



# Contra Costa County

## Comments on Final Environmental Impact Statement On Scotts Valley Band of Pomo Indians' Fee-to-Trust Application and Gaming Development Project April 28, 2008

The following comments on the Final Environmental Impact Statement (FEIS) include comments on the Draft Environmental Impact Statement (DEIS) that are applicable to the FEIS as well as new comments. DEIS carry-over comments reference the DEIS comment number and include the BIA's numbered responses as well as the County's comments on those responses. New comments and concerns are not numbered.

### Purpose and Need

The Purpose and Need for the casino project, as discussed in the Executive Summary, limits the purpose and need of the FEIS to benefits to the Tribe, and does not include "no detriment to the community." Until and unless the Office of the Solicitor, Department of Interior, finds that the North Richmond property qualifies as restored Indian Lands, the FEIS simply cannot assume that the purpose and need of a casino project in Contra Costa County is a foregone conclusion. The FEIS is a document that will be used by the Secretary of the Interior in making the decision on whether to take the land into trust, either as restored lands or newly acquired lands. If newly acquired, the Secretary must find that the proposed action is not detrimental to the community under the two-part determination process prior to authorizing gaming operations, in accordance with the Indian Gaming Regulatory Act. As currently written, the FEIS will not provide the Secretary with sufficient information to assess the "no detriment" criteria under the current too narrowly defined Purpose and Need.

The BIA acknowledges this issue in its Response to DEIS Comment 1-37:

"The overall process for the Tribe's proposed project is a bifurcated process. Initially, the Secretary of the Interior (the "Secretary") must decide whether to accept title to the six parcels of real property totaling approximately 29.87 acres and located in Contra Costa County, California (the "Property") in trust for the benefit of the Tribe. *The Secretary's accepting title to the Property in trust for the benefit of the Tribe is the **sole** component of the Project which constitutes a major Federal action requiring compliance with the NEPA through the preparation of the EIS.*" (Emphasis added).

It is precisely this reason why it is necessary for the FEIS to address the issue of "no detriment to the community" as part of both the purpose and need for the project and in

the analysis of environmental impacts. The Secretary has three options: not take the property into trust, take it into trust as newly acquired land or take it into trust as restored land. While separate and distinct from the authorization to conduct gaming, this action is a necessary prerequisite, as acknowledged in Response to DEIS Comment 1-37 as follows:

"The Secretary's acceptance of title to the Property in trust for the benefit of the Tribe does not authorize the Tribe to conduct gaming on the Property pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq. (the "IGRA"). Once the Secretary accepts title to the Property in trust for the benefit of the Tribe, IGRA, based upon the Tribe's Fee-to-Trust Application, authorizes the Tribe to conduct gaming on the Property only if; (1) the Tribe qualifies as a "Restored Tribe" within the scope and meaning of the IGRA, and (2) the Property constitutes "Restored Lands" within the scope and meaning of the IGRA."

The question of whether the Tribe has historic ties to the Property or to Contra Costa County is part of the analysis of whether the Property, once taken into trust status, will qualify as "Restored Lands" within the scope of the IGRA. Determining whether the Tribe constitutes a "Restored Tribe" and whether the Property qualifies as "Restored Lands" is not within the scope of the Secretary's authority. These determinations are made by the Division of Indian Affairs, Office of the Solicitor, United States Department of the Interior (the "DIA"), in consultation and coordination with the Office of the General Counsel, National Indian Gaming Commission (the "OGC")."

Since the DIA has not yet opined on whether or not the project site qualifies as restored lands, the FEIS should not assume that it will do so. It is disingenuous to deny any relation between the EIS process and restored land status while assuming that the lands qualify as restored lands, and thus limiting the purpose, need and scope of the EIS document. **The FEIS should either not be issued until after a DIA decision that the lands qualify as restored Indian Lands or be constructed such that it meets the purpose and need for acquisition of *both* restored land and newly acquired land.**

***BIA purpose should include community impacts (DEIS Comment 1-38)***--The DEIS stated that the BIA's purpose is "to support the tribal government in its efforts to improve the long term economic condition of the Tribe and its members through the development of a stable, sustainable source of employment and revenue." The County requested that the purpose be expanded to include impact on the surrounding community, since the Fee-to-Trust application is for restored land status.

The BIA's response was:

"The purpose of the EIS is to assess the impacts of the Fee-to-Trust application on the human environment including surrounding communities." This statement misses the point of the County comment. The County requested changes to the purpose and need statement. This is a critical point, as acknowledged in the BIA's response to Comment 1-51. Here, the BIA dismisses the County's request for a broader range of alternatives on the basis that "no detriment to the community" is NOT a stated purpose and need for the project and that "the alternatives presented do meet the stated purpose and need as presented in Section 1.2.2 of the FEIS." The relation between the purpose and need and selection of alternatives is also affirmed on page 2-1 of the FEIS: "Alternatives have been selected to meet the Purpose and Need as described in Section 1.2"

**County Comment on Response 1-38:** The purpose and need should be amended in the FEIS as requested. Otherwise, this improperly narrow purpose and need statement leads to improperly narrow alternatives.

***Impact on surrounding community needs thorough assessment (DEIS Comment 1-39)*** – Fee-to-Trust land acquisitions subject to Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2719(b)(1)(A), require findings by the Secretary of the Interior that the establishment of gaming on newly acquired lands is not only in the best interests of the Tribe and its members but it is also *not detrimental to the surrounding community*.

Since no determination has yet been made as to whether or not land will be acquired under the restored or newly acquired proviso, these provisions of IGRA should guide the content of the EIS. The EIS should thoroughly address community impact issues, which is not currently the case.

The BIA’s response was:

“The FEIS is one piece of information to be considered by the Bureau of Indian Affairs when determining whether or not to approve the fee-to-trust application. The EIS provides information on the environmental effects associated with construction and operation of the proposed gaming facility. The information contained in the document and appendices will be used by the Bureau when considering whether or not the project is detrimental to the surrounding community. The content of the FEIS is guided by the requirements of NEPA (42 U.S.c. 4321 et seq.) the Council on Environmental Quality (CEQ) Regulations for Implementing National Environmental Policy Act (NEPA) (40 C.F.R. Parts 15001508), and the BIA's NEPA Handbook (59 IAM 3). The provisions of IGRA do not guide the contents of or analysis conducted within the FEIS. The Bureau will use IGRA to determine if the project should be approved given all evidence (including the FEIS) in the administrative record. The DEIS does address impacts on the surrounding community. For example, traffic impacts on the surrounding community can be found in Section 4.8, while noise impacts on the surrounding community can be found in Section 4.10 and air quality impacts on the surrounding community can be found in Section 4.4. Please see the FEIS Table of Contents for a complete listing of those environmental issues that are addressed.”

**County Comment on Response 1-39:** The BIA states that the Bureau of Indian Affairs will be guided by the Indian Gaming Regulatory Act (IGRA) to “determine if the project should be approved given all the evidence (including the FEIS and the Administrative Record).” The BIA then goes on to state that the “FEIS does address impacts on the surrounding community.” This response fails to recognize that a mitigated impact cannot necessarily be equated to “no detriment.” For example, the BIA acknowledges the proposed project will result in increases in the number of problem gamblers within Contra Costa County and has added funding for two counselor positions as a mitigation measure. The increase in problem gamblers with the consequent social disruption will be detrimental to the community. The mitigation may help remediate the problem but it is not a prevention measure. As such, this impact must be considered “detrimental to the community” and would be if the purpose and need included that criterion. Again, the

County requests revision of the EIS and maintains that until such language is added, the scope of the EIS is not properly defined, which results in deficient analysis of impact.

***Tribal member employment needs to be addressed (DEIS Comment 1-40)*** – The DEIS did not address how any of the alternatives would further long-term sustainable employment for tribal members. There is no indication that the employment being generated by the project or the project alternatives would generate jobs suitable to the skill sets of the tribal members. There is no indication that tribal members reside in the vicinity of the project, and therefore would be within commute distance for any of the jobs offered. (Indeed, the extensive housing planned in Lake County is over 100 miles away from the proposed casino project.) Also, there is no indication that revenue will be used to effectively address the factors that cause the unemployment or underemployment among tribal members cited in the DEIS. If employment is part of the purpose of the Bureau of Indian Affairs, this issue needs thorough examination and analysis. Such an analysis is important in assessing the adequacy of the alternatives evaluated in the EIS.

The BIA's response was:

“The Economic and Fiscal Impact Report conducted for the project estimates that approximately 2,279 permanent new direct jobs would be created by the casino (see Appendix S, page 18). The Economic and Fiscal Impact Report Study goes on to state that the project would not only create jobs, "it would be one of the largest employers in the City of Richmond" (Appendix S, page 19). The job opportunities created by the casino include many different job types including jobs on the gaming floor, within food and beverage, security, marketing, etc. There is no requirement under NEP A that the jobs created by the facility be matched with the "skill sets" of tribal members. The fact that this project would generate the many varied job opportunities provides the Tribe with self-sustaining employment options for their members. These job opportunities in and of themselves would assist in furthering sustainable employment for tribal and other members of society. The purpose and need section of the EIS states that the "economic development is sought to improve the economic condition of the Tribe, enabling the Tribe to provide currently under-funded services needed by its members."

The County also comments that there is no indication that revenues generated by the casino facility would be "used to effectively address the factors that cause the unemployment or underemployment among tribal members." The County does not go on to clarify what is meant by the comment. A steady revenue stream to the Tribe and improvement of socioeconomic conditions would help to address the underlying factors of unemployment. The BIA is the reviewing agency that will consider the social, environmental, and economic impacts of the proposed project and decide whether the project should be approved. Employment is thoroughly addressed within **Appendix S** of the FEIS, as well as within the main body of the document.”

**County Comment on Response 1-40:** The BIA's response is contradictory. The BIA states that “employment [of Tribal members] is not part of the purpose of the Bureau of

Indian Affairs.” This statement is obviously contrary to the purpose and need statement in the FEIS which states that “the purpose and need for taking the property into federal trust is to carry out the Federal Government’s trust responsibility to the Tribe and to develop uses that will improve the long term economic condition of the *Tribe and its members through the development of a stable, sustainable source of employment...*”(emphasis added) Furthermore, the BIA cites two reasons for selecting Alternative A: “...the best means of securing and maintaining a long-term, sustainable revenue stream and employment opportunities for the Tribe.” (FEIS, page 2-32) If employment of Tribal members is not relevant to the purpose and need for the project, then the FEIS should be revised to delete all such references and the employment should not be used as a project selection criterion. If it is relevant, then the FEIS should contain a thorough analysis of employment, as requested by the County.

Elsewhere, the BIA states that the “job opportunities in and of themselves” would assist in furthering sustainable employment for tribal members. This response is insufficient. Without an analysis of factors such as Tribal members’ skill sets or place of residency relative to jobs created, the alternatives cannot be evaluated to determine whether they adequately enable the BIA to fulfill its purpose of “supporting the Tribal Government...through the development of stable, sustainable source of employment...” (FEIS, pg. 1-2). For example, the Lake County alternative was dismissed due to site development constraints, yet it may be the best alternative for providing employment opportunities for tribal members, due to its proximity to tribal housing and residency of tribal members. Without this analysis requested by the County, the BIA has no means of comparing each alternative’s capacity to develop long-term sustainable employment.

## **City of Richmond Municipal Services Agreement**

Beginning on page 2-9 under City of Richmond Municipal Services Agreement (MSA), the FEIS acknowledges that the project is not within the limits of the City of Richmond though the Tribe has entered into a MSA with the City. Within the MSA, the Tribe has agreed to allow the City certain privileges regarding the development of this project, many of which should be under the purview of Contra Costa County since the project is within the jurisdictional boundaries of the County. While the tribe can contract with any private firm to address health and safety issues on its trust land, any off site impacts within unincorporated Contra Costa County must be mitigated to the satisfaction of the County.

In addition, the FEIS should be modified to reflect that the validity of the Municipal Services Agreement (MSA) negotiated between the Tribe and City of Richmond is uncertain. In May 2007, local community groups filed a lawsuit alleging that the City violated California on Environmental Quality regulations (CEQA) when it negotiated the agreement with the Tribe without first conducting an environmental review. The group has petitioned the court to void the agreement, declare it unlawful, and issue a

restraining order barring further attempts without an environmental review. A recent ruling which voided a similar agreement in Amador County strongly suggests that the courts are likely to void the MSA between the City of Richmond and the Scotts Valley Band of Pomo on the same grounds. See *County of Amador v. City of Plymouth* (2007), 149 Cal.App.4th 1089. (Petition for review pending.)

The County provides comments later in this document on specific provisions of the MSA regarding, but not limited to, the review and approval of storm drain improvements, road improvements, storm water pollution controls, traffic mitigation measures, development standards, lighting improvements, construction methods, law enforcement, emergency medical services, fire response and payment of fees, among others. In general however, the BIA should take steps to reflect all mitigation conditions and explicitly describe the level of authority, and the agency granted that authority in the FEIS. It should not merely indicate the conditions are contained in the MSA. See also comments on the enforceability and validity of the MSA in Section 5, Mitigation Measures.

In the Response to County DEIS Comment 1-103, the BIA has indicated that the Tribe has made good faith efforts to negotiate a Municipal Services Agreement with the County, but that the County was not willing to enter into such an agreement. While the County does not dispute this statement, its reasoning for this decision is sound. Negotiating such an agreement is premature since decisions on the Tribe's Fee-To-Trust application and its "Restored Lands" Determination Request are pending. Denial of either of the Tribe's applications would render an MSA immaterial. As such, negotiating an agreement with the Tribe prior to a final decision on the Tribe's applications would not be a prudent use of staff time or County resources, particularly in light of the Amador County case. Furthermore, the County is not convinced that the Tribe is legally entitled to operate a casino or have the subject property acquired in trust since its historical and modern ties are to Lake County, not Contra Costa County. The County does not want to complicate, or further delay, the pending review of the Tribe's applications by negotiating a service agreement that in the wrong context could be misconstrued as evidence of the Tribe's legal standing in Contra Costa County.

## **Objectivity and Accuracy**

The **Introduction** to the FEIS (Executive Summary) does not include the fact that the Tribe's application is for the referenced land to be taken into trust as "restored land." This is a significant omission, since the approval process for a tribal casino and the rights of a tribe to operate gaming differ between restored land and other land acquired after October 17, 1988 (the date that the Indian Gaming Regulatory Act was enacted). This omission should be corrected. (See also DEIS Comment 1-38, 1-39 and 1-51)

The **Areas of Controversy** section of the Executive Summary does not mention expressed concerns regarding negative impacts on community revitalization efforts of the County Redevelopment Agency, including revenues to the Agency; environmental

justice for the low-income minority residents of North Richmond; proposed infringement upon the jurisdictional authority of the County's Sheriff, Fire and Emergency Medical Services; legality and reliance on the Tribe-City of Richmond Municipal Services Agreement for mitigation of impacts; and the too narrow purpose and need for the project, with resulting inadequate analysis of impacts and their mitigations: and inappropriate dismissal of the Lake County site as a project alternative. This should be corrected.

**Characterization of the Scotts Valley Band (DEIS Comment 1-44)**-- The EIS should be an objective analysis of the Fee-to-Trust Application and Casino Development Project that is based on accurate information. The DEIS is not. There are numerous references to the Tribe's "restored trust land base," as well as misleading or unsubstantiated statements regarding terms of the Stipulated Judgment, the Tribe's connection to Contra Costa County, forced relocation of tribal members to the Bay Area, the meaning of the "service population area," and the Tribe's right to autonomously restore its land base in Contra Costa County. These references should be removed from the EIS or qualified with such phrases as "the Tribe alleges that...."

BIA response was:

"In order to properly analyze impacts to the human environment that may result from the proposed project, the BIA must work under the assumption that the Tribe has the legal right to undertake the proposed project. Thus, the DEIS is created with the assumption that the Tribe would have the right to game on the property and that the property may be taken into trust for that purpose. The specific items mentioned by the commenter are irrelevant to the DEIS and are better suited for comment on the fee-to-trust process as discussed in Response 1-37. "

**County Comment on Response 1-44:** The BIA responds that it must "work under the *assumption* (emphasis added) that the Tribe has the legal right to undertake the proposed project" in order to properly analyze the project's impacts. The fact that the BIA is making this assumption is exactly the County's point. The BIA is acting prematurely by proceeding with this EIS since the Office of the Solicitor, Department of the Interior has not yet acted on the Tribe's Indian Lands Determination Request. Issuance of the FEIS should wait until such a determination is made, with appropriate revisions to the document to reflect that decision. This sequence would allow consistency with the BIA's recitation of the process described in the Response 1-37. The BIA presents no compelling reasons for moving forward with the EIS at this time.

**Terms of Stipulated Judgment (DEIS Comment 1-45)** – The statement "the terms of the Tribe's stipulated judgment specifically prohibited the Tribe from re-establishing the former boundaries of the Scotts Valley Rancheria." (Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria et al. v. United States of America et al., Civil No. C-86-3660 WWS, N Dist. CA, Sept. 6, 1991) is misleading. The Stipulated Judgment also provided for taking lands into trust within the boundaries of the Rancheria under certain conditions. Specifically, the federal defendant agreed to accept into trust:

- Any land within the boundaries of the former Scotts Valley Rancheria in Indian ownership (as of the date of the Judgment) and was acquired as direct consequence of the Tribe's termination (Paragraph 5, Pages 5 & 6, Stipulated Judgment);
- Future land acquisitions within former boundaries subsequently acquired by distributees, dependents or lineal descendants, or by the Band (Paragraph 8, Page 11, Stipulated Judgment); and
- Lands outside the boundaries of the former Rancheria held in the name of the Tribe, dependents, heirs or successors as of the date of the Judgment (Paragraph 6, Page 7, Stipulated Judgment).

The EIS should be revised to reflect these additional terms of the Stipulated Judgment that direct the federal government to accept the establishment of trust lands within the former boundaries of the Rancheria or remove all reference to the Stipulated Judgment.

BIA's response was:

“The stipulated judgment is a public document and is quoted as appropriate in the EIS. The comment is noted and is made part of the record. “

**County Comment on Response 1-45:** The BIA's response that the stipulated judgment “is a public document and is quoted as appropriate in the EIS” fails to adequately address the comment. The comment raises a concern over the misleading nature of the statement that implies that the Tribe could not take lands into trust within the boundaries of the Scotts Valley Rancheria or elsewhere in Lake County. The stipulated judgment is relevant to the FEIS to the extent that it provides criteria for the selection of alternatives. Consequently, *all* the criteria should be referenced and discussed as part of Section 2.0, Alternatives. It is irrelevant in Section 1.2.3. In addition, the statement that “The Tribe was illegally terminated and prohibited from restoring its prior Rancheria land base by court order.” in the Introduction to Section 1.0 (FEIS, page 1-1) should be deleted for the same reasons.

***Need for Development of Casino Project*** (Section 1.2.3, FEIS page 1-6)---The FEIS states that “the need for the development of this project is based on the following conditions:

- The Tribal Government has no sustained revenue stream;...
- The lack of economic development opportunities for Tribal members due to lack of a land base:....”

These references should either be deleted or amended to reflect the fact that the Tribal Government receives \$1.1 million annually from the California Indian Gaming Revenue Sharing Fund and that the tribe has a land base, although it is fee land, not trust land.

The Fund is distributed to all California tribes that do not operate a casino or have a casino with fewer than 350 slot machines. Also, there is not necessarily any correlation between economic development opportunities and the existence of a land base, whether fee land or trust land. For example, in March 2007, the U.S. Department of Agriculture-Rural Development awarded a grant to the California Coalition for Rural Housing, a coalition of five Lake County tribes, including the Scotts Valley Band of Pomo Indians, for a tribal housing capacity development project.

***Current day Lake County affiliations needs to be acknowledged (DEIS Comment 1-50)*** – The description of the Tribe in DEIS Section 1.2.2 (FEIS Section 1.2.3) makes no mention of its current day affiliation to Lake County, despite the fact that the Tribe has acquired 33.5 acres in Lake County for construction of “22 residential units, a 22,500 square foot two-story apartment building, and three lots for duplex housing units,” as well as a Tribal retirement facility, a Tribal residential care facility, restaurant, Tribal museum and cultural center (DEIS page 2-25 and FEIS page 2-30). According to the DEIS, page 2-26 (FEIS page 2-28), the land was acquired with Department of Housing and Urban Development (HUD) funding for these purposes and because the uses would fulfill the Tribal Council’s mission “to provide uses/services that assure long-term self-sufficiency of tribal members. This includes providing residential housing, economic opportunities...” (DEIS page 2-26 and FEIS page 2-31). The large volume of planned residential units at this Lake County location is certainly enough units to house a significant portion of the 181-member Tribe and indicates a very real present day connection to Lake County, rather than to Contra Costa County, as does the planned commercial development that would provide employment for Tribal members. The EIS should acknowledge the Lake County affiliation of the Tribe.

BIA’s response was:

The affiliation of the Tribe with Lake County is included in Section 2.3.1 and does not belong within the purpose and need section. The Tribe also maintains a Tribal office in Lake County in order to provide services to its members in and around Lake County. The Tribe’s plans to build housing and other services for Tribal members are unrelated to the purpose and need of the project as described in the EIS.

**County Comment on Response 1-50:** The County’s comment is relevant to the purpose and need in that it relates to the need to provide employment opportunities for tribal members. The comment also addresses the need for the BIA to fully evaluate a range of reasonable alternatives. The Tribe’s plans for building housing and other services in Lake County demonstrate the Tribe’s current and planned future ties to Lake County. The BIA has inappropriately and prematurely dismissed the Lake County site as a viable alternative that would meet the stated purpose and need for employment of tribal members near their homes. The FEIS should detail the Tribe’s affiliation to Lake County.

## Lake County and Other Alternatives - 2.0

***Additional Alternatives needed to comply with 40 CFR §1502.14 (DEIS Comment 1-51)***--It is Contra Costa County's understanding that the EIS should examine a range of alternatives that are consistent with the need and purpose (i.e., sustainable employment, revenue for the Tribe, and no detrimental impact on the community). Currently the range of alternatives is not sufficient to satisfy this criterion, particularly since all alternatives are located on the same site (in Contra Costa County) and none are consistent with the County General Plan and Planned Unit Development Zoning Program for North Richmond.

Additional alternatives need to be considered in order to comply with 40 CFR §1502.14, which requires the agency to "*vigorously explore and objectively evaluate all reasonable alternatives...*" (Emphasis added.) Furthermore, Section 1502.14 "requires the Draft EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." (40 CFR §§ 1500 – 1508.)

The courts have consistently employed principles that suggest a full evaluation of the proposed action with environmental risks, with a comparison to alternative courses of action. Other sites, not just alternatives intensities of the same uses, or alternative uses on the same site should be fully evaluated in the alternatives section.

In addition, the description of each alternative needs to be more complete, with information for each proposed use that includes estimated number of employees by job type and shift, number of patron trips per day, day of week and time of day, etc. The formatting of the DEIS document also makes it difficult for the reader to compare the proposed uses among the alternatives. A spreadsheet should be included in the EIS.

The BIA's response was:

"The purpose and need, as stated for NEPA purposes, is presented in Section 1.2.2 of the FEIS. The commenter is incorrect in their statement that "no detrimental impact on the community" is a stated purpose and need for the proposed action. The alternatives presented do meet the stated purpose and need as presented in Section 1.2.2 of the FEIS." (Note: Purpose and Need is Section 1.2.1 in the FEIS)

"The commenter's discussion regarding analysis of alternatives pursuant to 40 CFR is noted; however, the commenter does not state where the DEIS falls short of meeting the intent of NEPA as it relates to alternatives analyzed. The DEIS addresses a reduced Casino (Alternative B), a reduced casino and commercial development (Alternative C), a retail and office development project (Alternative D), and the

no action alternative (Alternative E). The document presents details and graphics showing how each of the alternatives would be developed. The details include a description of the proposed uses, development standards, and ancillary components (such as parking, site drainage, wastewater treatment and disposal, water supply, fire protection/emergency medical services, security/law enforcement). The FEIS includes a discussion of the application of the existing City of Richmond Municipal Services Agreement. All of this detail served as the basis for the rigorous environmental analysis that exists in Section 4 of the document. All of this was completed for the Proposed Action as well Section 2.4.1 of the FEIS presents a comparison of the alternatives based on the results of the environmental analysis. In addition, the DEIS considered the development of the casino on Lake County fee land (Section 2.3.1).

The DEIS contains sufficient information pertaining to jobs, job types and traffic information to allow for a complete and thorough analysis of environmental effects. We direct the commenter to Appendix S (Economic and Fiscal Impact Report) and Appendix K (Traffic Impact Study) for details pertaining to assumptions related to jobs and traffic. The comment concerning a spreadsheet is noted and made part of the administrative record; however, no change to the DEIS related to this issue is needed.”

**County Comment on Response 1-51:** As previously explained by the County, one of the Purposes and Needs in the FEIS should be “no detriment to the Community.” However, even if this was not a purpose and need, the “employment of tribal members” purpose and need clearly requires a thorough exploration of Lake County alternatives, since Lake County is where most of the tribe’s members now live and where the Tribe is vigorously pursuing the expansion of housing, commercial development and governmental services.

The BIA asserts the commenter “does not state where the DEIS falls short of meeting the intent of NEPA as it relates to alternatives analyzed.” We respectfully call to the BIA’s attention the following text from the original comment:

“Other sites, not just alternatives intensities of the same uses, or alternative uses on the same site should be fully evaluated in the alternatives section.”

More specifically, the BIA has failed to evaluate a reasonable range of alternatives by not evaluating an alternative location for the proposed development. In particular, the reasons given to dismiss the Lake County Fee-Land Alternative are based on speculative site constraints and not that the site would not meet the stated purpose and need. For example, Section 2.3 states that the alternative was dismissed because the site has a 150-foot setback, would require new water and wastewater facilities, and it *may* have an inadequate water supply. Furthermore, it would interfere with the Tribe’s plans for residential development on the parcel. While these are all potential site constraints to development of a new casino, they are challenges that have been successfully overcome by many other tribes throughout the state.

An alternative should not be dismissed from further analysis simply because it is inconvenient or not ideal for the project applicant; the BIA must evaluate all reasonable alternatives that would meet the stated purpose and need. The Lake County Fee-Land Alternative, or another off-site alternative, should also be evaluated by the BIA due to the level of public comments that have requested them to do so both during scoping and during circulation of the DEIS. The following examples are from the scoping document:

- Written Comment Card-Steven Elliott (of Scotts Valley Band of Pomo Indians) (page 79)  
“We need our casino in our territorial lands in Lake County, Clear Lake....”
- Written Comment Card-Les Miller (of Scotts Valley Band of Pomo Indians) (page 80)  
“...the request for land into trust by the Tribe is very weak because of the distance from our reservation to Richmond, CA...”
- Letter 11 (Law Offices of David M Fried)  
“Under NEPA, the preferred alternative for the Band is to look for land in rural Lake County for development, where the Scotts Valley Band has been based historically...The Scotts Valley Band is free to develop a casino in Lake County, which will provide the band with enormous financial rewards.”
- Letter 192  
“While I am sympathetic to the Scotts Valley Band of Pomo Indians' landless status, I fail to see how this group, backed by out of town investors, can be entitled to build in a community 100 miles away from their designated reservation.”
- Letter 225  
“It does not make sense since the Scotts Valley Band of Pomo Indians ancestral lands are more than 100 miles from the proposed site.”

*Lake County Fee-Land alternative should not be eliminated* (DEIS Comment 1-55)– The DEIS briefly discusses construction and operation of the proposed casino project on land (33.5 acres) currently owned in fee by the Tribe in Lake County. The reasons given for eliminating the Lake County Fee-Land alternative are without merit, as delineated below:

- Current land use – The DEIS states that the current onsite uses of the land include two occupied single-family homes, two barns and an abandoned residence. Most of the site is covered with walnut trees. The DEIS does not identify any impediments to either removing or relocating these residences and eliminating the walnut trees. Consequently, it must be assumed that this is not a reason to dismiss the Lake County Fee-Land alternative.

- Existing 150-foot development setback – The DEIS states that the Tribe has agreed to 150-foot development setback on the southern portion of the site adjacent to the vineyard to provide a buffer between the adjacent agricultural operations. Based on the County’s understanding of the Tribe’s ability to do what it wants on Reservation land, this development setback would not be applicable if the land was taken into trust for a casino project. Therefore, unless the Tribe has signed an agreement with Lake County waiving its sovereign rights on this issue, the development setback should not be considered impediment to the Lake County fee to land alternative

Note also that if the Tribe wanted to provide for a 150 foot buffer, it could choose to do so by using that portion of the property for open space or by locating a parking garage or other structure in that area that would not affect or be affected by the adjacent agricultural use.

- Roadway improvements – The DEIS states that CalTrans has discussed potential roadway improvements that would significantly widen Highway 29 to accommodate existing and future traffic. The urban interchange could necessitate acquisition of approximately 11 acres of the site. Rather than being an impediment to development of the Lake County Fee-Land alternative, such an urban interchange is a good reason why this alternative should be considered. It would allow for easy access to and from the casino without going by neighborhoods, as will be required with the proposed casino project in Contra Costa County. In addition, location of the casino at the Lake County site might contribute to the public good by helping fund the urban interchange.
- Size of site – The DEIS claims that an estimated 35% of the 33.5 acres site would not support a casino project, because of development setbacks and right-of-way roadway widening requirements. This 35% represents approximately 11.7 acres, which would leave approximately 21.8 acres for development—8.07 acres less than the 29.87 acre site in Contra Costa County. While this acreage difference might preclude development of the Preferred Alternative, the remaining available 21.8 acres of land would support several of the reduced-project alternatives. However, it cannot be assumed that this acreage would not be available to the Tribe once the land is taken into trust, at which time the Tribe would not be subject to any eminent domain proceedings by CalTrans or be subject to setback requirements of the County (unless sovereign rights have already been waived). For these reasons, size of the site cannot be considered grounds for dismissal of this alternative.
- Accessibility to water – The DEIS states that groundwater reserves “may not be adequate to sustain the water demands that come from proposed development” (page 2-25). Yet, the document presents no conclusive evidence regarding groundwater yields (no long-term groundwater pump test has been conducted). In addition, the DEIS does not address whether or not water could be available from other sources, for example, by tying into existing water supply systems. Consequently, water availability cannot be used as a reason for eliminating the Lake County Fee-Land alternative.

- Limitations due to HUD funding – Another reason given for eliminating the Lake County Fee-Land alternative is that the land was purchased with funding from HUD, which authorized the purchase for residential and commercial development. The casino project is a “commercial development.” The DEIS does not provide any specific information on the conditions of the HUD grant or if the Tribe could repay the grant funds if the grant’s conditions precluded casino development. Consequently, HUD funding cannot be used as a reason for eliminating the Lake County Fee-Land alternative.

The Lake County Fee-Land alternative should be fully analyzed in the EIS to meet the requirements of NEPA, which states that the BIA must evaluate a reasonable range of alternatives.

***Additional Lake County alternatives should be examined (DEIS Comment 1-55)*** – Since one of the rationales for the casino project is employment for Tribal members, it makes sense to locate the casino project near tribal housing. Consequently, additional alternatives should include an alternative to reestablish the Rancheria within or near its previous boundaries, as allowed in the Stipulated Judgment, on lands near those already held in fee by the Tribe.

While the proposed trust parcels in Contra Costa County are obviously preferred by the applicant, this does not relieve the BIA from the requirement to evaluate a full range of alternatives that meet the purpose and need “to facilitate economic development and the self-governance capability of the Tribe.”

BIA Response 1-55

Section 2.3.1 of the DEIS provides a description of the Tribe's consideration of the approximately 33.5 acres of land presently owned by the Tribe in fee in Lake County, at the intersection of Highway 29 and Soda Bay/Red Hills Road. The description details the environmental constraints, which include: right-of-way and setback issues, displacement of existing residents, planned Tribal development, wastewater disposal and water demand issues, and financial feasibility. These constraints constitute the reasons that this alternative was eliminated from further consideration in the DEIS. In addition, the following points of information and clarification support the elimination of this alternative.

A critical factor limiting the feasibility of the fee land to serve as an alternative is the fact that the Tribe has extensive plans for the use of the land, as described in the DEIS. There are few, if any, parcels of usable and appropriately zoned lands for the planned range of uses - from multi-family housing to a retirement community to an out-patient facility and a community park, along with infrastructure to support the entire development.

Developing a casino on the Lake County fee land would displace the Tribe's planned land uses and would require the Tribe to obtain one or more additional sites. The difficulty in locating an adequate site, costs associated with its purchase, and infrastructure improvements costs (including water supply and wastewater treatment) would be a practical impediment to relocating the Tribe's planned land uses. This would decrease the economic benefit to the Tribe by requiring it to devote a portion of gaming revenue to essentially replacing what it already has. At the same time, the fee land location in Lake County is in a far less populous portion of the State, with significantly less transportation infrastructure. This would significantly decrease the viability and revenue of the casino. Dividing the Tribal services onto one or more separate parcels of land would destroy the sense of community built into the plans for the fee land.

The 150-foot setback and additional right of way that may be needed for roadway widening would

require that approximately 35% of the project site be set-aside. This would severely limit the available locations for a gaming facility within the site. Additionally, access to the tee land is currently provided on the north side of the property, down a two-lane road from the Highway 29 - Soda Bay/Red Hills Road intersection. Planned expansion of Highway 29, while eliminating a significant amount of the Tribe's frontage, would also effectively shorten the access road to the property, virtually assuring that the increased traffic attributable to a gaming operation would be difficult to mitigate.

For these reasons, the property located in Lake County that is owned in fee by the Tribe was eliminated from detailed analysis within the DEIS.”

**County Comment on Response 1-55:** The BIA states that the reason the Lake County Fee-Land Alternative was dismissed is due to the inconvenience that alternative would have on current tribal plans as well as its location in a less populous portion of the state. These are given as additional reasons to dismiss the alternative (although the new/more detailed reasons are not included in Section 2.3 of the FEIS). Convenience of the applicant should not be a considering factor when dismissing a reasonable alternative. To quote CEQ guidance:

“Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”

The Lake County Fee-Land Alternative in particular meets the final “tests” of being a reasonable alternative that should have been thoroughly evaluated by the BIA and presented to the decision makers, in that it is feasible from technical and economic standpoint, and makes sense in terms of where the majority of the tribe’s members are currently located as well as being the historic home of the Tribe.

Nowhere does the BIA make a case that the Lake County Fee-Land Alternative would not meet the stated purpose and need of economic development for the tribe and employment opportunities for tribal members.

Nowhere does the BIA provide documented evidence that the Lake County site would not be a viable alternative. For example, the cited concerns regarding the viability of the Lake County site relative to transportation issues have not been evaluated and so must be dismissed. Specifically:

- The consumption of land for the purposes of constructing an appropriately scaled (such as would be required to mitigate the traffic impacts of the proposed project) "interchange" needs to be established before this alternative could be dismissed. At a minimum a traffic study establishing trip generation rates for the site would need to be developed to determine the scale of interchange improvement necessary to accommodate the project at the alternative site. The

trip generation rate would have to be context sensitive, taking into account the project sponsors assertion that the Lake County site would "...decrease the viability and revenue of the casino...." in conjunction with a revenue based trip generation model. See also County Comment on Response 1-139, "*Trip generation methodology is inadequate.*"

- The description of the effect that any expansion of Highway 29 would have on the function of an access road on the property is unfounded. The site and the road on the site are rural in character. Upon development for any urban project, such as being proposed, the site will undergo extensive improvements, if not a complete change in character. The operation of the road, as it is currently configured, is immaterial in terms of the viability of any potential project.

The County continues to insist that the FEIS cannot be considered adequate without a thorough exploration of the Lake County site alternative.

***More site development alternatives needed (DEIS Comment 1-53)*** – Currently the DEIS addresses five alternatives: two casino-only alternatives; one office/retail alternative; one combined casino/office/retail alternative; and one no-action alternative.

None of the alternatives presented are consistent with the Contra Costa County General Plan, the North Richmond Shoreline Specific Plan, or the North Richmond Planned Unit District (P-1) Zoning Program. An alternative that uses manufacturing, distribution, warehousing, and related activities consistent with these plans/ordinance should be created and analyzed. The criteria for creating this alternative are set forth in the County General Plan as:

- Maximum site coverage – 30%
- Maximum floor area ratio – 0.67
- Average employees/gross acre – 45

In addition, an alternative should be presented that responds to community needs for retail outlets, particularly access to groceries, hardware, and community services.

BIA's response was:

"Please see Response 1-51. Please note that this is a tribal project to be analyzed by the BIA. This is not a local land use project. NEPA does require that consistency with local plans be evaluated, which was done within the DEIS; however, a reasonable range of alternatives (which did not include an industrial alternative) was addressed within the DEIS. As presented in Section 4.8.1 of the DEIS, while the project would not be consistent with the heavy industrial "designation", it would serve to meet the market demands and needs of the community and would help promote and upgrade the visual appearances of the area. The proposed action would be consistent with the economic goals of the general plan. Given this, and the fact that the DEIS contains a reasonable range of alternatives and the fact that this is not a local land use project, no additional analysis of alternatives (i.e., heavy industrial) is needed."

**County Comment on Response 1-53:** The response to the County's request is inadequate. The BIA indicates that "NEPA does require consistency with local plans be undertaken, which was done within the DEIS." However, this contradicts its own statement that "the project would not be consistent with the heavy industrial 'designation'" of the property (ie, not a permitted land use under the County General Plan. The core of the issue with the casino is the lack of consistency with locally adopted General Plan land use policies.) The County has made a reasonable request asking that the alternatives analysis in the FEIS at the very least include an alternative that is based on the current General Plan land use designation, Heavy Industry (HI). In making this request, the County provided the basic site criteria necessary for conducting such an analysis under the General Plan's Heavy Industry designation. Unfortunately, the response summarily dismisses this reasonable request.

The response explains "...while the project would not be consistent with the heavy industrial designation, it would serve to meet the market demands and needs of the community and would promote and upgrade the appearance of the area. The proposed action would be consistent with the economic goals of the general plan." These two statements are made without any substantiation. There is no proper citation to the text of the Contra Costa County General Plan. There is no information or evidence provided to support the claim that the project would serve to meet the market demands and needs of the community or that it would be consistent with the economic goals of the general plan.

The response indicates a general lack of awareness or understanding of the role the General Plan plays in establishing land use and development policies for the County. As mandated under California law, each city or county must prepare a General Plan that is a comprehensive, long-term plan for the physical development of the land within its political boundaries. The General Plan is the most important legal planning tool for a city or county in California in its efforts to provide for orderly development of the community. Case law in California has described the General Plan as the "constitution" for all future development. Given the importance placed on the General Plan, as the constitution for development, it is disappointing that the authors of the FEIS have dismissed the County's reasonable request to include an on-site alternative that is based on the adopted Contra Costa County General Plan and consistent with the current Heavy Industry (HI) land use designation for the subject site.

Instead, the response rests on an unsubstantiated claim that the project would be consistent with the economic goals of the General Plan. Even if it were possible to identify a link between this project and certain economic goals described in the General Plan, such an approach would fail to understand a fundamental caution described in the General Plan. It cautions against myopically focusing on one particular goal or policy or measure without reference and regard to the entirety of the General Plan. That is to say, the goals, policies, and implementation measures must be placed in context with the entire General Plan, and unless clearly stated, one goal, policy, or implementation measure does not outweigh or overrule the others described in the General Plan.

For these reasons, the FEIS should include an on-site alternative consistent with the Contra Costa County General Plan.

***Selection of Preferred Alternative (DEIS Comment 1-56)*** - As discussed earlier, the purpose and need of the proposed casino project is to provide revenue and employment for the Tribe through a project that is not detrimental to the surrounding community. Yet, in the DEIS, the only criterion used to select the preferred alternative is revenue: Alternative A, the largest casino project would be “the best means of securing and maintaining a long-term sustainable revenue stream.” This reasoning is not sufficient for selection of preferred alternative. Selection should be based on all three criteria: revenue, employment and impact on the surrounding community.

Currently, the analysis of the alternatives is not sufficient for a quantitative and qualitative assessment of the relative advantages and disadvantages of each of the alternatives in order to make a decision on the “preferred alternative.” The commercial/retail development alternative is dismissed because it “would be subject to competition with other retail developments closer to population centers.” This ignores the fact that the casino project would also be subject to competition from the Lytton San Pablo Casino, which is closer to population centers and the I-80 corridor than the preferred alternative. Similarly, a mixed casino/retail/office development may provide a more balanced stream of revenue for the Tribe, and consequently be more sustainable.

Without any information on the work skills of tribal members (which should be included), it cannot be concluded that Alternative A, the largest casino project, best meets employment needs. Similarly, without an analysis of community needs for such businesses, the retail alternative should not be eliminated. Employment for community residents should also be considered in the selection process. The EIS needs to include a thorough assessment of the alternatives based on all three criteria.

The BIA’s response was:

“Please see Response 1-51. The Proposed Action is the project as proposed by the Tribe for the project site. The rationale and reasoning used for the development of the proposed action is revenue generation and employment opportunities as disclosed in Section 1.2.2 of the FEIS (Purpose and Need).”

**County Comment on Response 1-56:** The BIA added a phrase to the FEIS that the Preferred Alternative would provide the best means of securing and maintaining a long-term, sustainable revenue stream *and employment opportunities* for the Tribe (FEIS page 2-32). This conclusion is made without substantive analysis of the relative advantages and disadvantages of each of the alternatives compared to the magnitude of their impact on the community and the environment. Positive impacts (revenue and jobs) as well as possible negative impacts (community impacts) need to be thoroughly explored and are essential to evaluating an application. To assert to the contrary is a gross misrepresentation of the EIS process, which is to provide decision-makers with a full evaluation of the effects of a project—positive and negative. For example, the preferred alternative would employ over 2,200 people; however, the Tribe has only

about 95 adult members. A reduced alternative would clearly meet the purpose and need for Tribal member employment, with fewer community and environmental impacts.

Also indicated under **County DEIS Comment 1-40**, the BIA presents information on employment to allow for an analysis of the environmental impacts, but does not analyze factors such as Tribal members' skill sets or place of residency relative to the jobs created—only such an analysis would provide the basis for a conclusion that an alternative provides the best means of employment for the Tribe. A thorough analysis should be completed or statements alleging that Alternative A provides the best means of securing employment opportunities for the Tribe should be deleted from the FEIS. “Alternative A would provide the Tribe with the best means of securing and maintaining a long-term, sustainable revenue stream and employment opportunities for the Tribe.” FEIS page 2-32). Note also the disingenuous assertion in that response: “There is no requirement under NEPA that the jobs created by the facility be matched with the “skill sets” of tribal members.” NEPA *does* require that the selected alternative be the one that best satisfies the purpose and need for the project...in this case, employment of tribal members is one of the two criteria set forth in the FEIS.

## **Development Standards - 2.2.1**

***Development Standards (DEIS Comment 1-57)*** - The DEIS states that the Tribal government will adopt various development standards and comply with various Federal, State and local standards (pp. 2-4 and 5). Codes referenced in the DEIS are significant measures to protect public health and safety. County departments/districts responsible for ensuring compliance have staff with specific technical expertise and experience. Some, like public health standards for food and beverage handling, apply not just to project development, as listed in the DEIS, but also to facility operations. Similarly, the Fire District's Fire Prevention Bureau would conduct maintenance inspections during the life of the facility, if it were a private, non-tribal project. The EIS should clarify which standards and codes will apply to development, to operations, or to both.

The EIS should address the legal obligation, if any, of the Tribe to adopt development and operational standards once the land is taken into trust, the party (Tribe, BIA, etc.) with the authority to enforce all such standards and codes, the party responsible for responding to complaints, measures that will be taken to ensure timely compliance, and the mechanisms available to the County or others to ensure remedy of compliance deficiencies.

The BIA's response was:

“The Development Standards used in the construction and operation of the facility are identified in Section 2.2.1 of the FEIS. It is clear from the standards listed in Section 2.2.1 of the FEIS, which standards would apply to construction and operation activities. No changes to the text are necessary. Development standards are included in Articles IV and V of the enforceable MSA with the City of Richmond (Appendix Z) and include building standards, soil erosion control, signs, lighting, worker safety, geotechnical issues, equal opportunity, living wage, and food and beverage handling among other issues. The Tribe has agreed in the MSA with the City of

Richmond to enter into a Fire Protection and Emergency Response Agreement (FPERA). The FPERA shall address fire inspections and provision of building plans to the Richmond City Fire Department, which would ensure the health, safety and welfare of the general public (Section 2.2 of Appendix Z).”

**County Comment on Response 1-57:** The BIA indicates that these details are provided in Articles IV and V, as well as Article II, Section 2.2 of the Municipal Service Agreement (MSA) negotiated between the City of Richmond and the Tribe. As discussed earlier, the MSA is legally questionable, given its legal challenge and recent court decision. Even if it is valid, the BIA’s response does not fully address the County’s concern. The MSA inconsistently identifies the parties responsible for enforcement and responding to complaints and rarely identifies any measures for monitoring or ensuring timely compliance of the development standards. The Tribe’s legal obligations in these areas should be explicitly and consistently detailed in the FEIS, rather than the MSA (See Description of Project Alternatives, Section 2.2).

Reference to the City of Richmond’s development standards also ignores the fact that the property is within unincorporated Contra Costa County, not the City. The only jurisdiction with whom a MSA should be entered into is with the host jurisdiction, and any such agreement should follow approval of the fee-to-trust application and take into consideration the status of the land under the Indian Gaming Regulatory Act (see also the County’s comments on the City of Richmond Municipal Services Agreement).

***Development Standards should include local standards*** - The Development Standards identified on page 2-4 should include all local standards, including Contra Costa County Standard Plans and Specifications, Contra Costa County Title 9 Ordinance and the Caltrans Highway Design Manual Standards.

## **Water Resources - 3.3 and 4.3 et al**

***Changes needed on DEIS page 3-10, Section 3.3.1, Surface Water, Drainage, Flooding, Table 3.3-3 (DEIS Comment 30-1)*** - The U.S. Department of the Interior, US Geological Survey made detailed comments regarding EPA drinking water standards.

The BIA’s response was:

Table 3.3-3 and subsequent text in the document has been updated in accordance with the most recent EPA drinking water quality standards. This change does not alter the conclusions on environmental effects made in the FEIS.

**County Comment on Response 30-1:** While some of the errors have been corrected (chloride and TDS concentrations) there are still errors in Table 3.3-3. Review of the EPA website shows that aluminum is listed only as a Secondary MCL at 2 mg/l. The sulfate SMCL is 250 mg/l. Turbidity is still listed twice in Table 3.3-3, however, it does

not have a SMCL. Fluoride is misspelled. The text introducing Table 3.3-3 should state the table contains *selected* MCLs.

***Storm water runoff should be handled in accordance with County standards (DEIS Comment 1-59)*** – The DEIS addresses the impacts caused by the proposed action on water resources due to the effects of storm water runoff. The project proposed to mitigate these impacts through the use of infrastructure, whether directly or indirectly. The County typically requires project applicants to collect and convey all storm water runoff entering and/or originating on the property, without diversion and within an adequate storm drainage system, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system which conveys the storm waters to an adequate natural watercourse, in accordance with Division 914 of the Ordinance Code. The EIS should verify that storm water runoff will be handled in a manner that meets County standards and if not, then why not.

The BIA's response was:

“As discussed in Section 4.3, a drainage study was performed using the 10-year storm as the design storm, consistent with Contra Costa County Standards for drainage basins with a watershed of less than one square mile. Although the site would not be subject to County storm water standards, the drainage plan for the site was developed in accordance with Contra Costa County Standards for the design storm. The Tribe would prepare a Storm Water Pollution Prevention Plan (SWPPP) as a condition of the EPA issuing a NPDES Permit pursuant to the Clean Water Act. As discussed in Section 2.3(f) of the MSA, the Tribe would consult, in good faith, with the City of Richmond on the development of the SWPPP for the site, for both construction and operation of the proposed facilities.”

