roadway network based upon the trip distribution determined from a detailed market analysis of population densities (Appendix M, page 53 of the FEIS). As stated on page 100 of Appendix M, forecasts for future traffic volumes were prepared using the Transportation Research Board’s *Highway Traffic Data for Urbanized Area Project Planning and Design*, the Sacramento Metropolitan (SACMET) travel demand simulation model, San Joaquin Council of Governments (SJCOG) travel demand model, and the Amador County travel demand model. Second, the methodology used in determining project trip generation rates is described on page 46 of Appendix M, and is based on standard trip generation rates associated with land use in the Institute of Transportation Engineers (ITE) Trip Generation Manual (Manual). As described therein, the Manual contains information on only a few traditional casinos and so trip generation case studies of similar Indian casinos in terms of location, size, and other common characteristics were utilized to produce a more accurate representation of anticipated trip generation rates of the Preferred Alternative to the extent feasible, based on information available at the time of the study.

Figure 14 of Appendix M identifies the distribution of project trips generated by the Preferred Alternative. According to the figure, only one Friday P.M. peak hour trip is anticipated to be generated from the area served by SR-49 near Main Street. Those patrons that may travel from wine country to the casino are not considered to be new trips (as the trips were generated by the wineries). These trips are incorporated into the “no project” trips presented in Figure 10 of Appendix M.

- L2-58 Comment noted. The inclusion of the projects indicates a more congested existing roadway network and therefore conservative impact analysis. If, as the City indicates, many of the projects are not approved and would not be built, then the existing traffic levels would be reduced when project trips are added to the roadway network. As a result, fewer impacts would actually be experienced since there are fewer vehicles on the roadway network than originally analyzed.

- L2-59 The FEIS provides an analysis of the number of jobs and local wages that would be paid to the region. In regards to socioeconomic impacts, the development of the Preferred Alternative would not have a disproportionate adverse impact on a socioeconomically disadvantaged portion of society. With the inclusion of several job categories requiring little to no skill set or education requirements, the socioeconomic impacts would be beneficial to the community by providing job categories for persons of lesser socioeconomic status in the region.
- L2-60 After the NOI for the preparation of the DEIS was released, the public has been provided two additional opportunities to comment on the proposed alternatives. As discussed in the response to comment on the DEIS (response P17-76 in Appendix Y of the FEIS), the inclusion of the parcels after the release of the NOI does not prejudice the participation of any party in the environmental review process or the ability of any party to comment upon the environmental impacts associated with the project alternatives and proposed mitigation measures because of the two additional opportunities to comment on the proposed alternatives.
- L2-61 Comment noted and the request is noted in the record although the cooperating agency responsibilities have been fulfilled since the ROD has been released and the NEPA process concluded.

RESPONSE TO COMMENT LETTER L3 – COUNTY COUNSEL, AMADOR COUNTY, CALIFORNIA, DATED SEPTEMBER 13, 2010

- L3-01 The commenter gives thanks for the opportunity to comment on the FEIS. Comment noted. The BIA has reviewed and considered the comments provided by the County during the decision making process.
- L3-02 The commenter provides a summary of the County's mission and support of the NEPA environmental review process. Comment noted.
- L3-03 The BIA received comments from the County on the DEIS and provided responses to substantive comments in Appendix Y of the FEIS. The commenter notes that the FEIS contains updated data for certain environmental resources, such as transportation. The commenter states that the public has been deprived of the opportunity to review and comment. The FEIS was released to the public and comments were received. As detailed in the ROD, during the 30-day waiting period following issuance of the FEIS on August 13, 2010 (Refer to Attachments I and II), the BIA received 11 comment letters from agencies and 7 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 are included within **Attachment III** of the ROD. Specific responses to these comments letters are included in this attachment. The NOA for the release of the FEIS

(refer to Attachment II of the ROD) indicates that public comments would be accepted on the FEIS.

- L3-04 This comment lacks specificity. The commenter provides merely an opinion and does not provide supporting evidence; therefore, their argument is unsubstantiated. The main areas of controversy identified during the environmental review process of the Proposed Project are identified in the Executive Summary of the FEIS (availability of water, problem gambling, crime, and traffic). While there are other concerns identified by the public, the above issues were identified as being the main areas of controversy. Exclusion from the list of areas of controversy does not indicate that the BIA dismissed the public concerns as indicated by the inclusion of responses to all substantive comments on the DEIS in Appendix Y of the FEIS and associated changes within the text of the FEIS. Such changes included alteration of the site plan to mitigate concerns related to aesthetics and wetlands (and vernal pools) on the project site.
- L3-05 As explained in Section 5.2 of the FEIS, the preliminary site plans have been modified from the DEIS and the parking areas for Alternatives A through C have been reduced by way of the development of a parking structure to avoid or minimize impacts to jurisdictional waters of the U.S. and wetland habitat to the extent feasible. Refer to Figures 5-1 and 5-2 for the preliminary site plans for Phase I and Phase II of Alternative A, respectively, in the FEIS. Refer to Figures 5-3 and 5-4 for the preliminary site plans for Phase I and Phase II of Alternative B, respectively, in the FEIS. Refer to Figure 5-5 for the preliminary site plan for Alternative C in the FEIS. No changes to Alternative D are required to minimize impacts to waters of the U.S. or wetland habitats. These changes were made in consultation with the USEPA, which approved of the alteration of the site plan to reduce identified impacts to wetlands.
- L3-06 As noted in Section 5.2 of the FEIS, none of the proposed mitigation measures provided in the DEIS were removed from the FEIS. Instead, clarification and additional mitigation measures were added to Section 5.2 along with the development of preliminary site plans for Alternatives A through C, which incorporate mitigation efforts with the intent to avoid sensitive natural resources. Refer to the response to **Comment L3-05**.
- L3-07 As shown in Section 2.0 of the FEIS, changes to the project description include minor edits for clarity and refinements to avoid or reduce impacts, and do not reflect significant changes to the Proposed Project or development alternatives. For example, the preferred options for water supply (Option 2) and wastewater disposal (Option 2) remain consistent with the DEIS. As discussed in response to **Comment L3-03**, the public was provided adequate opportunity to comment on the mitigated site plan. As shown in Figure 5-2 (Phase II of the Preferred Alternative), portions of the parking areas have been condensed into a parking structure and portions of the facilities have been moved. However, the areas of disturbance are similar to the previously Proposed Project and do not constitute a significant change to the project requiring

supplemental analysis. Comments provided on the DEIS were adequately addressed in the FEIS and adequate information is available to make a decision on the project.

L3-08 The commenter appreciates the opportunity to provide comments on the FEIS. Comment noted. The FEIS is compliant with the provisions of NEPA, the Council on Environmental Quality (CEQ) Regulations for the Implementation of NEPA (40 CFR Parts 1500 – 1508), and the BIA NEPA Handbook (59 IAM 3-H).

L3-09 The commenter provides a summary of the mission of elected County officials and staff in regards to NEPA. Comment noted.

L3-10 This comment is identical to **Comment L3-03**. Please refer to the response to **Comment L3-03**.

L3-11 The revised TIA utilized more recent traffic counts to assess impacts of the project alternatives on baseline traffic operations. The resulting impacts were different than those identified in the DEIS due to the updated traffic counts. The revised TIA and resulting analysis and mitigation within the FEIS do not ignore significant impacts to County roadways. The revised TIA is a comprehensive analysis of potential impacts from the project alternatives to the existing roadway network. The study roadway segments were selected based on comments received on the DEIS and reflect concerns presented during the environmental review process. In accordance with guidance from CEQ [46 FR 18026 (1981)], all relevant and reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency. Addition of lanes to the roadway network is a viable mitigation measure outside the jurisdiction of the BIA. Furthermore, the impacts associated with traffic mitigation measures have been considered in the FEIS and specific mitigation measures have been provided in Section 5.2 of the FEIS. For example, under Biological Resources in Section 5.2.5 of the FEIS, mitigation is provided for off-site roadway improvements.

L3-12 This comment is identical to **Comment L3-04**. Please refer to the response to **Comment L3-04**.

L3-13 The commenter presented a similar comment on this subject earlier in this letter. Please refer to the response to **Comment L3-06**.

L3-14 This comment is identical to **Comment L3-05**. Please refer to the response to **Comment L3-05**.

L3-15 There was a misprint identified in the FEIS wherein Figure 2-6 was substituted for the mitigated Alternative A Grading and Drainage Plan. Please refer to Figure 2-6 of the DEIS for the correct Figure 2-6. For further explanation, please refer to the response to **Comment L3-05**. This misprint does not affect any of the conclusions of the FEIS or the ability of the public to comment on the project alternatives. Additionally, the mitigated site plans in Section 5.0 of the FEIS increase the distance from State Route (SR)-49 to the development components of the project alternatives. This would reduce the visibility of the structures from SR-49 considering the main

buildings have been moved behind village drive and the existing gas station and mini-mart. Overall, the mitigated site plans incorporate the same areas of disturbance, with a slight reduction in overall area due to the development of the parking structure, reducing the overall surface area of the parking lots compared to the original site plans.

- L3-16 The alternative site plans were modified in response to the comments on the DEIS, particularly comments from the USEPA. Please refer to the response to **Comment L3-05**. Alternative designs are identified as adequate mitigation by CEQ [46 FR 18026 (1981)]. The mitigated site plans are presented as mitigation in Section 5.2.5, indicating that the plans were developed to reduce impacts and that their location within the mitigation section of the document indicates that they would be developed instead of the site plans presented in Section 2.0 of the FEIS. These mitigated site plans are incorporated into the project description of the casino alternatives within the ROD. No revisions to the site plan of Alternative D, the non-casino alternative, were determined necessary to minimize impacts of the retail development.
- L3-17 The mitigated site plan extends further south than the original site plans by less than 100 feet. The overall surface area of improvements is reduced compared to the original site plan to reduce impacts to the vernal pool and wetlands on the project site. Mitigation measures identified in Section 5.2.5 would apply to the mitigated site plan and adequately address impacts to oak woodlands. As stated in Section 5.2.5, 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 one 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. The geotechnical setting of the project site is discussed within Section 3.2 of the DEIS and FEIS. As discussed in Section 3.2, the soils on the project site do not exhibit limitations on development on the project site (including a multiple storied building, which was already a component of the original site plan during development of the hotel during Phase II) and is located in an area that exhibits low seismic activity (as indicated in the County's general plan). As indicated in the mitigated site plan, the parking structure would be located behind the casino, conference center, and hotel, and therefore would not result in substantial visual impacts. All the analysis within the FEIS is indicative of the mitigated site plan and the alterations within the mitigated site plan do not require supplemental analysis.
- L3-18 As discussed in Section 2.0 of the FEIS, Wastewater Disposal Option 2 (surface water discharge) is the preferred alternative. The reservoir is not anticipated to be developed. However, the wastewater reservoir was analyzed within the FEIS indicating that failure could result in significant impacts to downstream areas as discussed in Section 4.2. As discussed therein, to reduce impacts, construction of the reservoir would follow recommendations listed in Appendix E of the FEIS and the Tribe would develop an Operation and Maintenance Program under the

direction of the BIA. With the included mitigation measures outlined in Section 5.2.2, impacts associated with potential dam failure would be reduced to less-than-significant levels.

