



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

Wtr-5

Milford Wayne Donaldson
State Historic Preservation Officer
Office of Historic Preservation
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001

FEB 17 2007

Re: Request for Consultation Under the National Historic Preservation Act for an
Undertaking at the Buena Vista Rancheria, Amador County, California

Dear Mr. Donaldson:

The Buena Vista Rancheria of Me-Wuk Indians (Tribe) is proposing to develop, construct, and operate a gaming and entertainment facility (proposed project) in Indian country located on the east side of Coal Mine Road near the unincorporated town of Buena Vista in Amador County, California. The Tribe has applied to the United States Environmental Protection Agency (EPA) for a National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act to operate a wastewater treatment facility as part of the proposed project. In addition, the Tribe is applying to the Army Corps of Engineers (Corps) for a permit under Section 404 of the CWA. As provided in 36 C.F.R. § 800.2(a)(2), EPA and the Corps have agreed that EPA will be the lead federal agency on the proposed project for purposes of complying with the National Historic Preservation Act of 1966 (NHPA), as amended, 16 U.S.C. § 470f. EPA has determined that the proposed project is an "undertaking" subject to the review process set forth in Section 106 of the NHPA. Accordingly, I am writing to initiate consultation with you on this project.

To provide you with background on this project, EPA has enclosed a copy of the draft Tribal Environmental Impact Report (draft TEIR) that was prepared by Jones & Stokes, the Tribe's consultant. The TEIR was prepared in accordance with the provisions of the gaming compact between the State of California and the Tribe. The draft TEIR includes, among other things, a description of the proposed project and an evaluation of potentially significant off-reservation environmental impacts of the project, including an analysis of potential effects on historic resources that have been identified to date and which are located off the reservation. (See section 3.E of the draft TEIR entitled, "Impact Analysis: Cultural Resources.")


Additionally, the Tribe retained Pacific Legacy, another consultant, who prepared a

cultural resource survey entitled "Archaeological Inventory of the Buena Vista Rancheria, Amador County, California" (Inventory), that includes geographic areas proposed for the project as well as areas on the reservation that are not proposed for any type of ground-disturbing activities. A copy of the Inventory is enclosed. Please note that the Inventory contains information that has been claimed confidential and therefore should be handled in accordance with the provisions of applicable State and federal law. EPA is particularly interested in consulting with your staff on evaluating the scope of efforts on identifying historic properties that have been conducted to date.

EPA is in the process of identifying other consulting parties. While Pacific Legacy made some initial contact with Indian tribes that may have interest in the proposed project, EPA is sending letters to federally-recognized tribes and other parties notifying them of the details of the project, and requesting their participation in the process. EPA looks forward to consulting with your staff on our efforts to identify other parties that may be interested in participating in the process.

We look forward to working with you and your staff on this project. For technical information or questions, please contact John Tinger, CWA Standards and Permits Office, at (415)972-3518 or Tinger.John@EPA.gov. Legal questions should be directed to Jo Ann Asami, Office of the Regional Counsel, at (415) 972-3929.

Sincerely,


Alexis Strauss, Director
Water Division

Enclosures:

Draft TEIR for Buena Vista Rancheria
Archaeological Inventory of the Buena Vista Rancheria, Amador County, California

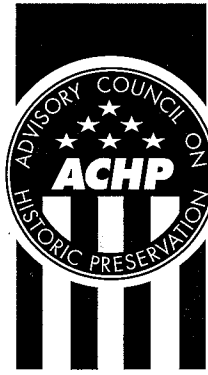
cc: (w/o enclosures)

Ms. Kathy Norton, Chief, San Joaquin Valley Office, U.S. Army Corps of Engineers

Sacramento District, Regulatory Branch, 1325 J Street, Sacramento, CA 95814

Rhonda Pope, Tribal Chairperson, Buena Vista Tribe, P.O. Box 162283, Sacramento, CA 95814

Dennis Trzcinski, Project Director, Wilmorite, Inc., 1515 19th St., Sacramento, CA 95814



Preserving America's Heritage

March 13, 2007

Mr. Doug Eberhardt
US Environmental Protection Agency, Region IX
CWA Standards & Permits Office, Mail Code: WTR-5
75 Hawthorne Street
San Francisco, CA 94105-3901

Ref: *Proposed Flying Cloud Casino, Buena Vista Rancheria
EPA NPDES Permit No. CA 0049675
Ione, California*

Dear Mr. Eberhardt:

We have been contacted by several members of the Ione Band of Miwok Indians who have expressed concerns about an apparent failure by the Environmental Protection Agency (EPA) to comply with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR 800) in carrying out the referenced undertaking. The EPA is considering issuing a NPDES permit for the proposed development.

According to our contacts, potential archaeological sites and properties of religious and cultural importance to the Ione Band, including a burial ground used by the band for thousands of years, may be adversely affected by the proposed construction of the Flying Cloud Casino. The Ione contend that the Buena Vista Rancheria site, in its entirety, constitutes one of the tribe's four most sacred sites. The project may also have an impact on the rural visual character of the Jackson Valley area and on nearby Buena Vista Peaks, which is considered a scenic landmark and of special significance to one or more Native American tribes in the region.

The Ione believe that they have not been able to enter into consultation with the EPA appropriately. They also believe their concerns are not being taken into account by the EPA. The ACHP has not received any notification of adverse effect for this undertaking, and we have no correspondence indicating that the Section 106 process has been initiated. In order for us to respond to the Ione Band of Miwok Indians, we request that EPA apprise us of the current status of this project. We are particularly interested in the steps the EPA has taken to comply with Section 106.

We thank you in advance for your prompt attention to this matter. Should you have any questions or wish to discuss this matter further, please contact me at 202-606-8553, or by email at jeddins@achp.gov.

Sincerely,

John T. Eddins, Ph.D.
Historic Preservation Specialist/Archaeologist
Office of Federal Agency Programs
Federal Permitting, Licensing, and Assistance Section



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

John T. Eddins
Historic Preservation Specialist/Archaeologist
Office of Federal Agency Programs
Federal Permitting, Licensing and Assistance Section
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

APR 04 2007

Re: The Buena Vista Rancheria of Me-Wuk Indians, Ione, California

Dear Mr. Eddins:

I am writing in response to your letter dated March 13, 2007, in which you request that the United States Environmental Protection Agency (EPA) apprise the Advisory Council on Historic Preservation (ACHP) of the steps it has taken to comply with Section 106 of the National Historic Preservation Act (NHPA) for a gaming facility proposed by the Buena Vista Rancheria of Me-Wuk Indians (Tribe). In your letter, you state that you have been contacted by several members of the Ione Band of Miwok Indians who have raised concerns regarding EPA's compliance with Section 106.

By way of background, the Tribe is proposing to develop, construct, and operate a gaming and entertainment facility (proposed project) in Indian country located on the east side of Coal Mine Road near the unincorporated town of Buena Vista in Amador County, California. The Tribe has applied to the United States Environmental Protection Agency (EPA) for a National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act to operate a wastewater treatment facility as part of the proposed project. In addition, the Tribe has applied to the Army Corps of Engineers (Corps) for a permit under Section 404 of the CWA. As provided in 36 C.F.R. § 800.2(a)(2), EPA and the Corps have agreed that EPA will be the lead federal agency on the proposed project for purposes of complying with the National Historic Preservation Act of 1966 (NHPA), as amended, 16 U.S.C. § 470f.

As provided in 36 C.F.R. § 800.3(a), EPA has determined that the proposed project is an "undertaking" subject to the review process set forth in Section 106 of the NHPA. Accordingly, by letter dated February 17, 2007, EPA initiated consultation with the California State Historic Preservation Officer's Office on this project. Among other things, EPA is interested in consulting with the SHPO's Office on the scope of efforts on identifying historic properties that have been conducted to date. Given the complexity of the issues and to facilitate the consultation

process, EPA and the SHPO have tentatively scheduled a meeting for April 5.

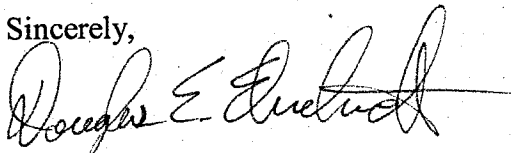
Additionally, by letters dated March 1, 2007, EPA formally initiated consultation with Indian Tribes, including the Ione Band of Miwok Indians, that might attach religious and cultural significance to historic properties in the area that may be affected by the project. EPA has not received formal responses from all interested parties to date, and will follow-up on these letters with phone calls to appropriate tribal officials, including Chairperson Franklin of the Ione Band of Miwok Indians, to ensure that these Tribes have been adequately notified and are given a meaningful opportunity to participate in the Section 106 process. Also, EPA intends to send letters to other parties who have expressed interest in the proposed project to ensure that their input is considered. To date, EPA has been contacted by several members of the Ione Band of Miwok Indians, who indicated they are interested in participating in the consultation process.

Once input from interested parties is received, EPA, in consultation with the SHPO will determine whether the undertaking may have adverse impacts on historic properties, in accordance with the procedures set forth in 36 C.F.R. Part 800, Subpart B. Should a party object to any such determination that cannot be resolved, EPA will solicit the assistance of ACHP.

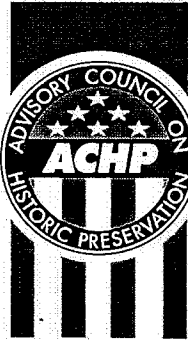
EPA Region IX is also in contact with Mr. Jaime Loichinger and Mr. John Vetter at EPA Headquarters/OFA, who have offered their assistance in this matter.

We hope that this information adequately responds to your letter. If you have additional questions, please feel free to call John Tinger of my staff, at (415)972-3518, or Jo Ann Asami, of the Office of Regional Counsel, at (415)972-3929.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas E. Eberhardt", with a long horizontal flourish extending to the right.

Douglas E. Eberhardt, Chief
CWA Standards and Permits Office



Preserving America's Heritage

August 13, 2009

Douglas E. Eberhardt, Chief
NPDES Permit Office
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

Ref: *Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project
Amador County, California*

Dear Mr. Eberhardt:

The Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the California State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require our further assistance, please contact Dr. John Eddins at 202 606-8553 or jeddins@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov
Buena Vista Rancheria NPDES CA0049675 Administrative Record Page 1306

Holland & Knight

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Holland & Knight LLP | www.hklaw.com

William Wood
(213) 896-2511
william.wood@hklaw.com

January 8, 2010

VIA E-MAIL AND UPS

Mr. Reid Nelson
Director, Office of Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 803
Old Post Office Building
Washington, DC 20004

Re: Request to Become Involved in Section 106 Consultation for Draft NPDES
Permit for the Proposed Buena Vista Casino; Request to Obtain a Determination
of Eligibility

Dear Mr. Nelson:

We are counsel to the Ione Band of Miwok Indians ("Tribe") and write on behalf of the Tribe to request that the Advisory Council on Historic Preservation ("ACHP" or "Council") become involved in the National Historic Preservation Act Section 106 consultation process conducted by the Environmental Protection Agency for a National Pollutant Discharge Elimination System permit for the proposed Buena Vista Casino on the Buena Vista Rancheria. The Tribe also asks that the Council request the Environmental Protection Agency ("EPA") obtain a determination of eligibility for the Buena Vista site.

