

June 17, 2019

James M. Lynch
jim.lynch@klgates.com

By E-mail and Post

T +1 206 370 6587
F +1 206 623 7022

Ms. Amy Dutschke
Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, California 95825
EMAIL: chad.broussard@bia.gov

Re: DEIS Comments, Redding Rancheria Project

Dear Director Dutschke:

Thank you for the opportunity to comment on the Bureau of Indian Affairs' ("BIA") Draft Environmental Impact Statement ("DEIS") for the Redding Rancheria Fee-to-Trust and Casino Project ("Proposed Project" or "Alternative A") at the Strawberry Field Site in Shasta County, California. I write on behalf of over 56 concerned neighbors, business owners, and community members ("Concerned Neighbors") who will be directly affected by the Proposed Project's significant environmental impacts on their homes, businesses and community.¹

The Redding Rancheria's ("Tribe") Proposed Project would transfer approximately 232 acres of agricultural lands and lands within the 100-year floodplain of the Sacramento River from fee to federal trust status to facilitate the construction of a 69,541 square foot casino, a nine-story, 250-room hotel, conference center and 1,800 seat event center, a 1,500 seat outdoor amphitheater, restaurants, a 130,000 square foot retail store for outdoor sporting goods, and parking for over 2,500 vehicles. As people who live and work in the area adjacent to the Strawberry Fields Site, the Concerned Neighbors are concerned about the significant change in land use contemplated by the DEIS and the serious environmental and quality of life impacts that they and the surrounding community will face if the BIA approves the Tribe's application. These concerns include site access and traffic-related impacts, water resources impacts, and noise impacts, among others.

The National Environmental Policy Act ("NEPA") requires the BIA to take a "hard look" at the environmental issues related to the Proposed Project and, at the same time, adequately inform the public of the BIA's decision-making process. The Indian Reorganization Act ("IRA") and the

¹ Each Concerned Neighbor is identified in Attachment A of these comments.

BIA's own implementing regulations require BIA to consider community impacts from fee-to-trust applications and to analyze community impacts through the NEPA process in order to take land into trust. Here, however, the DEIS contains many flaws, inaccuracies, and ambiguities regarding the Proposed Project's environmental and land use impacts, its alternatives, and impacts on the surrounding community. By ignoring the well-founded concerns of state and local stakeholders during scoping and prior comment processes, BIA has offered an inadequate document that fails to satisfy NEPA's basic requirements.

It is inappropriate for BIA to stack the deck in favor of the Proposed Project and exalt economic development over the significant environmental issues that require close consideration under NEPA and its implementing regulations. The fact is that the Tribe currently has significant opportunities for economic growth. Located less than two miles from the Strawberry Field Site, the Tribe's Win-River Casino operates on 14.8 acres of federal trust land, including an 84-room hotel, an event center, restaurants, and parking. Expanding the existing Win-River Casino Site (Alternative F) appears feasible, would satisfy the Tribe's desire for further economic development, and would do so with limited environmental impacts and disruption to the surrounding community. Alternative F is unquestionably the environmentally preferred alternative, and the BIA should consider it as the potential preferred alternative in a revised DEIS and in the final EIS.

In addition to commenting on the DEIS's fatal shortcomings, the Concerned Neighbors raise concerns regarding the BIA's application of the Indian Gaming Regulatory Act ("IGRA") to the Proposed Project. Specifically, Strawberry Fields does not qualify as "restored lands" under IGRA, and the Tribe cannot bypass IGRA's two-part determination requirement in pursuit of economic expediency.

The following comments provide additional details regarding the Concerned Neighbors' concerns.

I. The DEIS's Purpose and Need Statement is Inadequate

The Proposed Project's purpose and need is stated on page 1-2 of the DEIS: "The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development." The DEIS's purpose and need statement contains several flaws: (1) it presumes that the Proposed Project satisfies BIA's land acquisition policy; (2) it fails to identify BIA's relevant legal duties/evaluation criteria when acting on the Proposed Project; and (3) it contains insufficient detail needed to ascertain whether the DEIS satisfies key elements of NEPA including the development and screening of alternatives.

First, the DEIS presentation of the Proposed Project's purpose and need is inadequate because it unlawfully presumes the Tribe's economic development interests satisfies the BIA's land acquisition policy without considering whether, and to what extent, the Tribe's desire for economic development complies with the Indian Reorganization Act ("IRA"), 25 U.S.C. § 5108, and BIA's regulations at 50 CFR § 151.3. While the Agency has discretion when defining the purpose and need of a project, an unreasonably narrow or pre-determined purpose and need statement

violates NEPA. *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997).

The BIA may acquire land in trust for tribes when, among other things, the “Secretary determines that the acquisition of the land is *necessary* to facilitate tribal self-determination, economic development, or Indian housing.” 50 CFR § 151.3(a)(3) (emphasis added). A tribe’s desire for land to build a casino, related amenities, and a retail outlet does not automatically render a land acquisition “necessary”; particularly where, as here, the Tribe already enjoys 14.8 acres held in federal trust on which it operates the 141,607 square foot Win-River Casino and related entertainment and retail amenities.² And yet, by ignoring the Tribe’s existing economic potential, the DEIS’s purpose and need statement presupposes such necessity at Strawberry Fields. At the very least, the purpose and need statement should be revised so as not to pre-determine that the Proposed Project satisfies the IRA and the BIA’s requirement per 151.3(a)(3) to make a determination that the Proposed Project is “necessary.”

Second, the purpose and need statement describes the need for the BIA to act on the Tribe’s fee-to-trust application as established by BIA’s land acquisition regulations at 25 CFR § 151(h) and 151.12. While this may be true, the purpose and need statement does not adequately inform the public of BIA’s legal duties when undertaking the proposed action. Noticeably absent from the purpose and need statement are BIA’s land acquisition evaluation criteria at 25 CFR § 151.10(a)-(g). The purpose and need statement must be revised to specifically refer to, among other things, 151.10(a) (the existence of statutory authority for the acquisition and any limitations contained in such authority³); § 151.10(b) (the need of the tribe for additional land); § 151(e) (impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls); and, importantly, § 151.10(f) (jurisdictional problems and potential conflicts of land use which may arise). Finally, the DEIS fails to adequately explain and specify the Tribe’s plans and the anticipated economic benefits associated with the Proposed Project as required by 151.11(c). Consistent with other sections of NEPA analysis, BIA completely ignores the laws balancing the complex interaction of federal, state, local, and tribal sovereignty.

Third, the statement of purpose and need is very general and more detail needs to be provided regarding how the purpose and need for the project can be achieved for the following key NEPA elements:

- Developing a range of alternatives;

² In fact, the legislative history of the IRA shows that the purpose of the Act was to respond to the immediate need for land for homeless Indians in order to create subsistence opportunities such as agricultural endeavors. See House Report No. 1804, 73rd Cong. 2d. sess. (May 28, 1934) at 6-7.

³ For more on this particular evaluation criteria, see Section VIII below and our comments and concerns regarding the application of IGRA to the Proposed Action.

- Screening alternatives against the purpose and need for the proposed action; and
- Rejecting alternatives for not achieving the purpose and need for the proposed action.

The Tribe's objectives are focused on the Strawberry Fields Site as a part of the Tribe's traditional territory. The DEIS alternatives include several rather similar alternatives for using the Strawberry Fields Site; less attention is paid to other tribal and non-tribal land. The DEIS and scoping report, however, lack a clear description of the connection between the purpose and need for the proposed action by BIA and the Tribe's objectives and the development of the range of alternatives, as well as the rejection of alternatives. The DEIS's analysis fails to take a sufficiently "hard look" at how the purpose and need of this project can be satisfied and, as a result, fails to adequately inform the public of the Proposed Project's many environmental and land use impacts, or considers the consequences of the different alternatives.

In sum, the current purpose and need statement suggests that BIA has merely ratified a preordained decision, and the DEIS lacks sufficient detail to determine whether the DEIS satisfies key elements of NEPA. The DEIS must therefore be revised consistent with the remarks above.

II. The DEIS's Alternatives Description and Analysis is Deficient

The DEIS alternatives discussion includes many shortcomings including (1) failing to provide sufficient information for each alternative; (2) failing to explain how alternatives were screened and selected; and (3) performing an inadequate and misleading alternatives comparison.

First, the description of each alternative is insufficient. A supplemented and recirculated EIS should correct the following deficiencies:

- The DEIS fails to describe Project elements in detail, and not all elements are labeled on the figures, which consist only of a site plan and architectural rendering for each of the alternatives (Sections 2.3 – 2.8 and Figures 2-8 – 2-17).
- The architectural renderings do not clearly identify or describe the Project elements (Figures 2-9, 2-11, 2-13, 2-15, and 2-17) as there are no labels on the renderings in addition to the lack of complete labels on the site plans.
- The alternatives description lacks specific elements necessary for a proper NEPA analysis, including:
 - It is not clear where the amphitheater is located on the site. This leads to a deficiency in the noise analysis due to lack of description of the project elements. While the noise chapter discusses the location of the amphitheater on pages 4.11-9 and 4.11-10 in a way that makes it seem that the BIA had inside information about the amphitheater layout and location, the lack of this information in the EIS makes it impossible for the public to either understand the analysis or comment on

its adequacy. Other environmental effects could be affected by the layout and location of the outdoor amphitheater, including light and glare impacts when the amphitheater's exact location is revealed to the public.

