



May 26, 2011

Via Federal Express

Alexis Strauss
Director, Water Division
U.S. EPA, Region 9
75 Hawthorne St., Office WIR-1
San Francisco, CA 94105

Re: Notice to Proceed With Construction of the Buena Vista Casino

Dear Ms Strauss:

I am General Counsel to the Buena Vista Rancheria of Me-Wuk Indians. I am writing respectfully to convey the exigent circumstances that we believe warrant issuing a Notice to Proceed with construction of the Buena Vista Casino in Amador County as soon as possible. As described below, there are pressing circumstances that warrant the issuance of the Notice to Proceed at the earliest opportunity or otherwise risk the ultimate viability of the project.

This project will generate substantial economic opportunity in a region that has long been economically depressed. It is our understanding that the casino construction will employ approximately 350 people. Once the casino is operating, it will employ approximately 800 people, generating potentially hundreds of thousands of dollars per day. Each day that the project is delayed, these jobs and revenue are foregone.

The Tribe has worked cooperatively with EPA for more than five years to obtain a Clean Water Act (CWA) permit to discharge treated wastewater after the casino is constructed. As part of the permitting process, EPA, the California State Historic Preservation Office (SHPO), and the Tribe carefully evaluated historic preservation issues, altered the project design, and signed a Memorandum of Agreement (MOA) to complete the National Historic Preservation Act's requirements. The MOA now governs the historic preservation issues in the project. *See* 36 C.F.R. § 800.6(c).

Although the permit is the subject of a petition to review pending before the Environmental Appeals Board, that petition does not preclude the Tribe from commencing construction. *See In re. Buena Vista Rancheria Wastewater Treatment Plant*, NPDES Permit No. CA 0049675, EAB Nos. 10-05, 10-07, 10-13. The CWA permit is necessary only to discharge wastewater; it is not a prerequisite to construction. Likewise, under the Board's rules, the petition for review of a CWA permit triggers a stay of the Tribe's ability to discharge, but not its ability to begin construction. 40 C.F.R. § 124.16.

The only legal barrier to construction derives from the MOA. In negotiating the MOA, the signatories agreed that "EPA may issue Notices to Proceed (NTP)" with work on a "particular construction segment" if "any" of the specified conditions are met. MOA, at 3. These conditions include that "there are no unevaluated historic properties within the [area of potential effect]." *Id.* at 4. This condition is plainly met. As the MOA explains, the casino construction will have indirect adverse effects on two historic properties. MOA, Attachment 2, at 1. Both have been evaluated, and a treatment plan has been adopted to minimize those effects. *Id.* Thus, construction will not affect any "unevaluated historic properties," and EPA therefore may issue the Notice to Proceed now.

It is imperative to the project's success that the Notice to Proceed issue as soon as possible. The project requires financing that will be raised from the high-yield bond market. As detailed by the enclosed letter from the bank that is helping the Tribe arrange financing, the high-yield bond market is extremely volatile and risks closing at any time. In the wake of the financial crisis of 2008, the market was completely closed for a considerable period of time, and interest rates remained prohibitively high for even longer. Only in recent months has the market reopened, but there is no guarantee that the market will remain open or that these rates will remain available for long, particularly given ongoing economic and political uncertainty worldwide. Indeed, some believe interest rates may spike again if the debate over the Federal government's debt ceiling and long-term debt problems are not solved in the near future. In short, the window for the Tribe to secure financing for the project is open now, but it may close unexpectedly. If that window closes, and the Tribe cannot obtain financing, the project may be delayed indefinitely. The Tribe has obtained tens of millions of dollars in loans to fund the project to date. It must obtain long-term financing through the bond market soon.

I also would take this opportunity to address the recent decision in *Amador County v. Salazar*, No. 10-5240 (D.C. Cir. May 6, 2011). That case concerns Amador County's challenge to the Department of the Interior's approval of the Tribe's Amended Gaming Compact and the federally recognized status of the Buena Vista Rancheria as "Indian land" under 25 U.S.C. §§ 2710(d)(1), 2703(4). The court of appeals reversed the district court's jurisdictional holding that the County lacked standing to bring the suit. The court of appeals did not, however, address the merits in any way, and instead remanded to "give the district court an opportunity to assess the merits in the first instance." *Amador County*, slip op. 20.

We do not believe the decision presents any reason for EPA to withhold a Notice to Proceed. First, the decision was jurisdictional and does not call into question Interior's position that the Rancheria is "Indian land." That is governing position of United States today, just as it has been for decades. Second, the "Indian land" determination lies wholly within the authority and expertise of Interior. Neither Region IX nor the EAB has jurisdiction to reconsider the position of the federal agency with jurisdiction to decide that issue. Third, the decision does not reduce the urgency to proceed with construction. The County's litigation has been pending for years (and will continue for some time). The Tribe and its potential investors have, of course, been monitoring the litigation and factoring it into risk calculations. Indeed, the enclosed letter from the bank was written *after* the court of appeals issued its decision, demonstrating that the decision is not a handicap to financing. Notwithstanding the decision, the Tribe and potential investors intend to pursue the casino project, and the window to secure its financing is open now.

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The Tribe strongly respects the EAB process but unfortunately ten months into the appeal, EPA's failure to issue the NTP is creating a risk of the Tribe being foreclosed from pursuing this important project by default. While the Tribe has no objection to the EAB process proceeding in full, in the interim, we urge EPA to issue the NTP so that construction may proceed while the opportunity exists to do so.

Thank you for your consideration of this request. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

BUENA VISTA RANCHERIA OF ME-WUK INDIANS



Arnold D. Samuel
General Counsel

Enclosure

cc: Tod Siegel, Esq.
Jo Ann Asami, Esq.

CREDIT SUISSE



May 9, 2011

Thomas Wilmot, Sr.
Chief Executive Officer
Wilmorite Management Group
1265 Scottsville Road
Rochester, NY 14624

Dear Tom:

Following six years of preparatory work, we should be ready in early June to launch the \$310 million high yield financing for the construction of the Buena Vista Casino. Market conditions for a financing of this type are highly favorable, with investors exhibiting strong demand for new high yield notes. Over the past month, approximately \$45 billion of new high yield notes were issued and, in our opinion, this is a good time to launch the transaction. In light of current market conditions, we believe investors should be receptive to the proposed financing. However, given the fickle nature of the high yield bond market, the Tribe could face a material risk if the transaction is further delayed or if market conditions were to deteriorate.

As you know, market conditions will be a key factor that will impact our ability to complete the financing transaction and deliver an acceptable interest rate on the new notes. It is important to recognize that the high yield market remains subject to significant, unforeseen volatility, which could delay our ability to raise the financing. For instance, in early March the high yield market experienced significant dislocation as a result of the confluence of events in the Middle East, the disaster in Japan and credit downgrades in Europe. Investors quickly became much more cautious, causing high yield new issue volumes to slow and interest rates to temporarily spike. More dramatically, during the financial crisis in 2008 and 2009, the high yield new issue market completely closed to new issues for several months. If the high yield market were to experience another dislocation before we launch the proposed financing, we may be unable to raise the \$310 million required for the project.

In sum, we believe it is important to minimize market risk and launch this transaction as soon as possible. If we delay the financing, there is a material risk that a downturn in the high yield market could preclude the transaction from being completed or could significantly increase the interest expense on the notes.

Sincerely,

Dean Decker
Managing Director and Global Head of Gaming
Credit Suisse Securities