The Tribe attaches great importance to the Buena Vista site, and the Tribe's cultural and historical affiliation with the Buena Vista site is well-documented in anthropological reports, photographs, and historical records. The site, which is the location of a historic Miwok village, includes a tribal cemetery, an Indian ball field, three historic roundhouse areas, springs, a rock shelter, and the Buena Vista Peaks. Most of the site is encompassed by the Buena Vista Rancheria, but the Buena Vista Peaks and a spring affiliated with the village are outside the Rancheria's boundaries.

Oral histories and preliminary archaeological studies indicate that the Buena Vista site may be among the longest continually inhabited places in California, with a human presence and residency dating from more than 9,000 years ago through to the late 1900s and the present. People identified as living at Buena Vista in one of the earliest federal censuses of Indians in the area (prepared in 1905 and 1906) were base-roll members of or descendants of base-roll

members of the Ione Band of Miwok Indians; almost all of the people known to be buried in a cemetery at Buena Vista are base-roll members or relatives of base-roll or present-day members of the Tribe; and Ione Tribal members have continuously visited and used the site. The Tribe can provide you with documentation regarding the history of and the Tribe's association with the site, areas of which are recorded in the California Historic Resources Information System.

Some background regarding the proposed Buena Vista Casino project is helpful. In 1999, the Buena Vista Rancheria of Me-Wuk Indians of California entered into a tribal-state gaming compact with the State of California. Separately, the Buena Vista Rancheria of Me-Wuk Indians of California entered into a management agreement with a gaming developer. Both the tribal-state compact and the management agreement contemplated the establishment and operation of a casino on the Buena Vista Rancheria – i.e., at the Buena Vista site. Both agreements were entered into by Donnamarie Potts, as Spokesperson for the Buena Vista Rancheria of Me-Wuk Indians.

Because the management agreement required approval of the National Indian Gaming Commission ("NIGC"), the NIGC initiated Section 106 consultation in connection with its review of the proposed casino project. As part of this consultation, the NIGC solicited the views of the California State Historic Preservation Officer ("SHPO"). During the course of the consultation, a leadership dispute arose regarding the representation of the Buena Vista Rancheria of Me-Wuk Indians, and the project and the related Section 106 consultation stalled.

In 2004, the leadership dispute was resolved, and an amended tribal-state compact was executed between the State of California and the Buena Vista Rancheria of Me-Wuk Indians. This amended compact was signed by Donnamarie Potts as the Outgoing Chairperson of the Buena Vista Band of Me-Wuk Indians, and by Rhonda L. Morningstar Pope as the Incoming Chairperson of the Buena Vista Band of Me-Wuk Indians. At or around the same time, the proposed casino project was revived. Under the amended compact, a Tribal Environmental Impact Report ("TEIR") was prepared to examine the off-site impacts of the proposed project. However, the TEIR does examine impacts to cultural resources on the Rancheria. Nor did the TEIR process involve consultation under Section 106 of the National Historic Preservation Act.

In December 2005, the EPA noticed a proposed National Pollutant Discharge Elimination System ("NPDES") permit under Section 402 of the Clean Water Act for a wastewater treatment plant associated with the proposed casino project at Buena Vista. As part of the permitting process, the EPA initiated Section 106 consultation in 2007 regarding the impacts that the proposed project would have on historic and cultural resources. An initial consultation meeting was held on May 1, 2007. Representatives from the Tribe participated in this meeting.

On October 2, 2008, Douglas E. Eberhardt, Chief of the NPDES Permits Office for U.S. EPA Region IX, sent a letter to the SHPO seeking the SHPO's input on the EPA's efforts to identify historic properties, determination of the project's area of potential effects ("APE"), and assessment of effects on historic properties. In this October 2, 2008 letter, a copy of which is enclosed as Attachment A, the EPA set forth its determination that no historic properties within

the direct APE of the project construction zone or intersection improvements associated with the project; that one cultural resource (CA-AMA-650) located within the direct APE is not eligible for listing on the National Register of Historic Places; that two cultural resources within the indirect APE, CA-AMA-411/H (Upüsüni Village) and the Buena Vista Peaks, constitute historic properties; and that the project would adversely affect CA-AMA-411/H (Upüsüni Village) and the Buena Vista Peaks.

In late 2008, the EPA evaluated what impact the increased flow from the proposed wastewater treatment plant might have on historic resources located downstream of the proposed plant. On December 18, 2008, Mr. Eberhardt informed the SHPO of the EPA's conclusion that the proposed project did not have the potential to impact historic resources that may be located in the streambed downstream of the proposed wastewater treatment plant. As he had in his October 2, 2008 letter, Mr. Eberhardt again requested the SHPO's input regarding whether the APE for the project had been adequately defined; whether efforts to identify historical and cultural properties were adequate; whether CA-AMA-411/H (Upüsüni Village) and the Buena Vista Peaks constitute historic properties; whether CA-AMA-650 does not constitute a historic property; and whether the undertaking would adversely affect CA-AMA-411/H (Upüsüni Village) and the Buena Vista Peaks. A copy of this December 18, 2008 letter is enclosed as Attachment B.

On April 10, 2009, the SHPO's office wrote to Mr. Eberhardt, commenting that the SHPO concurred that the APE had been properly determined and that the efforts to identify historic properties were adequate. The SHPO also concurred that the two historic properties identified in the indirect APE, the Upüsüni Village (CA-AMA-411/H) and the Buena Vista Peaks, are both eligible for listing on the National Register of Historic Places under criterion A and that the Upüsüni Village is also eligible under criterion D. The SHPO further concurred that CA-AMA-650 is not eligible for listing on the National Register, and concurred that the undertaking would adversely affect CA-AMA-411/H (Upüsüni Village) and the Buena Vista Peaks. In this letter, the SHPO encouraged the EPA to notify the ACHP of the finding of adverse effect, provide the ACHP with appropriate documentation, and invite the Council to participate in the Section 106 consultation. A copy of the April 10, 2009 SHPO letter is enclosed as Attachment C.

In the interim, the EPA as the lead agency (together with the Army Corps of Engineers, which is considering an application for issuance of a permit under Section 404 of the Clean Water Act) held a consultation at the SHPO's office in Sacramento on March 12, 2009 regarding impacts of the undertaking on historic and cultural resources, potential mitigation of these impacts, and a draft Memorandum of Agreement ("MOA") concerning the mitigation of impacts that was circulated by the EPA on January 9, 2009. A copy of this draft MOA is enclosed as Attachment D. On March 25, 2009, a site visit was held at the Buena Vista site so that the EPA, Army Corps, SHPO and others could gain a better understanding of the proposed undertaking's potential impacts. Representatives from the Tribe participated in both the March 12 meeting and the March 25 site visit.

On June 4, 2009, the EPA circulated to the Tribe and other parties a copy of the draft Historic Properties Treatment Plan ("HPTP") for the Buena Vista project, and a meeting was held at the SHPO's office in Sacramento on June 30, 2009 to discuss the draft HPTP. The Tribe submitted comments to the EPA on the draft HPTP in advance of the meeting. Also, on July 24, 2009, the Tribe submitted comments to the EPA regarding the criteria to be used for monitors at the Buena Vista.

The Tribe has not seen a draft of either the MOA or HPTP that is more recent than those circulated by the EPA on January 9, 2009 and June 4, 2009, respectively, but both the draft HPTP and MOA are mentioned in the Notice of Proposed Action for the issuance of the NPDES permit that was released by the EPA on August 5, 2009, enclosed as Attachment E, and in the Proposed Fact Sheet for the proposed permit, enclosed as Attachment F. The Tribe submitted comments on the draft NPDES permit, draft HPTP and draft MOA on October 15, 2009. The comment period for the comments on the draft permit, NOA and HPTP has closed, and the EPA is currently in the process of formulating its final permit decision.

The Tribe hereby requests, for the reasons explained below, that the Advisory Council formally participate in the ongoing Section 106 consultation being conducted by the EPA. *See* 36 C.F.R. § 800.6(a)(1)(ii) ("[A]n Indian tribe ... may at any time independently request the Council to participate in the consultation."). The Tribe hopes that the Council can work with the EPA and Army Corps, the Tribe, and other consulting parties to avoid the adverse effects of the proposed project. The Tribe also asks that the Council request the EPA to obtain a determination of eligibility for the entire Buena Vista site. *See* 36 C.F.R. § 800.4(c)(2). Moreover, the Tribe requests that the Advisory Council encourage the EPA and Army Corps to delay the issuance of any permit or any permit decision for the proposed project until a determination of eligibility has been obtained and until the Advisory Council has had the opportunity to prepare its formal comments to the heads of the EPA and Army Corps (and to consult with the agencies, other consulting parties, and the public) so that these comments can be considered by the agencies in reaching a final decision.

Identification of Historic Properties; Request for Determination of Eligibility

As noted in the Tribe's comments to the EPA, the Tribe's position is that the area of the Buena Vista Rancheria where the project is proposed is included within a larger, single site that is eligible for listing on the National Register of Historic Places as a Traditional Tribal Cultural Property and under the criteria in 36 C.F.R. Part 800 implementing Section 106 of the National Historic Preservation Act ("NHPA"). This site extends outside the Rancheria's boundaries to include the Buena Vista Peaks and a spring adjacent to the northeast end of the Rancheria which is affiliated with the Village of Upüsüni.

The EPA has determined, and the SHPO has concurred, however, that only the areas encompassing the Buena Vista Peaks and CA-AMA-411/H are eligible for listing on the National Register. Although the Upüsüni Village designation has been expanded to include the Buena Vista Rancheria Cemetery and the third roundhouse and Oliver residence as loci of CA-

AMA-411/H in the Draft HPTP (see pp.10-11 thereof),¹ the Tribe's position remains that the entire Buena Vista site is eligible for listing on the National Register. The Tribe therefore respectfully disagrees with the conclusion at pages 9-10 of the Draft HPTP and in the above-mentioned correspondence between the EPA and the SHPO that only the areas encompassing the Buena Vista Peaks and CA-Ama-411/H are eligible for listing on the National Register – and that the area in the central portion of the Rancheria where the development is proposed is not.

