

EXHIBIT 7

Ione Band of Miwok Indians v. United States Environmental Protection Agency
NPDES Permit No. CA 0049675 – Buena Vista Casino Wastewater Treatment Plant

Exhibit 7 to Declaration of William Wood in Support of Petition for Review

Wood, William (LAX - X52511)

From: Tinger.John@epamail.epa.gov
Sent: Friday, August 06, 2010 2:33 PM
To: Wood, William (LAX - X52511)
Subject: Fw: Notification of Final Decision Regarding NPDES permit for Buena Vista Rancheria
Attachments: Buena Vista Permit Issuance 6-22-2010.pdf

Bill, here is a copy of the electronic notification that was sent out. Additionally, a hard copy of the entire permit, fact sheet & response to comments was sent to Mr. Matthew Franklin.

-john

John Tinger
 U.S. EPA Region IX
 NPDES Permits Branch
 (415) 972-3518

----- Forwarded by John Tinger/R9/USEPA/US on 08/06/2010 01:04 PM -----

From: John Tinger/R9/USEPA/US
To: "Jacky Bowen" <jbowen@hydroscience.com>, "Stephen Ferry" <sferry@hydroscience.com>, "Debbie Lewis" <dlewis@buenavistatribe.com>, "Harvey, Dale@WRCB" <HARVEYD@RB5F.SWRCB.CA.GOV>, "Richard McHenry" <rmchenry@waterboards.ca.gov>, chris_nagano@fws.gov, Kathy_Brown@fws.gov, JHAHN@co.amador.ca.us, "Patrick Blacklock" <PBlacklock@co.amador.ca.us>, "doug brown" <browndoug@att.net>, <brownd@edaw.com>, <jvid@volcano.net>, "Wes Sage" <wslex@hotmail.com>, jhuntame@ebmud.com, senator.cox@sen.ca.gov, "Tateishi, Peter" <Peter.Tateishi@mail.house.gov>, Wkgallagher@aol.com, news@tspntv.com, gdenton@surewest.net, "Soule, William" <wsoule@parks.ca.gov>, "Stratton, Susan" <SSTRATTON@parks.ca.gov>, Pam@ionemiwok.org, sarah@ionemiwok.org, "Glen Villa" <glenvilla@sbcglobal.net>, "Glen Villa" <gvilla@linkunet.com>, "Norton, Kathy SPK" <Kathy.Norton@spk01.usace.army.mil>, Richard.M.Perry@usace.army.mil, "John Eddins" <jeddins@achp.gov>, "Martha Shaver" <MShaver@co.amador.ca.us>, ionebandmiwok@sbcglobal.net, samWbaugh@amadorca.com, Joann Asami/R9/USEPA/US@EPA, john@buenavistatribe.com, "Barry Scott" <bscott@jsanet.com>, Gabriel Roark <GRoark@jsanet.com>, "Arnold Samuel" <arnold@buenavistatribe.com>, "Dennis Trzcinski Wilmorite" <DTrzcinski@Wilmorite.com>, "Rhonda Pope" <rhonda@buenavistatribe.com>, billiebob@softcom.net, gdenton@surewest.net, "jerry cassesi" <lucydog@wildblue.net>, "jill curran" <circleranch@volcano.net>, "betty ann curran" <curranlone@aol.com>, "rich curran" <rscurran@volcano.net>, "cynthhia curran" <ccurrans@hotmail.com>, "samantha melvin" <samantha2802@hotmail.com>, "Dan Port" <dport@volcano.net>, "stacey hoffman" <staceyah@ips.net>, "Amandeine Navel" <amandine0502@hotmail.com>, "jack huntamer" <jhuntame@ebmud.com>, "george lambert" <jvid@volcano.net>, "Richard Forster" <rforster@co.amador.ca.us>, "debbie holsapple" <ie.holsapple@asm.ca.gov>, "Lou Pietanaue" <policechief@ione-ca.com>, "ray and betty stacey" <percheronranch@aol.com>, "Roger Phelps" <rphelps@ledger-dispatch.com>, blancapaloma@msn.com, bondassociates@mac.com, crenshaw@cal.net, DeltaKeep@aol.com, dfries@uop.edu, gneuburger@yahoo.com, izmirian@earthlink.net, JBeuttler@aol.com, mjatty@sbcglobal.net, stripermike@earthlink.net, andrew@packardlawoffices.com, doug@lozeaudrury.com, michael@lozeaudrury.com

Date: 06/22/2010 02:16 PM

Subject: Notification of Final Decision Regarding NPDES permit for Buena Vista Rancheria

You are receiving this message because you have provided comments or have participated in EPA's public comment period for the Buena Vista Rancheria wastewater discharge permit located in Amador County, CA.

Please find attached EPA's notification to issue the final National Pollutant Discharge Elimination System (NPDES) permit for the Buena Vista Casino. The permit was signed June 22, 2010. The permit authorizes the Buena Vista Casino to discharge treated wastewater to an unnamed tributary/drainage channel along Coal Mine Road to Jackson Creek, and establishes effluent limitations and monitoring requirements for the discharge.

EPA first issued a public notice of proposed action on December 21, 2005 and issued a subsequent public notice on August 5, 2009. During the comment periods, EPA received comments from approximately 30 parties both in writing and in public testimony. EPA has provided a written comment response document to address all comments received. Additionally, EPA conducted a consultation under the National Historic Preservation Act, which concluded on June 1, 2010 with a Memorandum of Agreement among the State Historic Preservation Officer, the U.S. Army Corps of Engineers, the Buena Vista Rancheria of Me-Wuk Indians, and EPA. The final

8/14/2010

Permit, Fact Sheet, and Response to Comments document will be posted shortly on EPA's website at: <http://www.epa.gov/region9/water/npdes/permits.html>. Or, feel free to email me and I can send you the materials directly.

John Tinger
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NPDES Permits Branch
(415) 972-3518

EXHIBIT 8

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NPDES Permit No. CA 0049675 – Buena Vista Casino Wastewater Treatment Plant

Exhibit 8 to Declaration of William Wood in Support of Petition for Review

Attachment 2

Historic Properties Treatment Plan Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project

Introduction

The Buena Vista Rancheria of Me-Wuk Indians (Tribe) has proposed to construct a gaming and entertainment facility (Undertaking) in Indian country. The Tribe applied to the United States Environmental Protection Agency (EPA) for a NPDES permit under Section 402 of the Clean Water Act (CWA) to operate a wastewater treatment facility and to the United States Army Corps of Engineers (Corps) for a permit under Section 404 of the CWA. EPA and the Corps agreed that EPA would assume the role as lead Federal agency for purposes of fulfilling their collective responsibilities under Section 106 of the National Historic Preservation Act (NHPA), as provided in 36 C.F.R. 800.2(a)(2).

Consistent with the requirements of Section 106 of the NHPA, EPA in consultation with the State Historic Preservation Officer (SHPO) has determined that the Undertaking will adversely affect the Buena Vista Peaks and CA-Ama-411/H (Upüsüni Village), both of which are "historic properties," as defined in 36 C.F.R. 800.16(1). Consequently, a Memorandum of Agreement (MOA) that sets forth how these adverse effects will be resolved was executed by EPA and the SHPO. Stipulation III of the MOA requires the Tribe to prepare and implement a Historic Property Treatment Plan (HPTP). This HPTP identifies and describes specific treatment measures and actions that will be taken to minimize the adverse effects on the Buena Vista Peaks Traditional Cultural Property and archaeological site CA-Ama-411/H.