- L3-19 This comment is identical to a previous comment submitted by the commenter on the DEIS (L2-44). Please refer to the response to Comment L2-44 in Appendix Y of the FEIS. Further, this comment pertains to Water Supply Option 1; whereas, as stated in Section 2.2.1, page 2-9 of the FEIS, the preferred option is Water Supply Option 2. As a result, at this time there has been no formal communication, agreement, or meeting scheduled between the Tribe and the City to discuss connection of the casino to the City's municipal system. However, as discussed in response to **Comment S3-03**, the City's 2008 WSA included a commercial development within the water demand projections at the same location as the casino (with an acreage identified as 228 acres, the same as the proposed project site) with similar components as the Preferred Alternative (120,000 square feet of commercial space, a 250 room hotel, and a 30,000 square foot event center). Based on these similarities, the WSA thereby incorporates the Preferred Alternative into projected water demands and water supply assessments and the results indicate adequate water supplies, including groundwater resources.
- L3-20 As discussed in the response to comments in Appendix Y and in the FEIS, increased pumping by the City has led to an overdraft of groundwater in the local basin, despite having average rainfall for the years analyzed. Tribal pumping could increase the basin deficit. However, the Tribe has performed sustainable tests and identified the necessary water sources to maintain groundwater use within the safe yield of the wells. Pumping from the two on-site and one off-site wells would not likely affect neighboring wells, although the potential for this impact does exist. Therefore, mitigation measures are identified in Section 5.2.3 of the FEIS to ensure potential effects from development of an on-site groundwater supply system are less-than-significant.
- L3-21 The commenter states that no source for trucked water has been identified. The DEIS and FEIS include a will serve letter from Aero Pure Water. Additionally, as discussed in response to Comment L2-55 on the DEIS (Appendix Y of the FEIS), the remaining water would be supplied via approximately five water trucks (assuming 2,000-gallon tanks per truck) per day, a feasible method to meet the remaining water demand not met by the on-site groundwater wells (Appendix Y of the FEIS). Section 2.2.1 of the FEIS provides the details regarding truck deliveries and that 5 truck trips would be required per day. The impacts of these truck trips are inconsequential when considering patron and employee trips addressed in Section 4.8 of the FEIS.
- L3-22 The concerns of the USEPA were not disregarded as the development of the mitigated site plans (Figures 5-1 through 5-5 of the FEIS) were in response to USEPA comments. The BIA and the Tribe consulted with the USEPA after receipt of comments on the DEIS to discuss the proposed water options outlined for the project alternatives and other concerns in the USEPA's comments. The Tribe has committed to pursuing two domestic water supply options that are described in the Section 2.0 of the FEIS. Option 2 has been selected by the Tribe as the preferred water supply

option, which includes the use of wells and maximizing the use of recycled water. As discussed in Section 2.0 of the DEIS, water supplied under Option 2 during Phase I would be provided by three groundwater wells. Trucked water would be a supplemental water source only, with groundwater as the primary water source. For example, as discussed in Section 2.2.1 for Alternative A (which has the highest water demand of the project alternatives), with the use of recycled water, 100 percent of the potable water demands for Phase I would be met by the groundwater wells. For Phase II of Alternative A, with the use of recycled water, 92 percent of the potable water demand would be met by the groundwater wells. Water trucking would provide the remaining 8 percent of potable water to meet water demands or approximately 10,000 gallons per day (gpd), which would equate to five truck trips per day. Based on the results of the pump tests, analysis of the regional and local hydrology, review of existing water studies, development of the Plymouth Pipeline project, and commitment to maximize recycled water use to offset demand, sufficient water would be available to serve the project alternatives without adversely affecting the groundwater basin or other wells.

- L3-23 As discussed in Section 3.3 of the FEIS, groundwater recharge in areas of the project site with fractured underlying bedrock is attributable to interconnected fractures that store and transmit groundwater vertically and horizontally. As discussed in Section 4.3, due to the low conductivity and storability typically associated with unfractured shale and slate, the groundwater yield of the confined unit that supplies the project wells is likely attributed to the ability of interconnected fractures to store and transmit groundwater. These interconnected fractures provide recharge from a distant area to the fractures where the project wells are located. While surface water infiltration around the project wells may not account for a significant source of recharge, surface water infiltration from the region as a whole fills the fractures, which then transmit water to the fractures supplying the project wells.
- L3-24 This similar comment was adequately addressed in response to Comment L2-45 on the DEIS. Please refer to the response to Comment L2-45 in Appendix Y of the FEIS.
- L3-25 Reverse osmosis systems are the best available technology for treating water and have been widely accepted. As discussed in Section 2.2.1 of the FEIS, a 15,000-gallon storage tank would be installed to store the brine prior to being trucked to a disposal facility. The Tribe would pay the applicable fees for disposal, commensurate with a commercial project the size of Alternative A.
- L3-26 The response to Comment L2-52 on the DEIS does not indicate that effluent would at all times be compliant with Title 22 standards. The comment previously provided by the County on the DEIS stated that recycled water could not be relied upon to reduce potable water demands. As discussed in Section 2.0 and within Appendix B of the FEIS, various storage capacities are provided throughout the treatment process in case of upset conditions. A contingency plan would be developed that outlines emergency procedures for upset conditions.

- L3-27 As discussed in response to similar comments from the County on the DEIS, the site would maintain two 1 million gallon water storage tanks that would collect excess water from groundwater wells in times of low water demand to provide a reserve water supply. The filling of these tanks would occur prior to patronage of the casino resort complex. Therefore, with 2 million gallons of potable water on-site at the commencement of operations, the three wells would be pumped in rotation during low demand periods to maintain adequate supplies within the storage tanks.
- L3-28 Refer to the response to **Comment L3-27** regarding the use of on-site storage to supplement water demands.
- L3-29 The commenter provides the number of truck deliveries required to meet the water demands of the Proposed Project. However, the commenter does not provide detail as to how they calculated the specific number of trucks presented in the comment. Based on the potable water demands as detailed in Section 2.2.1 of the FEIS, 5 truck trips per day may be required. It should be noted that the truck trips do not take into account on-site storage and off-peak time filling of the storage tanks and are therefore provided as a conservative estimate of water supply need.
- L3-30 This comment is nearly identical to a comment previously received on the DEIS. Refer to the response to Comment L2-60 in Appendix Y of the FEIS. The Tribe would work with the USEPA to ensure discharges meet the effluent limitations and other water quality requirements specified within the NPDES permit.
- L3-31 This comment conveys a hypothetical situation, one that is not based on existing known information or current events. As previously discussed in the response to comments on the DEIS (L2-38) contained in Appendix Y of the FEIS, the project description has been updated in Section 2.0 of the FEIS to reflect the Tribe's intention to move forward with pursuing a NPDES permit for effluent disposal as the preferred disposal option. Please refer to Section 2.2.1 for a complete description of the preferred Wastewater Disposal Option 2.
- L3-32 The commenter's interpretation of the response to Comment L2-63 on the DEIS appears to be incorrect. In this response, there is no mention of the commenter's claim that the area influenced by the City and Proposed Project's wells is "identical." As stated in the FEIS, the Tribe will work closely with the USEPA under a NPDES permit concerning all discharges related to the treatment of wastewater and release of effluent on-site. Please refer to the response to **Comment L3-31**.
- L3-33 The commenter provides a rebuttal to the response to Comment L2-64, which is provided in Appendix Y of the FEIS. The comment is an incorrect statement based on an assumption about the local groundwater supply. The commenter points out but fails to provide sufficient detail as to the location in the text of the FEIS where an inconsistency exists. Section 5.2.3 provides adequate details of the groundwater monitoring program.

- L3-34 Refer to the response to **Comment L2-35** regarding spray fields and percolation rates. As indicated in Appendix B of the FEIS, the locations of the subsurface disposal field and the overall limited acreage was determined from the soils determinations in the study presented as Appendix S of the FEIS. The wastewater disposal scenarios acknowledge the limited areas where subsurface disposal is viable and depends upon either surface water disposal (the preferred Option 2) or storage on-site until reuse (Option 1). The disposal rates using spray fields are based upon typical climates (length of dry season), trans-evaporation rates, and topography. These rates were used to determine the disposal rates for the spray fields on the project site. A detailed calculation of the disposal rates are provided in Appendix E of the Water and Wastewater Feasibility Study (Appendix B of the FEIS).
- L3-35 First, the preferred option for wastewater disposal would not include construction of a reservoir. It would consist of discharge to the on-site intermittent creek pursuant to an NPDES permit and maximization of recycled water use (Wastewater Disposal Option 2). The project description has been updated in Section 2.0 of the FEIS to reflect the Tribe's intention to move forward with pursuing a NPDES permit for WWTP effluent disposal as the preferred disposal option.
- Second, the commenter's statement implies that the on-site water storage reservoir (Wastewater Disposal Option 1) would contain non-compliant effluent. This statement is incorrect. Conversely, Section 2.2.1 of the FEIS provides the following on Wastewater Disposal Option 1: *"This option would require that a NPDES permit be obtained from the USEPA. The seasonal storage reservoir would not be used for storage of untreated wastewater."* Further, page 2-13 states that 100 percent of wastewater would be treated in the WWTP to a level that meets Title 22 of the California Code of Regulations, Division 4, Chapter 3, Water Recycling Criteria definition of tertiary treated recycled water. Therefore, no adverse impacts to groundwater would occur.
- L3-36 The use of reclaimed water off-site was not part of the original design of the development alternatives and related wastewater disposal options evaluated for the Proposed Project. Please refer to the response to **Comment L3-35** regarding the preferred Wastewater Disposal Option 2 as the Preferred Alternative. Off-site use of recycled water is not considered a feasible option at this time and the analysis of off-site recycled water use is not required to complete the NEPA process.
- L3-37 This comment is similar to ones submitted earlier in this commenter's letter. Please refer to the responses to **Comments L3-26** and **L3-35**.
- L3-38 Additions to the mitigation measures in the FEIS included language substitutions intended for clarification and practicality. The chosen language was developed so that mitigation would be widely applicable throughout the construction and operation phases of the Proposed Project and in doing so would not hinder the ability of the Tribe to carry out mitigation measures simultaneously and under circumstances of unforeseen difficult project development scenarios.