As noted above, the California SHPO in April 2009 concurred with the EPA that the Upüsüni Village (CA-AMA-411/H) and the Buena Vista Peaks are both eligible for listing on the National Register of Historic Places, and that CA-AMA-650 is not eligible for listing. The SHPO determined that both CA-AMA-411/H and the Buena Vista Peaks under Criterion A were eligible under and that CA-AMA-411/H is also eligible under Criterion D. In its October 2, 2008 letter, the EPA determined that that CA-AMA-411/H was eligible for listing under Criterion A, Criterion B, and Criterion C.

The Section 106 regulations require agency officials to acknowledge that Indian tribes possess special expertise in assessing the National Register eligibility of historic properties that may possess religious and cultural significance to them. *See* 36 C.F.R. § 800.4(c)(1). The Tribe's position is that the entire Buena Vista site is eligible for listing on the National Register as a single Traditional Cultural Property consisting of and linking the Buena Vista peaks, the cemetery, the village site, the Indian ball field, the springs and other areas. It is also the Tribe's position that the entire site is eligible under Criterion A, Criterion B, and Criterion D.

The Tribe has repeatedly expressed to the EPA its position that the entire Buena Vista site is eligible for listing on the National Register, as well as its concerns about the adequacy of the efforts to identify cultural and historical properties affected by the proposed undertaking. These concerns are heightened by the fact that a geological study "within the footprint of the proposed project" (presumably the area of the site where the wastewater treatment plant and casino structure would be built) was still being contemplated as recently as June 2009. *See* Draft HPTP at p.17. As noted on page 9 of its October 2, 2008 letter to the SHPO, the EPA "concluded that the proposed undertaking will not adversely affect historic properties located within the direct APE of the construction zone ... because no such properties have been identified in the direct APE."

Given the Tribe's disagreement with the EPA's (and SHPO's) determination regarding the eligibility of the entire Buena Vista site for listing on the National Register, and the Tribe's concerns regarding the adequacy of the EPA's identification efforts, the Tribe asks that the Advisory Council request the EPA to obtain a determination of eligibility for the Buena Vista site from the Secretary of the Interior pursuant to 36 C.F.R. § 800.4(c)(2) and 36 C.F.R. Part 63. The Tribe also intends to submit an application for the entire Buena Vista site to be listed on the

¹ Unless otherwise noted, all references to the "Draft HPTP" refer to the version of the draft Historic Properties Treatment Plan for the proposed Buena Vista Casino on the Buena Vista Rancheria that was circulated by the EPA on June 4, 2009. A copy of the Draft HPTP is enclosed as Attachment G.

National Register of Historic Places, and it looks forward to working with the Advisory Council to process that application.

Request for Participation in Section 106 Consultation

In addition to asking that the Advisory Council request that the EPA obtain a determination of eligibility from the Secretary of the Interior, the Tribe asks that the Council become involved in the Section 106 consultation process under 36 C.F.R. § 800.6(a)(1)(ii). At least three of the criteria for ACHP involvement set out in Appendix A to 36 C.F.R. Part 800 are met here: the undertaking has substantial impacts on important historic properties, there is the potential for procedural problems (including the dispute about the entire site's eligibility, which the Council's involvement could help resolve), and the project presents issues of concern to an Indian tribe.

The Tribe has expressed to EPA its concern, among others, about whether direct impacts from construction of the casino and related infrastructure (including the wastewater treatment plant) would not occur in the area designated as CA-AMA-411/H. The Draft HPTP states at page 16 "[p]roject construction personnel, vehicles and equipment shall be barred from entering within the known boundaries of CA-Ama-411/H" However, given the small size and narrow shape of the Rancheria, the Tribe is particularly concerned about whether direct impacts from construction can actually be limited to areas outside of CA-AMA-411/H.

The Tribe also has concerns, as do others, about the adequacy of mitigation measures to address adverse effects of the proposed project on the visual, audial and other aspects of the Buena Vista site. At the June 30, 2009 consultation meeting, for example, representatives from the SHPO's office raised concerns about the adequacy of mitigation for the disruption of access between and among the various loci (or areas) of the site. These concerns from the SHPO are similar to some of the concerns expressed by the Tribe in its June 29, 2009 letter to the EPA and elsewhere.

In addition, the Tribe has concerns about the adequacy of efforts to identify and evaluate impacts to properties located outside the Rancheria but affected by the proposed project. The Tribe has expressed to EPA the concern that A construction of the proposed project could result in the widening of roads that would impact cultural sites near or alongside those roads, namely at Jackson Valley Road and Martell Land and at Highway 88 and Buena Vista Road (although the EPA has determined that CA-AMA-650, a cultural resource located near the intersection of Highway 88 and Buena Vista Road where intersection improvements are contemplated as part of the proposed project, is not eligible for listing on the National Register). The Draft HPTP, at page 12, mentions auditory impacts from increased traffic, but it does not address the potential impact that widening roads due to increased traffic going to and from the proposed casino could have on cultural sites located outside the Rancheria's boundaries.

And, importantly, the Tribe has concerns about the impacts of the proposed project – and its construction – on the cemetery located at the Buena Vista site and on Ione Tribal members'

access to the cemetery. Although the proposed project's impacts on the cemetery are not discussed in the description section of the Draft HPTP, cemetery access is addressed in its mitigation section. (On page 13 of its October 2, 2008 letter to the SHPO, the EPA stated that "[b]ecause the [Buena Vista Rancheria of Me-Wuk Indians] will provide access to the cemetery separate from egress and ingress to the proposed gaming and entertainment facility, EPA finds access issues do not constitute an adverse effect on CA-Ama-411/H.")

The Tribe is particularly concerned about issues regarding impacts to the cemetery and cemetery access since representatives for the Tribe understood the EPA's counsel to say at the March 12, 2009 consultation meeting at that the EPA was not going to be involved with the project for more than a few months after the issuance of any water discharge permit, and that the agency did not want to be involved with cemetery access issues or ensuring that cemetery access was not impeded. At the June 30, 2009 consultation meeting, counsel for the EPA indicated that she did not think (and representatives from the United States Army Corps of Engineers agreed) that any provisions regarding cemetery access should be in the Historic Properties Treatment Plan or Memorandum of Agreement. The Tribe has not seen a draft HPTP or draft MOA produced subsequent to these meeting and thus does not know if and how these issues have been or are being addressed.

The Draft HPTP provides on page 14 that "[t]he [Buena Vista] Tribe shall make a good faith effort to provide reasonable access to the cemetery located on the Buena Vista Rancheria for descendants and family of interred ancestors"; that "[t]he [Buena Vista] Tribe shall identify and maintain a driveway that will provide access from Coal Mine Road leading to the Cemetery entrance"; that "[a]ccess to the cemetery will be made available to descendants and family of interred ancestors by contacting the [Buena Vista] Tribe during regular business hours[]"; and that "[e]xcept during the Spring Grave Cleaning, the [Buena Vista] Tribe is solely responsible for the maintenance and upkeep of the entire cemetery." The Draft HPTP also discusses "enhancement" of the cemetery at page 15.

And the Draft HPTP claims on page 19 that "[a]lthough 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." It also states twice, on page 20 and on page 22, that "[d]espite 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."

As noted, the Tribe understands the EPA's position, as articulated through its counsel at the March 12, 2009 meeting, to be that the agency will not be involved in overseeing the implementation of the proposed HPTP or the proposed MOA after the NPDES permit is issued. The Tribe's concerns about the impacts to the cemetery and unanticipated discoveries are thus heightened, especially since the Draft HPTP provides at pages 21 and 23, respectively, that the EPA is to be responsible for notifying the SHPO and other interested persons about discoveries of potentially significant finds during construction or of human remains.

Both the Tribe's October 29, 2009 letter to the EPA and the SHPO's April 10, 2009 letter to the EPA encouraged the agency to formally invite the Advisory Council on Historic Preservation to participate in the Section 106 consultation. (The April 2009 SHPO letter also encouraged the EPA to notify the Advisory Council of the proposed finding of adverse effect and provide the Council with the necessary documentation.) The Proposed Fact Sheet, at page 16, notes that the EPA contacted the Advisory Council. However, to the Tribe's knowledge, the EPA has not communicated to the Council a finding of adverse effect (or no adverse effect) with the documentation required under 36 C.F.R. § 800.11(e).²

The Tribe requests that the Council become involved in the Section 106 consultation process under 36 C.F.R. § 800.6(a)(1)(ii). (The Tribe previously requested at the ACHP initiate Section 106 consultation regarding the proposed Buena Vista Casino in October 2005, before the EPA noticed the proposed NPDES permit and initiated the current Section 106 consultation.) As is clear from the above, at least three of the criteria for ACHP involvement set out in Appendix A to 36 C.F.R. Part 800 are present: the undertaking has substantial impacts on important historic properties, and particularly on a property that is of noteworthy importance as one of the oldest continually inhabited sites in California; there is the potential for procedural problems which the Council's involvement could help resolve, including the dispute about the entire site's eligibility that has already arisen; and the project presents issues of concern to the Ione Band of Miwok Indians.

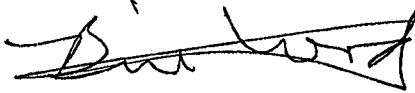
The Tribe also requests that the Advisory Council strongly encourage the EPA and Army Corps to delay the issuance of any permit or any permit decision for the proposed project until a determination of eligibility has been obtained and until the Advisory Council has had the opportunity to prepare its formal comments to the heads of the EPA and Army Corps (and to consult with the agencies, other consulting parties, and the public) so that these comments can be considered by the agencies in reaching a final decision, and until a determination of eligibility for the entire Buena Vista site has been obtained from the Secretary of the Interior pursuant to 36 C.F.R. Part 63.

² When an agency official finds that a project will have an adverse effect, 36 C.F.R. §§ 800.6(a)(1) requires that the official notify the Council of the finding by providing the documentation specified in 36 C.F.R. §§ 800.11(e), which must include (1) a description of the undertaking and its area of potential effects; (2) a description of the steps taken to identify historic properties; (3) a description of the affected historic properties, including information on the characteristics that qualify them for the National Register; (4) a description of the undertaking's effects on historic properties; (5) an explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and (6) copies or summaries of any views provided by the consulting parties and the public.

The Tribe thanks you for your consideration, and for your prompt attention to this matter. If you have questions regarding the Tribe's requests, or if you would like any further information from the Tribe concerning any of the above, please do not hesitate to contact me at (213) 896-2511 or at william.wood@hklaw.com.

