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

April 7, 2008

John Rydzik, Chief
Division of Environmental, Cultural,
Resource Management and Safety
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Subject: Draft Environmental Impact Statement, North Fork Rancheria of Mono Indians Fee-to-Trust and Casino/Hotel Project, Madera County, CA (CEQ # 20080045)

Dear Mr. Rydzik:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our detailed comments are enclosed. We appreciate the Bureau of Indian Affairs (BIA) agreement to accept EPA's comments past the March 31st comment deadline.

EPA is a cooperating agency for the EIS and reviewed select sections of the Preliminary DEIS and submitted comments to BIA on April 17, 2006. We appreciate BIA's responsiveness to our comments, which are reflected in the DEIS.

We commend BIA and the Tribe for including substantial mitigation measures to reduce significant project impacts. It is unclear, however, how BIA will ensure implementation of such an extensive set of mitigation measures after the fee-to-trust transfer is completed. We recommend that all mitigation identified in the document be included in the mitigation measures chapter and that a mitigation monitoring and enforcement program, per 40 CFR 1505.2 (c), be included in the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) to ensure that all proposed mitigation is implemented and significant impacts are reduced.

The DEIS does not identify the method of wastewater treatment and disposal that is proposed for the project, instead identifying several options including off-site disposal and an on-site wastewater treatment plant. The selection of the wastewater treatment option largely influences impacts to groundwater by affecting the ability to implement important mitigation measures, including the use of reclaimed water for both the project and other identified uses. Because of this uncertainty and the lack of information regarding mitigation monitoring and enforcement, we have rated the DEIS as Environmental Concerns – Insufficient Information

(EC-2) (see enclosed "Summary of Rating Definitions"). We have also included additional mitigation suggestions in our Detailed Comments (attached).

We appreciate the opportunity to review this DEIS, and we are available to answer questions you may have regarding our recommendations. When the FEIS is released for public review, please send two copies to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3846 or Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

/s/

Nova Blazej, Manager
Environmental Review Office

Enclosures: Summary of EPA Rating Definitions
EPA's Detailed Comments

cc: Jacquie Davis Van Huss, Chairperson, North Fork Rancheria
Roselynn Lwenya, Environmental Director, North Fork Rancheria

Mitigation and Monitoring

The DEIS identifies significant impacts to resources but also contains an impressive suite of mitigation measures to mitigate these impacts. The list of measures is so extensive, however, that it is unclear how the BIA will ensure their implementation after the fee-to-trust transfer is completed. The Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) state that a monitoring and enforcement program shall be adopted in the Record of Decision (ROD) and summarized where applicable for any mitigation (40 CFR 1505.2 (c)). Some mitigation measures do identify the implementation and enforcement component, such as the measures contained in the Memoranda of Understanding (MOU), but many do not.

The DEIS and the Madera Irrigation District Memorandum of Understanding (MID MOU) state that reclaimed water from any on-site wastewater treatment plant will be used for toilet flushing and other reclaimed uses (p. 2-13, 2-16, 2-30). This is a significant mitigation measure that is to be commended, but it is not included in the list of mitigation measures in Chapter 5 or in Table ES-1 in the Executive Summary.

We commend the Tribe and the City of Madera for proposing utilization of reclaimed water for golf course irrigation at the City's golf course located just south of the Madera site, which could eliminate golf course groundwater withdrawal of over 240,000 gallons of water per day (p. 2-17). Similarly, the Tribe's proposal to contribute to a reserved water bank or a groundwater recharge area is commendable (p. 5-6).

> *Recommendations:* EPA recommends a mitigation monitoring and enforcement program be developed and included in the Final Environmental Impact Statement (FEIS) and ROD, describing responsible parties for implementation and enforcement for each measure and how the success of mitigation measures will be monitored. It is important that mitigation be implemented so that significant impacts from the project do not occur.
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> Ensure all mitigation measures identified in the DEIS are included in the list of measures in Chapter 5 and are referenced in the ROD.

