Record of Decision

Trust Acquisition of 61.83 acres in Sonoma County, California, for the Cloverdale Rancheria of Pomo Indians of California

U.S. Department of the Interior
Bureau of Indian Affairs
April 2016

U.S. Department of the Interior

Agency: Bureau of Indian Affairs

Action: Record of Decision (ROD) for acquisition in trust by the United States of 61.83+/- acres in Sonoma County, California, for the Cloverdale Rancheria of Pomo Indians of California (Tribe), for gaming and other purposes.

Summary: In 2008, the Tribe submitted an application to the Bureau of Indian Affairs (BIA) requesting that the Secretary of the Interior (Secretary) acquire land in trust in Sonoma County, California (Site), for gaming and other purposes.

The Tribe has no reservation or land held in trust by the United States. The Tribe's government-to-government relationship with the United States was terminated in 1965 pursuant to Federal law. Following termination, the Tribe's former 27.5 acre reservation, the Cloverdale Rancheria, was divided and distributed in fee to five families, with two parcels held in common ownership. Much of these lands eventually passed out of Indian ownership. The Tribe now seeks to restore its homeland in an area it historically inhabited. The Site is contiguous to the former Cloverdale Rancheria. The Tribe proposes to develop a casino resort that includes an 80,000 square foot (s.f.) gaming area, a 287,000 s.f. hotel with 244 rooms, a 48,600 s.f. convention center, a 28,100 s.f. entertainment center, approximately 3,400 parking spaces (3,300 garage and 100 surface), and ancillary facilities.

The Department of the Interior (Department) analyzed the proposed acquisition in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act under the direction and supervision of the BIA Pacific Regional Office. The BIA issued notice of the availability of the Draft EIS on August 6, 2010, and of the Final EIS on April 18, 2014. The Draft EIS and Final EIS considered a reasonable range of alternatives to meet the purpose and need for acquiring the Site in trust, and analyzed the potential effects and feasible mitigation measures. The Final EIS and information contained within this ROD fully consider comments received from the public on the Draft EIS and Final EIS. The comments and the Department's responses to the comments are contained in the Final EIS and **Attachment II** of this ROD, and are incorporated herein.

With issuance of this ROD, the Department has determined that it will acquire the Site in trust for the Tribe for gaming and other purposes. The Department has selected Alterative A as the Preferred Alternative because it will best meet the purpose and need for the proposed trust acquisition by promoting the long-term economic self-sufficiency, self-determination, and self-governance of the Tribe. Implementation of this action will provide the Tribe with a restored land base and the best opportunity for attracting and maintaining a significant, stable, and long-term source of governmental revenue. This action will also provide the best prospects for maintaining and expanding tribal governmental programs to provide

a wide range of health, education, housing, social, and other programs, as well as creating employment and career development opportunities for tribal members.

The Tribe seeks to conduct gaming on the Site pursuant to the Restored Lands Exception of the Indian Gaming Regulatory Act. As discussed in the ROD, the Tribe qualifies as a "restored tribe," and the Site qualifies as "restored lands." Accordingly, the Tribe may conduct gaming on the Site upon its acquisition in trust.

The Department has considered potential effects to the environment, including potential impacts to local governments, has adopted all practicable means to avoid or minimize environmental harm, and has determined that potentially significant effects will be adequately addressed by these mitigation measures.

The Department's decision to acquire the Site in trust for the Tribe is based on a thorough review and consideration of the Tribe's application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of land in trust and the eligibility of land for gaming; the Draft EIS and Final EIS; the administrative record; and comments received from the public, Federal, State, and local governmental agencies, and potentially affected Indian tribes.

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1.0 INTRODUCTION

1.1 Summary

The Cloverdale Rancheria of Pomo Indians of California (Tribe) has no reservation or land held in trust by the United States. In 2007, the Tribe discussed its intent to place lands in trust for the purpose of gaming with the Pacific Regional Director, Bureau of Indian Affairs (BIA)[1] In 2008, the Tribe submitted an application to initiate the fee-to-trust process for gaming purposes.[2] In 2010, the Tribe submitted an updated application to the BIA requesting that the Secretary of the Interior (Secretary) acquire approximately 64.48 acres of land in Sonoma County, California (Site), for gaming and other purposes.[3] In October of 2012, the Tribe removed a parcel comprising approximately two acres from its application (Assessor's Parcel Number 116-310-020).[4] As a result, the acreage to be acquired by the Department is 61.83+/- acres. The Site is contiguous to the former Cloverdale Rancheria, and lies within the unincorporated area of Sonoma County. The Site is located within the Urban Growth Boundary and Sphere of Influence of the City of Cloverdale.

The Tribe seeks to conduct gaming on the Site pursuant to the "Restored Lands Exception" of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(b)(1)(B)(iii). As discussed in **Section 7.0 of this ROD**, the requirements of the Restored Lands Exception are met, and the Tribe may conduct gaming on the Site upon its acquisition in trust by the Department.

The Tribe seeks to restore its homeland in an area it historically inhabited. The Tribe's members descend from the indigenous Pomo people of the Cloverdale area.[5] In the 1800s, the Tribe was displaced from its traditional lands during the Gold Rush, which brought an increasing number

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[1] Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs (March 7, 2008), in Memorandum from Regional Director, Pacific Region, Bureau of Indian Affairs, to Assistant Secretary – Indian Affairs (Sept. 20, 2013) [hereinafter Regional Director's Recommendation], Vol. 1, Tab A; *see also* Resolution No. 2007-11-36: Resolution Requesting the Secretary of the Department of the Interior to Place Real Property Located in Sonoma County, California, into Trust for the Benefit of the Cloverdale Rancheria of Pomo Indians of California (Nov. 10, 2007), in Regional Director's Recommendation, Vol. 1.

[2] *Id.* On May 29, 2008, the Tribe submitted a resolution requesting additional acres be acquired, bringing the total acres to approximately 79. *See* Resolution No. 2007-11-136A: Resolution Amending Resolution #2007-11-136 By Adding a Parcel to the Referenced and Attached to Exhibit to Accurately Correct Parcel Legal Descriptions and Size Totaling Approximately 79+/- Acres (May 29, 2008), in Regional Director's Recommendation, Vol. 1.

[3] Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs (Dec. 28, 2010) [hereinafter Tribe's 2010 Application], in Regional Director's Recommendation, Vol. 1, Tab D.

[4] Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs (Oct. 1, 2012), in Office of Indian Gaming File, Tab 7.

[5] *See* TILLER'S GUIDE TO INDIAN COUNTRY: ECONOMIC PROFILES OF AMERICAN INDIAN RESERVATIONS 395 (Veronica E. Velarde Tiller ed., 2005).

of settlers to northern California.[6] In 1921, the United States acquired 27.5 acres of land for the Tribe with funds appropriated by Congress.[7] This land comprised the original reservation, known as the Cloverdale Rancheria. In 1958, Congress enacted the California Rancheria Act which mandated the termination of 41 designated rancherias and reservations in California.[8] In 1965, the Secretary formally terminated the United States' government-to-government relationship with the Tribe.[9] Following termination, the Tribe's former 27.5 acre reservation was divided and distributed in fee to 5 families, with 2 parcels (the tribal cemetery and community well) held in common ownership.[10] Soon after distribution, a portion of the western side of the former Cloverdale Rancheria was sold to the State of California (State) for the construction of State Highway 101.[11] In 1991, the State acquired an additional portion on the eastern side of the former reservation for a bypass to Highway 101.[12] Other lands were sold or lost due to non-payment of taxes.[13]

In 1983, the Tribe was restored to federally-recognized status pursuant to a stipulated judgment entered in *Hardwick v. United States*.[14] Since that time, however, the United States has not acquired land in trust for the benefit of the Tribe, thus, the Tribe remains landless.

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6 *See* S.A. BARRET, THE ETHNO-GEOGRAPHY OF THE POMO AND NEIGHBORING INDIANS 41-43 (1908), in Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Cal Artman, Assistant Secretary Indian Affairs (Dec. 11, 2007), Ex. K, Tab 5.

7 Act of June 21, 1906, 34 Stat 325; Act of April 30, 1908, 35 Stat. 70; *See* Cloverdale Rancheria Legal Description (March 11, 1921), in Tribe's 2010 Application, Ex. B; Notice of Federal Land Purchase for Cloverdale Rancheria (Feb. 10, 1921), in *id.* Ex. L.

8 Act of August 18, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390.

9 *See* Cloverdale Rancheria, California, Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 30 Fed. Reg. 16274 (Dec. 30, 1965), in Office of Indian Gaming File, Tab 3.

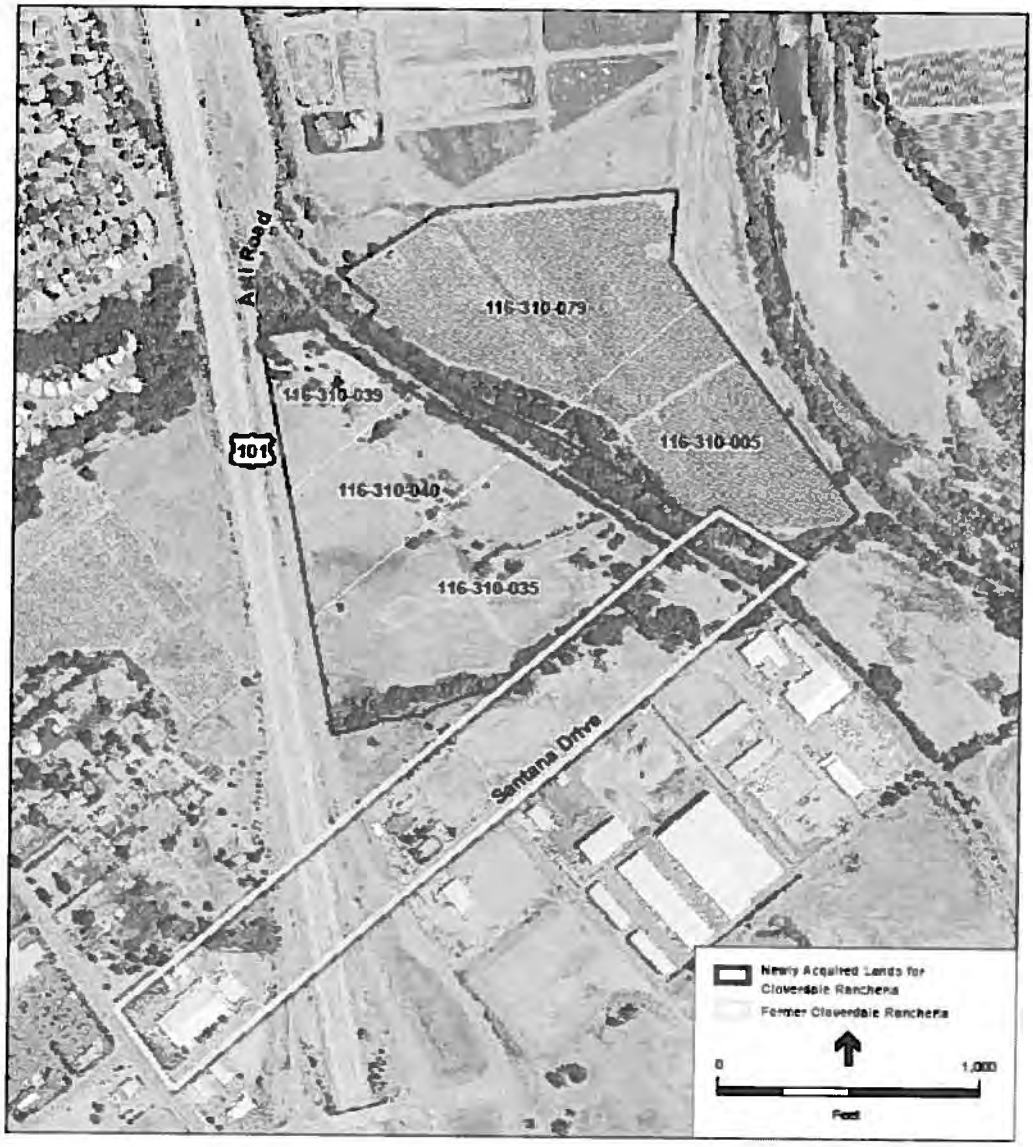
10 The BIA approved a distribution plan on September 3, 1959, to divide the 27.5 acres in to seven lots and distribute the land in fee simple to five heads of household and two common ownership parcels, in Office of Indian Gaming File, Tab 2. The plan called for the establishment of a legal entity, the Dusho Association, to accept the conveyance of land retained in common ownership, the community well-site and the tribal cemetery. *See* Articles of Association of Nonprofit Association (May 12, 1960), in Office of Indian Gaming File, Tab 2.

11 Memorandum from Area Director, Sacramento Area Office, Bureau of Indian Affairs, to Assistant Secretary – Indian Affairs (May 27, 1994), in Office of Indian Gaming File, Tab 4. *See also*, Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Cal Artman, Assistant Secretary Indian Affairs (Dec. 11, 2007), Ex. K, Tab 1 (correspondence between the Bureau of Indian Affairs and the California Division of Highways).

12 Memorandum from Area Director, Sacramento Area Office, Bureau of Indian Affairs, to Assistant Secretary – Indian Affairs (May 27, 1994), in Office of Indian Gaming File, Tab 4.

13 Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Cal Artman, Assistant Secretary – Indian Affairs (Dec. 11, 2007), Ex. K, at 3. At the time of restoration in 1984, only two Indian landowners remained. Memorandum from Area Director, Sacramento Area Office, Bureau of Indian Affairs, to Assistant Secretary – Indian Affairs (May 27, 1994), in Office of Indian Gaming File, Tab 4.

14 No. C-79-1710-SW; N.D. Calif. Dec. 22, 1983. *See* Notice of Restoration of Federal Status to 17 California Rancherias, 49 Fed. Reg. 24,084 (June 11, 1984), in Tribe's 2010 Application, Ex. D.



SOURCE: NAIP, 2014; and EBA, 2015

Exhibit
Former and Newly Acquired Lands for Cloverdale Rancheria

1.2 Authorities

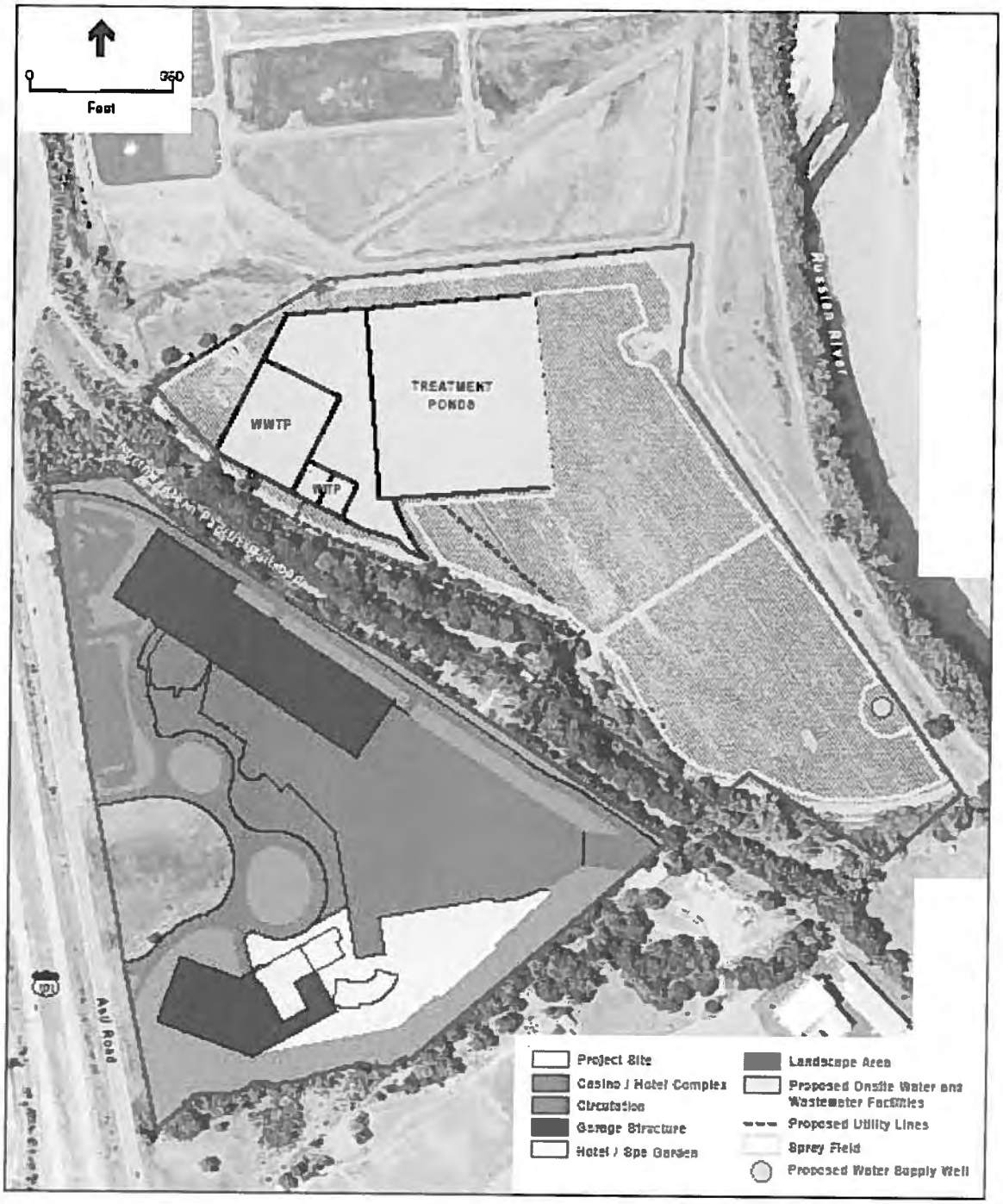
Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 465, provides the Secretary with general authority to acquire land in trust for Indian tribes in furtherance of the statute's broad goals of promoting Indian self-government and economic self-sufficiency.

As discussed below in **Section 8.3**, we have determined that the Secretary has authority to acquire the Site in trust.

The IGRA was enacted in 1988 to 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. Section 20 of IGRA, 25 U.S.C. § 2719, generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions. One exception, known as the Restored Lands Exception dictates that IGRA's general prohibition against gaming on newly acquired lands does not apply to land 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). The regulations set forth in 25 C.F.R. Part 292, implement Section 2719 of IGRA, including the Restored Lands Exception. Part 292 requires two inquiries: (1) whether the tribe is a "restored tribe," and (2) whether the newly acquired lands "restored lands." 25 C.F.R. § 292.7 (a) - (d). As discussed below in **Section 7.0**, we have determined the Tribe and the Site meet the Restored Lands Exception.

1.3 Description of the Proposed Action

The Department would acquire 61.83+/- acres in trust in northern Sonoma County, California. The Tribe proposes a two-story casino would consist of a mixture of uses including an 80,000 s.f. gaming area, 52,445 s.f. of food and beverage facilities, and 79,455 s.f. of support facilities (building support, casino support, administrative offices, public spaces, security, surveillance and 6 areas for employee dining and services). The 287,000 s.f. hotel would be 5 stories high and provide 244 guest rooms. The hotel would also include food and beverage facilities, reception and lobby areas, retail, and recreation. The casino and hotel would be open 24 hours a day, 7 days a week. Parking would include 3,400 spaces (3,300-space garage and 100-space surface lot). The 2-story, 48,600 s.f. convention center could accommodate up to 984 seats in the events hall for large events. Four meeting rooms would provide space for smaller meetings and could accommodate up to 240 seats total. The 2-story, 28,100 s.f. entertainment center would feature a showroom and stage for non-gaming related activities such as local and regional theater and musical performances. The entertainment center could accommodate up to 1,300 seats. Under one option analyzed in the Final EIS, the Tribe would construct and maintain water supply facilities on the Site. These would include a groundwater well, water treatment plant, water storage tanks, a pumping system, and a piped delivery system.



SOURCE: JCJ Architects, 2008; Adobe Associates, Inc., 2009; and ESA, 2015

Exhibit

Cloverdale Rancheria Resort Casino Project - Alternative A Site Plan

1.4 Land to be Acquired

The legal descriptions of the five parcels are found in **Attachment III**.