**County Comment on Response 1-59:** The response notes that a SWPPP would be prepared. However, a SWPPP would address stormwater pollutants, but would not typically address stormwater volume. In addition, the FEIS should provide a sound reason for the SWPPP being developed with consultation with the City of Richmond and not Contra Costa County, particularly since the project is located in unincorporated Contra Costa County. Absent such reason, the FEIS should provide for consultation with the County.

The FEIS notes that the project area is located in an area that would be inundated by high tides, and therefore passage of a 100-year storm flow would not be required. This, however, assumes that high storm tides would preclude all significant flooding events at the site, and this assumption is not addressed and may not be accurate.

Page 4.3-2, 2<sup>nd</sup> full paragraph indicates that flows in excess of the 10-year event would be routed along “the existing overland release path, which is at the northwesterly corner of the site,” and “due to the proximity of the site to the bay and the existing topography, the overland release path directs water toward the San Francisco Bay and does not direct excess runoff into the adjacent channels.” While runoff may be directed in the direction of the SF Bay, the Richmond Parkway represents a potential barrier to runoff

flows. The FEIS does not describe where runoff would go after moving in the direction of the bay – would it be discharged to the bay and by what means? As identified in Figure 3.3-1 of the FEIS, the Bay is located at least 1500 ft from the project area. The route for stormwater discharge from the project site to the bay is not discussed, and no adequate storm drainage system or adequate natural watercourse is described for conveying flows to the bay.

Also, the FEIS claims that the watershed area for this project is less than one square mile, but does not provide a reference or study that would support that assertion. Without further information, it is not clear whether the watershed (perhaps better defined as 'catchment area') is less than one square mile in dimension.

***Detention Basin needs to be redesigned (DEIS Comment 1-59)*** – The proposed casino project is located in an area where minimal regional infrastructure is in place to adequately convey storm water runoff from the region. The DEIS proposes to construct a storm water detention basin to limit the post-construction runoff volumes to pre-construction levels. (Typically, if a detention basin is not proposed to limit runoff volumes, the project proponent would be required to convey storm water runoff to an adequate system. If an adequate system is not available, the proponent would be required to construct infrastructure improvements to make the downstream system adequate.) The proposed detention basin solution is acceptable to the County so long as it is properly designed, according to County detention basin guidelines. The detention basin as it is currently described in the DEIS does not meet this standard.

BIA Response 1-59

“According to the Contra Costa Clean Water Program - Stormwater C.3 Guidebook, flood control detention basins may be designed to hold a storm predicted to occur 10 percent of the time in the coming years, which corresponds to the 10-year storm event. As discussed in Section 4.3, the drainage study utilizes the 10-year storm as the design storm for storm water facilities of the proposed facilities. The detention basin was designed to more than compensate for post-project runoff conditions. Specific standards regarding County detention basin guidelines are discussed in the following responses.”

**County Comment on Response 1-60:** The BIA indicates that the FEIS does, in fact, comply with County standards for detention basin design, since the County requires that facilities be sized to accept 10-year flood flows. However, the drainage study does not meet County standards, as discussed in analysis of Comment 1-63, below. Therefore, while design of the detention basin may meet County standards, it may be inappropriately sized, due to relying upon an improperly conducted drainage study. This comment was not adequately addressed.

***Detention of stormwater onsite (DEIS Comment 1-61)***- The EIS should discuss the advantages of detaining storm water onsite instead of conveying the runoff to existing drainage facilities. It should qualitatively evaluate the increase in site runoff by comparing the pre- and proposed post-development impervious areas and associated runoff. The capacity of the downstream drainage facilities should be discussed, including the probable impacts from ultimate buildout of the contributing watershed.

BIA Response 1-61

The EIS, as suggested by the Council on Environmental Quality, summarizes the pertinent data as it relates to potential impacts the project alternatives may have on the environment. Therefore, although a detailed study was performed for the drainage study (Appendix F), only a summary is provided in the EIS (Sections 3.3 and 4.3). The full drainage study is included in the appendices of the EIS, and includes the full calculations and data supporting the conclusions discussed in the EIS. In the second table of Appendix 2 of the drainage study titled "Time of Concentration / Flow Calculation" the calculation of the flows for the existing condition and each alternative are presented. Column 12, labeled "C", presents the average runoff coefficient for each condition and alternative. The existing condition used a 0.68 C value. For the alternatives, the C value ranged from 0.69 to 0.83. Detaining stormwater would prevent impacts to downstream stormwater facilities. As stormwater would meet pre-project levels there are no anticipated impacts to downstream facilities.

**County Comment on Response 1-61:** The response did not discuss the advantages of impounding the runoff onsite versus conveying it to existing facilities. Moreover, the Drainage Study on Appendix F indicated that the proposed detention facilities did not consider flows coming from offsite areas. Evaluation of drainage issues for this project should include runoff coming from the ultimate development of the offsite tributary areas, otherwise the on-site drainage systems could become inadequate in the future.

Furthermore, nothing is mentioned in the FEIS concerning the dimensions of the detention basin. Because storm water quality control is achieved through pollutant removal in the basin, removal efficiency is primarily dependent on the length of time that runoff remains in the basin. No mention in the FEIS was made concerning hydraulic retention time, which must be calculated to determine the dimensions of the basin. Additionally, U.S. Environmental Protection Agency (EPA) recommends that basins be wedge-shaped (proposed basin is irregularly shaped).

***Detention basin dimensions (DEIS Comment 1-62)*** - Nothing is mentioned in the DEIS concerning the dimensions of the detention basin. Because storm water quality control is achieved through pollutant removal in the basin, removal efficiency is primarily dependent on the length of time that runoff remains in the basin. No mention in the DEIS was made concerning hydraulic retention time, which must be calculated to determine the dimensions of the basin. Additionally, U.S. Environmental Protection Agency (EPA) recommends that basins be wedge-shaped (proposed basin is irregularly shaped).

BIA Response 1-62

The specific dimensions of the detention basin would be determined based on the final design of the site including consideration of specific measures that would reduce and minimize surface runoff. The estimated required detention basin volumes for the various site alternatives are stated in Appendix F. The approximate

locations are indicated in the various site plans for the alternatives. As shown in Figure 2-1, Alternative A would have a 0.8 acre detention pond at the northern portion of the project site, and a 1.6 acre detention swale along the western project boundary. The depth of the detention areas are identified in Section 4.3 and Appendix F as having a water depth of 3 feet with 1 foot of freeboard. The basins have been sized as "detention" basins, which means they would fill as flow exceeds outlet capacity and would drain as outlet capacity becomes available. The preliminary design of the detention basin has been sized to drain within 24 hours.

As stated in Section 4.3, stormwater treatment would be achieved by various structural and non-structural BMPs. It is specifically intended that stormwater treatment would be achieved prior to the flow entering the detention basin; therefore, the design of the basin would meet the hydraulic attenuation needs of the site. Mitigation has been added to Section 5.0 that the stormwater system be designed to meet the "maximum extent practicable" standard of the Contra Costa Clean Water Program's Stormwater C.3 Guidebook, including treatment of 80% of average annual runoff.

The California Stormwater Best Management Practices Handbook provides design criteria for various BMPs. The maximum side slope recommended for dry detention basins is 2: 1 with 4: 1 slopes desired for maintenance access to the pond bottom. The Contra Costa County Standards for detention basins allow 4: 1 side slopes below the waterline and 3: 1 side slopes above the waterline. The local standards are appropriate for this location, and the preliminary design (4: 1 side slopes) complies with these standards.

**County Comment Response 1-62:** The Final EIS should identify the preferred basin alternative from the 4 alternatives presented in the document. The Drainage Study shown on Appendix F is not sufficient since the basin design did not consider the runoff from the offsite areas (considering ultimate development). Also, the runoff coefficient for impervious pavements should be raised to 0.95, and for gravel to 0.90 per County guidelines (gravel will become impervious over time). The method used for the design of the basin in the Drainage Study was not adequate for final design. The final design will need to follow the small watershed hydrology method guidelines prepared by the County's Senior Hydrologist, Mark Boucher, who can be reached at (925) 313-2274. It appears that the discharges for the project site are influenced by wave action and/or tidal influence, so the project sponsor should consider pumping the impounded volume in the basin directly to the Bay and include the design, layout, and evaluation of the pump system in the Drainage Study.

Also, according to Appendix F, Page 4, the Preliminary Drainage Study, the detention basin is sized for a 10-year storm. County Flood Control District guidelines as well as EPA guidelines generally require detention basins to be sized according to the watershed area designed for multiple duration design storms and safely pass the 100-year storm event.

The FEIS used a 10-year peak discharge for a 24 hour duration for the worst-case detention scenario. Instead, the FEIS should use the County's hydrology method to assess discharge rates, which includes 3, 6, 12, and 24 hour duration as well as the 100 year storm event in order to assess hydrology impacts.

***Size of Detention Basin (DEIS Comment 1-63)--*** According to Appendix F, Page 4, Preliminary Drainage Study, the detention basin is sized for a 10-year storm. County Flood Control District guidelines as well as EPA guidelines generally require detention basins to be sized according to the watershed area, designed for multiple duration design storms and safely pass the 100-year storm event. The DEIS used a 10-year peak discharge for a 24 hour duration for the worst-case detention scenario. Instead,

the EIS should use the County's hydrology method to assess discharge rates, which includes 3, 6, 12, and 24 hour duration as well as the 100 year storm event in order to assess hydrology impacts.

BIA Response 1-63

The contribution to the local (piped) drainage system has been limited through the use of a detention basin to the flow that is released from the existing condition for a 10-year event. The 10-year event is chosen as the design event because this is the normal design criteria for local storm drain systems. Use of the 10-year design storm is also consistent with the Contra Costa County Standards for drainage basins with a watershed of less than one square mile. Mitigation has been added to Section 5.0 that the stormwater system be designed to meet the "maximum extent practicable" standard of the Contra Costa Clean Water Program's Stormwater C.3 Guidebook, including treatment of 80% of average annual runoff. The proposed detention facilities would prevent effects on the local drainage system. The preliminary design of the detention basin has been sized to drain within 24 hours.

Flows in excess of the 100-year event are anticipated to release along the existing overland release path, which is at the northwesterly corner of the site. Due to the proximity of the site to the bay and the existing topography, the overland release path directs the water toward San Francisco Bay and does not direct excess runoff into the adjacent channels. Therefore, it has no potential for reducing the capacity of the adjacent facilities. The criterion for attenuation of large rainfall events, such as the 100-year storm, is therefore neither required nor appropriate.

As discussed in Appendix F, the detention basin is inundated during the 100-year event. The proposed stormwater collection system and the proposed detention basin would be below the water surface created by extreme high tides and storm conditions. Passage of the 100-year flows is therefore not applicable. As stated above, mitigation has been added to treat 80% of average annual runoff.

The 100-year flood elevation on the project site is estimated to be six feet. The approximate elevation of all pavement areas would be nine feet and the building pad elevations would be ten feet or higher. This would ensure that all developed areas are placed above the elevation of the identified flood hazard area."

**County Comment on Response 1-63:** The response to comments document indicates that use of the 10-year design standard is consistent with Contra Costa County standards for drainage basins with a watershed of less than one square mile. The FEIS claims that the watershed area for this project is less than one square mile, but does not provide a reference or study that would support that assertion. Without further information, it is not clear whether the watershed (perhaps better defined as 'catchment area') is less than one square mile in dimension.

The BIA response also notes the overland release path directs stormwater flows toward the SF Bay, and not into adjacent channels. No channel is identified where this runoff would flow into the Bay, and runoff from the site would have to cross Richmond Parkway, then travel an additional 1500 ft in order to reach the Bay. According to County requirements, the FEIS should identify a means of retention or conveyance of storm flows. The FEIS indicates a means of partial retention of storm flows, up to a 10-year event. It does not address flows above that level. Also, the FEIS assumes that in the event of a flood, ocean related flooding would occur in the project area, and therefore any attempts at containing stormwater would be moot. However, the FEIS does not address potential for flooding during events that are greater than a 10-year event, but during which ocean-related flooding would not occur (a 30-year event, for example). This type of event could presumably result in the planned retention basin

reaching capacity and additional flows being routed via the undefined 'overland release path [that] directs water toward the San Francisco Bay.' However, the overland release path is undefined, is not identified on a map, does not include any definite channel, boundaries, or margins, and would be required to convey waters past the Richmond Parkway and through at across at least 1500 ft of distance before discharge to the Bay.

The BIA response asserts, consistent with the FEIS, that the detention basin would be inundated during a 100-year event, and that passage of a 100-year flood event is therefore not applicable. This assumption may not be totally valid, as discussed above. The County's Title 9 Ordinance, Section 914-12.004, states that "Detention basins shall also be sized to contain without freeboard a one-hundred-year average recurrence interval runoff, unless it can be shown that a one-hundred-year average recurrence interval runoff can be safely passed through the detention basin without damage to the detention basin or any other property." The Drainage Study needs to provide discussion and maps showing how this will be achieved. The Drainage Study should include maps that show and identify the existing drainage facilities adjacent to and downstream of this project.

Finally, neither the FEIS nor the flood drainage study address, although it should be done, the following:

- 3, 6, and 12 hour duration events
- Use of County's hydrology method

**Sizing of Spillway (DEIS Comment 1-64)-** On DEIS page 4.3-2, the first paragraph, last sentence, mentions that the "spillway will be sized to handle the historical 5-year discharge in the event that the culvert becomes plugged with debris." Instead the spillway should be designed to handle a 100-year storm event, at minimum, consistent with County standards.

The BIA's response was:

Comment noted. Section 4.3 of the FEIS has been revised to clarify the discharge of storm flows. A spillway has not been provided for this basin. The basin is to be constructed below the existing ground level. Since the site is located within the 100-year flood plain inundation of the site can be expected for extreme conditions. The building pads have been set above the 100-year flood condition. If the basin overfills it will simply create standing water on the site. A spillway is not required since there are no levees to protect and nowhere for excess water to spill. Excess flow will follow the site overland release path, which is at the northwesterly corner of the site. Please refer to Response 1-63 with regard to the 100-year storm event.

**County Comment Response 1-64:** The BIA indicates that water in excess of a 10-year event that would be contained by the retention basin would 'simply create standing water on the site.' The depth of this water is not assessed, nor is the potential for overland flows to affect Richmond Parkway or other adjacent areas. No further discussion of containment of flood flows on site is included. Potential for high flood flows to migrate onto nearby properties is not addressed. This response and revised FEIS text (page 4.3-2, end of second full paragraph) notes that excess runoff would follow the

'site overland release path, which is in the northwesterly corner of the site.' However, this overland release path is not adequately described, as discussed in detail for the evaluation for Comment 1-63, above.

**Overland release route (DEIS Comment 1-66)** - On page 4.3-2, the second paragraph, the FEIS mentions an existing overland release route. The project should identify an overland release route, and the Tribe should seek Flood Control District approval for this concept. Overland release pertains to the conveyance of storm runoff to public roads or other major drainage facilities by overland routes should the site drainage system be inundated. Planning of overland release routes allows for understanding of the impact due to overwhelming flows and assists in making evacuation plans in case of flooding. The spillway, as well as overland release, should be designed for at least a 100-year storm event.

The BIA's response was:

Please refer to Response 1-64.

**County Comment on Response 1-66:** An overland release path is discussed in the FEIS and BIA response, but is not specifically identified. Drainage facilities associated with Richmond Parkway are not discussed or identified, and the FEIS does not address whether other flood control facilities would be sufficient to contain flood flows.

The Final EIS should include maps and drawings that show the direction and location of overland release and the areas outside of the project that would be affected by the overland release. The overland release map would enable the County to evaluate how the existing facilities are going to be avoided or affected, and assist the County in making plans for flooding.

**Detention basin design standards (DEIS Comment 1-67)** - If the detention basin is not redesigned to County standards, then the EIS should include discussion of "possible conflicts between the proposed action and the objectives of Federal, regional, state, and local land use plans, policies, and controls for the area concerned." CEQ Regulations, Section 1502.16.

The BIA's response was:

The County Flood Control Guidelines have been consulted in the conceptual design of this basin. The introduction to the guidelines clearly states that these are guidelines and good engineering practices that are acceptable to the County Engineer as appropriate and required. The size of the basin is relatively small and shallow. A maintenance road as suggested by the guidelines would not be appropriate for this size of facility.

**County Comment on Response 1-67:** The BIA indicates that the cited standards are guidelines only, and implies that other 'good engineering practices' would be acceptable. This comment is adequately addressed, although additional definition or

discussion of 'good engineering practices' would be helpful.

***Stormwater Control Plan needs to be prepared and subject to County approval (DEIS Comment 1-69)*** - The County Board of Supervisors has adopted a new Stormwater Management and Discharge Control Ordinance as a result of new requirements ("C.3 requirements") by the State Regional Water Quality Control Board. These requirements require project proponents creating or replacing an acre or more of impervious surface to design and construct long-term "Best Management Practices" intended to control stormwater flow and potential stormwater pollutants prior to discharge. It appears that this project proposes to adhere to these new requirements by the installation of a Stormceptor® sediment/grease trap, construction of permeable surfaces where feasible, drain roof leaders to embedded cisterns, and construction of pedestrian walkways with permeable surface materials. Mitigation measures include preparation of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of the NPDES Phase II General Permit for Storm Water Discharges from Construction Activities.

To address the adequacy of these long-term Best Management Practices, the County now requires applicants to submit a Stormwater Control Plan. Stormwater Control Plan description and guidelines can be found on the County's Clean Water Program website at [www.cccleanwater.org](http://www.cccleanwater.org). Mitigation measures should include preparation of the Stormwater Control Plan for review and approval by the County.

Mitigation measures should also include long-term maintenance and funding of the required storm water quality management and discharge control facilities. These facilities will remain the responsibility of the property owner.

Page 3.3-9 states that "In some states, the EPA has delegated permitting authority to the regional water quality control board. However, the EPA continues to regulate discharges originating on Tribal lands in to receiving waters. Under the Federal Clean Water Act, Indian Tribes can be treated as states for the purposes of the NPDES program [33 USC § 1377 (e)]." It is assumed by this statement that the project proponent will adhere to the requirements of the EPA through the regional water quality control board. If not, then the EIS should clarify the statement.

The BIA's response was:

As discussed by the commenter, and in Section 3.3 of the DEIS, the USEPA is the permitting authority for water quality, including storm water, on tribal lands. The statement regarding the ability of a Tribe to obtain "treatment as a state" status has been removed, as the Tribe does not have any intentions at this time to seek such status. Therefore, if the property transfers into federal trust status on behalf of the Tribe, the USEPA would become have oversight under the Clean Water Act, and not state or local agencies.

**County Comment on Response 1-69:** The BIA has confirmed the USEPA is the permitting authority for water quality under the Clean Water Act. Accordingly, a

mitigation measure should be added to require that the Tribe adhere to the Clean Water Act and be subject to project review and approval through the USEPA.

***Area flood control issues need to be addressed (DEIS Comment 1-69)*** - The San Pablo Creek flood control channel, which is located on the south side of Parr Boulevard, and the Rheem Creek flood control channel, located north of Richmond Parkway provide regional flood protection for this area. While the project site drainage does not discharge directly into those facilities, it should have an interest in their proper operation and maintenance. The County and District do not have adequate funds for operation and maintenance of those facilities. The EIS should discuss the impacts created by the proposed casino project to these facilities, the benefits provided by these facilities to the proposed project, and participation by the proposed project to ensure that the current levels of protection remain in place.

The BIA's response was:

The existing setting discussion for water resources is contained in Section 3.3 of the EIS. Discussed there within, the project site is an unformed drainage area, as classified by the Contra Costa County Flood Control and Water Conservation District. This means that the project area has no official County drainage plan, no regional drainage facilities, and no associated fees. Currently, drainage from the site is surface runoff that travels in a westerly direction. Excess water on the project site is funneled towards lined retention/evaporation trenches either by smaller trenches or by small pipes just below the ground surface. Water is transported within these channels directly into San Pablo Bay. Based on the drainage study, the San Pablo Creek and Rheem Creek flood channels would not be impacted by the implementation of the proposed development.

**County Comment on Response 1-70:** The responses to comments document asserts that, based on the drainage study, San Pablo Creek and Rheem Creek flood channels would not be impacted by implementation of the proposed development. However, the drainage study does not specifically mention these two flood channels or the potential for the project to alter flows within the channels. This comment is not adequately addressed.

***Connection to existing drainage facilities need clarification (DEIS Comment 1-71)***  
– It is unclear whether or not the proposed drainage facilities for the project site would be connected to the existing drainage facilities in the area. If so, the Tribe will need to obtain either a road encroachment permit or a drainage permit from Contra Costa County Public Works Department. Any tie-in to or modification of existing drainage facilities, which are located within the County road right-of-way, would require a road encroachment permit. A County Drainage Permit is required for modification or tie-in to existing drainage facilities located on private properties. As part of the permit requirements, the Tribe would be required to prove the adequacy of the existing facilities to adequately convey the storm runoff generated by and passing through the

project site. The EIS should state whether or not a drainage permit or road encroachment permit would be required for the project.

The BIA's response was:

The drainage plan is discussed in Section 4.3 of the EIS. Discussed there within, once the treated outflow leaves the detention basin, it would enter an existing onsite drainage channel and be conveyed to a culvert that conveys flows under Richmond Parkway towards San Pablo Bay. Flows in excess of the 10-year event are anticipated to release along the existing overland release path, which is at the northwesterly corner of the site. Due to the proximity of the site to the bay and the existing topography, the overland release path directs the water toward San Francisco Bay and does not direct excess runoff into the adjacent channels. On-site stormwater discharge into the existing 36-inch culvert would not fall under the jurisdiction of the Contra Costa County Flood Control District, and therefore no County storm water permits would be required for this alternative.

**County Comment on Response 1-71:** The BIA response and the FEIS include a discussion of how water from the proposed detention basin is routed to a culvert that conveys water to San Pablo Bay. It also describes how flows in excess of a 10-year event would be *anticipated* to release along the 'existing overland release path, which is at the northwesterly corner of the site.' The BIA response continues by stating that from that point, the path 'directs the water toward San Francisco Bay and does not direct excess runoff into adjacent channels.' However, Richmond Parkway and at least 1500 ft of distance are between the project site and San Pablo Bay, and water would presumably need to cross these areas to be discharged into the bay. This issue is not discussed. See analysis of Comment 1-63, above. Drainage from the project site is not adequately addressed.

The connection to existing facilities still needs clarification in the FEIS. The drainage plan as discussed in Section 4.3 states that drainage would be conveyed to a culvert that flows under Richmond Parkway toward San Pablo Bay. As a result, the BIA states the stormwater discharge into this existing culvert would not fall under the jurisdiction of Contra Costa County. The FEIS, however, should also note, a double 36-inch culvert and a box culvert. These connections appear to occur within the County public right-of-way and therefore require an encroachment permit. Any tie-in to or modification to existing drainage facilities located on private properties would require a road encroachment permit. A mitigation measure should be included requiring the Tribe to prove the adequacy of the existing facilities to adequately convey the storm runoff generated by the project and apply for an encroachment permit through Contra Costa County.

Since the project will modify or replace existing drainage facilities, the FEIS should require a Drainage Permit per Section 1010-2.006 of the County's Title 10 Ordinance Code as well as a County Floodplain Permit to verify that structures are adequately protected from flooding. Furthermore, a Grading Permit should be required to show that the site grading does not adversely affect surrounding properties, and accommodates overland release. A mitigation measure should be included that requires the Tribe to

prove the adequacy of the existing facilities to adequately convey the storm runoff generated by the project, apply for an encroachment permit through Contra Costa County, and obtain a Letter of Map Revision from FEMA.

***Discharge rates should be based on County's hydrology method (DEIS Comment 1-75)*** – The DEIS uses a 10-year peak discharge for a 24 hour duration for the worst-case detention scenario. Instead, the EIS should use the County's hydrology method to assess discharge rates, which includes 3, 6, 12, and 24 hour duration as well as the 100 year storm event in order to assess hydrology impacts.

The BIA's response was:

Please refer to the response to Comment 1-63.

**County Comment on Response 1-75:** Refer to analysis of Response 1-63, Detention Basin needs to be redesigned, above; Comment not adequately addressed.

***Groundwater protection needs explanation (DEIS Comment 1-76)*** – On page 4.3-5 the DEIS acknowledges that there is a potential for construction and operational runoff to impact the groundwater in the area; however, there is no discussion of how groundwater will be protected, beyond the statement on page 2-4 that “The Tribal Government will adopt and comply with standards no less stringent than Federal ...water quality...standards applicable in California.” The EIS needs to address how groundwater will be protected and, if through the standards referred to on page 2-4, how these standards compare to those enforced by the Contra Costa County Environmental Health Division.

The BIA's response was:

Storm water runoff from the project site would be treated by features incorporated into the site and operation design including sediment/grease traps, a detention basin, and non-structural source control BMPs. The high groundwater table may require the treatment and discharge of water into the storm drain system during excavation of utility trenches and other elements of site development where groundwater could affect construction operations. The required BMPs are specifically intended to prevent damage to surface water from the management of groundwater. Additionally, the SWPPP would provide additional storm water control. Furthermore, operational effects to groundwater resources would be reduced through the mitigation measures listed in Section 5.2.9. These include storing the lowest level of hazardous materials necessary on site, using the least toxic material capable of achieving the intended result, minimizing the use of pesticides and toxic chemicals to the greatest extent feasible, developing a hazardous materials and hazardous waste minimization program, and measures to prevent the contamination of groundwater from surface spills of chemicals, petroleum products and other pollutants that may occur during the course of construction.

**County Comment on Response 1-76:** The FEIS and mitigation measures generally address prevention of groundwater pollution during construction activities. However, additional measures are needed to provide for appropriate discharge of water extracted

during groundwater dewatering activities. These waters could contain high levels of suspended solids and sediments, and potentially other pollutants, that could reduce water quality and groundwater quality during dewatering operations. Discharged water should be collected/contained and properly treated for sediment and other potential pollutants prior to discharge into offsite drainage facilities. Alternatively, water associated with dewatering activities should be contained on-site.

***Contra Costa County Environmental Health Services regulatory oversight should be addressed (DEIS Comment 1-77)*** – For private development, the Contra Costa County Environmental Health Division of the Health Services Department (CCCEHD) directs and regulates drilling activities (e.g., geotechnical investigations, environmental monitoring, well destructions, etc.) to ensure that groundwater quality is protected. The role of Environmental Health should be included in the description in Section 3.9.5 and mitigation measures should be included to provide for Environmental Health regulatory oversight of the project both during construction and operations, as though the project were a private development.

The BIA's response was:

“As discussed in Section 4.3 of the EIS, the USEPA would have jurisdiction pursuant to the Clean Water Act if the land is taken into federal trust status on behalf of the Tribe. Therefore, the USEPA would provide oversight for any groundwater related projects. However, as discussed in Section 2.0 of the EIS, all the alternatives at the project site would connect to EBMUD and therefore would not use groundwater resources. At this time, there are no planned projects involving groundwater (well closures, well drilling, monitoring).

**County Comment on Response 1-77:** The BIA states that CCCEHD would not have jurisdiction for groundwater-related projects (the EPA would have jurisdiction); however, CCCEHD permits would be needed for geotechnical investigations to ensure that groundwater quality is protected. A mitigation measure should be added to require these permits.

## **Air Quality - 3.4 and 4.4 et al**

***Air pollution from mobile sources (DEIS Comment 1-28)*** - In addition, the residents of West County are exposed to significantly more diesel particulate matter than any other portion of the county. There is six time more diesel particulate matter pollution released per square mile in West County than in the county as a whole and forty times more than in California as a whole. According to the research, the main sources of this pollution come from mobile sources including trucks, trains, ships, construction equipment and buses. The DEIS should analyze what the introduction of thousands of additional casino related trips per day to this area will do to pollution levels.

The BIA's response was:

In Section 4.4 vehicle emissions from the operation of the project alternatives were estimated using URBEMIS 2002, using input data from the Traffic Impact Study. Furthermore, localized worst-case carbon monoxide concentrations were estimated for intersections whose level of service declined to an unacceptable level as a result of traffic generated by the Proposed Action, in accordance with Bay Area Air Quality Management District (BAAQMD) screening methodology. The results indicate emissions for each alternative would be under the established thresholds of 100 tonsper-year and are summarized under the heading "Operation Emissions" for each alternative in Section 4.4.

**County Comment on Response 1-28:** The FEIS addresses emissions of diesel particulate matter (DPM) from construction equipment but still does not address DPM emissions from project operations.

***Terms need definition (DEIS Comment 1-81)*** – The terms "sensitive receptors" and "direct vicinity" are not defined. The EIS should include those definitions.

The BIA's response was:

The FEIS has been updated to include an expanded definition of "Sensitive Receptors" and specific sensitive receptors have been identified. As presented in Section 3.4.4, land uses such as schools, hospitals, and convalescent homes are considered to be sensitive to poor air quality because the young, the old, and the infirm are more susceptible to respiratory infections and other air quality-related health problems than the general public. Residential areas are also considered to be sensitive to air pollution because residents (including children and the elderly) tend to be at home for extended periods of time, resulting in sustained exposure to any pollutants present. The text in Section 4.4.3 has been modified for consistency with Section 3.4.4.

**County Comment on Response 1-81:** The FEIS includes the requested definitions and lists the distances between the nearest school, hospital, and convalescent home and the project site. However, it does not describe the distance to the nearest residence. This distance should also be added to Section 3.4.4 under the expanded description of sensitive receptors.

***Air quality impact analysis needs major revisions (DEIS Comment 1-82)*** – The EIS should include significant revisions in the analysis of air quality, including URBEMIS and carbon monoxide (CO) screening analysis to correct the deficiencies noted below:

- ***Use of out-of-date modeling tools (DEIS Comment 1-83)***– The analysis to estimate construction and operational emissions utilized the URBEMIS model (version 7.4.2), issued in May of 2003. The current version of URBEMIS is 8.7 (dated April 29, 2005). Limited sensitivity analysis shows that using this latest version would greatly change operational emissions. These changes may include the addition of architectural coating emissions from operations and changes in emission factors for on-road vehicles.

- **Updated analysis needed, given delays in project construction and operation (DEIS Comment 1-84)** – The URBEMIS analysis assumed that construction would begin in June of 2005, last 18 months, and operations would begin in December of 2006. Given project delays, a revised construction and operation schedule should be analyzed to account for changes in equipment and vehicle emissions factors. To note, emission factors tend to decrease as newer and more efficient engines are brought in service, so the current analysis is likely to be conservative in this sense. Secondly, default construction equipment assumptions from the URBEMIS 2002 model were used to calculate the air pollutant emissions generated from project construction. The default assumptions tend to be overly conservative in that it provides for more construction equipment and more usage of construction equipment than is likely needed. If available, site-specific equipment and equipment usage should be used. Other default assumptions such as 30-mile haul distance for disposal of demolition materials (and the 10-mile round trip distance for soil import and export) should be checked against the actual location of properly licensed landfill disposal sites (and soil borrow/disposal sites) to ensure accuracy of estimated emissions.
- **Corrections to reported data results (DEIS Comment 1-85)** – Several differences are noted between the URBEMIS results provided in Appendix R and those summarized in Section 4.4. These differences are as follows: In Table 4.4-3 the unmitigated PM10 emissions for Alternative A during 2006 should be 10.68 tons per year instead of 2.73 tons per year, thus changing the total construction related PM10 emissions for Alternative A to 19.02 tons per year. This correction should also be accounted for in the text of the document. Secondly, the operational emissions for Alternative B (Table 4.4-6) appear to be in error. Based on URBEMIS information provided, the unmitigated ROG, NOx, and PM10 emissions should be 5.85, 8.07, and 5.74 tons per year, respectively. Also the mitigated emissions should be 5.69, 7.85, and 5.59 tons per year, respectively. These table errors also appear in corresponding DEIS text.

The BIA's responses were:

1-82 "Comment noted, see Responses 1-83 through 1-91."

1-83 "For comparison purposes, construction and operation emissions estimates were calculated using the newest version of URBEMIS, Version 8.7. The results demonstrated that emissions for all alternatives, for both construction and operational activities were less than were estimated in the DEIS, using the older version of URBEMIS. Since this analysis demonstrated reduced emissions, the effect of the change was not determined to be significant, thus no changes were necessary to the DEIS. The results of the URBEMIS for Windows Version 8.7 calculations are presented in Appendix W."

1-84 "Construction emissions were recalculated using URBEMIS 8.7 with more current construction schedules, more realistic construction equipment use based on Sacramento Metropolitan Air Quality Management District's *SMAQMD CEQA Frequently Asked Questions (FAQ)*, revised May 2006, and revised truck haul distance for asbestos disposal and soil import/export. SMAQMD's FAQs provides recommendations for adjustments to URBEMIS defaults providing more accurate construction schedules and equipment types for projects such as the proposed project. The results demonstrated that emissions for construction activities were less than were estimated in the OEIS. For further information, see

Response 1-83.”

1-85 “The typographical errors in Table 4.4-3 and the text have been corrected to include the proper unmitigated and mitigated emissions of NO<sub>x</sub>, ROO, and PM 10 from the URBEMIS information provided in DEIS Appendix R. This change does not alter the conclusions on environmental effects made in the FEIS.”

1-85 “The typographical errors in Table 4.4-3 and the text have been corrected to include the proper unmitigated and mitigated emissions of NO<sub>x</sub>, ROO, and PM 10 from the URBEMIS information provided in DEIS Appendix R. This change does not alter the conclusions on environmental effects made in the FEIS.”

**County Comments on Responses 1-83 through 1-85:** The FEIS retains the analysis and results using the old URBEMIS, version 7.4.2 model. As recommended in County Comment 1-85, the erroneous results depicted in the DEIS Table 4.4-3 have been changed accordingly. However, the results depicted in Table 4.4-8 (FEIS page 4.4-13) were not corrected and do not match the results shown in Appendix R for Alternative B operational emissions.

- *Further details concerning CO screening needed (DEIS Comment 1-86)– Appendix R of the DEIS presents the URBEMIS modeling data. However, similar data was not presented for the CO screening analysis. At a minimum, the CO screening analysis should document the data used to determine the baseline and project CO concentrations at the seven analyzed intersections. This data should include (but not be limited to) vehicle speed, vehicle CO emission factor, receptor distance from edge, number of lanes within the primary and secondary roadways, whether roadway is at grade, depressed, or elevated, roadway peak hourly traffic volumes, and CO background concentrations. Although some of this data is within the traffic section of the document, this data should be included in Section 4.4 and/or Appendix R as it is pertinent to the CO screening analysis.*

The BIA’s response was:

Localized CO emissions were evaluated using the methodology provided in the BAAQMO guidelines. The BAAQMD Guidelines recommends that localized carbon monoxide concentrations should be estimated for projects in which project traffic would affect intersections or roadway links operating at Level of Service (LOS) D, E or F or would cause LOS to decline to D, E or F. A project contributing to CO concentrations exceeding the State Ambient Air Quality Standard (SAAQS) of 9 parts per million (ppm) averaged over 8 hours and 20 ppm for 1 hour would be considered to have a significant effect.

LOS data from the traffic study for the Proposed Action was reviewed. As noted in the traffic study, traffic volumes for Alternative A are the highest of any of the alternatives. Therefore, Alternative A would be considered the worst-case alternative for CO emissions. Within this alternative, 5 intersections met the criteria for CO review.

The BAAQMD guidelines provide a screening method used to determine whether detailed CO modeling

is appropriate. According to guideline, the BAAQMO recommends that the manual screening method be used to estimate CO concentrations. If the screening method predicts concentrations below the SAAQS, no further analysis is recommended. If the method predicts concentrations exceeding the SAAQS, then a more detailed analysis, such as Caline 4 should be conducted.

Using the BAAQMO screening methodology, worst-case CO concentrations were determined for each of the subject intersections. A summary table and analysis is included in Section 4.4 and the full tables are included in Appendix W. Based on the analysis there are no intersections that would exceed either the SAAQS for CO. As a result, no further analysis is required. The Proposed Action is determined to be less than significant in regards to CO emissions.

**County Comment on Response 1-86:** The FEIS includes greater detail regarding the CO screening analysis. However, it still references Appendix R when it should direct the reader to Appendix W.

- ***Need to address diesel particulate matter (DPM) emissions (DEIS Comment 1-87)*** – In August 1998, the California Air Resources Board (CARB) identified Diesel Particulate Matter (DPM) as a Toxic Air Contaminant. The California Office of Environmental Health Hazard Assessment, which is a branch of California EPA, established toxicity values for DPM, both as a carcinogen and a non-carcinogen. The emissions of DPM from construction and operations are not addressed in the DEIS, but should be either through a health risk assessment or an assessment of its significance.

The BIA's response was:

A discussion of diesel particulate matter (DPM) emissions has been added to Section 4.4 of the FEIS. Federal emissions standards have not been established for DPM. However, DPM are included under the NAAQS for PM<sub>10</sub> particulates. As noted in Section 4.4, estimated PM<sub>10</sub> emissions are below the *de minimis* emissions thresholds of the General Conformity Rule and therefore an adverse effect is not expected to occur. However, the emissions of DPM from construction equipment are considered significant and mitigation measures have been added to Section 5.0 to reduce construction equipment-related DPM emissions.

**County Comment on Response 1-87:** The FEIS now addresses DPM from construction equipment but still does not address DPM emissions from project operations.

- ***Other significance thresholds (DEIS Comment 1-89)*** – For construction activities, the BAAQMD considers that a set of control measures (based on the size of the project) would reduce the fugitive dust emissions from construction activities to a less-than-significant impact. Section 5.2.3 (Air Quality mitigations) of the EIS commits to all of the BAAQMD control measures that would apply to this project (jurisdictional issues aside), but these measures are not mentioned in the text of Section 4.4. The EIS should clearly state that the dust abatement mitigations are adopted from BAAQMD CEQA guideline to reduce the contribution of project

construction to local PM10 concentrations. Additional mitigation measures (such as limiting construction equipment idling time) related to combustion emissions should also be considered.

For operational emissions, BAAQMD's CEQA Guidelines establish quantitative thresholds of significance of 80 pounds per day and/or 15 tons per year for total emissions of ROG, NOx, and PM10. The EIS should explain why the General Conformity Rule was used exclusively when other, more site-specific standards are available for the analysis.

The BIA's response was:

Text has been added to Section 4.4 and Section 5.0 discussing mitigation measures equivalent to the BAAQMD CEQA guidelines for fugitive dust emissions, including construction idling measures.

The Proposed Action includes the application for the BIA to take the project site into Trust on behalf of the Tribe. Therefore, the Proposed Action is considered a Federal project requiring a General Conformity analysis as required by the Clean Air Act. Furthermore, the Proposed Action is bound by the NEPA process and not the similar California Environmental Quality Act (CEQA) process. There are no specific federal significance criteria for NAAQS; therefore, the General Conformity Rule de minimis thresholds are utilized as a guideline to determine potential significance of emissions from federal actions.

**County Comment on Response 1-89:** The FEIS still uses only the General Conformity thresholds to determine impact significance. However, the fugitive dust mitigations are specifically described as "equivalent to the BAAQMD CEQA guidelines" recommended measures (FEIS, page 4.4-6).

**Impact of carbon monoxide on intersections and/or roadways** - On FEIS page 4.4-3 under Localized CO Effects, there is a discussion on the effects of carbon monoxide concentrations as a result of project traffic impacts on existing intersections and roadway links. Clarification is needed on whether or not the referenced carbon monoxide effects result in the need to improve the level of service on specified intersections and/or roadways. If so, appropriate mitigation measure should be specified.

## **Wildlife – 3.5.4 and 4.5.4**

**Appendix G (Biological Resources Assessment) should be updated (DEIS Comment 1-92)** – The list of endangered and threatened species is out of date, according to the U.S. Department of Interior transmittal letter dated July 1, 2004 and the expiration date on the California Natural Diversity Data Base Report. The EIS should include revised lists and assess the impact of the project on the listed species.

The BIA's response was:

Updated Federal, State, and CNPS lists have been added to Appendix G. The text within Section 3.5.5 has been modified to address federal species that occur on the Richmond 7.5' quadrangle list. Listed species

with the potential to occur on site are addressed within Table 3.5-1 and federally listed species without the potential to occur on site are addressed within the text prior to the table.

**County Comment on Response 1-92:** Special-status species summary tables have been included in the FEIS. These tables reference 2007 USFWS, CNDDDB, and CNPS data, which is more current than the 2006 data included in the report. However, because only the year of the data search was included in the citations, there is no way of knowing if the data is still valid, that is, still within 6 months of the FEIS publishing date. The references do not correctly list the CNDDDB and CNPS database searches, and do not list the USFWS database at all. It is suggested that copies of the current database searches be included in the appendix as well. Also, because the data in October 2006 Biological Resources Assessment report in Appendix G still references outdated data, it may be less confusing to the reader include the summary tables first.

The inclusion of the summary tables provides information on the probability of species occurring in the action area, which is useful for justifying inclusion or exclusion of species for consideration in Table 3.5.1. In the FEIS, Table 3.5.1 has not been updated. This current Table 3.5.1 includes species that are not listed in the summary tables as having potential to occur at the project site; if these species are not likely to occur at the project site, they may be removed from further consideration.

***Indirect as well as direct effects need to be assessed (DEIS Comment 1-93) –*** Section 4.5 focuses on the potential direct effects of site development. However, according to the ESA Peer Review, NEPA and the Endangered Species Act require the lead agency (BIA) to evaluate the potential indirect impacts as well. These indirect impacts may include impacts to water quality and quantity within San Pablo Bay and the surrounding marshland. The DEIS fails to evaluate the potential effects of the Proposed Action on fisheries and other aquatic species or the Pacific Groundfish Fishery and Coastal Chinook Fishery. The EIS should do so.

The BIA's response was:

Indirect biological effects are addressed in Section 4.13.1 of the DEIS. The text in this section has been modified to specifically address indirect effects to the Pacific Groundfish Fishery and Coastal Chinook Fishery.

**County Comment on Response 1-93:** Indirect effects to Pacific Groundfish and Coastal Chinook Fisheries as a result of water quality impacts have been addressed with implementation of a SWPPP and BMPs. However, the discussion of "indirect effects occurring to wildlife and its use of surrounding land" is still vague. This section should clearly state what are the potential indirect impacts to other resources are (i.e. – disturbance from human activity, displacement, introduced predators, etc.). If there are no indirect impacts to other resources, then this should be clearly stated as well.

## Socioeconomic Conditions - 3.7 and 4.7 et al

**Identification of the Affected Communities and Economies** - Within the Socioeconomic analysis, the FEIS continues to provide minimal information on the affected population and local economies. In many sections of the discussion, the analysis and response to comments do not clearly distinguish between regional and county economies.

**Level of Analysis needs revision (DEIS Comment 1-95)** – The DEIS analyzes socioeconomic conditions at three levels: regional, Contra Costa County and the City of Richmond. Contra Costa County and Alameda County statistics are used to represent the region. Instead, the EIS should define the region as the communities from which the casino expects to draw its patrons.

Within Contra Costa County, the West County area should be the subject of investigation. West County is composed of the following census tracts: 359101, 358000, 357000, 356001, 365001, 359203, 364001, 359204, 359102, 364002, 359202, 365002, 360100, 363000, 366001, 366002, 367100, 360200, 367200, 378000, 368000, 361000, 369002, 369001, 372000, 73000, 362000, 376000, 370000, 371000, 375000, 374000, 384000, 3n000,381000, 385100, 385200, 379000, 386000, 380000, 382000, 387000, 383000, 390100, 392000, 391000, 388000, 390200, 389100, 389200.

City level impacts should include both the City of Richmond and City of San Pablo, both of which are contiguous to the North Richmond community.

Special attention should be given to North Richmond, the unincorporated community in which the casino project is proposed.

The BIA's response was:

The regional area defined within the EIS, which includes Contra Costa County and Alameda County, makes up the Oakland metropolitan statistical area. The general concept of a metropolitan statistical area is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of social and economic integration with that core. Metropolitan statistical areas comprise one or more entire counties. The Office of Management and Budget defines metropolitan statistical areas for purposes of collecting, tabulating, and publishing Federal data. This area provides a useful regional context in which to analyze potential impacts. A region defined by the draw of patrons would lead to a much larger study area. Socioeconomic impacts from the proposed alternatives would not be readily apparent in a larger area as project related impacts decrease in relative magnitude as the geographic area considered expands.

Potential impacts to Contra Costa County and City of Richmond are analyzed within the EIS, as the burden to public services, loss of property tax, and other increased demands fall primarily on City of Richmond and Contra Costa County.

West Contra Costa County, North Richmond and San Pablo information is subsumed in the analysis of Contra Costa County and is more appropriate as effects to County taxes and services would occur for all of Contra Costa County.

It should be noted that the environmental justice sections of the EIS (Sections 3.11, 4.11 and 4.12) address potential impacts to the local communities, including North Richmond and San Pablo.

**County Comment on Response 1-95:** While it may be appropriate to provide socio-economic data on the Oakland metropolitan statistical area, patrons to the casino will likely be drawn from the entire San Francisco Bay area. Therefore, those additional metropolitan statistical areas should be included as well. Note that a December 2007 license plate survey at Casino San Pablo found the counties of registration to include the Bay Area counties of Contra Costa 26%, Alameda 11%, Solano 5%, Santa Clara and San Mateo each 3%, San Francisco, Sonoma and Napa each 2% and Marin 1%.

The most proximate communities to the proposed project (i.e., North Richmond and San Pablo) are not recognized as distinct communities in the Socioeconomic Analysis (“West Contra Costa, North Richmond and San Pablo information is subsumed in the analysis of Contra Costa County.”) Yet, as acknowledged in the Response, the environmental justice analysis performed in Section 3.11 identifies these communities as “minority and low-income populations” based on census level information. As “communities of concern” these communities should also be characterized in the socioeconomic affected environment to enable an adequate understanding of the local communities’ populations and their distinct socioeconomic conditions.

Furthermore, the City of Richmond is analyzed separately in Section 3.7 based on the contention that the “burden to public services, loss of property tax, and other increased demands fall primarily on City of Richmond and Contra Costa County.” The burden on the City of San Pablo is no more or less than that to the City of Richmond, and so either San Pablo should be included or the Richmond excluded. In addition, the City of Richmond would lose no property taxes from the proposed project and the burden of “public services” are based only upon the MSA, the legality of which is in question, and so should not be relied upon. The reference to the City of Richmond should be deleted from the quoted sentence.

***Socio-economic profile of surrounding community residents should be included (DEIS Comment 1-98)*** – The DEIS includes information on the number of tribal members by age, by adult employment, by income distribution and by low-income characteristics. This information is not included for the surrounding communities of North Richmond and West County. The EIS should include those in order to allow for a comparability analysis, which should also be included in the EIS.

The BIA’s response was:

The EIS includes income, employment, and racial information for Contra Costa County, the City of Richmond and other local communities - including North Richmond and San Pablo. Please see EIS Sections 3.7,3.11,4.7,4.11, and 4.12. This information is presented to enable assessment of socioeconomic and environmental justice effects. This information is sourced from the US Census and other federal and state agency data. Tribal information is also provided to characterize potential socioeconomic impacts.

Accurate tribal information is only available from the Tribe; and while the format differs from US Census, it is presented to allow for a comparable analysis.

**County Comment on Response 1-98:** Contrary to the response, North Richmond and San Pablo are not included in either Section 3.7 or 4.7, as they should be. The Response also states that the tribal information was provided for comparable analysis. However, the approach adopted by the FEIS to present the limited information effectively obscures from readers of the socioeconomic analysis both the existence and character (i.e., unemployment, population and other socioeconomic characteristics) of those most affected local populations – most of which qualify as “communities of concern.” The structure of the very limited information presented does not facilitate any direct comparisons of the economic impacts between the tribe and local communities. Although unincorporated, North Richmond nonetheless has a distinct community character. By not recognizing these low income and minority populations in the socioeconomic analysis, the potential magnitude and relevance of subsequent socioeconomic issues requiring mitigation (e.g., job impacts) are under-represented. This issue is particularly relevant as it is these same issues for a very small Indian population (95 adults in Tribe) on whose behalf the project’s purpose and need is justified.