- L3-39 The commenter’s contention is based on assumptions and not factual evidence. To clarify, the monetary contribution to Amador County Unified School District included under the mitigation measures in Section 5.2 of the FEIS reflects a former agreement between the Tribe and the City, which was a result of negotiations intended to benefit the local school system prior to and regardless of an analysis of environmental impacts on the Proposed Project. As shown in Section 5.2.7, page 5-24, of the FEIS, the Tribe would make its monetary contribution upon implementation of the Proposed Project. As discussed in the analysis of impacts to housing and schools, it is expected that most employees would reside within their existing communities and would not need to relocate to work at the casino. The construction of new housing that may result from the development of Alternative A is expected to be limited by the number of employees able to finance a new home, the availability of residential zoned land, and local land use regulations. New construction would occur in the City and adjacent communities in Amador County, as well as in adjacent areas of surrounding counties. Due to the existing labor force in surrounding communities, the number of available vacant 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 increase in the use of libraries and parks does not constitute a significant impact to the environment or cause significant socioeconomic impacts contrary to the commenter’s claim. There is no evidence that development of the Preferred Alternative and associated impacts to libraries and parks would result in significant impacts.
- L3-40 Refer to the response to **Comment L3-39** regarding impacts to local parks.
- L3-41 A thorough analysis of population and housing is presented throughout Section 4.7 of the FEIS, which indicates that County infrastructure would not be significantly impacted by the Proposed Project. Mitigation is provided for schools as the Tribe committed to incorporate all the provisions of the voided Municipal Services Agreement (MSA) into mitigation measures for the project alternatives, regardless of need associated with identified environmental impacts. Further, please refer to the response to **Comment L3-39**.
- L3-42 The need to address problem gambling was a component of the voided MSA and is a component of the most recent versions of the Tribal-State Gaming Compact that the Tribe would be required to negotiate with the Governor’s Office. The impacts assessed within the EIS, in accordance with NEPA, do not indicate significant impacts would result in association with problem gambling and the Preferred Alternative. A similar comment was received from the Governor’s Office on the DEIS and the FEIS. Refer to the response to Comment S6-13 within Appendix Y of the FEIS and the responses to **Comment S3-05** and **S3-06** on the FEIS.
- L3-43 The commenter presents statements that the community will face issues such as domestic violence, abuse, depression, homelessness, divorce, and joblessness as a result of the casino. The commenter does not provide evidence or a substantive argument as to the reasoning the project

would cause such issues. As discussed above, the need to address problem gambling was a component of the voided MSA and is a component of the most recent versions of the Tribal-State gaming compact that the Tribe would be required to negotiate with the Governor's Office.

- L3-44 The FEIS does not ignore crime increase associated with gaming and large-scale commercial development. These issues are addressed in Section 4.9 of the FEIS. A similar comment was provided on the DEIS and a response was provided in responses to Comments L2-168 and L2-169 in Appendix Y of the FEIS.
- L3-45 The commenter provides their opinion that the use of parking staff and unarmed security to reduce criminal activity is preposterous. However, the use of roving security staff is a well documented deterrent. The commenter states that after the disbanding of the Jackson Rancheria Tribal Police Force there was an increase in criminal activity and calls to the Amador County Sheriff's Office. The increase would be anticipated, as it is anticipated in Section 4.9 of the FEIS and appropriate mitigation provided in Section 5.2.9 of the FEIS to fund the full-time equivalent of 6.5 officers. Financial compensation shall include the equipment necessary for the fully staffed officers.
- L3-46 The commenter claims that the FEIS indicates that the increase in sales taxes generated by the casino will off-set and mitigates other revenues lost by the local jurisdictions once the site is taken in trust by the BIA. The analysis of identified socioeconomic impacts within Section 4.7 of the FEIS does not rely on the increase in sales taxes generated by casino patrons to conclude impacts are less than significant. The commenter also states that the FEIS cannot reasonably identify impacts created by the casino. The FEIS in fact reasonably identifies impacts created by the Proposed Project and provides appropriate mitigation. For example, to offset socioeconomic impacts to the City and County from the loss of property taxes, the Tribe has committed to pay an annual contribution equal to the current tax rate to the City and Amador County to address other lost revenues (refer to Mitigation Measure 5.2.7(B) in Section 5.2 of the FEIS). The amount of payment shall be subject to annual review. Mitigation payments are provided to off-set impacts related to the loss of income from the removal of the project parcels from local taxation. The FEIS does not rely on this payment to offset taxation losses to mitigate project related impacts on other public services. For example, the Tribe would make payments to the local school district, the Sheriff's Department, the California Highway Patrol (CHP), and Amador County (to offset increased operating costs of emergency dispatching). Refer to Mitigation Measures 5.2.7(D) and 5.2.9(L-M) in Section 5.2 of the FEIS)
- L3-47 The commenter provided a previous comment regarding smoking within casinos as Comment L2-173 and L2-174 (Appendix Y of the FEIS). The responses located therein adequately address the topic of smoking.
- L3-48 Refer to the response to **Comment L3-47** regarding smoking within casinos.

L3-49 and L3-50

The level of analysis of the environmental resources discussed in the FEIS is consistent with the provisions of the CEQ regulations governing the content of EISs and the level of detail required. According to 40 CFR 1502.15, “(t)he descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simple referenced”. The commenter’s assertion that the Preferred Alternative would result in increased County costs due to spousal abuse and child endangerment is unsubstantiated.

L3-51 Development of child care facilities within the casino is not required to mitigate significant environmental or socioeconomic impacts.

L3-52 The traffic count data was conducted less than one year prior to completion of the FEIS. Traffic data that is two years old does not constitute the need to develop supplemental analysis. In accordance with the BIA NEPA Handbook, a supplemental EIS may be required when an FEIS is more than 5 years old and an action has yet to be taken. The traffic data was collected within a year of completion of the FEIS and the FEIS was released within a year and a half after the completion of the document. The release of the year old FEIS is consistent with the BIA NEPA Handbook.

L3-53 A comment regarding the timing of baseline data was submitted by the County as Comment L2-02 on the DEIS (Appendix Y of the FEIS), which references a U.S. Court of Appeals decision regarding the need to update baseline data. The commenter presents opinions that impacts *may* be misstated, but does not provide a specific example for which a detailed response can be provided.

L3-54 The commenter refers to two documents that do not provide thresholds for analysis for the level of service (LOS) for project roadways and therefore does not provide explanation as to why the LOS on identified intersections should be changed. The TIA included as Appendix M of the FEIS provides the various sources that were needed to determine the LOS thresholds to determine significant impacts. These include other TIAs conducted in the region, the Transportation Concept Report for SR-104, -124, and -16, the Amador County Regional Transportation Plan Update, City of Plymouth Transportation Impact Assessment Draft Report, and County of Sacramento Traffic Impact Study Guidelines. The analysis within the TIA is accurate and a change to the thresholds and corresponding analysis is unwarranted.

L3-55 Refer to the response to **Comment L3-54**.

L3-56 Refer to the response to **Comment L3-54**.

- L3-57 The reference to the cumulative year analysis as “2035” was a typographical error as the planning horizon for the cumulative analysis in the FEIS, as indicated in Section 4.11, is the year 2025. The 2025 year planning horizon was the appropriate planning horizon when the TIA was prepared. At the time the TIA was developed, existing planning documents also utilized the 2025 planning horizon.
- L3-58 The commenter claims that the roadway segment analysis of SR-16 between SR-124 and SR- 49 is missing from the list of deficient roadway segments on page 20. The exclusion of the above intersection on page 20 of the TIA (Appendix M of the FEIS) does not impact or alter the analysis of the project-related impacts. The roadway was appropriately identified as operating deficiently in Table 8 on page 21 and throughout the subsequent sections of the TIA. Mitigation for the impact from the casino on the above roadway segment was provided in Section 5.2.8 of the FEIS and the mitigation measure was also included within Section 6.7 of the ROD.
- L3-59 As stated in the TIA (page 22 of Appendix M of the FEIS), Synchro was only used along the Missouri Flat Road corridor in order to simulate coordination among the closely spaced signalized intersections. The Traffix model was utilized for the other roadway corridors (refer to Appendix M of the FEIS).
- L3-60 As stated on page 27 of the TIA (Section 3.0 of the TIA), the 2010 baseline scenario was developed by adding approved projects that were planned to be completed by 2010 to the 2008 traffic counts, which represent the 2010 Existing Plus Approved Projects (EPAP) Condition. Therefore, the analysis accurately assumes growth from the existing 2008 scenario to the 2010 impact analysis scenario.
- L3-61 Refer to the response to **Comment L3-53**.
- L3-62 Refer to the response to **Comment L3-53**.
- L3-63 Comment and typographical issue noted. As stated by the commenter, the typographical item does not change the trip generation calculations.
- L3-64 This comment is nearly identical to **Comment L3-11**. Please refer to the response to **Comment L3-11**.
- L3-65 On the contrary, the Tribe is not deferring funding of the traffic mitigation measures. The language added to the FEIS accurately identifies the method in which Caltrans and an applicant mitigate roadway impacts.
- L3-66 Refer to the response to **Comment L2-22** regarding consultation with surrounding planning departments to determine the approved project list of projects in the vicinity of the project site. Refer to the response to **Comment Letter S4** as referenced by the commenter.