1.5 Purpose and Need for Acquiring the Site in Trust

The purpose and need for acquiring the Site in trust is to allow the Tribe to generate a dependable stream of income that can be used to support tribal government functions and meet the needs of its members. Acquisition of the Site would enable the Tribe to meet its needs for economic development and diversification; self-sufficiency and self-governance; and to provide its membership with employment and educational opportunities, and needed social and governmental services. Further, acquisition of the Site in trust would restore the Tribe's land base. Increased revenue and job opportunities from the casino resort would improve the socioeconomic condition of tribal members and reduce dependence on public assistance programs. See **Section 8.4** for further discussion of the Tribe's need for acquiring the Site in trust.

1.6 Procedural Background and Cooperating Agencies

The BIA published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the *Federal Register* on July 7, 2008, describing the proposed action of acquiring the Site in trust and inviting comments.[15] See **Attachment I** of this ROD. In addition to accepting written comments, BIA held a public scoping meeting at the Cloverdale Citrus Fairgrounds on July 30, 2008. The Tribe, National Indian Gaming Commission, U.S. Environmental Protection Agency – Region IX (EPA), California Department of Transportation, Sonoma County, and the City of Cloverdale were identified as cooperating agencies during the scoping process.

The BIA published a Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on August 6, 2010.[16] See **Attachment I.** The Draft EIS was made available to the public and distributed to Federal, tribal, State, and local agencies for a total of 75 days for review and comment. The review and comment period, time and location of the public hearing, and contact details for additional information from BIA, the lead agency, were included in the NOA. Notice was also published in *The Press Democrat* on August 11, September 5, and October 9, 2010, and in the *Cloverdale Reveille* on August 18 and October 6, 2010. On September 16, 2010, BIA held a public hearing on the Draft EIS at the Cloverdale Citrus Fairgrounds. The BIA received a total of 34 comment letters in addition to the comments received during the public hearing. Public and agency comments on the Draft EIS received during the comment period, including those submitted or recorded at the public hearing, were considered in the preparation of the Final EIS. Responses to comments received on the Draft EIS were provided in Appendix S of the Final EIS.

In October of 2012, after the release of the Draft EIS, the Tribe removed a parcel comprising approximately two acres from the fee-to-trust application (Assessor's Parcel Number 116-310-

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15 73 Fed. Reg. 38,466 (July 7, 2008).

16 75 Fed. Reg. 47,622 (August 6, 2010).

020).[17] Because the removal of this parcel did not appreciably change the level of significance for the issues analyzed in the Final EIS, the Final EIS was not amended to remove this parcel from the impact analysis. This parcel will not be acquired in trust or developed with tribal offices as indicated in the Final EIS, and is not considered in this ROD.

The BIA revised the Final EIS as appropriate to address comments received on the Draft EIS. The BIA published an NOA for the Final EIS in the *Federal Register* on April 18, 2014.[18] See **Attachment I**. The BIA also published the NOA for the Final EIS in the local newspaper, the *Cloverdale Reveille*, on April 24, 2014. See **Attachment I**. The original 30-day review period ended on May 19, 2014. The BIA extended the review period for two weeks to June 2, 2014. Notice of the extension was published in the local newspaper the *Cloverdale Reveille* on May 22, 2014. See **Attachment I**. The comments received on the Final EIS during the comment period and the responses to each comment are included in **Attachment II**.

The Clean Air Act requires Federal agencies to assure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria pollutants. After making the Final EIS available to the public, BIA prepared and published Draft and Final Conformity Determinations in accordance with the General Conformity Rule Section 176 of the Clean Air Act, 42 U.S.C. § 7506, and EPA general conformity regulations, 40 C.F.R. Part 93, Subpart B. The BIA published NOAs of the Draft and Final Conformity Determinations in a local newspaper, The *Press Democrat,* on February 12, 2015, and April 22, 2015. See **Attachment I**. The BIA made the Draft and Final Conformity Determinations available to the public and submitted them to the EPA, the California Air Resources Board, Bay Area Air Quality Management District, and other applicable agencies for a 30-day review period. No comments were received on the Draft or Final Conformity Determinations. The Final Conformity Determination concluded that the proposed action of acquiring the Site in trust would conform to the State Implementation Plan and San Francisco Bay Area Air Basin Carbon Monoxide Maintenance Plan, and would not cause or contribute to new violations of the national standards for air quality or increase the frequency or severity of any existing violations of the national standards for air quality.

2.0 ANALYSIS OF ALTERNATIVES

2.1 Alternative Screening Process

A range of reasonable alternatives to meet the purpose and need for acquiring the Site in trust were considered in the EIS, including non-casino alternatives and reduced intensity alternatives. Alternatives, other than the No Action Alternative, were first screened to determine if they met the purpose and need for acquiring the Site in trust. Remaining alternatives were selected for their ability to meet the purpose and need for acquiring the Site in trust and reduce environmental impacts.

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[17] Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs (Oct. 1, 2012), in Office of Indian Gaming File, Tab 7.

[18] 79 Fed. Reg. 21,949 (April 18, 2014).

2.2 Alternatives Eliminated from Consideration

Additional sites were screened for their ability to restore the Tribe's land base. Sites that did not include lands of the original Rancheria or were not adjacent to the original Rancheria were eliminated from further consideration.

2.3 Reasonable Alternatives Considered In Detail

The Draft EIS and Final EIS evaluated the following reasonable alternatives and the mandatory No Action Alternative in detail.

2.4 Alternative A – Preferred Alternative

Preferred Alternative A consists of the acquisition of the 61.83+/- acre Site in trust, review by the National Indian Gaming Commission (NIGC) of a development and management contract between the Tribe and its management partners, and development of a casino, hotel, convention center, entertainment center and other ancillary facilities such as garage parking and infrastructure. This alternative most suitably meets all aspects of the purpose and need for acquiring the Site in trust by restoring the Tribe's historic land base and by promoting the Tribe's self-governance capability and long-term economic development. Components of Preferred Alternative A are described below.

Gaming Development and Management Contract: The NIGC reviews and approves management contracts for the management of the gaming facility between tribal governments and outside management groups. The development and management agreement between the Tribe and its management partner End to End Enterprises will be reviewed by the NIGC to ensure consistency with IGRA, NIGC regulations, and other tribal ordinances and policies.

Proposed Facilities: Preferred Alternative A would result in the acquisition in trust of the 61.83+/- acre Site for the benefit of the Tribe. The Tribe would develop a casino, hotel, convention center, entertainment center, garage and surface parking, and other ancillary facilities. The proposed 2-story casino would consist of a mixture of uses including 80,000 s.f. of gaming area, 52,445 s.f. of food and beverage facilities and 79,455 s.f. of support facilities (building support, casino support, administrative offices, public spaces, security, surveillance and employee dining and services). The 287,000 s.f. hotel would be up to 5 stories above grade and provide for 244 guest rooms distributed between floors. The hotel area also includes food and beverage facilities, reception and lobby areas, retail, recreation, back-of-house and building support. The casino and hotel would be open 24 hours a day, 7 days a week. Parking would include 3,400 spaces between garage parking and surface parking. The 2-story, 48,600 s.f. convention center could accommodate up to 984 seats in the events hall for large events. Four meeting rooms provide space for smaller meetings and could accommodate up to 240 seats total. The 2-story, 28,100 s.f. entertainment center would feature a showroom and stage for non-gaming related activities such as local and regional theater and musical performances. The entertainment center could accommodate up to 1,300 seats.

Water Supply: A potable water supply would be obtained from an on-site well. Tertiary treated effluent would be used for nonpotable uses, fire protection, and irrigation (private option). Water supply facilities would include a groundwater well, water treatment plant, water storage tanks, a pumping system (including pressurized storage) and a piped delivery system. The annual water demand for Preferred Alternative A is estimated to be 24.3 million gallons with use of reclaimed water. The associated average daily demand is estimated to be approximately 66,639 gallons with a constant withdrawal rate of 46 gallons per minute (gpm). The associated peak daily flow is estimated to be 126,147 gallons with a required pump rate of 88 gpm.

The water facilities would be constructed above anticipated flood elevations. An estimated volume of 500,000 gallons of reclaimed water will be retained in an above ground storage pond. Fire pumps would be used to elevate pressure in the reclaimed water main in case of fire. Reclaimed water for irrigation purposes would be stored near wastewater facilities in an above-ground storage tank with a volume of approximately 40,000 gallons. Anticipated peak landscape irrigation demand is 20,000 gallons per day. Treated wastewater for nonpotable purposes would be initially stored with landscape irrigation water. A separate and redundant pumping and plumbing system would be required to allow the use of recycled wastewater for nonpotable purposes. Potable and reclaimed water would be transported via pipes crossing over Porterfield Creek with support structures built outside of the creek banks.

The Draft EIS and Final EIS analyzed both a private option and a municipal option for water supply. The Tribe will be utilizing their on-site private well for water service, although the Tribe may choose to pursue the municipal option at a later date.

Wastewater Treatment and Disposal: Wastewater services for Preferred Alternative A would be privately provided by a new on-site collection system, wastewater treatment plant (WWTP), and sprayfields (private option). The annual wastewater flow is estimated to be 33.6 million gallons with a daily average of 92,023 gallons. The peak daily flow is estimated at approximately 171,500 gallons. Flows would be conveyed from the project facilities through the railroad easement to the WWTP located east of the railroad tracks. The sewer crossing would require an encroachment permit from the railroad to install pipe within the railroad right-of-way and under the tracks. As discussed in **Section 8.7** below, the North Coast Railway Authority holds the railroad easement and entered into an agreement in 2012 with the current landowners of the Site that guarantees their right to build utility lines at below grade, *i.e.* under the railroad easement.[19] Pipe construction under the tracks would utilize directional drilling or jack and bore drilling for installation. Crossing over Porterfield Creek is proposed via a suspended pipe over the creek, with support structures constructed outside of the creek banks.

The WWTP would treat wastewater to a tertiary level for reuse and disposal. The WWTP would consist of initial screening and transfer to an equalization tank, treatment in a constant flow membrane bioreactor, chlorination, and transfer to an effluent pump station. Treated effluent

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[19] Easement Agreement – Below Grade Utility Crossing of Railroad Line ¶ 1, in Regional Director's Recommendation, Vol. 1, Tab I.

would be stored in an above ground storage pond accommodating at least 73 acre-feet,[20] which is sized to account for project wastewater generation, a 100-year rainfall event, and evaporation and discharge of treated wastewater onsite. The storage pond will be enclosed by an earthen embankment, the top of which will be at least two feet above anticipated flood levels. The pond will be lined with either a natural soil liner or artificial welded seam plastic liner. The pond will be fitted with an aeration system designed to maintain an aerobic condition in the pond. A wet well and fire pump system would be located at the pond for fire flows. A floating intake system will be installed to permit withdrawal of stored water to be filtered and discharged to the spray irrigation disposal field. The sprayfield area would be an alfalfa field or similar crop with high evapotranspiration capabilities of approximately 14.6 acres. There would be a protective no-spray buffer of not less than 50 feet surrounding all onsite and neighboring groundwater wells. No spraying of treated wastewater would occur during the period from October 1 to May 14 to ensure that runoff is avoided.

The Draft EIS and Final EIS analyzed both a private option and a municipal option for wastewater service. Because there is no agreement between the Tribe and City of Cloverdale for wastewater service it is assumed in this ROD that the private option will be developed, although the Tribe may choose to pursue the municipal option at a later date.

Site Drainage: Preferred Alternative A includes features to reduce the level of stormwater runoff to pre-construction flows for up to a 10-year storm event. Pervious concrete surfaces (surfaces that would allow for the infiltration of stormwater into the groundwater basin) are proposed for most driveways and surface parking areas. Sump pumps would be located on the bottom floors of the garage structures to provide drainage for seepage and garage floor cleaning. Sump pump discharges will be treated with a sand/oil separator.

On-site drainage improvements west of the railroad tracks include a subterranean detention system and three upland drainage release systems. The development would route concentrated flows to the southern project boundary where existing sheet flow discharges occur. The subterranean detention system would include a network of large diameter pipes for temporary storage and an outlet structure which restricts discharge from the detention system to pre-development flow rates. One of the pipes is a 30-inch storm drain that would collect overflow from the existing central seasonal wetland on site during large storm events. The seasonal wetland is located near the outfall of an existing off-site culvert which transports runoff from the west side of Highway 101. The on-site drainage system would be designed to accommodate flows from at least a 10-year storm event, which requires a volume of 60,100 cubic feet. Excess flows from greater storm events would bypass, via culverts, the detention facility and discharge into the upland drainage release system. The upland drainage release system would consist of a field of large diameter rocks placed near the existing grade surface to spread concentrated flows to a sheet flow condition prior to being discharged on the surface to Coyote Creek. Existing drainage exits the western portion of the property from four existing culvert outfalls. These culverts would not be modified. Two existing culverts which cross under the railroad tracks would be improved. The northern culvert is an 18-inch culvert, which drains to Porterfield Creek. This culvert would be extended

[20] An "acre-foot" is a unit of volume commonly used in reference to large-scale water resources. It is defined as the volume of one acre of surface area to a depth of one foot.

past highly erodible areas and energy dissipation will be provided at the end of the culvert. The southern culvert is a 24-inch culvert with two water lines within the culvert. The water lines would be removed and relocated during construction to increase the capacity of the culvert.

Stormwater drainage east of the railroad tracks exits the property at two locations. These existing drainage systems would not be altered by the project. The project proposes to construct a new surface drainage channel along the northern and eastern boundary to route stormwater run-on to Porterfield Creek. This would replace an existing agricultural ditch that runs through the vineyard, and would move stormwater around proposed water and wastewater facilities.

Utilities: Electricity is available to Preferred Alternative A from Pacific Gas & Electric (PG&E) from lines which currently serve the Site. Natural gas would require installation of a 6-inch gas main, extending from the existing gas main on the east side of Asti Road approximately 2,500 feet south of Santana Drive.

Law Enforcement: The Tribe would provide 24-hour security surveillance of proposed facilities and parking areas through the use of private security guard patrols and security surveillance equipment typical of casino gaming facilities. The Tribe would also work cooperatively with area law enforcement agencies such as the Sonoma County Sheriff's Office, City of Cloverdale Police Department, and the California Highway Patrol. Either the City of Cloverdale Police Department or Sonoma County Sheriff's Office would provide primary law enforcement services. It is anticipated that the Tribe will contract with the City of Cloverdale Police Department; however, without an agreement in place enforcement authority would come under the jurisdiction of the State pursuant to Public Law 280, Pub.L. 83–280 (1953).

Fire Protection and Emergency Medical Services: The Tribe would contract with local service providers for fire protection and emergency medical services including the Cloverdale Fire Protection District and Cloverdale Health Care District for ambulance transport. See Final EIS Appendix N for letter of intent between the Tribe and City of Cloverdale. Defibrillators would be located onsite and staff would be trained to operate defibrillator equipment prior to emergency service provider arrival. Structures will include sprinkler systems and other fire prevention components as required by the local fire code.

2.5 Reduced Intensity Alternatives

To examine the potential for reduction of impacts and in response to public comment, additional alternatives were considered and carried out for full analysis within the Draft EIS and Final EIS. These include Alternatives B, C, and D which are described further below.

2.6 Alternative B - Reduced Hotel and Casino

Alternative B is similar to Preferred Alternative A in most respects, including the acquisition in trust of the 61.83 +/- acre Site and approval of a gaming management contract by NIGC. The casino and hotel facilities under Alternative B would be similar to those proposed for Preferred Alternative A, but would be reduced in scale. The 2-story casino would include 67,525 s.f. of

gaming, 37,800 s.f. of food and beverage facilities and 67,895 s.f. of support facilities. The 204,850 s.f. hotel would be up to 5 stories above grade and provide for 141 guest rooms distributed between floors. The entertainment center would be the same size as under Preferred Alternative A. Parking would include 2,900 spaces between garage and surface parking. Alternative B does not include a convention center component. Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, fire protection and emergency medical services would be substantially similar to those described for Preferred Alternative A, above.

2.7 Alternative C – Reduced Casino

Alternative C is similar to Preferred Alternative A and Alternative B in most respects, including the acquisition in trust of the 61.83 +/- acre Site and approval of a gaming management contract by NIGC. The casino and hotel facilities under Alternative C would be similar to those proposed for Preferred Alternative A and Alternative B, but would be reduced in scale. The hotel would be the same size as the hotel under Alternative B (204,850 s.f. and 141 guest rooms); however, the casino would be further reduced. The 2-story casino would include 57,708 s.f. of gaming, 37,800 s.f. of food and beverage facilities and 58,096 s.f. of support facilities. The entertainment center would be the same size as under Preferred Alternative A and Alternative B. Parking would include 2,400 spaces between garage and surface parking. Alternative C does not include a convention center component. Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, fire protection and emergency medical services would be substantially similar to those described for Preferred Alternative A, above.

2.8 Alternative D – Casino Only

Alternative D includes the acquisition in trust of the 61.83 +/- acre Site and approval of a gaming management contract by NIGC. The casino under Alternative D would be similar to those proposed for Preferred Alternative A and Alternatives B and C, but would be reduced in scale. The two-story casino would include 57,708 s.f. of gaming, 37,800 s.f. of food and beverage facilities and 53,264 s.f. of support facilities. Parking would include 1,900 spaces between garage and surface parking. No hotel, convention center, or entertainment center would be developed under this alternative.

Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, fire protection and emergency medical services would be substantially similar to those described for Preferred Alternative A, above; however, Alternative D would not require the northern upland drainage release system.

2.9 Alternative E – Commercial Retail-Office Space

Alternative E includes the acquisition in trust of the 61.83 +/- acre Site and development of a commercial retail and office center with light industrial warehouse space. This alternative is non-gaming and does not require approval of a gaming management contract by the NIGC. This alternative includes the development of 150,000 s.f. of commercial/industrial/warehouse space, 125,000 s.f. of commercial office, and 75,000 s.f. of retail and 14,000 s.f. of restaurants.

This alternative includes 1,600 surface parking spaces. Components related to water supply, wastewater treatment and disposal, site drainage, utilities, law enforcement, fire protection, and emergency medical services would be similar to those described for Preferred Alternative A, above; however, stormwater facilities and improvements would be configured to account for the change in footprint. The City of Cloverdale's General Plan identifies a proposed land use designation of Business Park and General Industry for the western portion of the Site.

2.10 Alternative F - No-Action Alternative

Under the No-Action Alternative, the acquisition in trust of the 61.83 +/- acre Site would not occur, and the Site would not be developed with uses described under Preferred Alternative A or Alternatives B, C, D, or E (Development Alternatives) in the near term. Land use jurisdiction would remain with Sonoma County. The Site would maintain its existing development density and uses in the near term. In the cumulative scenario (by 2030) and consistent with local zoning, it is assumed the Site could be developed with a business park and/or industrial uses west of the railroad tracks, and that east of the railroad tracks the Site would be used for agriculture or would be left open space.

3.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS

3.1 Environmental Impacts

Implementation of Preferred Alternative A, including construction and operation, and the other Development Alternatives could result in direct, indirect, and cumulative impacts to the environment. A number of specific environmental issues were raised during the EIS process. The categories of the most substantive environmental issues raised during the EIS process include:

- Land Resources
- Water Resources
- Air Quality/Greenhouse Gas Emissions
- Biological Resources
- Cultural and Paleontological Resources
- Socioeconomic Conditions
- Transportation
- Land Use
- Public Services
- Noise
- Hazardous Materials
- Visual Resources
- Environmental Justice

Each of the alternatives considered in the Final EIS were evaluated for the potential to impact environmental issues as required under NEPA, including the concerns listed above. The evaluation of these project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments for the Final EIS were

accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the Final EIS at the time of preparation. Alternative courses of action and mitigation measures were developed in response to the identified environmental concerns and substantive issues raised during the EIS process. A summary of the analysis of the environmental issues within the Final EIS, including the issues raised during the EIS process, is presented below.

3.1.1 Land Resources

Topography: All Development Alternatives would involve clearing and grading. While some alternatives would require import of fill to create building pad elevations, no significant changes to existing topography are proposed, and thus impacts would be less than significant. See Final EIS Section 4.2.1-1.

Soils: The previous development of residences on Site soils, the known characteristics of project soils, and preliminary borings do not suggest that soil hazards are likely to occur. However, subsurface conditions can vary and even soils suitable for development require mitigation for common soil limitations. Mitigation is included within the Mitigation Monitoring and Enforcement Plan (MMEP) to reduce the impact of potential soil limitations to a less-than-significant level (**Attachment IV**). See Final EIS Section 4.2.1-2.