Although additional information for the neighboring communities is provided in the Environmental Justice section, the FEIS continues to recognize and represent the most affected neighboring communities within the unincorporated surrounding areas of the project with socioeconomic data for the entire populations of residents within unincorporated areas of Contra Costa County.

***More Information is Needed on the Scotts Valley Band of Pomo Indians and its Members (DEIS Comment 1-96)*** – The DEIS identifies the Tribe by number of members, age distribution, employment status and income level. More information should be included on current and recent (past five years) place of residency of members by employment status, the skill sets and educational status of employable members, and the work history of all adult members. For adult members receiving social assistance, the type of assistance, agency providing the assistance, and the location where that assistance is provided should be included. Such information is needed to determine if the proposed casino project or the alternatives can effectively provide the Tribe with a reliable long-term source of employment as well as revenue. Also, since the purpose and need of the proposed casino project is to provide services to these members, describing the geographic distribution of the members is relevant, since the DEIS argues that the project needs to be located in Contra Costa County to better serve its members.

The statement on pg. 3.7-1, “Some tribal members are employed by local Bay Area businesses” needs further detail (i.e., how many members, employed in what capacity for how many years, what type of businesses, and the location of these businesses.)

The BIA’s response was:

The DEIS contains information necessary to determine the impacts of the various alternatives and does not require the information requested by the commenter. Further analysis of the individual skill sets, geographic distribution, level and type of assistance, employment area, and work history of Tribal members is outside the scope of the EIS. This information is not pertinent to the environmental analysis of the Proposed Action. Furthermore, the commenter seeks information that the Tribe considers private, personal, and confidential to its members and therefore not appropriate for wide spread disclosure to the general public.

**County Comment on Response 1-96:** Employment of tribal members is one of two stated Purposes and Need for the project. Without the information requested by the County, it is not possible to assess the ability of the project to meet this purpose and need. Information need not be member specific, and so would not violate any private, personal or confidential information.

## Housing - 3.7.3 and 4.7.3 et al

***Housing Sufficiency needs rethinking (DEIS Comment 1-100)*** - The DEIS asserts that currently vacant housing units can absorb increases in any housing demand due to the proposed casino project despite the cited vacancy factor of only 2\_9 % within the Oakland PMSA and in Contra Costa County. This conclusion is flawed. In assessing housing impacts, the EIS needs to account for the 1) physical adequacy of the vacant units (old, lacking in required facilities, or in disrepair), especially since almost 70% of the housing units in West County are more than 30 years old; 2) rental cost or sales price of the available units and their affordability to casino employees; and 3) the fact that healthy rental housing market usually has a vacancy rate of 4-5% to allow for turnover of units. A 3% vacancy rate is indicative of a tight housing market in which increased demand could drive up rental prices.

The BIA’s response was:

1-100 The FEIS analyzes the potential housing impacts in light of the low vacancy rates. As discussed in Section 4.7, since vacancy rates in Contra Costa County and Richmond are low, an increase in demand would result in increased housing values and consequently increased rent. However, given the number of vacant housing units and small demand for housing units from Alternative A the impact to the dynamics of the local housing market is expected to be nominal. It should be noted that the Tribe is committed to hiring locally and the unemployed work force in Richmond and Contra Costa County is large enough to support employment for the project.

**County Comment on Response 1-100:** The BIA simply asserts that the impact from the development of Alternative A “is expected to be nominal.” The FEIS provides no conclusive or even persuasive evidence to support claims regarding where the Tribe will obtain a skilled labor force for the proposed project, and the PFEIS does not properly address the environmental impacts surrounding that labor force. The Project Description of Alternative A states that the facility would employ 2,272 people (85% of whom would be full-time employees). This would make the facility the 5<sup>th</sup> largest private employer in the County (County of Contra Costa Comprehensive Annual Financial Report: Fiscal Year Ended June 30, 2006; page 172. See <http://www.co.contra-costa.ca.us/>, under “Document Center”).

An analysis performed for the City of Walnut Creek examined the linkage between job creation and housing impacts. The impact fees cited in the analysis illustrate the varying degree of impacts job creation can have on surrounding communities (Jobs Housing Nexus Analysis Commercial Linkage Fee Analysis, Keyser Marston & Associates, December 2004). The analysis reported that Housing Impact Fees in Bay Area communities for retail/office operations ranged from a low of \$0.81/square foot to a high of \$15.58/square foot (see Table V-5 from cited study, Appendix B).

Furthermore, the lack of skilled labor in the area, due to its socio-economic status, and the absence of information on the First Source Program (which hinges on the possibly legally void MSA with the City of Richmond, rather than a specific mitigation measure) only reinforces the concern that a more skilled labor force from outside the area would need to relocate to the area to fill the 2,272 estimated positions. If even a small percentage of those positions are filled by persons living outside the area, then the FEIS must ensure that its traffic analysis includes those potential commuters.

The BIA’s assertion that the project’s impact on the local housing market will be nominal is not credible in any of this context. The housing vacancy rate in the West County area is below that considered healthy for a housing market. The response acknowledges this. The response then goes on to assert that the effect on the housing market of the casino “is nominal”. This is a response that is absolutely inconsistent with the facts, which they do not dispute. This project’s impact on housing markets should be thoroughly evaluated in the EIS and associated in-lieu payments should reflect the calculation of housing impact fees using acceptable methodologies and be required as mitigation measures.

***Housing impacts need to include impact on new construction and housing values (DEIS Comment 1-101)*** - New homes are being built in North Richmond as part of the Redevelopment Agency's efforts to improve the community as well as along Richmond Parkway. The EIS needs to address whether or not the proposed casino project will affect the willingness of homebuilders to construct additional new housing and/or affect the value of the new homes. The proposed project's impact on the value of existing

residences also needs to be addressed in the EIS. If there will be a negative impact, mitigations should include compensation to homeowners whose houses could lose value.

The BIA's response was:

1-101 Section 4.8 discusses that the Proposed Action is not expected to be incompatible with surrounding land uses and Section 4.10 discusses the effect to community character. Lots in the vicinity of the project site are zoned industrial not residential. The Proposed Action would be situated away from established residential communities and the core of the City's downtown area avoiding effects to residential quality of life or downtown character. Some employees of the casino would likely choose to live closer to their place of employment and may occupy some of the planned housing in the area. The overall beneficial effect on jobs and expenditures on goods and services may be beneficial to the housing market. However, as discussed in Section 4.7, this effect is not expected to be substantial enough to change the dynamics of the local housing market.

**County Comment on Response 1-101:** The BIA's response on adverse impact on property values is not consistent with conversations between the County's Redevelopment Agency Director with local property owners and businesses. Residential property owners consistently state concerns regarding the casino, including property value effects. Industrial and general commercial property owners have expressed the same concern (personal conversation with Jerry Overaa, President Overaa Construction, 200 Parr Blvd, Richmond on April 16, 2008). Overaa Construction, which employs over 200 people, is one of the largest construction firms in the Bay Area, and is located immediately across the street from the proposed casino site. Mr. Overaa indicated that he would move his entire operation should the casino be approved. The FEIS needs to assess these impacts on local employment, property values and future of both residential and commercial/industrial construction activity.

In addition, the FEIS needs to recognize and take into account residential, commercial and industrial developments along the access routes to the casino project, particularly the Richmond Parkway.

## **Employment and Economic Impacts - 3.7.3 & pages 4.7.2 et al**

***Project employment and salary projections too high (DEIS Comment 1-102)*** - The DEIS includes an analysis by Klas Robinson entitled "Scotts Valley Band of Pomo Indians Economic and Fiscal Impact of Proposed Scotts Valley Casino, Richmond, California", dated December 2004. This report overestimates the number of casino employees in the Preferred Casino, Alternative A and the Reduced Casino, Alternative B. The table below shows the County's estimate and compares it to the Scotts Valley Band's estimate. As can be seen, the overestimation is close to 400 jobs for Alternative A and close to 350 for Alternative B. Appendix A at the end of these comments presents

the County's methodology and findings on casino employment  
 Comparison of FTE<sup>1</sup> Employment -Year 1

	County Projections	Scotts Valley Projections	Difference
Alt. A-Preferred Casino	1,713	2,108	(395)
Alt. B-Reduced Casino	895	1,241	(346)

Because employment is overestimated, salary projections are also overestimated in the Klas Robinson report. It is suggested that Klas Robinson overestimates salaries by almost \$16 million for Alternative A and almost \$13 million for Alternative B. The table below shows the difference between the two projections, and again Appendix A presents the methodology and findings in more detail.

Comparison of FTE Salaries -Year 1

	County Projections	Scotts Valley Projections	Difference
Alt. A-Preferred Casino	\$52,257,000	\$68,229,000	(\$15,972,000)
Alt. B-Reduced Casino	\$27,288,000	\$40,170,000	(\$12,882,000)

The BIA's response was:

1-102 The County's comments draw upon the review conducted by Meridian Business Advisors and presented as Appendix A of the County's letter. The review provided by Meridian (Table 7) presents a comparison of employment estimates from the Klas Robinson report and from Meridian for Alternatives A and B. Meridian's estimates are lower. Meridian's review goes on to suggest that the estimates in the Klas Robinson report are too high.

The discussion in Meridian's review cites Klas Robinson's figure of 2,644 gaming positions for Alternative A. It goes on to state that there is no explanation for how that figure was calculated and presents an estimate for gaming positions that uses a figure of six positions per table game. However, page 17 of the Klas Robinson report states that a figure of seven gaming positions per poker or table games and one position per slot machine was used. The use of both six positions per table games and seven positions per table game is common in the industry. As a practical matter, as long as the same average is applied to the subject property and any comparable properties, which was the case in the Klas Robinson report, the comparisons remain valid.

Meridian's review presents an alternative calculation for gaming positions totaling 2,300 that is irrelevant. It matches neither the Klas Robinson method, as stated in the report, nor the machine and table game assumptions used by Meridian in their own calculations of gaming revenue in their comments. If the machine and table count used by Meridian for Alternative A are applied to the same methodology used to

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<sup>1</sup> Full time equivalent (FTE)

calculate gaming positions that was stated in the Klas Robinson report, the total gaming positions would equal 2,625, virtually identical to the 2,644 figure used in the Klas Robinson report.

Meridian's review also states that: "Klas Robinson estimates employees using data from 10 Indian Casinos in California" which is not correct. The Klas Robinson report states that the information from the 10 casinos was used not as a basis for Klas Robinson's estimates but as a reasonableness check for the authors and for the reader. The analytical basis for Klas Robinson's employment estimates is the same May 2004 feasibility study completed for the project that is cited on page 4 of the Klas Robinson report.

Working from the incorrect assumption that the Klas Robinson employment estimates were derived directly from the information presented on the 10 other California Indian casinos, Meridian suggests that "there is a high probability," that the employment estimates are overstated. Meridian supports this assertion by pointing out that seven of the ten casinos cited in the Klas Robinson study had hotels while the subject project would not. Meridian suggests that the inclusion of hotel employees in the figures for the seven casinos distorted Klas Robinson's employee estimates. Meridian is correct that some of the casinos in the table presented in the Klas Robinson report had hotel operations and that the hotel employees were included in the figures presented. However, the number of casinos with hotels was six, not seven, as the data for Fantasy Springs preceded the opening of their hotel. While excluding hotel employees from the figures for those six casinos would yield a somewhat more accurate table, the difference is minor and the conclusion would remain the same. No attempt was made to do so because the proportion of hotel employees at each of those properties is not published separately and the table was a check for reasonableness not a foundation for the analysis. The suggestion that on this basis Klas Robinson's employment estimates are overstated is demonstrably false.

Meridian correctly cites Klas Robinson's employment estimate for Alternative A as equating to 0.8619 (rounded to 0.9 in the Klas Robinson report) employees per gaming position. While attempting to create doubt with the assertion about hotel employees in the comparable table, Meridian neglects to point out which of the casinos did not have hotels, what their averages were and how they compared to Klas Robinson's estimate for Alternative A. The three casinos not named in Meridian's comment were Viejas, San Manuel and Agua Caliente. Their averages were 0.9, 0.7 and 0.8 respectively, quite comparable to the estimate of 0.8619 for Alternative A. Five of the ten casinos presented in the table on page 17 of the Klas Robinson report had more than 2,000 employees. Even if a reasonable estimate was made for the number of hotel employees at those that had hotels and that number was deducted from their employment total, all five would still have well over 2,000 employees. Klas Robinson's estimate for full-time equivalent positions for Alternative A as cited in Table 7 of Meridian's review is 2,108.

Meridian identifies that they used a calculation of employees per square foot as the basis for their employment estimates. Obvious flaws in such a methodology are that it is much less rigorous than the detailed feasibility analysis that was the actual basis for Klas Robinson's estimates, using square footage fails to take into account the mix of table games (which have a much higher employment requirement) versus machines, and using square footage fails to take into consideration the level of utilization in the facility - which has a direct bearing on the number of employees required.

A less obvious but potentially as damaging flaw, if not more so, is the failure of Meridian to indicate which casinos were used in the comparison. The discussion simply states that eight casinos were used, none of which had hotels. Based upon their criticism of the Klas Robinson analysis, not more than three of those eight could be among those that were used in the Klas Robinson report. As noted in the Klas Robinson study, the ten that were selected represented at that time the 10 largest Indian casinos in California in terms of employment. The lowest number of employees amongst this group was 1,100 at Fantasy Springs. Thus at least five of the eight casinos used by Meridian had fewer than 1,100 employees. While such a property would potentially be a useful comparable for the Alternative B depending upon a variety of other factors, none of them could be considered a valid comparable for Alternative A that even by Meridian's estimate would have over 1,713 full-time equivalent employees and by Klas Robinson's estimate over 2,100.

In addition, although Meridian does not actually state what ratio of employees per square foot they used for their estimates, an easy calculation shows that the ratio was 0.216, which is actually lower than the average that they report. This is not consistent with a property with as high a level of utilization as is

expected for the subject project.

Finally, the alternative estimates of employment presented by Meridian are logically inconsistent with their criticism of operating expense projections. If, in fact that as suggested by Meridian, Klas Robinson's estimates of operating expenses are too low, it is inconceivable that Klas Robinson's estimates of employment would be too high, given the significance of labor cost amongst the various expenses in a casino operation.

### **Salaries**

Meridian compares Klas Robinson's estimates of total earnings to estimates prepared by Meridian (incorrectly labeled as salaries in Table 8 of Appendix A since they include tip income as well as wages). Meridian reaches a lower estimate for total earnings because of their lower estimate for total employment.

The problems in the employment estimate by Meridian are addressed in the foregoing discussion. These problems carry directly through into Meridian's comments on salaries, yielding the same logical inconsistency and the same inferior analytical support for their estimates. It should be noted that Meridian's comments actually validate the annual earnings per employee and tip income estimates used in the Klas Robinson study. The difference in the totals comes from the problematic employment estimates used by Meridian.

**County Comment on Response 1-101:** The BIA's response incorrectly concludes that the difference in estimates is attributed to different methodologies for estimating the number of gaming positions. In fact, the differences are due to differences in the data sources, which are detailed below, resulting in the MBA estimates being more accurate.

1. *KR assumes more **gaming positions** than does MBA* - The KR report shows 2,644 gaming positions, which appear to be based on a preliminary estimate of the number of slots and table games reported in the Scoping Report. MBA uses the number of games stated in the Fee-to-Trust application of January 2005, page 5, of 2,000 gaming machines and 50 gaming tables, resulting in **2,300** gaming positions using 6 positions per table game or **2,350** using 7 positions per table game. Given that the Fee-to-Trust application reflects the finalized figures, they should have been used in the economic and fiscal analysis.
2. *KR and MBA use **two different methodologies** to estimate casino employment.*
  - a. KR's methodology uses the number of gaming positions to estimate casino employment and assumes  $\pm 0.9$  employees per gaming position resulting in **2,279 employees**. KR checks the reasonableness of its employment estimate in a table on page 17 of the December 2004 report that presents the ratio of employees to gaming positions for 10 California Indian casinos,  $\pm 0.9$ . As noted in MBA's response to the DEIS, the majority of the casinos sampled have hotels attached, and the number of employees for each casino includes employees assigned to the hotel. The proposed Scotts Valley casino does not contemplate a hotel. Common sense argues that the ratio of employees to gaming position would be higher if hotel employees are included.

However, if MBA applied KR's methodology to estimate employees, the result would be 2,070 (2,300 gaming positions \* 0.9 employee per gaming position = 2,070 employees) or 209 fewer employees than estimated by KR. Using KR's

average earnings per employee of \$29,900 (page 21 of KR report), KR's estimated earnings of \$68 million are reduced by over \$6.0 million (209 employees \* \$29,900).

- b. MBA's methodology to estimate employees is based on a ratio of employees per square foot of gaming space which averaged .0233 for eight California and Washington Indian casinos with no hotels. (Source: Casino City's North American Gaming Almanac, 2005 Edition.) Using this ratio, estimated employees for the proposed casino would be 1,848 (79,320 casino square footage x 0.0233 = 1,848). This number is converted to full time equivalents or 1,713, using the same conversion factor as used in the KR report of 85% full time and 15% part time.

The table below summarizes the differences in methodology and employee estimates. In short, the MBA estimate reduces the KR estimate of total employees and full time equivalent employees by approximately 400.

	KR	MBA	Difference
# of Gaming Positions	2,644	2,300 to 2,350	-344 to -294
Methodologies:			
KR: # Employees using Employees/Gaming Position	2,279		
MBA: # Employees using Empl/Casino Sq. Ft.		1,848	-431
Full Time Equivalent Employees	2,108	1,710	-398

The difference between KR's estimate of employee earnings (\$68.2 million annually) and MBA's (\$52.3 million annually) is explained by the employee estimate discussed above. MBA's estimate is lower as fewer employees are estimated.

***Contra Costa County Employment section lacks meaningful analysis (DEIS Comment 1-104)*** – The EIS needs to provide an analysis of how the skills of the local work force match to the skills needed for casino employment. The degree to which the jobs match with local skills will determine whether the Tribe will be able to hire locally, which is its stated preference in the DEIS (although not included in the mitigation measures). At the existing Casino San Pablo, a local-hiring pledge also was made, but few local residents were hired. If the proposed casino project becomes a reality and the casino hires workers from outside the area, the result could be in-migration – which would cause additional environmental impacts – and little or no reduction in the unemployment rate for the area's existing labor force. In fact, the proposed casino project could result in increased local unemployment rates if local residents lose existing jobs due to the "substitution effect" (loss of 253-523 jobs from other businesses,

depending on the Alternatives, according to the DEIS). The discussion of this issue in the DEIS is simplistic and superficial. The EIS needs to correct this deficiency.

The EIS should identify the range of jobs (and background check requirements) generated by the project by skill levels, assess which of those jobs might be appropriate for members of the nearby communities, particularly North Richmond and Parchester Village, and what measures might be taken to ensure job opportunities for community residents. For example, the Contra Costa County Redevelopment Agency has successfully implemented a program of connecting jobs created by land development activities to local residents through job training and first-source hiring agreements. The land use permitting procedures of the County have been a primary mechanism for perfecting this linkage.

The BIA's response was:

1-104 Please see Response 1-103. The First Source Agreement would include the provision that 40% of gaming facility's non-licensed employees shall be hired from the priority categories identified. This condition is expected to reduce the potential for a substantial in-migration of workers from outside of the area. Employment losses from substitution effects are expected to be positions in other casinos and other entertainment and dining venues. As a result, positions that would potentially be lost would be replaced by new positions provided by the project. The proposed alternatives would provide a wide range of jobs including gaming positions (card dealers, cashiers), food and beverage (cooks, wait staff, managers), administrative, security, marketing, and property maintenance. Employment at the casino would provide a range of employment opportunities. As discussed in Section 5.2(b) of the MSA, to facilitate the hiring objectives of the First Source Agreement, the Tribe shall offer training programs to assist City residents, Tribal members, and other Native Americans to become qualified for positions at the Gaming Facility. It is unlikely that the jobs offered at the casino would not match the skills of the available work force due to the variety of employment opportunities.

**County Comment on Response 1-104:** Please see Comment on Response 1-103. The FEIS does not provide the requested, and necessary level of analysis necessary to reach the conclusion that FEIS projected beneficial local employment effects will occur.

***Tribal Member Employment section also lacks meaningful analysis (DEIS Comment 1-105)*** – This issue is discussed on page 4.7-21. That discussion is minimal. Since employment is one of the primary purposes and needs of the project, this section needs to be supported with much more in-depth analysis, including but not limited to the skill sets of the adult tribal members who need additional employment and the relationship between those skill sets with the jobs that will be available in the casino or other projects, the current place of residency for each of the tribal members, as well as other factors that would affect the viability of employment of tribal members at the proposed project site.

The BIA's response was:

- 1-105 Please see Response 1-96. The casino enterprise would provide training to tribal members that would be employed in the casino as it would to any other employee and thus the information requested is irrelevant. Further analysis of the individual skill sets and geographic distribution of Tribal members is outside the scope of the EIS. This information is not pertinent to the environmental analysis of the Proposed Action.

**County Comments on Responses 1-103, 104, and 105:** While the MSA with the City of Richmond is provided in Appendix Z, the socioeconomic impact analysis in the FEIS does not include this additional information and commitments discussed in Responses 1-103, 1-104 and 1-105. Additional information on the First Source program, local hiring commitment and job training program support is necessary to adequately answer the corresponding comment concerns. Furthermore, this information is also necessary to substantiate the projected employment impact that “the majority of employment would be drawn from the surrounding City of Richmond, and the remainder of Contra Costa County, with a very small percentage of new employees coming from the adjacent Counties of Alameda and Solano (FEIS, pg 4.7-3).” Given the major transportation routes to the neighboring Counties of Alameda, Solano, and Marin, it might be reasonable to expect that a significant number of future casino employees would reside outside Contra Costa County. As a result, while the FEIS analysis dismisses numerous County comments that request more specific information on specific job requirements and local workforce population's suitability as “out of scope,” it seems evident that it is a relevant and unaddressed question integral to determining the expected resources and feasibility of the necessary job training and hiring commitment programs to achieve even the First Source program's 40% hiring goal (Response 1-104) of non-licensed employees<sup>2</sup> let alone the “majority employment goal” for Contra Costa County as a whole.

Even if more specific analysis of the local worker's suitability for future project employment had been provided in the FEIS, more specific mitigation and commitments by the project remain necessary to ensure that: (1) the project's acknowledged adverse economic impacts to existing businesses (i.e., from project-related substitution effects) are matched by new project-related employment, and (2) future additional project-related employment will, in fact, benefits the local, city, and county populations as projected by the FEIS analysis.

Related to the above, Table 4.7-1 on page 4.7-2 of the FEIS provides a breakdown of the Alternative A “estimated direct wages and earnings by job type” that generates more questions than it answers. This assessment is based upon the fact that the “job type” as listed in the table is broken into categories that ostensibly include a wide range of jobs within the category itself (e.g. “Gaming” includes everyone from cashiers to the general manager), thereby rendering the “average earnings per employee” a dubious (and likely inflated) indicator of the economic benefits of these jobs. Also, as the table

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<sup>2</sup> The FEIS analysis does not clearly identify the future jobs at the casino that would require licenses and which are presumably not be included in the local hiring requirements.

states in the footnote, these figures include “full-time **and** part-time employees” (emphasis added), further confusing the real earnings potential of jobs that are anticipated to be generated through the project.

***Child care needs of project employees needs to be addressed (DEIS Comment 1-107)*** – The EIS should analyze project child care impacts utilizing the standards and procedures set forth in Chapter 82-22 of the County Ordinance Code. The analysis should include assessment of adequacy and affordability of existing child care resources and need for new resources by location as well as identification of needs by employees, project visitors and patrons. The Community Facilities Element of the Contra Costa County General Plan articulates policy on assisting and encouraging the development of adequate and affordable childcare.

The BIA’s response was:

1-107 While the project is expected to generate substantial new employment opportunities and would therefore increase the demand for child care services, the potential increase in the need for childcare is not expected to be substantial, nor is the increase in childcare service expected to result in any environmental impacts.

It is expected that employees and patrons with children would continue to use the same childcare facilities as they used before, or would be responsible for seeking out and paying for their own private child care services. The MSA entered into between the Tribe and the City of Richmond stipulates that the Tribe will provide compensation for non-licensed employees that meets or exceeds the City's Living Wage Ordinance (Appendix Z, Section 5.2(b)). This stipulation is intended to provide employees with income that provides for living expenses such as childcare.

The proposed development alternatives would not be subject to County's childcare facility ordinance, unless the County and Tribe enter into an agreement which stipulates the Tribe's adherence to the provisions of the ordinance.

**County Comments on Response 1-107** – The adequacy of a Living Wage to permit a family to afford adequate childcare is very much in question. Households of Very Low Income (50% of Area Median Income) and Low Income (80% of Area Median Income) have a difficult time finding and affording adequate childcare in Contra Costa County. The Living Wage does not even equal those income levels. Twenty-four percent of all children in Contra Costa County are in households receiving Public Assistance. The incidence of Public Assistance in West County is higher than the County average, and the incidence of Public Assistance in North Richmond is higher yet. The FEIS cannot rely on a Living Wage to mitigate the impact on childcare needs, nor can it rely on the MSA to ensure those wage levels.

## Property Taxes – Pages 3.7-6 and 4.7-7 & 8

***Property Tax Analysis Not Correct (DEIS Comment 1-108,1-109 and 1-110)*** – The DEIS misrepresents the property tax status of the proposed casino project lands and the appropriate methodology to assess lost property tax revenues. This should be corrected in the EIS. The misrepresentation is particularly disturbing since 25 CFR Part 151.10(e) and 151.11 specifically state “The Regional Director must make a conclusive statement regarding the impact on the State and any political subdivisions expected to result from removing the land from the tax rolls.”

The proposed project is in the North Richmond Redevelopment Agency, which receives the entire tax increment. Estimating the loss of property tax revenue because of tribal ownership by citing the current assessed value (AV) of marginally improved property is incorrect. The correct approach is to estimate the property value of the site were it to be taxable given the proposed improvements. In the short-run (the next 32 years, the remaining life of the North Richmond Redevelopment Plan), the AV increase that would occur were the site taxed at its improvement value of \$200 million would result in annual revenue flow to the Contra Costa County Redevelopment Agency of \$1,935,811. Capitalized through the sale of bonds, this revenue flow would generate \$24.2 million for the Agency to reinvest in the North Richmond community. At the termination of the Redevelopment Program this forgone revenue would shift and become a revenue loss to the County and all other taxing entities. This applies to Alternatives B, C, & D as well, although in lesser amounts.

Loss of property tax revenues will not be offset by sales tax or business revenues, as asserted in the DEIS. Sales tax distribution is determined by location of the sales and business revenues do not necessarily translate into County tax revenues. Absent an economic study, this generalization should be deleted in the EIS.

The BIA’s response was:

1-108 The County suggests that the DEIS misrepresents the property tax status of the land on which the proposed project would be located and, more to the point, contends that the actual lost tax revenue estimate should be based upon "its improvement value of \$200 million," yielding an annual tax revenue loss of \$1,935,811 as opposed to the figure of \$84,571 annually presented in the DEIS. The County also claims that lost property tax revenue would not be offset by sales tax revenue because the sales tax distribution is determined by location and (implicitly) the amount of sale tax revenue to Contra Costa County estimated in the DEIS is incorrect. The County goes on to state that an economic study would be required to support the sales tax estimate and to suggest the deletion of the "generalization" because such a study has not been done.

The responses to the County's comments are presented in inverse order. First, an economic and fiscal impact study was completed by Klas Robinson QED and included in the DEIS as Appendix S. As described clearly and at length on pages 44 through 46 of the Klas Robinson report, the estimate of sale tax revenue for Contra Costa County is based upon accepted econometric modeling methods and is specific to the County, taking into consideration any location issues that might arise. In effect, the conditions and concerns expressed by the County have already been addressed in a clear and appropriate fashion, yielding

an estimate of nearly \$2.2 million in increased sales tax revenue for the County directly plus an additional unspecified amount returned to the county from state sales tax collections from the impact of Alternative A.

The County's comments ignore the fact that as a tax increment district, the tax revenue they postulate and the bonding capacity they claim it would support would not in fact be used to "reinvest in the North Richmond community," it would be used (if developed on fee land, which is not proposed) to help support the initial development of the project site. However, because the Proposed Action would not receive Redevelopment Agency assistance, it could be argued that there is no practical loss to the Redevelopment Agency at all, since the County has no need to issue or repay supporting bonds for the project and the County would in fact dedicate all of their tax revenue from the property (if hypothetically developed on fee land) to the bonds issued to support its development.

While projected increases in sales taxes would offset the loss of property tax revenue, the Tribe would further mitigate fiscal effects to Contra Costa County and the North Richmond Redevelopment Agency by making in-lieu annual payments. The amount of payments would be subject to negotiation between the Tribe and the County. Section 5.2.6 of the FEIS has been revised to clarify the intention of the in-lieu payments. This mitigation is considered appropriate for the level of impacts expected.

Response to comment 109: Please see Response 1-108.

Response to comment 1-110: Please see Response 1-108.

**County Comments on Responses 1-108, 1-109 and 1-110:** The BIA's response on impacts to the Contra Costa County Redevelopment Agency is totally without merit, and in error. A Redevelopment Agency does not receive property tax increments to use solely on reinvesting in the private property from which the tax increments were generated. In fact, they are generally used to provide funding for area improvements which generally benefit all community residents. The amount of funds typically allocated to assist specific development projects is very limited, especially in North Richmond. Furthermore, the sponsor of the Scotts Valley Indian Casino has made no application for tax increment assistance from the Redevelopment Agency, nor is it likely to be provided given the overwhelming needs in other parts of the community. The Agency's estimate of a \$24.2 million loss in capitalization value is solely the result of the casino property not being subject to the local property tax. These funds would have otherwise been invested in community improvements and affordable housing in North Richmond. They would not be invested in the casino.

## **Community Infrastructure - 3.7.4**

***Open space and parks assessment needed (DEIS Comment 1-112)***– The EIS should assess the impact of the project on adjacent open space and parks, including

increased utilization due to proximity to the project, need for increased maintenance (litter, traffic, etc.), and on any wildlife residing in the open space areas.

The BIA's response was:

1-112 Potential impacts of the project on adjacent open space and parks have been thoroughly addressed in the EIS. Increased utilization of local parks is addressed in Section 4.7. Impacts to wildlife utilizing the project site and surrounding areas are addressed in Section 4.5.

**County Comment on Response 1-112:** The FEIS inappropriately limits the projected increase in open space and park utilization to casino patrons, ignoring the potential use by casino employees before or after work or during lunch breaks. In addition, the potential for increased crime related to the proximity of the casino at the parks needs to be analyzed.

**Community Infrastructure Needs to be Broadened (DEIS Comment 1-113)** – The DEIS characterizes community infrastructure as just schools, libraries, and parks and recreation. The infrastructure that supports the North Richmond community is much broader and includes services and programs of the Redevelopment Agency, Health and Human Services, Public Works, Law Enforcement/Justice System, Fire/EMS, and Transportation. The EIS should acknowledge this important community infrastructure.

The BIA's response was:

1-113 The BIA recognizes the importance of community infrastructure. The EIS provides an extensive analysis of impacts to important community infrastructure. Section 4.7 addresses impacts to schools, parks and libraries. Section 4.8 addresses impacts to transportation and the Redevelopment Agency. Section 4.9 addresses impacts to public works (water and wastewater service), public health and safety (including law enforcement, fire protection and emergency medical service).

**County Comments on Response 1-113:** The BIA's response is not responsive to the comment. The section on community infrastructure should be expanded as requested.

**Infrastructure Financing Needs Examination** – Contra Costa County finances its services through a variety of mechanisms. This subject needs to be addressed, including:

- **Property Taxes** – The EIS should estimate property taxes as discussed previously in these comments. (DEIS Comment 1-114)
- **Sales Taxes** – The EIS should estimate the volume of sales on the project site which would normally be subject to sales taxes, and identify whether or not the Tribe intends to collect and remit sales taxes (at the normal rate) to the State Board of Equalization on a timely and regular basis, consistent with non-tribal sales tax collection and remittance practices. (DEIS Comment 1-115)

- **Other Revenues** – The EIS should identify and estimate any other revenues that would be lost to local public agencies, such as transient occupancy taxes, which would normally accrue to the agency if not for the tax-exempt status of the Tribe. (DEIS Comment 1-116)

The BIA's responses were:

1-114 Please see Response 1-108.

1-115 The analysis in the EIS assumes that the Tribe would not collect and remit sales tax to the State Board of Equalization. Please see Response 1-108.

1-116 The analysis in the EIS assumes that the Tribe would not collect and remit occupancy tax to the State Board of Equalization. Please see Response 1-108.

**County Comment on Response 1-114:** The BIA's response is not responsive to the comment. The County requests an analysis of revenue loss impacts of the property being taken into trust section on community infrastructure financing.

**Infrastructure Financing Needs Examination** – Contra Costa County finances its services through a variety of mechanisms. This subject needs to be addressed, including:

- **Cost of Services (DEIS Comment 1-117)** – The DEIS does not contain a sufficient analysis of the impacts of the proposed casino project and therefore, provides insufficient information on which to estimate increased service demands and service costs. The EIS should correct this deficiency and include an estimate of the overall annual costs to the County, including its dependent special districts, of providing increased levels of service due to the existence of the project, by type of service as well as the increased capital costs for facilities, equipment or infrastructure. Increased costs should take into account financing limitations of state and federal funding. The County can help in developing cost of service estimates.

Response to comment

1-117 The BIA and the Tribe recognize that project development would require law enforcement, fire protection, emergency services, and public infrastructure improvements. Service requirements and potential impacts to these services are addressed in the EIS. In addition, the Tribe has entered into a MSA with the City of Richmond to address the provision of public services by the City of Richmond and other agencies, and the compensation for these services by the Tribe.

As identified in the MSA, the City of Richmond would be the primary provider of law enforcement and fire protection services. The MSA also identifies that the Tribe would reimburse the City for fees paid to Contra Costa County or other agencies for transport, booking or other incidental services.

The EIS identifies additional public service impacts and mitigation measures to address such impacts. For instance, the EIS identifies a potential increase in the demand for two licensed counselor positions for the treatment of problem gamblers. To mitigate this potential impact, the Tribe would be required to compensate County social services for a minimum of two licensed counselor positions. The exact cost

associated with this measure would be subject to negotiation between the Tribe and the County.

The Tribe would be responsible for other service improvements. The Tribe would be required to pay the West County Wastewater District (WCWD) for wastewater system improvements needed to serve the project. Likewise, the Tribe would be required to pay the East Bay Municipal Utilities District (EBMUD) for water system improvements needed to serve the project. Service fees provided by the Tribe would contribute to the costs of providing these services.

In sum, the EIS provides a thorough analysis of potential public service impacts and identifies mitigation where appropriate. The MSA, service provisions with other WCWD and EBMUD, and measures identified in the EIS, would ensure that the County is either not impacted, or would be compensated for the provision of additional services required to address project impacts.

**County Comment on Response 1-117:** The BIA's response is not responsive to the comment. In this comment and others, the County questions the adequacy of the impact analysis as currently contained in the EIS and requests a comprehensive, consolidated summary of increased capital and other one time costs and on-going operational costs. Again, the MSA with the City of Richmond cannot be considered an adequate mitigation measure for any impacts.

***Infrastructure Financing Needs Examination*** – Contra Costa County finances its services through a variety of mechanisms. This subject needs to be addressed, including:

- ***Summary of Revenue Losses and Cost Increases (DEIS Comment 1-118)***– The EIS should include a comprehensive summary spreadsheet on potential revenue losses and service cost increases associated with the project.

The BIA's response was:

The executive summary table (Table ES-1), Sections 4.7 and 4.9 of the FEIS provide a clear summary of potential fiscal and service impacts to Contra Costa County. Another comprehensive summary is not warranted.

**County Comment on Response 1-118:** The executive summary table (Table ES-1), Sections 4.7 and 4.9 of the FEIS identify mitigation measures, not necessarily revenue losses and cost increases.

## **Redevelopment Agency - 3.7.4**

***Redevelopment Agency is a Critical Community Infrastructure Financing Source that Needs Explicit Discussion (DEIS Comment 1-119)*** – The Contra Costa County Redevelopment Agency is an important financing source for community infrastructure in North Richmond. Its scope, source of financing and completed and projected projects

should be described in detail. The Redevelopment Agency is required to adopt a five-year Implementation Plan outlining activities designed to address blighting conditions in the North Richmond redevelopment area. This shorter term outlook of Agency activity has been recently supplemented by the completion of a major analysis of area infrastructure needs and means of financing them. Both documents should be consulted in developing the EIS.

The BIA's response was:

1-119 The comment is noted and made part of the administrative record. Both the North Richmond Redevelopment Plan and the Implementation Plan are addressed in the FEIS. As identified in Section 4.8, while the fee-to-trust transfer of the six project parcels would reduce the County's annual property revenue by \$85,571 (based on the 2004-05 tax year), the loss of property tax would be offset by an increase in sales tax revenues that would be generated as a result of purchases made by the casino operation on goods and services, and by the increase in business revenues in the area resulting from the indirect and induced effects of the casino. The Economic Impact Analysis prepared for the EIS (Appendix S) indicates that indirect and induced sales tax revenue generated by Alternative A would be equal almost \$18 million in Contra Costa County of which almost \$2.2 million would go directly to Contra Costa County or Richmond due to an additional 1.0 percent sales tax. As a result, fiscal impacts to Contra Costa County and the Redevelopment Agency are expected to be beneficial as total tax revenue is expected to increase. However, additional mitigation has been identified to ensure that the Redevelopment Agency and its programs are not adversely affected. This mitigation, which consists of in-lieu payments to the Redevelopment Agency, is provided in Section 5.2.6. Please see Section 3.8 and 4.8 for details on the Redevelopment Agency, and potential project-related impacts.

**County Comment on Response 1-119:** The BIA asserts that the Redevelopment Agency's loss of property tax dollars due to the casino's trust status would be offset by the receipt of increased sales taxes. The Redevelopment Agency receives *no* sales tax funds, therefore the loss of property tax dollars is a direct and unmitigated impact.

Furthermore, as discussed earlier, lack of specificity in the "in-lieu" payments to the Redevelopment Agency renders the mitigation measure meaningless, defers identification of the mitigation to a later date and thus, is inadequate by definition.

**Cumulative Effects, Development Projects (p. 4.12-7) (DEIS Comment 1-120)** – In addition to the improvements cited, the recently completed Contra Costa County Redevelopment Agency's industrial area infrastructures study of North Richmond provides explicit detail. The goal is to:

- a. Identify the scope of infrastructure (roads, drainage, utilities) required to bring the North Richmond area up to prevailing standards for industrial business parks; and on infrastructure needs in the area of the proposed casino project.
- b. To establish a plan of finance that would deliver these improvements in a phased and economically feasible manner. A partnership plan of finance is envisioned in which the County Redevelopment Agency and the property owners both

participate. The Redevelopment Agency would participate with tax increment financing and the property owners would participate via a public financing program such as a Mello-Roos special tax, or assessment proceeding.

- c. The Agency's infrastructure initiative is designed to bring the localized infrastructure (streets – Parr, Pittsburg, Brookside, Goodrick, 3<sup>rd</sup> St., 7<sup>th</sup> St., etc; largely non-existent drainage; and water, sewer, electrical, gas, and telecommunications infrastructure) up to competitive standards. The absence of tax increments from the casino site can have a detrimental effect (as detailed earlier in comments in Section 4.7-1). Furthermore the analysis contained in the DEIS fails to examine the local infrastructure, which we are addressing.

The BIA's response was:

- 1-120 The cumulative analysis presented in Section 4.12 of the EIS identifies other planned projects in the project area. Projects that are clearly identified in adopted plans or programs are considered speculative and have not been specifically addressed. However, it should be noted that the cumulative analysis assumes development reflected in local and regional plans. Please see Response 1-119 for discussion of Redevelopment Agency and property tax impacts.

**County Comment on Response 1-120:** The County provided information on the North Richmond Infrastructure study so that the BIA could incorporate that information into the EIS analysis of impacts and assessment of required mitigation. Since that has not been done, the cumulative analysis must be deemed deficient.

***Contra Costa County Redevelopment Agency Revenue (DEIS Comment 1-121)*** – The EIS should assess the short-term and long-term revenue losses and impacts of removing the subject property, including improvements from the property tax rolls due to its Indian trust status on the North Richmond community's revitalization program. The Contra Costa County Redevelopment Agency is charged with the task of upgrading the physical infrastructure and housing of the North Richmond community, and increasing economic opportunities for area residents. The Redevelopment Agency undertakes its activities utilizing property tax increment financing.

The BIA's response was:

- 1-121 Please see Response 1-119.

**County Comment on Response 1-121:** Please see County Comment on Response 1-119.

***Financing Community Infrastructure Improvements (DEIS Comment 1-122)*** – In 2000, the County Redevelopment Agency in conjunction with the Richmond Redevelopment Agency developed "The City/County Initiative – North Richmond: A Finance Strategy for Infrastructure/Economic Development." To implement this strategic plan, the County has initiated a program to develop and implement a plan of

finance for infrastructure improvements within the North Richmond community, with an emphasis on the areas north of Wildcat Creek. Those areas are designated in the Contra Costa County General Plan for employment-generating land uses. The plan of finance would encompass a land secured methodology (Mello-Roos Community Facilities District, or Assessment District) in partnership with Redevelopment Agency tax increment financing. The infrastructure program would include, among other things, roads, drainage, utilities, pedestrian improvements, parks, community facilities, landscaping and water/sewer/solid waste facilities. The plan of finance would also address facility maintenance requirements within the North Richmond area. The Agency has completed the Final Report and assessment of infrastructure needs, along with a detailing of a proposed plan of finance that would be done in a public/private partnership form. The availability of Redevelopment Agency financial resources is critical to fulfilling the goals of this plan of finance. All property owners would be participants in the financing plan. This should include the casino site as well. The EIS should assess the project's impact on this effort.

The BIA's response was:  
Please see Response 1-119.

**County Comment on Response 1-122:** Please see County Comments on Responses 1-119 and 1-120.

## **Social Costs of Gambling – 3.7.4 and 4.7.4 et al**

***Citations from studies on problem and pathological gambling not complete (DEIS Comment 1-123)*** – The DEIS review of the issue of problem and pathological gambling is based on three 1999 studies: one by the National Gambling Impact Study Commission (NGISC); another by the National Research Council (NRC); and a third by National Opinion Research Center (NORC). The EIS should point out that the rates of problem and pathological gambling cited in these studies are national rates and are thus broad generalizations which may or may not be relevant to this casino project, located within a low-income, heavily urbanized area with high crime rates.

Response to comment

1-123 The NGISC, NRC and NORC studies were used because together they present the most recent collection of comprehensive research on the social effects of problem gambling. For additional information please refer to Response 1-10.

**County Comment on Response 1-123:** The three studies cited are not the most recent research available, as detailed in County Comment 1-125. Regardless, the BIA's response does not explain why it is not appropriate to include the requested qualifications regarding these studies in the FEIS. The examination of off-reservation impacts of the casino project needs to focus on local impacts, based on local circumstances, not broad generalizations or national rates that may not be relevant.

***Furthermore, while the cited studies do not conclusively establish a definitive link between problem and pathological gambling and casinos, they do imply evidence of a strong connection between the two. (DEIS Comment 1-124)*** The following conclusions are directly from the NGISC report and should be included in the EIS (DEIS Comment 1-124):

- As the opportunities for gambling become more commonplace, it appears likely that the number of people who will develop gambling problems also will increase.
- Casino gambling is more habitual than other forms of gambling.
- As with other addictive disorders, those who suffer from problem or pathological gambling engage in behavior that is destructive to themselves, their families, their work, and even their communities. This includes depression, abuse, divorce, homelessness, and suicide.
- The Commission is unanimous in its belief that the incidence of problem and pathological gambling is of sufficient severity to warrant immediate and enhanced attention on the part of public officials and others in the private and non-private sectors. The Commission strongly urges those in positions of responsibility to more aggressively to reduce the occurrence of this malady in the general population and to alleviate the suffering of those afflicted.

Similarly, the following excerpts from the NRC and NORC reports pertaining to problem and pathological gambling should be included in the EIS:

- NRC concluded that pathological gambling is found proportionately more often among the young, less educated, and poor.
- The NRC and NORC studies found that men are more likely to be pathological, problem, or at-risk gamblers than women.
- Both studies found that pathological, problem, and at-risk gambling was proportionally higher among African Americans than other ethnic groups.
- NORC reported that pathological gambling occurs less frequently among individuals over age 65, among college graduates, and in households with incomes over \$100,000 per year.
- Researchers have discovered high levels of other addictive behavior among problem and pathological gamblers, especially regarding drugs and alcohol. For example, estimates of the incidence of substance abuse among pathological gamblers ranges from 25 to 63 percent. Individuals admitted to chemical dependence treatment programs are three to six times more likely to be problem gamblers than are people from the general population.

- In its survey, NORC found that "respondents reporting at-risk, problem, and pathological gambling are more likely than low-risk or non-gamblers to have ever been alcohol or drug dependent and to have used illicit drugs in the past 12 months."

Response to comment

1-124 Additional conclusions from the NGISC, NRC and NORC reports used in the discussion of social costs in Section 3.7.4 are included below at the request of the commenter. While these excerpts expand this discussion, they do not alter the conclusions in the EIS. Similarly, mitigation provided in Section 5.2.6 remains adequate to addressing social impacts.

The commenter request that the following conclusions from the NGISC (1999) study are considered: "As the opportunities for gambling become more commonplace, it appears likely that the number of people who will develop gambling problems also will increase. "Casino gambling is more habitual than other forms of gambling." "As with other addictive disorders, those who suffer from problem or pathological gambling engage in behavior that is destructive to themselves, their families, their work, and even their communities. This includes depression, abuse, divorce, homelessness, and suicide." "The commission is unanimous in its belief that the incidence of problem and pathological gambling is of sufficient severity to warrant immediate and enhanced attention on the part of public officials and others in the private and non-private sectors. The Commission strongly urges those in positions of responsibility to more aggressively reduce the occurrence of this malady in the general population and to alleviate the suffering of those afflicted."

The commenter request that the following conclusions from the NRC (1999) study are considered: "Pathological gambling is found proportionately more often among the young, less educated, and poor."

The commenter request that the following conclusions from the NORC (1999) study are considered: "Pathological gambling occurs less frequently among individuals over age 65, among college graduates, and in households with incomes over \$100,000 per year." "Respondents reporting at-risk, problem, and pathological gambling are more likely than low-risk or non-gamblers to have ever been alcohol or drug-dependent and to have used illicit drugs in the past 12 months."

The commenter request that the following conclusions from both the NRC (1999) and NORC (1999) studies are considered: "Men are more likely to be pathological, problem, or at-risk gamblers than women." "Pathological, problem, and at-risk gambling was proportionally higher among African Americans than other ethnic groups." "High levels of other addictive behavior have been found among problem and pathological gamblers, especially regarding drugs and alcohol. For example, estimates of the incidence of substance abuse among pathological gamblers ranges from 25 to 63 percent. Individuals admitted to chemical dependence treatment programs are three to six times more likely to be problem gamblers than are people from the general population."

**County Comment on Response 1-124:** The BIA's response acknowledges recent findings that several sectors of the affected communities are especially "at-risk" to incidences of problem gambling. However, the section on the Potential Social Costs Associated with Problem Gambling (FEIS pages 4.7-6 and 7) is still lacking: the analysis does not recognize the proportionally greater impact of casino spending to those lower income customers who can least afford it, who live closest to the project and already have limited alternative entertainment opportunities.

The FEIS relies on statewide statistics, based on casinos located primarily in rural areas, with limited access. (“...the number of problem gamers in California has risen from 0.8% to 1.3%, or by 0.5% since 1993 when casino gaming was relatively rare in California.”) The proposed casino will be very accessible to a low-income, high-risk minority population. Discussion should be expanded regarding the socio-economic and high-risk status of the population in the communities in proximity to the casino project, and base the analysis on those local characteristics, taking into account the ease of access (walking distance from North Richmond). The needed additional analysis may increase the estimated number of future problem gamblers needing/seeking treatment. In addition, the analysis should consider the issues of convenience-versus-tourism gambling.