- L3-67 The FEIS acknowledges the inconsistencies with the County zoning designations. While the County will not have jurisdiction over Tribal lands once the project parcels are taken into trust, the County will be provided with the development proposal for information and comments. The Tribe, prior to development, will consider any comments.
- L3-68 The commenter states that adjacent land uses are incompatible with the casino even though the City has designated a portion of the project site as commercial and adjacent existing land uses include a hotel and a gas station and mini-mart, consistent with the Preferred Alternative. The main development on the project site is concentrated near the City's commercially designated land. The surrounding portions of the project site would be maintained as open space to provide a buffer to the surrounding open space land uses.
- L3-69 Comment noted, refer to the response to **Comment L3-67** regarding inconsistency with the County zoning designations and implementation of the Preferred Alternative.
- L3-70 A similar comment was previously submitted by the commenter on the DEIS (Comment L2-41) and a response was previously given, which is included in Appendix Y of the FEIS. The commenter is referring to an outdated application that is "on hold." As discussed in Section 3.2 of the FEIS, the proposed grading and landform alteration associated with the casino complex and related structures described in the development alternatives would not adversely affect known or recorded mineral resources. Development of the project site would not substantially diminish the potential for extraction of important ores or minerals. Additionally, Alternative A would result in the development of at most approximately 35 percent of the project site (Alternative B would develop roughly 30 percent of the project site; Alternatives C and D significantly less than 30 percent), leaving the remainder of the area that includes the historically mined eastern side of the project site as open space.
- L3-71 Refer to the response to **Comment S3-03** regarding the inclusion of a project similar to the Preferred Alternative into the City's 2008 WSA.
- L3-72 This comment was adequately addressed within the response to comments on the DEIS, although Comment L2-224 erroneously references Comment L2-38. An appropriate response in regards to municipal wastewater connection is provided in response to Comment L4-199 in Appendix Y of the FEIS.
- L3-73 These types of agreements are known to work with other Tribal fire departments. For example, such a relationship in Yolo County has proved beneficial to Tribal members, casino patrons, and County residents.
- L3-74 To clarify, to comply with the Tribe's Fire Plan (Appendix F of the FEIS), the minimum staffing requirement would be 4 personnel.

- L3-75 The commenter references the International Building Code definition of a Fire Command Center and then infers that the fire command center is not intended to be used as a Fire/EMS dispatching and 911 coordination center. The revision to the California Building Code (Section 911), from which the Fire Command Center was designed, only states limitations that the Fire Command Center shall not be used for the housing of any boiler, heating unit, generator, combustible storage, or similar hazardous equipment or storage.
- L3-76 Comment noted. The requested change is not required for the BIA to make an informed decision on the environmental impacts of the Preferred Alternative.
- L3-77 This comment is nearly identical to **Comment L3-45**. Please refer to the response to **Comment L3-45**.
- L3-78 The meaning of the comment is unclear. The commenter states that the FEIS provides mitigation for impacts to the City, but then states that the FEIS does not provide mitigation for off-site impacts. The FEIS specifically states that the Preferred Alternative would impact the Amador County Sheriff's Office (ACSO) as a whole and does not confine the analysis to within the City or the project site.
- L3-79 Comment noted but the purpose of the comment and relation to the environmental analysis within the FEIS is unclear. The Tribe has committed to mitigation that requires the Tribe to fund the full-time equivalent of 6.5 officers to the ACSO. Financial compensation shall include the equipment necessary for the fully staffed officers.
- L3-80 The mitigation measure to fund the full-time equivalent of 6.5 officers more than adequately mitigates identified impacts to the ACSO.
- L3-81 A similar comment was previously provided on the DEIS (Comment L2-269) and an adequate response was provided (Appendix Y of the FEIS).
- L3-82 As discussed in Section 4.9 of the FEIS, impacts to the ACSO were determined through consultation with the ACSO. The impacts were specifically identified as equaling the equivalent of 6.5 officers. The Tribe has agreed to pay the full-time equivalent of 6.5 officers. For other law enforcement services, an agreed payment would mitigate potential impacts from the Preferred Alternative as identified in the FEIS and incorporated into the ROD.
- L3-83 The analysis within Section 4.9 of the FEIS presents the impacts of the Preferred Alternative and identified project-specific mitigation is presented in Section 5.2.9 of the FEIS. The analysis and resulting mitigation does not rely on mitigation from other casino projects to reduce identified impacts to less-than-significant levels.

- L3-84 The commenter presented a similar comment on this subject earlier in this letter. Please refer to the response to **Comment L3-06**.
- L3-85 The commenter states that it is well documented that the mitigation measure to adopt a responsible alcohol beverage policy does not substantially impact the number of drunk drivers arrested. However, no information is provided to substantiate the claim.
- L3-86 Comment noted. The analysis within Section 4.9 of the FEIS indicates that a significant impact to the ACSO would occur from the increase in service requests associated with the casino. As mitigation, the Tribe has committed to providing financial compensation to the ACSO for increased service calls as discussed in the response to **Comment L3-79**, above. Other mitigation measures have been provided in Section 5.2.9 of the FEIS and Section 6.8 of the ROD to assist ACSO personnel.
- L3-87 The response to this comment is addressed in the response to **Comment L3-86**.
- L3-88 The number of parking spaces and the mitigation measure are provided to prevent off-site parking. The parking structure and surface parking would accommodate peak hour operations, as designed.
- L3-89 Comment noted.
- L3-90 Comment noted. The mitigation measure requires discussions with Amador County. The concerns presented by the commenter will be addressed during these discussions.
- L3-91 While the Tribe has committed to provide funds for impacts to public services, the results of the analysis indicate the Preferred Alternative, with mitigation, would result in minimal environmental impacts. Some monetary and staffing impacts, which are not the subject of NEPA environmental analysis may be better addressed during County/City MSA negotiations and compact negotiations with the State. The mitigation payments within the FEIS resulted from the discussions with the City. The BIA has met its responsibility of analyzing environmental impacts as they pertain to public services.
- L3-92 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services required to complete the NEPA process.
- L3-93 Comment noted. As discussed in the Mitigation Measure 5.2.9(M), prior to commencement of operations, the Tribe shall negotiate in good faith to provide reasonable payment for services with the CHP.
- L3-94 Comment noted. The commenter provides an unsubstantiated claim that implementation of the casino alternatives would result in the need for new equipment and potentially operational space for County emergency dispatching services. Section 4.9 of the FEIS acknowledges that

implementation of the casino alternatives would result in adverse impacts to County emergency dispatching services and appropriate mitigation is provided in Section 5.2.9 of the FEIS.

- L3-95 Comment noted. Impacts to the District Attorney's (DA's) office are addressed in Section 4.9 of the FEIS by comparing the impacts of existing casino operations in the County to the DA's office to the proposed casino alternatives and adequate mitigation is provided in Section 5.2.9 of the FEIS. With the implementation of the mitigation measure, impacts would be reduced to a less-than-significant level.
- L3-96 The commenter states that the 2007 caseload numbers from casino activity in the County accounted for 15.3 percent of the total caseload of the DA's office. The 2003 data utilized in the FEIS indicates casino activity represents 10.8 percent of the DA's total caseload. The mitigation for the identified impact to the DA's office from the proposed casino alternatives adequately mitigates the anticipated impact.
- L3-97 The mitigation to provide funding for the full-time equivalent of 6.5 officers does not rely on the other mitigation measures to be implemented in order to mitigate identified impacts to less than significant levels. This comment is similar to the comment provided on the DEIS. Refer to the response to Comment L2-277 on the DEIS, presented in Appendix Y of the FEIS. The response, subsequent change in the FEIS, and mitigation measure developed in consultation with the ACSO, are adequate to mitigate identified impacts.
- L3-98 Comment noted. The exact location of alcohol sales within the project facilities of the casino alternatives is not relevant to the analysis within the FEIS. The impacts the casino development would have to the DA are addressed in Section 4.9 of the FEIS. The impact analysis includes a comparison between the casino alternatives and the impacts of existing casino operations to the DA's office and relies on total caseloads attributable to casino operations in the County obtained from direct communication with the DA's office. The associated mitigation measure for the identified impact to the DA's office does not indicate one-time payments would be made, but that payments would commence prior to operation of the selected alternative. The annual review provision was removed and does not reduce the performance of the mitigation measure.
- L3-99 Comment noted. Impacts to law enforcement services are adequately covered in Section 4.9 of the FEIS using industry standard methods and analysis to complete the NEPA process. As stated by the commenter, the significant impacts anticipated to the ACSO and DA would also result in significant impacts to other County law enforcement services including the probation office, Public Defenders office, and to court services. Mitigation has been included in Section 5.2.9 of the FEIS to provide monetary compensation to reduce impacts.
- L3-100 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.

- L3-101 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.
- L3-102 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.
- L3-103 The mitigation measures and associated payments to local agencies are based on anticipated impacts from the Preferred Alternative and do not rely on compensation from other casinos in the area. The results of the cumulative analysis do not rely on mitigation from other casinos to reduce identified impacts to less than significant levels. As stated in Section 4.11 of the FEIS, the development of these casinos in combination with growth that is expected to occur in the region may overburden the ability of the ACSO, CHP, and other law enforcement agencies to provide adequate service to businesses and residents of Amador County. Therefore, Alternative A is expected to result in a potentially significant cumulative effect. Mitigation has been identified in Section 5.2.9 of the FEIS to address potential effects to law enforcement in Amador County, which would in turn reduce cumulatively considerable impacts to a less-than-significant level.
- L3-104 The annual review has been removed from various mitigation measures. However, the funds are still to be negotiated under good faith and do not indicate the performance of the mitigation measure has been reduced.
- L3-105 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.
- L3-106 Comment noted. The inclusion of the requested information would not benefit the NEPA environmental review process and is not required for the BIA to make an informed decision on the EIS.
- L3-107 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.
- L3-108 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.
- L3-109 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.
- L3-110 Refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.
- L3-111 The comment is unsubstantiated. Additionally, refer to the response to **Comment L3-91** regarding the extent of analysis of impacts to public services to complete the NEPA process.