Regulatory Context

Federal Regulations

Section 106 of the NHPA requires that federal agencies consider the effects of their actions, including activities they fund or permit, on properties that may be eligible for listing or are listed in the National Register of Historic Properties (NRHP). Specific regulations (36 C.F.R. Part 800) regarding compliance with Section 106 of the NHPA state that, although the tasks necessary to comply with Section 106 may be delegated to others, the federal agency remains legally responsible for complying with the NHPA. 36 C.F.R. 800.2(a)(3). The Section 106 process is a consultation process that involves the SHPO throughout; the process also calls for including Native American Tribes and interested members of the public, as appropriate, throughout the process. Implementing regulations for Section 106 detail the five basic steps:

1. Initiate the Section 106 process.
2. Identify historic properties.
3. Assess the effects of the undertaking on historic properties within the area of potential effects (APE).
4. Resolve the adverse effects by continuing to consult with the SHPO, and any other consulting parties, including Native American Tribes to seek ways to avoid, minimize, or mitigate the adverse effect. A memorandum of agreement (MOA) is usually developed to document the measures agreed upon to resolve the adverse effects.
5. Proceed in accordance with the terms of the MOA.

To qualify for listing in the NRHP, a property must be at least 50 years old or, if fewer than 50 years old, be of exceptional historic significance. It must represent a significant theme or pattern in history, architecture, archaeology, engineering, or culture at the local, state, or national level. A property must meet one or more of the four criteria listed below. The criteria for evaluation of the eligibility of cultural resources for listing in the NRHP are defined in 36 C.F.R. 60.4.

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and

- that are associated with events that have made a significant contribution to the broad patterns of our history; or
- that are associated with the lives of persons significant in our past; or
- that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- that have yielded, or may be likely to yield, information important in prehistory or history.

In addition to meeting the significance criteria, potentially historic properties must possess integrity to be considered eligible for listing in the NRHP. Integrity refers to a property's ability to convey its historic significance (National Park Service 1991). Integrity is a quality that applies to historic resources in seven specific ways: location, design, setting, materials, workmanship, feeling, and association. A resource must possess two, and usually more, of these kinds of integrity, depending on the context and the reasons the property is significant.

Confidentiality of Information

This entire section contains information of a confidential nature, and the Tribe objects to the disclosure of this information pursuant to 36 C.F.R. 800.6(a)(5). Disclosure of this information to the public is a violation of both federal and state laws. Applicable U.S. laws include, but may not be limited to, Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) and the Archaeological Resources

Protection Act (16 U.S.C. Section 470hh). In California, these laws include, but may not be limited to, Government Code Section 6250 et seq. and Section 6254 et seq.

Background Research

Prehistoric Setting and Chronology

Central Valley and Delta Region

The Central Valley cultural chronology developed from a long history of archaeological investigation in the Sacramento and San Joaquin Delta region. The first cultural chronology for Central Valley prehistory is the Central California Taxonomic System (CCTS), pioneered by Lillard et al. (1939), later modified by Beardsley (1948), and recently refined by others (e.g., Bennyhoff 1994). The CCTS recognizes three major periods in central California prehistory, each defined by distinct material assemblages reflecting particular cultural adaptations.

- **Early Period** (ca. 4500–2500 Before Present [B.P.]), often correlated with the Windmill Pattern.
- **Middle Period** (ca. 2500–1300 B.P.), equated with the Berkeley Pattern in the San Francisco/Delta region.
- **Late Period** (ca. 1300–100 B.P.), corresponding to the Augustine Pattern in the San Francisco Bay area. The Late Period is typically divided into Phase I (ca. 1300–450 B.P.) and Phase II (ca. 450–100 B.P.).

The transition from the Middle to Late Periods marks a dramatic change in central California; new bead and ornament types emerge, and milling stones and simple cobble mortars and unshaped pestles give way to well-made bowl mortars and elaborately shaped pestles. These artifacts and an abundance of bedrock milling stations likely reflect intensive acorn use as the focus of subsistence activities in the Late Period. The adoption of the bow and arrow is another change in technology, although dart-sized points persist at some sites. Settlements appear to become more sedentary and populations increase. Stockton Serrated points were common during Phase 1 and 2 in the Central Valley and Delta, although these distinctive points are not found much north of the Sacramento area. Phase I of the Late Period is typically characterized by small side-notched or corner-notched points resembling the Rose Spring type. Phase I artifacts also include D- and M-series *Olivella* beads that are often found as isolates in sites dating to other cultural phases. New bead types emerge during Phase II (including clam shell disk beads and lipped *Olivella* beads), and Desert side-notched and Cottonwood points become the dominant arrow point types.

The utility of the CCTS in the Sierra foothills is limited because all three periods are essentially Late Holocene phenomena. In the Central Valley and Delta this is not a major concern as sites generally do not predate 4500 B.P., probably reflecting the burial or erosion of older sites. The foothills and higher elevations of the Sierra have older landscape surfaces that retain archaeological evidence of Middle Holocene and Terminal Pleistocene/Early Holocene human occupations.

Sierra Nevada Foothills

Central Valley assemblage traits occur throughout the foothills, and some formulation that incorporates the Early-Middle-Late Period sequence may prove ultimately to be appropriate to the study area. For the time being, local culture historical sequences developed for the Sierra Nevada foothills may provide a more inclusive framework for the Buena Vista Rancheria project area. These include the cultural sequence initially defined by Moratto et al. (1988) from the New Melones Reservoir Project about 45 miles from the proposed project site, and a cultural chronology by Milliken et al. (1997) from the Taylor's Bar Site (CA-Cal-1180/H), which is used in regional investigations specific to the Amador/Calaveras County foothills (e.g., Wohlgemuth and Meyer 2002).

Terminal Pleistocene/Early Holocene (ca. 12,000–6500 B.P.)

Land surfaces of this age have not been found in the Central Valley (where they are deeply buried if present), but they do occur in the lower foothills of the Sierra Nevada, including the general study area. Fluted points representing Paleoindian occupation during the terminal Pleistocene and Early Holocene have been found in the Sierra Nevada region (Stewart et al. 2002). Early Holocene components assigned to the Clarks Flat Phase (ca. 10,000–6500 B.P.) have been identified at several foothill localities and are best represented by the Clarks Flat Site, CA-Cal-342 on the Stanislaus River (Peak and Crew 1990), and the Skyrocket sites (CA-Cal-629/630) in Salt Springs Valley near the town of Copperopolis (La Jeunesse and Pryor 1996).

Artifacts diagnostic of this period include stemmed points of the Western Stemmed series, also known as Great Basin Stemmed points, where these are typically affiliated with the Early Holocene Western Pluvial Lakes tradition. The Taylors Bar Site (CA-Cal-1180/H) contains point forms similar to the Western Stemmed series (Milliken et al. 1997). A single radiocarbon date, possibly from the earliest cultural stratum, suggests occupation at 9,610±120 B.P. Presently, little is known about the lifeways and adaptations characteristic of the Clarks Flat Phase due to the sparse data available. Western Stemmed points may persist in the foothills into Middle Holocene contexts. At some sites, stemmed points appear reduced in size during the latter portion of the Clarks Flat Phase; this phase is marked by the addition of large side scrapers and denticulates, items that are used in the following period. These and other early Holocene flaked stone artifacts are often made from a distinctive silica-rich volcanic greenstone.

Middle Holocene (ca. 7000–4000 B.P.)

Middle Holocene components corresponding to the Stanislaus Phase (6500–4500 B.P.) are represented at three sites not far from the project area: Clarks Flat (CA-Cal-342), Texas Charley (CA-Cal-286 at New Melones Reservoir), and the Redbud site (CA-Cal-347 on the Stanislaus River). The Stanislaus Phase is best represented at Clarks Flat where it stratigraphically overlies the earlier Clarks Flat Phase. It is characterized by a continuation of wide-stemmed points as well as the addition of Broad Stemmed Stanislaus series points, reminiscent of Pinto Shouldered points. Atlatl weights are documented for the first time in the Stanislaus Phase at Clarks Flat, and the variety of flaked stone tools and groundstone implements (mostly abraders) increases. The basal component at the Texas Charley Gulch Site (CA-CAL-S-286) located on the northwest shore of New Melones Reservoir was assigned to the time period 6000–5500 B.P. (Moratto et al. 1988). The assemblage is dominated by large lanceolate bifacial points of

chert, a variety of side scrapers, end scrapers, and handstones. A single radiocarbon date places the occupation at 5120 \pm 170 B.P. Similar point forms (e.g., Pinto points) persist elsewhere until perhaps 4000 B.P. (Moratto 1984). These two Middle Holocene phases are thought to correspond to the hot/dry Altithermal climatic episode. In the New Melones project area the period was apparently characterized by sparse human occupation and an occupational hiatus during the hottest and driest portion of this period. Hunting is the most archaeologically visible subsistence activity throughout the Early and Middle Holocene.