- Five tall elements are shown on the architectural renderings for Alternatives A, B, and C (Figures 2-9, 2-11 and 2-13) that are not described in the text. Are these screens for the amphitheater? Lighted signs? The DEIS failed to describe noise and light and glare from these elements, as well the visual impacts from these elements.
- Two towers are shown on either side of the parking lot on the south end of the casino complex on the architectural renderings for Alternatives A, B, and C (Figures 2-9, 2-11 and 2-13). They appear to be five stories high. No labels or descriptions of these towers or the uses to be located in them is provided. It is impossible to assess whether the effects analysis includes these project elements.
- The two-paragraph description of "Architecture, Signage, Lighting and Landscaping" on page 2-16 for Alternative A, which is referenced on page 2-25 for Alternative B, and not described for other alternatives, lacks sufficient information for determining the effects associated with these project elements, including:
 - Architectural style (text on page 2-16 says "will enhance the natural and rural characteristics of the site"). This conclusion is incompatible with the architectural renderings for Alternatives A, B, C, D and E (Figures 2-9, 2-11, 2-13, 2-16 and 2-17), which show tall and prominent urban-style structures, including, a 9-story hotel and a multi-level parking garage, on greenfield development against the Sacramento River.
 - The DEIS fails to describe how many signs are proposed; where the signs will be located; and how large the signs will be. In addition to being illuminated, as stated in the DEIS on page 2-16, will the signs allow projection of video?
 - How will the landscaping screening conceptually indicated on the architectural renderings be achieved? What is the timeframe for maturation of the landscaping?
- Grading and drainage plan. Although, as stated in the DEIS on page 3.3-6, the development footprint is not within the 100-year flood plain, the remainder of the site is within the 100-year floodplain and the site does include areas subject to flooding from Churn Creek (page 2-19) and inundation from Sacramento River (page 2-20). The DEIS fails to include the grading and drainage plan, and it is unclear whether the grading and drainage study in Appendix C is a part of or corresponds to the Proposed Project.

- The “wet pond” description on page 2-20 is confusing and fails to match the description in Appendix C. To locate the wet pond, it is necessary to look in Appendix C Figure A4. The location of the wet pond should be in the EIS description of the alternatives.
- Appendix C contains a number of actions that would address water quality. It is not clear these are a part of the Proposed Project, alternatives, or satisfy NEPA’s mitigation requirements.
- Sacramento River Streambank Stabilization is described briefly as a part of the Proposed Project on page 2-20. No figure shows where this would be located. Also, although there is a schematic in Appendix C, there is no description of the construction activities involved. Would there be in-water work? If not, how would the work be performed?
- On page 2-20, gas service to the Proposed Project is to be provided as new service from PG&E, but new facilities are not described in the description of the Proposed Project and alternatives.

Second, neither the DEIS nor the scoping report provides sufficient documentation and explanation for how BIA screened and selected the range of alternatives. *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 868 (9th Cir. 2004) (stating that an EIS must contain a reasonable range of alternatives such that the “selection and discussion of alternatives fosters informed decision-making and informed public participation”). The DEIS also fails to explain the alternatives screening process, including screening criteria and a specific assessment of each alternative regarding whether it met the criteria.

Particularly troubling, the DEIS dismisses as uneconomic the public-proposed Vineyard alternative in only a few sentences (page 2-50), which seems to be the primary reason it was disfavored by the Tribe, but did so without any economic analysis. The Vineyard alternative, or similar agricultural-based alternative, would fulfill the primary project objectives as described in the DEIS: to restore the land base of the Tribe, ensure that the Strawberry Fields Site is adequately maintained and protected for future generations, and that the Tribe has the ability to exercise its jurisdiction as a sovereign tribal government over the Site. DEIS at 1-2. The Vineyard alternative, or similar, is also consistent with existing land uses for the Strawberry Field Site, which is one of the BIA’s key evaluation criteria for the fee-to-trust application. 25 CFR § 151.10(f) (requiring the BIA to consider potential land use conflicts that may arise as part of the land acquisition). Further, the DEIS fails to consider or address whether there is another alternative for the Strawberry Fields Site that could be economically viable, consistent with the primary project objectives, and more consistent with existing land uses. And, finally, the DEIS presents no information from which the public can ascertain whether any alternative similarly sized to the Proposed Project was considered.

Third, the DEIS's flaws with respect to the purpose and need statement infect the DEIS's alternatives comparison. NEPA requires an EIS to compare the impacts of the proposed action and its alternatives, "thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." 40 CFR § 1502.14. Project alternatives are derived from an EIS's purpose and need statement and "the agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, [or] the EIS would become a foreordained formality." *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

Because of the inadequacies of the DEIS's purpose and need statement, the information presented in the DEIS's alternatives comparisons, see DEIS at 2-53, is misleading and unfairly favors the Proposed Project due to the potential for greater economic returns to the Tribe. The comparison of alternatives section glosses over the environmental impacts associated with the Proposed Project and its alternatives and fails to quantify the degree of impacts associated with each alternative. Critically, the DEIS concludes that Alternative A best meets the purpose and need without considering environmental and land use impacts. This is despite BIA's own regulations requiring that it consider potential land use conflicts that may arise as part of the land acquisition. 25 CR 151.10(f). And, while the comparison of alternatives emphasizes the economic consequences of the Proposed Project and its alternatives from a revenue generating perspective, it fails to consider "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls." 25 CFR 151.10(e).⁴

The alternatives section in the DEIS must be revised to provide the public with complete information regarding the degree of environmental impact, the selection and screening process for the range of alternatives, and an adequate presentation of alternatives from which the public can make an informed comparison of the alternatives.

⁴ The DEIS does not reference or discuss the California Department of Tax and Fee Administration (CDTFA) Publication 146 (available at <https://www.cdtfa.ca.gov/formspubs/pub146.pdf>), which addresses whether the state can apply sales and use taxes to revenues generated on trust lands. The DEIS must be revised to include a discussion of CDTFA Publication 146 and provide a robust assessment of the impacts associated with removing the Strawberry Fields Site from state and local tax rolls.

III. The DEIS's Description of Access Options for the Proposed Project and the Analysis of the Related Traffic Impacts Are Inadequate

The traffic impacts analysis contains numerous flaws and errors that must be addressed before BIA can conclude there are no significant traffic impacts associated with the Proposed Project. A more detailed analysis is included in the attached technical comments on the DEIS's traffic impact analysis identified as Attachment B.

a. Access Issues

The DEIS glosses over the troublesome issue of accessing the Strawberry Fields Site. The North Access Only option, where access to the Proposed Project is provided on Bonnyview Road via Bechelli Lane, lacks sufficient capacity for the volume of vehicles exiting the Strawberry Fields Site. The intersection of Bonnyview and Bechelli, a narrow two-lane road, is barely 700 feet from one of the busiest interchanges in the City of Redding, the interchange to Interstate 5 (I-5), which is prone to queue overflows. Further, the Proposed Project conflicts with the City's plans for constructing a diverging diamond interchange with roundabouts at the intersection of Bonnyview Road with Bechelli Lane and Churn Creek Road, and would likely exhaust the entire capacity of the planned one-lane on ramp to the I-5. Given the Project's size, at least two access points are required. Southerly access to the Proposed Project via Smith Road is infeasible, however, because it is inconsistent with the City's Traffic Impact Study (TIS) Guidelines for residential streets. The DEIS's traffic impact analysis, Appendix F, fails to adequately address these significant access issues and must be revised.

Emergency access presents a particularly acute public safety hazard at Strawberry Fields. With only one access point, the DEIS does not explain how people will leave at the same time as heavy fire trucks and service vehicles arrive, particularly during peak travel times and periods of I-5 on ramp congestion.

b. Peak Hour Counts

The methodology and baseline assumptions for the traffic impact analysis contain a number of flaws. The analysis fails to identify traffic impacts during the peak hour of adjacent street traffic when impacts are most substantial. Each of the relevant traffic study guidelines (Caltrans, Redding, Shasta County) require analysis of peak hour conditions. Further, the DEIS' traffic study conducted traffic counts when schools were not in session, resulting in substantially lower baseline counts. The DEIS based its trip distribution analysis on Wi-Fi surveys, which are known to be unreliable indicators of actual traffic counts.

c. Intersection and Street Analysis

The DEIS also fails to address the level-of-service impacts to surrounding intersections. Specifically, the study area evaluates only ten area intersections, and ignores CalTrans guidelines to evaluate all intersections that may experience 50 or more peak hour trips. Impacts at all

intersections where the project could have potential impacts should be analyzed and those impacts disclosed.