Seismicity: As the Site is within a seismically-active region there are several potential seismic hazards which could affect the proposed development from earthquakes under the Development Alternatives. The Development Alternatives would be constructed to California Building Code standards. Additional mitigation is included within the MMEP to reduce potential impacts associated with seismic hazards. Implementation of the mitigation measures would reduce this impact to less than significant. See Final EIS Section 4.2.1-3.

Mineral Resources: The eastern portion of the Site has a Mineral Resource Zone (MRZ)-2b designation or the potential to contain high quality aggregate resources; however, it is not guaranteed that these resources are present or that they can be economically extracted. A significant amount of land in the vicinity, and outside of the Site, is zoned as MRZ-2b where mineral resources could be further defined and developed; therefore, the potential loss of resources on the Site does not represent a significant impact. See Final EIS Section 4.2.1-4.

3.1.2 Water Resources

Surface Water Drainage: Implementation of the Development Alternatives would result in changes to existing drainage patterns, both on-site and off-site. Several drainage features have been incorporated into the design of the alternatives that would retain stormwater on-site and lessen discharge of storm flows to downstream areas. For mitigation of a 100-year storm, mitigation is included within the MMEP which would reduce impacts to a less-than-significant level. See Final EIS Section 4.3.1-1.

Flooding: Implementation of the Development Alternatives would result in construction of water and wastewater facilities within a FEMA-defined 100-year flood zone. These facilities

would be surrounded by flood control levees. Preliminary flood height modeling indicates that the result of displacing flood waters would be less than significant; however, additional coordination with FEMA would be required and is included within the MMEP to reduce impacts to a less-than-significant level. See Final EIS Section 4.3.1-2.

Surface Water Quality Construction: Construction of the Development Alternatives would result in the potential for degradation of water quality. Construction of the Development Alternatives would be subject to regulation under the Federal Clean Water Act. As such, a National Pollutant Discharge Elimination System general permit for construction activities would be required, which would include completion of a Stormwater Pollution Prevention Plan and a series of best management practices. Compliance with permitting requirements would reduce impacts to a less-than-significant level. See Final EIS Section 4.3.1-3.

Surface Water Quality Operation: Operation of the Development Alternatives would involve additional use of the Site by automobiles, buses, delivery trucks, and other uses associated with daily operations of facilities which could potentially degrade stormwater quality. The Development Alternatives incorporate design measures that would reduce potential stormwater pollution and reduce impacts to a less-than-significant level. See Final EIS Section 4.3.1-4.

Groundwater and Russian River Effects: Implementation of the Development Alternatives would increase groundwater demands either from a proposed well or via municipal supply. The reduction of available flow to the Russian River caused by the proposed groundwater pumping would be very small and not observable or measurable and would not negatively impact the hydrology of the river or aquatic habitats. The small groundwater drawdown attributable under the private water option would not negatively impact the operation, condition, or yield in other onsite or neighboring wells. Thus, impacts to groundwater and the Russian River from groundwater pumping would be less-than-significant. See Final EIS Section 4.3.1-5.

Treated Effluent Disposal: Implementation of the Development Alternatives would include construction and operation of sprayfields for the disposal of treated effluent under the private wastewater option. Because treated effluent would meet California Code of Regulations Title 22 standards, no significant reduction in the quality of affected surface water or of drinking water quality is anticipated. To ensure that no significant and adverse effects to water quality occur, mitigation is included within the MMEP for management of sprayfield operation. See Final EIS Section 4.3.1-6.

3.1.3 Air Quality

Construction Emissions: Construction emissions associated with the Development Alternatives would not exceed local North Sonoma County Air Pollution Control District (NSCAPCD) thresholds. Fugitive dust may become a nuisance during construction to both on-site and adjacent off-site areas. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Section 4.4.1-1.

Operational Emissions: Operational emissions (on-road vehicle traffic) from the Development Alternatives would be distributed between three local air districts. Operational emissions of

NOx, CO, and PM10 would exceed the established NSCAPCD and Bay Area Air Quality Management District (BAAQMD) thresholds. Operational emissions would not exceed Mendocino County Air Quality Management District (MCAQMD) thresholds. Mitigation is included within the MMEP; however, impacts would remain significant even with implementation of mitigation. See Final EIS Section 4.4.1-2.

General Conformity: Pollutant emissions generated in the NSCAPCD and the MCAQMD would not require review under the Federal General Conformity Rule because both districts are designated attainment or unclassified for all Federal criteria pollutants. The BAAQMD is currently designated nonattainment for ozone and PM 2.5 and is a Maintenance Area for Carbon Monoxide (CO). The Development Alternatives would exceed the de minimus threshold for CO in the BAAQMD. Draft and Final Conformity Determinations for the Proposed Action were published and made publicly available for 30-day periods starting on February 12, 2015, and April 22, 2015, respectively. Public notices are included in **Attachment I**. No comments were received on the Draft or Final Conformity Determinations. Based on the information in the EIS and the Final Conformity Determination, the Proposed Action would conform to the State Implementation Plan (SIP) and San Francisco Bay Area Air Basin CO Maintenance Plan implemented pursuant to the Clean Air Act. As demonstrated in the EIS and Final Conformity Determination, modeling of CO shows that the Proposed Action would not cause or contribute to new violations of the national air quality standards, or increase the frequency or severity of any existing violations of the national air quality standards. See Final EIS Section 4.4.1-3.

Odors: The proposed wastewater treatment plant could create an odor impact to sensitive receptors approximately 900 feet away and across State Highway 101. Sensitive receptors at these distances may be affected by odor if the facility needs maintenance and/or during stagnant meteorological conditions. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Section 4.4.1-4.

Greenhouse Gas Emissions: The Development Alternatives would generate substantial amounts of greenhouse gas emissions. Mitigation is included within the MMEP to reduce the significance of this impact. Mitigation includes energy efficiency measures and purchase of greenhouse gas offset credits for operational emissions which exceed the 25,000 CO2e reporting limit. See Final EIS Section 4.4.1-5.

Climate Change: Climate change could result in increased intensity and/or frequency of major storm events, including those events that could result in flooding. Sufficient freeboard for development proposed within the floodplain is incorporated into the project design and required via mitigation measures in the MMEP, which would reduce potential impacts to a less-than-significant level. See Final EIS Section 4.4.1-6.

Indoor Air Quality: For Preferred Alternative A, and Alternatives B through D, patrons could be exposed to toxics and carcinogens from indoor tobacco use. Although the deleterious effects of environmental tobacco smoke (ETS) are widely known, it is possible that some employees or patrons would be unknowingly exposed to ETS without realizing its harmful effects. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Section 4.4.1-7.

3.1.4 Biological Resources

Upland Habitats: The Development Alternatives would affect upland habitats that are utilized by plant and wildlife species. Most of the affected habitat is either regionally abundant (grasslands/vineyards) or is of little value to plants and wildlife (urban); however, coast live oak woodland and north coast riparian scrub, are considered important biological communities and are less regionally abundant. Mitigation is included within the MMEP to reduce impacts to these biological communities to a less-than-significant level. See Final EIS Section 4.5.1-1.

Wetlands and other Waters of the United States: The Development Alternatives propose the discharge of fill material into waters of the United States, which would require a Section 404 permit from the Army Corps of Engineers and a Water Quality Certification from EPA Region IX. Compliance with permitting requirements and mitigation included within the MMEP would reduce impacts to a less-than-significant level. See Final EIS Section 4.5.1-2.

Federally Listed Species: There are no federally listed species under the Endangered Species Act that would be directly affected by the Development Alternatives. Federally listed species that may be indirectly impacted include California Coastal chinook, Central California Coast coho, and Central California Coastal steelhead. These species may be indirectly impacted by discharge of sediments from the Site. Potentially significant impacts would be reduced to a less-than-significant level by project design features (bioswales, a subterranean stormwater detention system, and porous concrete), best management practices (erosion control measures) and mitigation measures included within the MMEP. Accordingly implementation of these mitigation measures would reduce this impact to less than significant. See Final EIS Section 4.5.1-3.

Migratory Birds: Migratory birds may be adversely affected if active nest sites are either directly removed or exposed to a substantial increase in noise or human presence during construction of the Development Alternatives. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Section 4.5.1-4.

State and Local Special-Status Species: The pallid bat could be directly impacted from the removal of existing structures. Northwestern pond turtle and foothill yellow-legged frog could be indirectly impacted from construction-related sedimentation or contamination of aquatic habitat. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Section 4.5.1-5.

3.1.5 Cultural and Paleontological Resources

Historic Properties: No historic properties would be affected by the implementation of the Development Alternatives and thus impacts would be less than significant. See Final EIS Section 4.6.1-1.

Cultural and Paleontological Resources: While no known cultural and paleontological resources have been identified within the Site, there is the possibility for accidental discovery of archaeological

or paleontological resources during earth moving activities with implementation of the Development Alternatives. The destruction or disturbance of these resources would result in a significant impact; however, implementation of mitigation measures in the MMEP would reduce impacts to a less-than-significant level. See Final EIS Section 4 .6.1-2.

3.1.6 Socioeconomic Conditions

Economic Effects: Construction and operation of the Development Alternatives would generate substantial economic activity within Northern Sonoma County which is considered a beneficial effect. Both construction and operational phases would generate employment. Both construction and operational phases would also result in indirect and induced spending within Northern Sonoma and Mendocino Counties. Preferred Alternative A would result in the greatest economic benefits to the region and Tribe. Lost tax revenues to local jurisdictions from placement of the Site into trust would be offset by increased economic activity from the Development Alternatives. See Final EIS Sections 4.7.1-1, 4.7.1-2, and 4.7.1-4. See **Section 8.6** below for further discussion.

Housing: The Development Alternatives are not anticipated to result in significant worker migration or relocation to Northern Sonoma County, and, therefore, impacts to housing would be less than significant. See Final EIS Section 4.7.1-3.

Community Infrastructure: The Development Alternatives are not anticipated to increase Sonoma County's residential population, and, thus, are not anticipated to have significant impacts on community infrastructure. See Final EIS Section 4.7.1-5.

Problem Gambling: For gaming alternatives (Alternatives A through D), it is anticipated that there would be an increased need for counselors to treat the problem gambling population. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Section 4.7.1-6.

3.1.7 Transportation

Intersections/Freeways: Absent mitigation, the Development Alternatives would cause certain roadway intersections in the vicinity of the Site to operate at an unacceptable Level of Service (LOS) and add substantial traffic to intersections with above average collision rates. Accordingly, mitigation has been included to alleviate potential impacts. All of the study freeway segments of U.S. 101 from the Sonoma-Mendocino County Line to the Dry Creek Road Interchange in Healdsburg would continue to operate at an acceptable LOS. Mitigation is included within the MMEP to reduce potential impacts to the intersections listed below. See Final EIS Sections 4.8.1-1, 4.8.1-2, and 4.8.1-4.

- All Development Alternatives would significantly affect the U.S. 101 Northbound Ramps/South Interchange intersection which has above-average collision rates. Mitigation includes the option of signalization or construction of a roundabout at this intersection. Both options would reduce near-term impacts to a less-than-significant level. Cumulatively significant and unavoidable impacts are discussed in **Section 3.1.15** below.

- Preferred Alternative A and Alternatives B and C would significantly affect the Asti Road/ South Interchange intersection, which has above average collision rates. Mitigation includes the option of signalization or construction of a roundabout at this intersection. Both options would reduce near-term impacts to a less-than-significant level. Cumulatively significant and unavoidable impacts are discussed in **Section 3.1.15** below.

- Preferred Alternative A and Alternative and B would significantly affect Asti Road at the project entrance. Mitigation includes installation of a traffic signal and the main project entrance on Asti Road which would reduce impacts to a less-than-significant level.

Bicycle, Pedestrian, Transit Facilities: The Development Alternatives would generate a small volume of bicycle and pedestrian traffic and existing local and regional transit service are expected to serve the Development Alternatives adequately, and, thus, impacts would be less than significant prior to development of the SMART (Sonoma-Marin Area Rail Transit) rail. If the proposed SMART rail is developed, pedestrians walking between the SMART train station and Site would not have access to pedestrian facilities along this short section which is considered a potentially significant impact. Mitigation is included within the MMEP to reduce potential impacts. Implementation of these mitigation measures would reduce this impact to less than significant. See Final EIS Section 4.8.1-3.

Parking Capacity: All Development Alternatives were determined to have adequate parking capacity with the exception of Alternative D. Accordingly, all Development Alternatives except for Alternative D will have no impact. For Alternative D mitigation is included within the MMEP to reduce potential impacts. Implementation of theses mitigation measures would reduce the impact of Alternative D to less than significant. See Final EIS Section 4.8.1-5.

Construction Traffic: Construction-generated traffic would be temporary and therefore would not result in any long-term degradation in operating conditions on roadways in the project area. Most construction traffic would be dispersed throughout the day and would not significantly disrupt daily traffic flow on roadways in the Site vicinity. For these reasons, construction traffic would be less than significant. See Final EIS Section 4.8.1-6.

3.1.8 Land Use

Existing Land Use Policies: The Development Alternatives are compatible but not specifically consistent with the existing land use designations and zoning for the Site. As the Development Alternatives would not restrict development of proposed uses off-site and there is available undeveloped land in the vicinity which could be developed for uses intended for the Site, this impact is considered less than significant. See Final EIS Sections 4.9.1-1 and 4.9.1-2.

Airport Land Use Plans: The Development Alternatives are not consistent with the proposed density of uses within the Traffic Pattern Zone (TPZ); however, it is noted in the County's Comprehensive Airport Land Use Plan that this TPZ is not used. The proposed building heights would not penetrate navigable air space. The project is located at a distance which requires notification of construction under Federal Aviation Regulation 14 C.F.R. Part 77. Dust and smoke

created by construction activities can penetrate the navigable airspace and potentially interfere with aircraft operations. Although unlikely, construction equipment, such as cranes, may also penetrate navigable airspace during construction. Implementation of mitigation measures in the MMEP would reduce these potential construction impacts to a less-than-significant level. See Final EIS Section 4.9.1-3.

Agriculture: Implementation of the Development Alternatives would result in the conversion of a portion of the Site from land used and/or designated for agriculture to non-agricultural uses. The Site was evaluated under the Farmland Policy Protection Act and it was determined that conversion would be a less-than-significant impact. Williamson Act contracts would be removed (through non-renewal or cancellation) prior to development.[21] Additionally, the County and City envision future non-agricultural uses for the western portion of the site and there are no off-site agricultural uses which would be affected by the Development Alternatives. For these reasons, the effect on agriculture would be less than significant. See Final EIS Section 4.9.1-4.

3.1.9 Public Services

Public Water Supply: Under the private option for the Development Alternatives, well tests indicate that adequate water supply is available from the proposed well, and, thus, there would be no impact to public water suppliers. Under the municipal option, it is anticipated that the City has adequate capacity. However, the Tribe does not have an agreement with the City for water service and thus, this is considered to be a significant impact. Mitigation is included within the MMEP to reduce impacts to a less-than-significant level. See Final EIS Section 4.10.1-1.

Public Wastewater Services: Under the private option for the Development Alternatives, there is adequate area for proposed wastewater facilities, and, thus, there would be no impact to public wastewater services. Under the municipal option, the Tribe would contract with the City of Cloverdale for wastewater service and connect to the existing 18-inch sewer main which runs along the southern and northeastern project boundary; however, the Tribe does not currently have an agreement with the City to obtain wastewater service and thus, this is considered to be a significant impact. Mitigation is included within the MMEP to reduce impacts to a less-than-significant level. See Final EIS Section 4.10.1-2.

Solid Waste: The Development Alternatives are not anticipated to exceed the capacity or significantly decrease the life expectancy of landfills which serve the region, and, thus, impacts would be less than significant. See Final EIS Section 4.10.1-3.

Electricity, Natural Gas and Telecommunications Services: Electricity, natural gas and telecommunications services are available to the Site and thus impacts would be less than significant or all Development Alternatives. Natural gas would require installation of a 6-inch gas main extending from the existing gas main on the east side of Asti Road approximately 2,500 feet south of Santana Drive. If natural gas extension is infeasible the project will utilize electric appliances and/or propane gas. See Final EIS Section 4.10.1-4.

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[21] See further discussion of Williamson Act contracts in Sections **8.62 and 8.72** below.

Law Enforcement Services: It is anticipated that the Tribe will contract with the City of Cloverdale Police Department; however, without an agreement in place enforcement authority would come under the jurisdiction of the State pursuant to Public Law 280, Pub.L. 83–280 (1953). Increased demands may occur under the Development Alternatives. An increased demand without compensation could have a potentially significant impact. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Section 4.10.1-5.

Fire Protection/Emergency Medical Services: Construction and operation of the Development Alternatives would increase demands on local fire protection and emergency medical services. Increased demands as a result of the Development Alternatives without compensation could have a potentially significant impact. Mitigation is included within the MMEP to reduce potential impacts to a less-than-significant level. See Final EIS Sections 4.10.1-6 and 4.10.1-7.

3.1.10 Noise

Construction Noise and Vibration: Construction of the Development Alternatives would generate a significant amount of noise at the nearest residences and would also exceed the City of Cloverdale's exterior noise standards. Construction noise would therefore be considered a potentially significant impact. Mitigation is included within the MMEP which would reduce impacts to a less-than-significant level. Ground-borne vibration and noise associated with construction-related traffic were determined to be less than significant. See Final EIS Section 4.11.1-1.

Operational Noise: The Development Alternatives would result in additional traffic on local roadways. Future noise levels resulting from the increased traffic would not be substantially greater than the existing ambient noise levels, and thus the impact associated with increased traffic noise at sensitive receptors would be considered less than significant. The Development Alternatives would include HVAC systems which could have potentially significant impacts to sensitive receptors depending on siting. Mitigation is included within the MMEP which would reduce impacts to a less-than-significant level. See Final EIS Section 4.11.1-2.

3.1.11 Hazardous Materials

Construction: The potential exists for previously unidentified soil and/or groundwater contamination to be encountered during site preparation and construction activities associated with the Development Alternatives, which is considered a potentially significant impact. Mitigation is included within the MMEP which would reduce the impact to a less-than-significant level. See Final EIS Section 4.12.1-2.

Operation: The available information and data do not suggest that ongoing or historical site uses have caused significant soil or groundwater contamination on the Site. No significant quantities of hazardous materials are proposed to be used during operation of the Development Alternatives. The Tribe would conform to Federal Occupational Safety and Health Administration standards for hazardous materials and thus impacts would be less than significant. See Final EIS Section 4.12.1-3.

3.1.12 Visual Resources

Scenic Character: The Development Alternatives would alter current views of the Site; however, the Site is zoned for eventual light industrial/business park development. The Development Alternatives would not result in impacts to local ridgelines and would be consistent with architectural design for the region. Further, landscaping would be designed to act as a screen for the structures from most vantage points. The Development Alternatives may have structures painted in a fashion that does not blend in with existing and proposed landscaping and background coloration, which is considered to be a potentially significant impact. Mitigation is included within the MMEP to reduce impacts to a less-than-significant level. See Final EIS Section 4.13.1-1.

Night Lighting: The Development Alternatives would result in the addition of new sources of illumination in an area with relatively dark nighttime conditions which is a potentially significant impact. Project design features in addition to mitigation included within the MMEP would reduce impacts to a less-than-significant level. See Final EIS Section 4.13.1-2.

3.1.13 Environmental Justice

No minority or low-income communities of concern are located within the affected environment for the Proposed Action. Consequently, no significant environmental justice impacts would occur. See Final EIS Section 4.14.1-1.

3.1.14 Indirect Effects

Growth-Inducing Effects: A sufficient labor force exists within Sonoma County to eliminate the need to substantially draw employees from other regions. In the event that any relocating workers or new County residents need additional housing, there is a strong potential for their housing needs to be absorbed by the existing housing supply. The improvements proposed by the Development Alternatives are designed to specifically mitigate impacts without creating unnecessary additional capacity. Mitigation proposed for roadways and intersections would serve to mitigate the impacts of Development Alternatives on area roadway networks only, not to increase capacity of roadways to accommodate future unplanned growth. In addition, utility upgrades and extensions may be needed if municipal water, municipal wastewater, and/or natural gas are used. The project would work with the providers to ensure adequate improvements in coordination with surrounding growth. For each of these utilities, feasible alternatives have been provided should the project decide not to utilize municipal water, municipal wastewater and/or natural gas. See Final EIS Section 4.15.1.