Late Holocene (ca. 4000–150 B.P.)

The first human occupation in the Sacramento Valley during the Holocene is termed the Early Period (Lillard et al. 1939). This occupation is referred to as the Windmill Culture (Ragir 1972) or Windmill Pattern (Bennyhoff 1994; Moratto 1984). In the Sierra foothills, the Early Period spans from approximately 4500 to 2500 B.P., and although it is represented by few sites, it generally corresponds to the Windmill Pattern in the Central Valley. In Amador and Calaveras Counties, sites with Late Holocene/Early Period assemblages include the Old Bridge Site (CA-Cal-267) at Camanche Reservoir, a component that includes a cemetery dated to 3630 \pm 300 B.P. The Applegate Site (CA-Ama-56) also contains an Early Period component as reported by Johnson (1970). This assemblage was characterized by 29 burials, mostly flexed, and included one extended burial and one cremation. Obsidian hydration values on five Napa Valley points ranged from 3.4 to 5.7 microns, suggesting that the site was used from the Early Period through the first part of the Middle Period. Other Early Period components that correspond to Calaveras Phase occupations are sparsely represented at the Texas Charley (CA-Cal-286) and Redbud (CA-Cal-347) sites near New Melones Reservoir. The Early Period in this area is marked by Pinto Square Shoulder points, Humboldt Concave points, and possibly early examples of Elko Series or other corner notched points (Milliken et al. 1997; Moratto et al. 1988).

Moratto et al. (1988) defined the Middle Period and constituent Sierra Phase (2500–1300 B.P.) during the New Melones project. The Sierra Phase is characterized by some of the largest sites and most well-developed middens in the project region. Occupations during this phase were large, with populations settled in villages and evidence of intensive acorn exploitation. As in sites to the west, bowl mortars appear for the first time, and Elko Eared and Corner-notched points, Sierra Concave Base points, and distinctive *Olivella* beads are the most common diagnostic types.

Windmill type mortuary patterns persist in some areas of the central valley and lower foothills. For example, the Fredenberg Site (CA-Cal-1218), at the northern end of New Hogan Reservoir, contained Middle Period burials with *Olivella* ring beads and Elko Series points. Well-developed occupational middens reflect large habitation sites occurring throughout the bordering valley and lower foothill zone. Middle Period and Middle/Late transition phases are well represented at CA-Sac-133, a Plains Miwok site on Deer Creek near Sloughhouse (Bouey and Waechter 1992). Radiocarbon dates from burials at the site indicate a narrow temporal range, while artifact forms reflect generalized and longer site use, peaking around 2,500–150 years ago.

Phase I of the Late Period corresponds to the Redbud Phase (1300–500 B.P.). A major change in the archaeological record occurs at this point and is reflected by changes in technology, subsistence, settlement patterns, sociopolitical organization, and supra-regional interaction, ultimately culminating in the ethnographic period (Delacorte 2001). More elaborate mortars and pestles suggest intensification of acorn processing. The development of bow and arrow technology is marked by the appearance of new

projectile point types. In the project area, these primarily involve small corner-notched or side-notched points morphologically similar to Rosegate Series forms, although distinctive Stockton Serrated points appear as well. Despite this evidence of substantial change, sites in the study area (both foothill and valley sites) dating to this period are rare, especially when compared to the preceding Sierra Phase and the succeeding Horseshoe Bend phases. This paucity has been attributed to extremely hot and dry conditions, which may have stressed local populations and prompted population movements, changes in adaptations, abandonment of resources-poor areas, and other social responses. At New Melones, the Redbud Phase is marked by new artifact types as discussed above, but also by a paucity of sites (Moratto et al. 1988). Many of the large midden sites of the Sierra Phase cease to be occupied, and most sites appear to reflect ephemeral habitations. The paucity of sites dating to this period, if accurate, stands in stark contrast to the early centuries of this period (ca. 800–1200 BP) in the South Fork American River watershed north of the study region, where sites dating to this period are ubiquitous.

The Applegate Site (CA-Ama-56) in Jackson Valley is a substantial site approximately 4 miles from the Rancheria. CA-Ama-56 is a major Middle Period prehistoric occupation site with a Redbud Period component and cemetery that was mostly abandoned during the Late Period. Recent investigations reported by Wohlgemuth and Meyer (2002) involved backhoe trenches and the hand-excavation of 10 cubic meters of cultural deposits. Their investigations revealed a cultural deposit rich in prehistoric residues. These included flaked and ground stone artifacts, small numbers of shell beads and bone artifacts, baked clay, faunal and floral remains, isolated human bone fragments, and three compacted surfaces possibly representing house floors and radiocarbon dated to 690–1390 B.P. Data from the investigation, when combined with Johnson's (1970) and others', support larger regional shifts noted further south in the foothills, in which flourishing Middle Period occupations were followed by a decrease during the Late Period, Phase I, and a subsequent rebound during the Late Period, Phase II.

In the project vicinity, Phase II of the Late Period corresponds to the Horseshoe Bend Phase (ca. 650/450–100 B.P.), commonly marked by the replacement of earlier arrow point types with Desert Side-notch and Cottonwood points (Moratto et al. 1988). Other new artifact types include various disk beads (lipped *Olivella*, clam shell, and magnesite). New ornaments and an elaborate baked clay industry appear in valley sites. Evidence of long-distance trade in beads, decorative items, and obsidian becomes prominent, compared to the apparent loss of trade during the earlier Phase I. The period also reflects larger populations, as evidenced by many large midden sites and more sites attributed to this time-period than ever before, particularly in the New Melones study area. Large numbers of bedrock mortar features at most of the late prehistoric sites in the New Melones project area led Moratto et al. (1988:342) to posit that bedrock mortars were introduced to the study area during the Late Period, after ca. A.D. 1300 (650 B.P.). Many of the comparable sites in the study area have Late Period, Phase II components including CA-Cal-1180/H (Milliken et al. 1997), the Texas Charley and Redbud sites at New Melones Reservoir (Moratto et al. 1988), Bamert Cave (CA-Ama-3) at Camanche Reservoir (Johnson 1967), and CA-SJo-265 (Delacorte 2001). These and other regional sites show a pattern of intensive reoccupation during the Late Period, following an earlier site use during the Middle Holocene. This suggests that a population decrease preceded the terminal Late Period.

Previous Research

This entire section contains information of a confidential nature, and the Tribe objects to the disclosure of this information pursuant to 36 C.F.R. 800.6(a)(5). Disclosure of this information to the public is a violation of both federal and state laws. Applicable U.S. laws include, but may not be limited to, Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) and the Archaeological Resources Protection Act (16 U.S.C. Section 470hh). In California, these laws include, but may not be limited to, Government Code Section 6250 et seq. and Section 6254 et seq.

Studies on Buena Vista Rancheria

Identification efforts in the Undertaking's Area of Potential Effects (APE) are based on previous cultural resource studies (Clark 2001; Gross and Heipel 2000; Pacific Legacy 2006; Theodoratus et al. 2006), principally the latter three Pacific Legacy efforts because of their comprehensiveness. The previous studies consisted of records searches and literature reviews, archival research, correspondence and interviews with local Native Americans, archaeological surveys, presence/absence test excavations, test excavations, non-invasive burial detection, and remote-sensing surveys (Pacific Legacy 2006:ii-iii,41, 46; Theodoratus et al. 2006:4, 14). Field efforts in the APE are discussed further below under separate headings for direct and indirect APE. EPA in consultation with SHPO has determined that no further field efforts appear warranted for the purposes of this undertaking, except as specified in this HPTP.