Wastewater disposal options

EPA reviewed and provided comments on the preliminary DEIS (April 17, 2006). The wastewater disposal options identified in the DEIS remain the same with no preferred disposal method identified. The options presented are off-site wastewater treatment at the City of Madera wastewater treatment plant (WWTP) or an on-site WWTP with discharge of treated wastewater occurring through surface water discharge, spray disposal, sub-surface disposal, or a combination of spray and subsurface. A seasonal storage basin for use during rain events would be needed if spray and/or sub-surface disposal is used. It is not clear whether the site has sufficient capacity for both stormwater retention and wastewater retention considering it lies within the 100-year floodplain. Additionally, BIA and the Tribe should ensure that soil

conditions at the site will absorb the proposed volumes of spray wastewater without runoff. Should the disposal of effluent via spray disposal result in runoff and water discharges to waters of the U.S., these discharges would require a National Pollutant Discharge Elimination System (NPDES) permit.

If surface water disposal is used, discharges would occur to Schmidt Creek, which flows through the Madera site (p. 2-16), and would require an NPDES permit as the DEIS notes.

> *Recommendation:* In the FEIS, discuss total water storage capacity of the site that references the maximum capacity required for both stormwater and wastewater storage. Since the opportunity to mitigate impacts to groundwater depends on the method of wastewater disposal, we recommend the FEIS identify which wastewater disposal method will be used, or if this is not known, describe the process and timing for making this decision. BIA and the Tribe should fully consider the benefits of an onsite WWTP with water recycling in terms of mitigating groundwater impacts and reducing wastewater storage requirements.

Floodplain Impacts

The Madera site proposed for casino and hotel development is located in the Federal Emergency Management Act (FEMA) 100-year floodplain, and the current land tenant of 10 years stated that the site floods often during the winter months (p. 3.3-4). Development in floodplains is discouraged under Executive Order (E.O.) 11988 - Floodplain management. The DEIS states that elevating structures, which E.O. 11988 states is preferable over fill, is not practicable. It also states that the Grading and Drainage Plan incorporates fill to elevate the finished floor of the gaming facility at least 1 foot above the FEMA 100-year floodplain, and that approximately five feet above the floodplain is proposed (p. 4.3-1). It is not clear which elevation is the mitigation commitment for this impact, especially since no floodplain mitigation is listed in the mitigation measures chapter.

We note that climate change is expected to result in an increase in heavy rainfall events in many regions and increased frequency and severity of floods as well as droughts[1]. Increases in the regular flooding of the Madera site, therefore, are a possibility. This potential impact should be discussed in the FEIS with contingency measures included. The DEIS does identify the risk of constructing drinking water wells in the 100-year floodplain and proposes to raise the top of the well casing and wellhead facilitates at least 3 feet over the base floor elevation to minimize risks of contaminating drinking water (p. 2-19). Again, this mitigation measure is not included in the mitigation measures chapter under either floodplain or food and water safety. We also suggest mitigating the risk of water contamination from hazardous materials during both construction and operation. The DEIS identifies various hazardous materials that will be used during construction, such as fuels, solvents, cleaning, sealants, paints, etc., and also identifies the storage of hazardous materials that would occur should on-site wastewater treatment occur, including sodium hypochlorite, citric acid, and diesel fuel (p. 4.10-7). In addition to spill

[1] International Panel on Climate Change, Climate Change 2007: Synthesis Report. Available: http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf

containment, the project should ensure all hazardous materials are stored well above the reasonably foreseeable flood level that considers the effects of climate change.

> *Recommendation:* Clarify the mitigation commitment for development in a floodplain and include this in the list of mitigation measures in Chapter 5. Include mitigation for minimizing risks from hazardous materials contamination to both groundwater (well placement) and surface waters from flooding in Chapter 5. Ensure all mitigation measures are identified or referenced in the ROD and included in a mitigation monitoring and enforcement plan. Include a qualitative discussion of the potential effects of climate change on the project site and the measures that will be implemented to adapt the project to climate change effects.