Other Indirect Effects: As described in detail in Section 4.15.2 of the FEIS, implementation of off-site traffic and off-site utility mitigation may indirectly affect the environment; however, off-site activities would be required to comply with Federal, State, and local laws, policies, and ordinances, resulting in less than significant impacts. See Final EIS Section 4.15.2.

3.1.15 Cumulative Effects

The Development Alternatives when considered with past, present, and reasonably foreseeable future actions as well as project design features and proposed mitigation in the MMEP, would not result in significant adverse cumulative impacts related to land resources, water resources, biological resources, cultural and paleontological resources, socioeconomic conditions, land use, agriculture, public services, noise, hazardous materials, visual resources and environmental justice. See Final EIS Sections 4.16.1 and 4.16.2.

Air Quality: Any project that would individually have a significant air quality impact would also be considered to have a significant cumulative impact. Operational emissions would exceed the NSCAQMD and BAAQMD thresholds for NOx, CO, and PM10 for all Development Alternatives. Development of the selected alternative would therefore result in a cumulatively considerable net increase of NOx, CO, and PM10, and would be considered significant and adverse under local standards. See Final EIS Section 4.16.2.

Transportation: The Development Alternatives would cause certain roadway intersections in the vicinity of the Site to operate at an unacceptable LOS during future cumulative conditions. Mitigation is included within the MMEP to reduce potential impacts to the intersections listed below. See Final EIS Section 4.16.2.

- All Development Alternatives would significantly affect the U.S. 101 Northbound Ramps/South Interchange and Asti Road/South Interchange intersections under cumulative conditions. Mitigation includes the option of signalization or construction of a roundabout encompassing these two intersections. Under cumulative conditions, a roundabout would reduce potential impacts to a less-than significant level, while impacts would remain significant and unavoidable at both intersections with signalization.

- All Development Alternatives would significantly affect the U.S. 101 Southbound Ramps/South Interchange and Cloverdale Boulevard/South Interchange under cumulative conditions. Mitigation includes the option of signalization or construction of a roundabout encompassing these two intersections. Under cumulative conditions, a roundabout would reduce potential impacts to a less-than significant level. With signalization, impacts would be reduced to a less than significant level at the U.S. 101 Southbound Ramps/South Interchange intersection and would remain significant and unavoidable at the Cloverdale Boulevard/South Interchange intersection.

- Preferred Alternative A and Alternatives B and C would significantly affect Asti Road at the project entrance under cumulative conditions. Mitigation includes installation of a traffic signal and the main project entrance on Asti Road.

3.1.16 Unavoidable Adverse Effects

As discussed below in **Sections 3.1.3, 3.1.7, and 3.1.15**, there are unavoidable adverse effects associated with air quality and transportation under both near-term and cumulative conditions. Operational emissions would exceed local air district thresholds for all alternatives under near-

term and cumulative conditions even with implementation of feasible mitigation measures. Project-generated traffic would contribute to unacceptable LOS at local roadway intersections. Mitigation includes the option of signalization or construction of a roundabout for certain intersections. Roundabouts would reduce potential impacts to a less-than significant level in the near term and under cumulative conditions. Signalization would reduce potential impacts to a less-than-significant level in the near term but would result in cumulatively significant and unavoidable impacts at the following intersections: U.S. 101 Northbound Ramps/South Interchange, Asti Road/South Interchange, and Cloverdale Boulevard/South Interchange.

3.2 Comments on the Final EIS and Responses

After the issuance of the Final EIS on April 18, 2014, BIA received comment letters from agencies and from other interested parties. All comment letters on the Final EIS were reviewed and considered by BIA and are included within the administrative record. A list of comment letters and a copy of each letter received are included within **Attachment II**. Specific responses to these letters are included in the Response to Comments document, which is also included in **Attachment II**.

4.0 MITIGATION MEASURES

All practicable means to avoid or minimize environmental harm for the Development Alternatives have been identified and adopted. The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to Federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this decision. Specific best management practices and mitigation measures adopted pursuant to this decision are set forth below and included within the MMEP. Mitigation Measures are discussed in Section 5.0 of the Final EIS:

4.1 Land Resources

The following mitigation measure applies to Preferred Alternative A and Alternatives B, C, D, and E.

Preparation of Design-Level Geotechnical Recommendations

A. A design-level geotechnical report shall be prepared along with construction drawings and the Tribe shall adhere to the recommendations of the report.

4.2 Water Resources

The following mitigation measures apply to Preferred Alternative A and Alternatives B, C, D, and E.

Comprehensive Drainage and Flood Management Planning and Implementation

Prior to implementation of the selected alternative, the project proponent shall complete a comprehensive design-level Drainage Plan. This plan shall address drainage and flooding in the action area. The Drainage Plan will implement additional measures, including but not limited to additional pervious surfaces, stormwater retention ponds, additional underground stormwater retention capacity, and other measures to retain or infiltrate stormwater flows, such that no net increase in 100-year peak stormwater discharge occurs as a result of implementing the selected alternative.

Location of Facilities above the 100-Year Flood Height

The project proponent will ensure that the proposed groundwater well is installed above the FEMA-defined 100-year flood height, plus an additional 1-foot allowance to account for potential increases in flood height that would result from installation of levees surrounding the wastewater treatment plant, water treatment plant, and wastewater storage pond, as relevant. Specifically, the pump house including all electric and mechanical components, shall be installed at a level equivalent to at least 3 feet above the FEMA-delineated 100-year flood height, plus an additional 1 foot to offset flood height increases from installing flood control levees, as relevant.

A. In accordance with FEMA floodplain hydraulic modeling requirements, the Tribe shall develop a hydraulic model to quantify the impact of wastewater facilities and other related systems proposed for construction within the 100-year floodplain, and 500-year floodplain if required by FEMA, of the Russian River. Depending on the results of the hydraulic model (e.g., modeling indicates that flood height increases would exceed 1 foot), the Tribe shall complete a Conditional Letter of Map Revision (CLOMR) prior to implementation of a project and must submit a Letter of Map Revision (LOMR) request to FEMA within 6 months of completion of a project.

B. Under government to government consultation with FEMA, the Tribe shall seek participation in the National Flood Insurance Program (NFIP), which requires the Tribe to pass a resolution, adopt the effective Flood Insurance Rate Map maintained by FEMA, and adopt and enforce a flood damage prevention ordinance that meets or exceeds the minimum requirements of the floodplain regulation criteria of the program. If floodplain development occurs which modifies the existing physical features of a floodplain, the Tribe shall submit an application to FEMA for participation in the NFIP and comply with the minimum requirements of the NFIP prior to construction activities within the floodplain.

C. The Tribe shall establish a Tribal Mitigation Plan in accordance with 44 C.F.R. § 201.7, which addresses flood hazards and mitigation of those hazards. The plan shall include mitigation goals and strategies and other NFIP or floodplain management activities as described in the latest version of FEMA's Tribal Multi-Hazard Mitigation Guidance.

Water Quality Mitigation for Proposed Sprayfields

D. The applicant shall take the following measures to ensure no significant reduction in the quality of surface water or groundwater used for potable water supply under the selected alternative:

1. Sprayfield operation shall be managed such that no runoff or other surface discharge of treated effluent occurs from the sprayfield site. Sprayfields shall be monitored on a daily basis for signs of treated effluent pooling or potential runoff. In the event that substantial pooling, runoff, or potential signs of runoff are found, sprayfield discharge rate or management shall be modified to ensure that no runoff occurs. All drainages shall be protected from receiving sprayfield runoff by berms, ditches, or other measures. In no instance shall sprayfields be operated during natural precipitation events, or when standing water is located on-site. This measure will thereby prevent the migration of treated effluent into surface waters, ensuring that comingling of treated effluent with surface waters does not occur.

2. If the private water supply option is selected, groundwater quality shall be monitored for nutrients and pathogens. The applicant shall install at least three groundwater quality monitoring wells in the vicinity of the proposed water supply well, and shall sample each well at least monthly. Monitoring wells shall be screened at or above the level of the water supply well. In the event that pollutants associated with the sprayfield are detected in the groundwater in the vicinity of the water supply well, measures shall be taken to alter the pattern or intensity of wastewater/sprayfield disposal, to ensure that the water supply well does not become contaminated. In the event that the water supply well becomes contaminated with nutrients or pathogens associated with the proposed sprayfield, additional water treatment shall be installed, or a new well shall be installed, in order to ensure that drinking water quality meets Federal requirements.

Treated Effluent Storage Pond

E. If the private wastewater option is chosen, the following measures would be implemented by the Tribe:

1. The pond liner will be visually inspected once a year during the summer months.
2. Pond levels will be monitored and recorded at least once a month and reviewed for consistency with inputs (treated effluent and rain) and outputs (sprayfield irrigation, evaporation).

4.3 Air Quality

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E.

Dust Abatement Program

A. The applicant shall require construction contractors to implement an appropriate dust abatement program at least as stringent as the recommendations of the most recent version of the Northern Sonoma County Air Pollution Control District Rule 430, Fugitive Dust Emissions. These would include, but not be limited to, the following measures:

1. Covering open bodied trucks when used for transporting materials likely to give rise to airborne dust.
2. Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Containment methods can be employed during sandblasting and other similar operations.
3. Conduct agricultural practices in such a manner as to minimize the creation of airborne dust.
4. The use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.
5. The application of asphalt, oil, water or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which can give rise to airborne dusts.
6. The paving of roadways and their maintenance in a clean condition.
7. The prompt removal of earth or other material from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water, or other means.

B. All construction equipment shall be properly tuned and maintained in accordance with manufacturer's specifications.

C. General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions. During construction, trucks and vehicles in loading and unloading queues shall turn their engines off when not in use to reduce vehicle emissions.

D. Electricity from power poles rather than temporary diesel- or gasoline-powered generators shall be used to the extent feasible.

Transportation and Motor Vehicle Measures

E. Implement the Transportation and Motor Vehicle Measures below:

1. Incorporate public transit into project design
2. Limit idling time for commercial vehicles, including delivery and construction vehicles.
3. Use low or zero-emission vehicles where feasible, including construction vehicles and Tribal-fleet vehicles.
4. Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a web site or message board for coordinating rides.

5. Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.
6. If feasible, increase the cost of driving and parking private vehicles by, e.g., imposing tolls and parking fees.
7. Provide shuttle service to public transit.
8. Provide public transit incentives, such as free or low-cost monthly transit passes.
9. Implement parking cash-out program for employees, e.g., non-driving employees receive transportation allowance equivalent to value of subsidized parking.

F. The applicant shall require busses and diesel loading trucks to comply with the California Air Resource Board's Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling (California Code of Regulations, Title 13, Division 3, Article 1, Chapter 10, § 2458) which requires that the driver shall not idle for more than 5 minutes at any location, except in the case of passenger boarding where a ten minute limit is imposed, or when passengers are onboard.

Odor Management Plan

G. The operator of the WWTP shall formulate a progressive Odor Management Plan. This plan will allow the operator to respond to odor complaints and revise operations as necessary. The operator shall coordinate with the North Sonoma County Air Pollution Control District (NSCAPCD) to ensure that the operator is notified of all odor complaints received regarding the facility. The Plan shall discuss this complaint response protocol and include progressive measures to be made in the event of repeated, verified complaints. When the operator or NSCAPCD staff verifies strong odors at off-site receptors, the operator shall make changes in site operations to reduce the potential for odors. Odors may be reduced by installing additional odor control equipment, making process/treatment modifications, or other activities. Once complete, the Plan shall be submitted to the NSCAPCD for a 30-day period for review and comment.

Energy Efficient Measures

H. Implement the Energy Efficient Measures below:

1. Install efficient lighting and lighting control systems. Site and design building to take advantage of daylight.
2. Install energy efficient heating and cooling systems, appliances and equipment, and control systems.
3. Use solar heating, automatic covers, and efficient pumps and motors for pools and spas.
4. Bus Shelter for Existing/Planned Transit Service.
5. Parking Area Tree Cover (50 percent cover in 10 years).
6. Enhanced Recycling.
7. Drought tolerant landscaping and shade trees.

8. If financially feasible the Tribe could commit to construction of a facility that operates at a minimum level which is similar to the California Title 24 standards.

Indoor Air Quality

I. The following measures are recommended for all alternatives.

9. The Tribe shall ensure that ventilation of outdoor air is consistent with American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 62-19991 under all operating conditions.
10. To limit public exposure to environmental tobacco smoke, the Tribe shall provide non-smoking areas, or "smoke-free zones" in the casino gaming area.
11. The Tribe shall provide non-smoking rooms in the hotel.
12. The Tribe shall post signage in prominent locations alerting patrons and employees of areas that permit smoking, noting that environmental tobacco smoke has been found to be deleterious to health. Signage for employees shall include the employee break room.
13. Prior to hiring, prospective employees shall be informed that indoor smoking is permitted in portions of the buildings where they may be employed.
14. Prospective employees shall be given a brochure(s) describing the health effects of exposure to environmental tobacco smoke.

Greenhouse Gas Emissions

J. The Tribe shall compensate for indirect greenhouse gas (GHG) emissions which exceed 25,000 metric tons CO2e annually through the purchase of GHG credits offered at an approved GHG credit broker. The alternatives exceed 25,000 metric tons CO2e by the following amounts:

- Preferred Alternative A 27,211 CO2e
- Alternative B 11,748 CO2e
- Alternative C 8,928 CO2e
- Alternative D 1,430 CO2e
- Alternative E 18,758 CO2e

Credits shall be purchased once operations begin, and purchases may be phased over the first 10 years of operation.

4.4 Biological Resources

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E.

Upland Habitats

The Tribe shall compensate for the loss of coast live oak woodland and north coast riparian scrub habitat at a ratio no less than 1:1. Compensation will include on-site creation, restoration, or enhancement along the southern portion of the project area north of and parallel with Coyote Creek (channel I-2). On-site creation/restoration plans must be prepared by a qualified biologist prior to construction and be implemented within one year following construction. On-site creation/restoration sites shall be monitored for at least five (5) years to ensure their success.

A. Landscaped areas associated with project layout design shall be planted with native trees, shrubs, and ground covers. Landscaped areas shall avoid direct impacts to jurisdictional waters of the U.S.

No construction activities shall occur within the drip line of native trees that have been designated as avoided/protected from the project. If proposed construction activities are proposed within 50 feet of a protected tree, the Tribe shall clearly delineate the tree with appropriate fencing at the drip line.

Wetlands and Other Waters of the U.S.

The Tribe shall ensure that any loss of waters of the U.S. shall be compensated for by the preservation or creation of similar habitat at a ratio no less than 1:1, prior to construction. Permits secured for the project (Section 404 and Section 401) may require higher ratios. Compensation may include on-site creation, restoration, or enhancement, off-site creation, or payment into a Corps-approved mitigation bank for in-kind habitat credits. Mitigation bank credits must be obtained prior to construction. On-site or off-site creation/restoration plans must be prepared by a qualified biologist prior to construction and approved by the Corps. On or off-site creation/restoration sites shall be monitored for at least 5 years to ensure their success.

The Tribe shall incorporate into the Site drainage plan the flow and treatment Best Management Practices (BMPs) and the accompanying recommended design parameters (i.e. locations, sizing factors, soil specifications and plant selection) proposed in the preliminary Stormwater Quality Management Plan (Appendix Q of the FEIS).

Federally Listed Species

Impacts to aquatic habitat for federally listed salmonids during construction shall be minimized by implementing BMPs to protect water quality. This may include installing temporary siltation barriers (such as silt fencing), straw waddles, covering exposed soils, protecting inlet structures with sand bags, and reseeding exposed soils immediately following construction. These BMPs shall be fully described within the project's Storm Water Pollution Protection Plan (SWPPP), which shall be prepared prior to construction and implemented by the Tribe during construction. The Tribe shall also adhere to the measures provided under the EPA's NPDES General Construction Permit. Equipment and soil stock areas shall be placed at least 50 feet away from aquatic water sources.

Migratory Birds

B. The applicant shall make every effort to conduct any tree and shrub removal activities that are required for project construction outside of the migratory bird and raptor breeding season (March 1 through August 31). For construction activities that will occur between March 1 and August 31 of any given year, the applicant shall conduct preconstruction surveys in suitable nesting habitat within 500 feet of the Site for nesting raptors. Surveys shall be conducted by a qualified biologist. If nesting raptors are detected, the applicant will consult with a qualified biologist to develop suitable measures to avoid impacting breeding effort. Measures may include, but are not limited to:

    1. Maintaining a 500 foot buffer around each active raptor nest; no construction activities shall be permitted within this buffer except as described in Mitigation Measure G-2.
    2. Depending on conditions specific to each nest, and the relative location and rate of construction activities, it may be feasible for construction to occur as planned within the buffer without impacting the breeding effort. In this case (to be determined on an individual basis), the nest(s) shall be monitored by a qualified biologist during construction within the buffer. If, in the professional opinion of the monitor, the project would impact the nest, the biologist shall immediately inform the construction manager. The construction manager shall stop construction activities within the buffer until the nest is no longer active.

State and Local Special-Status Species

C. The applicant shall conduct a survey for bat roosts within suitable habitat on the Site. The survey shall be conducted by a qualified biologist. This survey shall include, at a minimum, a visual inspection of potential bat roosting sites, and may include an evening or night survey to observe emergence and/or to detect presence using sonic detectors (to detect bat vocalizations). If occupied bat roosts are detected, the applicant shall consult with a qualified biologist to develop measures that avoid impacting roosts. Measures may include, but are not limited to:

    1. Maintaining a 100-foot buffer around each roost; no construction activities shall be permitted within this buffer except as described in Mitigation Measure H-2.
    2. Exclusion of bats from roosts (ensuring that no bats are trapped in the roost). For maternity roosts, this measure may only be implemented once young have been reared and are able to freely leave the roost (typically before March and after August).

Prior to construction or grading activities, a survey for the western pond turtle shall be performed by a qualified biologist within 48 hours of construction. Surveys shall focus on potential upland basking sites. Any pond turtles found during surveys shall be relocated by a qualified biologist to suitable aquatic habitat not proposed to be impacted within the study area. Upon clearance of the site of pond turtles, appropriate exclusionary fencing (associated with Site BMPs) shall be erected to prohibit potential turtle upland migration through, or basking within, the active construction site.

4.5 Cultural and Paleontological Resources

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E.

Archaeological and Historical Resources

A. Due to the sensitivity of the general vicinity, appropriate recommendations consist of monitoring by a qualified archaeologist (familiar with Pomo prehistory and history) and Cloverdale Rancheria tribal representative during ground-disturbing activities that occur within 150 feet of perennial water courses including Porterfield Creek at the north and central portions of the project area and the unnamed creek at the south of the project area. An archaeological/Cloverdale Rancheria tribal monitoring program should be established that includes consultation between the consulting archaeologist, lead agency, and the project proponent. The program should formalize procedures for monitoring activities and clearly define the authority to temporarily halt/redirect ground-disturbing activities should resources be encountered.

B. If previously unidentified cultural materials are unearthed during construction, work should be halted within 35 feet of the find until a qualified archaeologist (familiar with Pomo prehistory and history) and a Cloverdale Rancheria tribal representative can assess the significance of the find. Prehistoric materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil ("midden") containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered stone tools, such as hammerstones and pitted stones. Historic-era materials might include stone, concrete, or adobe footings and walls; filled wells or privies; and deposits of metal, glass, and/or ceramic refuse. The BIA regional archaeologist shall be notified in the event of an unanticipated discovery. Procedures for post review discoveries without prior planning pursuant to 36 C.F.R. § 800.13 shall be followed. If any find is determined to be significant, the project proponent and a qualified archaeologist will meet to determine the appropriate course of action.

Human Remains

C. If human remains are encountered during ground-disturbing activities, pursuant to the Native American Graves Protection and Repatriation Act, Section 10.4 Inadvertent Discoveries, work should halt in the vicinity and the County Coroner, Cloverdale Rancheria tribal official, and the BIA regional archaeologist shall be notified immediately. At the same time, a qualified archaeologist and a Cloverdale Rancheria tribal representative should be contacted to assess the find. No further disturbance shall occur until the County Coroner, the Cloverdale Rancheria tribal official, and BIA have made the necessary findings as to the origin and disposition. If the human remains are determined to be of Native American origin, it is the Tribe's preference for interment. If interment

is not feasible the Tribe shall have the final authority as to disposition of the Native American human remains unless otherwise required by law.