Identification Efforts in the Direct APE

Three cultural resource studies included field efforts in the direct APE and resulted in an inventory of the direct APE (Clark 2001; Gross and Heipel 2000; Pacific Legacy 2006:20-21, 24. Gross and Heipel (2000, cited in Pacific Legacy 2006:20) surveyed the northern 40 ac of the Rancheria, which included the direct APE. Clark (2001) resurveyed a 31-ac portion of the Rancheria, including the direct APE. Clark (2001) also conducted focused survey and test excavation to determine the boundaries and character of CA-Ama-411/H; these efforts included excavation of a single 1-meter-by-1-meter test unit and three rapid-recovery units in the northernmost portion of the direct APE. One unit yielded 7 pieces of debitage, two stone tool fragments, and several pieces of rusted metal (Pacific Legacy 2006: Appendix B, pp. 20-21). Pacific Legacy (2006:38, Figure 4-22) excavated six shovel probes in the direct APE. The shovel probes were dug to an average depth of 40 centimeters. Two excavation units yielded a single piece of debitage each. This, coupled with the shovel probes proximity to repeatedly graded dirt roads, indicates that the artifacts found are from disturbed contexts and are not intact cultural deposits. (Pacific Legacy 2006:38-39.)

Identification Efforts in the Indirect APE

Three cultural resource studies included field efforts in the indirect APE (Clark 2001; Gross and Heipel 2000; Pacific Legacy 2006). Field efforts consisted of archaeological surveys; excavation of trenches, test units, and shovel test probes; ground-penetrating radar survey; and canine forensics for burial identification. (Pacific Legacy 2006:20-25, 38, Figure 4-22.) In addition to these field efforts,

Theodoratus et al. (2006) conducted research and interviews with local Native Americans to obtain information about native use of and resources in the APE.

Other Local Investigations

Several site excavations in the project region provide comparative data for the Buena Vista Rancheria research. Among these is the already-mentioned Applegate Site (CA-Ama-56) on Jackson Creek, a tributary of Dry Creek (Johnson 1970; Wohlgemuth and Meyer 2002). Also comparable is the previously discussed Taylors Bar Site (CA-Cal-1180/H) near New Hogan Reservoir (Milliken et al. 1997). Phase II investigations at CA-Ama-469 near Plymouth, where recent excavations have identified a substantial midden deposit containing flaked stone tools and debitage (obsidian, quartz, metavolcanic materials); groundstone; bone tools; vertebrate faunal remains; and diagnostic artifacts (Holmes et al. 2003), are also informative.

Historic Properties Adversely Affected - Description, Significance and Effects

Buena Vista Peaks

This entire section contains information of a confidential nature, and the Tribe objects to the disclosure of this information pursuant to 36 C.F.R. 800.6(a)(5). Disclosure of this information to the public is a violation of both federal and state laws. Applicable U.S. laws include, but may not be limited to, Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) and the Archaeological Resources Protection Act (16 U.S.C. Section 470hh). In California, these laws include, but may not be limited to, Government Code Section 6250 et seq. and Section 6254 et seq.

EPA in consultation with SHPO has determined that the Buena Vista Peaks are eligible for listing on the NRHP. The Peaks, consisting of North and South peaks, are visible from most areas of the Rancheria and throughout the APE but are not located within the Rancheria. SHPO has concluded that the Buena Vista Peaks constitute a traditional cultural property, due to the importance they have held for the Northern Sierra Miwok through time.

The Peaks are an important part of Northern Sierra Miwok identity and are closely identified with Upüsüni and with other surrounding villages. The north peak, the higher of the two, is called Soo'-so and the south peak is called How'-ah or How'-wah. The north peak is considered by some to be the more powerful of the two peaks. Some local Miwok information relates that in historic times, powerful spiritual leaders would visit gatherings of people at the roundhouse, then proceed up to the Peaks and carry on daylong discussions amongst themselves. They would then return and pass on information gathered at the Peaks to the people. Access to the Peaks is gained primarily from the south where the topography is less steep and where most of the important locations on the Peaks are located.

EPA, in consultation with SHPO, has determined that the Peaks are eligible for NRHP listing under Criterion A due to their association with ceremonial and spiritual practices that are significant to the

Jackson Valley Miwok. The Peaks are associated with areas or events that have made a significant contribution to the patterns of Native history in the Jackson Valley area, the presence of archaeological sites, and a specific area which aids in the determination of ceremony types and times, as described above.

The Peaks retain integrity of location, setting, feeling, and association despite the nearby location of a cogeneration plant to the west and the town of Buena Vista to the north. The combination of rural setting and constellation of cultural resources within and immediately north of the Peaks contribute to the Peaks' ability to convey its significance as a spiritual place of especial affinity to the Northern Sierra Miwok and Upüsüni.

CA-Ama-411/H (Upüsüni Village)

This entire section contains information of a confidential nature, and the Tribe objects to the disclosure of this information pursuant to 36 C.F.R. 800.6(a)(5). Disclosure of this information to the public is a violation of both federal and state laws. Applicable U.S. laws include, but may not be limited to, Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) and the Archaeological Resources Protection Act (16 U.S.C. Section 470hh). In California, these laws include, but may not be limited to, Government Code Section 6250 *et seq.* and Section 6254 *et seq.*

EPA in consultation with SHPO has determined that CA-Ama-411/H (Upüsüni Village) is eligible for listing on the NRHP under criteria A and D. This large site is located in the northern part of the Rancheria (Figure 1), nestled at the foot of the Buena Vista Peaks, and comprises remnants of the Northern Sierra Miwok village of Upüsüni. *Upüsüni* during pre-contact and early post-contact times, was often the site of community interaction between various regional tribelets. *Upüsüni*, as the site of roundhouses, served as an important spiritual center, as well as a hub for social, economic, and ceremonial activities.

The settlement is situated on a plateau below the Buena Vista Peaks, affording an unhindered view of eastern Jackson Valley to the north. The oral traditions of some native people of the region trace their origins to Buena Vista Peaks. Some hold that native people have occupied the Rancheria property since the beginning of time (Lobo 1997).

Several cultural features exist within and adjoining the reservation boundaries. A cemetery located on the northern end of a narrow ridge overlies the remains of a roundhouse, likely of prehistoric antiquity. Traditionally, roundhouses were abandoned following the death of a spiritual leader, who would sometimes be interred beneath the roundhouse floor. Until the recent past, subsequent interments have created the cemetery, as it exists today on the reservation.

The first and oldest roundhouse at *Upüsüni* is represented by a faint depression in the cemetery. An earlier village site is indicated by dark midden soils throughout. It is presumed that, over time, the village moved south along the ridge and further from the cemetery. Merriam reported in his 1903 journal a conversation with Casus Oliver that discussed the use of the first roundhouse. Oliver said that the roundhouse was used for all ceremonial occasions, including the mourning ceremony, feasts, and dances (Merriam 1903:321–324; cf. Merriam 1960:32–33).

A second roundhouse was located to the south of the first roundhouse and cemetery. It was built under the direction of Sigelizu¹ a spiritual leader who brought a Ghost Dance revitalization movement to the Buena Vista Indians in 1872 from Pleasanton (Gifford 1917:2216). Only the depression is in evidence today and the date of abandonment is unknown; but it is believed to hold at least one burial, due to evidence based on the use of ground penetrating radar and forensic canine investigations (Shapiro et al. 2006).