***More recent studies showing a link between casinos and problem and pathological gambling and other public-health issues should be incorporated into the EIS (DEIS Comment 1-125)*** – Since 1999, more recent studies have been conducted that show the correlation between casinos in a community and an increase in the number of persons suffering from problem and pathological gambling. Some of these include “Gambling Participation in the U.S. – Results from a National Survey” by John Welte, Ph.D. in the *Journal of Gambling Studies* (Winter, 2002); “The Relationship of Ecological and Geographic Factors to Gambling Behavior and Pathology” by Welte, et al. in the *Journal of Gambling Studies* (Winter 2004); and *A Review of Research on Aspects of Problem Gambling*, a study published in October 2004 for the Responsibility in Gambling Trust (RIGT).

Dr. Welte's 2002 study showed that the prevalence of problem gambling declined significantly as socioeconomic status increased. His study also revealed that African Americans, Hispanics and Asians were more likely to be problem gamblers than whites. Dr. Welte's 2004 study examined the effect of community disadvantages and gambling availability on gambling participation and pathology. The significant finding of this study is that the presence of a casino within ten miles of a respondent's home was positively related to problem and pathological gambling. Specifically, respondents to the survey who lived within ten miles of a casino had double the rate of problem and pathological gambling compared to those who did not (7.2 percent and 3.1 percent, respectively).

The 2004 study conducted by the RIGT found “... it can be anticipated that legislation and policies that significantly enhance access to electronic gaming machines, casino table games and other continuous gambling forms will generate increases in problem gambling and related flow-on costs to families and communities. Risk profiles are also likely to change, with disproportionate increases among women and some other population sectors including ethnic and new migrant minorities. Problem gambling may also move 'up market', becoming somewhat more evenly distributed throughout socioeconomic strata and age groups.”

While the NORC found that pathological gambling occurs less frequently among persons over age 65, a January 19, 2005 article in *USA Today* reported that nearly 11

percent of a study's participating senior citizens fit the researchers' criteria of "at-risk" gamblers - reporting that they placed more than \$100 on a bet, gambled more than they could afford to lose, or both.

Response to comment

1-125 The Welte (2002) study showed that the prevalence of problem gambling declined significantly as socioeconomic status increased. While this conclusion provides insight on problem gambling and demographics, it does not alter the conclusion of the social costs discussion in Section 3.7.4.

The Welte (2004) study found that the presence of a casino within ten miles of a respondent's home was positively related to problem and pathological gambling. Section 4.7.1 has been changed to calculate the expected number of problem gamblers located in Contra Costa County from the development of the Proposed Action. Further, mitigation is provided in Section 5.2.6 to ensure that the Tribe would provide an annual contribution to local organizations that address problem gambling issues, as well as compensate the county social services for a minimum of two licensed counselor positions. Refer to Response 1-13.

The RIGT (2004) study found" ... it can be anticipated that legislation and policies that significantly enhance access to electronic gaming machines, casino table games and other continuous gambling forms will generate increases in problem gambling and related flow-on costs to families and communities. Risk profiles are also likely to change, with disproportionate increases among women and some other population sectors including ethnic and new migrant minorities. Problem gambling may also move 'up market', becoming somewhat more evenly distributed throughout socioeconomic strata and age groups (Abbott et al., 2004; p.10)."

As discussed in Section 3.7.4, from the available studies there is no definitive conclusion of the link between gambling and crime, and casinos and problem gambling. For a discussion of the studies this EIS is based on and why, refer to Response 1-10. For a discussion of problem gambling generated from the proposed project and mitigation refer to Response 1-13.

**County Comment on Response 1-125:** See County Comment on Response 1-124. The Welte study should be referenced in the FEIS, since the BIA does not dispute its findings and it is more relevant to the circumstances of this casino project than the NGISC, NRC and NORC reports. The conclusion of the BIA in this response that "As discussed in Section 3.7.4, from the available studies there is no definitive conclusion of the link between gambling and crime, and casinos and problem gambling" is refuted by its own statement on FEIS pages 4.7-6 that is used as the basis for quantification of the impact of the casino on the increase in problem gamblers ("...the number of problem gamers in California has risen from 0.8% to 1.3%, or by 0.5% since 1993 when casino gaming was relatively rare in California.")

***No attempt to quantify problem or pathological gambling impact of casino project (DEIS Comment 1-126)*** – While the DEIS cited national figures on rates of problem or pathological gambling, it neither correlated those figures to the proposed casino project nor included any such discussion in the impact section. Both are needed, using data more recent than the 1999 studies cited.

Note however, even using the 1999 rates estimated by NORC and NRC and using California Department of Finance population projections for 2005 by age, the number of

adult problem and pathological gamblers (persons aged 20 and over) in California would range from 1 million to 1.7 million adults, depending on which source is used. The same calculation for Contra Costa County results in a range of 29,700 to 48,200, depending on which source is used. This accounts for 3 percent to 5 percent of the total population in Contra Costa County.

According to the California Council on Problem Gambling, a non-profit organization dedicated to helping problem gamblers, 3,400 Californians called the organization's gambling help line in 2004, which represented a 21 percent increase from 2003. Callers were nearly evenly split between male (52.7 percent) and female (47.3 percent) and the majority of callers were between the ages of 26 to 55 years of age.

Another indication of the importance of understanding the prevalence of problem and pathological gambling in California is a \$2 million study being conducted by the State of California's Office of Problem Gambling. The goal of the study is to understand and quantify gambling's impact on California. The study is expected to be completed in 2007.

Response to comment

1-126 Section 4.7.1 has been changed to calculate the expected number of problem gamblers located in Contra Costa County from the development of the Proposed Action. Refer to Response 1-13.

**County Comment on Response 1-126:** The FEIS, page 4.7-7 calculates that the proposed casino could increase the number of problem gamblers in Contra Costa County by approximately 3,525 persons, based on the County's overall population, an estimated 28,205 (4%) who are currently problem gamblers, with an projected increase of .5%. Again, this estimate should be adjusted upward to account for local conditions.

The FEIS then estimates the need for two additional licensed counselors to treat these new problem gamblers, based on the assumption that 3% will be "referred to treatment." The low referral rate begs the question of whether or not more should be treated and/or would seek treatment if affordable or required as a condition of public assistance. This issue needs to be addressed and accounted for in the analysis.

Again, the socio-economic characteristics of the local community and the vulnerability of its population to gambling addiction creates the need for a more meaningful and in-depth impact analysis in order for it to be adequate.

***Consequences of casino proximity and/or problem/pathological gambling need full review and analysis (DEIS Comment 1-127)*** – The DEIS acknowledges that "The gambler and his or her family may experience problems including involvement in crime, bankruptcy, divorce and domestic violence, and mental or physical health problems." The DEIS then dismisses these issues, with the statement: "Problem gambling often occurs with other behavioral and emotional problems that contribute to secondary issues, making correlation between problem gambling and secondary effects difficult."

Whether difficult to assess or not, the existence of the casino will result in increases in individual and societal pathologies. This issue is extremely important, not just because of the consequent demand for county services, but because of the resulting detriment to the community.

As repeatedly requested by the County, full review and analysis of the social costs associated with the proposed casino project should be incorporated in the EIS and include the issues and information listed below:

- *Mental Health* – The EIS should assess the increased demand on County mental health services by type of mental illness, severity and estimated recovery time, as a result of project patronage by an individual or by a family member, or due to proximity to the project.
- *Depression and Suicide* – The EIS should assess the increase in depression and suicides and their aftermath, including the impact on families.
- *Alcohol and Other Drugs* – The EIS should evaluate the extent to which illegal drug dealing and drug use will increase due to the presence of the casino project, as well as increases in alcohol consumption.
- *Domestic Violence* – The EIS should estimate the increase in domestic violence incidents involving project patrons and employees as well as resulting service demands (Sheriff's response, battered women's shelter services, child welfare services, court intervention, probation, etc.).
- *Child Abuse and Neglect* – The EIS should estimate the increases in child abuse and neglect due to a parent/guardian's absence due to patronage at the project and/or subsequent behavior toward children because of gambling losses or increased drinking.
- *Elder Abuse* – The EIS should estimate the increases in elder abuse, particularly fiduciary abuse, due to problem and/or pathological gambling.
- *CalWORKs and General Assistance* – The EIS should assess the number of individuals and families who would require CalWORKs or General Assistance as a result of loss of income due to gambling.
- *Truancy* – The EIS should estimate the number of children and youth who would skip school as a result of the project and assess the resulting juvenile delinquency and other negative behaviors.
- *Employment* – The EIS should estimate the number of persons who would become unemployed due to gambling, as well as those whose employment is lost due to the "substitution" effect noted in Section 4.7, Employment.

- *Divorce* – The EIS should assess the number of divorces that could be expected as a result of problem/pathological gambling and the consequent social costs of divorce, within the income ranges of expected patrons.
- *Criminal Activity* – The EIS should assess the nature, frequency and magnitude of criminal problems experienced in and around gambling, alcohol and entertainment facilities, such as the proposed project, including but not limited to fights, drunk in public, prostitution, cheating, robberies and fraud related issues.
- *Health Care and Health Care Access* – The EIS should estimate the increased demand for health care services by type of service due to traffic accidents, air quality deterioration, excessive alcohol and/or drug use, violence, etc. Contra Costa County currently provides health care access for all residents up to 300% of the poverty level in the County. The EIS should also estimate the number of individuals who would require County health care as compared to those who would require services under private coverage. A large influx of minimum wage workers without health insurance could severely impact access to health care in West County for all residents. The EIS should describe plans for providing health coverage to those who will be working at the casino.

Response to comment

1-127 Fully analyzing every social cost that may occur from gambling is outside the scope of this EIS. Section 3.7.4 provides a comprehensive overview of social costs from problem/pathological gambling.

**County Comment on Response 1-127:** The FEIS cannot be considered “adequate” with regard to identification of impacts or appropriate mitigation measures until it provides the required analysis. Otherwise, Contra Costa County will be forced to bear the very real costs of these social ills that result from the presence of the casino. In addition, as discussed in the County’s comments on the Purpose and Need for the project, “no detriment to the community” should be a purpose and need. Assessment of these social impacts is essential to determine the extent of detriment to the community.

***Consequences of casino proximity and/or problem/pathological gambling need full review and analysis (DEIS Comment 1-128):***

- ***Smoking*** – The DEIS on page 2-5 states smoking will be permitted within the casino, with non-smoking sections provided. The EIS should analyze the risk posed by employees’ and guests’ exposure to second-hand smoke. We could not find these health impacts addressed in the document. The DEIS should include a risk analysis to predict the morbidity/mortality rate due to second-hand smoke. This should be included in the discussion of the casino’s impact on public health and health-care costs.

At 16.2 percent, California's adult smoking rate is the second lowest in the nation (California Adult Tobacco Survey, 2003). Contra Costa's adult smoking rate is 13.7 percent, down from 19.4 percent in 1990 (California Tobacco Survey, 1990, 2002). This decrease of almost 30 percent in the adult smoking rate demonstrates how community norms regarding tobacco use have changed over the past two decades.

Smoking in the proposed casino presents a challenge to the norms California has worked hard to establish for its residents. According to Professor William Thompson of the University of Nevada, most urban casino patrons are local residents, except in Las Vegas. (*Urban Casinos: A Town Hall Meeting*, January 2005).

Local Contra Costa residents, whose smoking rates are low, will be exposed to pro-tobacco and pro-smoking behaviors. This, in turn, is likely to lead to an increase in smoking rates among casino patrons and, in turn, the County adult smoking rate. An increase in the smoking rate translates into increased health care costs to the County. It is known that the economic burden of smoking in California was \$15.8 billion dollars in 1999. That translated into \$228 million in direct medical costs for Contra Costa, \$459 per County resident (Max W., Rice D.P., Zhang X., Sung H.Y., Miller L., *The Cost of Smoking in California*, 1999, California State Department of Health Services, 2002). This cost is likely to increase if smoking rates in the County increase.

Exposure to second-hand smoke should also be examined in the EIS. Second-hand smoke contains a mixture of more than 4,000 chemicals, including more than 50 carcinogens. It is associated with an increased risk for lung cancer and coronary heart disease in non-smoking adults, and it is responsible for 38,000 deaths from these diseases each year (Centers for Disease Control, Second-hand Smoke Fact Sheet, 2004).

The Contra Costa County Tobacco Prevention Project has received complaints from workers at the existing Casino San Pablo who have developed respiratory illnesses since the casino became a tribal facility and smoking was allowed. These workers are worried about their health and their jobs; they have complained that they believe that calling in sick makes them vulnerable to being fired.

The following are some published facts about second-hand smoke in casinos:

- Smoky casinos contain up to 50 times more cancer-causing airborne particles than highways and city streets clogged with diesel trucks at rush hour. Cancer-causing particulates are virtually eliminated when indoor smoking bans are instituted (J. Repace, *Journal of Occupational and Environmental Medicine*, September, 2004).

- Regular exposure at work to second-hand smoke can cause a 91 percent increase in coronary heart disease (J. Repace, *Smoke-Free Casino Advocacy Guide*, American Indian Tobacco Education Partnership, April 2004).

Ventilation does not fully address the problems associated with exposure to second-hand smoke. There are no ventilation standards or technologies that can remove the carcinogens from second-hand smoke. At best, ventilation systems can address odor and haze. A number of scientific studies show that:

- Casino workers in a "well ventilated" casino had nicotine levels (metabolized nicotine) 300-600 percent higher than in other working workplaces during a work shift (D. Trout, J. Decker, et al., *Journal of Occupational and Environmental Medicine*, March 1998).
- "Designated 'no smoking areas' in Australian gaming clubs were found typically to provide a 50 percent reduction in exposure to second-hand smoke. The protection afforded is not comparable with that provided by prohibiting smoking on the premises." (T. Cains, S. Cannata, R. Poulos, et al., *Tobacco Control Journal*, 2004).

There is support for smoke-free tribal casinos in California. The California Department of Health Services reports that 91 percent of Californians surveyed said they would be more likely to visit American Indian casinos or would not change patronage if smoking were prohibited in casinos. Similarly, the American Indian Tobacco Education Partnership surveyed over 300 casino guests and workers around the state and found that over 80 percent prefer to work or play in a smoke-free environment.

- *Asthma* – Asthma is a chronic illness that can have serious health consequences for patients and their families. People with asthma have more frequent symptoms and asthma "attacks" if they are exposed to certain environmental "triggers." The establishment of the proposed casino will increase the amount of two primary environmental asthma triggers for both casino patrons and local residents: environmental tobacco smoke (ETS) and particulate matter (PM).

One of the primary environmental triggers for asthma is tobacco smoke. Tobacco smoke is known to cause asthma in otherwise healthy individuals. Conversely, reducing exposure to environmental tobacco smoke can also reduce asthma attacks. New asthma cases and asthma attacks requiring emergency medical care can be anticipated if indoor smoking is allowed at the proposed casino project. This increased medical care will, in turn, result in an increase in County costs to treat asthma patients.

Increased traffic due to the casino will also increase incidences of asthma and other lung diseases. According to the American Lung Association, air pollution is

known to have serious health impacts including reductions in lung function, lung tissue damage, and aggravation of lung diseases such as emphysema, bronchitis and asthma. Emissions from motor vehicles, including particulate matter, contribute to poor air quality. High levels of particulate matter are known to increase asthma attacks and symptoms in both children and adults, and may be a contributing factor causing asthma in otherwise healthy individuals. Elevated levels of particulate matter also have been linked to lung cancer. In addition, they recently have been found to contribute to 6,500 premature deaths, and 350,000 asthma attacks, annually in California.

According to the Transportation and Land Use Coalition's 2004 Report, *Cleaning the Air, Growing Smarter*, air pollution problems hit disadvantaged Contra Costa communities the hardest. That report studied eleven low-income and minority communities in the County for air pollution levels and associated health impacts, including Richmond, San Pablo, and North Richmond. This study needs to be incorporated into the EIS analysis.

These communities bear a double burden of air pollution from a combination of both elevated industrial and transportation-related pollution. Not surprisingly, these communities have higher asthma hospitalization rates than the County average. In Richmond, for example, asthma hospitalization rates are two and half times higher than the rest of the County.

Response to comment

1-128 There are no federal requirements for controlling indoor air pollution or existing indoor air pollution thresholds for such indoor chemicals as environmental tobacco smoke (ETS). Therefore, there are no thresholds in which the BLA can analyze the impacts of smoking within the casino environment. However, the USEPA recognizes ETS as a human health hazard. Therefore, the FEIS has been updated to include a discussion on ETS, and mitigation has been included to reduce potential impacts from ETS to the extent possible.

In regards to pollution generated from traffic, air quality is discussed in Section 4.4 of the FEIS. Discussed there within, implementation of the project alternatives would not significantly impact air quality and therefore, as discussed in Section 4.11 of the FEIS, would not impact low-income and minority communities.

**County Comment on Response 1-128:** The indoor air quality mitigation measures do not equate to a prohibition on smoking within the casino. No reason is given on why it is necessary to allow smoking. The County has provided ample evidence of the detrimental effects and that there is support among likely patrons for smoke-free casinos. If smoking is allowed, then appropriate mitigations should be added to support public health prevention programs and to finance the added costs of treatment for asthma and other lung diseases.

In addition, as requested the FEIS needs to add an analysis of the impact of increased traffic on incidences of asthma and other lung diseases, as both a community impact

and one which will require mitigation for the increased costs of health care (for which the County is responsible).

**Conclusions on crime and bankruptcies incorrect (DEIS Comment 1-130)** – The DEIS argues that there is no connection between casinos and an increase in crime and a rise in bankruptcies. Again, the DEIS quotes the NGISC study that was conducted in 1999. Since then, more recent studies have shown a connection for both crime and bankruptcies. The studies should be reviewed and presented in the EIS, including but not limited to “Legalized Gambling and Crime in Canada” by F. Stephen Bridges, Ph.D. in the December 2004 issue of *Psychological Reports* and “The Impact of Casino Gambling on Bankruptcy Rates: A County Level Analysis” published in March 2004 by Ernie Gross, Ph.D., Visiting Scholar at the Congressional Business Office.

Finally, the DEIS ends its problem and pathological gambling analysis by quoting another report conducted by the National Public Sector Gaming Study Commission published in February 2000. It reports that it is inconclusive whether a casino in a community increases the prevalence of problem and pathological gambling. This is refuted by more recent studies. One of these studies was published in the 2004 Winter Edition of the *Journal of Gambling Studies* by John W. Welte, Ph.D. called “The Relationship of Ecological and Geographic Factors to Gambling Behavior and Pathology.”

The EIS should use these more recent studies in the analyses of crime and bankruptcies, and the consequent impact on the community and increase in the demand for County services.

Response to comment

1-130 Please refer to Response 1-10 for a discussion of why the discussion of the social costs of gambling casinos is based on the NGISC and NPSGSC studies.

The study by Bridges et al. (2004) referenced by the commenter found that, "In Canada in 2000, but not in 1990, the total number of types of gambling activities was positively associated with rates of robbery. Gambling types include scratch tickets, raffles, sports tickets, bingo, casinos, slot machines, video lottery terminals, electronic gaming machines, horse racing, and others."

As discussed in Section 3.7.4, from the available studies there is no definitive conclusion of the link between gambling and crime, and casinos and problem gambling. For a discussion of the studies this EIS is based on and why, refer to Response 1-10. For a discussion of problem gambling generated from the proposed project and mitigation refer to Response 1-13.

The study by Goss et al. (2004) referenced by the commenter was undertaken to estimate the effect of casinos on individual and business bankruptcy rates over the 1990s. The study compares casino counties with non-casino counties by matching similar counties according to U.S. Census region, household income, population, and population density. The analysis uses simple descriptive statistics and regression analysis to estimate the effect. Results from applying the analysis to U.S. bankruptcy data for 1990 and 1999 indicate that counties that legalized casinos during the period suffered individual bankruptcy rates more than 100 percent higher than other counties.

The social effects discussion in Section 3.7.4 points out that while bankruptcy rates are commonly though

to increase within proximity to a casino, the U.S. Department of Treasury investigated the issue in 1999 and found "no connection between state bankruptcy rates and either the extent of or introduction of casino gaming." In addition, the NORC study concluded that bankruptcies were no more common in communities with casinos than in communities that do not have casinos.

For a discussion of Welte (2004) refer to Response 1-125.

**County Comment on Response 1-130:** BIA Response 1-10 incorrectly states that the NGISC and NPSGSC studies are the most recent research available. That is not correct, as detailed in County Comment 1-125. Also, as detailed in County Comment on Response 1-125, the Welte study should be referenced in the FEIS, since the BIA does not dispute its findings and it is more relevant to the circumstances of this casino project than the NGISC, NRC, NPSGSC and NORC reports. Again, this casino project is located in a densely populated, high crime area with a high-risk population. The local circumstances, not generalized national statistics, need to guide the FEIS analysis of impacts.

***Proposed mitigations for social costs need justification (DEIS Comment 1-130) –*** In Section 4.7, the DEIS states that the Tribe will come to an agreement with Contra Costa County to establish an appropriate annual contribution to local organizations that address problem and pathological gambling. These mitigations are not part of Section 5, which we understand should list all proposed mitigations. The DEIS also states that the typical contribution is \$10,000 annually, but that “the Tribe has committed to contribute well in excess” of this amount. The amount referenced here should be stated. In addition, the methodology and calculation used to derive that figure should be clearly defined, as well as the proposed methodology for calculating mitigation of other social costs.

Response to comment

1-131 Section 4.7.1 has been changed to calculate the expected number of problem gamblers located in Contra Costa County from the development of the Proposed Action. To ensure appropriate compensation to Contra Costa County social services Section 5.2.6 has identified mitigation that the Tribe would provide an annual contribution to local organizations that address problem gambling issues, as well as compensate the county social services for a minimum of two licensed counselor positions. Refer to Response 1-13.

**County Comment on Response 1-131:** The FEIS added mitigation measure 5.2.6.F to address potential project-related social costs of problem gambling and provided a rationale to justify the amount. Although this mitigation measure provides additional treatment resources, the analysis does not validate the adequacy of the mitigation to fully address the future social and treatment costs. See County Comments on Responses 1-124 and 1-126.

***Surveillance Program should be part of assessment of social costs (DEIS Comment 1-132) –*** While numerous studies show a strong link between casinos and social issues, a concrete methodology for understanding the impact of a casino in a community is to establish a surveillance system that would track the various data.

Dr. Rachel Volberg is considered an expert in problem and pathological gambling and was one of the lead authors of the NORC report. Dr. Volberg suggests the following when considering such a program:

- Establish the tracking system before the casino is introduced to the community
- Capture baseline data for comparison purposes
- Maintain an integrated data base by a neutral party
- Contain a funding mechanism
- Be flexible
- Incorporate a process for disseminating the information
- Contain a research component

Dr. Volberg has indicated that if a tracking mechanism is created she would like to collaborate with Contra Costa County. To her knowledge tracking mechanisms are in place in both New Zealand and Australia.

The mitigation measures should include establishment of an on-going, comprehensive surveillance program.

Response to comment

1-132 The Tribe has agreed to provide on-site security to reduce and prevent criminal and civil incidents.

Additionally, the Tribe has an agreement with Contra Costa County for an annual contribution from the Tribe to local organizations that address problem gambling issues, as well as compensate the county social services for a minimum of two licensed counselor positions. Other mitigation measures include training management and staff to develop strategies for recognizing and addressing customers based on their gambling behavior. Refer to Section 5.2.6 for problem gambling mitigation measures. However, using surveillance to collect data would intrude on the privacy of patrons and potentially conflict with their civil liberties.

**County Comment on Response 1-132:** The County's recommended approach to assessing social impacts recognizes the lack of existing research at the level of detail necessary for assessment of social impacts of the proposed casino, limitations of existing limited statistical data and the consequent uncertainty of the magnitude of future project-related social costs. The BIA acknowledges this as well, in their Response to Comment 1-125: "As discussed in Section 3.7.4, from the available studies there is no *definitive conclusion* of the link between gambling and crime, and casinos and problem gambling." (emphasis added)

It seems appropriate that more proactive and adaptive management approach to assessing and determining mitigation measures should be used in the effort to reduce the social costs. Response 1-132 dismisses the proposed approach from consideration based on unspecified privacy and civil liberty concerns. Since both New Zealand and Australia have similar programs, it is likely that these issues could be adequately addressed in the design of the research and referral program.

Periodic reassessment of incurred local problem gambling and other related social costs could also be used to adjust the extent of the project's mitigation to ensure that future tribal funding adequately matches future service requirements.

*Proposed mitigation strategies on social costs of gambling not sufficient (DEIS Comment 1-33)* – The mitigations proposed in the DEIS are limited in scope and insufficient. Mitigations should be identified that address each of the social issues raised by the County and also include a prevention program to stop people from becoming problem and pathological gamblers.

Raising public awareness of the risks of excessive gambling, expanding services for problem gamblers and strengthening regulatory, industry and public health harm reduction measures can counteract some adverse effects from increased availability, according to the authors of *A Review of Research on Aspects of Problem Gambling, Final Report*, Auckland University of Technology, Gambling Research Centre, prepared for Responsibility in Gambling Trust, October 2004.

From a public health perspective, individuals who experience gambling-related difficulties, but would not meet a psychiatric diagnosis for pathological gambling are of as much concern as pathological gamblers because they represent a much larger proportion of the population. There is a possibility that their gambling-related difficulties may become more severe over time and there is also the likelihood that their gambling can be more easily influenced by changes in social attitudes and public awareness.

A problem and pathological gambling prevention program would include a public-health education community outreach program with staff and outreach programs. One model to follow in creating the program is the anti-smoking prevention program.

Response to comment

1-133 Section 4.7.1 has been changed to calculate the expected number of problem gamblers located in Contra Costa County from the development of the Proposed Action. To ensure appropriate compensation to Contra Costa County social services Section 5.2.6 has identified mitigation that the Tribe would provide an annual contribution to local organizations that address problem gambling issues, as well as compensate the county social services for a minimum of two licensed counselor positions. Refer to Response 1-13.

**County Comment on Response 1-133:** The BIA's response does not acknowledge the obligation of the Tribe to adopt mitigation measures to *prevent* problem and pathological gambling. There is long standing precedence for such an approach: witness the anti-smoking public awareness programs sponsored by tobacco companies. The BIA provides no rationale for not adding this a very reasonable recommendation as a mitigation measure.

## Land Use - 3.8.2 and 4.8 et al

*Definition of P-1 zoning should be corrected (DEIS Comment 1-164)* – In the Land Use section of the DEIS on page 3.8-28, in the section entitled "Project Site," there are numerous erroneous references to the County's zoning in the project area. The consultants should contact Maureen Toms of the Redevelopment Agency at (925) 335-7230 to obtain correct information.

The BIA's response was:

1-164 Comments 1-164 through 1-176, with minor exceptions, are reiterated from a letter submitted by Contra Costa County Administrator Sara M. Hoffman (dated May 10, 2005), which provided comments on the Administrative DEIS (March 2005). These comments have been addressed in the Draft and Final EIS. Changes made to the EIS are summarized in the following responses.

The definition of the P-1 zone has been expanded to include additional language from the Contra Costa County Code.

**County Comment on Response 1-164:** Please see County Comments on Responses 1-164 through 1-177, below.

***Development guideline description for P-1 Zone is misleading (DEIS Comment 1-165)*** – On page 3.8-38, in the section entitled “Contra Costa County Code Title 8: Zoning,” the description given for the P-1 zoning designation is incomplete and misleading. This zoning allows certain uses by right, some uses are allowed with an administrative permit, others with a land use permit, and some are prohibited. Because the General Plan land use designation for the proposed casino site (and the adjacent area) is Heavy Industrial, casinos or gaming facilities are not a permitted use. In point of fact, the County has no General Plan land use category that would permit a casino as described in the DEIS. The consultants should contact County staff to obtain a complete and accurate description.

The BIA's response was:

1-165 As noted in Response 1-164, the definition of the P-1 zone has been expanded to include additional language from the Contra Costa County Code. Section 4.8 of the EIS identifies that the development of the proposed alternative land uses would not be consistent with the Contra Costa County General Plan designation. It should be noted that if the project site is taken into federal trust status, the Tribe would not be required to obtain land use permits from Contra Costa County.

**County Comment on Response 1-165:** Please see County Comments on Responses 1-164 through 1-177, below.

***Many more General Plan goals and policies are applicable to the project (DEIS Comment 1-166)*** -- In Section 3.8 dealing with Resource Use Patterns, DEIS page 3.8-33 includes a table listing “applicable” policies and goals from the Contra Costa County General Plan that relate to the project. The County's General Plan includes many more policies and goals that apply to the project, not just the few that are shown in Table 3.8-6. The EIS should include an analysis of all policies and goals in the General Plan. If it does not, then there should be an explanation/justification of why these policies and goals were selected and not others.

The BIA's response was:

1-166 The EIS evaluates consistency with Contra Costa County General Plan goals and policies that are applicable to the type of development proposed and the General Plan designation of the project site. Providing an analysis of the project's consistency with all of the General Plan goals and policies would not be reasonable, appropriate, or useful.

Definition of what is considered to be an applicable goal or policy has been added to Section 4.8 of the EIS.

**County Comment on Response 1-166:** Please see County Comments on Responses 1-164 through 1-177, below.

*Redevelopment Plan for the North Richmond Redevelopment Project Area incomplete (DEIS Comment 1-168)* – The summary of the North Richmond Redevelopment Plan (p. 3.8-38) is accurate as far as it goes. The Redevelopment Plan also contains a land use element, which incorporates by reference the County’s General Plan and implementing ordinances. As a result, the proposed project is inconsistent with the Redevelopment Plan. The Redevelopment Plan also provides for tax increment financing, with which the proposed project is inconsistent (see comments on Section 4.7-1).

The BIA’s response was:

1-167 Section 4.8 of the EIS identifies that because the project site is designated as Heavy Industrial by the County General Plan, development of the proposed nonindustrial land uses would be inconsistent with the land use designation of the project site adopted by the North Richmond Redevelopment Plan. Fiscal impacts to the Redevelopment Agency are addressed in Responses 1-119 through 1-122.

**County Comment on Response 1-168:** Please see County Comments on Responses 1-164 through 1-177, below.

*DEIS fails to recognize inconsistency between the project and General Plan land use designation (DEIS Comment 1-169)* – On page 4.8-16, the DEIS states the proposed project’s land uses (casino, parking facilities, detention basin) would “generally be consistent with the County General Plan and the redevelopment goals envisioned for the North Richmond area.” The proposed uses actually are inconsistent with the County General Plan policies for the area

The BIA’s response was:

1-169 Section 4.8 of the EIS has been modified to note inconsistencies of the project with the County General Plan.

**County Comment on Response 1-168:** Please see County Comments on Responses 1-164 through 1-177, below.

***Table 4.8-5 contains a number of errors and unsupported statements. The following are some examples:***

- Policies 3-30 to 3.32 relate to “Business and Employment Uses,” not “Community Identity and Urban Design” Discussion under Section 3-31. (*DEIS Comment 1-170*)

- Any discussion under Community Identity/Urban Design needs to be factual. The Proposed Action and Alternatives would redevelop the site with land uses that conflict with the Heavy Industry land use designation of the General Plan. Development of casinos, adult entertainment or shopping malls is not allowed in Heavy Industry areas. The potential for the Proposed Action and Alternatives to spur similar development or support services such as hotels on surrounding Heavy Industrial lands would further worsen land use conflicts with adjacent parcels and detract from the community's appearance as currently planned. "Cultural activities" included in the Proposed Action are not an allowed use on lands designated for Heavy Industry. The Alternatives that accommodate retail and office uses have no relation to the General Plan's goal for retaining, enhancing and diversifying the cultural activities available to the County. Furthermore, the Proposed Action and Alternatives are under no obligation to comply with local requirements for design review, which were developed to support community identity and urban design goals. . *(DEIS Comment 1-171)*
- The discussion of policies related to business and employment uses is also not factual. The Proposed Action and Alternatives would conflict with existing and planned uses for this employment center and would make it more difficult to retain and expand the jobs provided by Heavy Industry. The Proposed Action and Alternatives would provide a new regional commercial attraction to the area that is not accommodated by the General Plan for this area. The Heavy Industry that exists and is planned for the area would not realize customers from the Proposed Action and Alternatives. No information is available to show that the Proposed Action and Alternatives would generate better employment opportunities for neighboring communities than the employment uses that exist or are planned for the area. . *(DEIS Comment 1-172)*
- The DEIS makes a finding of consistency with the policies of the North Richmond area due to the fact the Proposed Action and Alternatives will redevelop the project site and encourage redevelopment of adjacent land uses. The DEIS fails to acknowledge that a key factor in designating an area as blighted is whether adjacent or nearby uses are incompatible with each other and would prevent the economic development of those parcels or other portions of the project area. The Proposed Action and Alternatives contribute to blight by introducing uses that would conflict with the land uses that exists or are planned for the area. The goal of the Redevelopment Agency is to encourage implementation of the adopted General Plan for the project area. The Proposed Action and Alternatives conflict with the General Plan and therefore conflict with the goals of the Redevelopment Agency. . *(DEIS Comment 1-173)*

The BIA's responses were:

1-170 The commenter refers to statements which are contained in DEIS Table 4.8-6 (relating to land use), not Table 4.8-5 (relating to traffic). Table 4.8-6 has been corrected in the FEIS.

1-171 The comment is noted and made part of the administrative record. Section 4.8 of the EIS has been modified to note inconsistencies of the Proposed Action and alternatives with the County General Plan.

1-172 The comment is noted and made part of the administrative record. Table 4.8-6 of the EIS has been modified to

note inconsistencies of the Proposed Action and alternatives with the County General Plan. Specifically the analysis of Policy 3-31 has been revised to indicate that while the Proposed Action and alternatives would provide a new regional commercial attraction to the area, the development of any of the alternatives would be inconsistent with the County General Plan industrial designation for the project site and the existing and planned adjacent land uses in the area.

- 1-173 The comment is noted and made part of the administrative record. Section 4.8 of the EIS has been modified to note inconsistencies of the Proposed Action and alternatives with the County General Plan for the North Richmond area.

**County Comment on Response 1-173:** Please see County Comments on Responses 1-164 through 1-177, below.

**Section 4.8.1 Land use (p. 4.8-13) (DEIS Comment 1-174)** – Table 4.8-5 suggests that the proposed Project is consistent with the North Richmond Redevelopment Plan. It is not. See earlier comment on Redevelopment Plan under Section 3.8. The comment applies to Alternatives B, C, & D as well. (note: reference is now on FEIS page 4.8-17 and is labeled Table 4.8.6)

The BIA's response was:

- 1-174 The comment is noted and made part of the administrative record. Section 4.8 of the EIS has been modified to note inconsistencies of the Proposed Action and alternatives with the North Richmond Redevelopment Plan.

**County Comment on Response 1-174:** Please see County Comments on Responses 1-164 through 1-177, below.

**Proposed project inconsistent with Contra Costa County Code Title 8: Zoning (DEIS Comment 1-175)** – The North Richmond area is zoned entirely Planned Unit District, or P-1. This zoning category automatically conforms to the General Plan. The proposal is inconsistent with the General Plan and therefore is inconsistent with the area zoning.

The BIA's response was:

- 1-175 The comment is noted and made part of the administrative record. Section 4.8 of the EIS has been modified to note inconsistencies of the Proposed Action and alternatives with the County Zoning Ordinance.

**County Comment on Response 1-175:** Please see County Comments on Responses 1-164 through 1-177, below.

**Section 4.8.1 – Consistency with Contra Costa County Zoning Ordinance: Title 8 (DEIS Comment 1-176)** – The DEIS correctly states that the Tribe has ultimate approval authority over land use on tribal land, but goes on to say that the Tribe will provide the County with the opportunity to provide input, thereby mitigating the community impact to less than significant. The opportunity to provide “input” is qualitatively different (and less) than having land use approval authority. If the Tribe is genuine in its stated intent to follow local land use policies, it will agree to a permitting

system that will provide the County with approval authority. The comment applies to Alternatives B, C, & D as well.

The BIA's response was:

1-176 Section 4.8 of the EIS has been modified eliminate the "less than significant" conclusions previously provided for Alternatives B, C and D. The BIA recognizes that while the Tribe has indicated that they will work in good faith to address the County's concerns, the County would not have approval authority over the project, and as a result would not be able to place conditions on the project to ensure the County's concerns are addressed.

**County Comment on Response 1-176:** Please see County Comments on Responses 1-164 through 1-177, below.

***Land Use – Affected Environment (p. 4.12 –32) (DEIS Comment 1-177)*** – The list of cumulative land use impacts is incomplete. The removal of property from the County tax rolls has both immediate and near term impacts on the County Redevelopment Agency, and longer term impacts on the County and all taxing entities. The absence of sales tax collection also results in lost opportunity costs to the area jurisdictions to the extent spending that occurs at the casino diverts taxable sales from these other localities.

The proposed development also creates an impediment to the County Redevelopment Plan achieving its goals (see particulars in comments in Section 4.7-1).

The BIA's response was:

1-177 Please see Responses 1-108 and 1-189.

**County Comments on Responses 1-164 through 1-177:** The text of the FEIS has been revised to reflect the inconsistency of the project with local land use plans. However, the significance of this change is not discussed, as required under NEPA, and this impact is not acknowledged as a significant issue in the Executive Summary (either under Areas of Controversy or in Table ES-1, Summary of Potential Environmental Effects, Mitigation Measures and Significance). On page 4.8-22, under "Effects to Project Area," the FEIS states that the "environmental effects of this change are discussed in the technical sections of this EIS." However, it appears the potential land use conflicts are not discussed in air quality, noise, visual impacts, hazardous materials, or community character. In particular, the presence of either a casino facility (Alternatives A, B, and C) or office/commercial (alternatives C and D), would present potential nuisance effects related to air emissions, noise, and hazardous materials with existing and future industrial uses. Existing and proposed industrial uses may be curtailed by the presence of sensitive receptors within the industrial area. It is exactly these conflicts which the relevant local land use plans are designed to prevent.

In revising Table 4.8.6, it does not appear Policy 3D was re-evaluated in light of other text changes (describing the proposed alternatives as inconsistent with local land use policies). Policy 3D provides for a range of land uses. By developing industrial land for non-industrial uses, the proposed alternatives reduce available industrially designated land, which could create demand for general plan amendments and rezoning elsewhere. [The statement, 'The Proposed Action and Alternatives will be consistent with the Redevelopment Plan for the North Richmond Redevelopment Area,' was removed although the table continues to show that the Proposed Action is consistent with Policy 3D. It should it be changed to "not consistent" with the policy]

In the cumulative impact analysis, on page 4.12-33, the FEIS states that a cumulative land use impact could occur due to conflicts with existing land uses or preclusion of planned land uses. The proposed alternatives, as discussed in the FEIS, would have both of those effects. However, this is inexplicably found to be a less-than-significant impact. The statements on page 4.12-35 that the project is supportive of the Redevelopment Plan because it would redevelop property within the plan area and provide employment opportunities ignore the fact that the proposed uses are inconsistent with the land use element of the General Plan (of which the Redevelopment Plan is an implementing plan). On the same page, the statement is made that the project could create incentives to develop nearby properties with commercial uses and that this is not an adverse effect. This statement again ignores the underlying conflicts with the General Plan and the ripple effects this change in land use patterns could have throughout the Redevelopment Area and the General Plan Area (i.e., Contra Costa County).

## Transportation - 3.8 and 4.8 et al

*Trip generation methodology inadequate (DEIS Comment 1-139)*– The DEIS uses trip generation rates derived from non-urban casinos as the basis for its trip generation estimates, despite the County's earlier comment that urban casinos should be used as the basis for trip-generation rates. To our knowledge, none of the surveyed facilities are in the center of a major metropolitan area, which will very likely generate more frequent trips of a shorter duration from the immediate vicinity as compared to more isolated non-urban gaming operations. No information is provided on the number of slot machines at these locations to compare with the proposed project.

### **BIA's Response 1-139 was:**

"The methodology used for this project is based on surveys of casinos in both rural and urban areas and was checked for reasonableness against other available data. The DEIS includes text listing the casinos that are used in the *lone Casino-Hotel Traffic Study Scoping Letter* prepared for the U.S. Bureau of Indian Affairs (February 2004). In addition to referencing data from the *Environmental Assessment for the United Auburn Indian Community of the Auburn Rancheria*, the traffic study used six casino studies, including two area-wide casino studies to establish trip generation rates. These casinos include the Pechanga Casino-Hotel, Barona Indian Gaming Casino, Shingle Springs Rancheria Hotel-Casino, Mystic Lake Casino, and two unidentified casinos. The area-wide surveys used are the San Diego County Casino Study and the

Mississippi Gulf Coast Casino Study. The DEIS uses previously published rates that were approved by the U.S. Bureau of Indian Affairs.”

**County Comment on Response 1-139:** The BIA fails to address the substance of the County’s comment, which is consistent with the comments of others<sup>3</sup>, that superior trip generation information is available and would provide a more relevant analysis. The traffic study used trip generation rates that include rural data<sup>4</sup> and inferior methodology (seats rather than revenue).

The response is incomplete. The response does not explain that the composite rural/urban data is the same as urban-only data. It merely restates the phrase on page 4.8-2 that “*appropriate trip generation data provided in the...lone Casino-Hotel Traffic Study Scoping Letter.*” The lone Casino is proposed to be built within an entirely rural county of 35,000 people, located approximately 60 miles southeast of Sacramento, and partially within the City of Plymouth with a population of 900. It is absurd to rely on a model based on this rural project to make any conclusions regarding an urban casino. A more relevant estimate could have been derived from the traffic studies associated with Casino San Pablo.

The fact that these trip generation rates may have been used in other projects does not mean that that use was appropriate for other projects or that it is appropriate for the unique circumstances of this project. Page 34 of the traffic study in the EIS (Appendix K) refers to a summary of trip generation rates from BIA documents “*in the appendix (Tables A-1 through A-3) for the weekday AM and PM peak hours as well as the Saturday peak hour.*” The locations of these facilities are not comparable to the proposed project. The locations are either planned casinos, rural, on the periphery of urban areas or “*unknown.*” These irrelevant locations provide irrelevant conclusions regarding weekend trip generation characteristics. Casino in locations removed from the center of metropolitan area are more difficult for customers to reach, and are more heavily used during weekends when more free time is available for customers to make the long trip to the casino. By comparison, the location of the proposed project will be a short trip for millions of customers. Given that the trip generation rates are the basis for which almost all other transportation impacts are quantified, **the flawed rates used in the FEIS vastly understate the effect of virtually all other traffic/transportation impacts. The negative effect this has on the accuracy of every transportation related impact cannot be understated. It is a fatal flaw that renders the FEIS inadequate under NEPA guidelines.**

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<sup>3</sup> COMMENT LETTER #33: WCCTAC: 33-1: Trip Generation Rates: The response to the assertion by WCCTAC that trip generation rates may be too low, “...there is supporting data and other research to back up the trip generation rates that were used in the analysis”, omits information provided by the County confirming WCCTAC’s assertion. County comments 1-139 & 1-140, establish that more accurate, relevant and readily available data and studies would result in “...trip generation estimates that are fifty to one hundred percent greater than those in the DEIS”.

<sup>4</sup> The basis for this comment is partially affirmed by the project sponsor’s own assertion that revenue would be higher in an urban location rather than in Lake County.

On Table 4.8-7 for Alternative B, it shows the average daily trips measured at 5,900 and the project generated traffic is shown in subsequent pages as such. However, it is stated above the table that “Alternative B is expected to generate 14,000 trips weekday.” The table should be corrected to consistently reflect the number of projected generated traffic.

Figure 14 of Appendix K in the FEIS is not properly explained. The sum of all percentages on Figure 14 exceeds 100. The total percentages should add up to 100%. Documents such as this confuse the reader rather than inform them.

*Trip generation assumptions (DEIS Comment 1-140)*-- The EIS should show how its trip generation assumptions are consistent with the revenue estimates generated by the project, since they are both directly related to the number of patrons visiting the casino. Research has been performed on a revenue-based model for casino trip generation which could be applied to the Scotts Valley proposal. The technical details on this are available from staff of the West Contra Costa Transportation Advisory Committee (WCCTAC). This type of model – which would be calibrated in this instance using revenue estimates from the Lytton casino proposal in San Pablo -- could result in trip generation estimates that are fifty percent to one hundred percent greater than those in the DEIS.

**BIA’s Response 1-140 was:**

“This traffic study and the trip generation assumptions were prepared based on Contra Costa Transportation Authority (CCT A) Technical Procedures and the California Department of Transportation's Guide to the Preparation of Traffic Impact Studies. The calculation of trip generation is based on square footage of gaming area, as supported by the methodology discussed in Section 4.8 and the Traffic Impact Study. Revenue projections are based on similar assumptions including facility size and location and in this respect traffic assumption are consistent with revenue projections.”

**County Comment on Response 1-140:** The BIA claims that the trip generation assumptions are consistent with revenue projections used in this study, but no comparison is provided of the gaming revenue generated by the projects that were used for trip generation. Response 140 claims that the project revenues are based on facilities of similar size and location, but none of the facilities specified are in operation in the center of a major metropolitan area.

The FEIS states that the preferred project would generate 14,000 daily trips based on the lone Traffic Study which based the generation rate per casino size. A revenue-based model that was used by consultants for WCCTAC weighed additional factors such as driving times to casinos, income demographics, age demographics, and seasonal population patterns of each zip code. This model forecasts 2011 gaming revenues and gaming visitor counts, resulting in an estimated 24,000 daily trips generated by the proposed project. Clearly, the FEIS has failed to adequately address the traffic impacts in a major metropolitan area such as the Bay Area.

The table below further quantifies the degree to which the trip generation figures were understated in the EIS. The PM peak is **understated by more than half** according to

the WCCTAC Urban Casino Study<sup>5</sup>. Again, given that virtually all other transportation related impacts are quantified using the trip generation figures, this understatement is propagated throughout the entire analysis of transportation related impacts.

**Trip Generation for Scotts Valley Casino**

	AM Peak Hour	PM Peak Hour
Scotts Valley EIS	441	932
WCCTAC Urban Casino Study	772	1897
% Difference	<b>75%</b>	<b>104%</b>

At a minimum, the EIS should provide a comparison table of the facilities evaluated for the trip generation rate. This comparison table should indicate:

- name of the city or community where the project is located;
- distance of this location from the principal city in the nearest Metropolitan Statistical Area;
- total building square footage;
- square footage for gaming area;
- square footage for other entertainment;
- number of hotel rooms;
- number of slots; and
- annual gaming revenue generation.

The EIS does not adequately justify the adequacy of its trip generation analysis. The EIS does not refute the trips generation analysis offered by the commenter’s. Without using the data and methodology identified by the county and others, the FEIS fails to use the best available information and is inadequate. The transportation information provided in the FEIS conceals the true transportation impacts of the project and diminishes the project sponsor’s responsibility for fair share of the cost of mitigation measures.

*The DEIS doesn’t adequately cover specific topics requested by Contra Costa County during the scoping sessions, in meetings and in other comments (DEIS Comment 1-141) – The County specifically asked that the EIS analyze the potential for conflicts between casino traffic and the truck traffic that uses Parr Blvd.; the degree to which casino traffic would cause trucks to avoid Parr Blvd. and divert onto other local roads through residential areas; impacts of the casino project on bicycle and pedestrian safety, particularly in regard to our pedestrian improvement projects along Third Street in North Richmond; safety and congestion impacts of casino traffic at the numerous railroad crossings in the general area; and impacts of casino traffic on roadway*

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<sup>5</sup> FINAL REPORT – Phased Transportation Study for Proposed Urban Casinos in West Contra Costa County, December 2007. (While this study was completed at the end of 2007 the data on which it was based was available at the time the Scotts Valley Traffic Study was complete.)

deterioration and the resulting need for increased road maintenance. In some cases, the DEIS doesn't address items, in others it fails to provide adequate analysis or explanation. Unless the EIS corrects these deficiencies, the document cannot be considered complete or adequate, in the professional judgment of County staff.