Respectfully,

HOLLAND & KNIGHT, LLP

A handwritten signature in black ink, appearing to read 'William Wood', with a stylized flourish at the end.

William Wood

cc (w/ attachments):

Valerie Houser, Coordinator, Native American Program, Advisory Council on Historic Preservation

Charlene Dwin Vaughn, Assistant Director, Federal Permitting, Licensing, and Assistance Section, Advisory Council on Historic Preservation

cc (w/o attachments):

Hon. Matthew Franklin, Chairman, Ione Band of Miwok Indians

Ione Band of Miwok Indians Cultural Heritage Committee

John Tinger, United States Environmental Protection Agency, Region IX, NPDES Permits Branch

Milford Wayne Donaldson, State Historic Preservation Officer, California Office of Historic Preservation, Department of Parks and Recreation

6194783_v6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

In reply, refer to WTR-5

April 16, 2010

Louise Bordnitz
Advisory Council on Historic Preservation
1100 Pennsylvania Ave, NW Suite 809
Washington, DC 20004

Re: Participation in NHPA Consultation for the Buena Vista Rancheria of Me-Wuk Indians
Gaming and Entertainment Facility Project, Amador County, CA

Dear Ms. Bordnitz:

I am writing to provide you notification that EPA plans to execute the Memorandum of Agreement (MOA) regarding the Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project located in Amador County, California.

As you are aware, EPA initiated consultation with the California State Historic Preservation Officer in a letter dated February 17, 2007, at which time EPA requested consultation with the ACHP, and invited the following other parties to participate in the consultation process: Tribes that may attach religious or cultural significance to historic properties that might be affected by the undertaking; the National Indian Gaming Commission; the Bureau of Indian Affairs; the Army Corps of Engineers; Amador County; the Friends of Amador County; and individuals with historic ties to the area.

EPA conducted a series of meetings from May, 2007 to June, 2009 with interested parties, including the SHPO, Army Corps of Engineers, Amador County, the Ione Band of Miwok Indians, the Jackson Rancheria of Me-Wuk Indians, individuals with historic ties to the area, the historic Band of Miwok Indians, the Friends of Amador County, and the Buena Vista Rancheria. Meetings were conducted to identify historic properties; determine the Area of Potential Affects; evaluate adverse impacts and to develop a memorandum of agreement (MOA) and historic properties treatment plan (HPTP). EPA also conducted a site visit to the proposed facility with interested parties to discuss the project and to evaluate the potential impacts of the project on historic properties. Throughout the consultation, EPA has copied the ACHP on all correspondences, memos, meeting agendas and meeting notes.

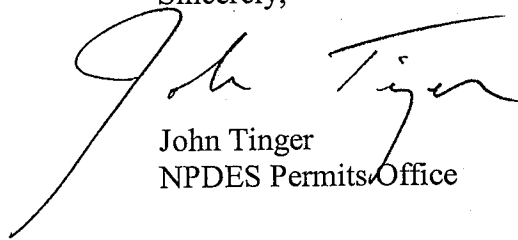
As a result of the consultation, a Memorandum of Agreement (MOA) with a Historic Properties Treatment Plan (HPTP) has been developed. EPA has documented in the regulatory record the extensive data collection efforts, consultation meetings, project site visit, and historical documentation to determine the area of potential effect (APE) and the MOA and HPTP. In a

letter dated August 13, 2009, the ACHP declined to participate in the consultation process, stating "we do not believe that our participation in the consultation to resolve adverse effects is needed." As a result of the consultation, a MOA with a Historic Properties Treatment Plan (HPTP) has been developed with concurrence of the SHPO. We are on the brink of signing the MOA with concurring parties.

On January 8, 2010, the Ione Band sent a letter to the ACHP requesting the involvement of the ACHP. The ACHP's letter of August 13, 2009 leaves open the possibility that the ACHP may reconsider their decision if a request is made by a consulting party. The Ione Band has been a party to the consultation, and EPA does not believe the January 8, 2010 letter raises any new issues that were not raised during the three years of consultation. Since the time of the January 8, 2010 request, EPA has not received a written response from the ACHP stating their intention to reconsider involvement. Per our last conversation, I understand EPA may proceed with signing the MOA and HPTP at this time, pursuant to the ACHP letter of August 13, 2009.

I will provide you with a copy of the signed MOA and HPTP to your attention upon completion of the MOA by concurring parties. Please feel free to contact me at (415) 972-3518 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Tinger". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John Tinger
NPDES Permits Office



ACHP Letter

gdenon to: lbrodnitz

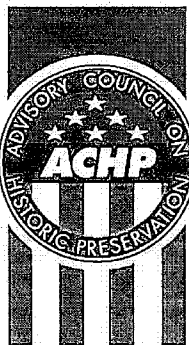
Cc: John Tinger, Joann Asami

03/21/2010 07:56 PM

I am Douglas Denton of the Ione Band of Miwok Indians of California and would like to ask the Advisory Council on Historic Preservation to become involved in the National Historic Preservation Act, Section 106 Consultation process conducted by the Environmental Protection Agency for a National Pollutant Discharge Elimination System permit for the proposed Buena Vista Casino on the Buena Vista Rancheria.

The Buena Vista site is my tribes sacred site. The site which is the location of a historic Miwok Village includes a tribal cemetery, an Indian ball field, three historic roundhouse areas, springs, a rock shelter, and the Buena Vista Peaks. This whole site is where the Miwok people began. It is where we were created. We would like to save this site by having it put on the National Register of Historic Places.

Can you please help us?



Preserving America's Heritage

April 20, 2010

William Wood
Holland & Knight, LLP
633 West Fifth Street
Los Angeles, CA 90071

Ref: *NPDES Permit for the Proposed Buena Vista Casino
Buena Vista, Amador County, California*

Dear Mr. Wood:

On January 8, 2010, the Advisory Council on Historic Preservation (ACHP) received your request on behalf of the Ione Band of Miwok Indians that the ACHP become involved in Section 106 consultation to resolve the potential adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places.

We were notified by the Environmental Protection Agency (EPA) of the Undertaking on July 31, 2009 and provided with adequate documentation per 36 CFR §800.11 to make a determination as to whether Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), would apply to this undertaking. We notified the EPA, by letter of August 13, 2009, that our participation in the case is not needed.

We have evaluated the material you provided, in which the Ione Band of Miwok Indians ("Tribe") assert that the Buena Vista Rancheria is included within a larger, single site that is eligible for listing on the National Register of Historic Places as a Traditional Tribal Cultural Property which would include the Buena Vista Peaks and a spring adjacent to the northeast end of the Rancheria which is affiliated with the Village of Upúšúni. Further, the Tribe requests that ACHP ask the EPA to request a determination of eligibility for the entire Buena Vista site, and to delay any permit or any permit decision for the project until such determination has been obtained.

Likewise we understand that the Tribe has concerns about the adequacy of identification and evaluation, of proposed mitigation measures related to direct impacts on cultural sites outside the Rancheria's boundaries and to the cemetery. Based upon our review, we have concluded that no new information has been introduced in this consultation to cause the ACHP to revisit its decision not to participate in this case. The Section 106 consultation has been inclusive and considered the full range of effects. As we understand, the mitigation set forth in the draft MOA will address effects on known and potentially unknown sites of religious and cultural significance to tribes. We do not see where our involvement at this juncture will alter this mitigation strategy.

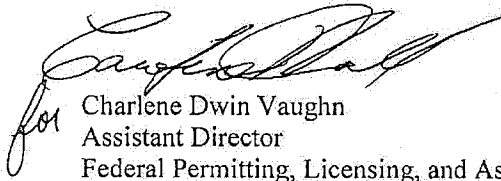
ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov
Buena Vista Rancheria NPDES CA0049675 Administrative Record Page 1319

Accordingly, we urge you to continue to consult with the EPA and other consulting parties to negotiate acceptable measures that address the Tribe's concerns.

If you have any questions, please contact Louise Dunford Brodnitz, Historic Preservation Specialist, at 202-606-8527 or via e-mail at lbrodnitz@achp.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charlene Dwin Vaughn". To the left of the signature, the letters "for" are handwritten vertically.

Charlene Dwin Vaughn
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs

September 3, 2009

John Tinger
U.S. EPA
75 Hawthorne St. (WTR-5)
San Francisco, CA 94105

Subject: Buena Vista Rancheria of Me-wuk Indians Gaming and Entertainment Facility
Project, Amador County

Dear Mr. Tinger,

I have expressed my concerns regarding the potential construction of a casino project on the property formerly known as the Buena Vista Rancheria for over 10 years now. I am of Miwok ancestry having cultural and historical ties to the Buena Vista Rancheria, where many of my ancestors and relatives are buried. When a potential casino project was initially discussed back in 1999, I expressed my concerns regarding the affects to the Native American sites located on and adjacent to the proposed project site. The United States Environmental Protection Agency (US EPA), Army Corp of Engineers and the State Historic Preservation Officer have all concurred that the project is an adverse affect to historic properties eligible for the national register. The footprint of the proposed project itself will occur in an archaeologically rich area and is likely to contain artifacts that may contribute to the overall knowledge and understanding of the historic properties affected. Many Miwok people fought hard to protect this land through the years, one individual was almost beaten to death in 1923 trying to protect the land which instigated the federal government to purchase the property in 1928 for the homeless Indians in Ione. I have the following comments on the proposed casino project.

Ms. Jo Ann Asami with the US EPA stated in the March Section 106 consultation meeting that the US EPA does not have the authority to disapprove the NPDES permit based on affects to archaeological sites, just the quality of the discharged water. Ms. Asami went on to describe the Section 106 process of the National Historic Preservation Act as a process to gather information but that was all, just a process that had to be followed, and that the EPA didn't have to do anything else as long as it followed the process. I disagree with this opinion, the US EPA and the Army Corp of Engineers do have the authority to disapprove the NPDES permit and 404 permit due to the adverse affects of the proposed project.

The Historic properties treatment plan states that the access to the Buena Vista peaks is from the west and the south, and that the access to the peaks is not from the north. This statement is incorrect. The access to the Buena Vista peaks has been from the west and south since people have cut access roads into the mountain at these points, the west road was in the early 1970's and the south road in the 1990's. Prior to the 1970's the access to the Buena Vista peaks occurred from the north side with most people parking at the Oliver house and hiking to the top of the peaks from there. This point of access was also the route people took to access the cave at the southern end of the Buena Vista Rancheria property which was used as a birthing cave as identified by Thompson & West in the

so that one can understand the potential affects from the project. None of this data has been provided except a claim that the parking structure has been reduced in height to a final building elevation of 423 feet. However, no elevation data was provided for the casino itself or the adjacent structures. How do we know what the current project proposal entails?