Located between the aforementioned roundhouse depressions is a substantial archaeological deposit suggestive of a former village site and south of these resources there is a third roundhouse site. This site includes the location of the former home of Casus Oliver. Oliver became headman (captain) before the turn of the 1900s. This third roundhouse is one of the best-described earthen ceremonial structures in California. Kroeber (1925:447, Figure 39) provides a diagram and description of it, photographs are included in Levy (1978:408–409), and additional photos taken by C. Hart Merriam and, possibly, E. W. Gifford are housed at the Phoebe Hearst Museum at the University of California, Berkeley (UCB) and the Bancroft Museum at UCB.

The recorded portions of the village site are located completely within the boundaries of the Rancheria and thus fall under the exclusive jurisdiction of the Buena Vista Tribe. The village site may extend to the east, outside of the Buena Vista Rancheria, however no archaeological testing has been conducted to define the eastern boundary of the site. Originally recorded as a roundhouse, the CA-Ama-411/H site record has been updated to include two previously recorded resources nearby—CA-Ama-449-H (Buena Vista Rancheria Cemetery) and KEA-BV-3 (Oliver residential area and third roundhouse). Although these were recorded as three separate resources, Gross and Heipel (2000) and Pacific Legacy (2006:26) concluded that the entire area in which these three resources are situated is also a Native American pre-European archaeological deposit. Therefore, all of these resources are considered loci or features of a single large site. The grouping of these three resources into one site number designation follows an earlier recommendation by Clark (2001:6) that only one site is represented in this area. This was based on their subsurface testing results in which cultural deposits were found in areas between all of the “sites” named by Gross and Heipel (2000). The results from Clark (2001), along with data produced by a recent testing program, support the combining of these sites into one resource. The North Central Information Center requested that the lowest trinomial number be used for an updated record when other sites with trinomials are subsumed into that resource. The newly defined CA-Ama-411/H includes three loci, as listed below under separate headings. In addition to these three site loci, CA-Ama-411/H includes an area south of Locus B that Jackson Valley Miwoks used as a field for Indian football, most often at Memorial Day celebrations at Upüsüni (Theodoratus et al. 2006:38). The football field is unmarked and cannot be visually distinguished from undeveloped grassland in the APE.

Locus A of CA-Ama-411/H (Upüsüni Village)

This locus contains an ethnohistoric cemetery with marked plots in an area enclosed by fencing, and which was originally recorded as CA-Ama-449-H. A traditional Native American roundhouse is documented as being under the cemetery. The cemetery is in good condition, is not vandalized, and is actively maintained.

¹ Sigelizu was a Plains Miwok man from Lockeford, San Joaquin County. The dances that he taught he learned in Pleasanton. Sigelizu died in 1876. (Gifford 1927:231.)

Locus B of CA-Ama-411/H (Upüsüni Village)

This locus represents the area occupied by a shallow, circular, earthen depression that is the reported location of the second roundhouse on the reservation, and which was originally recorded as CA-Ama-411/H. The circular depression measures 11.5 m in diameter and is about 25–30 centimeters (cm) deep. It is visible from the ground surface and appears to be in good condition and not vandalized.

Locus C of CA-Ama-411/H (Upüsüni Village)

This locus represents the area of the former Casus and Louie Oliver residence and the third, most recent roundhouse. The area was originally recorded under the temporary field designation KEA-BV-3 and has never received a trinomial. On or about June 2000, the previous Tribal administration removed the Oliver residence and cleared the area.

EPA has determined that CA-Ama-411/H is eligible for listing under Criteria A and D. CA-Ama-411/H is eligible under Criterion A due to its role as a socially prominent village site (Upüsüni) which holds a cemetery, the remains of three roundhouses—aligned with the cemetery and Buena Vista Peaks—used for ceremonial and community practices, and has been a central gathering place for Northern Sierra Miwok. To this day, the Buena Vista Tribe continues to use the site for traditional ceremonial practices.

The surfeit of information that CA-Ama-411/H has provided speaks to its eligibility under Criterion D. Examination of the roundhouses suggest that they may hold more information regarding cultural practices, and previous documentation of the area has been undertaken by some of the most well-known names in early California anthropology (Pacific Legacy 2006; Theodoratus et al. 2006:27–30). CA-Ama-411/H clearly has the potential to yield information of importance to regional prehistory and history.

CA-Ama-411/H retains integrity of location, design, setting, workmanship, feeling, and association. CA-Ama-411/H may retain integrity of materials as well, although the loss of the artifacts recovered by Clark (2001) prohibits study of the site's chronostratigraphic integrity through the analysis of existing collections. Integrity of location is indicated by the fact that the cemetery has not been moved from its historic location. CA-Ama-411/H, despite the nearby location of a cogeneration plant to the west and on-Rancheria roads, still retains its rural quality and therefore setting. CA-Ama-411/H retains integrity of design and workmanship, as indicated by the internal composition of features in the historically documented Locus B and C roundhouses, revealed through ground-penetrating radar survey (see Pacific Legacy 2006:Figure 5-2, 5-3; Theodoratus et al. 2006:29). The cohesion of internal features and nearby cultural resources south of CA-Ama-411/H, especially the Buena Vista Peaks, contributes to the site's feeling and association.

Adverse Effects on Buena Vista Peaks and CA-Ama-411/H

Based on an application of the criteria used to assess adverse effect on historic properties as set forth in 36 C.F.R. 800.5, EPA in consultation with SHPO has determined that the proposed undertaking will adversely affect CA-Ama-411/H (Upüsüni Village) and the Buena Vista Peaks located within the indirect APE, due to the introduction of visual, atmospheric or audible elements that may diminish the integrity of the properties significant historical features.

The undertaking entails the construction of a gaming facility, a multi-level parking structure, a wastewater treatment facility, signs and lighting, and other features. Consequently, the project will create visual effects due to the visibility of the buildings and parking structure on the landscape, including facility lighting; and will create auditory effects due to increased automobile traffic to and from the facility, as well as due to normal facility operations.

In reaching this conclusion, EPA in consultation with SHPO has assessed the effects of the undertaking on these two historic properties jointly because the two sites are culturally linked. Some local Miwoks consider unimpeded views from the Peaks to the cemetery and roundhouses (and vice-versa) a critical aspect of Upüsüni's setting (Theodoratus et al. 2006:30). Members of the Ione Band of Miwok Indians and other Jackson Valley Miwoks contend that these facilities, especially the parking structure, would impose prominently on the viewshed from CA-Ama-411/H to the Buena Vista Peaks (May 1, 2007 meeting at the Office of Historic Preservation). This departure from the historic layout of Upüsüni and its visual connection with the Peaks would degrade both properties' integrity of setting, design, feeling, and association.

Description of Treatment Program

Introduction

This entire section contains information of a confidential nature, and the Tribe objects to the disclosure of this information pursuant to 36 C.F.R. 800.6(a)(5). Disclosure of this information to the public is a violation of both federal and state laws. Applicable U.S. laws include, but may not be limited to, Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) and the Archaeological Resources Protection Act (16 U.S.C. Section 470hh). In California, these laws include, but may not be limited to, Government Code Section 6250 *et seq.* and Section 6254 *et seq.*

EPA in consultation with SHPO has determined that site Ca-Ama-411/H and the Buena Vista Peaks are both eligible for listing on the NRHP, and that these properties constitute closely associated traditional cultural properties, and that both would be adversely effected by construction and operation of the Buena Vista Gaming and Entertainment Facility. EPA in consultation with SHPO has found that the project facilities, especially the parking structure, would impose prominently on the viewshed from CA-Ama-411/H to the Buena Vista Peaks and that the project would result in the introduction of visual, atmospheric or audible elements that may diminish both properties' integrity of setting, design, feeling, and association. The presence of the gaming and entertainment facility will cause an impact to the contributing elements of the traditional cultural property (a visual impact between CA-Ama-411/H and the Buena Vista Peaks affecting the integrity of the setting, design, feeling and association) and this effect cannot be fully mitigated. No direct impacts to archaeological deposits have been identified or are anticipated. This section identifies and describes specific treatment measures and actions to be taken to minimize adverse effects on CA-Ama-411/H and the Buena Vista Peaks.