4.6 Socioeconomic Conditions

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, and D:

Problem Gambling

A. The Tribe will adopt a policy statement on problem gambling.
B. The Tribe will contract with a gambling treatment professional to train management and staff to develop strategies for recognizing and addressing customers whose gambling behavior may strongly suggest they may be experiencing serious to severe difficulties.
C. The Tribe shall refuse service to any customer whose gambling behavior convincingly exhibits indications of problem or pathological gambling.
D. The Tribe shall respectively and confidentially provide the customer (as described above) with written information that includes a list of professional gambling treatment programs and self-help groups.
E. The Tribe shall prominently display materials describing the risks and signs of problem and pathological gambling behaviors. Materials shall also be prominently displayed that provide information on available programs for those seeking treatment for problem and pathological gambling disorders.
F. The Tribe shall implement procedures to allow for voluntary self-exclusion, enabling gamblers to ban themselves from a gambling establishment for a specific period of time.
G. The Tribe will enter into an agreement with Sonoma County for an annual contribution from the Tribe to local organizations that address problem gamblers in Sonoma County. Based on the previous calculation of the expected increase in problem gamblers in Sonoma County and trends in treatment of problem gamblers, the Tribe would compensate County social services for a minimum of equivalent to 1.4 licensed counselor positions. If the County does not have a mechanism to provide these services then the Tribe shall contribute an equivalent amount to problem gambling treatment and prevention programs which serve Sonoma County.

Employee Commuters

H. The Tribe shall create an employee Commuter Program that will provide a shuttle service for employee commuters from the Santa Rosa/Rohnert Park area. In addition, incentives (such as partial or full reimbursement) would be provided for commuting employees.

4.7 Transportation

The Tribe shall pay a full share or fair share for implementation of the following improvements. In cases where improvements would require an environmental study and design, the full share or fair share contribution shall also apply to the environmental study. A summary table of mitigation measures is provided within the MMEP. The table summarizes the mitigation

measures required for each alternative and the residual significance after mitigation which are discussed in detail below.

A. Preferred Alternative A and Alternative B for near term and cumulative, Alternative C for cumulative scenario (by 2030) only. The project sponsor would pay 100% of the costs to install traffic signals at one central main entrance to the Site on Asti Road, and to construct a northbound right-turn lane and southbound left-turn lane on Asti Road at the site entrance. Supplementary driveways to the north and south of this signalized access would be configured to limit access to right-turn in/right-turn out only. The Tribe shall enter into an agreement with the County regarding maintenance of the traffic signal.

Mitigation Measures B and C shall both be implemented OR Mitigation Measure D shall be implemented.

B. For All Development Alternatives for near term and cumulative: The project sponsor would pay their fair share contribution towards the installation of traffic signals at the intersection of U.S. 101 Northbound Ramps / South Interchange.
C. For Preferred Alternative A and Alternatives B and C in near term and cumulative, Alternative D and E in cumulative scenario only: The project sponsor would pay their fair share contribution towards the installation of traffic signals at the intersection of Asti Road / South Interchange.
D. For All Development Alternatives for near and cumulative: The project sponsor would pay a fair share contribution towards the construction of a roundabout that encompasses the intersections of U.S. 101 Northbound Ramps / South Interchange and Asti Road /South Interchange. An Intersection Control Evaluation would need to be completed as the first step of Caltrans' Project Initiation Document process.
E. For All Development Alternatives in near term and cumulative: The project would install either an off-street path or sidewalk along Asti Road between the SMART track/multi-use trail crossing of Asti Road and the Site entrance.
F. For Alternative D in near term and cumulative: Prior to construction, the Tribe shall redesign the parking plan to provide an additional 135 parking spaces. These additional spaces shall be added so as not to substantially change the proposed site layout.

Mitigation Measures G and H shall both be implemented OR Mitigation Measure I shall be implemented.

G. For All Development Alternatives in the cumulative scenario only: The project sponsor would pay their fair share contribution towards the installation of traffic signals at the intersection of Cloverdale Boulevard / South Interchange.
H. For All Development Alternatives in the cumulative scenario only: The project sponsor would pay their fair share contribution towards the installation of traffic signals at the intersection of U.S. 101 Southbound Ramps / South Interchange.
I. For All Development Alternatives in the cumulative scenario only: The project sponsor would pay their fair share contribution towards the construction of a roundabout that encompasses the intersections of Cloverdale Boulevard / South Interchange and the U.S. 101 Southbound Ramps / South Interchange.

J. For Alternative E in the cumulative scenario only: The project sponsor would pay their fair share contribution towards the installation of traffic signals at the intersection of U.S. 101 Northbound Ramps / Citrus Fair Drive.

K. At least 30 days prior to grading and construction, the Tribe shall prepare and submit a Construction Traffic Control Plan to Sonoma County, the City of Cloverdale, and Caltrans District 4. The Plan shall specify the primary routes for construction traffic, the schedule/timing of deliveries of heavy equipment and building materials, and the schedule/timing of any off-site fill import/export. The Tribe shall consider all comments received prior to construction and incorporate suggested revisions to the maximum extent feasible and as required by laws governing State highway and local roadway facilities.

L. The Tribe shall make funding for implementation of the recommended near term road improvements available prior to initiation of construction. Funds shall be placed in an escrow account for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design (funding shall be for design standards consistent with those required for similar facilities in the region, unless a deviation is approved by the entity with jurisdiction), obtain approvals/permits for, and construct the recommended road improvement (note that the entity may request that the Tribe directly perform some of these tasks). In some cases, the governmental entity may feel that an improvement slightly differing from that recommended may better facilitate traffic flow while still mitigating the alternative's impact. In this case, the terms of the escrow account shall allow use of the funds provided by the Tribe to implement the improvement even though the improvement differs slightly from that recommended by the traffic impact study.

4.8 Land Use

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E:

A. In accordance with FAR Part 77.17 the Tribe has submitted FAA form SF 7460-1, "Notice of Proposed Construction or Alteration" for FAA review. Pertinent information about the alteration and appropriate attachments showing the type and location of the alteration has been submitted. The Applicant will continue to consult with FAA and will adhere to the recommendations of the FAA, concerning lighting and construction activities, received in response to the Applicant's form SF7460-1 submission. Upon the completion of engineering-level drawings and construction plans and prior to construction, the Tribe will submit additional details to FAA regarding building/antennae locations and building/antennae heights.

To ensure that the proposed wastewater ponds do not become an attractant to hazardous wildlife (such as ducks, geese, and other birds), the pond shall be monitored for one year following construction by a qualified biologist on a monthly basis to determine if hazardous wildlife are being attracted to it. Should it be determined that the pond is an attractant, it shall be covered to eliminate wildlife access. Acceptable materials that could be used to cover the pond include solid covers, grids, mesh, or netting. In addition, all lighting, storm water drainage, and landscaping plans at the WWTP site shall be designed to reduce or negate wildlife attractants. A wildlife hazard biologist shall review all plans.

4.9 Public Services

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E unless otherwise noted:

Municipal Water Agreement (If municipal option is chosen)

A. The Tribe would enter into a service contract with the City of Cloverdale for water service. The service contract would address the proportionate share of costs for the construction of water distribution lines along Asti Road which would serve the project and other developments. If municipal water cannot be provided the Tribe would choose the private water supply option.

Municipal Wastewater Agreement (If municipal option is chosen)

B. The Tribe would enter into a service contract with the City of Cloverdale for wastewater service. If municipal water cannot be provided the Tribe would choose the private wastewater option.

Law Enforcement Service Agreement

C. The Tribe would enter into a service contract with the City of Cloverdale Police Department or Sonoma County Sheriff's Office for the provision of primary law enforcement services to the Site.

> Alternatives A – D: It is anticipated that approximately 2.0 to 2.5 new sworn officer positions would be needed to adequately provide services to the Site and surrounding community. The actual number of sworn officer positions and other costs would be negotiated with the City or County. It is also recommended that the Tribe fund a fair share of the cost of a new police facility for the City of Cloverdale should the City propose this improvement.
>
> Alternative E: It is anticipated that approximately a 0.5 new sworn officer position would be needed to adequately provide services to the Site and surrounding community. The actual number of sworn officer positions and other costs would be negotiated with the City or County. It is also recommended that the Tribe fund a fair share of the cost of a new police facility for the City hould the City propose this improvement.

Fire Protection Service Agreement

D. The Tribe would enter into a service contract with the Cloverdale Fire Protection District for the provision of primary fire protection services to the Site. See Final EIS Appendix N for letter of intent between the Tribe and City of Cloverdale.

Alternatives A - C: It is anticipated that the Tribe would pay a fair share of the costs for (1) an aerial apparatus recommended for the Alexander Valley Resort, (2) regional training to fight multi-story structure fires, (3) other apparatus within the District's apparatus replacement program and (4) staffing needs.

Alternative D and E: It is anticipated that the Tribe would pay a fair share of the costs for apparatus within the District's apparatus replacement program and staffing needs.

Ambulance Service Agreement

E. Prior to operation, the Tribe shall enter into a service agreement with the Cloverdale Healthcare District for provision of ambulance services to the Site. This agreement would include compensation for responses that do not result in transportation and terms for renegotiation. The agreement may include proportional assessment of costs for staffing and vehicle replacement.

Emergency Response Plan

F. The Tribe would develop an emergency response plan (emergency medical, pandemic, natural disaster, failure of private water/wastewater facilities if applicable) in coordination with the local fire protection and emergency medical service providers.

Alternatives A - D: The Tribe would provide a basic level of EMS care on site including EMT-level staff and Automatic External Defibrillators.

Food and Beverage Standards

G. The following mitigation measure shall apply to the proposed development until food and beverage handling standards are adopted within a Tribal-State Compact (the Compact once executed shall supersede the following requirement):

The Tribe shall adopt and comply with standards no less stringent than state public health standards for food and beverage handling at food and beverage establishments. The Tribe shall allow inspection of food and beverage services by state, county, or city health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those State, County, or city health inspectors.

4.10 Noise

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E:

A. Construction activities shall be limited to the daytime hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and shall be prohibited weekends and holidays.

B. To reduce daytime noise impacts due to construction, the applicant shall require construction contractors to implement the following measures:

1. Equipment and trucks used for construction shall use the industry standard noise control techniques (e.g., standard mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds).
2. Stationary noise sources shall be located as far from adjacent receptors, whenever feasible, and they shall be muffled and enclosed within temporary sheds and incorporate insulation barriers or other measures.

C. For the duration of construction, the Tribe shall designate a construction noise coordinator. A sign shall be posted during construction at the Site, visible from Asti Road, which includes the permitted construction days and hours and a phone number contact for the construction noise coordinator. The construction noise coordinator shall track noise complaints and coordinate with construction contractors to implement technically and economically feasible measures to address complaints.

D. Rooftop air conditioners and other continuously operated 24-hour equipment (i.e., rooftop chillers, refrigeration systems, and exhaust fans) shall be located at the furthest away point from the nearest residential receptor and/or include additional noise attenuation (i.e., rooftop barriers or parapets between the equipment and the nearest sensitive receptor to absorb or deflect the noise) as necessary to reduce noise levels from the equipment to below 50 decibels at the nearest off-site sensitive receptors.

4.11 Hazardous Materials

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E:

Construction Reporting

A. In the event that contaminated soil and/or groundwater or other unknown hazardous materials are encountered during construction-related earthmoving activities, or during operation of the facility, all work shall be halted until a qualified individual can assess the extent of contamination. If contamination is determined to be significant, representatives of the Tribe shall consult with EPA to determine the appropriate course of action, including the development of a sampling plan and remediation plan if necessary. If concentrations of hazardous substances (i.e. volatile organic compounds from the adjacent MGM Brakes Assembly Plant) are identified in the groundwater during preliminary testing and development of an onsite potable groundwater source, the Tribe shall implement regular groundwater monitoring and install an appropriate water treatment system to reduce and/or eliminate concentrations from the groundwater supply.

4.12 Visual Resources

The following mitigation measures are recommended for Preferred Alternative A and Alternatives B, C, D, and E:

Visual Resources

A. The external appearance of the proposed project facilities, including the choice of color and materials, shall seek to reduce the visual impact of the proposed facilities. Bright reflective materials and colors shall be avoided in favor of colors that blend into the natural environment, mimic an agricultural scale structure or nearby residential structures.

Light and Glare

B. All outdoor light sources shall be properly shielded and installed to prevent light trespass on adjacent properties. Any flood or spot lamps must be aimed no higher than 45 degrees above straight down (half-way between straight down and straight to the side) when the source is visible from any offsite residential property or public roadway. Project signage will refrain from using excessively bright or neon signage, and will be designed to reduce visual impacts. Dark sky lighting techniques, including light shielding to prevent spill and fixtures for parking and walkways that direct all light to the ground, will be incorporated into the project.

C. All new outdoor roadway lights within the Site should consist of high-pressure sodium or low-wattage metal halide or comparable sources. As well, the intensity of the lights should be kept to a minimum necessary for safety and commerce as determined by the Tribe.

D. The proposed project facilities shall be painted with flat colors to reduce or eliminate glare.

4.13 Mitigation Measures Not Adopted

The CEQ NEPA regulations (40 C.F.R. § 1505.2(c)) call for identification in the ROD of any mitigation measures specifically mentioned in the FEIS that are not adopted. There is no mitigation listed in the FEIS that is not included in this ROD.

5.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)

Either the No-Action Alternative (Alternative F) or the Commercial Retail-Office Space Alternative (Alternative E) would result in the fewest effects to the natural and human environment. The No-Action Alternative would be environmentally preferred. The No-Action Alternative, however, would not meet the stated purpose and need. Specifically, it would not provide the Tribe with a restored trust land base or provide a viable economic development which would help fund tribal government programs, provide employment opportunities for its members, and allow the Tribe to become economically self-sufficient and achieve s elf-determination. The No-Action Alternative would also likely result in substantially less

economic benefits to Sonoma County and the City of Cloverdale than the Development Alternatives.

Of the Development Alternatives, Alternative E would result in the fewest adverse effects on the human environment. Alternative E would have the fewest effects due to a lesser amount of new development in comparison to any of the other Development Alternatives. However, Alternative E would generate less revenue, and therefore reduce the number of programs and services the tribal government could offer tribal members and neighboring communities. Alternative E is the Environmentally Preferred Development Alternative, but it would not fulfill the purpose and need for the Proposed Action stated in the EIS.

6.0 PREFERRED ALTERNATIVE

For the reasons discussed herein, the Department has determined that Alternative A is the Preferred Alternative. Of the alternatives evaluated within the EIS, Alternative A would best meet the purpose and need. Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the tribal government. Under such conditions, the tribal government would be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Tribe, its members, and local communities with greater opportunities for employment and economic growth. Alternative A would also allow the Tribe to implement the highest and best use of the property. Finally, while Alternative A would have slightly greater environmental impacts than either of the environmentally preferred alternatives, those alternatives do not meet the purpose and need for the Proposed Action to the same extent as Alternative A, and the environmental impacts of Preferred Alternative A are adequately addressed by the mitigation measures adopted in this ROD.

Alternatives B, C, D and E, while slightly less intensive than Alternative A, would require similar levels of mitigation for identified impacts; however, the economic returns would be smaller than under Alternative A and the more limited development is not the most effective use of either the land or the Tribe's capital resources. The Tribe needs a development option that would ensure adequate capital resources to not only fund tribal programs, but fund mitigation measures for identified impacts and anticipated payment obligations to local jurisdictions. The reduced revenue anticipated from Alternatives B, C, D and E would limit the Tribe's ability to fund both tribal programs and mitigation measures. Alternative E, a non-gaming development, would have limited competitive ability to draw patrons from the greater population centers within Sonoma County compared to the gaming alternatives.

Alternative A is the alternative that best meets the purpose and need of the Tribe and BIA while preserving the natural resources of the Site. Therefore, Alternative A is the Department's Preferred Alternative.

7.0 ELIGABILITY FOR GAMING PURSUANT TO THE INDIAN GAMING REGULATORY ACT

7.1 Introduction

As discussed in the Department's letter to the Tribe dated December 12, 2008, the Tribe meets the requirements of the Restored Lands Exception of Section 20 of IGRA and the Department's implementing regulations contained at 25 C.F.R. Part 292 because the Tribe qualifies as a "restored tribe," and the Site qualifies as "restored lands."[22] Accordingly, the Tribe may conduct gaming on the Site upon its acquisition in trust.

7.2 Legal Framework

Analysis of the Restored Lands Exception is governed by IGRA and its implementing regulations at 25 C.F.R. Part 292.

1. The Indian Gaming Regulatory Act

The IGRA was enacted "to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."[23] Section 20 of IGRA generally prohibits gaming activities on lands acquired into trust by the United States on behalf of a tribe after October 17, 1988. However, Congress expressly provided that lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition" are not subject to IGRA's general prohibition. 25 U.S.C. § 2719 (b)(1)(B)(iii).

2. The Department's Part 292 Regulations

During the Bush Administration, the Department promulgated regulations to implement IGRA. Under those regulations, the Restored Lands Exception allows for gaming on newly acquired lands when all of the following conditions in Section 292.7 are met:

(a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
(b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;

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[22] *See* Letter from George T. Skibine, Acting Deputy Assistant Secretary – Policy and Economic Development, to Patricia Hermosillo, Chairperson, Cloverdale Rancheria of Pomo Indians of California (Dec. 12, 2008), in Office of Indian Gaming File, Tab 6.

[23] *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002). *See* also 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to "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").

(c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
(d) The newly acquired lands meet the criteria of "restored lands" in § 292.11.

7.3 Restored Lands Exception Analysis

Part 292 requires two inquiries for determining whether newly acquired land meets this exception: (1) whether the tribe is a "restored tribe," and (2) whether the newly acquired land meets the "restored land" criteria set forth in Section 292.11.

7.3.1 Restored Tribe Criteria

Sections 292.7 (a) - (c) provide criteria for determining whether a tribe is a "restored tribe." As discussed below, the Tribe meets these criteria, and, thus qualifies as a "restored tribe."

1. The Cloverdale Rancheria of Pomo Indians of California was federally recognized.

In order to show that a tribe was at one time federally recognized for purposes of Section 292.7(a), a tribe must demonstrate one of the following:

(a) The United States at one time entered into treaty negotiations with the tribe;
(b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
(c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
(d) The United States at one time acquired land for the tribe's benefit; or
(e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.[24]

The Tribe satisfies subsections (b), (d) and (e). The record demonstrates that the United States acquired 27.5 acres of land for the Tribe in 1921, using funds appropriated under the authority of the Acts of June 21, 1906 and June 8, 1908.[25] These lands became the Cloverdale Rancheria. Further, the Tribe voted to accept the IRA on June 11, 1935. The Department maintained a government-to-government relationship with the Tribe until termination in 1965. Therefore, the Tribe was at one time federally recognized.

2. The Cloverdale Rancheria of Pomo Indians of California lost its government-to-government relationship.

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[24] 25 C.F.R. § 292.8.

[25] Act of June 21, 1906, 34 Stat 325; Act of April 30, 1908, 35 Stat. 70; *See* Cloverdale Rancheria Legal Description (March 11, 1921), in Tribe's 2010 Application, Ex. B; Notice of Federal Land Purchase for Cloverdale Rancheria (Feb. 10, 1921), in *id.* Ex. L.

Once a tribe establishes that it was at one time federally recognized, it must show that it lost its government-to-government relationship with the United States. A tribe can show that its government-to-government relationship was terminated by one of the following means

(a) Legislative termination;
(b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or
(c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.[26]

Here, the Tribe satisfies subsection (a). Congress enacted the California Rancheria Act in 1958, which provided a procedure for the termination of forty-one designated rancherias and reservations in California.[27] In 1965, the Secretary of the Interior published a notice terminating the United States' government-to-government relationship with the Cloverdale Rancheria.[28]

3. The Cloverdale Rancheria of Pomo Indians of California was Restored to Federal Recognition.

If a tribe can successfully show that it was at one time federally recognized and that its government-to-government relationship with the United States was terminated, then it must show that it was restored to Federal recognition. A tribe can show that is was restored to Federal recognition by one of the following:

(a) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);
(b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or
(c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.[29]

The Tribe meets subsection (c). The Cloverdale Rancheria of Pomo Indians was restored to Federal recognition pursuant to a Stipulation for Entry of Judgment in *Tillie Hardwick, et al. v.*

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[26] 25 C.F.R. § 292.9.