The impacts analysis is also flawed because it fails to identify direct Project impacts, even though several locations go from acceptable operations to unacceptable operations as soon as Project trips are added. There are many locations where Project-related increases result in much higher increases in delays than those specified in the City of Redding's Traffic Study Guidelines. The DEIS improperly assumes such impacts can be mitigated with a "fair share" obligation, overlooking the requirement that direct Project impacts be subject to direct Project mitigation. Further, the traffic impacts analysis fails to include any queuing analysis or turn lane storage evaluations for intersections, despite guidelines from the City of Redding to do so. The DEIS needs to be amended to address these flaws and provide a realistic analysis of the Project's direct contribution to traffic on City streets and intersections.

d. Trip Generation Analysis

The DEIS's trip generation analysis contains critical errors that significantly underestimates the massive influx of vehicles expected to descend on the Proposed Project during special events and normal casino/hotel operations. The DEIS improperly takes credits for "complementary" land uses, assuming without reason or sufficient explanation that 75% of the hotel guests are likely to be casino guests, and 70% of event center attendees would already be on-site, using the casino. The DEIS assumes an Average Vehicle Occupancy (AVO) of 2.2 for the event center and conference center, whereas practical experience shows that conferences are attended by people who arrive in single-occupancy vehicles. The DEIS traffic analysis also completely excludes Project staff and employees from expected trip generation; a significant oversight that could add approximately 10% to the traffic numbers. Taken together, the result is an unrealistic analysis that severely underestimates project trip generation.

IV. DEIS's Description of the Water Resources and Proposed Project Impacts is Inadequate

The DEIS contains significant flaws and missing information regarding the impacts to water resources associated with the Proposed Project, including impacts to the Sacramento River and its floodway from stormwater, wastewater, and bank stabilization activities.

First, the DEIS is unclear on whether the Proposed Project (or other alternatives at the Strawberry Fields Site) is located within the floodway of the Sacramento River. The DEIS needs to be revised to provide the public with more information and clarity on this key aspect of the Proposed Project and whether and to what extent there will be water quality impacts associated with aspects of the Proposed Project that are within or bordering the floodway.

For instance, the Proposed Project stormwater retention pond appears to be within the 100-year flood zone of the Sacramento River. DEIS, 2-20; DEIS Appendix C, Figure A 4. The DEIS should be revised to describe whether placement of retention ponds within the 100-year floodplain is

allowed under applicable regulations or is appropriate, based on engineering standards, and whether such retention ponds can be included in any water retention-based calculations for the Proposed Project. If not, it may be that the storm drainage plan does not adequately provide capacity to handle on-site drainage. The DEIS also acknowledges on pages 2-19 – 2-20 that during extreme runoff events, the retention pond will spill into the Sacramento River. During flood events the pond will be submerged and thus directly discharge into the Sacramento River.

The DEIS's water effects evaluation fails to provide sufficient information to understand how the Proposed Project would address water quality impacts to the Sacramento River from the retention pond during extreme rain and flood events. Similarly, there is no evaluation of the potential for the leach fields to be inundated in the event of a storm larger than the 100-year flood, which occurs more frequently with changes in climate.⁵ The leach field as shown on Figures A1 and A3 of Appendix C is designed to follow the boundaries of the FEMA FIRM 100-year flood plain, with no buffer. The DEIS needs to be revised to address whether the Proposed Project anticipates having a Clean Water Act NPDES permit or other water quality protections for such discharges from the retention pond and leach field to the River.

Second, there are numerous issues with DEIS's descriptions of the Sacramento River Bank Stabilization activities associated with the Proposed Project. The DEIS's descriptions of the affected environment, DEIS Section 3, appear to leave out the area of Sacramento River Bank Stabilization. Therefore, the affected environment description fails to describe all of the area potentially affected by the Proposed Project and alternatives. Impacts related to this portion of the Project area are not assessed, exposing the DEIS as insufficient under NEPA.

Additionally, the DEIS does not contain a sufficient effects analysis of the construction of the Sacramento River Bank Stabilization element of the project. The Water Resources analysis in DEIS Section 4 states that the mitigation measure provided in DEIS Section 5.5.3 U will reduce impacts to a less than significant level. However, Mitigation Measure 5.5.3 U only requires consultation with federal agencies and obligates the applicant to obtain permits for discharging fill material into wetlands. The effects analysis provides no evaluation of construction effects related to the Bank Stabilization (e.g., sedimentation, vibration effects on fish, etc.) and the mitigation measure only addresses fill of wetland and waters of the United States, not effects on biological resources. While the Project's Sacramento River Bank Stabilization element is treated as an environmental commitment or mitigation measure, the DEIS fails to evaluate the effects of its construction as required by NEPA.

⁵ See e.g., California Department of Water Resources & U.S. Army Corps of Engineers, California's Flood Future, Recommendations for Managing the State's Flood Risk (November 2013), Attachment C: History of Flood Management in California at C-95 (noting that between December 1996 to January 1997 the Sacramento River experienced its fifth record flood in 46 years).

V. The DEIS's Analysis of the Proposed Project's Noise Impacts is Inadequate

The DEIS's noise effects analysis has serious flaws, including insufficient and misleading analysis of noise impacts from the amphitheater and Proposed Project construction activities.

First, the analysis of noise impacts from the proposed outdoor amphitheater is deficient. Noise effects of the proposed outdoor amphitheater are discussed generally, but because the outdoor amphitheater's specific layout and location are unknown, the noise analysis cannot properly account for how the proposed amphitheater will interact with other environmental effects. Further, the analysis is very superficial and does not include technical analysis, such as modeling using SoundPLAN or another similar model to evaluate the specific noise levels at sensitive receptors.

The DEIS states that the mitigation measure provided in Section 5.11 A will reduce impacts to a less than significant level. But Section 5.11 A provides only a simple methodology to relate noise levels at the stage and noise levels at the northern boundary of the project site that fails to account for topography, the height of the stage, and the topography between the northern boundary of the project site and the sensitive receptors. In addition, this mitigation measure overlooks crowd noise, which could be substantial and must be evaluated in the DEIS. The measure also ignores sensitive receptors to the south and west of the site, which could experience impacts from crowd noise in addition to other noise depending on the topography and the layout of the amphitheater.

Second, the DEIS inexplicably uses a standard designed for traffic noise to evaluate non-traffic noise. The DEIS cites to Federal Construction Noise standards "based on peak traffic hour noise levels" to analyze amphitheater impacts. DEIS at 3.11-4. For example, unlike the 67 dBA Leq traffic standard applied by the DEIS, the City of Redding Nontransportation noise compatibility standards are 55 Hourly Leq, dB for daytime and 45 Hourly Leq, dB for nighttime,⁶ and the Shasta County Nontransportation standards are 55 Hourly Leq, dB for daytime and 50 Hourly Leq, dB for nighttime.⁷

Finally, the DEIS concludes that construction noise and vibration impacts will be substantial and significant, with noise levels exceeding 80 dB, a very high noise level, generally not considered acceptable for any land use and comparable to the highest noise levels in big city downtowns, even with vibration impacts exceeding the threshold used in the DEIS, especially to the sensitive receptor identified as a residence to the south of the Strawberry Fields site (pages 4.11-2 – 4.11-5). The DEIS states that the BMPs presented in Section 2.3.2 would reduce these impacts to a less than significant level. These BMPs lack performance standards however, that would ensure the reduction of noise and vibration to below thresholds. Additionally, the BMPs include

⁶ City General Plan Noise Element Table 5-5 Noise Level Performance Standards for New Projects Affected By or Including Nontransportation Noise Sources.

⁷ County General Plan Noise Element Table N-IV Noise Level Performance Standards for New Projects Affected by Or Including Non-Transportation Sources.

conditional language such as “whenever possible” or “as feasible” that would allow impacts to persist. For these reasons, the BMPs cannot be relied upon to make the finding that the impacts would be less than significant. Definitive mitigation measures must be added to the Proposed Project to reduce the noise and vibration impacts to a less than significant level.

VI. Socioeconomic Impacts

The DEIS’s reasoning and conclusions in Section 4.7 - Socioeconomic Conditions contain a number of flaws. Three of the most significant issues include: (1) flawed and incomplete analysis regarding the substitution effects on neighboring tribal casinos; (2) lack of any analysis regarding impacts on and mitigation for drug and alcohol addiction; and (3) inadequate analysis of impacts on crime.

First, the DEIS’s conclusion that “[t]he substitution effects resulting from Alternative A to competing gaming facility revenues are not expected to significantly impact these facilities, or to cause their closure” is highly questionable. DEIS at 4.7-4. The data in Table 4.7-3 directly contradicts the BIA’s conclusion that Alternative A would not significantly affect competing tribal casinos. Indeed, according to Table 4.7-3, Rolling Hills Casino (Paskenta Band of Nomlaki Indians) would suffer a 5.8% loss of revenues in year one and the Pit River Casino (Pit River Tribe) would suffer a 7.2% loss of revenues in year one. These are significant losses and could seriously impact the casinos profit margins and viability. Thus, as presented, the data reflects a significant impact on neighboring tribal casinos and the DEIS either must amend its conclusion or provide more concrete economic analysis to support it.