- L3-112 A similar comment was already submitted by the County on the DEIS. The response to comment L2-310 on the DEIS (Appendix Y of the FEIS) adequately addresses the comment from the County.
- L3-113 A similar comment was already submitted by the County on the DEIS. The response to comment L2-311 on the DEIS (Appendix Y of the FEIS) adequately addresses the comment from the County.
- L3-114 A similar comment was already submitted by the County on the DEIS. The response to comment L2-313 on the DEIS (Appendix Y of the FEIS) adequately addresses the comment from the County. The responses utilize commonly understood physical attributes of noise (such as attenuation).
- L3-115 The noise analysis identifies the anticipated increase at receptors 100 feet from the centerline of the roadway with the introduction of project-related traffic. To evaluate noise levels due to traffic, the Federal Highway Administration Highway Traffic Noise Prediction Model (FHWA-RD-77-108) was used (Appendix X of the FEIS). The FHWA model is based upon the Calveno reference noise factors for automobiles, medium trucks and heavy trucks, with consideration given to vehicle volume, speed, roadway configuration, distance to the receiver, and the acoustical characteristics of the site. The FHWA model was developed to predict hourly equivalent continuous noise level (Leq) values for free-flowing traffic conditions. The Proposed Project involves a federal action; therefore, federal noise thresholds are applicable. The threshold of significance as described in Section 4.10 of the FEIS is based on the U.S. Department of Transportation *1995 Highway Traffic Noise Analysis and Abatement Policy and Guidance*.
- L3-116 The Phase I Environmental Site Assessment (Phase I) was not included within DEIS, but was included in the FEIS. The incorporation of the Phase I into the FEIS provided adequate ability for public review. The BIA has the responsibility of ensuring existing hazardous materials issues do not pose unacceptable risks. Based on a review of the data, extent of the tailings, and lack of proposed development in the vicinity of the tailings, the mitigation is appropriate for the identified existing environmental condition on the project parcels.
- L3-117 Comment noted. While the development would change the visual character of the immediate area adjacent to the existing commercial zoning within the City parcels, the overall open space of the project site would be maintained. The impact is identified, but not significant due in part to the location of an existing gas station and hotel adjacent to the project site.
- L3-118 The goal of screening is not to completely hide the project development, but to soften the visual contrast. As indicated in Figure 1 of Attachment I of Appendix Y of the FEIS, by moving the project farther away from SR-49 and providing landscaping along the property adjacent to 49, the aesthetic impacts are softened such that visual impacts are less than significant.

L3-119 The revised site plans cover less area than the original site plans and were developed to reduce identified impacts. Refer to the response to **Comment L3-05** concerning the change in the site plans.

RESPONSE TO COMMENT LETTER L4 – DEPARTMENT OF TRANSPORTATION, SACRAMENTO COUNTY, CALIFORNIA, DATED SEPTEMBER 8, 2010

L4-01 Comment noted. The Tribe will consult with the County of Sacramento to implement the mitigation measures outlined within the FEIS that are within the jurisdiction of the County of Sacramento.

RESPONSE TO COMMENT LETTER L5 – TRANSPORTATION COMMISSION, AMADOR COUNTY, CALIFORNIA, DATED SEPTEMBER 9, 2010

L5-01 This comment is nearly identical to **Comment L3-66**. Refer to the response to **Comment L3-66**.

L5-02 The implementation of mitigation measures is accurately described in Section 5.1 of the FEIS. Because the Tribe does not have trust land, it has not entered into discussions with the Governor's Office regarding a Tribal-State Gaming Compact. The Tribe will consult with jurisdictional agencies to implement mitigation within their respective areas.

PRIVATE ENTITIES/ORGANIZATIONS (P)

RESPONSE TO COMMENT LETTER P1 – AUDREY SOUZA, PRIVATE CITIZEN, DATED AUGUST 21, 2010

P1-01 Commenter states that she is a resident of the local area and is against allowing any Indian tribe to purchase land for any use. This comment is an opinion that refers to the trust application and does not provide direct comment on the FEIS.

RESPONSE TO COMMENT LETTER P2 – CHERYL SCHMIT, DIRECTOR, STAND UP FOR CITIZENS, DATED SEPTEMBER 7, 2010

P2-01 This comment was addressed in the response to comments on the DEIS (P17-2; Appendix Y of the FEIS). This comment is outside of the scope of NEPA. No response is required.

P2-02 This comment conveys an opinion, one that does not provide comment on the FEIS. As noted previously in the response to comments on the DEIS (S6-02; Appendix Y of the FEIS), and in the response to **Comment L2-07**, the purpose of the preparation of the FEIS is to satisfy the requirements of NEPA regarding potential environmental impacts of the proposed project alternatives and not to discuss the provisions of the trust application.

RESPONSE TO COMMENT LETTER P3 – DUEWARD W. CRANFORD II, PRIVATE CITIZEN

- P3-01 This comment conveys an opinion, but does not provide comment on the FEIS. Refer to the response to **Comment P2-02**.
- P3-02 Refer to the response to **Comment P2-02**.
- P3-03 The comment review period for the FEIS was established in compliance with NEPA. The commenter explains that their present letter contains excerpts from their previous comment letter on the DEIS, for which they feel their comments were not adequately answered. Adequate responses to comments received on the DEIS were provided in Appendix Y of the FEIS.
- P3-04 The release of the FEIS was at the discretion of the BIA. In accordance with the BIA NEPA Handbook, a FEIS does not need to be supplemented unless no action has been taken on the project for 5 years. The FEIS was released approximately 18 months after the document was drafted.
- P3-05 The FEIS is in response to the Ione Band of Miwok's 2006 application to have 228.04 acres taken into trust to conduct gaming.
- P3-06 Refer to the response to **Comment P2-02**. No further response is required.
- P3-07 This comment does not apply to the NEPA environmental review process or environmental impacts of the Preferred Alternative. No response is required.
- P3-08 This comment does not apply to the NEPA environmental review process or environmental impacts of the Preferred Alternative. No response is required.
- P3-09 Refer to the response to **Comment P3-04**.
- P3-10 Refer to the response to **Comment P3-04**.
- P3-11 Comment and request noted. However, the change in members over a two-year time period does not significantly alter baseline data regarding the environmental analysis within the FEIS. This comment is outside of the scope of NEPA. No further response is required.
- P3-12 The commenter submits various requests for information that are not relevant to the NEPA environmental review process. The comments address information in the Tribe's fee-to-trust application, which is a separate process. These comments are outside of the scope of NEPA. No further response is required.
- P3-13 The commenter submits various requests for information that is not relevant to the NEPA environmental review process. The comments address information in the Tribe's fee-to-trust

- application, which is a separate process. These comments are outside of the scope of NEPA. No further response is required.
- P3-14 The commenter submits various requests for information that is not relevant to the NEPA environmental review process. The comments address information in the Tribe's fee-to-trust application, which is a separate process. These comments are outside of the scope of NEPA. No further response is required.
- P3-15 The commenter states that Section 1.0 of the FEIS is incomplete, misleading, and contains false statements and then provides a copy of portions of Section 1.0. No substantive evidence to support their claims is provided. No further response is required.
- P3-16 Please refer to the response to **Comment L2-21**.
- P3-17 Comment contains language that prevents a meaningful response to the comment. Once again the commenter is misinformed in the meaning of "landless" in regards to trust acquisitions. Refer to the response to **Comment L2-21**.
- P3-18 This comment was adequately responded to in a similar comment received on the DEIS. Refer to the response to Comment P17-76 in Appendix Y of the FEIS. The commenter has been provided two additional opportunities to comment on the Preferred Alternative since the scoping hearing (which did not originally include Parcels 2 and 12). Inclusion of these parcels in the description of the Proposed Project (and project alternatives) within the DEIS and FEIS does not prejudice participation of any party in the environmental review process.
- P3-19 As discussed in the ROD, the Tribe has developed an updated mitigated project site plan for the Preferred Alternative, which was presented in Section 5.0 of the FEIS. Refer to Figure 5-2 of the FEIS for the update site plan as proposed by the Tribe for full development. In accordance with planning level review, the sites are considered "potential" because a final decision has not been made on the project at the time the DEIS and FEIS were prepared. The locations of the project facilities as proposed by the Tribe are analyzed in the DEIS and FEIS, with the alterations in Section 5.0 of the FEIS provided to mitigate identified impacts. The ROD incorporates the updated site plan into the selection of the Preferred Alternative for development. Refer to **Section 7.0** of the ROD.
- P3-20 The comment relates to the Tribe's restored lands opinion and does not provide a comment on the environmental analysis or provide substantive comments on the proposed alternatives. The comment is outside the scope of NEPA and no response is required.
- P3-21 The comment relates to the Tribe's restored lands opinion and does not provide a comment on the environmental analysis or provide substantive comments on the proposed alternatives. The comment is outside the scope of NEPA and no response is required.

- P3-22 The fee-to-trust application and associated decision to take the requested land into trust is a federal action that requires environmental review in accordance with NEPA prior to making the decision. The NEPA process is one component of the complete record needed to make an informed decision. Completion of the NEPA review documentation does not guarantee requested lands will be taken into trust.
- P3-23 Comment noted. At this time there is adequate information to complete the NEPA environmental review process while the trust application process is being completed.
- P3-24 Comment noted. At this time there is adequate information to complete the NEPA environmental review process while the trust application process is being completed.
- P3-25 The Jackson and approved Buena Vista casinos are included within the analysis, particularly in the cumulative impact analysis within Section 4.11 and within the baseline determinations throughout Section 3.0 of the FEIS. The commenter provides an opinion that the listed casinos within 50 miles of the project site indicate overpopulation and overexposure of Indian casinos in the surrounding predominately rural areas. Opinion noted. The environmental analysis within the FEIS provides the appropriate baseline information (including cumulative casino operations) to assess environmental impacts of the proposed alternatives.
- P3-26 Refer to the response to **Comment P3-17** regarding language used in the comment as well as the misunderstanding of “landless” and trust lands.
- P3-27 As discussed in Section 1.2 of the FEIS, the purpose and need of the Proposed Action is for the Tribe to 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, provides a strong basis for acquiring lands and proclaiming acquired lands a reservation under 25 U.S.C. sections 465 and 467, wherein Congress granted to the Secretary of the Interior the authority to acquire lands in trust for Indian tribes. Unless the Tribe is able to acquire these lands in trust and is able to conduct gaming, the Tribe will remain unable to meet its need for economic development, self-sufficiency, and self-governance, and will be unable to provide its growing Tribal member population with employment and educational opportunities and critically needed social services. The growth rate of the Tribe between the release of the DEIS and FEIS has not been determined. In accordance with the Indian Gaming Regulatory Act (IGRA), Tribal gaming has been identified as a method to allow Tribes to generate governmental revenues which may be used to support Tribal programs such as housing. However, gaming generally requires trust lands and the Tribe does not currently have any lands held in trust. The Tribe would use funds from the casino development to meet the purpose and need as discussed in Section 1.2 of the FEIS. As discussed in the FEIS, no other development would occur on the 228 acre project site.