**BIA's Response 1-134 was:**

Refer to Response 1-26 regarding project impacts on truck traffic. General road maintenance was included in the effects to local jurisdictions in Section 4.7.

Impacts to safety of bicycle and pedestrian facilities were evaluated in Section 4.8; the project does not uniquely affect an existing bicycle or pedestrian network. The project site is in an industrial area that has limited pedestrian and bicycle facilities; however, the project would, to the extent feasible, incorporate pedestrian and bicycle friendly facilities. The Tribe has also agreed in the MSA with the City of Richmond to contribute to several pedestrian, bicycle and transit improvements in the vicinity of the project. These commitments include: contributing a proportionate share to the second phase of the Richmond Parkway Transit Center Parking and Access Improvements, providing a shuttle service from the Richmond Parkway Transit Center to the project, providing a shuttle from the Richmond BART Station to the project, providing sidewalks along the projects' Parr Boulevard frontage, providing bicycle racks at the project, and providing striping to establish a Class II bike lane in connection with the street improvements on Goodrick Avenue between Parr Boulevard and Richmond Parkway.

Regarding safety and congestion impacts of casino traffic at railroad crossings, the trains that operate in this area are related to the area's industrial uses and have a temporary impact on traffic. It is noted in the EIS in Section 4.8, *"when trains cross over Parr Boulevard they create a backup of traffic as traffic waits until the train has gone through the intersection. This traffic backup would remain with the addition of project traffic and possibly worsen slightly during peak traffic periods."* The Federal Railroad Administration Office of Safety promotes and regulates safety throughout the Nation's railroad industry and is the federal agency with oversight on safety issues at railroad crossings. Crossings require traffic control devices including warning signs, crossbucks, pavement markings, bells, flashing lights, and/or gates. Federally required traffic controls aid in the safe operation of railroads despite fluctuations in the amount of traffic.

**County Comments to Response 1-134:** This response covers a number of issues in general which will be addressed issue by issue below.

The statement that *"impacts to safety of bicycle and pedestrian facilities were evaluated in Section 4.8"* (of the DEIS) is not accurate, as the DEIS does not address bicycle or pedestrian safety. The response states that the project does not uniquely affect an existing bicycle or pedestrian network. It states in the PFEIS on page 4.8-14 that *"the project is in an industrial area with limited pedestrian and bicycle facilities"* and *"...casino will not restrict access to, or preclude future development..."* The project description and mitigation measures do not include the provision for such facilities between adjoining neighborhoods and the project. It is true that the area currently has no significant generators of pedestrian and bicycle traffic. However, the proposed project would establish a worksite of up to 1,930 employees and provide thousands of square feet for gambling, eating and entertainment. Yet no estimate is made of the number of employees and customers who would bike or walk from the adjoining neighborhoods. No evaluation is made of how this bicycle and pedestrian traffic created by the proposed project will be safely accommodated in this area or be effectively served by the sidewalk proposed along Parr Boulevard or the Class II bike lanes proposed for Goodrick Avenue between Parr and the Richmond Parkway.

Furthermore, Response 1-134 states that the Proposed Action would, *“to the extent feasible, incorporate pedestrian and bicycle friendly facilities.”* It is unclear what the definition of “extent feasible” is and who would determine what is feasible or not. The EIS states that sidewalk improvements would be provided along the project’s frontage on Parr Blvd. and would stripe Goodrick Ave. between Parr Blvd. and Richmond Parkway with a Class II bike lane. Goodrick Ave. currently has narrow shoulders and does not appear to have adequate width for a Class II bike lane. The striping of a Class II bike lane without necessary road widening would bring the road and future Class II bike lane out of standard. Rather, the FEIS should provide for mitigations that require the project to *“provide necessary road widening and striping to establish a Class II bike lane in connection with the street improvements on Goodrick Avenue between Parr Boulevard and Richmond Parkway.”* The response also does not specifically address the project’s impact to pedestrian improvement projects along Third Street in North Richmond. This should be added in the FEIS.

The BIA mentions a Municipal Services Agreement (MSA) with Richmond to address mitigation. Since the project is within the County’s jurisdiction, one must assume that the mitigation measures will take place only within Richmond city limits. The FEIS does not demonstrate how the MSA would result in sufficient funding for mitigating off-site impacts, including completion of gaps in pedestrian and bicycle facilities between the project and adjoining neighborhoods.

On Page 3.8-1, the FEIS refers to Richmond Parkway as a major arterial and a Route of Regional Significance, which is correct. However, on Page 3.8-11, it refers to Richmond Parkway as a *“Basic Route in the Contra Costa County network...”* The second reference should be corrected to reflect the regional significance of this roadway.

Response 1-134 regarding truck traffic and diversion provides statements that assume the Proposed Action will not cause a significant impact, but fails to provide any technical analysis supporting these assumptions. The EIS does not even acknowledge the percent of traffic in the area comprised of truck or how these slow moving vehicles were accounted for in its evaluation of traffic congestion and level of service.

Response 1-134 also states that the project has an impact on traffic at at-grade railroad crossings and that the Federal Railroad Administration Office of Safety regulates safety. However, the FEIS fails to state what the project’s impact is to safety and congestion at these crossings and whether or not mitigations are required to improve safety as a result of this increase of congestion.

Response 1-134 refers to Section 4.7 for the project’s impacts on road pavement condition. This section only touches upon this issue and does not provide evidence of the impacts this Proposed Action has on existing roadways. This section states that *“an estimate of the magnitude of the increased cost of these services (in this case road maintenance) is required to balance against the expected increase revenue to government from direct and indirect taxes and in-lieu tax payments”* but does not

attempt to estimate this cost for road maintenance nor does it attempt to compare the cost to expected revenues.

*Impact of Railroad Crossings needs examination (DEIS Comment 1-135)* – Two heavily used sets of railroad tracks are located less than a mile east of the project site with numerous at-grade street crossings throughout the area. These tracks carry numerous freight trains that are more than a mile long on a daily basis, in addition to passenger trains. The casino project could exacerbate congestion and safety issues at these railroad crossings. The most direct route between the project and the Lytton San Pablo Casino is via Parr Boulevard which crosses these tracks at grade.

While this issue is partially addressed on pages 4.8-12 to 14, the analysis is incomplete. It cannot be assumed that travelers will be familiar with the area, enough to *“know back roads to connect to various destinations....”* Casino visitors and those who use the Richmond Parkway as a through fare between I-80 and the San Rafael Bridge will not have such knowledge. The DEIS concludes that the *“safety of traffic and trains would not worsen with the added traffic.”* This conclusion is not supported by any data within the document and so should be deleted.

**BIA’s Response 1-135 was:**

“Regarding safety and congestion impacts of casino traffic at railroad crossings see Response 1-134.”

**County Comment on Response 1-135:** The BIA repeats information from the DEIS describing the operational setting of railroad crossings as well as again providing safety related Federal Railroad Administration requirements. The response establishes no relationship between the information provided in Comment 1-135 or the project, and does not provide any new information subsequent to the DEIS. It is not responsive.

Over twenty trains pass through the area daily. At a minimum, an examination of how increased queue lengths (due to project traffic) would increase at the two heavily used grade crossings east of the project should be provided. If any methodology or data was used to make the assertion that *“...safety of traffic and trains would not be worsened with the added traffic,”* or *“this traffic backup would remain with the addition of project traffic and possibly worsen slightly during peak traffic periods,”* it was not provided contrary to CEQ regulations and should be deleted. This response fails to acknowledge that the project will be responsible, in part, for generating the additional traffic that will increase the likelihood of dangerous behavior by customers waiting for trains to pass as they go to and from the project. The conditions at these (currently) lightly traveled grade crossings will change with the project and the need for both traffic and safety mitigations will increase. The project sponsor must provide the requested analysis and provide appropriate mitigations; at a minimum at-grade crossing controls that are an enhancement to existing conditions should be identified.

*Analysis of truck traffic and traffic diversion should be broadened and rethought (DEIS Comment 1-136)* – The project site is located in an area that generates

significant truck traffic. These trucks move more slowly than passenger vehicles and require more road space than passenger vehicles. Introducing significant amounts of casino-related traffic creates the potential to divert truck traffic to other roads not suited to carry such traffic.

In regard to truck conflicts and possible diversion of trucks through neighborhoods, the DEIS on page 76 of Appendix K indicates that project mitigations will bring level-of-service (LOS) during peak periods to acceptable levels and therefore truckers won't be tempted to divert onto other routes through neighborhoods. The County has several concerns with this reasoning.

First, it only deals with the morning and afternoon peak hours. Increased automobile traffic, and conflicts with trucks, could lead truckers to divert through neighborhoods outside of peak hours. The issue of trucks and diversion is not confined to peak hours, and is not necessarily dependent upon peak-hour level of service.

Second, the DEIS provides no explanation as to why adequate LOS would ensure trucks wouldn't divert onto other routes. Page 4.8-12 states that *"the additional traffic as a result of the casino does not create unacceptable LOS at any of the study intersections with Alternative A in the 2006 condition. With acceptable LOS at the study intersection, especially those surrounding the project site, traffic conditions would not be of a level conducive to encourage any more trucks and buses to divert off intended routes, such as on Richmond Parkway, through local neighborhood to avoid traffic congestion than if the project were not constructed."* An increased amount of traffic on roads that have tight turns, inadequate shoulders, or other limitations, could encourage trucks to divert to other routes even if all of the study intersections and road segments technically have adequate level-of-service. It would have been helpful if the analysts contacted other jurisdictions that have casinos to determine if truck diversion has occurred; it also would have been helpful for the analysts to contact local businesses and trucking firms in the North Richmond area to obtain their insight into this issue. County staff remains concerned about the potential for diversion of trucks into residential neighborhoods to avoid casino traffic.

**BIA's Response 1-136 was:**

"Refer to Response 1-26 regarding impacts to truck traffic."

**County Comment on Response 1-136:** Response 1-136 is a reference to Response 1-26, which is non-responsive to the comment's request for broadened analysis (e.g., to analyze off-peak hours, and to contact other jurisdictions with casino to learn about their experiences with truck diversion). Furthermore, the EIS does not indicate if the LOS estimates it relies upon account for the percentage of slow-moving truck traffic that occurs in the area.

Another area of concern not addressed in the FEIS was the impact of the traffic on local businesses near the Casino site. Response 1-26 states that any increase in LOS would be mitigated through a proportionate share paid through the Tribe, yet does not provide

a complete analysis of LOS, nor does it describe any mitigations caused by the increase in LOS.

*Roadway deterioration and maintenance needs to be addressed (DEIS Comment 1-137)* – The County specifically asked in our earlier comments that the DEIS examine the project’s impacts on road condition and deterioration. We could find no mention of this issue in the DEIS. The EIS should examine the existing condition of roads that will be impacted by the casino and assess increased maintenance requirements. For the Richmond Parkway assessment, the City of Richmond should be contacted for information on construction standards used for the construction of Richmond Parkway, including those within the unincorporated area. The County Public Works Department can provide information on other roads within the unincorporated areas. The County remains very concerned about this issue since there is very limited public funding for road maintenance.

**BIA’s Response 1-137 was:**

General road maintenance was included in the effect to local jurisdictions in Section 4.7. While road deterioration in this area is largely attributable to truck traffic, the beneficial economic impacts would offset the additional costs of government services.

**County Comment on Response 1-137:** The comment requests that roadway deterioration and maintenance be addressed. The BIA’s response provides no background to how to deal with road maintenance, nor does it respond to the County’s comments. No information is provided that demonstrates increased revenues to the County government will be sufficient to off-set all impacts to County services, including a greater need for road maintenance expenditures. Instead, the BIA’s response relies upon a general statement: *“the beneficial economic impacts would offset the additional cost of government services.”* What are these *“beneficial economic impacts”*, in what form is this benefit presented to the County, what portion of this benefit addresses the issue of road maintenance, and how does the County, specifically the Public Works Department receive this benefit to offset the cost to maintain the existing road system?

The referenced Response 1-134, regarding the impacts of casino traffic on roadway deterioration and the resulting need for increased road maintenance, refers to Section 4.7 which only touches upon this issue and does not provide evidence of the impacts this Proposed Action has on existing roadways. This section states that *“an estimate of the magnitude of the increased cost of these services (in this case road maintenance) is required to balance against the expected increase revenue to government from direct and indirect taxes and in-lieu tax payments”* but does not attempt to estimate this cost for road maintenance nor does it attempt to compare the cost to expected revenues.

The EIS needs to correct these deficiencies of information and analysis.

*Bicycle and pedestrian issues should be addressed more fully (DEIS Comment 1-138) -*  
- The proposed project is located in an area that is not served by sidewalks, bike routes or buses (as noted in the DEIS). Many low-income residents of nearby neighborhoods do not have vehicles or driver's licenses and could not drive to the casino if employed there. The EIS needs to evaluate the impacts of introducing pedestrians and bicyclists into an area not built to serve such travel.

The DEIS dismisses this issue with the following statements: there is *"no clear method of improving roadways to better accommodate pedestrian and bicycle users"* and *"the casino would not restrict access to, or preclude future development of, bicycle or pedestrian facilities."*

Methods for improving roadways to better accommodate pedestrian and bicycle users can be found in the Federal Highway Administrations' Design Guidance for Accommodating Bicycle and Pedestrian Travel and the Manual on Uniform Traffic Control Devices (2003), Chapter 1000 of the Caltrans Highway Design Manual (2001), and the Contra Costa County Trail Design Resource Handbook (2001).

The EIS should address participation in providing adequate pedestrian and bicycle facilities beside those provided along the project's frontage. Mitigations should also indicate how the project will contribute toward completing relevant bicycle/pedestrian facilities such as trail gaps and the Richmond Parkway bikeway for example, as would be required of a private developer.

On Page 25 of Appendix K, the first sentence under the *"Bicycle, Pedestrian and Transit Access"* heading states that *"There are no sidewalks on most of the nearby streets in the vicinity of the project but it is assumed that the project will be required to complete sidewalks along the project frontage."* We have two comments on this sentence. First, it is unclear who has the authority to place such a requirement on the Tribe. The County has been informed repeatedly that we have no authority to impose any requirements. Second, since the sentence acknowledges a lack of sidewalks in the area, the DEIS mitigations should have included adequate shoulder areas, sidewalks and pedestrian crossings on all streets leading from the project site to nearby residential neighborhoods so any local residents who obtain jobs at the casino could access it safely on foot or on bicycle. These mitigations should be included in the EIS.

**BIA's Response 1-138 was:**

"Refer to Response 1-134 regarding impacts to safety of bicycle and pedestrian facilities and improvements discussed in the MSA. As the project is not expected to generate a significant number of bicycle trips it would not be required as mitigation to contribute to the Richmond Parkway bikeway or trail gaps; however, the Tribe will consider making contributions to pedestrian and bicycle improvements in the area. The project site is in an industrial area that has limited pedestrian and bicycle facilities; however, the project would, to the extent feasible, incorporate pedestrian and bicycle friendly facilities. AC Transit operates busses for patrons or employees that may not have vehicles."

**County Comment on Response 1-138:** The BIA's response contains errors of fact and fails to address the issue more fully as requested by the County in it's DEIS comment.

The response claims *“The project site is in an industrial area that has limited pedestrian and bicycle facilities.”* Contrary to this claim the project is directly adjacent to both existing and planned portions of the Bay Trail, a major recreational and non-motorized transportation facility that is currently 240 miles long and is planned to link the nine Bay Area counties and 47 cities, eventually totaling 400 miles. There is an entrance to the Bay Trail at the intersection of Richmond Parkway and Parr Boulevard, **approximately 200 feet from the edge of the project site.** Parr Boulevard west of the Richmond Parkway is a planned Bay Trail route.

The presence of this prominent facility/destination draws users continuously along the route, including in the vicinity of the planned project site. This occurs regardless of the lack of formal or designated non-motorized facilities and regardless of assertions in the EIS that *“the project is not expected to generate a significant number of bicycle trips.”*

Considering:

- the context described above (Bay Trail),
- the two proposed driveways from the project site onto Parr Boulevard (creation of conflict points), and
- the presence of substantial truck traffic,

provision of only a sidewalk to accommodate non-motorized uses along the Parr Boulevard frontage is inadequate. Given the setting, **any project at this location** (including the proposed project) must provide a level of non-motorized accommodation concomitant with a major non-motorized transportation facility (the Bay Trail in this case) in order to ensure an acceptable level of connectivity. The proposal to provide a sidewalk is what would be required as a **minimum** for virtually any project at any location and would only be acceptable in the absence of the unique circumstances described above.

Substantially improved accommodation should be developed and included in the mitigation measures. At a minimum, the accommodation plan should recommend signage, pavement delineation/treatment, facility type (Caltrans Class I, II, III) facilities (minimum) and other appropriate traffic control devices. This accommodation should be included in a revised “Conceptual Parr Boulevard Design” which currently only addresses motor vehicle operations.

In addition to aforementioned issues related to the proximity of the project to the Bay Trail, the project is likely to generate a substantial amount of non-motorized trips accessing the site<sup>3</sup> from the neighborhoods to the east and south of the site. Without analyzing non-motorized access paths similarly to the effort put into the automotive access analysis, it is likely the project will compromise the safety of those wishing to access the site by alternative modes. The assertion in the FEIS that AC transit operates buses for patrons and employees that don’t have cars does not acknowledge that the bus service may not be sufficiently frequent and affordable to employees who would otherwise walk or ride their bike to work.

for this purpose. Failure to substantively respond to this comment will compromise the safety of non-motorized travelers, reduce non-motorized connectivity (in an area with low access to automobiles<sup>6</sup>), and diminish the quality of the regional trail system.

Response 1-138 states that the Tribe will consider making contributions to bicycle and pedestrian improvements. What and how will the Tribe consider making these contributions absent an adequate and complete evaluation in the EIS? Typically, the County has a role in determining what would be an appropriate contribution. Will the project construct Class II bike lane facilities along the Parr Blvd. frontage?

The response references the MSA between the City of Richmond and the Casino. It makes no mention of any discussion with the County on the provision of such facilities, whether the MSA provides sufficient revenue to the City to fully mitigate impacts in the unincorporated area, or if the MSA obligates the City in any way to provide funds to the County.

***The document doesn't provide a level-of-service analysis using the Contra Costa Transportation Authority (CCTA) methodology as requested (DEIS Comment 1-141)*** – The DEIS reports level-of-service analysis for intersections that was performed using a different methodology than CCTA's. The DEIS states the consultants also performed the analysis using CCTA methodology, but again the document doesn't report those results (Appendix K, "Traffic Impact Study," page 29). The County specifically asked that the study use and report the results of the CCTA methodology along with any other methodology used by the analysts. Without the CCTA method of analysis, it is difficult for staff to compare the study's results with other studies in recent years in West County that used the CCTA methodology, the standard method used throughout Contra Costa County as part of the countywide Transportation Improvement and Growth Management Program enacted by Measure C in 1988 and reaffirmed by the voters' approval of the Measure J extension in November 2004.

**BIA's Response 1-141 was:**

"The Highway Capacity Manual (HCM) methodology provides a worst-case scenario when compared to the use of the CCTA methodology. Leaving out the CCTA results in lieu of HCM data is common practice for traffic studies in Contra Costa County. Since the analysis verified this was the case with the many project study intersections it was decided that the inclusion of the CCTA data would be overwhelming and would distract from the LOS results that the analysis is based on. CCTA LOS printouts will be provided for any locations where there is a concern there could be an anomaly. However, there is no justification for presenting overall CCT A results for the many scenarios that have been analyzed."

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<sup>6</sup> The EIS asserts in the "Direct Economic Effects of the Project" that employees will largely be local. This underscores the County's comment, which was disregarded, that the local population has a low auto ownership rate and is more likely to travel to the proposed project by non-motorized modes. These workers will be exposed to unsafe conditions as the travel from the neighborhoods east and south of the project site through the industrial area to the project. These unsafe conditions could be mitigated by providing sidewalks and bike lanes that connect the project site to these neighborhoods.

**County Comment on Response 1-141:** The BIA defends the use of the HCM methodology and overlooks the declaration in Appendix K that CCTA's Technical Procedures Manual will be followed.

The internal conflict identified above is in addition to three other critical issues, CCTA procedures states that other methodologies can be used (such as the provided HCM) so long as they are used to supplement methodologies sanctioned in the Technical Procedures; 2) comparing the analysis results to other studies will be problematic if the CCTA methodology is not included; and 3) the assertion that no violations exist is provided without substantiation in conflict with CEQ regulations.

The pledge that *“CCTA printout will be provided for any locations where there is a concern there could be an anomaly”* is meaningless. The concern that there could be an anomaly in the FEIS findings is central to this comment yet the FEIS fails to furnish the data as requested. Failure to respond substantively to the comment compromises the integrity of the FEIS and the usefulness of the traffic study, and disregards the violation of both local technical procedures and self-imposed standards.

***Assumption of Richmond Parkway/San Pablo Avenue intersection project needs to be justified (DEIS Comment 1-144)*** – The DEIS assumes completion of the \$10 million grade-separation intersection of Richmond Parkway and San Pablo Avenue as part of the year 2025 cumulative roadway network. This very costly project currently has little funding. The EIS should provide some justification for assuming this project will occur as part of the cumulative assumptions. The Regional Transportation Plan prepared by the Metropolitan Transportation Commission lists this project as costing \$20 million and will not be fully funded in its financially constrained revenue estimate that extends to 2030. This comment is particularly important because of the ramifications of possible traffic impacts on the County and the City of Richmond. Under the Measure C Countywide Transportation Improvement and Growth Management Program, if a local jurisdiction fails to meet its traffic service objectives, it can be a reason to deny these jurisdictions their annual apportionments of Measure C transportation sales-tax funds.

**BIA's Response 1-144 was:**

“While it may not be clear exactly where the funding will come from, the County bases its land use planning decisions on the assumption that the projects listed in the County Transportation Plan will be constructed. Although no project can ever be 100 percent guaranteed, the County is committed to constructing all of the improvements in their plan. These projects are included in all traffic modeling that is done for the area and are assumed in the cumulative analyses of all environmental studies conducted in this area.

Please note that assuming that the currently planned improvements on the Richmond Parkway might not be constructed would then require a revised modeling analysis to determine cumulative volumes. It is very likely that elimination of other unfunded improvements (i.e. the interchange at San Pablo Avenue) would cause the model to assume reductions in the amount of through commute traffic that is assigned to the study area. Based on previous work with the model, eliminating unfunded improvements assumed in the plan would probably result in reduced cumulative volume forecasts for the Richmond Parkway.”

**County Comment on Response 1-144:** The BIA claims that inclusion of the project is standard practice. This claim is neither responsive to the comment nor substantiated. No explanation is given on why this practice is “standard” or that application of this standard practice is appropriate in this circumstance. It is not standard practice to use a financially unconstrained project list from the Countywide Transportation Plan for the purpose of a cumulative analysis. Assuming transportation projects that have little possibility of being funded during the planning horizon serves to underestimate traffic impacts.

The FEIS must quantify the casino project’s contribution to the need for the Richmond Parkway/San Pablo Avenue intersection project and identify the casino project sponsor’s financial contribution to construction. Without this information there can be no assumption that the improvement will be constructed.

Furthermore, the response states that “eliminating unfunded improvements assumed in the plan would probably result in reduced cumulative volume forecasts for the Richmond Parkway.” It is difficult to understand why the elimination of improvements would result in a reduced cumulative volume forecast. Rather, it is assumed that there would be a cumulative growth in volume but a reduction in capacity with the elimination of improvements. This needs to be clarified.

Failure to provide the requested information will result in a potential project impact not being mitigated to a less than significant level.

*Certain additional development projects should have been included in the baseline assumptions for 2006 (DEIS Comment 1-145) – The following projects in the vicinity of the project site are scheduled to be completed or nearly completed within two years, and should be assumed for the baseline (Appendix K, page 32). Information is available from the City of Richmond Planning Department’s website at [www.ci.Richmond.ca.us/planning/applications/](http://www.ci.Richmond.ca.us/planning/applications/) lists (under “major.pdf”):*

- Country Club Vista at Hilltop (645 single-family homes)
- Fairfield Communities on Garrity Way at Blume Drive (200 apartment units)
- Ford Assembly Plant at Marina Way (including 29 live/work units)
- Kaiser Medical Center expansion at 901 Nevin Avenue
- Marina Way South Live/Work (65 live/work units)
- Pinole Point Business Park on Giant Highway
- Shoreline Commercial Center on Richmond Parkway at Goodrick Avenue
- Shoreline Technology Park on Goodrick Avenue at Richmond Parkway
- The Villas at Hilltop (172 residences)

**BIA’s Response 1-145 was:**

In coordination with staff from the City of Richmond all reasonably foreseeable projects were identified that would significantly impact traffic at the project study intersections. This information was based on the data that was available at the time the DEIS was prepared. As an example, the Shoreline Technology Park was considered very speculative due to various environmental and land use constraints that have prevented many previous projects from being approved on that site.

Cumulative traffic conditions are based on growth patterns and future activities through the year 2025 that are assumed in the Contra Costa County Transportation Authority Traffic Model. The model includes full build-out of the County's General Plan and new projects in the immediate vicinity. Increased traffic to and from additional developments could increase background volumes, which would decrease the contribution of project traffic to future traffic. Thus, added cumulative developments are not expected to change the conclusions of the EIS.

**County Comment to Response 1-145:** This comment contends that certain additional development projects should have been included in the baseline assumptions for 2006. The response about “cumulative traffic conditions” does not respond to the comment’s request for revisions to the near-term (2006) baseline assumptions (and by extension, to near-term project impacts). If 2006 baseline conditions were worse than analyzed in the DEIS, then it is possible that the project’s impacts could be worse than reported in the DEIS.

*The calibration of the regional travel demand forecasting model should be checked and adjusted if necessary (DEIS Comment 1-146)* – Some of the forecasts for local intersections in North Richmond and San Pablo seem counter intuitively low to County and WCCTAC staff. For example, on the second page of Figure 4.8-2 in the DEIS showing project-generated traffic volumes for Alternative A (the proposed project), the model estimates only eight westbound vehicle trips will approach the Rumrill Blvd./Market Avenue intersection during the evening peak period. Market Avenue is one of the main east-west roads connecting the I-80 Corridor with the communities of North Richmond and San Pablo. Staff recognizes that this type of forecasting model has a high-percentage error rate when dealing with relatively small local streets, but observation and intuition nonetheless lead staff to believe the Rumrill/Market intersection will sustain significantly more than eight trips in the p.m. peak as a result of the project. The same comment applies to the other local intersections shown in the same figure.

BIA’s Response 1-146 was:

“The traffic model was calibrated and checked. Data from the model was interpreted and likely paths of distribution were based on existing distribution of traffic volumes. The local intersections in the area referred to all have LOS B or better operations during the PM peak hour when the project would generate the most traffic. These intersections all have available capacity and it is clear that distributing more project trips to the smaller local roadways would not change the impacts that the proposed project would have, as specified in the Traffic Study and DEIS. In summary, this issue was reviewed and it was determined that the distribution used for the DEIS represents a more conservative scenario. It was determined that shifting trips to the local streets would not create any new local impacts. On the other hand, distributing trips onto local streets would be perceived as understating the project's contribution to the more substantial improvements that would be required on Richmond Parkway.”

**County Comment on Response 1-146:** The Contra Costa Transportation Authority (CCTA) recently authorized use of the countywide model for project-level analysis. The Sugar Bowl Casino project represents that first application of the countywide model for a project-level analysis in the Richmond area. The BIA’s response asserts that the model was calibrated and checked. This assertion is unsubstantiated and thus inadequate. CCTA Technical Procedures describe the steps that model users should

follow to ensure the model's validity in the study area. CCTA standard agreements for use of the model (Technical Procedures, Appendix C, Section 2-f) obligate the user to provide CCTA with a description of the modifications made to the model to perform the traffic study. No results are provided in the FEIS demonstrating that the model is producing valid results for the road links and intersections in the study area (pursuant to CCTA guidance). No description is provided for modifications/adjustments made to the model (pursuant to CCTA standard agreement).

In addition to the CEQ regulation requiring substantiation of information provided in the FEIS, the examples of inordinately low forecasted volumes on select streets in the project vicinity provided by the County should have underscored the need to provide substantiation.

Failure on the part of the project sponsor to substantiate the response, as required by CEQ, leads the County to assume that the project sponsor did not fulfill its responsibility to affect refinements to the model (which are typically done for a project level analysis) to ensure accuracy. This would result in an inaccurate analysis of traffic impacts and possibly, inappropriately, reduce the project sponsors responsibility for mitigation.

***Weekend impacts weren't analyzed or fully explored as requested by the County (DEIS Comment 1-147)***– The DEIS states that the weekday evening commute period is the most critical in determining project impacts. County staff agrees the weekday evening peak is critical, but we also asked the consultants to analyze the traffic impacts on weekends. Even if peak-hour freeway traffic isn't greater on the weekends, the trips generated by the casino are greater on weekends than weekdays, according to the DEIS, and therefore could still cause significant impacts on weekends. The DEIS fails to provide any analysis of weekend conditions, as requested three times by the County. Page 40 of Appendix K states the peak time for casino traffic and parking demand is on Saturdays between 6 p.m. and 9 p.m. Therefore, traffic analysis should have been performed for this time period on both freeways and local roads. The County now makes this request for the fourth time.

**BIA Response 1-147 was:**

When considering the "peak hour period" for analysis, traffic volumes are reviewed to determine at what periods the highest volume of traffic travels in the project study area. It is possible that levels are exceeded on major vacation weekends; however, this is an occasional occurrence and would not be part of the average weekend volumes. Average weekend volumes did not approach the volumes shown during the identified weekday AM and PM peak periods.

The traffic analysis for the Proposed Action included an analysis of weekend traffic conditions but detailed count data was not included in the report. Because the hourly volumes on the Richmond Parkway are much higher than the hourly trip generation of the casino, the weekday traffic would, in fact, only need to be 10 to 15 percent higher than the weekend conditions to be the worst-case scenario. Our data shows that there is no question that weekday peak hour volumes are much more than 15 percent higher than the weekend peak hours. Due to the weekday operation of many businesses in the area and the significant amount of commuter traffic it is very clear that the weekday commute hours are the critical periods that need to be studied and used for design in the project area.

Traffic volumes on Interstate 80 (I-80) on the study freeway segments were reviewed for Friday evening and Sunday evening volumes (as these periods exhibit the highest off-peak volumes). With the addition of project generated trips added to the I-80 study freeway segments, the Proposed Action was determined to contribute less than 2% traffic, considered less than significant as agreed to by Caltrans during project scoping meetings. Casino weekend peak hour trip generation (Saturday Peak Hour) was calculated and added to study freeway segment volumes. Weekend traffic is discussed On pages 25,28,36,47,48, and 70 of the Traffic Study (Appendix K) and pages 3.8-12, 4.8-2, 4.8-3 and 4.8-9 of the DEIS.

**County Comment to Response 1-147:** The comment states that weekend impacts were not fully analyzed as requested by the County. Response 1-147 continues to provide generalizations about relative traffic volumes (casino-generated and background) on weekend days compared to weekdays and Friday evenings, without providing the data upon which the analyst reached the conclusion that, under project conditions, weekend days would have lower traffic volumes than weekdays, and therefore there is no reason to quantitatively analyze potential weekend impacts. While it is possible that this determination is correct, it cannot be verified since the detailed count data was not included in the traffic report (Appendix K). This data needs to be appended to the FEIS. A word search for “Friday” in Appendix K produced no results, so there is no indication that the impacts of the project were evaluated under cumulative conditions for Friday evening peak periods. The lead agency should also refer to Comments 1-139 and 1-140 for relevant findings regarding the flawed trip generation analysis in the EIS.

***Traffic Impacts of Event Center Need Separate Analysis (DEIS Comment 1-148) –*** The DEIS fails to analyze the events center traffic separately from casino traffic, as previously requested by the County. The preferred alternative includes a 24,000 square-foot event center with 1,500 seats. Presumably, events would start at set times, therefore, creating a concentrated use of adjacent roadways and freeway systems. Traffic impacts of the event center should be separately analyzed by time of day and day of week. The DEIS states this analysis was not done because *“the size of the event center (1,500 seats) is not as extensive as other similar facilities in other casinos.”* This explanation does not provide an adequate reason for rejecting the County’s request for this analysis. The size of this event center relative to other casinos is irrelevant to the potential impact from this project. A 1,500-seat event center could have significant traffic impacts of its own, apart from the casino. Customers attracted to the event center have the potential to be completely separate from the customers attracted to the casino operation. Had there been any other proposal for a 1,500-seat event center in any unincorporated area of the County, the County would require worse case a traffic analysis that assumes the event center and casino would operate independently. The Sugar Bowl situation is no different. The County continues to request this analysis.

**BIA’s Response 1-148 was:**

“The methodology used for this project is based on surveys of several casinos, many with events centers. Therefore, trip generation rates include events center trips. The proposed events center is not unusually large and is a typical component of many similar casinos. Due to the small size of the event center (1,500 seats), a separate trip generation rate was not calculated or distributed onto the roadway network during typical arrival and departure times, but rather trips from the event center were factored into the PM peak hour period trips. This is discussed in the DEIS on page 4.8-2 and page 39 of Appendix K.

If the traffic from the event center were to be calculated separately it would require subtracting out the roughly 100 peak hour trips that were assumed to affect the PM peak hour on a daily basis. Based on data from the Institute of Transportation Engineers (ITE) a stand-alone theater with 1,500 seats would also generate about 100 PM peak hour trips. However, with this methodology some reductions would need to be applied to account for the fact that some trips would be shared between the casino and the events center. Therefore, the application of the casino rates to the event center area clearly results in an accurate (and most likely conservative) estimate of the event center traffic. For additional information refer to Response 15-10.”

**County Comment on Response 1-148:** The BIA's response indicates a failure to understand the nature of the comment. The response is both subjective and arbitrary in justifying the approach in the EIS “*The proposed event center is not unusually large and is a typical component of many similar casinos.*” Whether or not the size of the event center is unusual or typical is not relevant.

There is no data or methodology provided to substantiate the claim that some reductions were made for shared trips (between the casino and the event center). No information is provided that shows the trip generation rates were drawn from casinos that included event centers, or that the event centers were of similar size or were operated at the same frequency as proposed for Sugar Bowl. The response asserts that the ITE has a trip rate for stand-alone theaters that would generate a trip estimate equivalent to that used in the FEIS. Please be aware that the 7<sup>th</sup> Edition of the trip generation manual does not provide a rate for “*stand alone theater*”. No reference is made to the ITE Land Use Code that was used to derive the estimate so commenter's are unable to determine if the trip rate is based on a use that is relevant and that includes sufficient surveys to support the FEIS's conclusion.

The proposed project is in the center of a major metropolitan area with the ability to easily attract a significant number of trips solely for the purpose of attending events with no interest in gaming. If the FEIS assumes there will be some amount of shared trips, the sponsor is required to disclose the percentage and provide the supporting analysis. In addition, the reference in Response 15-10 for more detail is circular and leads the reader back to the (inadequate) response, providing no additional information.

The use of an inadequate traffic analysis for the events center understates project impacts and diminishes the Tribe's responsibility for mitigation. Similar to the discussion in Comments 1-139 and 1-140 regarding trip generation rates, the significance of this flaw in the EIS cannot be understated given that most other traffic impacts are quantified based on the accuracy of the trip generation.

**Clarification is needed on Page 45 dealing with patrons' likely access routes (DEIS Comment 1-150)** -- On Page 45 of Appendix J, in the paragraph entitled “*Trip Distribution,*” the DEIS states “... *it is expected that all patrons will be directed to use Richmond Parkway to reach the site and that patrons approaching from the greater Bay Area to the south will be directed to take the I-580 freeway.*” As contained in earlier comments by the County, the document should indicate who will provide this direction to patrons, and how they will provide it. Such direction could be part of an effective

casino-sponsored transportation management program or roadway signage but the document doesn't state this. We couldn't find any mention of an ongoing transportation management program after the casino is open for business.

**BIA's Response 1-150 was:**

The Tribe would provide directions to patrons through marketing including the Internet, brochures, and signage. All signs would be consistent with local ordinances. Signs located on the project site would be restricted by Tribal ordinance incorporating the City of Richmond Sign Ordinance as specified in Section 4.4 of the MSA (Appendix Z). Through marketing materials, patrons would be encouraged to use Richmond Parkway and other major roadways. The assumption that patrons would use Richmond Parkway is also supported by existing traffic data which shows that traffic through this area utilizes Richmond Parkway.

**County Comment to Response 1-150.** Response 1-150 states that the *"signs located on the project site would be restricted by Tribal ordinance incorporating the City of Richmond Sign Ordinance..."* Given the project is located within unincorporated Contra Costa County, the County sign ordinance should be followed.

**Use of Protectocoat Lane (DEIS Comment 1-152)** – DEIS provides minimal information regarding the *"Goodrick Avenue Entrance"* at the rear of the project site. This entrance is actually via Protectocoat Lane, currently a private road. The EIS should analyze the rights of the casino project to utilize this road, its capacity to handle projected traffic volume, safety issues and the adequacy of its intersection with Goodrick Avenue.

**BIA's Response 1-152 was:**

"Project use of Protectocoat Lane would require that the Tribe first negotiate with the parties who have a stake in a non-exclusive easement that dictates the use and maintenance of the roadway. During this negotiation process, it would be determined if casino use of Protectocoat Lane to access Goodrick Avenue is acceptable to adjacent landowners. In anticipation of those negotiations the use of this access route was analyzed in detail and it was determined that the roadway could, in fact, safely accommodate traffic from the casino and that no additional improvements would be required at the intersection of Protectocoat Lane with Goodrick Avenue."

**County Comment on Response 1-152:** The response's reference to a required agreement to allow project use of Protectocoat Lane begs the question, what if use of the private road were denied to the project? The response that "the roadway could in fact safely accommodate traffic from the casino and that no additional improvements would be required at the intersection of Protectocoat Lane and Goodrick Avenue." However, the document does not provide the analysis to warrant that statement. This analysis should be provided giving consideration to expected volumes of traffic using this road, the number of lanes required to carry this traffic volume, the need for drainage improvements along this road, the need for pedestrian improvements, and other infrastructure improvements required by County Ordinance. It is difficult to understand why no improvements would be necessary for this road given its existing condition. The EIS should also state alternatives should the Tribe fail to gain access rights from adjacent landowners to use this road.

Leaving Protectocoat Lane in the analysis is suggesting unrealistic access to the project site and diminishes the impact on surrounding roadways. Failure to respond substantively to this comment results in an inaccurate analysis of impacts and inappropriately diminishes the project sponsor's responsibility for mitigation measures.

Also note on page 3.8-1, the FEIS revision to add "*Protectocoat Road*" should rather be "*Protectocoat Lane*" to be consistent throughout the FEIS.

***Improvements to Goodrick Avenue and its intersections with Richmond Parkway and Parr Boulevard (DEIS Comment 1-153)***– The EIS should address safety and capacity improvements along Goodrick Avenue as well as its intersections with Richmond Parkway and Parr Boulevard, including the need for additional turn lanes at the intersections and/or improvements to provide adequate deceleration and storage length.

**BIA's Response 1-153 was:**

Each study intersection and roadway segment was assessed for operational and capacity problems with the added traffic from each of the build alternatives. Mitigation was proposed for study intersections and roadway segments that were shown to have operational and/or capacity problems. Where projects have been identified and listed in the 2004 update to the County Transportation Plan, the Tribe would pay a proportionate share of the cost of improvements. No other required safety or capacity improvements were identified for Goodrick Avenue. Based on traffic studies of previously proposed projects along Goodrick Avenue, it is clear that future improvements in this area will be dependent on permitted future development along Goodrick Avenue (particularly in the area north of the Richmond Parkway). The Tribe has agreed in the MSA to pay a proportionate share of an additional northbound through lane on Richmond Parkway at Goodrick Avenue.

**County Comment on Response 1-153:** The BIA's response indicates that each study intersection and roadway segment was analyzed for operational and capacity problems. However, the intersection at Goodrick Avenue and Parr Boulevard was not analyzed as a study intersection in the EIS. Goodrick Avenue is proposed as an entrance to the project. The intersection of Goodrick/Parr is on the route to the nearest adjacent operating casino in San Pablo and is likely to be used by customers traveling between these casinos. Development north of the Richmond Parkway has little relationship to the impacts of project-related trips using Richmond Parkway to reach the proposed project access off Goodrick Avenue. The intersection should be analyzed or the rationale for not conducting such an analysis should be provided. See also Comment 1-161 regarding the calculation method for proportionate share contributions and comments on the Municipal Services Agreement (MSA) with the City of Richmond.

***Turn Lanes on Richmond Parkway at Parr Boulevard (DEIS Comment 1-154)***– The EIS should analyze the adequacy of the deceleration and storage lengths for the existing southbound left turn lane on Richmond Parkway and Parr Boulevard and the existing northbound right turn lane on Richmond Parkway at Parr Boulevard. These lanes should be adequately sized not only for the amount of traffic expected to make this movement to access the project site, but also for build-out of the area.

**BIA's Response 1-154 was:**

“Refer to Response 1-153. The adequacy of turn lanes at Richmond Parkway and Parr Boulevard was analyzed in detail and no other required safety or capacity improvements were identified. Mitigation in Section 5 includes that the Tribe pay a proportionate share of construction costs for an additional southbound through lane on Richmond Parkway at Parr Boulevard.”

**County Comment on Response 1-154:** The BIA’s response includes no substantiation or mention of methodology used to support the determination of adequacy, is insufficient and ignores CEQ regulations relative to the provision of supporting information.

The Response 1-154 states that the adequacy of turn lanes was analyzed in detail though no analysis has been provided to prove the adequacy and to what standard was used to in this analysis. The response directs the reader to Response 1-153, which also provides no substantiation or methodology. Reference to the project list of the Countywide Transportation Plan is irrelevant since that plan did not anticipate construction of the proposed project. Without this substantiation it cannot be assumed that adequate storage and deceleration lanes will exist. Failure to properly analyze this could compromise the safety and function of the intersection as left and right turning vehicles interfere with vehicles traveling through the intersection, and inappropriately diminish the project sponsor’s responsibility for mitigation measures.

***Need for Dedicated Right Hand Turn Lane Westbound on Parr Boulevard (DEIS Comment 1-155)***– Currently, the traffic analysis shows a dedicated left hand turn lane and a through/right lane only (2 lanes). The EIS should evaluate the potential traffic from build out of the area on the west side of the Richmond Parkway and the consequent need for the westbound through movement on Parr Boulevard to be separated from the right hand turn traffic coming from the project site. The EIS should analyze the sizing of this right turn lane for storage and identify the need for additional right-of-way dedication.

**BIA’s Response 1-155 was:**

“Refer to Response 1-154. The Tribe has agreed in the MSA that unless adequate mitigation can be achieved by the location of driveways or other design features, the Tribe shall add a left-turn lane on the westbound Parr Boulevard approach to Richmond Parkway, provide two westbound through lanes between the main entrance to the project and Richmond Parkway, widen Parr Boulevard to three lanes in the westbound approach to Richmond Parkway, and make associated modification to the traffic signal.”

**County Comment on Response 1-155:** The BIA’s response does not address the stated issue, the need for a **dedicated right hand turn lane** and is insufficient. The FEIS should be able to determine at this point in time what adequate mitigation is or is not. This response should therefore state what the Tribe will mitigate for without the flexibility to change.

See comments below regarding the calculation method for proportionate share contributions and comments to the Municipal Services Agreement (MSA) with the City of Richmond. Failure to properly analyze the projects impact on this facility/movement could compromise the safety and function of the roadway and inappropriately diminishes the project sponsor’s responsibility for mitigation measures.

***Storage Adequacy of Left Hand Turn Lanes (DEIS Comment 1-156)*** – Currently, the DEIS is silent on the adequacy of the storage of the capacity of the left hand turn lanes into the project. This should be analyzed.

**BIA’s Response 1-156 was:**

“The adequacy of the storage capacity of the left-hand turn lanes into the project was carefully analyzed and the project LOS analysis verified the storage would be adequate. For additional information, refer to Response 1-154.”

**County Comment on Response 1-156:** The BIA’s response includes no substantiation or mention of the methodology which resulted in their determination of adequacy. Given this lack of substantiation, it cannot be determined if the impact is fully evaluated.

Failure to properly analyze storage capacity could compromise the safety and function of the roadway and inappropriately diminishes the project sponsor’s responsibility for mitigating impacts of the project. See also County Comment 1-161.

***Financial Participation (DEIS Comment 1-157)*** – Private development projects would participate in various funding mechanisms, such as traffic fees to mitigate increases in traffic and their associated costs as well as to provide for future construction of bicycle and pedestrian trails, including the Bay Trail and the Wildcat Creek Regional Trail. The EIS should address the casino project’s participation in these funding mechanisms or mitigation measures to offset the loss of this funding from the project.

**BIA’s Response 1-157 was:**

Traffic mitigation fees, including the West County Regional Mitigation Fee and Contra Costa County Area Benefit fee program, are discussed in Section 4.8.1. Participation in these fee programs would not mitigate impacts to a less than significant level and thus were not required as mitigation. The Tribe has agreed to fund a number of traffic improvements or contribute a proportionate share to planned improvement projects in the MSA and in Section 5 of the DEIS. With improvements listed in mitigation and the MSA, traffic impacts would be reduced to a less than significant level.

**County Comment to Response 1-157:** The response is wrong in relation to this issue. Participation in these fee programs do help to mitigate project impacts to a less than significant level and should be required as mitigation. The project’s impacts extend further than its immediate vicinity. This impact is experienced by the transportation system within the region and within the area of benefit area because this type of development will generate new vehicle trips. Even if the projects do not reduce traffic impacts to a less than significant level, traffic congestion will be reduced nonetheless with implementation of these transportation projects and justify the financial participation of the Tribe. The Tribe should not only contribute their proportionate share of impact on those intersections and road segments identified in the FEIS but also those of improvement projects established by the West Contra Costa Transportation Advisory Committee and North Richmond Area of Benefit fee programs. This comment is therefore repeated. See comment below regarding the calculation method for proportionate share contributions.

***Intersection of Richmond Parkway/Parr Boulevard (DEIS Comment 1-160)***--As a related comment, the Traffic Impact Study (Appendix K) clearly shows the proposed casino's significant impact at the intersection of Richmond Parkway/Parr Boulevard and the required measure to mitigate that impact. Section 4.8 of the Environmental Consequences section of the DEIS seemingly conceals that significant impact by describing 2006 Baseline and Baseline Plus Project Alternative LOS (pages 4.8-9 to 4.8-11) with the above-cited required mitigation measure already in-place. The LOS and delay value for Richmond Parkway/Parr Boulevard under Alternative A conditions in Table 4.8-5 (page 4.8-10) generally represent the "with mitigation" conditions presented in Table 12 in the Traffic Impact Study (page 48) (even those numbers are not always consistent). However, as stated above, as described in Section 5.0, Mitigation Measures, the Tribe would be responsible for the full costs of the measure required to improve the LOS to an acceptable level under "With Project" conditions at this intersection. The casino project EIS needs to clearly present impacts by stating in the impact discussion that the proposed casino project would cause a significant traffic impact (with text reference to the required mitigation measure in Chapter 5.0).

**BIA's Response 1-160 was:**

Section 4.8 of the FEIS was clarified to state that the effect is significant before mitigation. It should also be noted that improvements to the Richmond Parkway/Parr Boulevard intersection are included in the MSA.

**Comment 1-160:** The response again makes reference to the MSA between Richmond and the Tribe to mitigate any impact. As previously discussed, the FEIS should not rely on the MSA for any mitigation, given its legal uncertainty.

***Responsibility for paying proportionate share of costs methodology unacceptable (DEIS Comment 1-161)***-- The DEIS references payment by the Tribe of a proportionate share of the costs for the improvement of intersections along Richmond Parkway. As described in Section 5.0, Mitigation Measures, using standard practice, the proportionate share is determined on the basis of the proposed casino project's percent contribution to the increase in traffic volumes (i.e., the percent of the difference between existing and cumulative volumes), not its percent contribution to the total cumulative traffic volumes. Yet, the DEIS states the "proportionate share is derived from the percentage that the added project trips contribute to the new total trips ..." (page 5-10) (emphasis added). Also, it is unclear exactly what would be the basis used to allocate the proportionate share of costs between the Tribe and other entities. This should be made clear.