The DEIS further concludes that the “[s]ubstitution effects are anticipated to diminish after the first year of Alternative A operation because local residents would have experienced the casino and would gradually return to more typical and more diverse spending patterns.” DEIS at 4.7-4. This conclusion is vague and unsupported. The DEIS provides no data showing that after one year residents would return to “diverse spending patterns” and that those “diverse spending patterns” would have on neighboring tribal casinos. The DEIS needs to provide actual evidence to support this conclusion.

Second, the DEIS analyzes the Project’s potential impacts on problem and pathological gambling, but does not analyze, or even mention, the Project’s potential impacts on alcohol and drug addiction. It is accepted science that problem gambling and alcohol abuse have a high co-occurrence. See e.g. Welte J, Barnes G, Wieczorek W, Tidwell MC, Parker J, *Alcohol and Gambling Pathology Among U.S. Adults: Prevalence, Demographic Patterns and Comorbidity*, J STUD ALCOHOL. 62(5):706-12 (2001); Grant JE, Kushner MG, Kim SW., *Pathological Gambling and Alcohol Use Disorder*, ALCOHOL RESEARCH AND HEALTH. 26:143–150 (2002); Barnes GM, Welte JW, Hoffman JH, Tidwell MC, *Gambling, Alcohol, and Other Substance Use Among Youth in the United States*, J STUD ALCOHOL DRUGS 70(1):134-42 (2009). A 2006 National Opinion Research Center report, “California Problem Gaming Prevalence Survey” shows a clear correlation between at-risk and problem gamblers and an increase in mental health issues and alcohol and drug abuse. Thus, the DEIS’s analysis of socio-economic impacts is incomplete

without analyzing impacts on, and proposed mitigation measures for, alcohol and drug addiction in surrounding communities, which is bound to increase with the introduction of the Proposed Project.

Third, the DEIS analysis of impacts on crime is inadequate. The DEIS contends that “[t]here is a general belief that the introduction of legalized gambling into a community increases crime [but that] this argument is often based on anecdotal evidence rather than empirical evidence.” DEIS at 4.7-11. The DEIS cherry-picks a few studies that show that ski tourism resulted in a larger increase in crime than casino development and that casinos increase crime for the first few years of operation, and then crime rates go down. *Id.* These two studies, however, do not present a complete picture of the literature connecting crime and casinos. For example, a report requested by the California Attorney General found a link between casinos and serious crimes. Charlene Wear Simmons, *Gambling in the Golden State: 1998 Forward*, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/gambling/GS98.pdf>. The 2006 National Opinion Research Center report discussed above also indicated that problematic gamblers are more likely to have been arrested and/or incarcerated.

The DEIS analysis also contains misleading information regarding crime reports, which contradicts information from the Shasta County Sheriff’s Office. The DEIS states the current Win-River Casino only calls the Sheriff’s Office 2-5 times per month. Appendix A at 25. However, according to the Sheriff’s Office comment letter, the Office was called for 1351 incidents stemming from Part 1 crimes between January 2017 and October 2018. Capt. Pat Kropholler, Shasta County Sheriff’s Office Review, Redding Rancheria DEIS, May 22, 2019. Even using the DEIS’s high estimate of 5 calls per month for each of these months, and putting aside non-Part 1 crimes, there is a discrepancy of 1,241 calls to the Sheriff’s Office. The DEIS must conduct a more thorough analysis of the literature surrounding crime increases following casino openings and account for this discrepancy in the number of calls to the Sheriff’s Office.

VII. BIA Failed to Include Meaningful Input from Cooperating Agencies and Prepare a Document that Satisfies State and Tribal Law

BIA failed to include critical input from the cooperating agencies City, County, and CalTrans during the drafting of the EIS. Failing to account for state and local concerns has resulted in a DEIS that piecemeals a full environmental review under NEPA and insufficiently evaluates the casino’s true environmental impacts.

a. The BIA Failed to Incorporate a CEQA Analysis and Appropriate Mitigation Measures Developed by Cooperating Agencies

While the City, County, and CalTrans are named “Cooperating Agencies,” the DEIS fails to fully evaluate the Project’s impacts and potential mitigation measures under state and local environmental law. Under NEPA, Cooperating Agencies can be federal, state, or tribal entities that have jurisdiction by law or special expertise with respect to any environmental impacts. 40 CFR § 1501.6; 43 CFR § 46.225. If in the course of environmental review a lead agency omits

a significant issue or ignores the advice and expertise of a cooperating state or local agency, the EIS may be inadequate. Indian Affairs NEPA Guidebook at 14b.

NEPA requires that cooperating agencies be identified early in the scoping process and assume responsibility for proposing mitigation measures necessary to allow a state or local permit, license or related approval to be granted. 40 CFR § 1503.3(d). All mitigation measures that could improve the project must be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies. 40 CFR § 1502.16(h); 1505.2(c); Indian Affairs NEPA Guidebook at 19b. The EIS should indicate the likelihood that such measures will be adopted or enforced by the state and local agencies responsible for developing and enforcing them. *Id.*

NEPA also requires lead federal agencies to cooperate with state and local agencies in environmental decision-making to reduce duplication between NEPA and state and local environmental requirements, like CEQA. See 40 CFR § 1506.2; *Nw. Sea Farms v. United States Army Corps of Eng'rs*, 931 F. Supp. 1515, 1523 (W.D. Wash. 1996). Lead agencies are encouraged to cooperate with state and local agencies in the preparation of joint environmental statements and on matters of local jurisdiction and expertise. 40 CFR § 1506.2(c); 43 CFR § 46.230. In California, the CEQA guidelines similarly urge state agencies to “consult as soon as possible with the Federal agency” in circumstances where state authorization is necessary in connection with a federal project. Cal. Code Regs. Tit. 14, § 15223. The Tribal-State Compact Between the State of California and the Redding Rancheria requires the Tribe to make a good faith effort to incorporate a CEQA review into the environmental analysis and mitigation of off-site environmental impacts associated with new gaming facilities. See Tribal-State Compact at 10.8.1; 10.8.2. The cooperation required of federal, state, local and tribal entities show that Federal environmental decision-making is not made in a vacuum.

Here, the DEIS fails to give adequate attention to CEQA or analyze the environmental considerations of state and local cooperating agencies with special expertise over aspects of the Project. At several points, the DEIS simply states, “Any infrastructure improvements required by the development of Alternative A, [the Proposed Action,] would abide by all California Environmental Quality Act (CEQA) regulations and other applicable federal, State, and local laws.” DEIS at 4.10-8. CEQA, however, is a fundamental California land use and environmental planning law that requires a project applicant to mitigate all significant environmental impacts when feasible. NEPA and the Tribal-State compact require that such a CEQA review occur within the same NEPA environmental document, and not be deferred to a later date. By deferring all CEQA analysis to a later date, BIA failed to undertake a comprehensive review of environmental impacts and associated mitigation measures as required by NEPA and the Tribal-State Compact.

Indeed, BIA appears to have intentionally avoided a comprehensive analysis of state and local considerations caused by on- and off-site project improvements. During scoping, BIA ignored CalTrans’ assumption that “there will be a corresponding or joint California Environmental Quality Act (CEQA) document that will address the CEQA required mitigations and requirements for any significant impacts this project may have.” BIA also rejected the County’s comments on the Administrative Draft EIS that was circulated in March 2019, where the County warned BIA that

the Project's full environmental impacts could not be determined accurately until the County and Tribe negotiated a mitigation agreement. County Comment Letter (June 11, 2019) at 1. Contrary to the certainty expressed in the DEIS, the City has pointed out that its provision of electricity, water supply, and wastewater services remains "at the discretion of the Redding City Council," and thus subject to CEQA and the mitigation of all significant environmental impacts, where feasible. City Comment Letter (May 22, 2019) at 3-4. The City and County have also raised a number of additional points where the DEIS environmental analysis has continued to lag behind what NEPA and CEQA require. Against the recommendations and rebuffing the assistance of these cooperating agencies, BIA failed to undertake a complete environmental review and incorporate appropriate mitigation measures into the DEIS.

It is thus clear that the DEIS would not pass muster under either NEPA or CEQA, for the reasons mentioned above. Several of the DEIS "mitigation measures" (including traffic/transportation and water quality permits and certifications) would constitute unlawful "deferred mitigation" under CEQA because they are too vague to meaningfully inform whether the mitigation would be effective. The water supply and wastewater analysis in DEIS Appendix B is insufficient to meet the standard of a CEQA Water Supply Assessment that would be required of a project this size. By deferring analysis of many issues associated with off-site traffic, water quality, and other impacts caused by the Proposed Project, the DEIS fails to consider the "whole of the action" associated with developing and operating the casino, hotel, amphitheater, leach field, and other aspects of the Proposed Project. There appears to be no Memorandum of Understanding with any of the cooperating agencies, as recommended by both CEQ regulations and CEQA guidelines. 40 CFR 1506.2; CEQA Guidelines § 15222.

