



OFFICE OF THE GOVERNOR

May 5, 2008

*Via Facsimile (916) 978-6055 & U.S. Mail*

Ms. Arny Dutschke  
Acting Regional Director  
U.S. Department of Interior  
Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way, Room West 2820  
Sacramento, California 95814

Re: Enterprise Rancheria Draft Environmental Impact Statement

Dear Ms. Dutschke:

We have reviewed the February 2008 Draft Environmental Impact Statement ("DEIS") for a proposed fee-to-trust acquisition and the subsequent development of a casino-resort complex by the Estom Yumeka Maidu Tribe ("Enterprise Rancheria" or "Tribe"). The Bureau of Indian Affairs ("BIA") is the lead agency and the Tribe, the National Indian Gaming Commission ("NIGC"), and Yuba County are cooperating agencies. Thank you for this opportunity to comment on this project. Please note that our comments are limited solely to the DEIS, and we reserve the right to comment further on the fee-to-trust acquisition. From the material submitted in the DEIS, we are concerned that the DEIS has not thoroughly evaluated all of the project's potential environmental impacts, or considered effective mitigation measures.

**Background**

According to the DEIS, in 1915 and 1916, the United States purchased two 40-acre parcels in Butte County for the Tribe. (See DEIS at p. 3.2.6-4.) The parcels are known as "Enterprise 1" and "Enterprise 2." (*Ibid.*) In 1965, the United States sold the 40-acre parcel known as Enterprise 2 in a condemnation sale to accommodate the construction of the Oroville Dam. (*Ibid.*) The majority of that land is now under water. (*Ibid.*) Currently, the 40-acre parcel

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known as Enterprise 1 is held in trust for the Tribe and is located in Butte County, approximately 11 miles northeast of the City of Oroville. (DEIS Executive Summary at p. i; DEIS at pp. 1-2, 2-37 to 2-38, 3.2.6-4.)

The proposed action involves the transfer of a 40-acre parcel located in Yuba County ("Yuba County Parcel") into federal trust status for the Enterprise Rancheria for a hotel and gaming facility. (DEIS at p. at p. 1-1.) The Tribe also seeks NIGC approval of a gaming management contract. (*Ibid.*) On the Yuba County Parcel, the Tribe proposes to construct an eight-story, 170-room, hotel and a 207,760 square-foot gaming facility, with food and beverage services, retail space, meeting space, and administrative space. (DEIS at pp. 2-1 to 2-2, 2-5 to 2-6.) The proposed project would also include 2,750 on-site parking spaces; 600 spaces would be within a multi-level parking structure. (DEIS at pp. 2-1, 2-6.) Water would be supplied to the project by a groundwater well, requiring the production of 122,000 gallons of water per day and a water storage tank. (DEIS at p. 2-12.) Also, an existing off-site wastewater treatment plant would be expanded to accommodate the project's wastewater output. (DEIS at p. 2-14.) In addition to the proposed project, the DEIS considers several project alternatives, including a reduced intensity project (DEIS at p. 2-20), and the construction of a gaming facility on the Tribe's existing trust land in Butte County. (DEIS at p. 2-37.)

#### Applicable NEPA Standards

NEPA requires that an EIS be prepared for all "major Federal actions significantly affecting the quality of the human environment." (42 U.S.C. § 4332(2)(C).) An EIS must include:

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(*Ibid.*)

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An agency may first prepare an environmental assessment ("EA") to make a preliminary determination whether the proposed action may have a significant environmental effect. (*Nat. Parks & Conservation Assn. v. Babbitt* (9th Cir. 2001) 241 F.3d 722, 730; see 40 C.F.R. §§ 1501.4, 1508.9.) Whether preparing an EA or EIS, NEPA requires an agency to take a "hard look" at the environmental consequences of its actions. (*Nat. Parks & Conservation Assn. v. Babbitt, supra*, 241 F.3d at p. 730, quoting *Metcalf v. Daley* (9th Cir. 2000) 214 F.3d 1135, 1141.) As set forth below, we consider the DEIS to be inadequate under NEPA in a number of respects. The following areas require additional discussion and analyses to allow the BIA and the NIGC to take the required "hard look" at the Project's environmental consequences.

#### Wastewater

The proposed project would utilize and expand an off-site engineered wastewater treatment and disposal facility, and would dispose of treated wastewater on land via a spray field at a site near the Yuba County Parcel. (DEIS at pp. 2-14, 4.3-3; Figure 2-3.) The DEIS acknowledges that use of the spray field during the rainy winter months will not be possible and proposes seasonal storage to meet that contingency. (DEIS at p. 4.3-4.) Also, the project site is partially located in a 100-year flood zone, and the Sacramento and San Joaquin Drainage District holds an inundation easement on the Yuba County Parcel, which allows for the project site to be flooded without recourse for the property owner. (DEIS at p. 3.1.3-1; Figure 3.1.3-1.) The DEIS does not address whether the wastewater treatment plant site is also subject to the inundation easement. We are concerned that the flooding of the expanded wastewater treatment facility may potentially contaminate surface and groundwater, and the DEIS does not consider this potential adverse environmental effect.<sup>1</sup>