During project design specific efforts were made to avoid direct effects on CA-Ama-411/H. The location of the project was shifted to the south to its current proposed location in order to avoid direct impacts to Loci B and C of Ca-Ama-411/H, and the parking facility was changed to a multi-level structure at the south side of the casino building instead of a larger surface parking area within CA-Ama-411/H, as previously designed. The current design of the project includes a buffer area between CA-Ama-411/H and the project construction area.

Other design changes will also result in reduced indirect (visual) effects on CA-Ama-411/H and the Buena Vista Peaks. The parking structure has been reduced from a nine-level structure that would rise to an elevation of 454 feet to a six-level structure that would rise to an elevation of 423 feet, resulting in a reduction of 31 feet of height thus reducing the impact on the view shed between the Peaks and CA-Ama-411/H.

Additionally, both the height and the footprint of the casino structure have been reduced resulting in a less imposing overall structure. The highest part of the casino structure has been reduced by 21 feet; from a 12-level parking garage to nine-level garage.

Although the introduction of the project facilities will create a visual intrusion in the viewshed between the cemetery and the Buena Vista Peaks, the project will not change access to the Buena Vista Peaks or intrude upon the route of travel between the Cemetery and the Peaks. Due to very steep topography directly south of the project site, access to the Peaks is not gained at that location. Access to the Peaks is gained from the west and southwest (west of the project site) where the primary sacred sites of the Peaks are located. The introduction of the project facilities will not alter existing access routes between the cemetery and the sacred locations on the Peaks.

Other aspects of the project have also been designed to reduce the visual impacts associated with the introduction of the facilities. These design measures include the application of minimum lighting standards with low wattage lights placed at lowest allowable height; use of an earth tone color scheme for the buildings; and low profile, low wattage signs. These measures were included in the project design to reduce the visual impacts of the facilities.

Measures to Minimize Adverse Effects

Driveway Access to the Cemetery at Buena Vista Rancheria

While the project will not diminish access to the cemetery or change procedures for access to the cemetery, this measure is included as a mitigation to ensure that a viable access to the cemetery is included in the design project and that a driveway is not eliminated. Specifically, the Tribe shall identify and maintain a driveway that will provide access from Coal Mine Road leading to the Cemetery entrance, provided that any such access road does not violate any provisions of a permit issued under the Clean Water Act by the United States Corps of Engineers for the project. If access cannot be constructed as planned, the Tribe shall notify EPA and the SHPO and consultation may be reopened. The identified access driveway (Figure 2) shall be made known to descendants and family of ancestors interred in the cemetery. This measure shall be implemented by the Tribe prior to commencement of project construction.

Cemetery Protection

The Tribe shall install barriers and other access restrictions to prevent access by the general public to the cemetery. Specific measures implementing these objectives are as follows:

Barriers

The Tribe shall install appropriate decorative fences and lockable access gates at all points of ingress to the cemetery so that access to the cemetery can be limited to authorized visitors. Signs shall be posted indicating restricted access to the cemetery. This measure shall be implemented by the Tribe prior to operation of the project.

Enhancement of the Cemetery

The Tribe shall install a minimum of four benches placed within the cemetery for the use of descendants and family to sit while visiting their relatives. This measure shall be implemented by the Tribe prior to commencement of project construction.

Landscaping

The Tribe shall install appropriate landscaping in the area between the known boundaries of CA-Ama-411/H and the project location. The objective of the landscaping will be to obscure views and sounds of the project facilities from CA-Ama-411/H, without blocking views of the Buena Vista Peaks from the cemetery. Specific measures implementing these objectives are as follows:

Vegetation

Native vegetation including trees and shrubs shall be planted in the area between the CA-Ama-411/H and the project and along the north and east side of the project access driveway (Figure 3). Taller native trees shall be planted between the project site and CA-Ama-411/H with the intent of obscuring views of the project facilities from the cemetery but not blocking views of the Buena Vista Peaks from the cemetery. Native shrubs shall be planted along the north and east edge of the project access driveway with the intention of both muffling automobile sounds and obscuring views of automobiles from the cemetery. Detailed information on the vegetation plan, including specific plant varieties, heights, and growth schedule, are presented in Attachment 1 to this document. This measure shall be implemented by the Tribe prior to operation of the project.

Earth Berms and Walls

To the extent practicable, earthen berms and decorative retaining walls shall be installed in the area between the CA-Ama-411/H and the project and along the north and east side of the project access driveway with the purpose of enhancing the effectiveness of vegetation (see *vegetation* above) in efforts to obscure views of the project from the cemetery (Figure 3). Vegetated earthen berms will be installed provided that any such berms do not violate any provisions of a permit issued under the Clean Water Act by the United States Corps of Engineers for the project or interfere with the drainage pattern of the land. If earthen berms cannot be constructed as planned, the Tribe shall notify EPA and the SHPO and consultation may be reopened. This measure shall be implemented by the Tribe prior to operation of the project.

Protection Measures During Construction

The Tribe shall implement appropriate measures to protect known historic properties from direct impact during project construction and associated activities. Specific measures implementing this objective are as follows:

Access Control

Project construction personnel, vehicles and equipment shall be barred from entering within the known boundaries of CA-Ama-411/H which is located north of the project construction area. Existing access roads leading to CA-Ama-411/H shall be blocked with fencing or other barriers during all phases of project construction such that construction personnel, vehicles and equipment cannot enter the boundaries of CA-Ama-411/H. This measure shall be implemented by the Tribe prior to commencement of project construction.

Signs

The Tribe shall place signs at all points of ingress into CA-Ama-411/H indicating that access to that area is restricted and that no construction personnel, vehicle or equipment are allowed within the restricted area. The signs shall not indicate that a historic property, archaeological site, sacred site, or other cultural resource is present. This measure shall be implemented by the Tribe prior to commencement of project construction.

Fencing

The Tribe shall install temporary fencing outside the known boundaries of site CA-Ama-411/H along the south and southwest side of the site. This measure shall be implemented by the Tribe prior to commencement of project construction.

Archaeological Testing Program

The Tribe shall retain the services of a professional qualified archaeological firm to conduct a geo-archaeological study within the footprint area of the proposed project. The archaeological firm will conduct research and a field inspection to determine if buried sites are present in areas where Holocene geological deposits will be disturbed by project activities. The study will be divided into three parts, including background research, field investigations, and report write-up as described below.

Background Research

Background research for the geo-archaeological study will include a review of aerial photographs, available geological maps, soils surveys, and any other relevant geo-environmental literature that will assist in determining the nature and age of landforms within the project area.

Field Work

Field work will be directed toward portions of the project's direct APE that may have potential to contain buried archaeological deposits based on background analyses and in-field observations. Subsurface exploration will be conducted using a tractor-mounted backhoe. The exact size, number, and location of

trenches will be determined in the field based on existing conditions, environmental constraints, and ongoing results of trenching. At a minimum, 6 trenches will be excavated, each measuring about 1 meter (~3 feet) in width, and 4 meters (~13 feet) in length. Additional trenches may be excavated in order to adequately evaluate the stratigraphy. When possible, trenches will be excavated to the depth of excavation required for project construction. When necessary, appropriate trench shoring shall be installed to allow for inspection of the trench profile. When it is not feasible to trench to the depth of proposed project excavation, core samples will be taken at the bottom of trenches to the approximate depths of proposed excavation or as deep as is feasible under site conditions.

The depth and general nature of the geological deposits exposed in each trench will be recorded, with additional attention given to trenches that contain buried soils and/or archaeological remains. Each trench will be given a unique field designation, and its location recorded using a GPS-device and/or by plotting on high-resolution aerial photographs. Project personnel will not enter a trench that is more than 1.5 meters (~5.0 feet) in depth unless an appropriate shoring system is installed in accordance with the California Occupational Safety and Health Administration standards. All of the trenching will be supervised by the project geo-archaeologist.