Reducing Impervious Surfaces

Reducing the excessively high parking ratios commonly used in commercial areas helps reduce the amount of impervious surfaces which cause impacts to hydrology. The preferred alternative includes approximately 4,500 parking spaces, with 2,000 of them in a multi-level parking structure (p. 2-1). We commend BIA and the Tribe for proposing use of a parking structure to reduce the amount of impervious surface, however, we encourage the further reduction for the protection of water resources and to reduce indirect impacts to the 8.5 acres of seasonal wetlands on the site (p. 3.5-2). The project avoids direct impacts to these wetlands but does not address the potential indirect impacts, which could include depriving the wetlands of flows since it appears the parking lot draining will route runoff towards the west and away from the existing wetlands (Figure 2-4).

The DEIS does not identify the proposed need for 4,500 spaces or how this number was calculated. Parking ratios are generally expressed as spaces per 1,000 ft^2 gross floor area (GFA), not including storage or utility spaces. It appears that the parking ratio used is over 9 spaces per 1000 ft^2 of *total* square footage. This is much higher than the conventional retail minimum parking ratio of 5 spaces per 1000 ft^2 GFA, and better site design parking ratios for retail spaces have been recommended at 4.0 to 4.5 spaces per 1000 ft^2 GFA[2.]

> *Recommendations:* EPA recommends the parking lot design be modified to conform with "green parking" guidelines. For more information on green parking, see http://www.epa.gov/smartgrowth/parking.htm or http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=factsheet_results&view=specific&bmp=89. The FEIS should identify the parking ratio used to size the parking lot and indicate how this ratio is appropriate. We recommend the parking ratio be reviewed for conformance with local and national casino experience to see if lower ratios are warranted and feasible.
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> We commend the use of a parking structure, which minimizes the parking lot footprint, and encourage the use of the structure for any alternative that is selected. We also have the following recommendations: (1) that at least 30% of the spaces have smaller dimensions for compact cars, and (2) that spillover parking with pervious surfaces be

[2] Kwon, Hye Yeong. 2000. An Introduction to Better Site Design, *Watershed Protection Techniques*, 3(2): 623-632

included in the design. Pervious alternative pavers include gravel, cobbles, wood mulch, brick, grass pavers, turf blocks, natural stone, pervious concrete, and porous asphalt.

Additional Recommendations

- Agricultural Demonstration Project: The DEIS states that the Tribe has agreed in the MID MOU to establish an agricultural demonstration project for educational purposes on the Madera site (p. 4.8-42). It is not clear what this project would involve, where it would be located, or how it would affect environmental resources. The FEIS should provide more details on this demonstration project.

- Air Quality: EPA appreciates the addition of measures to mitigate air quality impacts from project construction (p. xvii and Appendix T). It is especially important that all reasonable mitigation measures be included in the project and enforced, especially since Madera County is designated as being in "serious" nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter less than 10 microns in diameter (PM_{10}). We appreciate the thorough discussion of cumulative impacts from ozone and PM_{10}. EPA also commends BIA and the Tribe for the good discussion and evaluation of climate change and greenhouse gas emissions. One minor suggestion is to list the mitigation for cumulative contributions to greenhouse gases from waste diversion under impacts to services, since this does not relate to impacts to resources.

- Green Building: The DEIS states that the Tribe shall seek Leadership in Energy and Environmental Design (LEED) certification for project components, where possible (p. xxviii). We request that the FEIS identify the project components where this is deemed possible. EPA strongly encourages the pursuit of LEED certification for this project. LEED certification will enable the Tribe to establish themselves as recognized leaders in the green building sector and offer them the opportunity to market their venue as an environment-friendly facility.