By analyzing the fee-to-trust action only, the DEIS improperly segments the NEPA analysis by failing to give a "hard look" to the other federal, state, and local actions required to develop the casino. Failing to analyze environmental impacts and proposed mitigation under CEQA has resulted in BIA improperly segmenting the Project to avoid full consideration of state and local needs. See *Lange v. Brinegar*, 625 F.2d 812, 815 (9th Cir. 1980).

b. The BIA Must Correct the Deficiencies and Recirculate the DEIS

Given the substantial deficiencies in the DEIS, BIA has no choice but to supplement its environmental analysis to comply with CEQA and incorporate meaningful mitigation measures, and recirculate the document. NEPA requires agencies to supplement a draft environmental impact statement if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1)(i-ii).

A "longstanding" Ninth Circuit rule is that an "impact statement should provide the public with information on the environmental impact of a Proposed Project as well as encourage public participation in the development of that information." *California v. Block*, 690 F.2d 753, 772 (9th Cir. 1982) (quoting *Trout Unlimited, Inc. v. Morton*, 509 F.2d 1276, 1282 (9th Cir. 1974)). If a DEIS

is so incomplete or misleading that the public cannot make an informed comparison of alternatives, NEPA requires the EIS be revised to provide a reasonable, good faith, and objective analysis. *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 422 F. Supp. 2d 1115, 1120 (N.D. Cal. 2006). Here, the deficiencies in the DEIS fails to provide the public with information on the environmental impact of the Tribe's Proposed Project, and the BIA must supplement its environmental analysis accordingly and recirculate the DEIS for public review.

VIII. The Redding Rancheria cannot bypass the Indian Gaming Regulatory Act's (IGRA) two-part determination requirement because Strawberry Fields does not qualify as "restored lands" under IGRA.

The Indian Gaming Regulatory Act (IGRA) prohibits gaming on lands taken into trust by the Secretary of Interior (Secretary) after October 17, 1988, subject to limited exceptions. 25 U.S.C. § 2719. The primary exception, and the only one applicable here, is known as the Secretarial "two-part determination" exception. Under this exception, the Secretary may take land into trust after October 17, 1988 for gaming purposes only after (1) consulting with state and local officials, including nearby Indian tribes, and (2) obtaining the state governor's concurrence with the decision to take the land into trust for gaming purposes. 25 U.S.C. § 2719(b). The Secretary must determine, after consultation with state, local, and tribal officials, that the gaming establishment on the new lands would be in the best interests of the tribe seeking to game on the land and would not be detrimental to the surrounding community. *Id.* The standard two-part determination is the appropriate way for the Secretary to process and approve or deny the Redding Rancheria's fee-to-trust application here.

Instead of following the legally proper path for reviewing and making a final determination on the Redding Rancheria's application, however, the Secretary and the Redding Rancheria are attempting to shoehorn the Tribe's application into an exception to IGRA's general prohibition on gaming that does not require consultation with state, local, or tribal officials or the state governor's approval. The exception, known as the "restored lands" exception, allows gaming on lands "taken into trust as part of . . . the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). To qualify for this exception, a tribe must show, among other things, (1) that the subject "land is included in the tribe's first request for newly acquired lands since being restored to Federal recognition" or (2) that the "tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition **and the tribe is not gaming on other lands.**" 25 C.F.R. § 292.12 (emphasis added). The Redding Rancheria, of course, is gaming on other lands⁸—it owns and operates the Win-River Resort &

⁸ In addition to the fact the Redding Rancheria is already gaming on other lands, a portion of the lands (approximately 80 acres) included in the Tribe's pending application may not have been part of the Tribe's fee-to-trust application until after 25 years had passed since the Tribe was restored to federal recognition. "The Redding Rancheria was restored on June 11, 1984, and applied for the Restored Lands exception on March 10, 2009, a few months before its eligibility under [DOI's] expired on June 11, 2009." Letter from John Tahsuda, Principal Deputy Assistant Secretary—Indian Affairs, to the Hon. Dianne Feinstein, U.S. Sen. (Feb. 28, 2019), *available at* <https://www.standupca.org/off-reservation-gaming/contraversial-applications-in-process/redding-rancheria/february-28-2019-doi-letter-to-senator-feinstein> (last visited

Casino (Win-River) on its reservation, just over three miles from the Strawberry Fields site. The Tribe, therefore, cannot satisfy a key requirement of the “restored lands” exception and the Secretary must follow the “two-part determination” requirement for processing the Tribe’s fee-to-trust application.

While it is understandable that the Redding Rancheria would prefer to dispense with the requirement to consult with state, local, and tribal officials and obtain the governor’s concurrence, there are no factually or legally defensible reasons for the Secretary to do so here. The Secretary should process the Redding Rancheria’s fee-to-trust application under the normal two-part determination process for lands taken into trust after October 17, 1988.

- a. The plain language of the regulations are clear that the “restored lands” exception does not apply to a tribe that is already gaming on other lands.

The regulations are written in clear, present tense language: “and the tribe *is* not gaming on other lands.” 25 C.F.R. § 292.12(c)(2) (emphasis added). Indeed, as recognized by the Department of Interior (DOI) in litigation at the Ninth Circuit, the regulation “makes no exception for whether the tribe will be gaming on other lands in the future. . . . [T]he regulations are clear, and contain no provision for an expression of future intent with an undefined time frame.”⁹ At least one Ninth Circuit Judge observed this as well: “The subsection directs the Secretary to look at what is happening, not what might happen in the future.”¹⁰ Had DOI meant to incorporate a future intent aspect into the “restored lands” exception, then the rule would say something like, “and the tribe **will not be** gaming on other lands after the new lands are taken into trust for gaming purposes and new gaming operations are established on the new lands.” That, however, is not what the regulations say. The plain language of the regulations make clear that a tribe that *is*—as opposed to *will be*—gaming on other lands does not qualify for IGRA’s “restored lands” exception. Put simply, the Redding Rancheria cannot make use of the “restored lands” exception to circumvent IGRA’s standard two-part determination because it *is* gaming on other lands.

This reading of the regulation comports with the fact that the temporal connection the tribe must show under IGRA is between (1) “the date of the acquisition of the land” and (2) “the date of the tribe’s restoration.” 25 C.F.R. § 292.12. The temporal connection requirement is not related to when the tribe starts gaming on the new land. Thus, Redding Rancheria’s offer to cease its operations at Win-River once the new Strawberry Fields casino is up and running has no affect

June 11, 2019). More than 25 years after it was restored to recognition, “[t]he Tribe amended its request in July 2010 to include the Adjacent 80 Acres.” *Letter Decision regarding Redding Rancheria’s Request for “Restored Lands” Determination on “Strawberry Fields” and the “Adjacent 80 Acres”* (U.S. Dep’t of Interior, Dec. 22, 2010), available at <https://www.nigc.gov/images/uploads/indianlands/Redding%20Final%20Decision%20Letter.pdf> (last visited June 11, 2019).

⁹ Answering Brief of Federal Appellees (Sept. 28, 2012), *Redding Rancheria v. Salazar*, No. 12-15817, Dkt Entry 23 Pages 59–60.

¹⁰ *Rancheria v. Jewell*, 776 F.3d 706, 719-720 (9th Cir. 2015) (Callahan, C.J., dissenting).

on the Secretary's processing of the Tribe's fee-to-trust application. If the Tribe wanted to qualify for the "restored lands" exception, then it should have made that offer and shutdown Win-River before it submitted its fee-to-trust application. Under those circumstances, the Tribe would not have not been gaming on other lands and may have qualified for the "restored lands" exception.¹¹ That, however, is not what happened. Instead, the Redding Rancheria *is* gaming on other lands and thus cannot take advantage of IGRA's "restored lands" exception.

This reading of the regulation is also consistent with the rulemaking history leading up to DOI's publication of the final rule in the federal register. In DOI's notice of proposed rulemaking, the "restored lands" exception did not contain the "and the tribe is not gaming on other lands" proviso. Gaming on Trust Lands Acquired After October 17, 1988, 71 Fed. Reg. 58,769-01, 58,774 (Oct. 5, 2006). It simply stated: "The tribe submitted an application to take land into trust within 25 years after the tribe was restored to Federal recognition." *Id.* At that point, the language of the proposed rule did not account for a tribe's other gaming operations. During the comment period, DOI received a comment requesting DOI to revise the rule "to ensure that [the "restored lands" exception is] not used by a tribe which is **already** gaming." Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354-01, 29,367 (May 20, 2008) (emphasis added). DOI adopted the commenter's recommendation by adding the "and is not gaming on other lands" language to 25 C.F.R. § 292.12(c)(2). *Id.* at 29,367, 29,378. The rule was intended to ensure that a restored tribe that was already gaming on other lands could not use the "restored lands" exception to leapfrog from site to site within the first 25 years of its recognition being restored. Thus, tribes that are already gaming on other lands, like the Redding Rancheria, cannot take advantage of the expedited fee-to-trust process allowed under the "restored lands" exception. DOI must therefore process the Redding Rancheria's application pursuant to IGRA's two-part determination requirement.

- b. Allowing the Redding Rancheria to avoid the two-part determination requirement does not advance IGRA's purposes.