**BIA's Response 1-161 was:**

The proportionate share is derived from the percentage that the added project trips contribute to the new total trips at each specific study intersection and roadway segment. The new total trips are equivalent to total traffic volume and are not only cumulative traffic. This standard is appropriate, as it would mitigate for effects from the Proposed Action. The details of any proportionate share agreements would be reviewed in detail prior to their approval.

**County Comment to Response 1-161:** The FEIS references payment by the Tribe of a proportionate share of the costs for the improvement of intersections along Richmond

Parkway as well as environmental review of and mitigation for traffic improvements in the project area (Section 5.2.4 J). As described in Section 5.0, Mitigation Measures, using standard practice, the proportionate share is determined on the basis of the proposed casino project's percent contribution to the increase in traffic volumes (i.e., the percent of the difference between existing and cumulative volumes), not its percent contribution to the total cumulative traffic volumes. Yet, the FEIS states the *"proportionate share is derived from the percentage that the added project trips contribute to the new total trips ..."* (page 5-15) (emphasis added). Also, it is unclear exactly what would be the basis used to allocate the proportionate share of costs between the Tribe and other entities. This should be made clear.

If *"total traffic volume"* is defined as the "increase in traffic volumes (i.e. the difference between existing and cumulative volumes), then the Public Works Department is satisfied that this methodology is correct. Otherwise, the methodology stated in the FEIS is incorrect and therefore this comment is repeated. The following is the methodology used by the Public Works Department based upon the proportion of vehicle trips resulting from the development's build out to the total increase in future vehicle trips:

Cost Sharing Equation:  $(E-B)/(E-A) * 100\%$

A = No growth in West County, existing 2006 condition

B = No project, Indian Casino Project is not built while West County continues to grow in 2025

E = Complete build out of project, Indian Casino Project complete build out in 2025

It also could not be located in the FEIS where the proportionate share has been calculated respective to each mitigation measure. These needs to be provided to assure mitigation measures are appropriate and accurate. Response 1-161 also state that *"the details of any proportionate share agreements would be reviewed in detail prior to their approval."* It is unclear who reviews the agreements and who approves them. The Public Works Department should be given the opportunity to review and approve these agreements.

***By-Pass Rates methodology not sufficiently explained (DEIS Comment 1-162)--***  
*On page 4.8-3, the DEIS states that "it is likely that the pass-by traffic for the casino component of the project would be between 5 and 10 percent...but was conservatively estimated to be 3% to be consistent with other casino traffic studies mentioned above."*  
A copy of these studies should be included in the Appendix. Also the methodology used in these casino traffic studies should be detailed along with justification for their applicability to this project. Also, what is the justification for the assumed 5-10% pass-by rate? There is also no justification presented for using a 10% pass-by for the pending retail project (page 32 of the Traffic Impact Study) or 34% for retail and restaurant uses of Project Alternatives C and D (page 49 of the Traffic Impact Study). Since there are no retail outlets near the casino and few restaurants, are these assumptions realistic? Why are the assumed percentages so different? These discrepancies should be corrected or explained.

**BIA Response 1-162 was:**

All of the pass-by rates used in the traffic study is confirmed by reputable sources, including the Institute of Transportation Engineers (ITE). ITE and other sources indicate that much higher pass-by percentages could be used than those assumed in the DEIS. Based on a review of all available ITE and casino pass-by data, the pass-by assumptions in the DEIS are considered conservative assumptions. For example, according to ITE and the existing Richmond Parkway volumes, the 10% pass-by rate assumed for retail in the DEIS could actually be as high as 34% and the pass-by rate for restaurant uses could be as much as 50%. The use of these percentages is entirely defensible based on the extensive pass-by data provided by ITE. However, for the purposes of this analysis, more conservative rates were used to ensure that all potential impacts were identified. For additional information refer to Response 31-78.

**County Comment to Response 1-162:** While the response indicates that the pass-by rates were confirmed by “reputable sources and the Institute of Transportation Engineers,” the basis is not provided for using the “conservative” rates cited in the analysis or a justification for not including its sources as appendices with the FEIS. This is not a lot of data available on travel behavior of casinos located major metropolitan areas so providing data to support the findings of the EIS is important. This needs to be corrected in the FEIS.

*Participation in West County Regional and North Richmond Area of Benefit fee programs necessary (DEIS Comment 1-163) – Page 4.8-14,15 of the DEIS describes the two traffic mitigation fees that apply to the development of this project site. The DEIS further states that “the Scotts Valley project would mitigate traffic impacts resulting from the added traffic generated by the project” and “all traffic impacts will be mitigated with the proposed mitigation identified in the Traffic Study” through the payment of their proportionate share of the improvements, which deems participation in the two fee programs unnecessary. It is not understood how project mitigation as specified in the mitigation measures can deem participation in these programs unnecessary despite the fact that many of the mitigation measures are not a part of the project lists respective to each fee program.*

The West County Regional and North Richmond Area of Benefit fee programs are based on the traffic impacts on these regional and benefit areas caused by new development. Participation in these fee programs by definition correlates to the project's proportionate share for mitigation of traffic impacts at a regional and benefit area level. In fact, a distinction can be made between the responsibility of the project to mitigate for traffic impacts caused immediately by the project and those impacts caused by the project on a regional and benefit area basis. Therefore, it is the responsibility of the project proponent to not only mitigate for the project's impacts in its immediate location, but also at a regional and benefit area level by the payment of traffic mitigation fees through these programs. The EIS should include participation in both fee programs.

**BIA Response 1-163 was:**

Please refer to Response 1-157.

**County Comment to Response 1-163:** See Comment 1-157.

**LOS reductions at key local intersections (DEIS Comment 44-31)**-- The comment finds concerns in the DEIS assertion that all project alternatives will result in LOS reductions at key local intersections.

**BIA Response 44-31 was:**

“The Proposed Action would add traffic to local intersections but the effects are based on the analysis of traffic operations and the Proposed Action would not violate any established level of service thresholds or other established traffic standards.”

**County Comment to Response 44-31:** The response fails to state, as does Response 44-29, that the Proposed Action’s avoidance of significant traffic impacts and violation of the applicable traffic standards is contingent on implementation of mitigation measures. The FEIS should do so.

**“...no LOS impacts created by the additional project traffic” is an inaccurate statement** (new comment)– FEIS page 4.8-14, third paragraph, states that “there are no LOS impacts created by the additional project traffic that would result in an unacceptable LOS in any of the analysis scenarios for any of the build alternatives or with the addition of Lytton or the other casinos.” This conflicts with data in Tables 4.12-9 and 4.12-11, which indicate unacceptable levels of services at a number of intersections. This inaccuracy needs to be corrected.

**Some intersections in the model have not been modeled and analyzed** (these include, but are not limited to, Parr Boulevard/Goodrick Avenue, Giant Highway/Richmond Parkway, Richmond Parkway/Castro Street, and Richmond Parkway/I-580).

County staff completed a traffic operations analysis using Synchro 6.0 software and identified the following areas that warrant further study before the FEIS is released:

- The I-580 on and off ramps to the development at I-580/Castro Street and I-580/Richmond Parkway may be impacted by the project and, as a result, should be analyzed.
- There seems to be a large volume difference between the Castro Street/Gertrude Avenue and Castro Street/I-580 intersections. Almost 45% of the southbound trips disappear in the AM model. Please check other volumes between intersections. There are other intersections that appear to have a volume difference between intersections as well.
- Some intersections have queue lengths that exceed the capacity. For those intersections, the v/c ratio exceeded 1 in the mitigated model. Please provide additional mitigations.
- Please verify that all the intersection lane configurations are correct, including but not limited to Parr Blvd./Giant Highway, Market Street/Third Street, etc.

- The westbound counts along Parr Blvd. east of Goodrick Avenue appear to be low compared with the records in the Public Works Department Traffic Section.
- San Pablo Avenue is the major north-south corridor in West County. Other intersections should be analyzed. The only intersection along San Pablo Avenue that is being analyzed is Richmond Parkway.

## **Wastewater Services - 3.9.1 and 4.9.1 et al**

***Wastewater impacts need further analysis (DEIS Comment 1-180)*** – The DEIS states that project flows would not constitute a “significant increase in daily flows because they would not exceed existing WCWD wastewater capacity,” (page 4.9-3); however, WCWD’s letter to the Tribe (Appendix A) does not support this assertion, and in fact offers a differing view, stating that “*sewage capacity is becoming increasingly scarce.*” CEQ Regulations for Implementing NEPA, Section 1502.16, state that “the [environmental consequences] discussion will include the environmental impacts of the alternatives.” The EIS needs to fully address direct and indirect effects on local wastewater service, taking into account the discrepancies between Appendix A and Section 4.9, lack of commitment from WCWD to serve the project, and WCWD’s statement on limited sewage capacity.

### Response to comment

1-180 Appendix A of the DEIS states that based on preliminary design review and wastewater calculations, it has been determined that the WCWD presently has adequate wastewater collection infrastructure and capacity to serve the Proposed Action. Section 4.9 analyzes the proposed wastewater generation of the proposed alternatives compared to the average daily inflow to the WCWD and the capacity of the WCWD facility. The District is currently reviewing the design of the Proposed Action to assess availability of service to the casino facility.

**County Comment to Response 1-180:** While text in the FEIS was revised to attempt to clarify this issue, confusion still exists. The letter from WCWD presented in Appendix A is not in response to an application for wastewater treatment as is implied in the FEIS. Only after an application has been submitted can WCWD determine definitively if it is capable of providing service to the project and what would be required to do so. It stands to reason that because of the nature of the project (per the DEIS “...no permitting exists for this type of development”), significant modifications to the current wastewater treatment system may be required. These modifications may include “construction of offsite” facilities, per WCWD’s letter in Appendix A. The public cannot effectively review this project without knowing what, if any, modifications to the wastewater treatment system may have to occur because of the project. If construction of offsite facilities would be required, then the FEIS must analyze those facilities as

interrelated actions of the project. An application should be submitted to WCWD and their response and recommendations should be included in the FEIS.

Furthermore, WCWD's letter, dated March 24, 2005, states that it has conducted a preliminary design review based on the "Project as we understand it as of the date of this correspondence." Firstly, more than two years has gone by since the original request to WCWD. If the project has been changed since then, then WCWD should be contacted with the revised project description and the updated correspondence should be included. Secondly, Appendix A does not support the assertion in Response 1-180 that the "District is currently reviewing the design of the Proposed Action to assess availability of service...." Per the March 24<sup>th</sup> letter, WCWD has already conducted a preliminary review, which has failed to provide any concrete answers regarding wastewater treatment. Additional information needs to be included in the FEIS to clear up this issue.

***Wastewater flow calculations need justification (DEIS Comment 1-181)*** – Per DEIS page 4.9-1, the wastewater analysis relies on information that is "based on assumed flows from other similar casinos in Northern California." However, it is not disclosed how these assumed flows are derived except to say that "it has been observed...." The comparability of these casinos cannot be assumed, as noted elsewhere in these comments. These casinos are located in rural or suburban areas, while the proposed casino project is located in a highly urbanized area. At minimum, occupancy rates should be based on Casino San Pablo occupancy rates or those of another urban casino. Furthermore, rates should be based on substantiated data, not "observation."

Response to comment

1-181 Wastewater calculations are included as Appendix T in the FEIS. Calculations presented in Appendix T include wastewater generating factors for the proposed facilities, peaking factors, and occupancy factors. Flows were obtained from project files from casinos throughout Northern California and were used to calculate the estimated wastewater generation rates for the Proposed Action.

**County Comment to Response 1-181:** The BIA provides no source or reference for the wastewater flow calculation data, other than AES (the EIS consultant). Furthermore, wastewater flow calculation methods and assumptions are not discussed or disclosed in Appendix T. The response fails to address the County's concerns regarding the legitimacy of the calculations and their source. Because this casino would be located in an urban industrial area, wastewater calculations based on rural, remote casinos may not be applicable. More information is needed to make an informed review.

***Source data needs justification (DEIS Comment 1-182)*** – Wastewater flow calculations presented in Table 4.9-1 are detailed in Appendix T. However, except for the reference "AES, 2005," which is not compelling, no official or known authoritative sources are given for the numbers used in the calculations. Per CEQ Regulations for Implementing NEPA, Section 1502.24, "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact

statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.” The EIS should cite authoritative sources.

Response to comment

1-182 Please refer to Response 1-181.

**County Comment to Response 1-182:** Appendix T presents estimates of wastewater production rates for each of the four alternatives. It does not present background data or discuss assumptions used to generate the wastewater production rate data. In Appendix T, no source data is cited, and no studies or standard methodologies are given to support the data that is shown in Appendix T. See County Comment on Response 1-181, above.

## **Law Enforcement - 3.9.5 and 4.9.5 et al**

### ***Calls for Sheriff’s Services and Comparative Crime Rates (DEIS Comment 1-189)***

– Page 3.9-4 cites calls for Sheriff’s services in North Richmond compared to other unincorporated areas. This data is not correct (see Appendix B-Crime Statistics, prepared by the Contra Costa County Office of the Sheriff). In addition, crime statistics should be added to the EIS as baseline data for projections of increased crime that will result from addition of the casino and ancillary activities, as well as for the assessing the comparability of the proposed casino to other casinos cited in the DEIS.

Response to comment

1-189 Baseline crime statistics for the City of Richmond have been added to Section 3.9. Section 4.9 calculates the expected increase in calls for service to local law enforcement agencies. The Tribe has entered into the MSA with provisions that the Richmond Police Department would provide 24-hour law enforcement services at the project site.

**County Comment to Response 1-189:** Baseline crime statistics for the City of Richmond may be interesting, but are insufficient for the purpose of this EIS. The nearest city population is more than ½ mile from the project site. The statistics for the North Richmond community should be considered, since the project is located within North Richmond.

***Comparability of “Similar” Casino Facilities (DEIS Comment 1-190)*** – The DEIS assesses the demand on public safety services by comparing the proposed Sugar Bowl Casino with the Jackson Rancheria Casino, the Cache Creek Casino and the Thunder Valley Casino. Neither the Jackson Rancheria Casino nor Cache Creek Casino is comparable since they are located in rural areas. The Thunder Valley Casino is also not comparable since it is located in a low-density light industrial warehousing area, fairly isolated from other urban uses. The proposed Sugar Bowl Casino is located in a densely populated urbanized area with census tracts with densities as great as 18,000 people per square mile. The proposed casino site is surrounded by communities with high rates of poverty, unemployment and crime. For example, the Sheriff’s Office

receives an annual average of 69 calls per 100 residents from all unincorporated areas of the County other than North Richmond. The annual average in North Richmond is 239 calls per 100 residents, 346% higher than the countywide average. Crime rates are also significantly higher in North Richmond than the unincorporated areas for all types of crime, averaging 240% higher over the last 5 years. The EIS should analyze these factors in determining the comparability of the other casinos to the proposed Sugar Bowl Casino.

Response to comment

1-190 The three casinos referenced in the EIS were chosen to represent a range of other Native American gaming establishments in Northern California. Therefore, the data presents a range of typical impacts on public safety services that could result from the Proposed Action and alternatives. Further, the project site would be provided law enforcement services primarily by the Richmond Police Department as outlined in the MSA.

**County Comment on Response 1-190:** The response does not convincingly refute the County's point. In order to prove the legitimacy of comparing rural/suburban Indian casinos with the proposed project, a detailed and logical reasoning must be provided. The BIA has not done so. The three referenced casinos are markedly dissimilar. None of them is located in an urban area with high crime rates.

The Tribe can contract with whatever private or public agency it chooses for security on the project site. However, the Office of the Sheriff, not the Richmond Police Department, has jurisdictional authority and responsibility for primary law enforcement services within the unincorporated area surrounding the casino project. The California Highway Patrol, not the Richmond Police Department, has jurisdictional authority and responsibility for enforcing the vehicle code within the unincorporated area surrounding the casino project. The role of the Richmond Police Department within the unincorporated area is solely a function of its mutual aid agreement with the County. It should be noted though that the Office of the Sheriff and the California Highway Patrol have provided *long-term* mutual aid assistance to the City on multiple occasions in the past, because the City could not handle law enforcement issues in its own jurisdiction. The FEIS provides no analysis on the City of Richmond's ability to provide law enforcement services in an unincorporated area.

See Comments on the MSA in Section 5, Mitigation.

**Law Enforcement Staffing Mischaracterized (DEIS Comment 1-191)** – On page 4.9-8 the DEIS states that “according to the Contra Costa County Sheriff's Department staffing needs of the Sheriff's Department are based primarily on budget and population.” This reference is not correct and does not reflect the opinion of the Sheriff's Office. Budget never determines needs, rather, it guides staffing levels. Also, population is only an initial determinant for staffing. The “ideal officer to population ratio of one officer per 1,000 population” is a statewide yardstick that is used generically, not specifically to Contra Costa County. Sheriff's Office staffing distribution is not the same throughout the County but rather is dependent on a multiplicity of factors.

Response to comment

1-191 Section 4.9 has been changed to incorporate the MSA. Pursuant to the MSA, the Richmond Police Department would provide law enforcement services for the project. Further, the MSA provides for the provision of compensation by the Tribe to the City of Richmond Police Department to adequately provide 24-hour services.

**County Comment on Response 1-191:** The language in Section 4.9 has been deleted in the FEIS. However, now the FEIS blithely ignores the off-reservation impacts of the proposed casino on the demand for *off-site* law enforcement services. Instead, all references are to *on-site* law enforcement services. This results in a egregious flaw in the assessment and mitigation of the off-reservation impacts of the casino. See also Comments on the MSA in Section 5, Mitigation.

***Estimated Calls for Law Enforcement Services (DEIS Comment 1-192)*** – The DEIS asserts that the “demand for public safety services would be less from casino patrons than it would be from a permanent residential population,” (page 4.9-8). This conclusion, which may or may not be true since no evidence is provided to support that conclusion, is just one factor of many factors will affect calls for services, due to the presence of the casino. The EIS needs to assess *all* factors, including location of the casino, crime rates in the surrounding area, land uses (residential, retail, industrial, etc.), crime prevention measures taken on the casino site as well as the visible presence of on-site and off-site security. For Thunder Valley, the DEIS states that the tribal security force has 15 security members and the Tribe pays for five deputy positions and one patrol vehicle. We could not find any statement as to the number of on-site security personnel planned for this facility, but did see in the mitigation measures that the Tribe would negotiate with Contra Costa County for up to four deputy positions.

The Contra Costa County Office of the Sheriff believes that the casino would require, at minimum, additional staffing for another beat. Five deputies and two sergeants would allow for around the clock coverage and built in relief for the scheduled workweek.

However, final determination of staffing requirements would need to be based on factors such as facility size, patronage, population influx as well as EMS, fire and transportation impacts. Quick ingress and egress in the immediate area as well as surrounding areas are critical to officer safety, response times, threat assessment and mobilization of resources. Special events could trigger the need for traffic control. There will also be additional demands on Sheriff’s Patrol due to the policy of the Fire District and EMS to request a law enforcement response to every call for service in North Richmond.

Response to comment

Support is given on page 4.9-8 of the DEIS directly following the above-mentioned statement. As discussed in the Section 4.9, the presence of 24-hour Tribal security coupled with video surveillance and additional on-site security measures would reduce the need for law enforcement services generated by casino patrons from the City of Richmond Police Department. Additionally, refer to Response 1-191 for information on the Richmond Police Department providing law enforcement services to the project site.

**County Comment on Response 1-192:** The BIA's response to the County's comment has been to limit discussion of law enforcement in the FEIS only to that which is necessary on the project site. The FEIS has not done an adequate job of properly projecting calls for service, since the analysis concludes that the majority of casino related problems would be handled by tribal security personnel on-site or by the Richmond Police Department. This does not adequately address off-site criminal activity due to the presence of the casino or calls from individuals coming to and leaving the facility. Such calls for law enforcement assistance would be routed to the County Sheriff or California Highway Patrol. When a call for assistance is received from a cell phone, it is automatically routed to the CHP dispatch unit, which routes it to the County if the call is regarding an incident in the unincorporated area. When a call for assistance is received from a landline, it is automatically routed to the Sheriff's dispatch unit, which routes it either to the CHP (vehicle code issues) or to a Sheriff's unit if the call is regarding an incident in the unincorporated area. From a technical perspective, it would be impossible to segregate calls for law enforcement services that result from the presence of the casino from those which may have occurred absent the casino. Thus, even if the MSA were valid, and it is not, a significant increase in calls for Sheriff's Office services can be anticipated in the unincorporated area surrounding the project.

**Criminal Activity (DEIS Comment 1-193)** - The DEIS evaluates the project's impact on public criminal activity based on the findings of the NGISC. The limitations of this research have been previously discussed. Even if this research were considered applicable to this project, it only covered serious crimes. No mention is made of the study's findings regarding the impact of casinos on non-violent crimes such as prostitution and DUI.

Response to comment

1-193 Refer to Response 1-127 for a discussion of social issues and the scope of the EIS. Section 4.9 discusses social issues within the scope of the EIS.

**County Comment on Response 1-193:** The referenced Response 1-127 states: "Fully analyzing every social cost that may occur from gambling is outside the scope of this EIS. Section 3.7.4 provides a comprehensive overview of social costs from problem/pathological gambling." The BIA's response is not responsive. Criminal activity is a very specific and significant off-reservation impact of the casino. Non-violent crimes such as prostitution and DUI should be projected as one measure of the need for increased law enforcement and related services. It is also a measure of the impact to the community and its character.

**CHP Law Enforcement (DEIS Comment 1-194)** -- The EIS also needs to acknowledge that enforcement of the vehicle code in unincorporated areas is the responsibility of the California Highway Patrol. The ability of the CHP to address the needs and impacts of the proposed project must also be evaluated for such issues as increases in traffic accidents, drunk driving and traffic violations.

Response to comment

Section 3.9 was revised to discuss the responsibilities of California Highway Patrol in the unincorporated

areas. Impacts are addressed in Section 4.9 regarding potential increased demands from service from increased traffic and serving of alcoholic beverages. Section 5 states that "The Tribe shall negotiate with the Department of California Highway Patrol the amount of payment required to provide and maintain reasonable levels of safety and security for the project site."

**County Comment on Response 1-194:** Impacts to agencies that conduct a significant amount of law enforcement in the area surrounding the proposed casino cannot be discarded as a "social cost" that is "outside the scope of this EIS," as asserted in Response 1-193.

With regard to DUI's, the FEIS now acknowledges that serving alcohol at the casino would "potentially increas(e) problems with drunken driving and underage drinking" and that "these problems lead to increased service calls to the CHP and local law enforcement." (FEIS page 4.9-11) The FEIS then goes on to state that the impact would be less than significant after the implementation of mitigation measures (no service to those under 21 years old and implementation of a "Reasonable Alcoholic Beverage Policy"). No data is provided to support the conclusion of "no significant impact." The FEIS should estimate the number of patrons who would be drinking and consequent traffic accidents, drunk driving and traffic violations.

In addition, the FEIS needs to assess traffic accidents and traffic violations that are not due to drunk driving. Impact on those law enforcement services should be correlated to increases in traffic related to the casino.

***Sheriff's Deputies Part of a System That Would Need Augmentation (DEIS Comment 1-96)*** – Sheriff's deputies, in order to maintain a high visible presence and high levels of service delivery would need to be stationed in a local station house. This would need to be constructed. Investigative staff resources would need to be added as well. In addition, additional support staff would be required for communications, crime prevention programs, clerical support and related training. There would also be cost increases related to services and supplies of significance, such as vehicle acquisition and maintenance; computer equipment and technical support and other building occupancies.

Response to comment

The MSA states that the Tribe and City of Richmond will enter into a CLEA, which will address in detail the rights, responsibilities and authority of the Richmond Police Department. The CLEA will include an itemized listing of the additional law enforcement infrastructure, equipment and personnel that the Richmond Police Department would reasonably require.

**County Comment on Response 1-196:** See Comment on Response 1-190 and Comments on the MSA in Section 5, Mitigation. The County is legally and solely responsible for law enforcement within unincorporated Contra Costa County (except for CHP, as noted in 1-190).

**Other Justice System impacts need to be addressed (DEIS Comment 1-197)**-- The EIS should also address other justice system impacts that would result from criminal activity resulting from the presence of the casino project, as requested by the County in its August 2004 submittal on the Scope of the EIS, including:

- *County Detention Facilities* – The EIS should estimate the number of individuals that would be booked into the County detention system and/or incarcerated by duration of sentence as well as profile the characteristics of inmates (with an assessment of necessary ancillary services, such as mental health counseling, substance abuse, batterers’ treatment, etc.).
- *Prosecution and Defense* – The EIS should estimate the increases in criminal prosecutions as a result of the project by type of crime. In addition, the EIS should estimate the number of crimes for which the Public Defender would be required to provide defense by type of crime.
- *Court Facilities* – The EIS should estimate the number crimes that would be adjudicated in court by type of crime.
- *Probation* – The EIS should estimate the number of individuals by type of crime (juvenile and adult) who would be put under probation supervision through the court process, including the length of the probationary period.

Response to comment

Refer to Response 1-127 for information on social issues and the scope of the EIS. Section 4.9 discusses social issues within the scope of the EIS.

**County Comment on Response 1-196:** The referenced Response 1-127 states: “Fully analyzing every social cost that may occur from gambling is outside the scope of this EIS. Section 3.7.4 provides a comprehensive overview of social costs from problem/pathological gambling.” The BIA’s response is not responsive. Criminal activity is a very specific and significant off-reservation impact of the casino and it has a measurable impact on the entire justice system. The FEIS should quantify those impacts and provide appropriate mitigation measures.

## ***Fire Services - 3.9.5 and 4.9 et al***

**Compliance with current building, fire and life safety codes (DEIS Comment 1-198)** – On page 2-4, the DEIS states generally that the Tribe will “adopt standards of the Uniform Building Codes, including all uniform fire...and related codes.” Yet, in the following list of codes, there is no mention of the fire codes and related requirements. The EIS should specifically add the California Fire Code and the Fire District’s Fire

Prevention Bureau requirements as well as additional life safety codes (e.g., National Fire Protection Association), which should be utilized to the fullest extent possible.

Response to comment

1-198 Section 2.2.1 of the DEIS stated that the development would incorporate features identified in the California Fire Code and the Contra Costa County Fire District Prevention Bureau Requirements including: Type I non-combustible, fire-resistive construction; automatic sprinklers; and an automatic fire detection and alarm system. The Tribe has agreed in the MSA with the City of Richmond to enter into a FPERA. The FPERA shall address fire inspections and provision of building plans to the Richmond City Fire Department, which would ensure the health, safety and welfare of the general public (Section 2.2 of Appendix Z).

**County Comment on Response 1-198:** FEIS page 2-5 now references the appropriate codes, however limits the Tribes commitment on compliance. “Features” of the California Fire Code and the Contra Costa County Fire District Prevention Bureau Requirements Code do not equate to “compliance” with both Codes. Protection of casino patrons and employees can best be assured by full compliance, as specified by a mitigation measure on the issue. See also the County’s comment on the validity and enforceability of the MSA in the Mitigation Section.

**Authority to manage any and all emergencies on-site (DEIS Comment 1-200) –** The DEIS does not address the authority for the Fire District to make all necessary decisions, with collaboration from tribal representatives, regarding Fire District-related emergencies to ensure the safety of all employees and citizens. This should be added to the EIS.

Response to comment

1-200 The MSA with the City of Richmond has made adequate provisions to ensure the safety of employees and patrons. The City of Richmond Fire Department would provide primary fire protection and emergency medical services to the project. The FPERA between the Tribe and the City of Richmond shall address coordination issues including (i) staffing and scheduling, (ii) the development of a pre-fire plan, (iii) the provision of building designs and plans, (iv) practice drills, (v) the development of a Fire Disaster Management Plan, (vi) periodic inspections, and (vii) conduct of any activities related to the City's provision of fire protection and emergency response services to the project (Section 2.2 of Appendix Z). Section 4.9 was revised to include a discussion of mutual aid services provided by Contra Costa County Fire Protection District.

**County Comment on Response 1-200:** The BIA’s response ignores Contra Costa County Fire Protection District’s (CCCYPD) mutual aid responsibilities under its automatic aid agreement with the City of Richmond’s Fire Department, instituted on July 11, 2006. Under the preferred Alternative A, CCCYPD estimates that it would respond about 10% of the time to the casino on automatic aid calls when Richmond Fire is not available (32 responses annually), based on the current West County fire station configuration. Additionally, CCCYPD estimates that an additional 80 calls would occur annually for emergency incidents located just off-site at the casino property.

The FEIS should also acknowledge that the CCCYPD would need to participate in the development and implementation of the Project’s pre-fire plan and its Disaster Management Plan. Additionally, CCCYPD would participate with the City of Richmond

and its Fire Department in emergency drills and training exercises pertinent to the project. In the event the CCCFPD is first on the scene of a major fire, hazardous materials, terrorist or medical incident, it must have authority to manage all appropriate aspects of the emergency until relieved of such command by a higher, agreed upon, authority. The Tribe needs to cede that authority to CCCFPD under a binding, legally enforceable agreement. This issue needs to be addressed under mitigation measures. Note that this same management of incident authority applies to Emergency Medical Services (EMS), and also requires a binding, legally enforceable agreement. See EMS comments below.

***Fire protection requirements and resources (DEIS Comment 1-201)*** – Additional emergency response capabilities will be required to meet the needs of the proposed development. This will include fire personnel, equipment and facilities. Such responses (personnel and times) should meet or exceed the minimum requirements of the Fire District. As noted under the comments under Law Enforcement, the DEIS's use of Jackson Rancheria's or Cache Creek Casino's need for services is not appropriate for estimating the demand for services due to the proposed project, and such references should be deleted in the EIS.

Fire protection and emergency medical first responder services (paramedic) are provided by Fire Station 70, located at 13928 San Pablo Avenue, San Pablo. (Emergency ambulance services are not provided by the fire district, but are provided by American Medical Response under contract with Contra Costa County EMS.) The station is located 2.15 road miles east of the site and is staffed with a three-person crew and one Type 1 engine. Calls for emergency service in its service area exceeds 3,000 yearly. For the first six months of 2004, Station 70 responded to 1502 calls, or 8.25 per day. For calendar year 2003, Station 70 responded to 3,230 calls, or 8.85 per day. Lastly, for calendar year 2002, Station 70 responded to 3,022 calls, or 8.28 per day.

Fire Station 70 protects the City of San Pablo west of Interstate 80, the unincorporated areas of North Richmond and East Richmond Heights, a total of 4.8 square miles with a population of approximately 40,000. A portion of East Richmond Heights is within a "Very High Hazard Fire Severity Zone," which is an area with an extreme fire hazard due to vegetation, density of structures, roadways and topography.

With the population of 40,000 within the service area, and the request of 2,193 calls for emergency medical services for the calendar year of 2003, the Fire District's service demand for EMS was 54.8 calls per 1000 population. Overall, Fire Station 70, for calendar year 2003 responded to 3,230 calls, which equals 80.8 calls per 1000 population.

With the projected addition of approximately 18,000 casino occupants to the service area, an increase of approximately 987 calls per year can be directly attributed to the proposed casino. The Fire District has calculated an increase of fire and public service (non-EMS) calls to the complex that approximates one per week, or 52 calls per year. Therefore, the CCCFPD anticipates an increased call load of 1039 responses per year.

The Contra Costa County Fire Protection District cannot serve the proposed complex and its occupant load without mitigation. Based upon nationally recognized standards, the fire district “shall have the capability to deploy an initial full alarm assignment within an 8-minute response to 90 percent of the incidents” (NFPA #1710 section 5.2.3.2.1). At the present time, three of the four pieces of equipment assigned to the 1<sup>st</sup> (full) alarm exceed the 8-minute response time by 3 to 7 minutes. This also assumes that these engine and truck companies are in quarters (their fire station) and are not on other emergency responses. Therefore, the Tribe would need to construct a new fire station (relocate fire station 70) to CCCFPD specifications on a 208’ X 208’ parcel of land within 2.25 miles of the casino project. A new aerial apparatus (with a crew of three per shift) shall also be provided along with a rescue unit staffed by two firefighter/paramedics for each shift.

#### Response to comment

1 -201 Fire personnel, equipment, and facilities required to provide primary service to the project are addressed in the MSA with the City of Richmond and would be provided at a level to ensure the health, safety and welfare of the general public. In addition to the FPERA, discussed above, the Tribe would provide a one-time payment, which would contribute to the provision of an engine truck, an aerial ladder truck, and fire station improvements (Section 2.2(b) and Section 3.1 of Appendix Z). The discussion regarding Cache Creek and Jackson Rancheria are included in the EIS to provide analysis on emergency medical and fire service requests from similar facilities. The County's independent analysis of the anticipated number of calls is based on the ratio of the number of calls received per year compared to the County Fire Protection District's entire service population. This ratio is not applicable to the number of visitors at the project as many patrons would only stay a short period of time, whereas service populations, are less temporary in nature. Information regarding Station 70 of the Contra Costa County Fire District is noted and consistent with the discussion in Section 3.9; however, it should be noted that the City of Richmond Fire Department would provide primary fire and emergency medical services to the project.

**County Comment on Response 1-201:** See also County Comment on Response 1-200. While the City of Richmond’s Fire Department will provide, via the MSA, primary fire and paramedic emergency medical services to the project, CCCFPD will need to provide secondary emergency services on a routine basis. Structure fire incidents will necessitate CCCFPD responses, as will medical emergencies when Richmond Fire Department resources are unavailable (out of service for maintenance, training, other emergencies, etc.).

Cache Creek and Jackson Rancheria are not valid for comparison purposes since they are not similar facilities in similar locations. In addition to the methodology submitted in the original comments on the DEIS, data acquired from CCCFPD units responding to the San Pablo Casino (San Pablo) in the City of San Pablo also supports the forecast of a significant increase in emergency responses for public safety departments to the Project. Originally Casino San Pablo had 100 gaming machines available for patrons (1999-2004). In 2004, the CCCFPD responded to Casino San Pablo for 28 emergency calls. When Casino San Pablo added 700 more gaming machines, the workload increased every year, with the year 2006 requiring the CCCFPD to respond 101 times.

(Note that San Pablo has Class II bingo-based slot machines, which have a lower patron turn-over rate than Class III machines, and so the forecast may be low.) Forecasting 2500 to 5000 machines at the Project, an annual call load of 320 to 620 could be expected. Additional emergency responses to adjacent areas of the Project, including streets and highways, can approach several hundred more on an annual basis.

A new fire station costs approximately \$3 million, without land. The aerial apparatus costs a minimum of \$785,000 and personnel costs will be close to \$2.8 million per year for 9 firefighters (current costs, with will increase over time.) A rescue unit staffed with 6 firefighters now costs \$1.86 million per year (personnel only). No provision is made in the FEIS to compensate CCCFPD for these additional costs to its system. This needs correction, with the addition of a mitigation measure(s).

See also EMS comments below.

***Fire response estimates appear reasonable (DEIS Comment 1-202)*** – The DEIS estimates the expected volume for fire calls by alternative configurations for the casino: 5 calls per year for Alternate A; 3 for B and C and 2 for D. These estimates appear appropriate. It was estimated that a new engine company would be needed, not including Emergency Medical Services or fire prevention inspections.

Response to comment

1 -202 Comments noted. Fire personnel, equipment, and facilities required to provide primary service to the project are addressed in the MSA with the City of Richmond and would be provided at a level to ensure the health, safety and welfare of the general public.

**County Comment on Response 1-202:** The BIA states that the issue of fire response estimates and associated resources needs is handled under the MSA. See the County's comment on the validity and enforceability of the MSA in the Mitigation Section.

In fact, as the closest fire company (Station 70 per Mapquest), CCCFPD will require the addition of one firefighter/paramedic at Fire Station 70, due to anticipated fire and medical responses to the casino. With a 10-25% absence expectation for the closest Richmond Fire Department unit to respond (approximately 1039 annual calls are projected), CCCFPD is expected to respond 104 to 260 times per year. This requirement will ensure the highest level of initial medical care and additional staffing to meet National Fire Protection Association (NFPA) standards for responses. The FEIS needs to be revised to reflect this data and mitigation requirement.

***Dispatching of Fire District resources (DEIS Comment 1-203)*** – The impact of estimated additional calls for service would necessitate the addition of one half-time fire/EMS dispatcher.

Response to comment

1 -203 No methodology was provided as to why the project would require one half-time fire/EMS dispatcher. The total number of estimated annual calls for service from the project site (as analyzed in Section 4.9) is 5 calls for fire-related incidences and 312 calls for medical services. This is not anticipated to result in the need for additional dispatch employees.

Emergency calls within the unincorporated are automatically routed to CCCFPD, not Richmond Fire. While Richmond Fire may be the primary Public Safety Answering Point (PSAP) for on-site casino calls, CCCFPD will still need dispatching capacity. Additional calls are projected to total approximately 1039 annually (See Comment 1-201). Based on CCCFPD's experience with Casino San Pablo, CCCFPD's dispatcher workload would amount to about 25% of the casino's on-site call load, with a projected increase of approximately 80 calls or more per year.

The CCCFPD's Communication Center is close to maximum capacity, ie., at its threshold for hiring an additional dispatcher. Based on this increase call load and the current user agency formula for dispatch reimbursement, the cost for dispatching would approximate \$31,000 annually (.5 Full Time Dispatcher).

***Disaster management requirements and resources (DEIS Comment 1-204) –*** Authority to manage potential and existing large-scale emergencies will be required by the Fire District. Potential resources may be required to ensure that the proposed facility and its occupants remain safe and prepared for disaster situations. Development of disaster management plans by the Tribe, Fire District and the County's Office of Emergency Services should be addressed in the EIS.

Response to comment

1 -204 The development of a Fire Disaster Management Plan would be included in the FPERA as discussed in Response 1-200. Construction would follow building and fire codes as discussed in Section 2.0, which would prevent building failure to a reasonable extent in the event of an earthquake. Project elements such as fire-resistant building materials, automatic sprinklers and alarms would reduce risks of life and property associated with fire.

**County Comment on Response 1-204:** The BIA's response is not responsive to the County's comment. As the secondary fire and medical emergency response jurisdiction, the CCCFPD should participate in the development and implementation of a Project Disaster Management Plan. See also County Comment 1-200.

## **Emergency Medical Services - 3.9.5 and Pages 4.9-12 et al**

***Current Emergency Medical Services (EMS) system not fully described (DEIS Comment 1-206)–*** The description of Contra Costa County's EMS in the EIS needs to explain that both ambulance and fire respond to emergency calls; that the only ambulance provider is American Medical Response (AMR) (no fire districts); and the

terms and conditions under which AMR must respond to calls. The average time from dispatch to scene and return to service in Contra Costa County is 20 minutes and for transports it is 45 minutes. The EMS ambulance provider would likely require approximately 1.5 unit hours of work but a total of 3.9 units hours to assure performance. (Industry standards require ambulance providers to use a .40 unit hour of utilization to assure sufficient ambulance resources are available to meet response times.) A unit hour is an hour of scheduled coverage by an ambulance.

Response to comment

1 -206 AMR data is noted. Fire departments and ambulance both respond to emergency medical calls. The City of Richmond Fire Department would be compensated for emergency medical calls through the MSA. Ambulance transport and emergency room care are provided by private businesses and usually paid for by the person requiring emergency medical care. Thus, any increased use of emergency medical services would fund expansion of needed services. Ambulance service may be provided through the City's contract with AMR (through the terms of the FPERA) or the Tribe may choose to contract with a private ambulance company.

**County Comment on Response:** The BIA incorrectly assumes that the cost of all EMS services will be borne by the patient. In fact, local fire departments cannot bill users; therefore, they are unable to increase revenue when costs rise due to higher workloads. CCCFPD expects an increase in medically-related emergency incidents at the casino due to the periodic absence of available Richmond Fire Department units. With a 10%-25% absence expectation for the closest unit to respond, CCCFPD is expected to respond 104 to 260 times per year. It should also be noted that CCCFPD responds to *all* emergencies with advanced life support (ALS) capabilities provided by a paramedic. This data supports the need for one (1) firefighter/paramedic for Fire Station 70 to be funded by the Project.

***EMS impacts not thoroughly analyzed (DEIS Comment 1-207)***– There are three kinds of EMS impacts:

- increased demand on-reservation (i.e., on the casino site)
- increased demand off-reservation, but generated by activities on the site
- increased resources required to meet demand due to longer response times resulting from project-related traffic congestion

The DEIS addresses the first impact, but not the two other impacts. The EIS should do so.

The proposed casino will generate more traffic, resulting in traffic accidents that require EMS response. This increase in demand for EMS services should be included in the analysis. In addition, the EIS should assess the impact to Contra Costa County's ambulance transport contractor. With the expected increase in vehicle traffic due to casino activities, it is probable that other ambulance transport response times would increase and require AMR to add more unit hours to maintain its contractually obligated response times to the remainder of the community (response within 11.75 minutes for 90% of all calls). This must be considered in the EIS.

Response to comment

1 -207 The City of Richmond Fire Department would provide primary fire protection and emergency medical services to the project. As discussed in Response 1-206, private companies provide ambulance response and increased demands would fund expanded services. Increased response times due to traffic congestion as the project is not anticipated to significantly increase traffic congestion in the area. The Tribe has agreed to fund a full share or proportionate share of several traffic improvements, listed in Section 5.2.7, in order to reduce the effects from project-generated traffic to a less than significant level.

**County Comment on Response 1-207:** The BIA fails to acknowledge that emergency medical and fire incidents emanating from the Project and its surrounding area will increase the workload of 3 agencies: Richmond Fire Department, CCCFPD and AMR/Contra Costa EMS. Due to fire incidents requiring multiple fire engine companies (which would include CCCFPD units) to respond, and medical incidents requiring CCCFPD units to respond when Richmond Fire Department units are not available (See Comment 1-202), CCCFPD's workload will increase. Similarly, incidents requiring ambulance transport will increase the EMS workload. (See EMS Comments on Responses 1-198 through 1-209 below)

The response indicates that the City of Richmond Fire District would provide primary fire protection and emergency medical services to the project and increased response times are not anticipated due to traffic congestion. However, the basis for this conclusion is not provided. The FEIS needs to provide justification for this conclusion that is based on data.

The BIA relies on traffic improvements that “reduce the effects from project-generated traffic to a less than significant level.” As detailed in County Comments 1-139 and 1-140, project-generated traffic is seriously underestimated, rendering the stated mitigation measures inadequate.

***Projected demand for EMS calls needs redoing (DEIS Comment 1-208)***– The DEIS estimates on EMS calls from the casino is based on 2002 Cache Creek Casino data and 2003 Jackson Rancheria Casino data; averaging six and five times per week, respectively. This is much less than reported by Michael Osur, Assistant Public Health Director, County of Riverside in a 2005 communication with a Contra Costa County representative. Mr. Osur reported that Riverside County averages three to four ambulance responses daily to each of the four major casinos in their county. The volume was so high at one casino that the casino purchased an ambulance for the ambulance provider in that county and also provides additional dollars for staffing the ambulance and to the EMS Agency for surveillance and protocol coordination. Given the disparity between these estimates (21-28 calls per week versus 5-6 calls per week), the EIS should include a more thorough analysis of expected EMS calls.

Response to comment

1 -208 The discussion regarding Cache Creek and Jackson Rancheria are included in the EIS to provide analysis on emergency medical and fire service requests from similar facilities. If emergency medical calls were higher than anticipated it would not affect County services. First, private companies provide ambulance response and increased demands would fund expanded services. Secondly, the Tribe would receive primary

fire and emergency medical response from the City of Richmond Fire Department. As discussed in the MSA, this would be provided at a level to ensure the health, safety and welfare of the general public (Section 2.2 of Appendix Z).

**County Comment on Response 1-208:** The BIA's response is not responsive to the County comment. The DEIS and now the FEIS contain incorrect information. Text in the FEIS should be revised to reflect the accurate EMS numbers for the Cache Creek and Jackson Rancheria Casinos. Without appropriate mitigation based on realistic call estimates, the result could be diversion life-saving resources from other county and city areas during responses due to the presence of the casino.

***Local hospital impact needs to be added (DEIS Comment 1-210)*** – Typically about 70% of EMS responses result in transport to a hospital. The EIS should include an assessment of the impact of the proposed casino project on local hospital emergency services.

Response to comment

1-210 Hospital service is provided by private companies, which charge individuals requiring service. The two emergency rooms most likely to service calls originating from the project site are Doctor's Medical Center and Kaiser Medical Center in Richmond. In 2005, Doctor's Medical Center averaged 22.5 emergency ambulance patients per day; the facility has 232 inpatient beds and 24 emergency treatment areas. In 2005, Kaiser Medical Center received approximately 9.3 emergency ambulance patients per day; the facility has 50 inpatient beds and 15 emergency treatment areas. Both emergency centers also receive emergency patients who are not transported by ambulance. If general demands on the hospital increase it is anticipated that increased revenue would fund expansion and/or improvement of private, emergency treatment facilities.

**County Comment on Response 1-210:** The response alludes to a possible increase in general demands on local hospitals, but contends that increased private revenue would fund expansions and improvements of local facilities. This response ignores the legal obligation of hospitals to provide emergency room care, regardless of a patient's ability to pay or insurance status. Consequently, the assumption that hospital revenue will offset emergency room service costs or fund increases in emergency room capacity is fallacious. The FEIS should include a thorough analysis, supported by data, as requested by the County.

***Peak hours need to be part of EMS and hospital impact analysis (DEIS Comment 1-211)***– The need for EMS and hospital emergency services will likely spike during the peak casino hours, predicted to be during the weekends and afternoon and early evening hours. This also corresponds to the peak period for non-casino EMS call requests. For example, during fiscal year 2004, the number of EMS calls in San Pablo peaked at noon and then peaked again at 3 pm with the busiest period from 3pm to 8pm. The EIS needs to consider these peak hour factors in its analysis of the need for EMS and emergency room resources.

Response to comment

See Response 1-210. Adequate levels of service would be provided through the peak hours. Through the MSA, the Richmond Fire Department will provide a level of service to adequately ensure the health, safety and welfare of the general public. This agreement does not exclude peak hours. AMR is a private company and is contractually responsible to meet ambulance response times. Should additional ambulances be needed during peak hours they would be privately funded and privately provided. As noted in Response 1-210 the number of emergency treatment areas currently exceeds the daily average number of patients.

**County Comment on Response 1-211:** The BIA equates peak commuter hours and peak EMS hours. In fact, fire and medical emergency responses are highest during evening and weekend hours (per CCCFPD Information Technology Analysis-2006). Generally, call loads increase on Fridays, Saturdays and Sundays. For each day of the week, call loads are higher in the morning (7-9 am), early evening (5-7 pm) and later evening (11 am – 1 am). If peak usage hours for patrons are similar at the casino, then emergency medical resources will be impacted beyond currently workloads. This relevancy needs to be included in the final analysis vis-à-vis impacts to emergency fire and medical services during certain hours and days.

**County Comments on Responses 1-206 thru 1-211, EMS System:** The FEIS fails to address the concerns raised by the County in its comments on the DEIS submitted to the BIA in May 2006 regarding emergency medical services (EMS). **The EIS fails to distinguish between components of EMS response and between levels of EMS service that, depending on the service model used in a particular area, can be provided by one or more response components. The lack of understanding of the operation of the EMS system reflected in the EIS results in a failure to correctly assess the project's likely onsite and offsite impacts on EMS service.**

The principal components of EMS field response include first responder service, usually provided by fire engine crew and ambulance transport service. The levels of EMS service, which can be provided by either or both the first responder or ambulance components, are Basic Life Support (BLS) provided by EMT-I's operating under a limited scope of practice and Advance Life Support (ALS) provided by paramedics operating under an expanded scope of practice. Under State law, paramedic programs can only operate under the approval and supervision of the County EMS Agency. In the area of the project, both Contra Costa County Fire Protection District (CCCFPD) and American Medical Response (AMR), the County's contracted emergency ambulance service provider, provide paramedic ALS level response. Richmond Fire, identified in the FEIS as the agency to provide EMS service currently does not provide ALS level service and does not provide ambulance transportation service. Because Richmond Fire does not provide ALS first response, the County requires AMR to meet shorter response time standards and to adhere to high paramedic staffing requirements (two paramedics per ambulance) within the City of Richmond than elsewhere. Paramedic ALS first responder service provided by fire are subsidized by the County indirectly through the cost for provision of County EMS Agency oversight and directly through an annual paramedic engine subsidy currently set at \$30,000 per paramedic-staffed engine. Richmond Fire, identified in the FEIS to provide fire and EMS service under an

MSA, would also receive this County paramedic engine subsidy should it establish a paramedic program.