The presence or absence of archaeological materials will be determined by: (1) examining and raking the deposits as they are removed from the trenches; (2) examining the trench walls whenever it is safe and practical; and (3) selectively spot-screening a sample of the deposits through 1/8-inch mesh screen with volumetric controls if conditions allow. Wet-screening will be used if moist soils would obscure possible cultural materials. If cultural materials are identified or suspected, all materials around a find or suspected find will be screened.

If cultural remains are identified, all cultural material will be collected (including formed tools or diagnostic artifacts, as well as flaked stone debris, manuports and fire-cracked rock). If any intact cultural features are identified, they will be documented in profile, and an appropriate-sized sample of the soil matrix collected for flotation processing and micro-constituent analyses. No destructive analysis will be conducted on any archaeological materials including human bone, animal bone or artifacts. All excavation will be observed by a Native American monitor.

Report

Within two weeks of completing the field investigation, a letter report will be prepared summarizing the primary results of the geo-archaeological investigation, including GIS maps depicting all trench locations and any areas found to contain buried archaeological deposits. Within three months of the completion of field work, a draft technical report will be submitted describing the results of the background research and field investigation. In addition to location maps, the report will include photographs of representative trenches and soil-stratigraphic descriptions of geological deposits exposed in each trench. Any archaeological finds will be treated pursuant to the archaeological discovery plan and in accordance with 36 C.F.R. 800.13. This information will be used to interpret the history of Holocene landscape evolution in the project area. Following review of the draft report, a final report will be prepared and delivered to the Tribe. Copies of the draft report and the final report will be made available to representatives of the other Native American groups that have been involved in the consultation for this project, based on the list of participants maintained by the EPA and if they so request of the EPA or the Buena Vista Rancheria of Me-Wuk Indians.

Disposition of Recovered Archaeological Materials

Any and all archaeological materials collected during archaeological testing will be re-buried within the Rancheria following any analysis that may be conducted. No destructive analysis will be conducted on any archaeological materials. All collected archaeological materials will be temporarily stored and treated in accordance with 36 C.F.R. Part 79 until the items are re-buried. Collected archaeological materials will be re-buried in a location adjacent to the existing cemetery in an area unlikely to contain buried archaeological remains. However, in order to avoid potential further disturbance of buried archaeological remains at the selected location, excavation for re-burial will be conducted under the supervision of a qualified Native American monitor who will ensure that potentially significant archaeological remains are not disturbed during re-burial.

The Archaeological Testing Program will be implemented by the Tribe prior to the commencement of project construction.

Monitoring

Although no known historic properties would be directly impacted by construction or operation of the project it is possible that previously unknown archaeological deposits, including human remains and funerary objects, could be discovered during ground-disturbing activities. In order to identify, protect, or treat any such discovery of archaeological deposits, the Tribe shall implement an intensive monitoring program during ground-disturbing construction activities. Specific measures implementing these objectives are as follows and shall be implemented by the Tribe during project construction.

Qualifications

Archaeologists

All archaeological monitoring shall be carried out by—or under the direct supervision of—a person or persons meeting at a minimum the Secretary of Interior's Standards *Professional Qualifications Standards* (48 FR 44738-39) (PQS) as an archaeologist. This requirement does not preclude the use of properly supervised personnel who do not meet the Professional Qualification Standards. All activities conducted by the archaeological monitor shall reasonably conform to the standards and guidelines established by the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740) and SHPO.

Native American

All Native American monitoring shall be carried out by a person or persons meeting the following criteria:

- Shall be Native American;

- Shall have a certificate or certification demonstrating completion of a cultural protection and preservation training class or program;
- Shall have knowledge of Native American cultural practices and material culture, and preference shall be given to persons with knowledge of Me-Wuk culture and history; and
- Shall have experience monitoring construction activity for Native American cultural sites.

The number of Native American monitors needed during archaeological testing and during construction will depend on the number of pieces of heavy equipment operating at any given time. Although the number of monitors will therefore be variable, it is anticipated that between two to five Native American monitors will be needed during ground disturbing activities. The number of monitors on site will be adequate to observe ground disturbing activities sufficient to identify archaeological remains. The Buena Vista Tribe shall establish a pool of qualified Native American monitors (individuals meeting the criteria described above) that will be called upon as needed. All Native American monitors shall be compensated fairly in accordance with the experience and responsibility assigned to them.

Monitoring During Construction

Archaeological and Native American on-site monitoring shall be conducted by qualified monitors (see Qualifications above) during all ground-disturbing construction activities on ground that has not been previously and recently disturbed. The archaeological and Native American monitors will ensure that any intact cultural deposits or features are properly identified and recorded, and that work will stop in the area of the find if continued construction would likely cause additional damage to intact deposits or features. Any identified human remains are to be treated with respect and in accordance with the requirements of the *Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects* (below). The monitors will maintain notes in the form of a Cultural Resource Monitoring Log. If the monitors determine that a potentially significant cultural resource has been identified or that potentially human remains are present, the monitors shall implement the procedures described below under *Archaeological Discovery Plan*.

Training

The qualified archaeologist and Native American monitors will provide training to construction personnel regarding proper procedures and conduct in the event that archaeological materials are encountered during construction. Prior to the beginning of construction a training session will be held to provide adequate information and ensure adherence to the procedures prescribed in this document. The monitors will provide additional in-field cultural resource education in the event of any construction personnel changes. All training sessions will be conducted in person and in English. Construction personnel will be educated regarding the purpose for archaeological monitoring, cultural resource regulations, and requirements in the event that human remains are encountered, basic identification of archaeological resources, and proper discovery protocols to be followed during construction. Each construction worker will be required to sign a statement that certifies their understanding and receipt of the cultural resource education information and willingness to abide by the guidelines conveyed in the training. In addition, the construction crew will be provided reference cards that outline the proper discovery procedures and contact information for project monitors and the environmental staff for the undertaking.

Archaeological Discovery Plan

Despite the intensive archaeological resource field investigations that have already been performed prior to project construction, it is nonetheless possible that previously unidentified cultural resources could be discovered during the project construction process. This *Archaeological Discovery Plan* describes the procedures established to deal with unanticipated discoveries of archaeological resources during the course of project construction. The Tribe shall implement the *Archaeological Discovery Plan* during ground-disturbing construction activities. Procedures to deal with the unanticipated discovery of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony are described below in *Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects*.

Stop Work

If the archaeological or Native American monitor or other personnel discovers a potentially intact archaeological resource, all construction shall immediately stop within 100-ft of the discovery. All equipment at the location of the discovery will be relocated to other work areas to allow work to continue unless movement of the equipment may cause damage to the discovered material. If the monitors determine that the discovery is a non-significant or non-archaeological find, the discovery will be recorded in the daily Archaeological Monitoring Log and construction may then proceed at the direction of the monitors.

Notifications

In the event of the discovery of a potentially significant find and as soon as construction activity has stopped, the contractor's construction supervisor or the archaeological monitor will notify the EPA and the State Historic Preservation Officer (SHPO) and other interested persons within 48 hours of the discovery. The notification shall describe the initial assessment of the find and proposed actions to resolve potential adverse effects. The proposed actions to resolve potential adverse effects will be informed by a Research Design to be prepared immediately following the identification of a potentially significant find (see *Archaeological Discovery Plan* and *Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects* below). The monitoring report will conform to the standards and guidelines established by the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation*, which will describe the methods and findings of archaeological and Native American monitoring conducted during construction activities.

Archaeological Investigation

In the event that the archaeological and/or Native American monitors determine that potentially significant archaeological remains have been discovered during project construction, after the stop work order and notifications have been implemented as described above, an archaeological investigation of the find will commence in adherence to the following procedures:

Preliminary Archaeological Investigation

A qualified archaeologist, in consultation with the Buena Vista Tribal Council, will prepare a brief work plan that describes the methods and objectives of a preliminary archaeological testing program. The purpose of a preliminary testing program will be to gather enough information to characterize the find, provide boundary definition, and if possible, to provide a recommendation concerning eligibility of the resource for listing on the NRHP. Prior to implementation of the preliminary archaeological testing, EPA and SHPO shall review and approve the plan.