The lineal descendants of the current membership of the Buena Vista Rancheria includes only Rhonda Pope and her descendants. Rhonda Pope's lineage represents only 3 different lineages buried in the cemetery located on the Buena Vista Rancheria. There are 12 different lineages represented by the burials in the cemetery located on the Buena Vista Rancheria. My direct ancestors are from 2 of the 12 lineages, which both of my lineages are completely different from any of the lineages represented by Rhonda Pope. The Ione Band of Miwok Indians has tribal members from 11 of the 12 lineages buried in the cemetery. To allow Rhonda Pope, the Buena Vista Rancheria, make the decisions regarding the protection of the sites located on the Buena Vista Rancheria property is ridiculous. The Ione Band of Miwok Indians must be given at least equal opportunity to make decisions affecting the Native American sites.

The reburial of all artifacts discovered should not be reburied within the archaeological protection are CA-AMA-411H. The reburial location must occur outside of this area. The excavation for reburial must be excavated using archaeological methods and shall be monitored by an archaeologist and Native American monitor, due to the archaeological sensitivity of the entire property and the potential for buried deposits to contribute to the knowledge of the historic properties. All Section 106 consulting parties with Native American affiliation shall be notified of the reburial date, time and location at least one week prior to reburial. Reburials shall be conducted by representatives of both the Buena Vista Rancheria and the Ione Band of Miwok Indians, and shall not be conducted by the Native American monitors, although the monitors may be present for the reburial if the consulting parties agree.

It seems that the US EPA and the Army Corp of Engineers has down played the importance of the archaeological sites affected by the proposed project. The CA-AMA-411H site is not just a village site eligible for the national register, nor are the Buena Vista Peaks eligible because of the relationship of a mythical story. Both of these sites are part of the foundation of the entire northern Miwok culture and belief system and are one continuous site. The aboriginal people at the Buena Vista Rancheria village site used a cave on the southern end of the property as a place for child birthing. This cave is listed and grouped under the Buena Vista Peak site record, yet it is contiguous and directly affiliated with the CA-AMA-411H site. There are no Native American sites located in Amador, Eldorado, Calaveras, Tuolumne, Sacramento or San Joaquin counties that come close to the importance of this site, including the Indian Grinding Rock State Park located in Amador County. The Buena Vista sites are where the oral history and the ethnographic data document the birth of the Northern Miwok people and the culture. The sites are and always have been interconnected since humans were created on the Buena Vista Peaks. The federal and state governments should not approve a project that dissects

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896
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(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



April 10, 2009

In Reply Refer To: EPA070228A

Douglas E. Eberhardt, Chief
NPDES Permit Office
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

Re: National Pollutant Discharge Elimination System Permit Under Section 402 of the Clean Water Act to Operate a Wastewater Treatment Facility as Part of the Proposed Buena Vista Rancheria of Me-Wuk Indians of California Gaming and Entertainment Facility.

Dear Mr. Eberhardt:

Thank you for continuing consultation with me regarding the proposed issuance by the United States Environmental Protection Agency (EPA), of a National Pollutant Discharge Elimination System Permit for the Proposed Buena Vista Rancheria of Me-Wuk Indians of California Gaming and Entertainment Facility in Amador County, California. The EPA is seeking my comments on their efforts to comply with 36 CFR Part 800 (as amended 8-05-04) implementing Section 106 of the National Historic Preservation Act (NHPA). The Buena Vista Rancheria of Me-Wuk Indians of California (Tribe) has applied for the National Pollutant Discharge Elimination System (NPDES) permit, which is required under Section 402 of the Clean Water Act (CWA), in order for the Tribe to operate a wastewater treatment plant for the Gaming and Entertainment Complex being proposed in Amador County, California. The EPA has determined that this is an undertaking subject to Section 106 of the NHPA.

After reviewing your letters of October 2, 2008 and December 18, 2008, and the earlier correspondence and supporting documentation submitted in support of this undertaking, I have the following comments:

1) I concur that the Area of Potential Effects (APE) has been properly determined and documented pursuant to 36 CFR Part 800.4 (a) (1) and that the Efforts to Identify Historic Properties within the APE represent a reasonable and good faith effort by the EPA pursuant to 36 CFR Part 800.4.

2) I further concur that the two historic properties identified in the APE, the Upüsüni Village (CA-AMA-411/H) are both eligible for the National Register of Historic Places under criterion A and that the Upüsüni Village (CA-AMA-411/H) is also eligible under

criterion D. In concurring that both historic properties eligible under criterion A, it is clear that these two historic properties constitute one Tradition Cultural Property to the numerous Tribes and individuals with concerns and family connections to the Buena Vista Rancheria, the Rancheria cemetery, and the Buena Vista Peaks.

3) I further concur that CA-AMA-650 is not eligible for the NRHP and thus does not constitute an historic property pursuant to Section 106 regulations and NRHP criteria.

4) I further concur that the finding of Adverse Effect determined by the EPA is appropriate pursuant to 36 CFR Part 800.5(d)(2).

In regard to the concerns expressed by several interested parties, I have reviewed the information provided by the EPA in their letter of December 18, 2008, and I agree with the EPA's analysis that the increased flows from the discharges of the proposed treatment facilities will have a negligible effect on downstream erosion. The subject of these discharges is also beyond the provinces of a Section 106 consultation as it does not appear to affect any historic properties and is more clearly within the concerns of agencies that address watercourse and fishery issues.

The EPA has also submitted a Draft Memorandum of Agreement (MOA) pursuant to 36 CFR Part 800.6 and is preparing a Historic Properties Treatment Plan (HPTP) that will be implemented by the MOA to resolve these adverse effects. I will provide comments on this MOA via email to the EPA. Pursuant to 36 CFR Part 800.6(a)(1) the EPA should notify the Advisory Council on Historic Preservation (ACHP) of the finding of adverse effect, provide them with appropriate documentation of this undertaking, and invite the ACHP to participate in the consultation and MOA.

Thank you for seeking my comments and for considering historic properties in planning your project. I look forward to continuing this consultation in the future. If you require further information, please contact William Soule, Associate State Archeologist, at phone 916-654-4614 or email wsoule@parks.ca.gov.

Sincerely,

Lucan K Shattox for

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

cc:

John T. Eddins, Ph.D.
Historic Preservation Specialist/Archaeologist
Office of Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 803
Washington, D.C., 20004



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

Buena Vista Rancheria National Historic Preservation Act Consultation Meeting

SITE VISIT

Wednesday, March 25, 10:00 am 2001

Buena Vista Rancheria, Coal Mine Road.

Purpose of Meeting:

To visit the portion of the Buena Vista Rancheria where a gaming and entertainment facility is proposed to be built. This is to aid the EPA in the process of consulting with Native American and other interested parties on the MOA and on measures to mitigate the adverse effect of the project consistent with the NHPA.

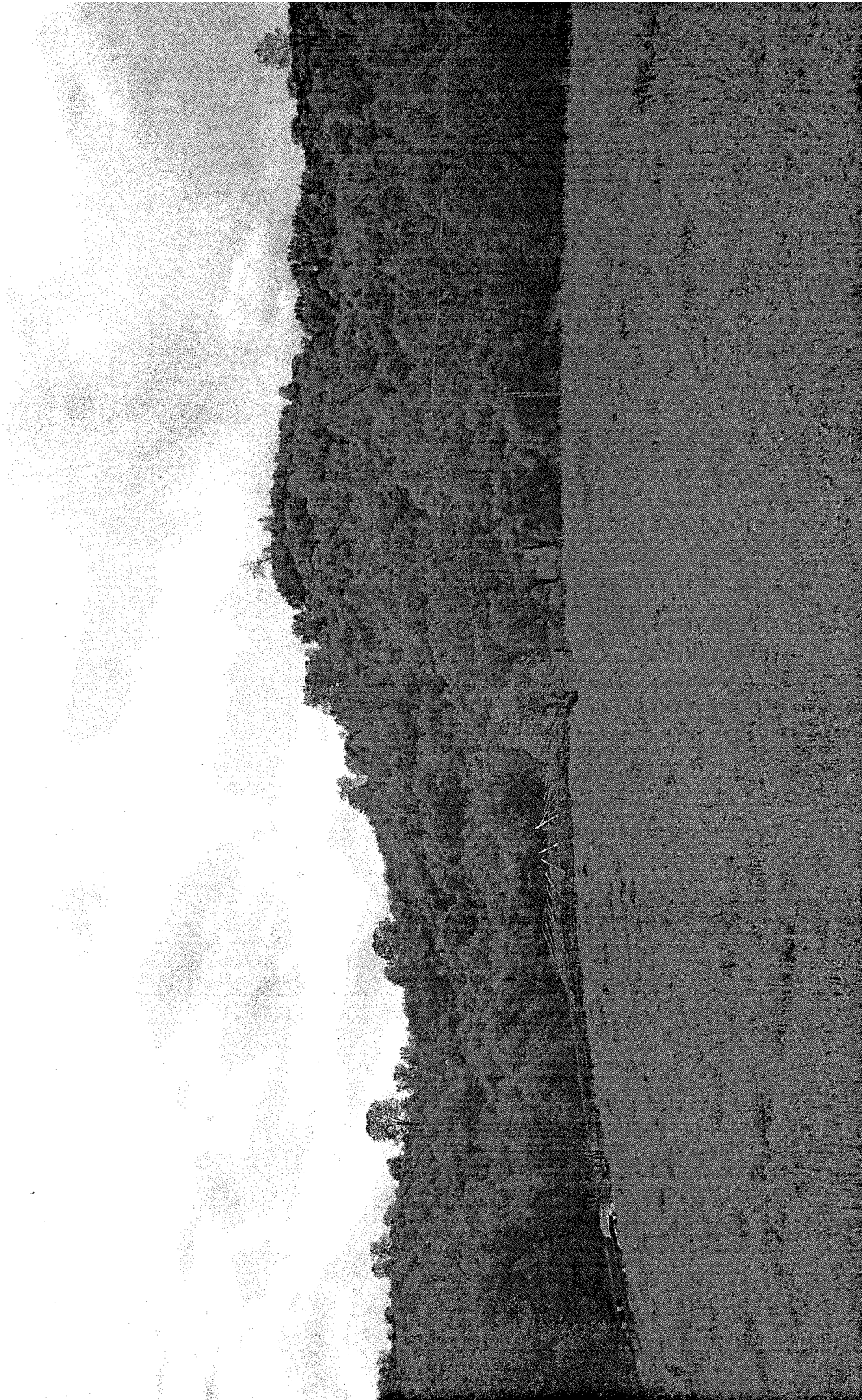
Agenda:

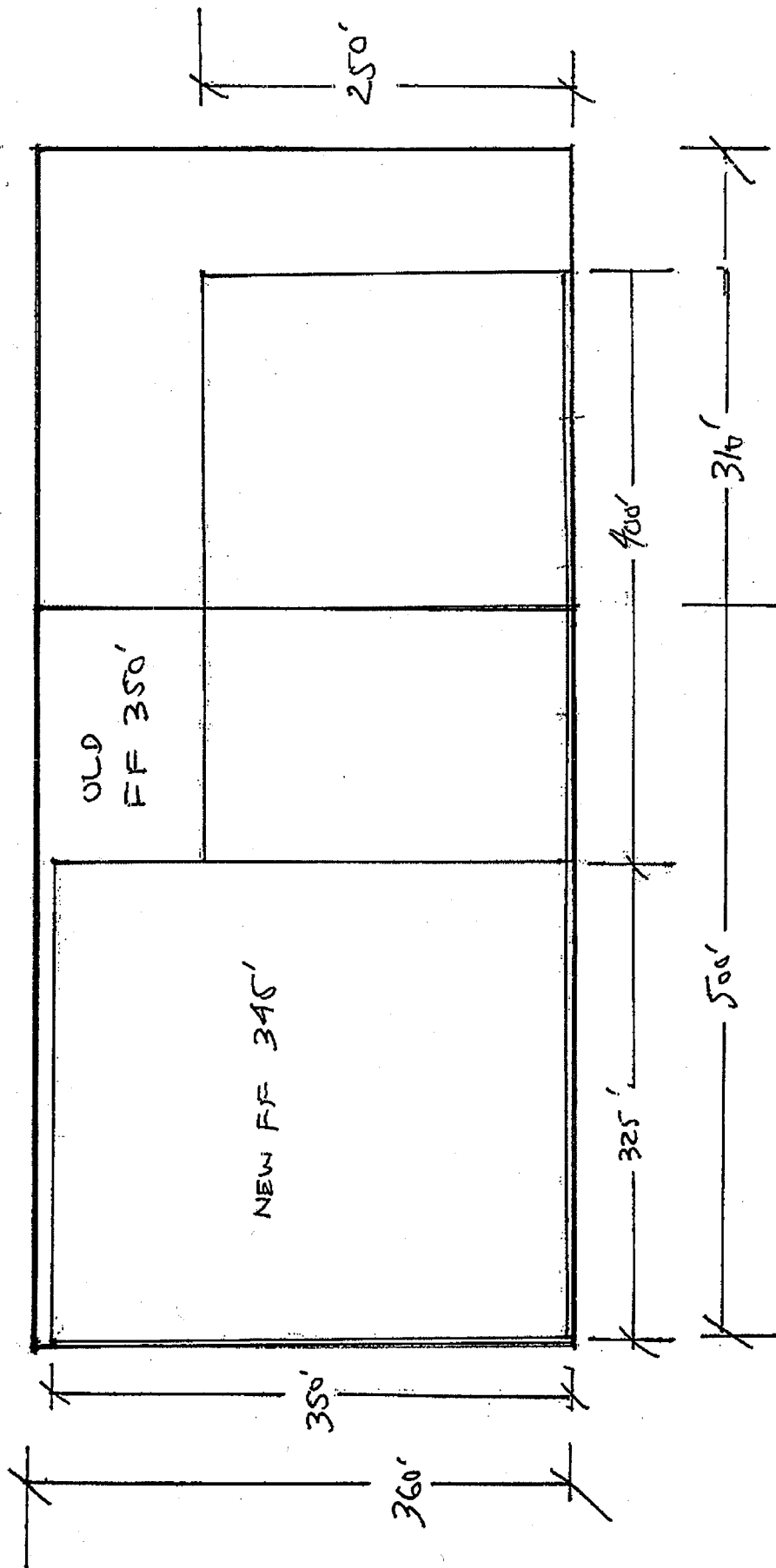
- Introductions
- Tour proposed boundaries and foot print of project site.
 - building footprint will be staked
 - photographic simulations will be provided
- Discuss potential mitigation measures for identified adverse impacts.
- Discuss next steps
 - provide comments
 - draft Historic Properties Treatment Plant
 - receive comments
 - evaluate mitigation efforts
- Set up next meeting

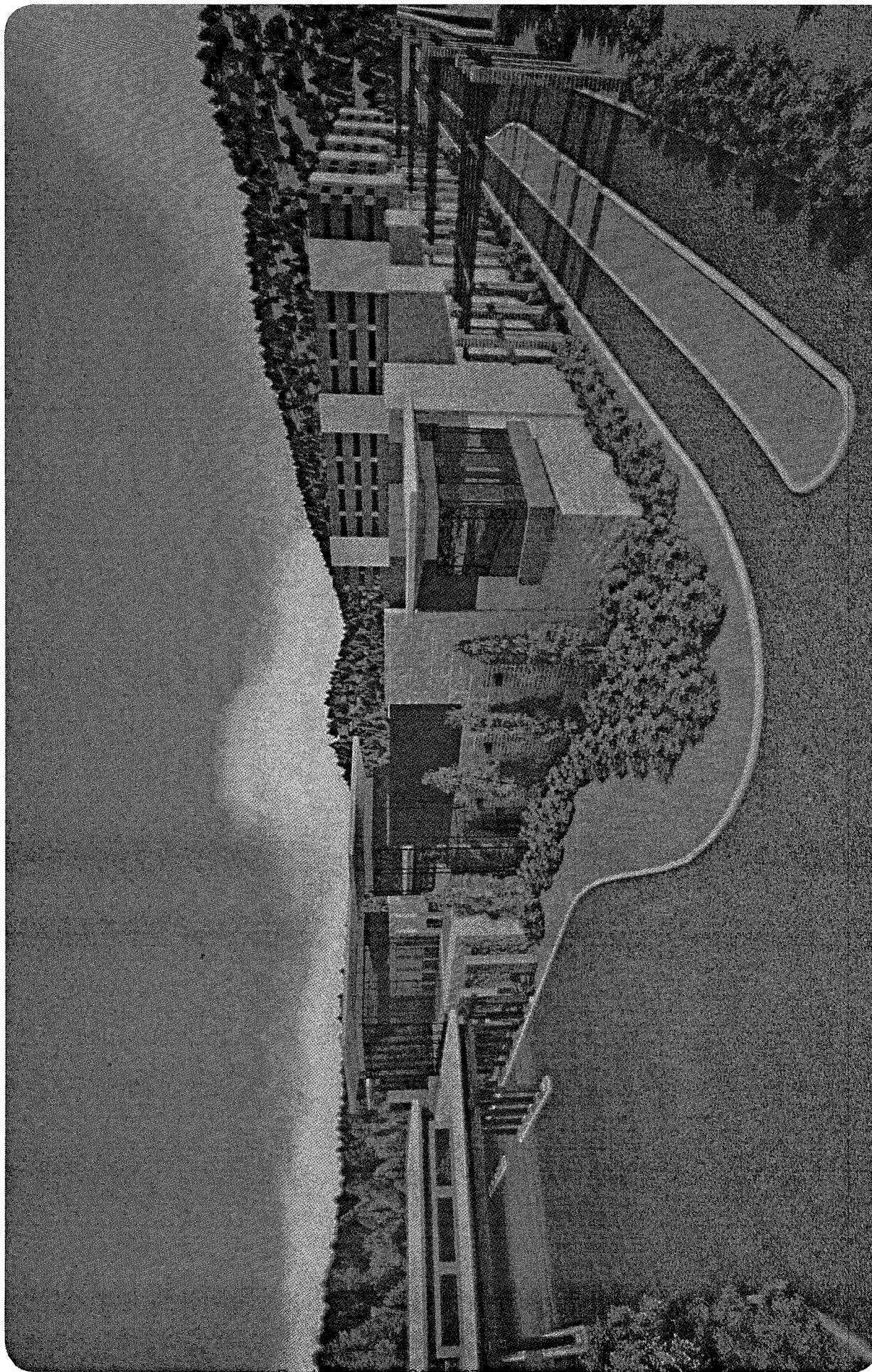
Invited Attendees:

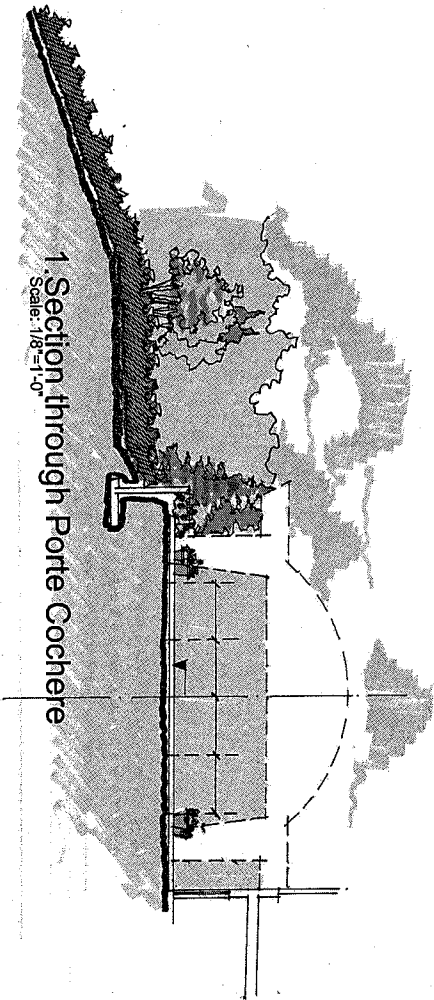
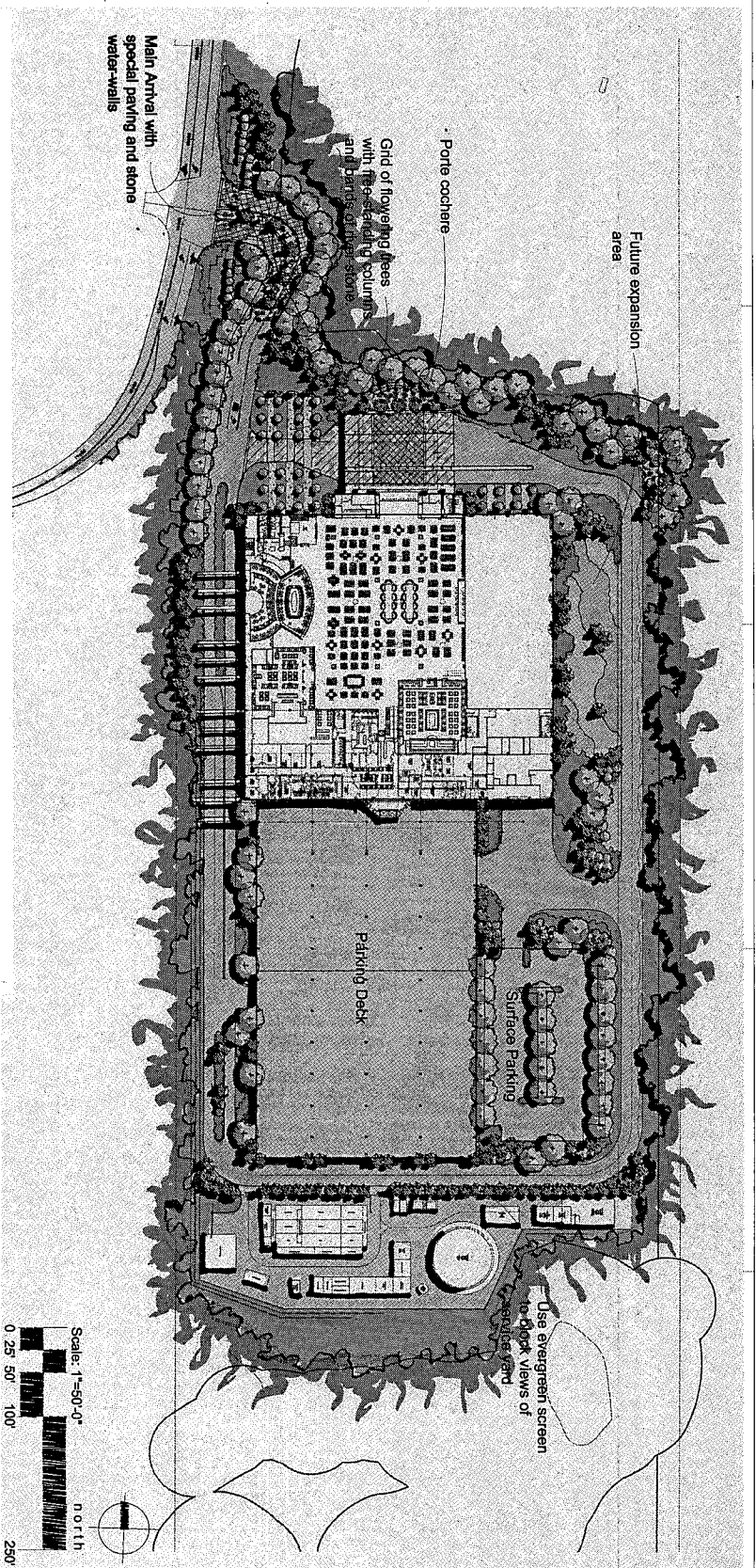
SHPO, U.S. Army Corps of Engineers, U.S. EPA
Ione Band of Miwok, Historic Ione Band of Miwok, Jackson Rancheria, Buena Vista Rancheria, Jones and Stokes (representing Buena Vista Rancheria), Amador County, and other interested individuals.





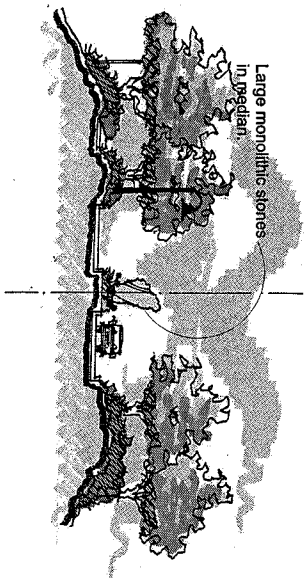






2. Section through Entry Drive

Scale: 1/8"=1'-0"



Sheehan Partners ARCHITECT 10000 W. 10th Avenue Suite 100 Golden, CO 80401 (303) 440-1000 www.sheehanpartners.com		COMING ASSOCIATES ARCHITECT 10000 W. 10th Avenue Suite 100 Golden, CO 80401 (303) 440-1000 www.comingassociates.com		FLYING CLOUD CASINO 10000 W. 10th Avenue Suite 100 Golden, CO 80401 (303) 440-1000 www.flyingcloudcasino.com		BUENA VISTA RANCHERIA 10000 W. 10th Avenue Suite 100 Golden, CO 80401 (303) 440-1000 www.buenvistarancheria.com		NOT FOR CONSTRUCTION		ADMINISTRATIVE RECORD PROJECT NO. 20080050 DATE 10/10/2008 DRAWN BY L-01 CHECKED BY L-01 APPROVED BY L-01	
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Buena Vista Casino

Comparison of TEIR Project vs. Current Project

Description	Original TEIR Project	Reduced Project
Parking	9 levels- 3,446 spaces	6 levels- 1,885 spaces
Low Rise Area	328,521 sf	136,000 sf
Major Features:		
Gaming Floor	71,525 sf	25,332 sf
Slot Machines	2,000	950
Table Games	80	20
Buffet	330 seats	252 seats
Café/Grill	220 seats	196 seats
Asian Restaurant	161 seats	74 seats
Blues Lounge	188 seats	178 seats
Food Court	188 seats	34 seat Deli

Buena Vista Rancheria National Historic Preservation Act Consultation

Site Visit at the Buena Vista Rancheria

Weds, March 25th, 10:00 am

Name	Representing	Email
John Tignor	EPA	Tignor.John@EPA.Gov
John Tang	Buena Vista	John@BuenaVistaTribe.com
Susan Emerson	historic Ione Band	susie - cuesie@yahoo.com
Dale A. Dale		Dale A Dale
Barbara Espinosa	historic Ione Band	
MILFORD WAYNE DONALDSON	SHPO	mwdonaldson@parks.ca.gov
Debra Grimes	Guest "Cultural Resource Specialist" of Mi-wuk Indian	Calaveras Band
GABRIEL ROAR	ICF JONES & STOKES	groark@jisanet.com
Rhonda		Rhonda@BuenaVistaTribe.com
DOUG DENTON	IONE BAND MIWOK INDIANS	gdenton@SUNWEST.NET
Bill Wood	Hokkaida Knight Cultural Heritage Committee	william.wood@hokkaida.com
Billie Blue Elliston	Ione Band of MIWOK INDIANS	bebluesky@softcom.net
Johnny "Gil" Jamerson	Ione Band of miwok Indians	916-202-7031
Sarah Norris	Ione Band	Sarah@ionemiwok.org
De Dyste	Ione BAND of Miwok Indians	AMMA_dee@hotmail.com 916-208-7776
DENNIS TRZCINSKI	WILMORITE	DTRZCINSKI@WILMORITE.COM

Buena Vista Rancheria National Historic Preservation Act Consultation

Site Visit at the Buena Vista Rancheria

Weds, March 25th, 10:00 am

Name	Representing	Email
Arnold Samuel	Buena Vista	arnold@buenvistatribe.com
Glen Villa Jr	self	glenvilla@sbcglobal.net
Glen Villa Sr	self	gville@linknet.com
Lisa PulsKamp	self	lisa/kamp5891@sbcglobal.net
MARTHA SHAVER	Amador Co.	snake@volcano.net
SUSAN STRATTON	OHP	sstratton@parks.ca.gov
Paul R	COE	richard.m.perry@usace.army.mil
Kathy Norton	COE	Kathy.Norton@usace.army.mil
JO ANN ASAMI	EPA	asami.joann@epa.gov
FRANK COSTA	J.V	MAXIMO@WILDBLUE.NET

Materials from March 25 Site Visit to Buena Vista Rancheria (1/2)

John Tinger to: Soule, William, Stratton, Susan

04/13/2009 12:48 PM

Pam, sarah, "Glen Villa", "Glen Villa", "Norton, Kathy SPK", Richard.M.Perry,
John Eddins, John Vetter, Jaime Loichinger, "Martha Shaver", ionebandmiwok,
Cc: samWbaugh, Joann Asami, Doug Eberhardt, john, "Barry Scott", Gabriel Roark,
"Arnold Samuel", "Dennis Trzcinski Wilmorite", "Rhonda Pope"
<rhonda@buenavistatribe.com>, gdenton, "jerry cassesi"

Thank you very much for your participation in the Site Visit to the Buena Vista Rancheria. It was very helpful to view the site, to see the outlines of the proposed structures and to view the proposed height of the proposed structures in context. Attached, please find a list of meeting attendees and photos taken by Mr. Trzcinski of the balloons from the cemetery location. I will forward an email containing copies of the documents distributed at the meeting.

John



Meeting Attendees March 25, 2009 site visit.pdf

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

----- Forwarded by John Tinger/R9/USEPA/US on 04/13/2009 12:32 PM -----

From: "Trzcinski, Dennis" <dtrzcinski@wilmorite.com>
To: John Tinger/R9/USEPA/US@EPA
Date: 04/08/2009 11:26 AM
Subject: Photos of Balloons From Cemetary

John,

Pursuant to the meeting at the Buena Vista Rancheria on March 25th, attached you will find pictures of the helium balloons taken from the Cemetery the Saturday prior to the meeting. Photo 0209 is actual size taken without the zoom. Photo 0211 is taken with the zoom. As you will see in photo 0211, the view angle from the cemetery significantly reduces the perceived height of the parking garage.

I will be forwarding these on to Wayne Donaldson per his request at the site. I will also be forwarding you, under separate cover, the documents viewed throughout the site visit as requested by Bill and Wayne.

Dennis

Confidentiality note: The information contained in this electronic mail transmission and any attachments that accompany it may contain privileged and confidential information and is intended only for use by the individual(s) or entity(ies) named above. If you have received this electronic mail transmission in error, be aware that any distribution or other use or retention of this communication, its substance or attachments is strictly prohibited. Please delete it from your system without copying or forwarding


it, and notify the sender of the error by reply Email or by telephone immediately. Thank you.  Photo 0209.JPG (Acul).jpg

 Photo 0211.JPG (Zoom).jpg

Fw: Materials from March 25 Site Visit to Buena Vista Rancheria (2/2)

John Tinger to: Soule, William, Stratton, Susan

04/13/2009 12:50 PM

Pam, sarah, "Glen Villa", "Glen Villa", "Norton, Kathy SPK", Richard.M.Perry,
John Eddins, John Vetter, Jaime Loichinger, "Martha Shaver", ionebandmiwok,
Cc: samWbaugh, Joann Asami, Doug Eberhardt, john, "Barry Scott", Gabriel Roark,
"Arnold Samuel", "Dennis Trzcinski Wilmorite", "Rhonda Pope"
<rhonda@buenavistatribe.com>, gdenton, "Jerry cassesi"

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

----- Forwarded by John Tinger/R9/USEPA/US on 04/13/2009 12:49 PM -----


From: "Trzcinski, Dennis" <dtrzcinski@wilmorite.com>
To: John Tinger/R9/USEPA/US@EPA
Date: 04/08/2009 11:29 AM
Subject: Documents Viewed at March 25th Buena Vista Site Visit





John,

As outlined in previous e-mail, attached you will find a copy of the documents viewed at the site visit that will be forwarded to SHPO.