- P3-28 The need to improve existing housing conditions for Tribal members is part of the purpose of the Preferred Alternative. The revenue from the casino would be utilized to develop a Tribe-specific housing development, developed by and for the Tribe.
- P3-29 The issue brought up by the commenter regarding the Tribe being landless has been adequately addressed throughout the other responses to the commenter. As indicated by the information provided by the commenter, the housing project would be located on fee land and would be subject to local jurisdiction. These lands still do not constitute trust lands.
- P3-30 The FEIS was completed in February 2009 as indicated on the cover. At the time of completion of the FEIS, the proposed housing mentioned in the referenced Long Range Transportation Plan of the Tribe had not been presented to the BIA. There are no funding mechanisms to develop the homes within the plan and therefore the plan is not considered a component of the cumulative environment analyzed in the FEIS. Development of any future housing projects on lands owned in fee by the Tribe, which at this time are part of a general master plan and are not defined projects, would still remain under the jurisdiction of state and local governments and therefore would require CEQA compliance.
- P3-31 The commenter reiterates opinions regarding information within the DEIS, however no substantive comments are provided. The issues mentioned within this comment are adequately addressed throughout the other responses to the commenter.
- P3-32 Comment noted. The approval of the future Tribal-State gaming compact by the Governor's Office is included within Table 1-1, in Section 1.4 of the FEIS. The omission of the State Legislature ratification of the future compact does not prejudice the ability of the public to assess the proposed environmental impacts of the project alternative. The objection to the omission is hereby noted in the record.
- P3-33 Refer to the response to **Comment L3-27** regarding the use of two 1million gallon storage tanks to allow for rotational groundwater pumping during low peak demand periods.
- P3-34 The commenter reiterates responses to comments on the DEIS presented in Appendix Y of the FEIS. No response required.
- P3-35 Refer to the response to **Comment L3-27** regarding the use of two 1-million gallon storage tanks to allow rotational groundwater pumping. This would allow the wells to be pumped at their long-term yields and the response to Comment L2-49 in Appendix Y of the FEIS should state "(t)he rotation would involve pumping two of the wells concurrently at rates equal to the recommended long-term yields, while the third well is allowed to recover."

Table 2-6 of Appendix B of the FEIS presents the water demands for the project alternatives. Refer to the response to **Comment L2-31** for a discussion on the difference between Tables 2-6 and 6-1 within Appendix B of the FEIS.

- P3-36 Refer to the response to **Comment P3-35** regarding the language within the response to Comment L2-49 on the DEIS (Appendix Y of the FEIS). The issue of long-term yield was adequately addressed in response to Comment F1-02 on the DEIS (Appendix Y of the FEIS). Refer to the response to **Comment L3-27** regarding the use of two 1million gallon storage tanks to allow rotational groundwater pumping. The water demands would not be met by pumping groundwater directly to the treatment plant and then the facilities. Water would be pumped to the water treatment plant, and then the two 1million gallon storage tanks. These tanks would be filled prior to operation of the Preferred Alternative. This storage provides approximately 10 days of demand (and emergency storage for fire response). While water is being drawn from the storage tanks (the rate will depend upon occupancy rates of the facilities), the storage tanks will be filled through rotational pumping from the wells. During low occupancy periods, the tanks will be refilled to make up for the higher occupancy periods.
- P3-37 These comments reiterate issues previously presented by the commenter. The issues mentioned within this comment are adequately addressed throughout the other responses to the commenter.
- P3-38 The response provided by the BIA in Appendix Y of the FEIS adequately addresses Comment P17-154 on the DEIS.
- P3-39 The commenter reiterates the response provided to Comment P17-154 on the DEIS from Appendix Y of the FEIS.
- P3-40 The exact terms of the water contract have not yet been determined, as at the time of development of the FEIS, a decision on the Preferred Alternative had not yet been made. The analysis indicating trucked water is required is a conservative analysis that does not take into account the fluctuation of use over a 24-hour period (allowing groundwater pumping to make up the supply during low occupancy periods) or the two 1million gallon storage tanks. Trucking may not be required based on the storage capacity; however, the analysis was included within the FEIS to ensure the possibility of trucked water was evaluated. The letter from Aero Pure Water indicates its capabilities and ability to deliver water and is not a contract for service. The Tribe will contract with a water purveyor at the time trucked water is required to supplement filling the two 1 million gallon storage tanks.
- P3-41 As discussed further in the paragraph referenced by the commenter, the Ione Band is comprised of individuals descended from native people indigenous to present day Amador, El Dorado, Calaveras, San Joaquin, Sacramento and Placer counties, and include the Northern Sierra Miwok, the Locolomne, and Moquelumne tribelets of the Plains Miwok, and the Wapumne, a tribelet of the Nisenan (Theodoratus 2004). The traditional relationships among these tribelets fostered ease

of movement into one another's territories. Their movements and frequent intermarriage were outcomes of devastating impacts to their native population and culture by successive incursions of non-Indians into their traditional territories. The references provided by the commenter detail the existing Tribal members ties to the area while the cultural resource setting in Section 3.6.4 of the FEIS presents the historical ties to the region.

- P3-42 The purpose of the EIS is not to determine the identity of the Tribe applying for the fee-to-trust acquisition. The comments and information provided by the commenter are outside the scope of NEPA.
- P3-43 The purpose of the information provided within the EIS is to assess the potential for the proposed project alternatives to impact cultural resources within and surrounding the project site. The Tribe's ties to the land are outside the scope of NEPA.
- P3-44 The commenter reiterates general statements regarding the FEIS. These issues have been adequately addressed when substantive comments were given on the FEIS and when required under NEPA throughout the responses provided above.
- P3-45 Comment noted, no response is required.
- P3-46 The commenter resubmits comments provided on the DEIS as an attachment to their letter. The commenter does not provide comments as to why or how the DEIS comments were not adequately responded to in the FEIS and therefore a secondary response cannot be provided. Please refer to the responses to Comment Letter P17 on the DEIS in Appendix Y of the FEIS.

RESPONSE TO COMMENT LETTER P4 – DR. ELIDA A. MALICK, PRIVATE CITIZEN, DATED SEPTEMBER 2, 2010

- P4-01 The commenter refers to a previous comment submitted by the commenter on the DEIS regarding the number of tribal members and supplies the rebuttal that it is common knowledge that the Tribe has generally numbered 85 to 90 members. The commenter's claims are unfounded. The commenter's statement that the number of members is based on common knowledge is not supported by evidence. The increase in Tribal members does not provide increased baseline information as the environmental review of the proposed project alternatives and the lack of the requested information does not bias the environmental review process or the ability of the public to comment of the analysis.
- P4-02 The scope of the project is not directly related to Tribal membership and therefore the requested information would not provide for a better opportunity to comment on the FEIS. The scope of the project is based on local market conditions and environmental constraints. Within the FEIS, the BIA analyzes the proposed project (Alternative A) and other alternatives including reduced

intensity alternatives. As noted by the commenter, the details regarding Tribal membership are not required to assess socioeconomic impacts of the proposed project alternatives. To provide clarification to this comment, Section 3.7 of the FEIS does not include text that states that several Tribal members live in the City.

- P4-03 The commenter reiterates their comment made previously on the DEIS and states that no response was given to the comment on the DEIS. An adequate response to the comment on the DEIS was provided as response P16-06 in Appendix Y of the FEIS.
- P4-04 The commenter suggests that the Tribal survey conducted in 2004 does not represent the most recent and accurate information. A response as to the timing and data collected in preparation of the FEIS was already provided in the response to comments on the DEIS (L2-02) contained in Appendix Y of the FEIS. Updating such information would not alter the conclusions in the FEIS.
- P4-05 Table 3.7-1 of the FEIS is referenced in the paragraph referred to by the commenter. The table clearly states that the employment and income category (which includes the statement that 81 percent of members live below the national median income level) was based on the 32 percent of responses received from the survey.
- P4-06 The commenter feels that the data contained in the FEIS was not updated as they had requested in their previous letter submitted in response to the DEIS. Please refer to the response contained in the response to **Comment P4-04**. The employment and income data of the Tribe do not provide further clarification on the analysis and conclusions within the FEIS. Providing additional numbers would not provide clarification to the commenter on the potential impacts of the proposed alternatives.
- P4-07 To reiterate, background information on the Tribe is not necessary for examining potential environmental impacts of the Proposed Project in accordance with NEPA regulations. Further, the BIA is in charge of reviewing the FEIS and approving its content. The background information was provided by the Tribe and from BIA's meetings with the Tribe.
- P4-08 This comment illustrates a scenario that is not based on fact or reason. As described in Section 2.2 of the FEIS, there are no plans to construct Tribal housing under the Proposed Project among any of the development alternatives. That being said, the supposition that the Proposed Project may cause tribal members to relocate their homes is unsubstantiated. The commenter states that a response was not given to Comment P16-20 on the DEIS. A response to Comment P16-20 on the DEIS is provided in Appendix Y of the FEIS.
- P4-09 The commenter claims that no form of verification was provided by the BIA regarding their previous comment on the DEIS concerning the number of tribal members' children that attend local public schools. The commenter acknowledges that providing the number of Tribal members' children attending local schools in the FEIS may not be necessary to assess potential

impacts to schools. Accordingly, these details are not required to complete the NEPA process. The information regarding where Tribal children attend schools was obtained from conversations with the Tribe.

- P4-10 The commenter restates their previous comment concerning employment status of tribal members, provides the response contained in the response to comments on the DEIS, then declares that no reasonable response to the comment was made. In response, this comment is merely an opinion that fails to provide justification for why the initial response given was insufficient. The commenter states that responses were not given to Comments P16-21 and P16-22 on the DEIS. Responses to Comments P16-21 and P16-22 are provided in Appendix Y of the FEIS.
- P4-11 Please refer to Section 3.7 of the FEIS, which provides extensive detail on the existing socioeconomic conditions pertaining to the City. This information was taken from reputable sources, for example, the California Department of Finance (2004), the U.S. Census Bureau (2000), and the City itself (2001), all of which are cited in text with complete references provided in Section 8.0 of the FEIS. The commenter states that a reasonable response to Comment P16-26 was not provided, but does not provide substantive critique as to why the response was inadequate. Therefore a more detailed response cannot be given. Refer to the response to Comment P16-26 on the DEIS presented in Appendix Y of the FEIS.
- P4-12 The response to Comment P16-64 adequately addresses the comment provided on the DEIS. The statement regarding benefits within the DEIS is a qualitative statement that is not relied upon to determine socioeconomic impacts of the proposed alternatives. Expanding upon the statement in the FEIS would not increase clarity or further justify conclusions of the analysis and resulting impact determinations.
- P4-13 The school impact mitigation fees were determined through negotiations during development of the MSA with the City. After the MSA was voided, the Tribe requested the BIA include the provisions of the voided MSA into the EIS and Preferred Alternative. Please refer to the response to **Comment L3-39**.
- P4-14 Refer to the response to **Comment P4-13** regarding school impact fees.
- P4-15 The commenter states that their comment on the DEIS (Comment P16-95) was intended to gather information distinguishing the differing impacts between a casino and a small scale commercial or residential neighborhood development. However, the statement in the DEIS specifically references large-scale development in analyzing effects of the Proposed Project and not the small scale development referenced by the commenter. The commenter states that a response was not given to Comment P16-95 on the DEIS. A response to Comment P16-95 on the DEIS is provided in Appendix Y of the FEIS.