Congress passed IGRA on October 17, 1988 to, among other things, "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702. Congress also sought to balance state and local interests that might be affected or harmed by tribal gaming facilities. One way in which Congress ensured the protection of state and local interests was by establishing a general prohibition on gaming on trust lands acquired after IGRA was enacted, unless the Secretary of Interior (1) consults with state, local, and tribal officials and (2) obtains the governor's concurrence. 25 U.S.C. § 2719. Recognizing that this prohibition would work to the detriment of tribes that did not have trust lands as of October 17, 1988, Congress included the "restored lands"

¹¹ Assuming, among other things, that the Redding Rancheria submitted its application to take the land into trust within 25 years after it was restored to federal recognition. 25 C.F.R. § 292.12(c)(2). As noted in footnote 1, a portion of the lands (approximately 80 acres) in the Redding Rancheria's current application were not part of the Tribe's application until after 25 years had passed since the Tribe was restored to federal recognition.

exception “to promote parity between established tribes, which had substantial land holdings at the time of IGRA’s passage, and restored tribes, which did not.” *Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015). The “restored lands” exception thus placed tribes that did not have established gaming operations prior to IGRA on a level playing field with those that did. The Secretary, however, must “ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes’ gaming operations.” *Id.* at 711.

IGRA permits tribes to use net revenues from gaming establishments for specified purposes designed to achieve IGRA’s goals of promoting tribal economic development, self-sufficiency, and strong tribal governments. “[N]et revenues from any tribal gaming are not to be used for purposes other than—(i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies.” 25 U.S.C. § 2710(b)(2)(B) (class II gaming); 25 U.S.C. § 2710(d) (class III gaming). If a tribe’s gaming operations meets these purposes, then a tribe may use net revenues to make per capita payments to its members. 25 U.S.C. § 2710(b)(3) (class II gaming); 25 U.S.C. § 2710(d) (class III gaming). But only if (1) the tribe has prepared and the Secretary has approved a plan to allocate casino revenues consistent with the requirements of 25 U.S.C. § 2710(b)(2)(B), (2) the interests of vulnerable tribal members who are entitled to per capita distributions are adequately protected, and (3) the tribe notifies its members that the per capita payments are subject to federal taxation. 25 U.S.C. § 2710(b)(3) (class II gaming); 25 U.S.C. § 2710(d) (class III gaming).

Here, the Redding Rancheria already has a profitable casino on trust lands. The Tribe has notably benefited from the ability to establish and operate Win-River post October 17, 1988,¹² and as a result, has been using the profits from that establishment to promote its tribal economic development, self-sufficiency, and government since 1999. Presumably, Win-River has allowed the Tribe to achieve IGRA’s defined goals—since, as of at least 2004, the Redding Rancheria has apparently been able to distribute annual per capita payments to its members of approximately \$35,000.¹³ To put that payout into perspective, the average annual income of a resident of the city of Redding as of 2016 was approximately \$26,000 and projects to be approximately \$28,000 as of 2021.¹⁴ The average annual income in Shasta County as of 2016 was also slightly less than

¹² *Rancheria v. Jewell*, 776 F.3d at 709 (“The United States accepted the Tribe’s trust-to-trust transfer request for these parcels in 1992, and the Tribe began operating a small casino, known as the Win–River Casino, on the 2.3 acre parcel after entering into a gaming compact with the state of California in 1999.”).

¹³ See *DNA wasn’t convincing for Redding Rancheria*, Indianz.com (Feb. 20, 2004), https://www.indianz.com/News/2004/02/20/dna_wasnt_conv.asp (last visited June 11, 2019). According to the Redding Rancheria’s Distribution Ordinance, the Tribe distributes 60% of its share of the Win-River’s net revenues to its members in the form of per capita distributions. *Regulation of Class II Gaming, Use of Gaming Revenues*, Ordinance No. 5-27-99, Section 1000(5) (May 27, 1999, last amended 2001), available at [https://narf.org/nill/codes/redding/reddistribution.html](https://narf.org/nill/codes/redding/redddistribution.html) (last visited June 11, 2019).

¹⁴ Redding Rancheria Fee-to-Trust and Casino Project Draft Environmental Impact Statement, Appendix A at 17. See also *Economy in Redding, California*, BestPlaces.net,

\$26,000 and projects to be just under \$28,000 in 2021.¹⁵ In sum, because of the revenues generated by Win-River, the Redding Rancheria is already economically developed and self-sufficient, with a strong tribal government.

It follows that the primary purpose of the Strawberry Fields facility must be to increase the size of the per capita distributions currently received by members of the Redding Rancheria. Per capita payments are, however, an ancillary benefit of IGRA and allowed only after tribal gaming operations achieve IGRA's primary purposes. While approving the Strawberry Fields project does not necessarily violate the purpose of IGRA, it is questionable whether it is necessary to fulfill IGRA's primary purposes. In this light, the Secretary should weigh adverse effects documented by concerned citizens, both tribal and non-tribal, heavily. The Secretary and the Redding Rancheria have not shown why making the Tribe's members wealthier—through a federally sanctioned increase in their per capita casino income via an improper use of the “restored lands” exception—is justified in consideration of the countervailing adverse effects that the federal action and expanded casino operations at Strawberry Fields will have on the surrounding community.

If the Tribe wants to obtain additional benefits from the options provided by IGRA to expand its gaming operations, it must pursue the same process that similarly situated tribes are required to follow—the Secretarial two-part determination. Consistent with IGRA, this would ensure the full and complete consideration of state, local, and tribal interests, along with those of the Redding Rancheria itself. Anything else would impermissibly allow the Redding Rancheria to take advantage of the “restored lands” exception to the detriment of the surrounding community, including other tribes, in contravention of IGRA.

c. A court would not defer to the Secretary's incorrect interpretation and application of the “restored lands” exception.

In this case, where the Secretary's interpretation conflicts with both the ordinary meaning of the regulation's plain language and the purpose of the “restored lands” exception, as well as IGRA more broadly, a reviewing court would not defer to the Secretary's decision to process the Redding Rancheria's application under the “restored lands” exception. *Pres. of Los Olivos, et al., v. U.S. Dep't of Interior*, 635 F. Supp.2d 1076, 1090 (C.D. Cal. 2008) (“[A]lthough courts will defer to an agency's construction of a regulation that is ambiguous, deference is not required when the agency's interpretation is inconsistent with the plain language of the regulation itself, conflicts with the agency intent at the time of promulgation, or exceeds the statute's limits.”). Instead, a court would likely remand to the Secretary for further proceedings consistent with IGRA's two-part

<https://www.bestplaces.net/economy/city/california/redding> (last visited June 11, 2019) (estimating the average annual income for a Redding resident to be less than \$24,000).

¹⁵ Redding Rancheria Fee-to-Trust and Casino Project Draft Environmental Impact Statement, Appendix A at 17. *See also Economy in Shasta County, California*, BestPlaces.net, <https://www.bestplaces.net/economy/county/california/shasta> (last visited June 11, 2019) (estimating the average annual income for a Shasta County resident to be less than \$24,000).

determination requirement. *Id.* at 1096. To avoid this obvious and unnecessary result, the Concerned Neighbors urge the Secretary to proceed with the proper two-part determination now.

On behalf of the Concerned Neighbors, thank you for your time and consideration of the forgoing comments. Please feel free to contact me at the number provided above if you have any questions regarding these comments.

Very truly yours,



James M. Lynch
K&L Gates LLP

Attachments:

1. Attachment A - List of Concerned Neighbors
2. Attachment B - Traffic Impact Analysis Technical Memo

ATTACHMENT A

Concerned Neighbors, Business Owners, and Community Members

1. Ken Wood, Owner of North State Hearing
2. Timothy Thomas, Impacted Neighbor
3. Ed Shaw, Owner of Cook Concrete
4. Joe Furnari, Churn Creek Bottom Homeowner
5. John Dunlap, Impacted Neighbor
6. Steven Hill, Churn Creek Bottom resident
7. Bruce Haynes, Impacted Neighbor
8. Brenda Haynes, Churn Creek Bottom Homeowners & Friends
9. Lyle Tullis, Tullis Inc., Impacted Neighbor
10. Al Shufelberger, Owner of Redding Lumber Transport, Inc
11. Richard Downs, Redding Realty, Impacted Neighbor
12. Alan T. Hill, Impacted Neighbor
13. Sara Frost, Churn Creek Bottom Homeowner
14. Carolyn Shaw, Churn Creek Bottom Homeowner
15. Rod Evans, Churn Creek Bottom Homeowners & Friends
16. Dan Frost, Churn Creek Bottom Homeowner
17. Christian M. Carmona, Churn Creek Bottom Homeowner
18. Stephanie R. Carmona, Churn Creek Bottom Homeowner
19. Randy C. Carter, Ret. Fire Captain, Redding Fire Department
20. Laurie S. Carter, Churn Creek Bottom Homeowner
21. Ruth M. Helton, Shasta County Resident 92 years
22. Barbara J. Boyer, Shasta County Resident 88 years
23. Christine R. Presta, Shasta County Resident 59 years