[27] Act of August 18, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390.

[28] *See* Cloverdale Rancheria, Calif, Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 30 Fed. Reg. 16274 (Dec. 30, 1965), in Office of Indian Gaming File, Tab 3.

[29] 25 C.F.R. § 292.10.

United States.[30] Notice of the Tribe's restoration was published in the *Federal Register* on June 11, 1984.[31] The Tribe was, therefore, restored to Federal recognition.

The Cloverdale Rancheria of Pomo Indians of California is a restored tribe.

The Tribe satisfies the requirements of 25 C.F.R. § 292.7 (a) - (c), and thus qualifies as a "restored tribe" for purposes of IGRA. The United States purchased land for the Tribe and created the Cloverdale Rancheria in 1921. The United States maintained a government-to-government relationship with the Tribe until that relationship was terminated in 1965, and Federal recognition was restored pursuant to the *Tillie Hardwick* litigation.

7.3.2 Restored Lands Criteria

Section 292.7(d) requires that newly acquired land meet the criteria set forth in Section 292.11 to qualify as "restored land." As discussed below, the Site meets the criteria and thus qualifies as "restored land."

In order for newly acquired lands to qualify as "restored lands" for purposes of Section 292.7, the tribe acquiring the lands must meet the requirements of Section 292.11:

(a) If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that either:
  (1) The legislation requires or authorizes the Secretary to take the land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or
  (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.

(b) If the tribe is acknowledged under § 83.8 of this chapter, it must show that it:
  (1) Meets the requirements of § 292.12; and
  (2) Does not already have an initial reservation proclaimed after October 17, 1988.

(c) If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12.[32]

Here, the relevant paragraph is (c) and the criteria of Section 292.12. The Cloverdale Rancheria of Pomo Indians was restored to Federal recognition pursuant to a Stipulation for Entry of Judgment in *Tillie Hardwick*. Accordingly, the Tribe must meet the requirements of Section 292.12:

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[30] No. C-79-1710-SW; N.D. Calif. (Dec. 22, 1983).

[31] 49 Fed. Reg. 24,084 (June 11, 1984).

[32] 25 C.F.R. § 292.11.

(a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:
   (1) The land is within reasonable commuting distance of the tribe's existing reservation;
   (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
   (3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
   (4) Other factors demonstrate the tribe's current connection to the land.

(b) The tribe must demonstrate a significant historical connection to the land.

(c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:
   (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
   (2) 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.[33]

1. Section 292.12(a): In-State and Modern Connections

Section 292.12(a) requires that the newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population. The Site is in a State (California) where the Tribe is now located. The Tribe has maintained government offices in the City of Cloverdale on South Cloverdale Boulevard since 1994.[34] Additionally, of the total tribal population of about 563 members, approximately 50 percent of the Tribe's members live within a 30-mile radius of the Site, and 67 percent within a 50-mile radius.[35] The Site is, therefore, located within the State or States where the Tribe is now located.

Additionally, Section 292.12(a) requires a tribe demonstrate a modern connection to the land by way of four different options. Here, the Tribe meets subsections 292.12(a)(3) and 292.12(a)(4). Section (3) states that a tribe meets the modern connection requirement if the land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed

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[33] 25 C.F.R. § 292.12. The State erroneously suggests that restored lands must be the same size as a tribe's former reservation. Neither IGRA nor its implementing regulations require "restored land" to be equivalent in size to a tribe's former reservation.

[34] *See* Letter from George T. Skibine, Acting Deputy Assistant Secretary – Policy and Economic Development, to Patricia Hermosillo, Chairperson, Cloverdale Rancheria of Pomo Indians of California (Dec. 12, 2008) at 4, in Office of Indian Gaming File, Tab 6.

[35] Presentation of the Cloverdale Rancheria of Pomo Indians of California (2014) [hereinafter Tribe's 2014 Presentation], in Office of Indian Gaming File, Tab 8.

at that location for at least 2 years at the time of the application for land-into-trust. The Tribe submitted its application to acquire the Site in trust to BIA in 2008. The Tribe maintains a tribal headquarters on South Cloverdale Boulevard. The headquarters is approximately three miles from the Site. The headquarters has existed at this location since 1994, well past the regulatory requirement of two years. Therefore, the Tribe satisfies Section 292.12(a)(3) in establishing a modern connection.

The Tribe also meets the criteria in subsection (4). Subsection (4) allows a tribe to show a modern connection through other factors that demonstrate the tribe's current connection to the land. Although the Tribe was terminated in 1965, tribal members and their descendants continued to reside in the Cloverdale area. For example, at the time of restoration, two original allotment distributees of the former Cloverdale Rancheria still lived on their allotments.[36] These allotments are adjacent to the land to be acquired in trust. Accordingly, the Tribe can show a modern connection to the land.

2. Section 292.12(b): Significant Historical Connection

Section 292.12(b) requires that a tribe must demonstrate a significant historical connection to the land. A "significant historical connection" to land can be established if the "tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land."[37] The Tribe meets this requirement. The Tribe once occupied lands in the vicinity of the Site, which is contiguous to the former Cloverdale Rancheria.[38] The Tribe occupied the former Cloverdale Rancheria beginning in 1921 when the United States acquired the lands for the Tribe.[39] Moreover, the Haas Report shows that the Tribe voted to accept the IRA on June 11, 1935,[40] thus, providing documentation of the Tribe's occupation of the Cloverdale Rancheria. Additionally, there is a tribal cemetery within the Tribe's former Rancheria boundaries, which tribal members continue to use. The Tribe also submitted information regarding its ancestral and indigenous use of the lands in Cloverdale.[41] This provides further evidence of its historical connection with the lands. Thus, the Tribe has successfully demonstrated that it has significant historical connections to the Site.

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[36] *See* Letter from George T. Skibine, Acting Deputy Assistant Secretary – Policy and Economic Development, to Patricia Hermosillo, Chairperson, Cloverdale Rancheria of Pomo Indians of California (Dec. 12, 2008) at 4, in Office of Indian Gaming File, Tab 6.

[37] 25 C.F.R. 292.2.

[38] *See* December 2007 Request for Indian Land Determination, Cloverdale Rancheria of Pomo Indians of California, Memorandum from Michael Cox and Patricia Zell regarding Request for Indian Land Determination for the Cloverdale Rancheria of Pomo Indians of California, December 10, 2007, p. 13-14; *see also* Map in Section 1.3, supra.

[39] *See* Cloverdale Rancheria Legal Description (March 11, 1921), in Tribe's 2010 Application, Ex. B

[40] Theodore Haas, Ten Years of Tribal Government Under IRA (1947)(Haas Report) at 15.

[41] December 2007 Request for Indian Land Determination, Cloverdale Rancheria of Pomo Indians of California.

3. Section 292.12(c): Temporal Connection

Section 292.12(c) states that the tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. A tribe can show this by two ways: (1) the land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or (2) 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. Here, the Tribe meets both requirements. The Tribe's request to acquire the Site into trust is its first request for trust lands since the Tribe was restored to Federal recognition in 1983. Further, the Tribe's request was made in 2007, within 25 years of the Tribe being restored to Federal recognition in 1983 and the Tribe is not gaming on other lands. Therefore, the Tribe can show a temporal connection in accordance with the requirements of Section 292.12(c).

The Site qualifies as restored lands.

The Tribe satisfies the requirements of Sections 292.7 and 292.12 and, thus, the Site qualifies as "restored lands" for purposes of IGRA. The Tribe demonstrated its in-state and modern connections, its significant historical connections to the Site, and its temporal connection to the Site. Accordingly, the Site meets the requirements necessary to determine that it will be restored lands upon its acquisition in trust.

Restored Lands Exception Conclusion

As discussed above, the Tribe is a restored tribe and the Department has determined that the Site satisfies the criteria for restored lands. Upon its acquisition in trust, the Site is eligible for gaming pursuant to the Restored Lands Exception of IGRA, Section 2719(b)(1)(B)(iii).

8.0 TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465. The regulations found at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5.

8.1 25 C.F.R. § 151.3 – Land acquisition policy

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

(1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
(2) When the tribe already owns an interest in the land; or
(3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The Tribe's application satisfies Section 151.3(a)(3) because acquisition of the Site will facilitate tribal self-determination and economic development. Through the exercise of

tribal governmental authority, the Site will be subject to the Tribe's management, protection, and conservation after it is acquired in trust. Development of the casino resort will generate revenue to facilitate tribal self-determination by funding educational, social, and employment programs for tribal members. The Tribe also needs additional sources of revenue to adequately preserve its community and cultural history. With revenues generated by the development of this trust acquisition, the Tribe plans to construct and operate a cultural center.

The revenue derived from the Tribe's casino resort will also fund several essential tribal programs that will substantially benefit its members. The Tribe requires funds to conduct research to ascertain its members' health needs and implement a comprehensive health care plan to meet those needs. The Tribe also plans to create a program to alleviate the high costs of prescription medications and health equipment for its elders.

Additionally, the Tribe requires economic development to facilitate the improvement and expansion of its existing housing program. The Tribe plans to increase its housing program services by 25 percent, and to increase as necessary thereafter in the future.[42] Acquiring the Site in trust will enable the Tribe to generate enough revenue to construct housing that allows all of its members to live in one tribal community.

Currently, there are approximately 315 adults and 248 children enrolled in the Tribe.[43] With available Federal funding, the Tribe administers a number of programs that benefit its members. Despite these programs, many tribal members continue to live in poverty and struggle to find employment. In 2005, the Tribe's unemployment rate was 28 percent, and of those employed, 47 percent were below the poverty level.[44] The economic development resulting from this acquisition will supplement the Tribe's current government assistance and provide further funding for tribal government operations, tribal programs, and new programs designed to offer essential services. The funds from the casino resort will also be used to preserve the Tribe's culture and history. Any additional resources available to the Tribe will go towards improving employment and educational opportunities, health services, and housing.

Housing.[45]

The Tribe's housing program administers funds from the Indian Housing Block Grants to low-income families. The Tribe has identified that nearly 25 incomes of its families are extremely low- to low-income, and either need housing or assistance in retaining current housing. The Tribe's Federal funding is not sufficient to meet the housing needs of all its members, and less than half of tribal members receive limited assistance from the available

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[42] Tribe's 2010 Application at 5.

[43] Tribe's 2014 Presentation, in Office of Indian Gaming File, Tab 8.

[44] U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, 2005 AMERICAN INDIAN POPULATION AND LABOR FORCE REPORT at 12, in Office of Indian Gaming File, Tab 5. Employment data for the Tribe was not available in the BIA's most recent update following the 2005 report. *See* U.S. DEP'T OF THE INTERIOR, OFFICE OF THE ASSISTANT SECRETARY – INDIAN AFFAIRS, 2013 AMERICAN INDIAN POPULATION AND LABOR FORCE REPORT, *available at* http://www.bia.gov/cs/groups/public/documents/text/idc1-024782.pdf (last visited Nov. 9, 2015).

[45] Tribe's 2010 Application at 5; Tribe's 2014 Presentation at 5.

funding. Currently, the Tribe's housing program only serves the neediest segment of the tribal population. Due to these restrictions, the Tribe is unable to address the needs of members who are unemployed or only slightly above the poverty level. The Tribe also wants to develop housing that will allow all of its members to live in one tribal community.

Education[46]

The Tribe provides only limited assistance to its youth. The Tribe currently offers higher education and vocational scholarships to approximately 3 percent of its tribal members. The Tribe can only afford to supplement 8 percent of the actual costs of tuition and books, and is unable to assist with other educational costs such as housing, school supplies, and transportation. With its gaming revenue, the Tribe plans to increase the funding for its educational program by 50 percent.

Social Services[47]

The Tribe currently operates a Social Services Program that provides vouchers to tribal members for food, clothing, and other necessities. The Tribe, however, serves only 20 percent of its members with this program. Using revenue generated by the casino resort, the Tribe plans to increase that number by 50 percent.

Further, the Tribe reports that it will use this revenue to implement a variety of programs that address the Tribe's current demands. The Tribe needs resources to promote the general welfare of its youth by guaranteeing access to food, clothing, and recreational activities. The Tribe is also unable to meet all the needs of its disabled members. Revenue from the casino resort will allow the Tribe to provide its disabled members with in-home care, equipment, medication, and physical and financial support. Additionally, the Tribe needs funds to assist tribal members who have special nutritional requirements and to offer support for burial assistance.

The Tribe lacks the ability to meet the needs of its elders, who comprise approximately 15 percent of the Tribe. Funds are required to provide in-home care, medication, transportation, equipment, dietary needs, rehabilitation, and hospice services. The Tribe also plans to implement a program that subsidizes the costs of prescription medications and other essential health equipment for its elders.

Health Services[48]

Revenue from the proposed casino resort will allow the Tribe to create a comprehensive health care program to meet the needs of its members who currently do not receive health care assistance. The health care program will offer health, dental, and vision insurance and provide additional support for medication and transportation.

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[46] *Id.*

[47] Tribe's 2010 Application at 6; Tribe's 2014 Presentation at 5.

[48] *Id.*

Child Care[49]

The Tribe's Child Care Program services approximately 2 percentof tribal children per year. The current funding is insufficient to help all parents who are in need of child care assistance. For the past few years, families have been placed on a waiting list before they could enroll in the Child Care Program. With the recent cut backs to the Temporary Assistance to Needy Families program, Sonoma Works, and the 4C programs in the State, the waiting list has increased. The Tribe reports that with the revenue generated from the proposed casino resort economic development, the Tribe's Child Care Program will reach at least 20 percent more children. The Tribe also plans to open a child care center for children. The child care center will eliminate the waiting list and allow parents to focus on attending school, searching for employment, and maintaining current employment, while their children are cared for in a safe environment.

Employment[50]

The Tribe provides no employment assistance. Funding is needed to provide resources to support employment.

Tribal Administration[51]

The funds that the Tribe receives from the Federal Government for tribal administration and other needs are insufficient. The Tribe plans to supplement funds provided to it by Public Law 93-638 by at least 25% so that it can establish a self-sufficient tribal government that has the resources to effectively carry out its day-to-day responsibilities. With a limited staff and insufficient office space, the Tribe is unable to meet its administrative burden. The Tribe reports that revenue from the casino resort will be used to obtain the necessary equipment, supplies, and staff to alleviate the demands on the tribal government.

The Regional Director determined, and we concur, that the acquisition of the Site is necessary to facilitate tribal self-determination and economic development.

8.2 25 C.F.R. § 151.11 - Off-reservation acquisitions

The Tribe's application is considered under the off-reservation criteria of Section 151.11 because the Tribe is landless and has no reservation. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) – (c), and (e) – (h), as discussed below.

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[49] Tribe's 2010 Application at 5; Tribe's 2014 Presentation at 5.

[50] Tribe's 2014 Presentation at 5.

[51] Tribe's 2010 Application at 6; Tribe's 2014 Presentation at 5.

8.3 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) requires consideration of the existence of statutory authority for the acquisition and any limitations on such authority.

In *Carcieri v. Salazar*, 555 U.S. 379 (2009), the United States Supreme Court held that the Secretary's authority to acquire land in trust for Indian tribes under the first definition of "Indian" in the Indian Reorganization Act (IRA), 25 U.S.C. § 461 et seq., extended only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934. We have evaluated the applicability of *Carcieri* to the Tribe's application and have determined that the Secretary is authorized to acquire land in trust for the tribe under 25 U.S.C. § 465.

The Department has determined that the question of whether a tribe was "under federal jurisdiction" for purposes of *Carcieri* entails a two-part inquiry.[52] The first question is to examine whether there is a sufficient showing in the Tribe's history, at or before 1934, that it was under Federal jurisdiction, *i.e.*, whether the United States had taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the Tribe or in some instances tribal members – that are sufficient to establish Federal obligations, duties, or responsibility for or authority over the tribe by the Federal Government.[53] Once having identified that the Tribe was under Federal jurisdiction prior to 1934, the second question is to ascertain whether the Tribe's jurisdictional status remained intact in 1934.[54] The Department recognizes however that some activities and interactions could so clearly demonstrate Federal jurisdiction over a federally recognized tribe as to render elaboration of the two-party inquiry unnecessary.[55] The Section 18 elections under the IRA held between 1934 and 1936 are such an example of unambiguous Federal actions that obviate the need to examine the Tribe's history prior to 1934.[56] Moreover, in addition to the Tribe's Section 18 election, the record here clearly demonstrates that the Tribe was under Federal jurisdiction prior to and through 1934 with the acquisition of the land base for the Tribe in 1921.

Section 18 of the IRA provides that "[i]t shall be the duty of the Secretary of the Interior, within one year after the passage [of the IRA] to call . . . an election" regarding application of the IRA to each reservation.[57] If "a majority of the adult Indians on a reservation . . . vote against its application," the IRA "shall not apply" to the reservation.[58] The vote was either to reject the

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[52] *See* M-37029, The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act (Mar. 12, 2014) (M-37029).

[53] *Id.* at 19.

[54] *Id.*

[55] *Id.* at 20.

[56] *Id.*

[57] Act of June 18, 1934, 48 Stat. 984 (codified at 25 U.S.C. § 478); Act of June 15, 1935, ch. 260, § 2, 49 Stat. 378.

[58] *Id.*

application of the IRA or not reject its application. Section 18 required the Secretary to conduct such votes "within one year after June 18, 1934," which Congress subsequently extended until June 18, 1936.[59] In order for the Secretary to conclude that a reservation was eligible for a vote, a determination had to be made that the relevant Indians met the IRA's definition of "Indian" and were thus subject to the Act.[60] Such an eligibility determination would include deciding the Tribe was under Federal jurisdiction, as well as an unmistakable assertion of that jurisdiction.[61] The outcome of this vote – whether to reject or not reject the IRA – does not alter this conclusion. In 1983, Congress enacted the Indian Land Consolidation Act (ILCA).[62] The Act amended the IRA to provide that Section 5 of the IRA applies to "all tribes notwithstanding section 18 of such Act," including Indian tribes that voted to reject the IRA.[63] As the Supreme Court stated in *Carcieri*, this amendment "by its terms simply ensures that tribes may benefit from [Section 5] even if they opted out of the IRA pursuant to Section 18, which allowed tribal members to reject the application of the IRA to their tribe."[64]

As stated in the report prepared in 1947 by Theodore H. Haas, Chief Counsel for the United States Indian Service, a majority of the adult Indians residing at the Tribe's reservation voted to accept the IRA at a special election duly held by the Secretary on June 11, 1935.[65] The calling of a Section 18 election at the Tribe's reservation unambiguously and conclusively establishes that the Tribe was under Federal jurisdiction in 1934. The IRA vote is dispositive as to a finding of Federal jurisdiction.[66] In addition, because the Tribe is federally recognized as of the date of

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[59] Act of June 15, 1935, ch. 260 § 2, 49 Stat. 378.

[60] M-37029 at 21.

[61] *Id.*

[62] Act of Jan 12, 1983, 96 Stat. 2515, 2517-19 (codified at 25 U.S.C. §§ 2201 *et seq.*

[63] 25 U.S.C. § 2517.

[64] *Carcieri*, 555 U.S. at 394-95

[65] Haas Report at 15.

[66] We also note that, as explained above, in 1921 the Department acquired 27.5 acres of land for the "Cloverdale band of Homeless Indians." The acquisition of the Cloverdale Rancheria in 1921, shortly before the IRA was enacted, also conclusively establishes that the Tribe was under Federal jurisdiction in 1934. *See Stand Up for California! v. United States DOI,* 919 F. Supp. 2d 51, 67-69 (D.D.C. 2013). The County submitted comments concerning the effect of the *Carcieri* decision on the Secretary's IRA authority, and asserted in such comments that the Secretary must "show . . . that the stipulated judgment in the *Tillie Hardwick* case was legally adequate to confer Federal recognition to the Tribe." County Comment Letter at 4. The Tribe's federally recognized status, however, is beyond dispute and not subject to challenge. The Federal Government's termination of the Tribe's federally recognized status, which was subsequently restored in 1984 in connection with the *Tillie Hardwick* litigation, *see* Section 7.0 *infra*, does not undermine our conclusion that the Tribe was under Federal jurisdiction in 1934. Indeed, the termination demonstrates the presence of a Federal-tribal relationship that the Federal Government affirmatively sought to end in 1965. This Federal-tribal relationship was restored in 1984 and the Tribe was thereafter included in all official *Federal Register* lists of federally recognized tribes. *See* 49 Fed. Reg. 24084 (June 11, 1984) (Notice of restoration of 17 Tillie Hardwick Tribes); 50 Fed. Reg. 6055 (Feb. 13, 1985)(first list published after restoration, and the Tribe appears on the list); 60 Fed. Reg. 9250, 9251 (Feb. 16, 1995) (first list published after List Act, Tribe appears on list); 80 Fed. Reg. 1942, 1943 (Jan. 14, 2015). Following passage of the Federally Recognized Indian Tribe List Act, 108 Stat. 4791 (1994) (List Act), inclusion on the official *Federal Register* list conclusively establishes the federally recognized status of an Indian tribe. The language of the List Act confirms that a stipulated judgment like that entered by the Federal court in the *Tillie Hardwick* litigation is a "decision of a United States

this decision, as demonstrated by its appearance on the list of Federally recognized tribes published annually in the *Federal Register*, the Tribe meets the requirement that it be "recognized" under the first definition of "Indian."[67] Thus, the Secretary is authorized to acquire land in trust for the Tribe under Section 5 of the IRA.