Since the FEIS fails to adequately describe how ALS response and ambulance transport will be provided, it is impossible to determine impacts on County services and costs. The FEIS fails to provide any analysis of the impact of project-related traffic on response times for ambulance units responding to offsite incidents, a factor that may require increasing the number of ambulances in order to meet response time requirements. The FEIS continues to use EMS response estimates based on the Cache Creek and Jackson Rancheria Casino data that the Riverside County EMS staff report are substantially incorrect.

Advanced Life Support (ALS) is performed in the field by licensed paramedics and are limited by law to operating under a county EMS approved and supervised ALS program. Paramedics are able to provide an advanced level of care when acting under protocols approved by the County EMS Medical Director and with the ability to communicate from the field directly with a County-approved base hospital physician. Basic Life Support (BLS) is performed by EMT-I's operating under a much more limited scope of practice and trained in first aid. EMS response requires both the advanced life support (ALS) level of EMS service provided by paramedic responders and the basic life support (BLS) level of EMS service provided by Emergency Medical Technicians I (EMT-I's).

The FEIS states, "The Richmond Fire Department would provide fire and emergency medical services to the project site pursuant to the MSA." Since the Richmond Fire Department provides only BLS level first response and does not provide patient transport, the FEIS fails to address the provision of ALS service and patient transport.

Under the existing County EMS system, rapid ALS response and patient transport are provided throughout County under contracts with fire agencies with ALS services and with American Medical Service, a private ambulance company. In Richmond, the County contracts with American Medical Response to provide both timely ALS response and patient transport.

All paramedic-based ALS service is subsidized by the County, due to the fact that, under the California Health and Safety Code, all paramedic programs must be approved and overseen by the County's EMS Agency,

Currently, the County assures rapid access to ALS level care and patient transport through a combination of contracts with those fire services that provide ALS level care or patient transport and with American Medical Response, which provides both ALS and patient transport. All paramedic programs receive County oversight as required by the Health and Safety Code. This oversight is provided at County expense. In addition to the paramedic program oversight provided by the County EMS Agency, all fire service paramedic programs receive a County subsidy (currently, \$30,000 annually for each paramedic-staffed fire engine) funded through a parcel fee (County Service Area EM-1).

No provision is made in the FEIS mitigation measures for the Tribe to participate in this funding system; therefore, this cost is an un-mitigated impact of the project.

## **Food Safety - 3.9.5 and 4.9.5 et al**

***Food safety issues need to be addressed (DEIS Comment 1-213)***– The Contra Costa County Environmental Health Division of the Health Services Department is responsible for inspecting and regulating retail food facilities to ensure a safe and sanitary food supply. The Division is also provides training to restaurants and other facilities handling food on safe and sanitary techniques of food preparation and storage.

If the Tribe intends to contract with the Environmental Health Division for these services, then the EIS should say so. If not, then it should address how the Tribe would ensure food safety within its facility, including how it will respond to consumer complaints. (Note that the only reference to this public health issue is found on page 2-4: “The Tribal Government will adopt and comply with standards no less stringent than State public health standards for food and beverage handling.”) It should be noted that the Casino San Pablo facility does not have a contract with Environmental Health, and the Division receives complaints regarding Casino San Pablo’s restaurant. However, absent any authority, those callers are referred to the Bureau of Indian Affairs.

Response to comment

1 -213 The Tribe has agreed to comply with State laws and regulations regarding the handling of food and beverages in the MSA. Additionally, it is anticipated that these standards and inspections would be addressed in the Tribal-State compact.

**County Comment on Response 1-213:** The BIA’s response indicates that the Tribe, pursuant to the MSA, has agreed to comply with State laws and regulations on food safety. See County Comment on the MSA in the Mitigation Measures Section for detail on why the MSA is not an adequate mitigation measure. As it now stands, there is no assurance of food safety at what would be the largest food facility in Contra Costa County.

In the MSA, Food and Beverage Handling, Section 5.2(f), the Tribe agrees to comply with State laws and regulations regarding the handling of food and beverages, including alcoholic beverages. Yet, there are no provisions for monitoring and assuring compliance by Registered Environmental Health Specialists, consistent with state law.

The BIA response also indicates that “it is anticipated that these standards and inspections would be addressed in the Tribal-State compact.” The FEIS cannot assume that there will be such a compact. If the property is granted restored trust land status, the Tribe will have the right to operate Class II gaming without a compact, as is the current case with Casino San Pablo. In any case, restaurant and other food handling facilities on trust land do not require compact approval.

Contra Costa Environmental Health is the local agency with the experience and knowledge necessary for plan review and approval, permitting, training, food borne illness investigation and regular inspection of operations. The FEIS should be amended to include a realistic analysis on how the Tribe will attain, maintain and verify food safety, in compliance with California Retail Food Code. This needs to be an explicit mitigation measure.

## **Noise - 3.10 and 4.10 et al**

***Traffic-related noise impacts on the local roads missing (DEIS Comment 1-216)***— According to the DEIS, on pages 4.8.3-4 approximately 10% of the 14,000 trips a day would use local roads. (note comments under Transportation on the need to reassess this conclusion, as well as to consider diversion of truck traffic to local roads) The DEIS does not assess noise impacts from traffic on local roads or identify which local roads would be used. The EIS should do so.

The noise impact analysis is important because: (1) many of the local streets are residential, (2) current traffic volumes may be so low that even minor traffic could significantly increase the noise levels, and (3) some of the traffic could occur at night. Noise at night is the most annoying noise and can cause sleep disturbance.

***Noise impacts on residences along Richmond Parkway needs more complete analysis*** – The DEIS acknowledges that the casino project will significantly increase traffic on Richmond parkway, indeed “it is expected that all patrons will be directed to use Richmond Parkway to reach the site....” (page 4.8-4). Yet, the DEIS dismisses the impact of traffic related noise on residences adjacent to Richmond Parkway with the statement that noise levels in excess of the federal guidelines “would occur with or without the project.” (page 4.12-54) This analysis is insufficient since it does not analyze the impact of casino-generated traffic on current and projected night-time noise, the time during which casino traffic would be expected to have a greater impact on traffic volumes and when noise would be most disturbing to sensitive receptors. The EIS needs to thoroughly analyze noise on *all* roads that are adjacent to residences.

BIA response 1-216:

Richmond Parkway provides the most direct route to the project site for patrons. The traffic study determined that all roadway segments and intersections analyzed along Richmond Parkway would operate at acceptable service levels after mitigation. Therefore, because significant traffic delays are not expected along this roadway, it is not anticipated that patrons would seek alternative routes. Furthermore, speed restrictions on neighborhood roadways would increase travel time to the project site, making them a less desired option. The traffic study predicts that 10% of commuters would travel to the project site through local roadways. This would be the equivalent of 1,400 daily trips. However, it is anticipated that these trips would be highly dispersed throughout the roadway system and would not significantly increase the traffic on anyone roadway. Therefore it is not expected that project related traffic noise effects would occur on local roadways. The noise levels on roadways directly affected by project related traffic, including Richmond Parkway, Parr Boulevard, and Goodrich Avenue, are evaluated in Section 4.10 of the DEIS. The

discussion of Richmond Parkway has been expanded to discuss the impact to existing residences along Richmond Parkway. Due to the project contributions to existing levels of unacceptable noise, it is recommended as mitigation in Section 5 that the Tribe contribute a fair share to planned noise mitigation along impacted segments Richmond Parkway.

**County Comment on Response 1-216:** As depicted in FEIS Table 4.10-2, project related traffic would increase the Ldn by greater than 1.5 dBA along all analyzed segments of Richmond Parkway (which already has ambient noise levels greater than 65 dBA Ldn). The impact and potential mitigation for residences along Richmond Parkway are now mentioned in the FEIS. Page 3.10-5 includes the statement that “several noise sensitive receptors consisting of single-family residential homes are located adjacent to potentially affected segments of Richmond Parkway.”

More information should be included on the number of single-family homes affected by the noise increases. Also, specific discussion is needed on the “planned noise mitigation” methods/strategies to which the applicant will contribute a fair-share. Feasibility of these mitigation measures should be addressed as well. Finally, there needs to be a statement of the project’s noise impact on residences along impacted segments of Richmond Parkway after mitigation.

As detailed in the County’s comments on Transportation, increases in traffic due to the casino project are vastly underestimated in the FEIS. Once this deficiency has been corrected, the BIA needs to revisit the issue of traffic-related noise impacts on local roads to assess noise impacts for sensitive receptors on those roads. In addition, diversion of truck traffic to local roads still needs review and analysis.

## **Visual Resources - 3.10 and 4.10 et al**

***Visual impacts need mitigation (DEIS Comment 1-221)*** – The DEIS states that there is no significant impact of the casino development project in the area, since it is identified as “blighted” by the North Richmond Development Plan. The purpose of the redevelopment plan is to enhance the visual resources of the area, through such mechanisms as developer fees and assessment districts to both develop and maintain visual resources, including those along the road right-of-way. Mitigation measures in the EIS should include the casino project’s participation in such funding mechanisms or provide for other mitigation measures to offset the loss of this funding.

Response to comment

1-221 Refer to Response 1-119. Additionally, the increase in business revenues resulting from direct and indirect effects of the casino is estimated to be \$17.9 million per year countywide. Payroll and related taxes (estimated to be \$22.9 million annually) would also increase as a result of employment opportunities and earnings supported by the casino operation and its indirect and induced effects. These factors would more than offset the additional costs of governmental services that Alternative A would incur on local governmental agencies.

**County Comment on Response 1-221:** The BIA’s response indicates that the North Richmond Development Plan and Implementation Plan are addressed in the EIS. However, neither Response 1-119 nor 1-221 is responsive to the County’s comment, specifically regarding the Tribe’s participation in maintenance of streetlights and assessment districts. See County Comment on Response 1-119 regarding the validity of relying on any “in-lieu payments” to the Redevelopment Agency or on revenue from sales taxes. Payroll and the unspecified “related taxes” referenced in the BIA response do not fund the streetlight maintenance or contribute to assessment districts either. The FEIS should address visual resource issues separately and evaluate the project’s impact on them from a “real-world” perspective with full understanding of these programs.

***Lighting plan needs to be included (DEIS Comment 1-222)*** – The DEIS addresses lighting on page 4.10-7 (FEIS page 4.10-9) for the proposed casino project with the statement that lighting fixtures will be downcast to decrease light impacts on the surrounding vicinity. The EIS should include a lighting plan for the facility, including the potential for light pollution, type of lamps (and their energy efficiency), intensity of lights, height of lights, area of impact and duration (7 days per week, all night-time hours). The EIS should address the proponent’s participation in lighting districts for future maintenance of streetlights. Mitigation measures to reduce lighting impacts should also be added.

Response to comment

1-222 The level of detail requested by the County is not appropriate or necessary for the assessment of light impacts from a commercial facility in an urban industrial area; the incorporation of downcast lighting is considered an adequate precaution from adverse light impacts. Regarding future maintenance of streetlights see Response 1-221.

**County Comment on Response 1-222:** The BIA’s response that the level of detail requested in this comment is not appropriate or necessary is not an adequate response under NEPA regulations. Neither assessment of impacts nor mitigation may be deferred to a later date, as put forth in the BIA’s response. The FEIS cannot fully assess the environmental effects of the project without analyzing this issue at the requested level of detail. The simple statement that downcast lighting will be provided is not adequate. Furthermore, the response ignores the County’s request regarding financial participation in streetlight maintenance. This too is an inadequate response.

Without the requested analysis, it is not possible to identify appropriate mitigation measures, resulting in potential unmitigated impacts. The Tribe should prepare a lighting plan and make it available for review and comment as part of the EIS process.

***Landscaping and Streetscapes (DEIS Comment 1-223)*** – Page 3.10-21 references the objectives of the North Richmond Shoreline Specific Plan which provides guidance

with respect to visual resources, although, the DEIS does not state whether or not the project will adhere to these guidelines. The EIS should do so. The EIS should assess the impact of the project's landscaping on visual aesthetics. In addition, traffic impacts on existing streetscapes should be assessed, including impact of necessary street widenings.

Response to comment

1-223 The visual resource objectives of North Richmond Shoreline Specific Plan were considered in the assessment of visual impacts provided in Section 4.10 of the EIS. As noted in Section 4.10, development of any of the development alternatives would result in less than significant changes to the existing visual character of the site and its surroundings. Regarding the North Richmond Shoreline Specific Plan, the project would be compatible with the plan's objectives in improving the visual experience along Richmond Parkway. Following approval of the Section 151 Trust Acquisition, all of the project parcels would be exempt from City and County land use regulations including review or approval of improvement plans on trust land. Street improvement projects or other projects within the public right-of-way would be subject to the local jurisdiction in which they are made; these jurisdictions would have the ability impose design specifications consistent with applicable plans and guidelines.

**County Comment on Response 1-223:** The BIA's response noted that "local jurisdictions would have the ability to impose design specifications on street improvement projects within the public right-of-way" that are related to the proposed project at the same time stating that "all of the projects parcel would be exempt from City and County land use regulations." The FEIS needs to address how the Tribe will assure compatibility between trust land streetscapes and adjacent streetscapes in the public right-of-way. Unless the County has the ability to impose specifications and review and approve improvement plans, compatibility can only be assured through an improvement plan that has been scrutinized through the EIS process and whose implementation is a mitigation measure.

The BIA response also states that the project would "result in less than significant changes to the existing visual character of the site and its surroundings" but fails to state whether or not the North Richmond Shoreline Specific Plan has been used to provide guidance on how the project is developed, a fact necessary to evaluation of the assertion. The reader is left wondering how the Plan was considered. Additional specific details regarding the project's attention to the Plan should be included in the FEIS.

The statement in the FEIS on page 4.10-8 that "the project would be compatible with the plan's *objectives* in improving the visual experience along Richmond Parkway" (emphasis added) begs the question of compliance with the North Richmond Shoreline Specific Plan.

**Signage (DEIS Comment 1-224)**– The EIS should identify the number, height, location and illumination of all signs or billboards associated with the project and their visual, lighting and/or auditory impacts.

Response to comment

1-224 As with the assessment of potential light impacts, the level of detail requested by the County is not appropriate or necessary for the assessment of signage impacts from a commercial facility in an urban industrial area. It should be noted that the through the MSA entered into with the City of Richmond, the Tribe has committed to adopting rules, regulations and restrictions relating to signage identical to the City of Richmond's Sign Ordinance. While it is recognized that the project site is located in an unincorporated portion of Contra Costa County, the Tribe's compliance with this provision would ensure that the Tribe's signage would comply with reasonable local standards.

**County Comment on Response 1-224:** The BIA's response that the level of detail requested in this comment is not appropriate or necessary is not an adequate response under NEPA regulations. Neither assessment of impacts nor mitigation may be deferred to a later date, as put forth in the BIA's response. The FEIS cannot fully assess the environmental effects of the project without analyzing this issue at the requested level of detail. The simple statement that the MSA will provide the necessary rules, regulations and restrictions is not adequate. See County Comment on the MSA in the Mitigation Measures Section for detail on why the MSA is not an adequate mitigation measure. More information needs to be included in the FEIS regarding signage and billboards for the proposed project, along with appropriate mitigation measures.

## **Community Character – Pages 4.10-8 et al**

***Irreversible significant change in community character should be acknowledged (DEIS Comment 1-225)*** – The DEIS acknowledges that all alternatives would “result in a substantial development change in the character of the surrounding community” and all of project alternatives are “inconsistent with the type of development envisioned for the area.” The DEIS then concludes that the project related effects to the community character would be less than significant due to “increased economic development opportunities and location of the proposed facility away from established communities in the core of the downtown area.”

The DEIS incorrectly attributes the benefits to the “City” (presumably the City of Richmond), stating that it would add to the City's tax base, reduce the need for City residents to seek work outside the community, increase visitation to the City and be consistent with the type of economic development the City has envisioned for the area. None of these statements are correct.

All alternatives reduce the tax base of the Redevelopment Agency, the current taxing entity, as discussed in comments regarding property taxes. The statement on unemployment is unsubstantiated since there has been no analysis of whether or not area residents would qualify for the jobs. Indeed, given the number of jobs that would be lost due to the proposed casino project, it may be that employment opportunities would decline for area residents. Certainly wages would be less than if a property developed to its planned use under the current zoning. Value of increased visitation is questionable, at best. In addition the DEIS incorrectly states that the alternative that the

project would be situated “away from established residential communities.” To the contrary it is part of the very well established North Richmond community. The relationship to the City of Richmond’s downtown area is irrelevant.

The EIS should correct the misstatements in the DEIS and conclude that all alternatives would have a significant impact on community character. In addition, in this section or elsewhere, the EIS should discuss the impact of the proposed casino project on existing and potential future industrial and manufacturing businesses.

Response to comment

1-225 The conclusion of a less than significant effect to community character is supported by the following findings:

- The project site is zoned for industrial land use. While the Proposed Action and alternatives would result in commercial development, substantial conflicts with surrounding land uses that currently exist in the area (RV storage, whole sale nursery, auto recycling, miscellaneous storage and light industrial uses, open space, public facilities) are not expected. Common land use conflicts associated with industrial and commercial land uses include noise, dust, odors, traffic congestion and aesthetics. Neither the proposed uses on the project site (casino, retail) nor the existing or planned uses in the surrounding area would be particularly sensitive to these issues, with the notable exception to traffic. Traffic from the Proposed Action and alternatives could result in significant impacts to surrounding land uses due to local congestion. However, with mitigation included in the EIS, traffic impacts would be reduced to a less than significant level.
- The introduction of a commercial development in an industrial area would not noticeably alter most area residents' experience of their community. Most residents would only notice the proposed casino and/or retail development as they pass the site while traveling on Richmond Parkway or Parr Boulevard.
- Increased economic activity associated with commercial development is not commonly considered to be negative in an area that is economically depressed. The project site is located in a redevelopment area designated by Contra Costa County. While negative perceptions on casinos ostensibly based in moral or ethical concerns are evidenced in various comments submitted, an unbiased review of social and economic impacts associated with casinos provides little evidence of significant impacts to surrounding communities. The potential socioeconomic impacts associated with the Proposed Action and alternatives have been exhaustively documented in the EIS and substantial commitments have been identified to address community concerns. The MSA entered into between the City of Richmond and the Tribe addresses many community concerns such as the mitigation of traffic, law and fire protection, public service impacts, and revenue for local government programs. The EIS identifies an extensive list of mitigation measures to ensure that the surrounding community is not significantly affected.

Notwithstanding these findings, the analysis on community character presented in Section 4.10 has been amended for clarity and consistency.

**County Comment on Response 1-225:** FEIS page 4.10-8 now acknowledges that the casino’s effects on the “community character of the surrounding area can be viewed from both a positive and negative light.” It then continues with a nonsequitur: an explanation of determination of project consistency with a General Plan process, with no further language that applies that process to the proposed casino project. The FEIS then does not correct any of the other deficiencies identified in County DEIS Comment

1-225. The BIA dismisses the County concerns based on the fact that the project is “situated away from established residential communities and the core of the City of Richmond’s downtown area...” This response ignores the proximity of the North Richmond community, a “community of concern,” as noted by the County. The FEIS needs to be revised to include a thoughtful analysis of this issue.

The response also asserts that “the introduction of commercial development in an industrial area would not noticeably alter most area residents’ experience of their community” and that the increased economic activity would be a non-negative impact to the local community. The validity of these assertions seems questionable given that the FEIS has not sufficiently demonstrated: (1) the extent that economic benefits from a casino (i.e., spending and employment) will directly benefit the communities of North Richmond, Old Town San Pablo, City of Richmond and other local economies (see other comments); (2) the source and effects that the acknowledged considerable project-related substitution (or sales shift) effects will have on existing local businesses; and (3) that the nearly \$18.5 million in estimated future annual advertising and promotion spending for the project will be highly noticeable to both locals and non-locals, resulting in a adverse redefinition of the community’s perceived character

## **Environmental Justice – 3.11 and 4.11 et al**

***More information needed for environmental justice analysis (DEIS Comment 1-231)*** - For a robust analysis of environmental justice, the EIS should also include information regarding population characteristics, population densities, unemployment rates, percentage of owner-occupied housing, single-parent households, number of individuals over the age of 25 with high school diplomas, number of children/percentage of children receiving free/reduced-fee lunches (an indicator of poverty), the number of English-language learners in the schools, and academic performance index figures. The County’s Employment and Human Services Department can provide further information on the demand for Child Protective Services, General Assistance, CalWorks Assistance, and Welfare-to-Work services. The County Probation Department can provide information concerning adult and juvenile probationer rates in the area. The Health Services Department can provide information about homelessness and dependency on the County system for medical care, drug and alcohol dependency recovery services, mental health services, and other related needs. Information from the Sheriff’s Office on crime rates and criminal behavior is included in Appendix U, with an updated report attached to these comments. The above information will point out the number of high-risk factors prevalent within the community.

Response to comment

1-231 The information requested is beyond the scope of the EIS and is not required to substantiate the potential for environmental justice effects.

**County Comment on Response 1-231:** While the FEIS has revised some of its information by characterizing the “communities of concern,” the document still provides insufficient information on these communities and does not evaluate the project’s potential impacts to these “at-risk” populations. For example, no population figures are provided to give a sense of the size of the low income and minority populations, and these communities are not identified in the socioeconomic analysis but instead, because they live in unincorporated areas, are considered within the Contra Costa County population.

In addition to the environmental justice related issues raised earlier (e.g., social cost of gambling and narrow definition of the affected population), **Comments 1-231, 1-232 and 1-233** specify issues of particular relevance to the communities of concern that are dismissed as “out of scope” for the FEIS (**Responses 1-231 and 1-233**). Much of the additional requested information is information that would clearly relay the potential for project-related health issues and government service cost impacts that these “communities of concern” may contribute to due to the project. The FEIS’s environmental justice consists, in essence, of a finding of “no significant impacts” based on the theory that since no findings of significant adverse impacts were found in the analysis for the larger city and county level affect population, then no significant adverse impact can be attributed to the local neighboring “communities of concern.” This approach is highly questionable and should be substantiated by specific analysis as these individuals are potentially more at-risk for many project-related impacts. For example, low income and minority individuals may be particularly attracted to the casino given the potential for “cheap” alcohol which can be consumed while gambling and/or limited (and likely closure of) alternative neighborhood entertainment destinations. Spending amounts that more affluent customers can afford could have disproportionately greater impacts to low-income customers, particularly if these individuals do not benefit from project employment opportunities. Consequently, these communities could experience adverse effects more specific to their population or at a magnitude that would not be recognized at a City or County level of impact analysis. In any case, the current environmental justice analysis does not consider this possibility. The FEIS should be revised accordingly.

***Impact of Casino Project on environmental justice needs thorough examination (DEIS Comment 1-233)*** – The communities surrounding the proposed casino clearly qualify for consideration for environmental justice mitigation in the EIS, according to the CEQ guidelines cited. In addition, the EIS should assess the impact of the casino project on the numerous programs operated by Contra Costa County to support and improve the North Richmond community, including but not limited to the North Richmond Health Clinic, the Service Integration Programs, the North Richmond Empowerment Collaborative, code compliance, and anti-illegal dumping efforts. The County is also implementing a Redevelopment Plan for the area, designed to improve the living conditions and physical environment of North Richmond, as well as to create new employment opportunities. The Casino Development Project will take almost 30

acres of land out of the Redevelopment Agency's control, with a loss of tax increments and bonding capacity. It could also affect the desirability of the area for future development as envisioned by the Redevelopment Plan. These issues are of serious consequence and need to be addressed thoroughly in the EIS.

Response to comment

1-232.1 Sections 3.11 and 4.11 of the FEIS provide a thorough discussion of potential environmental justice impacts. Potential impacts to the North Richmond Redevelopment Plan are addressed in Section 4.8. Impacts to public services are addressed in Section 4.9.

**Comments 1-233 and 1-258:** The County raised concerns that the FEIS neither adequately specifies the expected future cost to local government services nor provides sufficient commitment to ensure that adequate compensation will be received by affected government services. Response 1-11 and 1-258 and Appendix S: The FEIS adopted methodology for the government service costs asserts that while, in a variety of U.S. markets, the costs per patron have ranged from \$0.15 to \$0.31, the applicable future service cost for the project is estimated to be \$0.21 per patron. This assertion is unsubstantiated by any specific or verifiable corresponding data in Appendix S that provides information on the casino operations and their localities from which the data was obtained. The Fiscal Analysis also presumes the project's "location in a larger metropolitan area that will, presumably have the additional casino gambling which will tend to make the per patron cost of additional government services lower," (Appendix S, pg 53). However, Klas Robinson's (KR) analysis appears neither to acknowledge that the Bay Area has one of the highest cost of living in the country nor that North Richmond may have existing underfunded public services and related infrastructure that already are inadequate or in need of replacement compared to other areas. Adequate future mitigation for public service costs should be based on actual project-related future service cost increases and subject to periodic reassessment and redetermination.

MBA argues that incremental costs should be based on interviews with the County service providers and not on averages from other communities (See Appendix A). In this regard, MBA supports KR's statement that "the cost of additional services can still *vary significantly* ... depending upon a variety of other factors, including the size of the community in which the casino is located, differences in service costs per event, differences in regulatory requirements, differences in road maintenance costs and differences in the amount of gaming present in the area."

Contra Costa County does present factors that *vary significantly* from other communities, and these factors severely weaken KR's methodology to estimate incremental costs. Fire protection of the proposed casino is one example. County fire district representatives estimate that a new fire station, aerial apparatus, and 15 additional firefighters/paramedics will be required to service the casino. (p. 50, County's comments on DEIS, May, 2006). The cost of the personnel, annual salaries and benefits only, is estimated at \$1.9 million or \$0.20 per patron as shown in the table below vs. the \$0.21 used by KR. The cost of the fire station or equipment is not

estimated nor included in the cost per patron of \$0.20, but Fire District staff estimate that an aerial truck would cost \$750,000 and a new station (excluding land) would cost \$2.4 million to build. It is important to note that the incremental cost per patron of \$0.20 does not include any cost for police protection (the County estimates that an additional beat is required which comprises seven employees), health and human services, road maintenance, or processing of misdemeanor or felony arrests in the judicial system that relate to the District Attorney, Public Defender, detention facilities, or Probation Department. Thus, KR's incremental cost estimate of \$0.21 per patron is woefully underestimated.

### Estimated Incremental Fire Costs

	Emp. Req'd	Entry Salary	Benefits @ 80%	Total Cost
Apparatus Crew	9	\$68,000	\$54,000	\$1.1 m
Paramedic	6	\$75,000	\$60,000	\$0.8 m
Fire Station (excluding land)				\$2.4 m
Apparatus				\$0.75 m
Annual Patrons				9.5 m
Cost/Patron-Year 1				\$0.53

Further, the Municipal Services (MSA) Agreement between the City of Richmond and the Scotts Valley Band shows annual payments to the City from the Tribe starting at \$13.4 million in the first year. The purpose is to “otherwise mitigate any impact which the Tribe’s development, construction, operation and maintenance of the Project may have on the City or the surrounding community. Such services include law enforcement, fire protection, emergency response, transportation system management, public works and other City services” (page 3, Municipal Services Agreement). This payment equates to an incremental cost of \$1.41 per patron vs. KR’s \$0.21.

Furthermore, the MSA annual payment of \$13.4 million is in addition to \$8.2 million in one-time payments for fire protection, law enforcement and public works infrastructure and service requirements (pages 16-17).

## Effects on Contra Costa County - Pages 4.7.8 et al

**Casino revenue projections questionable (DEIS Comment 1-41)**– The DEIS included an analysis by KlasRobinson entitled “Scotts Valley Band of Pomo Indians Economic and Fiscal Impact of Proposed Scotts Valley Casino, Richmond, California,” dated December 2004. The KlasRobinson analysis overestimates operating net income by a minimum of \$80 million for the Preferred Casino, Alternative A and \$60 million for the Reduced Casino, Alternative B. The table below summarizes the difference between the County’s estimate and that of the Scott Valley Band. Appendix A at the

end of these comments presents the methodology and findings regarding operating net income.

**Klas Robinson Operating Net Income Projections-Year 1  
Compared to County Estimate**

	Klas Robinson Est. Net Oper. Income	County Est. Net Oper. Income	Difference
Alt. A	\$242,471,000	\$158,580,000	\$83,891,000
Alt. B	\$193,295,000	\$123,584,000	\$69,711,000

The December 2004 Klas Robinson report cannot be relied on as an indicator of the financial performance of the proposed Scotts Valley Band of Pomo Indians' casino.

Meridian Business Advisors of Reno, Nevada reviewed the report and has the following major concerns of the analysis.

1. Operating Net Income is over-estimated. Klas Robinson estimates operating net income at 60% of total revenue for both the Preferred and Reduced Casino. The experience of other casinos does not support this high profit margin.
2. The revenue projections are reasonable, but the assumptions and findings on expenses need to be reexamined as the 60% profit margin is substantially higher than comparable casinos, whether Tribal on non-Tribal. The operating net income would be reduced substantially with a more reasonable analysis of expenses.
3. No interest expense is included in expenses. No mention is made as to how the casino will be financed. No reduction to operating net income is made for payment of a management contract. These two items could have a substantial impact on the net income of the casino. The EIS needs to address these items.

The BIA response was:

**Gaming Revenue**

The Meridian analysis cited in the County's comments is based upon the first year of operation for Alternatives A and B. The Klas Robinson report is based upon the third year of operation, by which time either alternative would have established a more stable long-term position in the market than in the first year. It is unclear why Meridian used first year estimates in a review of the Klas Robinson report rather than the third year projections Klas Robinson used.

The estimates by Meridian show higher gaming revenue for Alternative A and lower gaming revenue for Alternative B than the projections in the Klas Robinson report. The difference between the gaming revenue estimated for Year I by Meridian for the Proposed Action and the Klas Robinson estimate amounts to less than 10 percent, which is within a reasonable error range for a project of this size. It is not clear to what

extent Meridian researched and analyzed the market in preparing its estimate. The projections in the Klas Robinson report are based upon a full feasibility study with extensive market research and analysis.

Meridian's estimate of gaming revenue for Alternative B is significantly lower than the projection in the Klas Robinson report. According to Meridian's assumptions, Alternative B has approximately 52 percent of the square footage of the Proposed Action. Meridian's gaming revenue estimate for Alternative B equals approximately 56 percent of their gaming revenue estimate for Alternative A. Thus, Meridian's estimate for reduction in gaming revenue is very nearly identical on a percentage basis to their assumed reduction in gaming square footage. The implication is that the degree of utilization of the machines and tables eliminated would be virtually identical to the utilization of those remaining.

Meridian's estimate assumes that the machines and tables in Alternative A are utilized at or very near 100 percent; this is highly unlikely. During off-peak times, some machines and tables in the larger, Alternative A would remain under utilized. The elimination of these machines and tables would not result in a loss of revenue to the same degree. Therefore, the reduction in revenue between Alternative A and the Alternative B would be unlikely to match the reduction in square footage so closely on a percentage basis.

Klas Robinson's projections are based upon a reduction in square footage of approximately 58 percent. These projections anticipate a corresponding reduction in gaming revenue of only approximately 22 percent, reflecting the likelihood that the eliminated machines and tables would have had some operating periods where they were not fully utilized. This is considered to be a much more likely scenario and much more consistent with actual experience.

### **Other Revenue**

Meridian identifies the percentage of non-gaming revenue to total revenue under Alternative A in the Klas Robinson report as being 10 percent. This is correct. Meridian specifically identifies this percentage as a reasonable assumption on Klas Robinson's part. Meridian uses the same percentages for their estimates of total revenue for Alternatives A and B. The BIA concurs that the application of the same percentage to their estimates is reasonable. As a result, Meridian's estimates of other revenue are proportionally higher and lower than Klas Robinson's to the same degree as were the gaming revenue estimates with the same limitations and implications explained previously.

### **Operating Net Income**

In their review of the Klas Robinson report, Meridian equates "cash flow before debt service" as used in the Klas Robinson report to "operating net income." This is not correct. Cash flow before debt service does not include depreciation or interest expense. It is more properly equated to EBITDA (earnings before interest, taxes, depreciation and amortization). As a result, it will always account for a higher percentage of total revenue than operating net income.

Meridian also suggests that the profit margin projected in the Klas Robinson report is unreasonable. In support of this statement, Table 5 in Meridian's review presents "Net Opr. Income as % of Ttl. Revenue" [sic], for River Rock Casino, which is located north of the San Francisco Bay Area, for an unspecified collection of Indian casinos taken from a report by Joseph Eve CPA's, and for non-Indian casinos in Las

Vegas and Laughlin. Following Table 5, a second table labeled Table 6 shows the difference between Klas Robinson's projections and an arbitrary assumption of a 40 percent margin for both alternatives using the difference to question the reasonableness of Klas Robinson's projected expenses.

The information presented from the Joseph Eve study does not offer a meaningful basis for comparison to Klas Robinson's projected cash flow for the proposed development alternatives. First, the error in interpretation noted above makes it likely that the percentages cited from the Joseph Eve study are not directly comparable to the cash flow (EBITDA) percentages used in the Klas Robinson study. Second, the Joseph Eve study, as noted in footnote 7 on page three of Meridian's review comments is derived from the operating performance of Indian casinos in 2002, while the Klas Robinson projections are for a future development that would not be in operation until the second half of the decade.

The information presented from the Joseph Eve study does not offer a meaningful basis for comparison to Klas Robinson's projected cash flow for the proposed development alternatives. First, the error in interpretation noted above makes it likely that the percentages cited from the Joseph Eve study are not directly comparable to the cash flow (EBITDA) percentages used in the Klas Robinson study. Second, the Joseph Eve study, as noted in footnote 7 on page three of Meridian's review comments is derived from the operating performance of Indian casinos in 2002, while the Klas Robinson projections are for a future development that would not be in operation until the second half of the decade.

Third, and most importantly, as shown in Table 5 of Meridian's review, the categories in the Joseph Eve study include casinos with revenue of under \$50 million and even under \$20 million annually. The highest revenue category shown is "Over \$50 m of Revenue." By comparison, even the estimates of total revenue prepared by Meridian for Alternative B equal nearly \$240 million, with the projected/estimated revenue for Alternative A being substantially higher still. The profitability of a casino varies on a percentage as well as an absolute basis depending in part upon the size of its revenue stream. Indeed, Table 5 in Meridian's review demonstrates that higher revenue correlates with higher profit percentages. Such a correlation is particularly true where the greater revenue stream is the result not merely of more machines and tables but of higher utilization, such as in the case of the subject project. Given the gap between the floor of the highest revenue range in the Joseph Eve study and the projected/estimated revenue for the subject project, the Joseph Eve percentages are of little use.

The percentages presented for Nevada casinos are even less useful in evaluating the projected cash flow for the subject property in the Klas Robinson study. Footnote 8 in Meridian's review indicates that the percentages for the Nevada casinos exclude interest expense. This is closer to an operating equivalent to the projections in the Klas Robinson study but the percentages still reflect a deduction for Depreciation and Amortization that should be excluded in the table for comparison to Klas Robinson's figures. Adding back depreciation and amortization to the Nevada figures presented in Meridian's review would increase the percentages by between five and eight percent, depending upon the market.

The revenue range issue noted above for the Joseph Eve study remains relevant for the Nevada percentages shown, particularly the Boulder Strip and Laughlin figures. For the Boulder Strip properties cited, their

actual average total revenue per property as presented in the same report cited in Footnote 8 is less than \$39 million. For Laughlin, the average total revenue per property equals slightly over \$92 million. In both cases, the difference from the revenue projections for the subject project in the Klas Robinson study is substantial.

The average total revenue per property for the Las Vegas Strip area cited in Table 5 in Meridian's review equals nearly \$489 million. This at least is comparable to the amount of revenue projected for the subject property in Klas Robinson's report. It does not, however, make the performance of those casinos any more relevant or useful in evaluating the analysis presented in the EIS. The market conditions and operating environment of the Las Vegas Strip are dramatically different from those that would be faced by the proposed casino. The Las Vegas Strip is a destination market that derives virtually all of its demand from outside of the immediate area. To accomplish this, Las Vegas Strip properties actually have more hotel rooms than gaming positions and major non-gaming attractions and amenities to support them. Their revenue mix demonstrates this. The Las Vegas Strip properties cited in Meridian's review derive only 40.5 percent of their revenue from gaming, compared to the 90 percent projected for the subject property that was affirmed as reasonable in Meridian's comments. In addition, Las Vegas Strip properties derive over 43 percent of their gaming revenue from table games, keno and bingo, games which are significantly more labor intensive than slot machines. By comparison, Meridian's estimates for Alternative A show only about 16 percent of gaming revenue coming from tables.

These differences in revenue mix have a direct effect on the profit percentage presented in Table 5. Over one-third of the revenue at the Las Vegas Strip properties comes from food, beverage and other sources that have lower departmental profit margins than gaming, translating into lower overall profit margins for the complex as a whole. Only the hotel components generate profits comparable to or even better than gaming. The profit margin in Las Vegas for gaming in turn is lowered by the greater reliance on labor intensive table games, by the gaming taxes and fees assessed by the State of Nevada and by the high percentage of complimentary expenses required to draw destination demand. Indeed, complimentary expenses account for over 18 percent of total gaming expenses for the Las Vegas Strip properties, a much higher percentage than would be expected at the subject property. The net results of these differences are much lower profit margins on a percentage basis than would be expected for a casino such as the one proposed.

The citation of the River Rock Casino in Table 5 of Meridian's review is much more reasonably comparable than the other study-based percentages presented. River Rock would actually be a competitor of the subject project and operates under similar market and regulatory conditions. However, the percentage presented for River Rock still suffers from serious flaws when used as a basis for evaluating the profitability projected for the proposed casino. As previously noted, Meridian misinterprets the meaning of Klas Robinson's projected cash flow and mistakenly compares it to income rather than EBITDA. Using the EBITDA figure for River Rock Casino would increase the percentage listed in Table 5 by several points. Excluding fees paid to the State of California by River Rock, which are excluded from the Klas Robinson analysis as noted in Meridian's review, would further increase the percentage.

The most significant factor affecting the accuracy of River Rock Casino as a basis for comparison to the

Klas Robinson cash flow projections, however, remains the difference in revenue, specifically average win per gaming position. According to the same SEC filing referenced in Footnote 6 of Meridian's review, the average win per gaming position for River Rock during the relevant time period was approximately \$210 per day. By comparison, the estimate made by Meridian described in Meridian's review equals over \$404 per gaming position per day for Alternative A and over \$432 per gaming position per day for Alternative B.

The difference in average win per gaming position has a significant effect on profitability. Although there are some increased costs associated with higher utilization, they are not proportional. River Rock Casino had 1,600 slot machines and 24 table games during most of the period cited in Meridian's review. This is larger than Alternative B but somewhat smaller than Alternative A. Their total expenses for that period were just under \$93.5 million excluding depreciation and interest. This is nearly 20 percent lower than the projections used in Klas Robinson report for Alternative B even though the River Rock actually has more gaming positions than Alternative B as outlined by Meridian. The cash flow projections for the subject project are higher on a percentage basis not because the expense projections are too low. Rather, they are higher on a percentage basis because the projected average win, a figure that for Alternative A Meridian believes is too low, is so high. Higher utilization naturally leads to higher profitability.

Yet another reason for the higher profit margin projected is the absence of any revenue sharing in the base projections. This is clearly noted in the Klas Robinson report and is actually referenced in Meridian's review, but it is not considered in the evaluation of "operating net income" in Meridian's comments.

**County Comment on Response 1-41:**

*a. Gross Gaming Revenue Estimates.* The County raised concerns that the casino revenue projections contained in the Tribe's economic and fiscal impact study were questionable. **Response:** The BIA has clarified that "cash flow" has been redefined as EBITDA, earnings before interest, taxes, depreciation and amortization. As such, the County retracts its comments regarding Klas Robinson's (KR) "cash flow" projection of over 60% as being overstated. With this definition, the 60% "cash flow" assumption is reasonable. The County, however, notes that revenue projections based on operating income (which takes into account depreciation) present a more realistic picture of the revenue available to the casino to cover its day-to-day expenses. To illustrate this point, the table below provides information on Tribal financial performance; operating income is net of depreciation and reduces the percent of operating income to a range of below 20% to 40%. Appendix A, at the end of these comments, presents the methodology and findings on this point.

	<b>% Operating Income (Net Revenues less Operating Expense)</b>			
<u>Tribal Casino</u>	2006	2005	2004	2003
<b>Mohegan Sun-Connecticut</b>				
Net Revenue	\$1.4 b.	\$1.3 b.	\$1.2 b.	\$1.2 b.
% Operating Income	<b>17%</b>	<b>10%</b>	<b>20%</b>	<b>20%</b>

<b>Fantasy Springs-Palm Springs, Ca</b>			
Net Revenue	\$118 m.	\$91 m.	77.6 m.
% Operating Income	<b>25%</b>	<b>25%</b>	<b>28%</b>
<b>River Rock Casino-N. Calif</b>			
Net Revenue	\$130 m.	\$133 m.	\$104 m
% Operating Income	<b>31%</b>	<b>29%</b>	<b>28%</b>
<b>Joseph Eve</b>			
% Operating Income			<b>40%</b>

*b. Annual Estimates.* The County's comments were based on an analysis of first year revenue projections contained in the Tribe's economic and fiscal impact study. **Response:** The BIA's response regarding Meridian Business Advisor's (MBA) gaming revenue analysis states that "It is unclear why Meridian used first year estimates in a review of the Klas Robinson report rather than the third year projections Klas Robinson used." On page 14 of the KR report of May 2004, in the table labeled "Revenue, Expense and Cash Flow Comparison", KR clearly uses the first year projection for the preferred alternative; MBA merely followed suit and used a first year revenue projection in its report.

*c. MBA Gaming Projections.* The County's estimated gaming revenue for *Alternative A* is considerably lower than the estimates presented by KR. **Response:** The BIA claims that the difference between the estimates for *Alternative A* is caused by MBA's unrealistic assumption that the machines and tables are utilized at 100 percent. However, MBA actually based its revenue projection on comparable data from other large metropolitan gaming venues, including Chicago and Detroit, not on an assumption as KR states that revenue estimates are based on close to a 100 percent utilization of games. Further, MBA assumes that the win/unit/day in the reduced alternative would be higher than in the preferred alternative as the supply of gaming devices would be lower thus pushing higher utilization. The assumption simply reflects a supply-demand condition.

*d. Reduced Alternative Casino Size.* The County's estimated gaming revenue for *Alternative B* is considerably lower than the estimates presented by KR. **Response:** The BIA's comments reflect that KR reduced alternative revenue projection is based on a "reduction in (casino) square footage of approximately 58%", bringing the square footage to 33,300 vs. the 41,400 used in the DEIS. It is unclear why KR assumed a different square footage than was used that in the DEIS. However, 33,300 square feet of gaming allows for approximately 850 gaming devices, assuming 80 percent of the casino floor is dedicated to devices. KR estimates revenue of \$308.9 million; assuming gaming revenue is 90 percent of total revenue and device revenue is 90 percent of total gaming revenue, gross device revenue is estimated at \$250 million. Device win per day would then be over \$800 a machine, an unrealistic amount. A \$400 win/day/machine is more closely aligned with current performance in metropolitan areas.

***Per patron cost of government services without foundation (DEIS Comment 1-233)*** – On page 4.7-7, the DEIS states that the proposed casino project, *Alternative A*, would result in a total incremental cost of governmental services of approximately \$0.21

per patron or approximately \$2 million annually (based on 9.5 million visitors per year or 26,000 per day). For Alternative B, the report estimates a cost of \$1.17 million based on a cost of \$0.18 per patron (based on 6.5 million visitors per year or 17,800 per day).

The DEIS relies on Appendix S for documentation of this conclusion. As described on page 52 of Appendix S, Scotts Valley Band of the Pomo Indians Economic and Fiscal Impact of Proposed Scotts Valley Casino by KlasRobinson, the cost per patron is not derived from any analysis of the impact of the proposed casino project on Contra Costa County, rather it is “based on our experience in analyzing casino operations in a variety of markets throughout the United States ... [which] ... ranges from approximately \$0.15 to \$0.31 per patron.” The paragraph then goes on to say that the proposed project’s location in a larger metropolitan area will tend to make per patron costs of governmental services lower, although per event costs would be higher. (Although not explained, the County here assumes, that an event is a “service.”) Based on these two factors, the report concludes that costs will be approximately 21 cents per patron, for alternative A and 18 cents per patron for Alternative B.

This casino is being proposed in a highly urbanized, low income area with high crime rates and high unemployment rates. There are few, if any, examples of Indian casinos in the United States in such locations. As discussed extensively elsewhere in the County’s comments, the County believes the casino will have far reaching impacts on the demand for health and human services, on redevelopment of the area, transportation, law enforcement, fire, emergency medical services and other governmental services. As KlasRobinson acknowledges in its report, “the cost of additional services can still vary significantly for the same number of patrons depending upon a variety of other factors including the size of the community in which the casino is located, differences in service costs per event, differences in regulatory requirements, differences in road maintenance costs and differences in the amount of gaming present in the area.”

The inadequacy of the per patron approach is further illustrated by comparing Contra Costa County’s direct staffing costs for law enforcement *only* to the \$2 million costs *total* estimated by KlasRobinson. The staff costs of staffing a single beat (5 deputies, 2 sergeants and 1 clerk) is \$1.1 million per year. (note: that cost has gone up to \$1.43 million per year, as of April 2008) This does not include vehicle acquisition and maintenance, substation construction and operating costs, services and supplies, dispatch, detention facilities or other justice system services.

The EIS should not rely on Appendix S for *any* conclusions regarding the cost of governmental services. Instead the County’s comments should be taken into account in revising the EIS to accurately analyze the impacts of the proposed casino project. Cost of service estimates should be based on the impact analysis for each of the issues. As mentioned elsewhere, the County would be willing to assist in the assessment of service costs.

Response to comment

1-233 Please see Response 1-258.

***Distribution of sales tax revenues inaccurate (DEIS Comment 1-234)*** – Page 44 of Appendix S states that the City of Richmond and/or Contra Costa County will receive almost \$2.2 million annually in increased sales tax revenue “due to its additional 1% sales tax.” In fact, neither the City of Richmond nor Contra Costa County receive any of these revenues. Half of the 1% sales tax is for transit in Alameda, Contra Costa and San Francisco Counties, in accordance with AB 1107 (statutes of 1977). In accordance with AB 1107, 75% of the revenues for transit go to BART while the remaining 25% can be split among AC Transit, BART and Muni. The other half of the 1% sales tax is for the Contra Costa County transportation measure, Measure C, which accrues to the Contra Costa Transportation Authority. The base 7.25 % sales tax is distributed as follows:

State General Fund - 5%;

State Fiscal Recovery Fund – 0.25%

County or City (based on point of sale) (Bradley Burns) - .075%;

County Transportation Fund (Bradley Burns) - .025%;

County Mental Health - 0.5%; and

Local Public Safety Fund (Proposition 172) - 0.5%.