#### Air Quality

Vehicular and area source emissions associated with the project exceed thresholds of significance for the Feather River Air Quality Management District ("FRAQMD"), and cannot be reduced to less than significant levels by the proposed mitigation measures. (DEIS at pp. 4.4-9 to 4.4-10.) These impacts are largely associated with the projected number of vehicular trips to the project site by patrons, and traffic congestion associated with the increased vehicular travel. (DEIS at p. 4.4-9.) Many of the proposed mitigation measures are oriented towards encouraging car pooling and mass transit use for trips to the site to reduce the number of vehicular trips to the project site. (DEIS at pp. 5-9 to 5-10.) The proposed mitigation measures do not contain detailed proposals to decrease the number of vehicular trips to and from the project site or

<sup>1</sup> Additionally, because the wastewater treatment plant will not be located on trust land, the proposed plant may be subject to the requirements of the California Environmental Quality Act (Pub. Res. Code, §§21000, et seq.).

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mitigate the effects of the projected number of vehicular trips. Moreover, it appears that the mitigation measures related to mass transit may be ineffective, as the DEIS states that the project "is not anticipated to generate additional transit riders, given the lack of transit service in the vicinity of the [project] Site." (DEIS at p. 4.8-12.)

By 2025, even with mitigation measures, the project will continue to generate a significant level of emissions exceeding FRAQMD thresholds. (DEIS at pp. 4.12-8 to 4.12-9.) The project will generate 1.12 % of the county's Nitrogen Oxide Gas emissions and 2.92 % of the county's inhalable particulates. These long-term impacts further support the need for the DEIS to set forth adequate mitigation measures to reduce the number of vehicular trips.

#### Resource Use Patterns

The largest number of visitors to the project site is expected to come from the Sacramento area. (DEIS at p. 4.8-3.) The DEIS estimates that the project will result in 8,168 new vehicular trips to the project site daily, with 725 occurring during "PM Peak" hours. (DEIS at p. 4.8-1, Table 4.8-1.) The DEIS states that the project "would either result in an unacceptable [Level of Service] or contribute to already unacceptable operations, resulting in a significant impact" to six intersections on State Routes 70 and 65. (DEIS at p. 4.8-10.) These state highways are major traffic arteries for the Yuba-Sutter area, and the DEIS does not address the project's potential aggravation of traffic congestion problems associated with regular events at the nearby Sleep Train Amphitheater. Additionally, all of the proposed mitigation measures involve roadway improvements, with the majority of mitigation measures not being implemented until 2025. (DEIS at pp. 5-25 to 5-27.) Therefore, the Final EIS needs to address methods to mitigate the traffic congestion associated with the project. (*Ibid.*)

#### Public Health and Safety

While the DEIS acknowledges that the project is in a flood-prone area, it does not address any impacts that it may have on emergency evacuation routes for the nearby Plumas Lake Housing Developments, where thousands of houses are now located in an area that was subject to catastrophic flooding from the Feather River in 1997. (See DEIS at p. 3.1.3-4.) Also, the California Highway Patrol, which provides law enforcement to State Routes 65 and 70, may be expected to experience an increase in service calls and traffic enforcement due to the increased levels of traffic from the project. The DEIS does not factor this potential impact into its analysis. (DEIS at p. 4.9-5.)

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#### Visual Resources

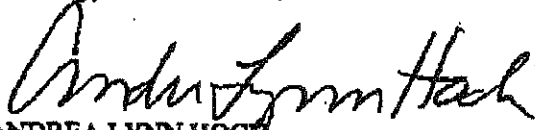
The DEIS concludes that the project would not result in significant impacts to visual resources because the project is consistent with "land use regulations and views from scenic corridors would not be noticeably affected." (DEIS at p. 4.10-8.) Although the project will be located in an area zoned for sports and entertainment venues, the DEIS concedes that the project would result in the loss of open space. (DEIS at p. 4.10-8.) Indeed, the surrounding area is primarily agricultural (DEIS at p. 3.1.5-3), and the project site is currently used for hay production. (DEIS at p. 3.1.5-5.) The addition of an eight-story hotel, a 207,760 square-foot gaming facility, and a multi-level parking structure, in a largely undeveloped area will undoubtedly degrade the visual quality of the surrounding environment, and the final EIS needs to recognize the significance of this impact and evaluate measures to mitigate it.

#### Conclusion

The DEIS requires additional analysis in several areas, including information to fully assess the nature and scope of the project's off-site environmental impacts, and whether measures proposed to mitigate the impacts are adequate. These comments do not constitute the entirety of the State's comments on the DEIS. Other State agencies with specific technical expertise may provide additional comments in separate letters.

Thank you for this opportunity to comment on the DEIS.

Sincerely,



ANDREA LYNN HOCK  
Legal Affairs Secretary