- P4-16 The commenter states that a response was not given to Comment P16-96 on the DEIS. A response to Comment P16-96 on the DEIS is provided in Appendix Y of the FEIS.
- P4-17 The comment has been adequately responded to in the first portion of the response. The impacts from the “unplanned growth” associated with development of the Preferred Alternative are mitigated by the payment to the ACSO and other law enforcement agencies. Refer to the response to Comment P16-98 (and the referenced response to Comment P16-97) in Appendix Y of the FEIS.

RESPONSE TO COMMENT LETTER P5 – ELIDA A. MALICK AND THOMAS P. INFUSINO, NO CASINO IN PLYMOUTH, DATED SEPTEMBER 10, 2010

- P5-01 The commenter states their intent to comment on the FEIS and feels that the BIA’s responses to their previous comments on the DEIS were not legally adequate. Comment noted.
- P5-02 The commenter provides a summary of the contents of their letter. No response is required.
- P5-03 This comment is a statement of the commenter’s opinion, one that lacks supporting evidence and fails to define an argument or pose a question. Comment noted.
- P5-04 This comment is similar to the comment expressed in **P5-03**. Please refer to the response to **Comment P5-03**.
- P5-05 This comment is similar to the comment expressed in **P5-03**. Please refer to the response to **Comment P5-03**.
- P5-06 The commenter expresses their opinion on a separate project that is unrelated to the FEIS and the NEPA process. No response is required.
- P5-07 The commenter conveys their disapproval of the DOI’s role in the environmental review process under NEPA. This comment is an opinion, one that does not comment on the FEIS. No response is required.
- P5-08 The topic addressed in this comment is similar to **Comment P5-06**. Please refer to the response to **Comment P5-06**.
- P5-09 This contains an identical comment letter to one already submitted on the FEIS. Please refer to the responses to **Comment Letter P3**.
- P5-10 This contains an identical comment letter to one already submitted for the FEIS. Please refer to the responses to **Comment Letter P4**.
- P5-11 This contains an identical comment letter to one already submitted for the FEIS. Please refer to the responses to **Comment Letter P6**.

- P5-12 The commenter fails to provide specific details concerning their criticism of the BIA's response to comments on the DEIS. Comment noted, no further response is required.
- P5-13 The commenter provides a general statement that the traffic analysis was improper. Comment noted. Please refer to the Response to **Comment Letter P6** concerning traffic comments.
- P5-14 The BIA is not required to modify analysis or alternatives or alter text simply at the request of a commenter. The comments provided by No Casino In Plymouth and associated authors were adequately addressed in the response to comments on the DEIS (Appendix Y of the FEIS) and changes to the DEIS were presented in the FEIS where the BIA determined it was appropriate to clarify the findings of the impact analysis or further reduce potential impacts. Additional comments on the FEIS are adequately addressed within the responses contained in this attachment to the ROD.
- P5-15 Although the commenter's criticism of the FEIS is unclear in this comment, the project is not subject to regulations imposed on the private sector because after the decision to take the land into trust is granted, the land will be held by the federal government in trust for the Tribe.
- P5-16 It is acknowledged that the FEIS is a large document. However, the in-depth analysis required to allow the BIA to make an informed decision of the Preferred Alternative requires various technical appendices that might not be readily understood by the general public. The text of the FEIS (Sections 1 through 8) includes summaries of the technical appendices and the results of supporting analysis. The electronic version was adequately accessible to the general public and hardcopies were available upon request.
- P5-17 The commenter references the responses to Comment P10-03 and P11-03 on the DEIS (Appendix Y of the FEIS). In regards to P10-03, the noise analysis was updated. Further, as indicated in Section 4.10 noise, impacts from traffic were analyzed in accordance with the Federal Highway Administration (FHWA) methodologies. The legal citation does not apply as the appropriate analysis was conducted to analyze noise impacts and the purpose of NEPA has been fulfilled through the completion of the FEIS and release of the ROD.
- P5-18 Detailed information, to the extent practicable and reasonable for the scale of anticipated impacts, was presented in the cumulative analysis in Section 4.11 of the FEIS. The commenter then references various cases regarding cumulative analysis [*Ocean Advocates v U.S. Army Corps of Engineers* (2005, 9th Cir.), 402 F.3d 846; *Lands Council v. Power* (2004, 9th Cir) 395 F.3d 1019, 1035; *Habitat Education Center, Inc. v. Bosworth* (2005) 363 F.Supp.2d 1070,1078; *Neighbors of Cuddy Mountain v U.S. Forest Service* (1998, 9th Cir.) 137 F.3d 1372, 179; and *NRDC v. Hodel* (1988) 865 F.2d 288, 299]. However, no comment is given as to the meaning of including the legal references and the relevance to the analysis within the FEIS. Comment noted, no further response is required.

- P5-19 The commenter again references various cases regarding cumulative analysis [*Neighbors of Cuddy Mountain v. U.S. Forest Service* (1998, 9th Cir.) 137 F.3d 1380 and *Te-Moak Tribe of Western Shoshone of Nevada v. United States Department of the Interior* (2010, 9th Cir.) No. 07-16336]. However, no comment is given as to the meaning of including the legal references and the relevance to the analysis within the FEIS. No response is required.
- P5-20 Comment noted. There is no indication that conducting the noise survey during an alternative time period would result in higher results than those obtained during the January assessment. Regardless, the results indicate that even with an increase in the background traffic levels, the addition of project-related trips would not result in significant noise impacts to sensitive receptors along the roadway network.
- P5-21 The commenter again references various cases regarding cumulative analysis (*Carmel-by-the-Sea v. U.S. Department of Transportation* (1997, 9th Cir.) 123 F.3d 1142, 1154; *Neighbors of Cuddy Mountain v. U.S. Forest Service* (1998, 9th Cir.) 137 F.3d 1372, 1380; *South Utah Wilderness Alliance v. Norton* (2003) 277 F.Supp2d 1169]. However, no comment is given as to the meaning of including the legal references, just a statement that NEPA requires that the agency discuss the expected efficacy of the mitigation and provide factual support for this effectiveness. However, there is no reference to the discussions within the FEIS. No response is required.
- P5-22 The commenter again references various cases regarding cumulative analysis [Methow Valley, 490 U.S. at 351-352, 109 S.Ct. 1835 (citing 42 U.S.C. 4332Cii) and *South Fork Band Council of Western Shoshone of Nevada v. United States Department of Interior* (2009, 9th Cir.) No. 09-15230]. However, no comment is given as to the meaning of including the legal references and the relevance to the analysis within the FEIS. No response is required. The commenter states that the responses to Comment P10-06 and associated P11-05 are not responsive to NEPA requirements. The commenter does not provide justification for this assertion and therefore a substantive response cannot be provided for a comment that only states the methodology used is inappropriate [46 CFR 18026 (1981)]. The comments are adequately addressed in Appendix Y of the FEIS.
- P5-23 The commenter states that the responses to Comment P10-07 and associated P11-05 are not responsive to NEPA requirements. The commenter does not provide justification for this assertion and therefore a substantive response cannot be provided for a comment that only states the methodology used is inappropriate [46 CFR 18026 (1981)]. The comments are adequately addressed in Appendix Y of the FEIS.
- P5-24 On the contrary, the response provided for Comment P10-09 in Appendix Y of the FEIS does not suggest that the speed limit is 30 miles per hour (mph) on SR-49 as you approach the project site. The 30 mph is utilized as an example (this is why the abbreviation “i.e.” was used). As correctly stated in the response to Comment P10-09, the speed limit drastically reduces as one enters the

City and therefore traffic related noise is greatly reduced. As discussed in Section 4.10 of the FEIS, to evaluate noise levels due to traffic, the Federal Highway Administration Highway Traffic Noise Prediction Model (FHWA-RD-77-108) was used (Appendix X of the FEIS). The FHWA model is based on the Calveno reference noise factors for automobiles, medium trucks and heavy trucks, with consideration given to vehicle volume, speed, roadway configuration, distance to the receiver, and the acoustical characteristics of the site. The FHWA model was developed to predict hourly Leq values for free-flowing traffic conditions.

Traffic volumes (existing and future, project and no-project conditions) were obtained from the TIA. Concurrent traffic counts and noise measurements on roadway segments were conducted to calibrate the noise model to actual conditions.

P5-25 Each comment was reviewed and considered when developing the FEIS. For example, an alternative site plan was developed based on comments received on the DEIS. Where comments were received that were general in nature or did not provide a specific comment on content, methodology, or other specific question, the lead agency is not obligated to respond [46 CFR 18026 (1981)]. Therefore, short responses are given to such comments. For this comment, the commenter provides a matrix with each comment number listed and then six headings, which represent their previous comments submitted on the DEIS. The headings are general critiques of the responses to comments on the DEIS included as Appendix Y of the FEIS. Substantive responses to a table that merely provides checkmarks for general headings with single phrase comments on the FEIS cannot be specifically responded to. The commenter provides another tabled matrix for the responses to Comment Letter P12 on the DEIS. Again, a table that merely provides checkmarks for general headings with single phrase comments on the FEIS cannot be specifically responded to.

The No Casino in Plymouth submittal included various exhibits on a separate DVD and a Guide to Exhibit Folders on DVD, which are hereby incorporated into the record.

RESPONSE TO COMMENT LETTER P6 – RICHARD MINNIS, PRIVATE CITIZEN, DATED SEPTEMBER 9, 2010

P6-01 The release of the FEIS and associated 30-day waiting period to allow comments on the FEIS complies with the requirements of NEPA and the BIA NEPA Handbook. While complex, the appendices of the TIA were made available to the public for review in accordance with the requirements of NEPA and the BIA NEPA Handbook.

P6-02 The commenter provides opinions on the quality of the TIA; however, no substantive comments on the methodologies utilized in the TIA were provided and therefore a response cannot be given.