Treatment of Historic Properties Discovered During Construction

In the event that preliminary archaeological investigations result in a finding, made in consultation with SHPO, that archaeological remains that were discovered during project construction are or may be eligible for listing on the NRHP, then applicable provisions of the MOA (Stipulation VII) shall be implemented and appropriate treatment measures shall be identified in consultation among the Signatory Parties to the MOA and other appropriate parties as may be required under Section 106 of NHPA.

Research Design

If adverse effects on an archaeological site discovered during construction cannot be avoided and consultation among Signatory Parties to the MOA identify treatment measures including data recovery, then a qualified archaeologist, in consultation with EPA and SHPO shall prepare a research design which will include identification of research domains, specific research questions, a statement of data requirements needed to address the research questions, a description of methods to be employed in data recovery, a description of analysis to be used, report preparation and review procedures, and identification of a repository or other disposition of any collected artifacts or other archaeological remains.

Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects

Despite the intensive archaeological resource field investigations that have already been performed prior to project construction, it is nonetheless possible that previously unidentified Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony could be discovered during the project construction process. This *Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects* describes the procedures established to deal with unanticipated discoveries of these types of materials during the course of project construction. The Tribe shall implement this plan during ground-disturbing construction activities. Procedures to deal with the unanticipated discovery of other types of archaeological resources are described above in the *Archaeological Discovery Plan*.

At all times human remains will be treated with the utmost dignity and respect. Human remains, funerary objects, sacred objects, and objects of cultural patrimony will be left in place and not disturbed, collected, or removed—and protected and secured—until appropriate measures have been taken according to this plan. Native American remains and associated funerary objects shall be defined to include the following:

- Human remains of Native American origin.
- Any associated funerary objects placed intentionally at the time of death or late with or near the human remains of Native American origin or within the burial pit.
- Any unassociated funerary objects, which are understood to mean those objects that were intentionally placed with human remains of Native American origin but have been disturbed through erosion, vandalism, construction, or other ground-disturbing activities and their association has been muddled
- Any sacred objects which shall mean specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Any object of Cultural Patrimony which shall be items having ongoing historical, traditional, or cultural importance central to the Mi-Wuk people rather than property owned by an individual.

Stop Work

Should Native American remains, as defined in this section, be found during the course of monitoring, the Tribe shall stop all ground disturbing work in the area of the find and within 100-feet of the find until the following procedures have been implemented:

The archaeological and Native American monitors shall protect and or stabilize the find from further disturbance. Then, the monitor(s) will review the find and determine if it is a Native American remain as defined in this section, and if it is, record the object in situ to the extent possible using standard archaeological recordation methods. If the object is determined not to be Native American remains as defined in this section, then this determination shall be recorded and construction may continue in the vicinity of the object, subject to the procedures described above in the *Archaeological Discovery Plan* as well as any applicable procedures as stipulated in the MOA.

Notification

If skeletal material or other human remains are discovered, the EPA, SHPO, and the Amador County Coroner/Sheriff shall be notified immediately. The county coroner will make the official ruling on the nature of the remains, as either forensic or archeological. The archaeological monitor will make the required immediate notifications, and will notify EPA and SHPO of the medical examiner's official ruling. The archaeological and Native American monitors will assist law enforcement personnel, but will also ensure that the archaeological context of the remains stays intact and that human remains are treated with dignity and respect. If it is determined that the remains are forensic (i.e., they represent a modern crime scene), the archaeologists will cooperate with the law enforcement investigation, and assist law enforcement personnel in obtaining necessary evidence without destruction of the site.

Treatment of Native American Remains

In the event that Native American remains are to be exhumed following the appropriate measures (as described above), they will be treated in accordance with the following provisions:

- Behavior of all staff including monitors, archaeologists and others that may be present will be respectful and appropriate and in accordance with the directions of Native American monitors.
- Archaeological excavation and removal of the remains shall be carried out by, or under the direct supervision of, a person or persons meeting at a minimum the Secretary of Interior's Standards *Professional Qualifications Standards* (48 FR 44738-39) (PQS) in the appropriate disciplines. All activities required for the archaeological recordation, removal, and handling of Native American remains shall reasonably conform to the standards and guidelines established by the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740).
- There will be no public exposure of the remains or objects.
- No Native American human remains, funerary objects, sacred items or objects of cultural patrimony shall be removed from the Buena Vista Rancheria.
- No destructive analyses of human remains or objects will be permitted, including radiocarbon dating and obsidian hydration.
- The Tribe shall provide a safe, secured facility located on the Buena Vista Rancheria to place any burials, funerary objects, sacred items, or objects of cultural patrimony discovered during construction until these items are re-interred.
- Any burials, funerary objects, sacred items or objects of cultural patrimony that are removed from the site of discovery shall be re-interred within the Buena Vista Rancheria, within or adjacent to the existing fenced cemetery in an area that will not be subject to disturbance..
- Re-Burial of Native American remains shall be scheduled and conducted by the Tribe in coordination with Native Americans recognized as having lineal, familial, or cultural affiliation.

Cultural Interpretive Display

The Tribe shall install a cultural interpretive display that provides visitors with information about the prehistory, history and ethnographic uses of the Buena Vista Rancheria and its immediate surroundings. The interpretive display will include available historical photographs, written presentations describing the prehistoric, ethnographic and historic background of the area and examples of relevant material cultural. The interpretive display will be located within the Buena Vista Rancheria and shall be implemented by the Tribe within one year following completion of project construction.

Treatment Measure Documentation and Report

The Tribe shall provide EPA with annual progress reports describing actions taken to implement the measures described in this HPTP, identification of measures that have been fully implemented, and a

discussion of any major problems or difficulties encountered which may prevent full implementation of one or more of the treatment measures.

In adherence to Stipulation V of the MOA, within twelve months after the Tribe, in consultation with EPA and SHPO, has determined that all measures required by the HPTP have been completed, the Tribe will prepare and distribute to consulting parties a draft report documenting the methods and results of implementation of the measures of this HPTP. This report will include a comprehensive monitoring report, conforming to the standards and guidelines established by the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation*, which will describe the methods and findings of archaeological and Native American monitoring conducted during construction activities. The report will document any discoveries, provide an explanation of the disposition of any discovered items, and will include monitoring logs.

In the event that Native American remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during construction activities, the report will include documentation of the results of the archaeological investigation of the Native American remains. The report shall include a description of the finds, any drawings made, methods used in the removal and analysis of the remains, a discussion of the archaeological relevance of the find, and a description of the disposition of the remains.

Copies of all reports will be made available to all consulting parties including representatives of the other Native American groups that have been involved in the consultation for this project, based on the list of participants maintained by the EPA and if they so request of the EPA or the Tribe.

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EXHIBIT 9

Ione Band of Miwok Indians v. United States Environmental Protection Agency
NPDES Permit No. CA 0049675 – Buena Vista Casino Wastewater Treatment Plant

Exhibit 9 to Declaration of William Wood in Support of Petition for Review

Wood, William (LAX - X52511)

From: Tinger.John@epamail.epa.gov

Sent: Wednesday, August 11, 2010 3:09 PM

To: Wood, William (LAX - X52511)

Subject: MOA

Attachments: Buena Vista Final MOA 5-5-2010.pdf; EPA070228A BUENA VISTA MOA SIGNATURE PAGE AR-M550U_20100602_140621.pdf; Buena Vista MOA Attach 1 APE 4_15_10.pdf; Buena Vista MOA Attach 2 HPTP 4_15_10.pdf

John Tinger
U.S. EPA Region IX
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