24. Dr. Brian Nilges, Churn Creek Bottom Homeowner
25. Katie Nilges, Churn Creek Bottom Homeowner
26. Olivia Nilges, Churn Creek Bottom Homeowner
27. Rob Cronich, Churn Creek Bottom Homeowner
28. Kristy Lanham, Churn Creek Bottom Homeowner
29. Todd Giles, Churn Creek Bottom Homeowner
30. Shannon Giles, Churn Creek Bottom Homeowner
31. Dr. Richard Malotky, Impacted Neighbor
32. Tiger Michiels, Churn Creek Bottom Homeowner
33. Susan Michiels, Churn Creek Bottom Homeowner
34. Joe Hedayattzadul, Concerned Citizen of Redding
35. Jeff Darling, Owner of Darling Accounting
36. Amelia Ward, Concerned Citizen of Redding
37. Dennis Ward, Concerned Citizen of Redding
38. Karen Edkin, Concerned Citizen of Redding
39. Tom Stovall, , Concerned Citizen of Redding
40. Edward Tam, Concerned Citizen of Redding
41. Rod Evans, Churn Creek Bottom Homeowners & Friends
42. Jeb Allen, Owner of Palomar Builders
43. Joe Baker, Impacted Neighbor
44. Denise Baker, Impacted Neighbor
45. Mike Chittim, Bonnyview Bechelli Coalition
46. Tom Mancuso, Bonnyview Bechelli Coalition
47. Freeda Watenpaugh, Wintu Tribe, Churn Creek Bottom resident

48. Chris Begley, Bonnyview Bechelli Coalition
49. Diane Abair, Real Estate Broker, Bonnyview Bechelli Coalition
50. Mary Ocasio, Churn Creek Bottom Homeowners & Friends
51. Dr. Harry Daniels, Retired Physician, Impacted Neighbor (living within 1/2 mile of the proposed project)
52. Mark Coulter, Impacted Neighbor
53. Janet Coulter, Impacted Neighbor
54. Cathy Kneer, Community Leader
55. Tom Reemts, Churn Creek Bottom Homeowners & Friends
56. Gary Bossuot, Impacted Neighbor (living within 1/2 mile of the proposed project)

ATTACHMENT B



translutions, inc.
17632 Irvine Boulevard, Suite 200,
Tustin, California 92780
Phone (949)656-3131 Fax (949)445-3131
solutions@translutions.com

June 17, 2019

Mr. Buck B. Endemann, Partner
K&L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, California 94111

Subject: Comments on the Traffic Impact Study Included in the Draft Environmental Impact Statement for the Redding Rancheria Fee-to-Trust and Casino Project

Dear Mr. Endemann:

Translutions, Inc. (Translutions) is pleased to present this letter summarizing our findings from the review of the Traffic Impact Study (TIS) included in the Draft Environmental Impact Statement (DEIS) for the Redding Rancheria Fee-to-Trust and Casino Project. The TIS was prepared by Kimley-Horn dated June 2018.

The TIS evaluates three sites for the proposed project – the Strawberry Fields Site, Anderson Site, and Win River Casino Site. These comments are generally on the Strawberry Fields Site, though some comments are also applicable to the other sites. For the Strawberry Fields Site, the TIS evaluates four land use alternatives and three access alternatives. The four land use alternatives evaluated are:

- Alternative A: Proposed Project
- Alternative B: Proposed Project with No Retail Alternative
- Alternative C: Reduced Intensity Alternative
- Alternative D: Non-Gaming Alternative

This review focuses on the Proposed Project (Alternative A). Alternative A consists of a new casino and resort, including an approximately 69,515 square foot casino, 250-room hotel, an event/convention center, and a retail center. In addition, the following three project access options were evaluated for each land use alternative on the Strawberry Fields Site:

- North Access Only – access to South Bonnyview Road via Bechelli Lane
- North and South Access – access to South Bonnyview Road via Bechelli Lane and access to Smith Road via a new connecting roadway (overpass only at Smith Road)
- South Access Only – access to Smith Road via a new connecting roadway and a new I-5 Interchange at Smith Road

The DEIS states that the preferred access alternative is the “North Access Only” alternative.

This letter has two main sections.

1. Comments on the Project Circulation; and
2. Comments on the Traffic Impact Study Report

SECTION 1. COMMENTS ON PROJECT CIRCULATION

The DEIS states that the preferred access option is the North Access Only option where access to the project is provided on Bonnyview Road via Bechelli Lane. Bechelli Lane is a narrow two-lane roadway in the vicinity of the project site. Further, the intersection of Bonnyview Road and Bechelli Lane is barely 700 feet from the interchange to the Interstate 5 (I-5) freeway and is one of the busiest interchanges in the City of Redding. Such a congested interchange is prone to queue overflows. Accounting for the casino, event center, conference center, hotel, and retail uses, it is anticipated that the project will have several thousand employees and guests on site during peak operating hours. It is unclear how so many people will be evacuated in case of a fire or other emergency via one access only, which is extremely close to a busy interchange.

The City of Redding has recommended that a Divergent Diamond Interchange (DDI) be constructed when the Bonnyview Road interchange is improved, with proposed roundabouts at the intersections of Bonnyview Road with Bechelli Lane and

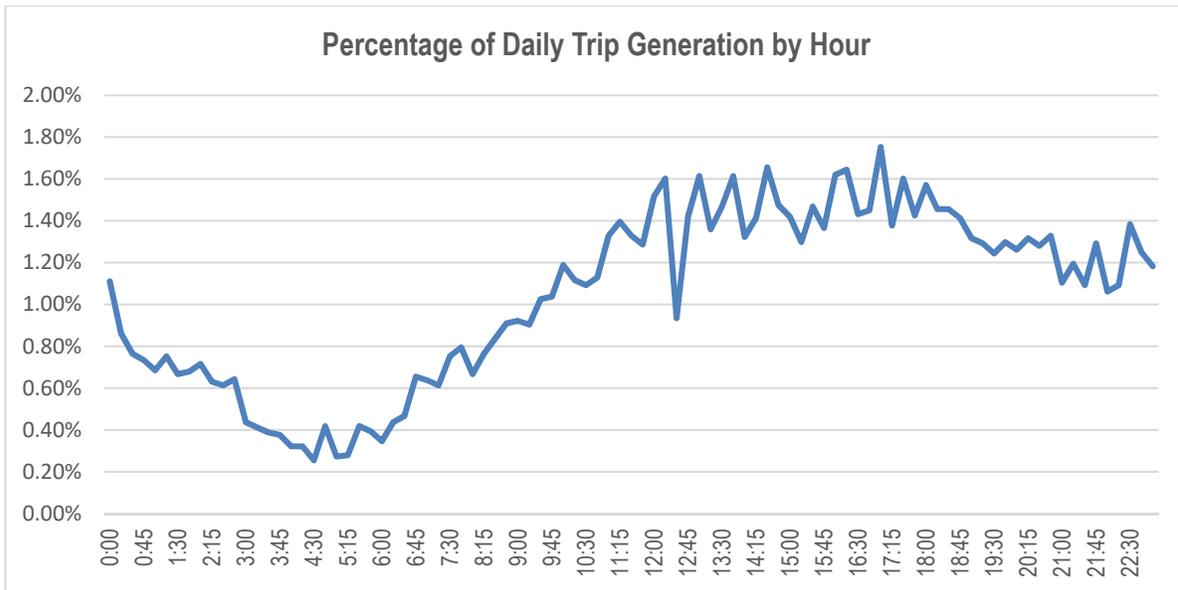
Churn Creek Road. The City has also recommended that Bechelli Lane remain a two-lane roadway. The proposed project appears to contradict the City's plans for the area. The TIS also does not evaluate the roundabouts and the DDI, which are planned by the City. It is likely that under the DDI/Roundabout scenario, vehicles exiting the project could potentially be trapped on the lane to connecting to the I-5 Southbound On-Ramp, especially since the distance between Bechelli Lane and the ramp is reduced further under the DDI/Roundabout Scenario. In addition, the proposed project is likely to exhaust the entire capacity of the planned one-lane on ramp to the I-5.

Given the size of the project, it is clear that at least two access points are required. However, access to the south via Smith Road is infeasible because Smith Road is a residential street and based on the City's TIS Guidelines, access and livability are of primary importance in residential streets, which would be impacted by the proposed project should a southerly access be proposed.

SECTION 2. COMMENTS ON THE TRAFFIC IMPACT STUDY REPORT (TIS)

The TIS evaluates 10 intersections for the Strawberry Fields Site. Caltrans and most municipal agencies use 50 peak hour project trips as a screening threshold for potential impacts. Based on the number of trips generated by the project, in addition to the 10 intersections evaluated, the study should be revised to include intersections where the project could potentially add 50 or more peak hour trips.

Based on the review of the traffic counts, it appears that the Friday analysis was conducted for 5:00 p.m. to 7:00 p.m. Translutions has reviewed survey data from three casinos from Riverside County (<https://www.cathedralcitycasino.com/draft-ea-teir/>). The graph below shows the hourly distribution of daily traffic for three casinos in Riverside County.