8.4 25 C.F.R. § 151.10(b) - The need of the individual Indian or tribe for additional land

Section 151.10(b) requires consideration of the need of the tribe for additional land. The Tribe needs land because it has no reservation or land held in trust by the United States.[68]

The Tribe seeks to acquire land in an area it historically inhabited to restore its homeland. The Tribe's members descend from the indigenous Pomo people of the Cloverdale area.[69] In the 1800s, the Tribe was displaced from its traditional lands during the Gold Rush, which brought an increasing number of settlers to northern California.[70] As explained above, in 1921, the United States acquired 27.5 acres of land for the Tribe with funds appropriated by Congress.[71] This land comprised the original reservation, known as the Cloverdale Rancheria. Congress enacted the California Rancheria Act in 1958, which mandated the termination of forty-one designated rancherias and reservations in California.[72] In 1965, the Secretary formally terminated the United States' government-to-government relationship with the Tribe.[73] Following termination, the Tribe's former 27.5 acre reservation was divided and distributed in fee to five families, with two parcels, the tribal cemetery and community well, held in common

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court" that can restore an Indian tribe's federally recognized status. Congress has never disturbed the Tribe's inclusion on the annual *Federal Register* lists and the time for third party challenges to the Tribe's listing has long since passed.

[67] M-37029 at 25-26; 80 Fed. Reg. 1942 (Jan. 14, 2015). *See also* 25 C.F.R. § 151.2 (defining "tribe" as "any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians ... which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs."). The word "now" in the first definition of Indian modifies "under federal jurisdiction" but not the phrase "recognized Indian tribe." *Carcieri*, 555 U.S. at 398 (Breyer, J. concurring).

[68] The State of California notes that the acreage included in the Tribe's trust application exceeds the acreage of the Tribe's former reservation. Nothing, however, in the IRA or the Department's trust land acquisition regulations (25 U.S.C. § 151 *et seq.*) limit trust land acquisitions to the size or location of former reservations. Further, it is not for the State of California to determine how much land will meet the Tribe's needs. *See Pres. Of Los Olivos and Pres. Of Santa Ynez v. Pacific Reg'l Dir., BIA*, 58 IBIA 278, 314 (2014).

[69] *See* TILLER'S GUIDE TO INDIAN COUNTRY: ECONOMIC PROFILES OF AMERICAN INDIAN RESERVATIONS 395 (Veronica E. Velarde Tiller ed., 2005).

[70] *See* S.A. BARRET, THE ETHNO-GEOGRAPHY OF THE POMO AND NEIGHBORING INDIANS 41-43 (1908), in Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Cal Artman, Assistant Secretary Indian Affairs (Dec. 11, 2007), Ex. K, Tab 5.

[71] Act of June 21, 1906, 34 Stat 325; Act of April 30, 1908, 35 Stat. 70; *See* Cloverdale Rancheria Legal Description (March 11, 1921), in Tribe's 2010 Application, Ex. B; Notice of Federal Land Purchase for Cloverdale Rancheria (Feb. 10, 1921), in *id.* Ex. L.

[72] Act of August 18, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390.

[73] *See* Cloverdale Rancheria, Calif, Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 30 Fed. Reg. 16274 (Dec. 30, 1965), in Office of Indian Gaming File, Tab 3.

ownership.[74] Soon after distribution, a portion of the western side of the former Cloverdale Rancheria was sold to the State of California (State) for the construction of State Highway 101.[75] In 1991, the State acquired an additional portion on the eastern side of the former reservation for a bypass to Highway 101.[76] Other lands were sold or lost due to non-payment of taxes.[77]

Despite the Tribe's restoration to federally-recognized status pursuant to a stipulated judgment entered in *Hardwick v. United States* as described above, the United States has not acquired land in trust for the Tribe's benefit, and the Tribe remains landless. The impacts resulting from termination still affect the Tribe today. Acquiring the Site in trust will restore the Tribe's land base and strengthen the Tribe's self-sufficiency through increased funding for tribal government operations and programs designed to address the needs of the Tribe, its members, and those of future generations. The Regional Director found, and we concur, that acquisition of the Site in trust will address the Tribe's need for additional land.

8.5 25 C.F.R. § 151.10(c) – The purposes for which the land will be used

Section 151.10(c) requires consideration of the purposes for which the land will be used.

Under the Preferred Alternative A, the proposed 2-story casino would consist of a mixture of uses including an 80,000 s.f. gaming area, 52,445 s.f. of food and beverage facilities, and 79,455 s.f. of support facilities (building support, casino support, administrative offices, public spaces, security, surveillance and 6 areas for employee dining and services). The 287,000 s.f. hotel would be 5 stories high and provide 244 guest rooms. The hotel would also include food and beverage facilities, reception and lobby areas, retail, and recreation. The casino and hotel would be open 24 hours a day, 7 days a week. Parking would include 3,400 spaces (3,300-space garage and 100-space surface lot). The 2-story, 48,600 s.f. convention center would accommodate up to 984 seats in the events hall for large events. Four meeting rooms would provide space for smaller meetings and accommodate up to 240 seats total. The 2-story, 28,100 s.f. entertainment center would feature a showroom and stage for non-gaming related activities such as local and regional theater and musical performances. The entertainment center would accommodate up to 1,300 seats. Under one option analyzed in the Final EIS, the Tribe would construct and maintain water supply facilities on the Site. These would include a

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[74] The BIA approved a distribution plan on September 3, 1959, to divide the 27.5 acres in to seven lots and distribute the land in fee simple to five heads of household and two common ownership parcels, in Office of Indian Gaming File, Tab 1. The plan called for the establishment of a legal entity, the Dusho Association, to accept the conveyance of land retained in common ownership, the community well-site and the tribal cemetery. *See* Articles of Association of Nonprofit Association (May 12, 1960), in Office of Indian Gaming File, Tab 2

[75] Memorandum from Area Director, Sacramento Area Office, Bureau of Indian Affairs, to Assistant Secretary – Indian Affairs (May 27, 1994), in Office of Indian Gaming File, Tab 4.

[76] *Id.*

[77] Letter from Patricia Hermosillo, Cloverdale Rancheria Tribal Chairperson, to Cal Artman, Assistant Secretary Indian Affairs (Dec. 11, 2007), Ex. K, at 3. At the time of restoration in 1984, only two Indian landowners remained. Memorandum from Area Director, Sacramento Area Office, Bureau of Indian Affairs, to Assistant Secretary – Indian Affairs (May 27, 1994), in Office of Indian Gaming File, Tab 4.

groundwater well, water treatment plant, water storage tanks, a pumping system, and a piped delivery system.

We determine that the Tribe has adequately described the intended purpose of the land to be acquired.

8.6 25 C.F.R. § 151(e) – If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls. The BIA provided notice of the proposed trust acquisition and solicited comments from the following state and local governments on the potential impacts of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments by correspondence dated April 12, 2012:[78]

- California State Clearing House, Office of Planning and Research[79]
- Office of the Governor, State of California
- State of California, Department of Justice
- Board of Supervisors, County of Sonoma
- Sonoma County Public Works
- Sonoma County Fire
- Sonoma County Assessor
- Sonoma County Sheriff's Department

The BIA notified and sought comment from the City of Cloverdale on April 19, 2012,[80] and the following entities by fax on April 20, 2012:[81]

- City of Windsor
- City of Cloverdale Police Department
- City of Healdsburg

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[78] Regional Director's Recommendation, Vol. 3. The Notice was also sent to the Office of United States Senator Diane Feinstein.

[79] On April 17, 2012, the California State Clearing House, Office of Planning and Research, forwarded the Notice to the following: Resources Agency; The Department of Conservation; Office of Historic Preservation; Department of Parks & Recreation; Department of Water Resources; Department of Fish & Game, Region 3; Cal Emergency Management Agency; Native American Heritage Commission; State Lands Commission; Caltrans; Caltrans – Division of Aeronautics; Caltrans District 4; California Highway Patrol; Air Resources Board; Department of Toxic Substances Control; Regional Water Quality Control Board; and Deputy Attorney General, Department of Justice. *See* Regional Director's Recommendation, Vol. 3, Tab B.

[80] *See* Letter from Robin Paige Donoghue to Amy Dutschke, Regional Director (May 1, 2012), in Regional Director's Recommendation Vol. 3, Tab A.

[81] Regional Director's Recommendation Vol. 3.

Pursuant to the requests of the City of Cloverdale, Sonoma County, and the State, BIA extended the comment deadline for an additional 30 days to June 18, 2012.[82] The BIA ultimately received responses from:[83]

- State of California, Department of Justice
- City of Cloverdale
- North Coast Regional Water Quality Control Board
- Office of the County Counsel

The BIA also received letters of support from the following tribal governments:[84]

- Lytton Rancheria of California
- Dry Creek Rancheria Band of Pomo Indians
- Federated Indians of Graton Rancheria
- Kashia Band of Pomo Indians of the Stewarts Point Rancheria

8.6.1 Current Property Tax

We analyze the tax impacts below, and note that the Final EIS fully evaluated the impacts on the State and its political subdivisions resulting from removal of the land from the tax rolls in Section 4.7.

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[82] Regional Director's Recommendation, Vol. 3, Tab A.

[83] Letter from Kathleen E. Gnekow, Deputy Attorney General, State of California, to Amy Dutchke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (June 14, 2012), in Regional Director's Recommendation, Vol. 3, Tab E; Letter from Eric W. Danly, Cloverdale City Attorney, City of Cloverdale, to Amy Dutchke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (June 18, 2012), in Regional Director's Recommendation, Vol. 3, Tab F; Letter from Mona Dougherty, Senior Water Resources Control Engineer, North Coast Regional Water Quality Control Board, to Arvada Wolfin, Bureau of Indian Affairs (May 10, 2012), in Regional Director's Recommendation, Vol. 3, Tab C; Letter from Bruce D. Goldstein, County Counsel, by Jennifer C. Klein, Deputy County Counsel, Office of County Counsel, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (June 13, 2012), in Regional Director's Recommendation, Vol. 3, Tab D.

[84] Letter from Margie Mejia, Chairperson, Lytton Rancheria to Bureau of Indian Affairs (June 27, 2012); Letter from Harvey Hopkins, Chairman, Dry Creek Rancheria Band of Pomo Indians to Bureau of Indian Affairs (June 21, 2102); Letter from Greg Sarris, Tribal Chairman, Federated Indians of Graton Rancheria, to Bureau of Indian Affairs (June 8, 2012); Letter from Emilio Valencia, Chairman, Kashia Band of Pomo Indians of the Stewarts Point Rancheria (June 11, 2012). *See* Regional Director's Recommendation, Vol. 3, Tab G.

Additional letters of tribal support were submitted in 2014 by Chicken Ranch Rancheria of Me-Wuk Indians of California; Lytton Rancheria of California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria; Federated Indians of Graton Rancheria; Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria; Manchester Band of Pomo Indians of the Manchester Rancheria; Sherwood Valley Rancheria of Pomo Indians of California; Middletown Rancheria of Pomo Indians of California; Ione Band of Miwok Indians of California; Greenville Rancheria; Redding Rancheria; Enterprise Rancheria of Maidu Indians of California; Susanville Indian Rancheria; Mechoopda Indian Tribe of Chico Rancheria; and Pala Band of Luiseno Mission Indians of the Pala Reservation. *See* Comments and Responses to Comments on the Final EIS, in **Attachment II**.

Once acquired in trust, the Site will not be subject to Sonoma County property taxes.[85] The State of California, Department of Justice, in its letter dated June 14, 2012, (State Comment Letter) raised concerns about potential adverse impacts to Sonoma County resulting from the loss of current property tax revenue.[86] Sonoma County raised similar concerns in its letter dated June 13, 2012, (Sonoma County Comment Letter), and reported that the assessed property taxes for 2011-2012 for the Site were $40,486.98.[87] The County also reported that the amount of taxes allocated to the County's General Fund for 2009-2010 was $139,302,000 ($131,486,000 net after redevelopment contributions),[88] and that the amount of total secured property taxes levied by the County for 2010-2011 was $641,845,000.[89]

While the County may experience a loss of property tax revenue, the economic benefits resulting from the development and operations of the casino resort will more than offset losses from tax revenue. The Final EIS Section 4.7 projects that Preferred Alternative A will generate substantial economic activity and spending within the region. Construction work will generate considerable local employment and new spending within Sonoma County and other counties within the Bay Area. Total construction costs are estimated at $319,600,000. The construction required to implement Preferred Alternative A will also generate 1,065 jobs.

Operations associated with Preferred Alternative A are projected to generate approximately $179.8 million per year in sales revenues. This includes visitor spending at the casino that would not otherwise occur within the County without the development of the casino resort. New revenues for the County from the casino, alone, are projected to be at least $120 million. These new revenues from the casino, combined with the projected sales from the other proposed facilities including the hotel and entertainment center will represent, of the $179.8 million in future annual sales, $137.1 million in new annual net sales to the Sonoma County economy.

Under Preferred Alternative A, estimates provide that the casino resort will employ approximately 1,610 employees for an array of job positions that require varying degrees of skills and experience. The casino resort will require staff for its gaming, lodging, entertainment,

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[85] *See* 25 U.S.C. § 465. *See also* Cloverdale Rancheria of Pomo Indians Fee-to-Trust and Resort Casino Project Final Environmental Impact Statement [hereinafter Final EIS] §4.7-16.

[86] Letter from Kathleen E. Gnekow, Deputy Attorney General, State of California, to Amy Dutchke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (June 14, 2012) [hereinafter State Comment Letter], in Regional Director's Recommendation, Vol. 3, Tab E. The City of Cloverdale raised similar concerns about potential impact in its June 18, 2012, letter. *See* letter from Eric W. Danly, Cloverdale City Attorney, City of Cloverdale, to Amy Dutchke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (June 18, 2012), in Regional Director's Recommendation, Vol. 3, Tab F. However, the parcel that would have come under the taxing authority of the City was removed from consideration (APN 116-310-020). *See* supra note 4.

[87] Letter from Bruce D. Goldstein, County Counsel, by Jennifer C. Klein, Deputy County Counsel, Office of County Counsel, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (June 13, 2012) [hereinafter Sonoma County Comment Letter], in Regional Director's Recommendation, Vol. 3, Tab D. *See* Regional Director's Recommendation, Vol. 6, for updated property tax rolls for the 2012-2013 fiscal year for all five parcels.

[88] *See* Sonoma County Comment Letter at 7.

[89] *Id.* at note 6.

sales and marketing, security, and food and beverage operations. It is estimated that, of the 1,610 created jobs, 1,255 of them represent net new employment opportunities that will benefit Sonoma County's residents and economy.

Preferred Alternative A will also produce secondary economic effects that will benefit Sonoma County. Secondary economic effects are manifested in two ways: (1) indirect effects that result from the procurement of construction-related supplies, services, materials, and equipment; and (2) induced effects that stem from construction support businesses (and their employees) and their future spending on goods or services in Sonoma County. In total, construction under Preferred Alternative A will generate approximately $207.5 million in secondary economic spending benefits. Additionally, the total economic spending benefits generated by the operation of the casino resort will be $70.8 million per year. Accordingly, although the County will lose some revenue from property taxes as a result of the acquisition of the Site in trust, it will only be a small portion of the total property tax revenues for the County, and the increased economic activity from the Tribe's gaming enterprise will mitigate the loss.

Lastly, although the gaming resort will be located on trust land that is not subject to sales tax, the facility will increase taxable sales at other area businesses that serve both the gaming resort and its patrons. The construction under Preferred Alternative A will provide the State and the local jurisdictions and assessment districts with $5.6 million in benefits from sales taxes. Also, the Tribe anticipates indirect and induced tax revenues stemming from casino resort employee's wages and supplier's businesses. It is projected that the State will receive approximately $1.6 million of sales tax revenue from the operations of the facilities. The total annual tax benefits from the casino resort's operations would exceed the identified lost property taxes from the Site's acquisition in trust status.[90]

The Regional Director found, and we concur, that although the acquisition of the Site in trust would result in the loss property tax revenue for the County, that revenue would be a small portion of the overall tax revenue collected by the County and would be outweighed by substantial economic activity and spending within the region that would result from Preferred Alternative A.

8.6.2 Future Property Tax

The State Comment Letter and the Sonoma County Comment Letter stated that if the Department acquires the Site in trust, the County will lose future tax revenues from development of the Site.[91] The County's potential loss of future tax revenue cannot be determined with certainty by the County or the State. The Department is not required to consider speculative losses of future tax revenue. Under Section 151.10(e), the analysis of tax impacts is based on existing circumstances, i.e., taxes actually assessed and paid. The Department is not required to speculate on the potential revenue impacts from future development or improvement of the Tribe's lands.[92]

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[90] Final EIS § 4.7-21.

[91] State Comment Letter at 5; Sonoma County Comment Letter at 7-9.

[92] *See, e.g., Skagit County, Washington v. Northwest Regional Director*, 43 Interior Board of Indian Appeals (IBIA) 62, 81-82 (2006); *Shawano County, Wisconsin, Board of Supervisor v. Midwest Regional Director*, 40 IBIA

8.6.3 Public Services

The Sonoma County Comment Letter[93] and the comment letter from the City of Cloverdale dated June 18, 2012, (City of Cloverdale Comment Letter)[94] raised concerns over the additional burden and cost to law enforcement and other emergency services.

As discussed in Sections 4.10.1–5 and 5.10-3 of the Final EIS, the development of the casino resort would increase calls to local law enforcement. As mitigation, the Tribe will provide 24-hour on-site security surveillance of facilities and parking areas through the use of private security patrols and security surveillance equipment. The Final EIS Section 5.10-3 provides additional mitigation measures to address law enforcement needs. The Tribe will work cooperatively with the County and City, and would enter into a service contract with the City of Cloverdale Police Department or Sonoma County Sheriff's Office for the provision of primary law enforcement services to the Site. It is anticipated that approximately 2 to 2.5 new sworn officer positions would be needed to adequately provide services to the Site and surrounding community. The actual number of sworn officer positions and other costs would be negotiated with the City or County. In addition, the Tribe would fund its share of the cost of a new police facility for the City of Cloverdale if the City proposes this improvement. Such mitigation would lessen the increased demands in the overall community.

As discussed in Section 4.10.1-6 of the Final EIS, construction and operation of the casino resort would increase the need for emergency services. The Site is within the service area of the Cloverdale Fire Protection District. The development of the hotel and parking structures would also exceed the height of buildings in the area creating additional demands for an aerial apparatus because the nearest ladder truck is approximately 17 miles away. An aerial apparatus was identified as a need of the proposed Alexander Valley Resort project located just south of the project site so it is anticipated that the Tribe could fund a proportionate share of this need. The Fire Protection District also has existing equipment needs and would need regional training for fighting multi-story fires. As discussed in Section 5.10-4 of the Final EIS, the Tribe would enter into a service contract with the Fire Protection District for the provision of primary fire protection services to the Site. See Final EIS Appendix N for letter of intent between the Tribe and City of Cloverdale. The Tribe would pay its share of the costs for: (1) an aerial apparatus recommended for the Alexander Valley Resort, (2) regional training to fight multi-story structural fires, (3) other apparatus within the District's apparatus replacement program, and (4) staffing needs.