P6-03 The commenter states that the areas of focus in the TIA were the population centers and the Proposed Project site. The commenter states that the problem with this approach is the cumulative nature of traffic. A specific comment on the methodology utilized to develop the TIA

is not provided by the commenter and therefore a substantive response cannot be given. Cumulative impacts to the roadway network are assessed in Section 4.11 of the FEIS.

- P6-04 The comments received on the DEIS from the No Casino in Plymouth group incorporated comments previously received from Mr. Minnis and were included as Comment Letter P12 in Appendix Y of the FEIS. Additionally, the request for the inclusion of the study roadway features presented by the commenter were adequately responded to in the response to Comment P12-23, which states that in response to comments from jurisdictional agencies and due to the changes in the existing roadway network since the development of the TIA for the DEIS, additional roadways and intersections were included in the revised TIA for the FEIS.
- P6-05 The commenter provides comments and opinions regarding the routes patrons would take to visit the project site and the conditions of roadways. However, the commenter does not provide reasoning other than giving unsubstantiated statements about “local” routes and generalized statements regarding operations of roadway features. The study roadway network included in the TIA for the FEIS was selected based on comments on the DEIS and in consultation with local jurisdictional agencies. The TIA adequately utilized the appropriate means to determine the study roadway network.
- P6-06 Comment noted, no response is required. Where substantive comments are presented, appropriate responses have been provided.
- P6-07 Comment noted. The baseline determinations were developed in accordance with Caltrans guidelines for the development of traffic impact studies (refer to Appendix M of the FEIS).
- P6-08 The 2013 baseline conditions were developed by utilizing the 2010 baseline conditions (of which the commenter had no comments and stated as such) and adding traffic from approved projects. The approved project listing was obtained from jurisdictional planning agencies (Sacramento County, Amador County, San Joaquin County, etc.). This methodology is consistent with standard industry practice and other TIAs produced for Caltrans review.
- P6-09 The 2013 Existing Plus Approved Project (EPAP) conditions (relating to operation of Phase II of the Preferred Alternative) would only be experienced if the project were approved and Phase I commenced operation in 2010. In accordance with the analysis, the impacts experience during Phase I (2010 timeline) require mitigation. Therefore, in order to experience the impacts of Phase II, the improvements related to Phase I would be required to be implemented. To provide a 2013 EPAP analysis of Phase II and not include the mitigation identified for Phase I of the Preferred Alternative would overestimate impacts.
- P6-10 A waiver of sovereign immunity is not required to enforce mitigation measures identified in the FEIS. The commenter does not provide examples of the inability to implement mitigation measures for lands already held in trust. Several tribal development projects on trust lands exist

where the Tribe has sovereign immunity and committed mitigation measures have been implemented as agreed. As stated in Section 5.1 of the FEIS, all mitigation is enforceable under Federal law, by the Tribe through tribal environmental laws, and/or the National Indian Gaming Commission (NIGC).

- P6-11 The commenter provides an unsubstantiated claim that the probability of the implementation of mitigation measures where the Tribe's fair share determination is 100 percent is low. The commenter again comments on the use of 2010 mitigation measures in the 2013 EPAP conditions. This issue was adequately responded to in the response to **Comment P6-09**.
- P6-12 The 12 casinos referenced had actual driveway counts available to the traffic engineer at the time the TIA was developed for the FEIS. Developing trip rates for other casinos by comparing Caltrans daily traffic counts prior to construction and then during operation of the casino as suggested by the commenter would not provide accurate results, as the assumption would be that the casino is the only new development or other factor that would change Caltrans daily traffic counts. The TIA adequately presents the methodology that was used to determine an appropriate trip generation rate in accordance with the Trip Generation Handbook (Institute of Transportation Engineers). There was insufficient data and correlation amongst the data to develop a trip generation rate for the Proposed Project based on casino gaming floor size and therefore a weighted average of the 12 casino trip generation rates was utilized for the proposed casino development alternatives in the TIA. Furthermore, the daily trip generation rate calculated in the TIA was higher than the San Diego Council of Governments (SANDAG) recommended daily trip generation rate, indicating either a more conservative or accurate approach was utilized in the TIA for the FEIS.
- In response to the hotel topic, the inclusion of a hotel within a gaming facility reduces trip generation of the hotel. An internal capture rate of 75 percent (which what was used in the TIA in the FEIS) is an acceptable assumption. While the SANDAG method is one study that was conducted, it has been the experience of other professionals, including the professionals that developed the EIS, that the SANDAG method over-estimates trips generated by a hotel supported by a gaming facility.
- P6-13 The analysis methodologies and assumptions utilized within the TIA are appropriate and consistent with industry standards and other TIA's prepared for Caltrans as discussed in the above responses.
- P6-14 The commenter provides statements regarding the development of a cumulative analysis in general terms, but does not present specific comments on the analysis within the TIA or the FEIS. Please refer to the response to **Comment L2-57** for information on the methodologies used to forecast traffic conditions in the TIA (Appendix M of the FEIS). No further response is required.

- P6-15 As stated by the commenter, the cumulative environment was determined by reviewing appropriate regional planning document and including traffic from reasonably foreseeable development projects. The cumulative environment was developed in accordance with available information at the time of the study. To assume conditions will not change would be an unreasonable and illogical assumption. The commenter does not describe or give reasoning as to why they consider the selected projects unreasonable for inclusion in the cumulative environment; therefore, a more specific response cannot be provided.
- P6-16 If the project were not to be implemented, there would be no cumulative impacts. The analysis of the impact of the project alternatives utilizes the impact of adding project generated vehicle trips to the roadway network at the time of the cumulative planning horizon. To not assume the improvements are in place would overestimate impacts and require duplication of mitigation efforts.
- P6-17 The commenter attempts to reason that because funding is not identified for projects 20 years in the future that they should not be included in the analysis. The cumulative analysis itself requires assumptions and professional judgment on the part of the analyst to assess conditions that cannot yet be determined. Using jurisdictional agency planning documents provides for a logical development of a baseline of infrastructure in place 20 years from now. The commenter references the current financial state of conditions in Washington and California; however, it should be noted that 20 years is a long time considering the current economic recession began only 4 years ago and has since shown signs of improvement.
- P6-18 The commenter states that a proposed improvement to SR-88 is “bogus”; however, the commenter does not provide an explanation as to why this opinion is given. Therefore, no response can be provided.
- P6-19 The commenter states that a proposed improvement to SR-16 is “troubling”; however, the commenter does not provide an explanation as to why this opinion is given. Therefore, no response can be provided.
- P6-20 The commenter speculates that the Tribe will “fall back on their sovereign immunity during negotiations” and therefore mitigation measures from the Proposed Project would not be implemented. This comment is unsubstantiated, and furthermore, this speculation has not been the case on other roadway improvement projects required as mitigation for Tribal gaming projects.
- P6-21 The commenter states that the cumulative analysis in the FEIS is invalid because of the comments already provided on the other analysis scenarios. Accordingly, those comments on the other analysis scenarios have been adequately responded to within the above responses to the commenter. As addressed throughout the above responses, because the analysis was conducted consistent with Caltrans guidelines for traffic impact studies and the data has not been skewed,

the cumulative analysis is as accurate as can be expected for a 20-year future assessment of impacts.

- P6-22 The commenter again states that due to the errors previously identified in their comment letter, mitigation measures are not valid to mitigate impacts that would actually occur. Comment noted and the responses to the previous comments adequately address the issues presented on mitigation measures by the commenter.
- P6-23 The determination of fair share for the development of the Ione Bypass was calculated using a Caltrans methodology which takes into account other development in the area. Should all the proposed development be completed, the Ione Bypass would be funded and implemented. This is a reasonable assumption. Refer to the response to **Comment L2-53**, which in part discusses the scenario when the project fair share is less than 100 percent.
- P6-24 The commenter states that a mitigation feature is invalid due to the cost to develop a similar feature closer to Sacramento (widening SR-16 from two to four lanes). While the cost may be high, many contributions from developments and/or state and federal highway funding are sometimes required to fund expensive improvements to roadway networks. The text referenced by the commenter regarding negotiations at the time the Preferred Alternative is approved and implemented provides protection to both the Tribe and the jurisdictional agency. Should approved projects be rescinded at the time the negotiations occur, the Tribe's fair share would increase for the mitigation measure in question. Conversely, if there are additional approved development applications at the time the Preferred Alternative is approved and implemented, the Tribe's fair share contribution would be reduced. The language was inserted to more accurately depict the method in which traffic mitigation is actually implemented.
- P6-25 Refer to the response to **Comment P6-24** regarding the implementation of the traffic mitigation measures and how these measures are implemented and funded.
- P6-26 The commenter provides a hypothetical situation without providing evidence as to the likelihood for the situation to occur. No response is required.
- P6-27 Comment noted and substantive comments provided further in this letter are adequately addressed.
- P6-28 The commenter is incorrect to assume increased trip generation patterns between the Proposed Project and other casinos are similar to trips generated among wineries. As with wineries, the clustering of similar venues results in diverted-linked trips. These trips are generated by the first destination, but then travel occurs to the other destinations. Thereby, the trip generated by the first destination is not assigned to the next destination. Only the intersections and roadway segments along the roadways connecting the destinations are counted. To be conservative, the TIA for the Preferred Alternative did not include diverted-linked trips and assumes all trips are

generated at the population centers. This results in a more conservative analysis. As indicated by the commenter, the actual diverted-link trips that would most likely be experienced would actually result in reduced impacts compared to those mitigated for in the FEIS.

P6-29 The commenter states that the traffic analysis in the FEIS is flawed because it fails to include a project that was not approved at the time the TIA was completed. In response, the TIA cannot incorporate a project that was not known or approved of when the TIA was developed.

P6-30 This same comment was received on the DEIS as Comment P2-11 and was adequately addressed in Appendix Y of the FEIS.

P6-31 The Long-Range Transportation Plan was developed after the BIA completed the FEIS and therefore was not incorporated into the FEIS.

P6-32 The commenter reiterates the general issues presented throughout the comment letter under a conclusion heading. These substantive comments were adequately addressed in the responses to the comments above.

P6-33 The methodologies, assumptions, and conclusions within the TIA do not constitute a patently inaccurate factual contention as shown in the responses to the comments within the letter provided by Mr. Minnis.

RESPONSE TO COMMENT LETTER P7 –WALTER W. DIMMERS, PRIVATE CITIZEN, DATED SEPTEMBER 3, 2010

P7-01 through P7-11

These comments are nearly identical to **Comments P5-16 through P5-24** and are in fact a reduced version of the P5 comments. Please refer to the response to **Comments P5-16 through P5-24**.