Response to comment

1-234 As noted in the Economic and Fiscal Impact Report authored by Klas Robinson (Appendix S), relevant sales in the State of California are taxed at a rate of 7.25 percent. Relevant sales in Contra Costa County are taxed an additional 1.0 percent. The commenter does not dispute this. The commenter provides information regarding the distribution of the additional 1.0 percent sales tax in Contra Costa County. The commenter specifically states that neither the City of Richmond nor Contra Costa County receive any of these revenues. Yet within their description of the distribution of those funds they specifically acknowledge its use for transit funding purposes within the county including the Contra Costa Transportation Authority. It is neither necessary nor practical to catalog each individual program, agency or use to which the funds may be placed by the County. That the funds are used for the benefit of Richmond and/or Contra Costa County as they were characterized in the Economic and Fiscal Impact Report is apparent by the commenter's statement.

The commenter goes on to provide a distribution of the base 7.25 percent sales tax. It should be noted that their figures for "County or City" and "County Transportation Fund" should read 0.75% and 0.25% respectively since the total would not otherwise add to 7.25 percent. The commenter's breakdown of the base 7.25 percent sales tax clearly shows that the "County or City," "County Transportation Fund," and "County Mental Health," would in fact receive 1.5 percent of sales on a combined basis, an even greater amount than that cited in the Klas Robinson report.

**County Comments on Responses 1-234:** The BIA's response reveals total ignorance of local government financing. Restricted revenues cannot be diverted for any purposes other than allowed by the funding source.

***Klaus Robinson Report misleading on direct impacts (DEIS Comment 1-235)*** – The direct impacts section of Appendix S, is misleading in that it reports on gross impacts, not net. For example, on page 15 regarding employment, the report attributes an increase of an estimated 2,108 full time equivalent jobs on a stabilized basis to the establishment of the proposed casino project (Alternate A). The DEIS reports that these are gross estimates, not net, due to loss of other jobs in the local economy. The DEIS reports a loss of between 253 and 533 jobs (depending on the alternative).

The KlausRobinson Report then uses this over inflated employment estimate to project earnings, payroll taxes, and other economic benefits resulting from the proposed casino project. Even if these analyses were correct (which they are not), the figures are over inflated due to the over inflated employment figures.

Response to comment

1-235 The Economic and Fiscal Impact Report, beginning on page 48, presents an entire section on the net effects of the project on output, employment and earnings taking into consideration the very issues the commenter describes. The discussion is placed at that point in the report so that the substitution effect can be applied not only to direct impacts but to indirect and induced impacts as well, to provide a complete and comprehensive picture. This is a normal and standard practice. There is nothing misleading about the figures presented for direct employment and earnings at the proposed complex. They are accurate and are not characterized as the final net impact.

### **County Comments on Responses 1-231 and 1-232:**

***Compact fees uncertain (DEIS Comment 1-235)*** – On page 30 the KlausRobinson Report states, “there will likely be a revenue sharing fee to the state in exchange for the right to operate casino gambling.” This conclusion cannot be made for several reasons: 1) the Governor of the State of California has declared an opposition to this and other urban casinos and, therefore is unlikely to negotiate a compact unless mandated to do so under federal law; and 2) even if the Governor negotiates a compact, the state legislature may to refuse to ratify it, as it did with Casino San Pablo.

The EIS should either qualify the discussion on Compact Fees or delete it.

Response to comment

1-236 The Economic and Fiscal Impact Report specifically states that a compact has not yet been negotiated. Klas Robinson provides a range of possible revenue sharing percentages and the associated dollar amounts that would accrue if any of them were to be in place. The range of percentages is entirely consistent with percentages that have been discussed publicly for compacts that were under negotiation in the State of California at that time and with percentages that have been negotiated in compacts in other states. Even a casual reader can easily understand that the figures presented are hypothetical and for purposes of illustration. There is no need for any further qualification or clarification. In response to the suggestion to delete information on compact fees, the information is clearly relevant and also relatively more beneficial to the State of California, Contra Costa County and the City of Richmond than to the proposed project or its tribal owners, since it calls specific attention to the possibility that additional revenue to government could be negotiated into any compact.

### **Comment 1-237**

***Economic output for Contra Costa County cannot be assumed (DEIS Comment 1-237)*** – the KlasRobinson Report assumes that the induced and direct impact on economic output on Contra Costa County from the proposed casino project is approximately \$284 million due to increased expenditures for hotels, retail and eating and drinking establishments. Contra Costa County’s “benefit” is approximately 75% of the total for the State of California. (Page 34, Appendix S)

The distribution of output between Contra Costa County and California is not explained or justified. Contra Costa County is part of the larger San Francisco metropolitan area. The EIS

should provide justification as to why such a high percentage of the output would occur in Contra Costa County rather than elsewhere within the Bay Area region, particularly since there can be no assurances that casino employees will be Contra Costa County residents.

Response to comment

1-237 The Economic and Fiscal Impact Report clearly describes the model used for the analysis, the IMPLAN model, which was originally developed by the University of Minnesota for the U.S. Forest Service, FEMA and the Bureau of Land Management, and which is widely recognized and accepted as an accurate analytical tool for estimating indirect and induced impact anywhere in the continental United States. The model is maintained and updated by an independent organization with no vested interest in this project. The amounts presented in the report and the distribution between Contra Costa County and the balance of the State of California are derived directly from the model itself. They are not assumptions at all, but rather dependable projections of future outcomes derived from one of the most complex and comprehensive econometric modeling analyses available.

### **County Comments on Responses 1-231 and 1-232:**

***Economic benefits to Contra Costa County unsubstantiated (DEIS Comment 1-238)*** – On page 33 of the KlasRobinson Report, it states that “...money is never actually lost in a casino. Rather it is distributed back into the economy in the form of wages, taxes and expenditures for goods and services.” This generalization overlooks several facts which will affect the economic consequences of the casino for Contra Costa County:

- 1 According to the DEIS, the Tribe intends to provide governmental services to Tribal members at its properties in Lake County where it will provide housing and other governmental services;
- 2 Presumably, a portion of the casino revenues will go to the casino investors who may or may not live in Contra Costa County;
- 3 Similarly, the management firm who handles the operation of the casino may or may not be located in Contra Costa County.

Response to comment

1-238 The comment focuses a statement on page 33 of the Economic and Fiscal Impact Report regarding the redistribution of casino revenue back into the economy in the form of wages, taxes and expenditures for goods and services. The commenter believes that this statement is a generalization that overlooks three specific facts related to whether some portion of casino revenue would be redistributed outside of Contra Costa County.

The Economic and Fiscal Impact Report clearly explains that not all of the revenue generated at the casino is expected to be redistributed within Contra Costa County alone or even entirely within the State of California. The authors never suggest that this would be the case and in fact make clear that the opposite is true - some portion of the revenue would in fact be redistributed outside of Contra Costa County and outside of the State of California. All of the report's estimates clearly take this into consideration. The authors do not specify within the quoted statement that the money would be distributed specifically into the economy of Contra Costa County or the State of California, nor is such a thing implied. Moreover, the context of the quoted statement indicates that it is not an analytical conclusion but a general comment on economic cycles as a prelude to discussing the general concept of indirect and induced impact.

**County Comment on Responses 1-237 and 1-238:** The economic output and benefits resulting from this project are not substantiated. Facilitated by the transportation accessibility of the site and aggravated by the lack of amenities in the local area, it may be expected that much of the indirect accommodation spending will instead be spent outside the County at existing lodging establishment in areas with other tourism attractions. The FEIS does not provide any description of the business sector nor the IMPLAN model findings to substantiate that the County's existing or future hospitality sector would capture these indirect spending benefits from the project. IMPLAN modeling is based on the existing or past structure of the economy (i.e., Economic Census Data). The addition of a new \$450 million or more casino could, in and of itself, alter the nature of the County's economic interrelationships due both to its mere size and the unique nature of its marketing pull and customer base (information on which has been available in the expanded Appendix S after public review of the DEIS). Irrespective of IMPLAN's potential utility and appropriateness as a general model tool, the dependability of its projections will be based on some degree of interpretation as assumptions used as the data inputs applied to the model can have major effects on its results.

Furthermore, the disparity between retained economic spending and lost flow of economic spending (profits, debt service, and management fees) is not clearly identified. Although specifically requested by multiple comments [e.g., Comments 1-237 and 1-238], the socioeconomic analysis does not address the issue adequately. It might reasonably be assumed that the majority of profits (including payments to non-County resident tribal members), management fees, investor returns (including debt interest), and Compact payments will leak project revenues out of the County and thereby would generate negligible benefits to the County.

***Specious comments should be deleted (DEIS Comment 1-239)*** – The KlasRobinson Report is replete with comments that have no basis. For example, on page 18 the study reports “the proposed Scotts Valley Casino could conceivably reduce the unemployment rate in Richmond in half.” This type of generalization is inappropriate and should be deleted. As discussed elsewhere in the County's comments, the potential for West County residents, particularly North Richmond, the City of San Pablo and the City of Richmond residents, to fill jobs in the casino is predicated on an analysis of the skill sets required by those jobs and the skill sets of the unemployed population within those communities (as well as a determination of whether or not security requirements would preclude employment for even those with the requisite skills).

Response to comment

1-239 While commenter suggests that the Klas Robinson report has numerous comments that have no basis; however, only one specific example is offered, a quote from page 18 of the Economic and Fiscal Impact Report regarding the relationship between the projected level of employment at the subject project and the number of persons then unemployed in Contra Costa County.

The relationship as presented in the Klas Robinson report is straightforward mathematically. There were 5,450 people unemployed in the City of Richmond in 2003. The preferred alternative is projected to employ 2,279 people. This equates to more than half of the number of people unemployed in Richmond at that time. This figure does not include the additional 1,925 indirect and induced jobs that would be created by the project in Contra Costa County, including the City of Richmond, net of substitution effects. It should be noted that Klas Robinson do not, in the quoted statement or anywhere in the report, specifically predict that the unemployment rate in the City of Richmond would be cut in half. In the very next sentence in the Economic and Fiscal Impact Report, not quoted by the commenter, the authors acknowledge the potential for employees to come from outside Contra Costa County. The words "could conceivably" fall far short of a prediction, are clear and unambiguous, and are consistent with the specific employment projections in the report.

**County Comment on Response 1-239:** Unfortunately, straightforward mathematically models are not necessarily applicable in the real world. As the County has repeatedly pointed out, the potential for West County residents to be employed at the casino is based on their qualifications relative to the available jobs.

***Purchases of goods and services without basis (DEIS Comment 1-240)*** – On page 27, the KlasRobinson Report states that the proposed casino project will spend considerable sums within the County and the State to purchases goods and services for ongoing operations and then cites a figure of \$67 million. The bases for these figures are not documented. In addition, there is no assurance that any of these expenditures would be made within Contra Costa County, with the exception of wastewater services (under utilities).

The EIS should either provide documentation for these expenditure estimates or delete them.

Response to comment

1-240 The commenter claims that the basis for Klas Robinson's projections of direct purchases of goods and services by the preferred alternative is not given. This claim is contradicted by the first paragraph on page 27 of the Economic and Fiscal Impact Report, on which the expenditures are listed, which explains quite clearly that they are based upon industry standards including published information on comparable facilities, that they were analyzed on a segmented basis and that they exclude player comps and other internal discounts. Page 29 of the report provides additional information on the types of expenditures included in each category. The description of approach and methodology on page 4 of the report also ties the analysis in total, including this component, to the market study and financial projections for the project. The basis for Klas Robinson's estimates is both clearly stated and appropriate.

**County Comment on Response 1-240:** The FEIS analysis estimates a total *in-state* expenditure benefits for the project (see Table 4.7-2) of approximately \$69.6 million after substitution. The BIA indicates that "these purchases would be made primarily from existing vendors located in Contra Costa County, the City of Richmond and surrounding areas." This assertion is provided with minimal supporting evidence that County businesses would actually benefit from the projected goods and service expenditures and that considerable economic "leakage" would not occur. Given both the proposed casino's accessibility/proximity to other businesses in the region and the size and possibly specialized nature of several expenditure categories (e.g., advertising, gaming, insurance) it seems more likely that, without specific commitments, only a

minor proportion of these economic benefits would be gained by the County – let alone the City of Richmond.

**Comments 1-24 and 1-240** raise highly relevant concerns that projected future goods and services may not actually result in the projected local spending (i.e., City of Richmond or Contra Costa County)<sup>7</sup> by recognizing the major component of the gaming supplies is presumable the slot machines. Response 1-24 fails to provide any substantial evidence to address the County’s seemingly reasonable assertion that a major proportion of the gaming supplies sales would “not be direct to the local economy.” Response 1-240 also fails to address a key component of the County’s stated concern. Irrespective of the accuracy of the future project-related spending projections, the response fails to acknowledge the issue of what proportion of the spending will actually be met by local businesses despite the FEIS assertions (see page 4.7-3). Similarly as discussed for the gaming supplies, for other direct spending “benefits” from the goods and services (i.e., advertising, food and beverage, general insurance, and other administration), it seems that much of this spending may likely go to non-County businesses. The likelihood of this leakage is further increased (and likely not considered by the IMPLAN model) since it is associated with a single very large business, which will be sought as a customer by support businesses throughout the Bay Area and whose needs may exceed the service/supply capacity of relatively small, local suppliers.

(DEIS Comment 1-251) As part of the EIS review process, Meridian Business Advisors (MBA) of Reno, Nevada reviewed a December 2004 report by Klas Robinson<sup>QED</sup> entitled “Scotts Valley Band of Pomo Indians Economic and Fiscal Impact of Proposed Scotts Valley Casino, Richmond, California”. MBA’s scope of work was to render opinions on the reasonableness of the findings regarding the gaming development’s estimated revenue, employment, wages, tax generation and other financial/economic estimates.

It should be noted that the Klas Robinson report documented few assumptions on which its findings were based. Thus, MBA constructed its own financial/economic assumptions, leading to estimates on casino revenue, employment, salaries and other pertinent data. MBA’s estimates were then compared to Klas Robinson’s.

Response to comment

1-251 Please refer to Response 1-41.

**County Comment on Response 1-240: See County Comment on Response 1-41.**

**County Comment 1-252**

1. Gaming Revenue

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<sup>7</sup> It should be noted that out-of-County service and equipment sales will also have the additional effect of resulting in reduced indirect and induced economic benefits to the Contra Costa County economy.

The estimates of gross gaming revenue from MBA and Klas Robinson are shown in Table 1. As can be seen, MBA's estimates are higher than Klas Robinson's in the Preferred Casino, Alt. A and lower in the Reduced Casino, Alt. B.

**Table 1**

Comparison of Gaming Revenue-Year 1

	MBA	Klas Robinson	Difference
Alt. A-Preferred Casino	\$387,356,000	\$355,601,000	\$31,755,000
Alt. B-Reduced Casino	\$215,960,000	\$278,063,000 <sup>8</sup>	(\$62,103,000)

MBA's assumptions in deriving the gaming revenue estimates are as follows:

**Table 2**

MBA Casino Revenue Assumptions

	Alt. A-Preferred	Alt. B-Reduced
Casino Square Footage <sup>9</sup>	79,320	41,440
# of Slot Machines <sup>10</sup>	2,100	1,100
Win/Slot Unit/Day	\$425	\$450
# of Table Games <sup>3</sup>	75	39
Win/Table Unit/Day	\$2,250	\$2,500
Estimated Gaming Revenue	\$387,356,000	\$215,960,000

Response to comment

1-252 Please refer to Response 1-41.

**County Comment 1-253**

2. Other Revenue

Klas Robinson's estimates of food/beverage and other revenue (retail sales) in Alt. A is estimated at 10% of gaming revenue. This is a reasonable assumption. Applying the 10% factor to gaming revenue results in the following comparison of total revenue. Again, MBA's estimate is higher than Klas Robinson's for Alt. A and lower for Alt. B

**Table 3**

Comparison of Total Revenue-Year 1

	MBA	Klas Robinson	Difference

<sup>8</sup> Gaming revenue is estimated at 90% of total revenue, the same breakdown as in Alternative A. Klas Robinson shows only total revenue for Alternative B.

<sup>9</sup> Square footage taken from Draft EIS, February 2006, pages 2-6 and 2-9.

<sup>10</sup> 80% of casino floor dedicated to slot machines; each machine requires 30 sq. ft. Ratio of slot machines to table games is 28:1.

Alt. A-Preferred Casino	\$430,396,00 0	\$396,449,00 0	\$33,947,000
Alt. B-Reduced Casino	\$239,955,00 0	\$308,959,00 0	(\$69,004,000)

Response to comment

1-253 Please refer to Response 1-41.

### County Comment 1-254

#### 3. Operating Net Income:

For both Alt. A and Alt B, Klas Robinson shows a “cash flow before debt service” (operating net income) that represents more than 60% of total revenue. Expenses, then, represent close to 40% of total revenue.

**Table 4**

Klas Robinson Operating Net Income Projections-Year 1

	Total Revenue	Total Expenses <sup>11</sup>	Net Opr. Income	% Income of Ttl. Revenue
Alt. A	\$396,449,000	\$153,978,00 0	\$242,471,00 0	61.2
Alt. B	\$308,959,000	\$115,664,00 0	\$193,295,00 0	62.6

Admittedly, tribal casinos enjoy a healthier operating profit margin than non-tribal facilities but 60% appears unreasonable. The table below presents examples of the percentage of net income to total revenue from other casinos or groups of casinos.

The data presented for Tribal casinos show operating net income ranging from 24.5% to 38.1% of total revenue. For non-Tribal casinos, it ranges from 9.1% to 21.1%.

**Table 5**

Operating Profit Margin of Other Casinos

<i><b>Tribal Casinos</b></i>	Net Opr. Income as % of Ttl. Revenue
River Rock Casino, Ca. <sup>12</sup>	27%
Report by Joseph Eve, CPAs <sup>13</sup>	
All Casinos in Study	35.0%

<sup>11</sup> Total expenses before debt service payments and management fees.

<sup>12</sup> River Rock Entertainment Authority, SEC Filing 10-K, 3/30/06.

<sup>13</sup> Joseph Eve, CPA, Great Falls, Montana, “The 2003 Indian Gaming Cost of Doing Business Report”. A summary of financial information collected in 2002 from audits of “over 50 Native American Organizations in 21 states.”

Under \$20 m. of Revenue	24.5%
\$20 m to \$50 m of Revenue	31.9%
Over \$50 m of Revenue	38.1%

<b><u>Non-Tribal Casinos</u></b> <sup>14</sup>	Net Opr. Income as % of Ttl. Revenue
Las Vegas Strip Area (\$72+ m Rev.)	16.5%
Boulder City Strip Area (\$1+ m Rev.)	21.1%
Laughlin (\$1+ m Rev.)	9.1%

The table below applies a 40% profit margin to Klas Robinson's estimated total revenue and then compares that to Klas Robinson's operating net income in its report. The difference ranges from \$69 million to \$84 million for Alt. B and Alt. A respectively.

**Table 6**

Revised Klas Robinson Operating Net Income Projections-Year 1  
Using 40% Profit Margin

	Net Oper. Income-Original	Net Oper. Income @ 40%	Difference
Alt. A	\$242,471,000	\$158,580,000	\$83,891,000
Alt. B	\$193,295,000	\$123,584,000	\$69,711,000

The substantial profit margin estimated by Klas Robinson leads naturally to a question of the reasonableness of projected expenses.

Response to comment

1-254 Please refer to Response 1-41.

**Comment 1-255**

4. Employment

The estimates of employment from MBA and Klas Robinson are shown in Table 7. As can be seen, MBA's estimates are lower than Klas Robinson's in Alt. A and Alt. B by over 395 and 345 full time equivalent positions respectively.

**Table 7**

Comparison of FTE<sup>15</sup> Employment -Year 1

	MBA	Klas Robinson	Difference

<sup>14</sup> Information taken from Nevada Gaming Control Board, "Nevada Gaming Abstract 2005." Excludes interest expense.

<sup>15</sup> Full time equivalent (FTE)

Alt. A-Preferred Casino	1,713	2,108	(395)
Alt. B-Reduced Casino	895	1,241	(346)

Klas Robinson estimates employees using data from 10 Indian casinos in California and calculates employees per gaming position (combination of slot machines and gaming table positions). These calculations result in an average for the 10 casinos of 0.8619 employees per gaming position.

Klas Robinson's choice of casinos, however, includes seven that have hotels, and the hotel employees are included in the total employee count that is used. Therefore, there is a high probability that Klas Robinson's employment estimate is overstated.

Further, the January 2005 Fee to Trust application (FTT) indicates the Alt. A casino will have 2,000 slot machines and 50 table games. Assuming 6 positions to a gaming table and one position per slot machine, a total of 2,300 gaming positions is estimated. However, the Klas Robinson report shows 2,644 positions. There is no explanation as to how the 2,644 positions were calculated.

MBA's methodology uses employees per square foot of the casino facility. Eight Indian casinos with no hotels were selected, and the number of employees was divided by the casino facility square footage. The average was .0233 with a range of .017 to .031 for the eight casinos.

Response to comment  
1-255 Please refer to Response 1-102.

**Comment 1-256**

5. Salaries

The estimates of salaries from MBA and Klas Robinson are shown in Table 8. As can be seen, MBA's estimates are lower than Klas Robinson's because MBA is estimating fewer employees as shown in # 4 above. MBA's estimates are \$16 million and \$12.9 million lower for Alt. A and Alt. B respectively or 31% and 47% less in salaries than estimated by Klas Robinson.

**Table 8**

Comparison of FTE Salaries -Year 1

	MBA	Klas Robinson	Difference
Alt. A-Preferred Casino	\$52,257,000	\$68,229,000	(\$15,972,000)
Alt. B-Reduced Casino	\$27,288,000	\$40,170,000	(\$12,882,000)

MBA uses an average annual salary of \$25,350 compared to \$24,950 for Klas Robinson.

Included in both consultant's estimates is accommodation for tips, estimated at 20% of total salaries.

Response to comment

1-256 Please refer to Response 1-102.

**Comment 1-257**

6. Distribution to Members and Tribe

The Fee to Trust (FTT) application, dated January 2005, indicated that tribal members will receive up to twenty percent (20%) of the Tribe's annual gaming revenue (approximately \$16M to \$21M); up to 23% will be allocated to tribal governmental operations, including tribal services such as education, health care, family services, housing and cultural programs; and 55% will be deposited into an economic development fund for land acquisition and creation of additional businesses for the benefit of the Tribe and its members. (page 7). It further states that "the Facility will generate between \$72M and \$94M in tribal revenue annually during its first five years of operations..." (Taken from a Klas Robinson report of May 2004.) The Tribe has 181 members according to the DEIS. Contra Costa County did not have a copy of the May 2004 report and thus MBA is unaware of the assumptions on which the numbers were calculated.

MBA attempted to validate the Tribal distribution using the information in the December 2004 report and making assumptions on a management fee expense. The table below presents the distribution given these assumptions.

**Table 9**  
Estimated Tribal Distribution – Year 1  
Using Klas Robinson Financial Projections

	Alt A.	Alt. B
Revenue	\$396,449,000	\$308,959,000
Expenses	<u>153,978,000</u>	<u>115,664,000</u>
Cash Flow	242,471,000	193,295,000
Mgmt. Agreement @ 25% of Net Revenue	(60,618,000)	(48,324,000)
Net Income	\$181,853,000	\$144,971,000
Member Distribution @ 20%	\$ 36,371,000	\$ 28,944,000
Tribal Operations @ 23%	41,826,000	33,343,000
Economic Dev. Fund @ 55%	100,019,000	79,734,000

The table above does not consider revenue sharing with the State. At 25% of gross slot revenue, state revenue sharing would be \$75,821,000 to \$59,088,000 for Alt. A and Alt.

B respectively. At 10%, state revenue sharing would be \$30,328,400 to \$23,635,200 for Alt. A and B, respectively. This would reduce net income.

MBA also calculates the Tribal distribution using our assumptions on operating net income (40% of operating net income) and the same assumptions on a management fee expense as was used in Table 9.

**Table 10**  
Estimated Tribal Distribution – Year 1  
Using MBA Financial Projections

	Alt A.	Alt. B
Revenue	\$430,396,000	\$239,955,000
Expenses	<u>258,237,000</u>	<u>143,973,000</u>
Cash Flow	172,158,000	95,982,000
Mgmt. Agreement @ 25% of Net Revenue	(43,040,000)	(23,996,000)
Net Income	\$129,118,000	\$ 71,986,000
Member Distribution @ 20%	25,824,000	14,397,000
Tribal Operations @ 23%	29,697,000	16,557,000
Economic Dev. Fund @ 55%	71,015,000	39,593,000

The table above does not consider revenue sharing with the State. At 25% of gross slot revenue, state revenue sharing would be \$81,441,000 to \$45,169,000 for Alt. A and Alt. B respectively. At 10%, state revenue sharing would be \$32,576,400 to \$18,067,600 for Alt. A and B, respectively. This would reduce net income.

Response to comment

1-257 While the EIS acknowledges that revenue would be used to fund the Tribal Government, specifics of the distribution to tribal members and tribal operations suggested by the commenter is speculative and not relevant to the assessment of environmental impacts presented in the EIS.

**Comment 1-258**

**7. Cost of Government Services**

The Klas Robinson report calculates the cost of public services for Alt. A at \$0.21 per casino patron or approximately \$2.0 million per year based on 9.5 million visitors per year or 26,000 per day. For Alt. B, the report estimates a cost of \$1.17 million based on a cost of \$0.18 per patron. Alt. B's cost is based on 6.5 million visitors per year or 17,800 per day. Klas Robinson bases its estimates on "our experience in analyzing casino operations in a variety of markets throughout the U.S...." (page 52)

A more thorough and credible analysis would be based on interviews with the direct service providers to ascertain their estimates on the cost of providing services. These providers would include at a minimum law enforcement, fire protection/EMS and road maintenance, three of the major users of local governments funds. As Klas Robinson notes in its report, "the cost of additional services can still vary significantly for the same number of patrons depending upon a variety of other factors including the size of the

community in which the casino is located, differences in service costs per event, differences in regulatory requirements, differences in road maintenance costs and differences in the amount of gaming present in the area.” Given these differences, a more thorough analysis of the costs is required.

The analysis should include estimates not only for additional personnel to service the casino, but additional substations/fire stations/offices; additional light and heavy equipment, such as patrol cars, fire apparatus, street sweepers; and additional office equipment and supplies, such as computers, desks, radio equipment. Finally, there is an overhead cost that should be analyzed as additional direct services expenditures increases the cost to administrative offices such as the Auditor-Controller, Human Resources, County Counsel, County Administrator, Building and Grounds, etc.

The need to interview the direct service providers is evidenced by the analysis below that takes only information from law enforcement as noted in the comments in the DEIS and applies direct staffing costs to those comments. Staffing costs are specific to Contra Costa County. As can be seen \$1.1 million in increased County costs is estimated to staff direct law enforcement services only. This does not include associated costs, such as vehicle acquisition and maintenance, substation construction and operating costs, services and supplies, communications, computer equipment, dispatch, detention facilities or other justice system services. Law enforcement is just one of many County provided services that will be required due to the presence of the proposed casino.

**Table 11**  
**Estimated Direct Staffing Cost of Law Enforcement**  
**for Proposed Richmond Casino**

<b>Law Enforcement:</b>		
<b>Est. Cost</b>		
Deputies*	5	\$700,000
Sgts	2	360,000
Clerk	1	65,000
<b>Total</b>		<b>1,125,000</b>

\*staffing level equivalent to coverage by 1 Deputy Sheriff 24 hours/per day, 360 days/year.

Response to comment

1-258 The commenter, Meridian Business Advisors, summarizes Klas Robinson's estimates of the cost of public services, as presented in Appendix S of the DEIS, and concludes that a more thorough analysis is required. In particular, Meridian states that a: "more thorough and credible analysis would be based on interviews with the direct service providers to ascertain their estimates on the cost of providing services," going on to list several governmental functions that should be included in the interview process. In support of this conclusion, Meridian presents Table 11 which outlines the additional staff that the Contra Costa County Sheriffs department believes it would need to deal with the new casino and associates "direct staffing costs" with the numbers of positions listed. The total figure of over \$1.1 million equals more than half of Klas Robinson's total estimate for the preferred alternative.

In the past, the only practical option for estimating increased costs for government services from a new casino was to conduct the types of interviews suggested and to attempt to build up an estimate from the

results. This was necessary at that time because there was no track record for the actual effect of casino development on government service costs in new markets. This is no longer the case. There are now numerous jurisdictions of all sizes and types into which casinos of all sizes and types have been introduced where the true impact on government service needs and costs can be ascertained.

One of the first lessons learned as this information became available was that the early estimates built from interviews with local service providers were wildly inaccurate and almost uniformly overstated. The reasons were simple and not unexpected. Given the uncertainty involved and the practical nature of the government funding process that provides great incentive to get as much funding as possible up front rather than trying to seek more funding at a later date, there was a natural tendency to greatly overestimate the needs and the associated costs.

For this reason, the more accurate analytical method to use in the present day to estimate increased costs to government from casino development is to study the true impact such development has had on other jurisdictions and adjust their experience to reflect the unique characteristics of the subject market, just as is done to estimate the demand for and potential profitability of the subject casino. It is from Klas Robinson's experience in performing this type of analysis that the range of costs on a per patron basis was presented in Klas Robinson's report as cited by Meridian and from applying their evaluation of the particular characteristics of the subject market that they reached the conclusion of \$0.21 per patron-day.

The Municipal Services Agreement (MSA) entered into between the Tribe and the City of Richmond identifies that the Tribe and City (at a minimum) will enter into a Cooperative Law Enforcement Agreement ("CLEA"), which will address in detail the rights, responsibilities and authority of all of the participating Law Enforcement Agencies with respect to the provision of public safety and law enforcement services to the project site. The MSA provides for the provision of compensation by the Tribe to the City of Richmond Police Department to provide 24-hour public safety service to the project site. Because law enforcement service would be provided primarily by the City of Richmond, the County would not need to increase law enforcement staff as suggested in their comments. However, pursuant to the MSA, the Tribe would reimburse the City of Richmond for fees paid to Contra Costa County for transport or booking or similar services. Please refer to the MSA (Appendix Z) for additional details.

**County Comment on Response 1-258:** The BIA contends that detailed analysis of service costs is not necessary because "There are now numerous jurisdictions of all sizes and types into which casinos of all sizes and types have been introduced where the true impact on government service needs and costs can be ascertained." There are no comparable jurisdictions in California and the County knows of none elsewhere in the United States. If there are comparable jurisdictions, then their specific experience(s) should be reviewed as part of the assessment of projected impacts.

## Mitigation Measures – 5.0 et al

***MSA with the City of Richmond cannot be relied upon for any mitigation of impacts***—The MSA between the Tribe and City of Richmond is the identified mitigation measure for many of the impacts cited in the FEIS. However, the MSA cannot be considered an adequate mitigation measure in any circumstance for the following reasons:

- NEPA mandates that the FEIS include a discussion of the “(m) means to mitigate adverse environmental impacts.” (40 C.F.R. Section 1502.16(h); see also 40 C.F.R. Section 1502.14(f).) To be considered adequate, mitigation measures must avoid or reduce environmental impacts that may be caused by the proposed restored trust land casino project; the mitigation must be a solution to an identified environmental problem. Reliance on the MSA defers the mitigation to a later date: they do not avoid the problems caused by the project; they merely put off review until a later date. NEPA does not allow such a result—the proposed activities must actually mitigate adverse environmental impacts. It is not enough that certain measures, if implemented in the future, would fix the environmental problems associated with the project.
- The MSA may not be legally valid. In May 2007, local community groups filed a lawsuit alleging that the City violated California on Environmental Quality regulations (CEQA) when it negotiated the agreement with the Tribe without first conducting an environmental review. The group has petitioned the court to void the agreement, declare it unlawful, and issue a restraining order barring further attempts without an environmental review. A recent ruling which voided a similar agreement in Amador County strongly suggests that the courts are likely to void the MSA between the City of Richmond and the Scotts Valley Band of Pomo on the same grounds. See *County of Amador v. City of Plymouth* (2007), 149 Cal.App.4th 1089.
- Even if the MSA is overcomes the legal challenge and/or successfully meets its CEQA obligations, it may not be enforceable. Under the MSA, the Tribe has agreed to a limited waiver of sovereign immunity only if all of the following three conditions apply: 1) The claim is made by the City, and not by any other agency, person, instrumentality, corporation, partnership or entity; 2) the claim alleges a breach by the Tribe of one or more specific obligations or duties the Tribe assumed pursuant to the MSA; and 3) the claim seeks money damages for noncompliance. Waiver is specifically excluded for injunctive or other equitable relief against the Tribe.

For mitigation measures that do not entail payments by the Tribe, such as the pledge to hire locally and pay a Living Wage, no legal remedy would be available for non-compliance by the Tribe. For mitigation measures where the City has agreed to payment or provision of service, the MSA provides for no legal remedy non-compliance by the City against the Tribe.

- The MSA assumes that the City has jurisdictional authority to provide services and implement and/or pay for mitigation measures in the unincorporated County areas and under the purview of the State of California (CHP law enforcement along the Richmond Parkway and I-80). State law does not allow for such infringement upon the authorities, rights and obligations of County or state governments, outside the boundaries of Indian trust land.

**Transportation Mitigation Measures**--Intersection #13 is missing from the mitigation list in Section 5. The intersection of Richmond Parkway at Blume Drive/ I-80 Westbound Ramps was not included in Section 5 as a mitigation measure even though Table 4.12-9 on page 4.12-27 shows a cumulative plus alternative A scenario resulting in a LOS of E which is unacceptable. This intersection should be accounted for in Section 5.

In-lieu development fees provided by the Tribe should include traffic impact fees. Section 5.2.6 H. states that the Tribe will provide reasonable in-lieu development fees. It is assumed that these in-lieu development fees include traffic impact fees, specifically that of the West Contra Costa Transportation Advisory Committee fee and North Richmond Area of Benefit fee. These are considered reasonable by the County.

Section 5.2.3 W., Section 5.2.5 B. and Section 5.2.6 G. all state in one way or another that the Tribe will be contributing its proportionate share to fund environmental reviews of and mitigation for traffic improvements, including the cost of preparing environmental documents, the cost for mitigation for cultural and paleontological resources (including, but not limited to, avoidance resources, the preservation of key historical features, or the removal, documentation, and curation of cultural resources), and purchase of parcels for traffic improvements. As stated in earlier comments, how and when the proportional share will be calculated and deposited with the County needs to be clarified

Table 4.13-1, Intersection Improvements, does not reflect mitigation measures in Section 5. Mitigation measures in Section 5 do not include the re-striping of Parr Blvd. to provide a left-turn lane on the WB approach or the addition of a northbound through lane on Richmond parkway as stated on this table on page 4.13-5.

Regarding Table ES-1 in the Executive Summary, as is the case for the other sections of the Final EIS addressed herein (see #2 above), Table ES-1 is essentially the same in the Final EIS as it was in the Preliminary FEIS. As noted above, text about the potential transportation impacts during construction of off-site traffic mitigation measures was added to the Environmental Effect column, and the above-cited Mitigation Measure K was added to Table ES-1. ESA's opinion about the adequacy (or inadequacy) of the identified mitigation measures remains the same as stated in the previous (June 2007) peer review effort.

However, the current review of the Final EIS recognizes that the structure and wording of the Mitigation Measures in Table ES-1 (which is often copied verbatim into a findings document and/or into the Mitigation Monitoring and Reporting Program) is either incomplete or inaccurate as it pertains to what improvements will in fact be implemented and to the funding responsibility of the Tribe. For example:

- Mitigation Measure A is missing the statement that “the Tribe would be responsible for the full costs of this improvement”, which is included in Section 5.2.7 of the Final EIS. Also, the sentence “This mitigation is not required for Alternative B” has no

place in the presentation of mitigation measures for Alternative A, and should be deleted.

- Mitigation Measures C – F are not worded clearly enough regarding what will/shall be implemented. Phrases like “is assumed”, “may need to be”, and “is required” need to be rewritten to read “will be constructed by [entity’s name]”. Mitigation Measure B also needs to be revised to indicate what entity “will construct” the stated improvement.
- Mitigation Measure G introduces an inconsistent verb (“shall” instead of “will”).
- Mitigation Measure H needs to be revised to add the phrase “the Tribe would be responsible for a proportionate share of costs for this improvement”. Also, the text needs to change or delete the phrase “approximately 2 years ago” as it’s not clear to what year the “two years ago” refers (note that this exact phrase was in the May 2007 Preliminary FEIS, and in the February 2006 DEIS).
- Mitigation Measures I and J need to be revised to add the phrase “the Tribe would be responsible for a proportionate share of costs for this improvement”. Also, the text needs to change or delete the phrase “is currently in construction on the first phase...”, as it’s not clear that that remains its status (note that this exact phrase was in the May 2007 Preliminary FEIS, and in the February 2006 DEIS).
- The statement under Mitigation Measures for Alternative B (“AB”) needs to be revised to read as follows (because all measures would apply to Alternative B, except “A”): “Same as mitigation measures B through K under AA.”

***Safety and Loss Prevention (DEIS Comment 1-188)*** – The DEIS references the following measures to prevent and/or minimize criminal behavior on and off the property: on-site security with two-way radios, well-lit parking lots, “no loitering” signs, and implementation of a “Responsible Alcoholic Beverages Policy.” The EIS needs to address additional measures such as screening and background checks of casino and other employees, internal and external security programs, internal operating procedures and a comprehensive staff and security staff training program.

Response to comment

1-188 Section 4.9 notes several additional security procedures that would be implemented to ensure the safety and security of patrons and employees. Discussion of the screening procedures used during the hiring of casino employees is not within the scope of this EIS.

**County Comment to Response 1-188:** The cited security measures do not equate to a comprehensive security program. The County was not requesting a detailed description of pre-employment screening procedures, but commitment to a training program. The FEIS does not provide sufficient mitigation measures on minimizing criminal activity at and around the project site that is spurred by the presence of the casino.

***Air toxics/construction mitigation (DEIS Comment 46-22)*** – Include a discussion of air toxics in the FEIS. In addition, include the following additional mitigation measure for air quality in the FEIS and quantify additional pollutant reduction estimates that could be expected from their implementation:

- Prepare an inventory of all equipment prior to construction and identify the suitability of add-on emission controls for each piece of equipment before groundbreaking. Control technologies such as particles traps control approximately 80 percent of DPM, 40 percent of carbon monoxide emissions and 50 percent of hydrocarbon emissions.
- Ensure that diesel-powered construction equipment is properly tuned and maintained, and shut-off when not in direct use. Employ periodic, unscheduled inspections to limit unnecessary idling and to ensure that construction equipment is properly maintain,, tuned and modified consistent with established specifications.
- Prohibit engine tampering to increase horsepower, except when meeting manufacturer’s recommendation.
- Local diesel engines, motors, and equipment staging as far as possible from residential areas and sensitive receptors (schools, daycare centers, and hospitals).
- Require the use of low sulfur diesel fuel (<15 parts per million sulfur) for diesel construction equipment, if available.
- Reduce construction-related trips of workers and equipment, including trucks. Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.
- Lease or buy newer, cleaner equipment (1996 or newer modes), using a minimum of 75percent of the equipments total horsepower.
- Use lower-emitting engines and fuels, including electric, liquefied gas, hydrogen fuel cells, and /or alternative diesel formulations.

To the extent that air toxic emissions may potentially affect low-income and minority populations, their involvement in developing mitigation measures is warranted and appropriate.

The BIA’s response was:

Section 5.0 of the FEIS has been updated to include the eight additional mitigation measures as recommended above. Furthermore, estimated emission reductions from the integration of additional mitigation measures have been quantifies and are presented in Section 4.4 and are included in the URBEMIS output files in Appendix R.

**County Comment on Response 46-22:** Despite the response, the recommended mitigation measures from the 2<sup>nd</sup> and 8<sup>th</sup> bullet points above have not been incorporated into the FEIS and there is no justification for their exclusion.

**Mitigation measure needed on Seismicity – 3.2.4 and Pages 4.2-2 et al (DEIS Comment 1-58)** – Appendix E, Preliminary Geotechnical Report recommends designing the site structures for Seismic Zone 4 with increases for near-fault effects (e.g., Hayward Fault with 1.6 miles), consistent with California Building Code (CBC) design and construction standards (page 5). The DEIS includes only UBC (Uniform Building Code) (1997) requirements (page 4.2-2). If UBC requirements alone are sufficient to ensure the safety of casino patrons during displacement along the Hayward fault, then the EIS should include a statement to that effect. If not, CBC standards should be added as a mitigation measure.

The BIA's response was:

“Section 2.2.1 of the FEIS was revised to state that the structures would be designed for Seismic Zone 4 of the California Building Code.”

**County Comment on Response 1-58:** The response states that Section 2.2.1 has been revised to state that the structures would be designed for Seismic Zone 4 of the California Building Code (CBC). While many additional revisions incorporating the CBC has been made to the document, the FEIS still needs to be revised on page 3.2-9 to delete the reference to building design according to the Uniform Building Code. Also, the FEIS has also entirely removed the mitigation measure referring to the UBC from page 5-4, therefore there is no longer any mitigation referring to building codes within the FEIS.

**First Source Program needs to be mitigation measure (DEIS Comment 1-103)** – The DEIS states that the Tribe is “committed to use the local labor force” (page 4.7-1). The County's Redevelopment Program, and its P-1 zoning program require that North Richmond residents be given first consideration for employment under the auspices of a “First-Source Hire Agreement” (page 4.7-1). Achieving this goal requires more than “good faith.” Affirmative action to train, recruit, and hire local residents are part of the First Source Program. Adoption of the County's First-Source Hire Agreement should be included in the mitigation measures in the EIS.

The BIA's response was:

1-103.1 The MSA entered into between the Tribe and the City of Richmond identifies that the Tribe shall enter into a First Source Agreement with the City (Appendix Z, Section 5.2(b)). The First Source Agreement will identify hiring priorities in the following order:

1. Tribal members and other Native Americans residing in proximity to the Gaming Facility,
2. Individuals participating in and qualified under the City's First Source Program,
3. Other individuals residing in Richmond and
4. Individuals residing in the unincorporated area of North Richmond.

The MSA has been incorporated into the project description, and therefore, MSA conditions need not be incorporated as mitigation measures in the EIS. It should also be noted that while the Tribe has made good faith efforts to address the County's concerns, the County has not been willing to enter into a similar agreement with the Tribe.

**County Comment on Response 1-101:** With respect to the local hire commitment, there is no evidence of a binding commitment, such as a mitigation measure, and consequently, no assurance that FEIS projected beneficial local employment effects would occur. Again, the referenced MSA is legally questionable.

Furthermore, the MSA, even if deemed legal in the courts, may not result in the assumed local employment benefits: the MSA provides for renegotiation and waives the Tribes sovereign immunity only when three conditions are met, one of which is that the claim seeks “money damages for noncompliance.” Consequently, the City could sue and receive monetary compensation for non-compliance with local hiring commitments, but could not force the Tribe to actually comply and meet its local hiring targets. See comments on the MSA in Section 5, Mitigation Measures.

In addition, the host community—North Richmond—is fourth in priority relative to the stated priorities. This is an unacceptable position given the prospective impacts of hosting such a large facility.

A mitigation measure for jobs impact should be added that requires the Tribe to enter into a local hire/first source program with the County, the government of jurisdiction. Such an agreement could be joint effort of the County and City Workforce Development Boards.

***Mitigation measures on property tax loss (DEIS Comment 1-111)***--The mitigation measures state that the “Tribe will provide reasonable in-lieu development fees, in-lieu contributions to the local redevelopment agency and in-lieu property taxes to Contra Costa County to mitigate recognized effect to the West County Unified School District.” (DEIS page 5-9)(FEIS page 5-16, Mitigation Measure 5.2.6 H) As currently constructed the sentence can be read to mean that all in-lieu payments are for mitigation of school impacts. If that is not the intention, the sentence should be clarified. Also, the basis for determining “reasonable” needs clarification. “Reasonable” to the County is full payment as though the property were held in fee, not trust.

The BIA’s response was:

Please see Response 1-108.

**County Comments on Response 1-111:** Since the referenced sentence was not changed in the FEIS, the County can only assume that the referenced property taxes are to mitigate school district impacts. Again, the term “reasonable” needs to be defined, otherwise, the mitigation measure is without meaning and deferred to a later time, and therefore, not adequate.

***Smoking and Health Concerns need greater mitigation (DEIS Comment 1-18)*** - In recognizing the substantial health impacts caused by smoking and the need to protect the health of employees. The State of California enacted a prohibition on indoor

smoking in places of employment. Numerous studies have shown that exposure to second hand smoke can cause increased respiratory, cardiovascular and associated health problems and can increase the risks for cancer and birth defects. Studies have also shown that employees in smoke-filled environments are exposed to more carcinogens and health risks associated with second hand smoke.

The BIA's response was:

“Comment noted and made part of the administrative record. The Tribe has recognized the health and social concerns of smoking by designing the casino with non-smoking sections (as noted in Section 2.2.1 of the DEIS).

**County Comment on Response 1-18:** The BIA states that Section 2.2.1 recognizes the issue, which is addressed by providing both smoking and non-smoking sections within the casino, with mechanical ventilation systems within smoking areas...designed according to the most current industry standards for smoking areas, which include increase in air exchanges compared to typical occupancy rates” (FEIS page 2-6).

This response does not inform the reader whether or not smoke will still travel between the smoking and non-smoking sections. The FEIS should either specify that this public health protection is provided or a mitigation measure should be added on segregation between the smoking and non-smoking sections such that the smoke does not travel between the two areas.

Also, without detail on the square footage of smoking and non-smoking areas by type of area (slot machine, Asian games, buffet, sports bar, etc) it is impossible to assess the extent of the health impacts. This needs to be added and analyzed in the FEIS. In addition, health impacts to employees exposed to second-hand smoking in smoking areas should be addressed in the FEIS. Mitigation Measure 5.2.3 II should be modified to reflect that the ventilation of indoor (not outdoor) air is consistent with current industry standards for smoking areas, which include increases in air exchanges compared to typical occupancy rates (as described in response to DEIS Comment 1-19).

***Hazardous materials and waste management mitigations need to be expanded (DEIS Comment 1-220)***– The DEIS acknowledges that hazardous materials will be stored, used and generated at the proposed casino project site. Mitigation Measures J calls for the Tribe to develop and implement a hazardous materials and hazardous waste minimization program. In the EIS, this mitigation should be expanded to require review of the plan by with the Contra Costa Health Services Hazardous Materials Division and the Fire District.

BIA Response 1-220

The proposed facilities would be developed on lands held in federal trust status. As a result, the BIA and USEP A would have oversight of the use and storage of hazardous materials pursuant to applicable federal regulations. Mitigation has been identified in the EIS that would reduce potential hazards to a less than significant level. Pursuant to the MSA, the City of Richmond Fire Department would provide fire protection to the project site. Accordingly, if present, the Tribe would provide the Richmond Fire Department with an inventory of hazardous materials stored on site.

**County Comment on Response 1-220:** The BIA's response is adequate in that it states that the regulatory power over hazardous material use by the casino lies with the BIA and USEPA. The response implies that the Tribe is not required to obtain approval or permits from Contra Costa Health Services Hazardous Materials Division and the Fire District. The response should provide a more clear explanation in this response and Section 3.10.2 "Hazardous Materials" of the County's jurisdiction over the Tribe's use, storage, and transport of hazardous materials. Also, the setting information (Section 3.10.2 "Hazardous Materials") does not identify the BIA as having these oversight responsibilities. The setting should be updated to reflect this new information, such that the FEIS provides a complete and accurate picture of the regulatory oversight of the use and storage of hazardous materials by the Tribe.

It should also be noted that the following mitigation measure that was included (page 5-27 in Chapter 5.0 Mitigation Measures) in the Preliminary FEIS (May 2007) was not included in the FEIS released March 2008:

O. Site development work will not begin until a determination has been made by the BIA in consultation with Contra Costa Health Services Hazardous Materials Program (CCHSHMP), the RWQCB, and USEPA that a risk to human health and/or the environment does not exist.

In an effort to maintain a cooperative relationship with Contra Costa County, it would be in good faith for the Tribe to include this mitigation measure in the FEIS and provide Contra Costa Health Services with information regarding their use, storage, transport, and disposal of hazardous materials. In the event of an emergency on adjacent properties in the County, this would allow the County and the Fire Department to have a complete picture of any potential hazards associated with the Proposed Action site.