As discussed in Sections 5.10-5 and -6 of the Final EIS, the Tribe would enter into a service contract with the Cloverdale Healthcare District for the provision of ambulance services to the

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241, 249 (2005); *Rio Arriba, New Mexico, Board of Commissioners v. Acting Southwest Regional,* 38 IBIA 18,21 (2002); *City of Eagle Butte, South Dakota v. Aberdeen Area Director,* 33 IBIA 246, 248 (1999).

[93] Sonoma County Comment Letter at 9.

[94] Letter from Eric W. Danly, Cloverdale City Attorney, City of Cloverdale, to Amy Dutchke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (June 18, 2012) [hereinafter City of Cloverdale Comment Letter], in Regional Director's Recommendation, Vol. 3, Tab F.

Site. The Tribe would also develop an emergency response plan (emergency medical, pandemic, natural disaster, failure of private water/wastewater facilities if applicable) in coordination with the local fire protection and emergency medical service providers. The plan would address staff training and the necessity of an on-site defibrillator.

8.7 25 C.F.R. §151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise.

As discussed in Sections 1.2 and 3.9.1 of the Final EIS, the Site lies within the unincorporated area of Northern Sonoma County. The Site is also located within the Urban Growth Boundary and Sphere of Influence of the City of Cloverdale, and has been approved for future annexation by the City. The Site is currently used for residential and agricultural purposes. The two parcels east of the railroad track contain vineyards and one residence. The three parcels west of the railroad track contain six residences, a modular building, two barns, multiple sheds, and ancillary facilities related to equestrian operations. The surrounding land uses include the City's wastewater treatment plant and associated treatment ponds and a lumber yard to the north, industrial warehouses and storage facilities, commercial facilities, a sawmill, and the municipal airport to the south, Highway 101 to the west, and the Russian River and agriculture to the east.

8.7.1 Impacts to Jurisdiction

Lands held in trust by the United States are not subject to the regulatory requirements of the State or local jurisdictions. Federal, including federal environmental laws, will apply to the Site. Any development or construction on lands not held in trust would be fully subject to local laws, laws of the State, and regulatory permitting programs.

Law Enforcement Services

The City of Cloverdale expressed concerns about the potential strain on law enforcement services, and raised concerns regarding the jurisdictional authority of law enforcement.[95] Under Public Law 280, Pub.L. 83–280 (1953), the State will maintain criminal jurisdiction over the Site after it is acquired in trust. The Sonoma County Sheriff's Department will continue to provide law enforcement services to the Site. As discussed in Section 4.10.1 of the Final EIS, the Tribe would also work cooperatively with area law enforcement agencies such as the Sonoma County Sheriff's Office, the City of Cloverdale Police Department, and the California Highway Patrol, and would enter into a service contract with the City of Cloverdale Police Department. Accordingly, impacts to law enforcement services will be mitigated after the Site is acquired in trust.

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[95] City of Cloverdale Comment Letter at 13.

Railroad Jurisdiction

Sonoma County expressed concerns about potential conflicts that may be created by accepting land on both sides of a railroad into trust. Specifically, the County is concerned about the possibility that the Tribe may not be able to cross, access, or build pipelines or crossings across the railroad property between the east and west portions of the Site, and about any obstacles that would interfere with state, local, or federal authorities in addressing safety or other requirements for a planned rail line to Cloverdale.[96] The North Coast Railway Authority holds the railroad easement and entered into an agreement in 2012 with the current landowners of the Site that guarantees the landowners right to build utility lines at-below grade, *i.e.* under the railroad easement.[97] The agreement also states that the grant is subordinate to the prior rights of the North Coast Railway Authority to use all of the at-grade easement in the performance of its duty as a common carrier.[98] This grant runs with the land and will pass to the United States upon the Site's acquisition in trust.[99] Accordingly, we conclude that the trust acquisition will not cause a conflict with the railroad property because the trust land is held subject to the railroad easement and the 2012 Agreement allows the Tribe to build utility lines under the easement.

8.7.2 Land Use Designations and Zoning

As discussed in Section 3.9.1 of the Final EIS, the Sonoma County General Plan was adopted in 2008. The Land Use element provides the distribution, location, and extent of uses for each land use category. The Sonoma County Zoning Ordinance regulates the development in the unincorporated areas of the County by establishing districts and designating permitted uses.

The Site lies within Cloverdale's Sphere of Influence. The City's Sphere of Influence is defined as the area of the City that has been approved for future annexations from the Sonoma County Local Agency Formation Commission.[100] The Cloverdale General Plan includes the goals, policies, and programs of the City for land use, development, and environmental quality. The City's land use designation would be applicable to the Site only if it is annexed by the City.

The following chart illustrates the existing County land use and zoning designations, and the proposed City land use designations.

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[96] Sonoma County Comment Letter at 15.

[97] Easement Agreement – Below Grade Utility Crossing of Railroad Line ¶ 1, in Regional Director's Recommendation, Vol. 1, Tab I.

[98] *Id.* at ¶ 2.

[99] *Id.* at ¶ 10.

[100] See Final EIS at § 3.9.1.

Existing land Use and Zoning Designations[101]

Parcel Number	Existing Jurisdiction	Existing County Land Use Designation	Existing County Zoning	Proposed City Land Use Designation if Annexed
116-310-035 (western side)	County	Limited Industrial	Rural Residential	Business Park and General Industry
116-310-039 (western side)	County	Limited Industrial	Rural Residential	Business Park and General Industry
116-310-040 (western side)	County	Limited Industrial	Rural Residential	Business Park and General Industry
116-310-005 (eastern side)	County	Land Intensive Agriculture	Land Intensive Agriculture	Conservation
116-310-079 (eastern side)	County	Land Intensive Agriculture	Land Intensive Agriculture	Conservation

Sonoma County General Plan and Zoning

The Sonoma County Comment Letter expressed concerns about potential jurisdictional conflicts with the current General Plan designations and zoning, and the protection of farmland.[102] The two eastern parcels of the Site, which would be developed with water, wastewater facilities, and sprayfield crops, are designated and zoned for Land Intensive Agriculture. The County stated that this designation is designed to enhance and protect lands capable of and generally used for the production of food, fiber, and plant materials. Permitted uses include agricultural production processing and services. The County stated that the proposed wastewater facilities conflict with the Agricultural Element of the General Plan.

City of Cloverdale General Plan

If the Site is annexed by the City, the eastern parcels would be designated Conservation by the City of Cloverdale. The City stated that the General Plan land use designation of Conservation is intended to manage and preserve valuable biological, visual, and agricultural resources in the planning area through primary uses of river/stream-related recreation, open space buffers, and agricultural production.[103]

The Business Park designation, that would apply to the western parcels of the Site if annexed, is intended to provide additional service-oriented employment opportunities via primary uses such

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[101] *See* Table 3.9-1, Land Use and Zoning for the Project Site, in Final EIS at § 3.9.1.

[102] Sonoma County Comment Letter at 11 -16.

[103] City of Cloverdale Comment Letter at 6.

as professional office and research and development uses. Secondary uses would include limited light industry, industrial parks, wineries, warehouses, and nurseries. The City also stated that the General Industrial land use designation, that would apply to the western parcels if annexed, is intended to provide additional employment opportunities through primary uses such as light manufacturing, limited manufacturing, industrial parks, wineries, lumber mills, assembly, warehousing and distribution. Secondary uses would include professional offices and research and development. The City currently has a wastewater treatment pond within the area proposed for Conservation designation.

With regard to the potential jurisdictional conflicts identified above, we conclude that development of Preferred Alternative A will not conflict with the County and City's land use designations. As discussed in the Final EIS at Section 4.9-1, the proposed casino resort and ancillary development under Preferred Alterative A is generally compatible, although not specifically consistent, with the City and County's designations and zoning. The Final EIS in Section 4.9.1 analyzed the effects of the casino resort on surrounding lands and found that development at the Site would not affect the use of off-site lands for their current purposes or future designated land uses. [104] Further, there are no off-site agricultural uses which would be affected by the development alternatives.[105] For these reasons, the effect on agriculture would be less than significant.

Williamson Act Lands

The State Comment Letter and the Sonoma County Comment Letter expressed concerns about potential land use conflicts for the two eastern parcels that are encumbered by the California Land Conservation Act of 1965 (Williamson Act) restrictions.[106] The Williamson Act allows counties and cities to designate lands for agricultural preservation and provide favorable taxation to private agricultural landowners based on the income-producing value of their property in agricultural use, rather than on the property's assessed market value. The landowner enters into a contract with the city or county agreeing to not develop the land for a minimum of 10 years. The contracts automatically renew every 10 years unless a party files for nonrenewal or petitions for cancellation. In accordance with the 2012 tribal resolution No. 2012-09-185, the Tribe filed a notice of nonrenewal of its Williamson Act contract with the County on January 14, 2016, and has agreed to use the land in a manner consistent with applicable law.[107]

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[104] *See* Final EIS § 4.9-1; Comments and Responses to Comments on the Final EIS at 20, Comment No. G-22.51, in Attachment II to this ROD.

[105] *See* Final EIS § 4.9.1-4.

[106] *See* State Comment Letter at 3-4; Sonoma County Comment Letter at 11-13. The County also questioned the Department's ability to acquire lands in trust that are encumbered by Williamson Act restrictions. *See* Sonoma County Comment Letter at 4-5. However, the Department may acquire land in trust that is subject to a Williamson Act contract. *See* Attachments to Preliminary Title and Boundary Opinion (Feb. 27, 2013), in Regional Director's Recommendation, Vol. 7. Similarly, the Department may accept title to land subject to encumbrances such as easements or rights-of-way. Here, the Regional Director determined that the procedures found in 25 C.F.R. § 151.13 for acquiring title to the Site in trust for the Tribe have been fulfilled. See Regional Director's Recommendation at 44.

[107] Resolution No. 2012-09-185: Resolution to Accept Certain Exceptions for the Cloverdale Rancheria of Pomo Indians of California's Fee to Trust Application (Sept. 25, 2102), in Regional Director's Recommendation,

8.7.3 Water Resources

Water Supply

The County expressed concerns about potential impacts to water supplies and groundwater resources created by the casino resort.[108] The County stated that jurisdictional conflicts would arise under the onsite well option if the demand for water outpaced the supply, because either the City's supply would be negatively impacted or the groundwater table from which the well would draw would be negatively impacted. The City also expressed concerns about potential impacts to existing groundwater supplies, and the potential for subsidence due to overdraft of the ground water basin, and the potential impact on the production capacity and water quality of the City's nearby well fields.

As discussed in Section 4.3.1-5 of the Final EIS, implementation of Preferred Alternative A would increase groundwater demands either from a proposed well or via municipal supply. The reduction of available flow to the Russian River caused by the proposed groundwater pumping would be very small, not observable or measurable, and would not negatively impact the hydrology of the river or aquatic habitats. The small groundwater drawdown attributable under the private water option would not negatively impact the operation, condition, or yield in other onsite or neighboring wells.

Wastewater

The County expressed concern that jurisdictional conflicts would arise in the event of groundwater contamination where the Tribe uses less rigorous water quality standards than are applicable in the surrounding region. The County also stated that because the eastern parcels are near the Russian River and in a floodplain, surface runoff from the Tribe's wastewater treatment ponds or sprayfields present a threat to the water quality of the Russian River and the surrounding area, including threatened and endangered salmon and steelhead.

As discussed in Sections 4.3.1 and 5.3 of the Final EIS, mitigation measures will be taken to reduce impacts to water quality. These include the completion of a comprehensive Drainage Plan to address drainage and flooding in the area and ensuring that the proposed groundwater well is installed above the 100-year flood height. Mitigation measures also include ensuring that no significant reduction in the quality of surface water or groundwater used for potable water supply occurs, and managing sprayfield operation such that no runoff or other surface discharge of treated effluent occurs from the sprayfield site. Further, groundwater quality shall be monitored for nutrients and pathogens. In the event that the water supply well becomes contaminated with nutrients or pathogens, additional water treatment or a new well shall be installed, to ensure that drinking water quality meets federal requirements.

Vol. 1, Tab F; Notice of Nonrenewal for Williamson Act Contract (January 14, 2016), in Office of Indian Gaming File, Tab 9.

[108] Sonoma County Comment Letter at 14-15.

8.8 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the Acquisition

The BIA is equipped to discharge additional responsibilities that may result from this acquisition. The Site does not contain natural resources that require BIA management assistance. With no leases or rights of way, any additional responsibilities resulting from this acquisition will be minimal.

8.9 25 C.F.R. § 151.10(h) - The extent of information to allow the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

The BIA published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the *Federal Register* on July 7, 2008, describing the proposed action and inviting comments.[109] See **Attachment I** of this ROD. In addition to accepting written comments, the BIA held a public scoping meeting at the Cloverdale Citrus Fairgrounds on July 30, 2008. The Tribe, National Indian Gaming Commission, U.S. Environmental Protection Agency – Region IX (EPA), California Department of Transportation, Sonoma County, and the City of Cloverdale were identified as cooperating agencies during the scoping process.

The BIA published a Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on August 6, 2010.[110] See **Attachment I.** The Draft EIS was made available to the public and distributed to federal, tribal, state, and local agencies for a total of 75 days for review and comment. The review and comment period, time and location of the public hearing, and contact details for additional information from the BIA, the lead agency, were included in the NOA. Notice was also published in *The Press Democrat* on August 11, September 5, and October 9, 2010, and in the *Cloverdale Reveille* on August 18 and October 6, 2010. On September 16, 2010, the BIA held a public hearing on the Draft EIS at the Cloverdale Citrus Fairgrounds. The BIA received a total of 34 comment letters in addition to the comments received during the public hearing. Public and agency comments on the Draft EIS received during the comment period, including those submitted or recorded at the public hearing, were considered in the preparation of the Final EIS. Responses to comments received on the Draft EIS were provided in Appendix S of the Final EIS.

The BIA revised the Final EIS as appropriate to address comments received on the Draft EIS. The BIA published an NOA for the Final EIS in the *Federal Register* on April 18, 2014.[111] See **Attachment I.** The BIA also published the NOA for the Final EIS in the local newspaper, the *Cloverdale Reveille*, on April 24, 2014. See **Attachment I.** The original 30-day review period ended on May 19, 2014. BIA extended the review period for two weeks to June 2, 2014. Notice of the extension was published in the local newspaper the *Cloverdale Reveille* on

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[109] 73 Fed. Reg. 38,466 (July 7, 2008).

[110] 75 Fed. Reg. 47,622 (August 6, 2010).

[111] 79 Fed. Reg. 21,949 (April 18, 2014).

May 22, 2014. See **Attachment I**. The comments received on the Final EIS during the comment period and the responses to each comment are included in **Attachment II**.

The Department must complete an Environmental Site Assessment (ESA) pursuant to the Departmental Manual at 602 DM 2 to determine if there are any environmental contamination-related concerns and/or liabilities affecting the land to be acquired. The Department finalized a Phase 1 ESA on March 23, 2012, determining that there were no hazardous materials or contaminants. An updated site inspection will be conducted by BIA prior to acceptance of the Site in trust.

8.10 25 C.F.R. § 151.11(b) - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

Section 151.11(b) provides that as the distance between a tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition, and give greater weight to the concerns raised by the State and local governments having regulatory jurisdiction over the land to be acquired in trust.

The Tribe has no reservation. The Site is located approximately 293 driving miles to Yreka, California (near California-Oregon boundary), and approximately 247 driving miles from Lake Tahoe (California-Nevada boundary).

8.11 25 C.F.R. § 151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use

The Tribe submitted a Seven Year Business Plan (Business Plan) that specifies the anticipated economic benefits associated with the proposed casino resort.[112] The Tribe's application discusses that project revenues account for competitors based on proposed new facilities and expansions in the competitive market.[113] Additionally the Tribe's business plan addresses community economic impacts.[114]

The Business Plan estimates that total net revenues from the casino resort will range from $114 million in the first year of operation to $144 million in the seventh year of operation.[115] The casino resort is estimated to employ approximately 1,600 employees and include employment opportunities for tribal members. The Business Plan also states that the Tribe will implement training programs specifically for employment at the casino resort.

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[112] Cloverdale Rancheria of Pomo Indian of California Seven Year Business Plan, in Tribe's 2010 Application, Ex. O [hereinafter Seven Year Business Plan].

[113] *Id.* at 8.

[114] *Id.* at 7.

[115] Cloverdale Rancheria Financial Projections (1-7 Years), in Seven Year Business Plan at 17.

The economic development that will result from this acquisition will supplement the Tribe's current government assistance programs and provide further funding for tribal government operations, tribal programs, and new programs designed to offer essential services to tribal members. Any additional resources available to the Tribe will go towards improving employment and educational opportunities, health services, and housing. The Tribe reports that its primary objective for acquiring the Site in trust is to use it to generate enough revenue to create employment opportunities and to construct housing that allows tribal members to live in a tribal community in Cloverdale.[116]

8.12 25 C.F.R. § 151.11(d) – Consultation with the State of California and local governments having regulatory jurisdiction over the land to be acquired regarding potential impacts on regulatory, jurisdiction, real property taxes, and special assessments

See discussion in **Sections 8.6 and 8.7** above.

9.0 DECISION TO APPROVE THE TRIBE'S FEE-TO-TRUST APPLICATION

I have determined that the Department will approve the Tribe's request to acquire the Site in trust and will implement Preferred Alternative A. This decision is based upon the environmental impacts identified in the FEIS and corresponding mitigation, a consideration of economic and technical factors, and the purpose and need for acquiring the Site in trust. Of the alternatives evaluated in the EIS, Preferred Alternative A would best meet the purpose and need for action. The casino-hotel complex described under Preferred Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government and to fund necessary mitigation for development of economic ventures. This would enable the tribal government to establish, fund, and maintain governmental programs that offer a wide range of health, education and welfare services to tribal members, as well as provide the Tribe and its members with greater opportunities for employment and economic growth. Accordingly, the Department will approve the fee-to-trust application subject to implementation of the mitigation measures identified in the Mitigation Monitoring and Enforcement Plan (MMEP) in **Attachment IV**.

9.1 Preferred Alternative A Results in Substantial Beneficial Impacts

Preferred Alternative A is reasonably expected to result in beneficial effects for Sonoma County, the City of Cloverdale, and the Tribe. Key beneficial effects include:

- New sources of revenue that will allow the Tribe to meet its and its members' significant needs and to help develop the political cohesion and strength necessary for tribal self-sufficiency, self-determination and strong tribal government.
- Estimated construction cost of $319,600,000 (primarily expenditures to local construction and engineering firms), with approximately 1,065 jobs generated over the entire construction period.

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[116] Tribe's 2010 Application at 4.

- During construction, indirect and induced spending of approximately $207,503,000 for businesses in Sonoma County and generation of approximately 954 indirect and induced jobs within Sonoma County businesses.
- During operation, indirect and induced spending of approximately $70,776,000 for businesses in Sonoma County annually and generation of approximately 476 indirect and induced jobs within Sonoma County businesses.
- Estimated annual net sales (new to Sonoma County) of $136,400,000 and employment of approximately 1,610 workers during operation.

9.2 Alternatives B, C, D, and E Result in Fewer Beneficial Effects

Alternatives B, C, D, and E would generate less revenue than the Preferred Alternative. As a result, it would limit the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. Due to less new development, the effects on the natural and physical environment would be slightly less under Alternatives B, C, D, and E than under Preferred Alternative A. Preferred Alternative A would, however, result in a similar level of impacts after mitigation. We believe the reduced economic and related benefits of Alternatives B, C, D, and E make them less viable options. Alternatives B, C, D, and E would fulfill the purpose and need for acquiring the Site in trust to a lesser degree, however, than Preferred Alternative A.

9.3 No-Action Alternative Fails to Meet Purpose and Need of Project

The No-Action Alternative (Alternative F) would not meet the purpose and need for acquiring the Site in trust. Specifically, it would not provide the Tribe with a restored trust land base or a source of net income to allow the Tribe to achieve self-sufficiency, self-determination, and a strong tribal government. This alternative also would likely result in substantially fewer economic benefits to the City of Cloverdale, Sonoma County, and surrounding communities than the Development Alternatives.

10.0 SIGNATURE

By my signature, I indicate my decision to implement Preferred Alternative A and acquire 61.83+/- acres in Sonoma County, California, for gaming and other purposes for the Cloverdale Rancheria of Pomo Indians of California. Upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the land in trust.

Lawrence S. Roberts
Acting Assistant Secretary – Indian Affairs

4/29/16
Date