As seen on the graph, trip generation during the p.m. peak hour and the hour between 5:00 to 7:00 p.m. are very similar. Since traffic volumes on street are highest during the traditional 4:00 to 6:00 p.m. period, the project impacts during the traditional peak hours are likely to be higher since the higher on street traffic volumes lead to decreased residual capacity. For example, at the intersection of Bonnyview Drive & I-5 SB ramps, the peak hour from the Costco EIR shows that the p.m. peak hour begins at 4:30 p.m. and the traffic volumes are 12% higher than the peak hour between 5:00 p.m. to 7:00 p.m. disclosed in this study. It should be noted that the Shasta County General Plan, City of Redding TIS Guidelines, and Caltrans TIS Guidelines all require evaluation of the traditional peak hours which were not conducted, resulting in minimization of potential impacts.

It appears that the traffic counts were conducted in July 2016. Schools in the area were closed during that period. Summer traffic patterns are different and generally have lower traffic volumes. It is recommended that the analysis be conducted using traffic counts when schools are in session, and for the traditional peak hours.

A comparison of Casino Survey data shows that the trip generation of the casino during the weekday p.m. peak hour of adjacent street traffic is only 16% less than the one hour of highest street traffic on Saturday 5:00 p.m. to 7:00 p.m. The Riverside County survey data also shows that the Saturday daily trip generation is almost 39% higher than the weekday trip generation. The Project Trip Generation for Strawberry Fields (Table 16 of the TIS) shows that the Saturday trip generation is lower than the Friday trip generation. It should be noted that the TIS states that the trip generation for tribal gaming facilities generally peaks on Saturday evenings. At the least, this discrepancy shows that the percentage of weekday trips occurring during the traditional weekday peak hour is substantially higher as a percentage of daily trip generation. Table 16 also shows that the peak hour of Saturday traffic is approximately 7% of the daily traffic, which shows that trips are spread out more evenly throughout the day, potentially peaking at some other time than the hours analyzed. This should be explained in the study, and the traditional peak hours should be evaluated.

The project trip generation is confusing. The report text states that for Alternative 1, (The Project) "Consists of a new casino and resort, including an approximately 69,515 square foot casino, 250-room hotel, an event/convention center, and a retail center, as well as associated parking and infrastructure". However, the trip generation table (see below) lists a lesser area for the casino (48,060 square feet). It is unclear why almost 25% of the space is being ignored. It is also unclear if the independent variable in the survey excluded appurtenant spaces.

The trip generation rates used for the Hotel component of the of the project uses approximately a quarter of the rates from the ITE Trip Generation Manual. The report states that $\frac{3}{4}$ of the hotel guests are likely to be part of the casino. Since the casino trip generation is based on actual surveys of the casino itself (and the Win River Casino has an attached resort) trips from the hotel are being understated in this analysis. Further, the report says that 25 percent of the 250 on-site hotel rooms would be occupied by event attendees with an average occupancy of 1.3 attendees per room, resulting in 81 attendees staying on-site, and not driving to/from an event. It appears that the TIS is saying that the hotel would effectively generate no new trips. This is counterintuitive, since the site could be used for retreats and training, as well as public meetings.

The DEIS states that most of the trips from the conference center would be outside of the peak hours. Typically, such facilities also host seminars, conferences, continuing education classes etc. which result in a high number of a.m. and p.m. peak hour trips. Using attendee numbers disclosed in the TIA, there could be as many as 490 attendees to the Conference Center after accounting for on-site guests, which could result in as many as 490 peak hour inbound trips. The proposed Conference Center could have over 60 supporting staff and related trips. Such events also generate substantial trips during the peak hours for both employees and attendees, and do not occur during off-peak hours as stated in the DEIS.

The TIS also states that 70 percent of the event center attendees would be on site at the Casino. This is a very high number, and potentially understates trips significantly. In fact, 30% of 1,800 results in 1,260 attendees. Applying an AVO of 2.2 used in the TIA, 572 trips are anticipated. When associated staff trips are included, the number of trips could be more than 750 during the peak hour, which is more than the trip generation of the Casino portion of the project. It is also unclear if events were held on the days surveys were conducted at the Win River Casino. If an event was not held on that day, it would mean that the observed trips to the casino are in addition to event venue since it is unlikely that the casino will turn non-event attendees away.

The TIS uses an Average Vehicle Occupancy (AVO) of 2.2 for the Event Center and conference center. For special events such as work conferences, seminars, and conference events, the AVO is typically lower than 2.2, because most attendees are likely to arrive in single occupancy vehicles, or with family not attending the event. A lower number will result in higher trip generation. Please provide an explanation or source for the 2.2 AVO used in the analysis, or update the analysis as needed. In addition, as discussed above, an AVO based analysis ignores trips made by staff. Typically, approximately 10 staff members are required for every 100 event attendees, which would result in 180 staff members. This is a fairly high number and cannot be ignored. Such events also generate substantial trips during the peak hours, and do not occur during off-peak hours as stated in the DEIS.

The trip generation for the casino component was based on survey data from Win River Casino. The trip generation table states that the number of gaming position is used as the independent variable for the purposes of estimating trip generation. The total number of gaming positions should be disclosed/documentated (slots, table games, etc. dining seating) and compared to trip rates on a gross floor basis. As the number gaming positions/seats is reflective of the total person capacity sometimes this results in an under representation of trip generation depending upon the casino operator. In addition, since the proposed project is substantially closer to the freeway than the Win River Casino (0.25 miles compared to over 3 miles), it is likely that more trips would divert from the freeway to the proposed Casino. The trip generation should be adjusted to reflect a higher rate.

The TIS mentions that the trip distribution was based on Wi-Fi surveys, but doesn't detail the methodology used for the survey. Wi-Fi based surveys are generally inaccurate for various reasons including auto-turn off features, Trusted Network algorithms, etc. We recommend that the trip distribution be explained in more detail or reevaluated by a more reliable methodology.

Page 8 of the TIS lists the thresholds and impact criteria for City of Redding and the County but does not identify direct project impacts. This is in spite of several locations going from acceptable operations to unacceptable operations once project trips are added, and the project related vehicle-to-capacity and delay increases being substantially higher than the thresholds, the TIS does not identify direct impacts.

The TIS uses the City of Redding guidelines to identify fair shares for improvements under cumulative conditions but ignores the guidelines where it states that the project is 100% responsible for mitigating existing plus project impacts. In fact, the TIS does not even analyze an Existing Plus Project scenario and deems all impacts and mitigation measures as cumulative, subject to fair share payments. An existing plus project scenario should be evaluated, and impacts disclosed.

The Guidelines also require evaluation of intersection queuing and sufficiency of left turn storage. The TIA does not include queuing analysis or turn lane storage evaluations for intersections. Recommend results be provided. It is also unclear how the queuing interactions will impact closely spaced intersections. The Caltrans TIS Guidelines requires the use of the latest edition of the Highway Capacity Manual for all analyses. However, the TIS uses HCM 10th Edition and not HCM-6.

CONCLUSIONS

The TIS appears to be deficient in terms of disclosure of impacts. The above comments can be summarized into the following categories:

1. **Project Circulation.** The preferred Access Alternative will make it difficult for vehicles exiting the project, especially when the Bonnyview Road interchange is improved to the DDI with roundabouts at Bechelli Lane;
2. **Safety Impacts.** The preferred Access Alternative will make it difficult to evacuate the large number of people and property in case of a fire event or other natural disaster;
3. **Analysis Time Period.** The project does not identify impacts to traffic during the peak hour of adjacent street traffic, when impacts are most apparent even if the project trip generation is lower than the peak hour of generator. All traffic study guidelines (Caltrans, Redding, Shasta County) require analysis of peak hour conditions. As demonstrated by the Riverside County surveys, weekday trip generation during the p.m. peak hour of adjacent street traffic, although lower than the trip generation during weekend peak hour of generator, is still substantial and once evaluated in conjunction with the higher background traffic volumes could result in more impacts;
4. **Existing Counts.** The traffic counts were conducted when schools were not in session, resulting in substantially lower baseline counts;
5. **Project Trip Generation.** The project trip generation takes credits for "complementary" land uses, uses a high AVO, ignores employee trips, and generally underestimates project trip generation;
6. **Study Area.** The TIS evaluates 10 intersections for the Strawberry Fields Alternative when there are hundreds of peak hour trips at intersections not included in the analysis. Impacts at all intersections where the project could have potential impacts should be analyzed and impacts disclosed;
7. **Analysis Methodology.** The TIS does not evaluate effects of queues and left turn storage;

8. **Impact Determination.** The TIS ignores City of Redding Guidelines which require identification of direct project impacts from a project based on a comparison of existing and existing plus project conditions. The TIS does not include an Existing Plus Project scenario. The TIS also fails to apply thresholds listed in the TIS to identify adverse project impacts;
9. **Mitigation Measures.** The TIS identifies payment of fair share fees for all impacts and does not identify any mitigation measures to offset direct project impacts.

We trust you will find this helpful in your planning process. If you have any questions, please contact me.

Sincerely,

translutions, inc.



Sandipan Bhattacharjee, P.E., AICP
Principal