Dennis

Confidentiality note: The information contained in this electronic mail transmission and any attachments that accompany it may contain privileged and confidential information and is intended only for use by the individual(s) or entity(ies) named above. If you have received this electronic mail transmission in error, be aware that any distribution or other use or retention of this communication, its substance or attachments is strictly prohibited. Please delete it from your system without copying or forwarding

it, and notify the sender of the error by reply Email or by telephone immediately. Thank you.  Old vs New Overlay.pdf

 2009-01-15_BOOK_Presentation.pdf  Grading Plan 1 of 2.pdf  Grading Plan 2 of 2.pdf  Landscape Plan.pdf



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

In reply, refer to WTR-5

Mr. Milford Wayne Donaldson, FAIA
State Historic Preservation Officer
Office of Historic Preservation
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001

DEC 18 2008

Subject: Evaluation of Potential Erosional Effects on Historic Properties Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project, Amador County

Dear Mr. Donaldson:

On November 20th, you and your staff graciously hosted a meeting to continue the consultation process EPA initiated under section 106 of the National Historic Preservation Act (NHPA) for the Buena Vista Rancheria of Me-Wuk Indians (Tribe) Gaming and Entertainment Facility Project in Amador County, California (proposed project). The primary purpose of this meeting was for EPA to consult with your office and representatives from Indian Tribes on determinations of effects EPA made in a letter I sent to you dated October 2, 2008. During the course of this meeting, a party requested that EPA evaluate what impact the increased flow from the proposed project might have on historic resources located in the stream bank downstream of the project. Accordingly, as was agreed at the meeting, I am writing to provide EPA's evaluation of the impact of any increased flows that may occur from the construction and operation of the proposed project on historic resources.

The specific concern raised during the November 20th meeting is that the increased flow from the proposed project may adversely affect historic properties, including Amador 56, which may be located along the stream bank downstream of the project. In general, stream bank erosion may occur during peak storm events when high flows and high velocities occur in excess of the natural channel capacity to dislodge soils, rock, and vegetation due to high flows and high velocity. Therefore, as set forth in greater detail in the attachment, EPA calculated the projected levels of increased flow attributable to the construction and operation of the proposed project and compared these levels to the existing flow regime of Jackson Creek, including conditions in atypical storm events.

Drainage from the proposed project area currently flows north to a constructed channel that runs along Coal Mine Road, tributary to Jackson Creek near the town of Buena Vista. Jackson Creek is tributary to Dry Creek approximately 5 miles from the project site, and Dry Creek is tributary to the Mokelumne River. The Jackson Creek watershed encompasses approximately 60 square miles. The point at which the proposed discharge would reach Jackson Creek is approximately 1.8 miles from (west of) Lake Amador. Lake Amador is the source of water supplied by the Jackson Valley Irrigation District (JVID) to irrigation customers in the surrounding area. The flows in Jackson Creek at the project's tributary point are largely dependent upon JVID releases from Lake Amador. Based on data provided by JVID, typical overflows from the Amador dam reached a peak of 2900 acre-ft/day (1460 cfs) in 2007, with typical peak overflows ranging from 500-1,000 acre-ft/day (250-500 cfs). During dam overflows, actual flows in Jackson Creek will be higher than the dam overflows due to rainfall flowing into Jackson Creek from the watershed downstream of the dam. Consequently, EPA conservatively chose 1500 cfs as peak dam overflow during storm events.

Changes to existing flows that are attributable to the proposed project would be from two main sources. The first would be from increased flow from the construction of additional impervious areas associated with the facility such as building the structure, and paving for the parking lot and access roads. EPA conservatively estimated the peak storm runoff calculated from these areas based on a methodology acquired from the Amador County Public Works based on calculating the difference between the existing run-off volumes and projected run-off from the as-designed facility¹. These calculations were done for both a 25-year 24-hour event and a 100-year 24-hour event. As set forth in detail in the attachment, a conservative projection shows an increase in runoff for the 25-year storm event to be 11.8 cubic feet per second (cfs), and for the 100-year storm event to be 13.4 cfs.

The second main source of increased flow from the proposed project would be the direct discharge from the wastewater treatment facility. Based on the Tribes' National Pollutant Discharge Elimination System (NPDES) permit application, the average discharge flow is projected to be 170,000 gallons per day, with a weekend peak flow of approximately 250,000 gallons per day. For purposes of calculating projected changes in flow, EPA used the highest projected discharge volume of 250,000 gallons per day, or 0.39 cfs.

To determine the overall potential impact of the proposed project on flow, EPA combined the projected increase in flow from storm runoff and the wastewater treatment facility and determined that the overall increase would amount to approximately 14 cfs. When compared to 1500 cfs, the peak flow calculated for the 100-year 24-hour event, the 14 cfs amounts to less than 1% increase of flow in Jackson Creek. Consequently, given that this projected increase in volume is so small, EPA has determined that such an increase will have a negligible effect on downstream flow volumes and therefore will not measurably impact flow velocities and creek levels in Jackson Creek. Therefore, EPA

¹ See, Technical Drainage Study, addendum No. 1 for Flying Cloud Casino at Buena Vista Rancheria, Kimley-Horn and Associates, Inc. September 2005.

has concluded that the increased flows from the proposed project will have a negligible downstream affect on streambank erosion and thus does not have the potential to impact any resources that may be located in the streambed.

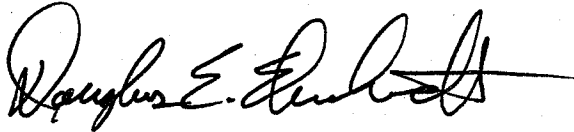
In conclusion, EPA believes that this addresses the remaining issues of our efforts to determine affects of the proposed project, and we welcome your input on the following items:

- (1) That the APE is adequately defined.
- (2) That identification efforts are adequate.
- (3) That two identified cultural resources, CA-Ama-411/H (Upüsüni Village) and the Buena Vista Peaks, constitute historic properties.
- (4) That CA-Ama-650 does not constitute a historic property.
- (5) That the undertaking will adversely affect CA-Ama-411/H (Upüsüni Village) and the Buena Vista Peaks.

If you have any questions regarding the information contained in this letter and its attachments, please contact John Tinger of my staff at (415) 972-3518 or Tinger.John@EPA.gov. Legal questions should be directed to Jo Ann Asami, Office of the Regional Counsel, (415) 972-3929.

Thank you for your consideration of these issues.

Sincerely,



Douglas E. Eberhardt, Chief
NPDES Permits Office

Attachment: Flow Calculations for Jackson Creek and the Proposed Project

cc: (w/ Attachment)

Mr. Matthew Franklin, Chairman, Ione Band of Miwok Indians
14 West Main St. P.O. Box 1190, Ione, CA 95640

Ms. Pamela Baumgartner, Tribal Administrator, Ione Band of Miwok Indians,
14 West Main St. P.O. Box 1190, Ione, CA 95640

Mr. Nicolas Villa, Jr. Historic Ione Band of Miwok Indians
Jackson Valley Reservation, 3015 Jackson Valley Road, Ione CA, 95640

Ms. Rhonda Pope, Tribal Chairperson, Buena Vista Rancheria
P.O. Box 162283, Sacramento, CA 95814

Mr. Sam Baugh, Jackson Rancheria of Me-Wuk, 12222 New York Ranch Rd, Jackson,
CA 95642

Ms. Kathy Norton, Chief, U.S. Army Corps of Engineers
Regulatory Branch, 1325 J Street, Room 1480, Sacramento CA 95814

Mr. John T. Eddins, Advisory Council on Historic Preservation
1100 Pennsylvania Ave, NW, Suite 809, Washington DC 20004

Mr. Dan Hall, Bureau of Indian Affairs,
BIA Pacific Regional Office, 2800 Cottage Way, Sacramento CA, 95825

Ms. Martha Shaver, Amador County Counsel
810 Court St., Jackson, CA 95642

Mr. Gabriel Roark, Jones & Stokes
2600 V Street, Sacramento, CA 95818

Attachment: Flow Calculations for Jackson Creek and the Proposed Project.
December 10, 2008, Prepared by John Tinger, US EPA

EPA compared existing flows in the Jackson Creek to the increase in flows that may result from the project.

Existing Flows

The existing drainage from the project site flows generally north to a constructed channel that runs along Coal Mine Road, tributary to Jackson Creek near the town of Buena Vista. Jackson Creek is tributary to Dry Creek approximately 5 miles from the project site, and Dry Creek is tributary to the Mokelumne River. The Jackson Creek watershed encompasses approximately 60 square miles. The point at which the proposed discharge would reach Jackson Creek is approximately 1.8 miles from (west of) Lake Amador. Lake Amador is the source of water supplied by the Jackson Valley Irrigation District (JVID) to irrigation customers in the surrounding area. The flows in Jackson Creek at the project's tributary point are determined by JVID release from Lake Amador.¹

Based on data provided by the Jackson Valley Irrigation District², typical overflows from the Amador dam reached 2900 acre-ft/day (1460 cfs) in 2007, with typical peak overflows ranging from 500-1,000 acre-ft/day. (250-500 cfs). During dam overflows, actual flows in Jackson Creek will be higher than the dam overflows due to rainfall flowing to Jackson Creek from the watershed downstream of the dam. However, EPA has conservatively assumed a typical peak dam overflow of **1500 cfs**.

During summer months, flows average around 10 to 20 acre-ft/day. (**5-10 cfs**). During the dry season, the flows in Jackson Creek are largely dependent on the dam overflows.

Flow Increase

Flow increase during storm events that will contribute to downstream erosion related to the project will occur from the wastewater treatment plant discharge and the increased stormwater runoff due to construction of impervious areas.

First, the average wastewater treatment plant discharge flow is projected to be 170,000 gallons per day with a weekend peak flow of approximately 250,000 gallons per day. EPA has conservatively selected the highest projected volume of 250,000 gallons per day, or 0.39 cfs.

Second, the volume of runoff during a rain event will increase due to the increase in impervious surface areas (roads, parking lots, and roof surfaces) that have replaced vegetated areas and prevent rainwater from infiltration and evapotranspiring. The project

¹ Buena Vista NPDES Engineering Report from NPDES permit application, May 2005, Hydrosience Engineers, Inc, page 11.

² phone conversation 12/10/08

has proposed a stormwater control structure to mitigate the affects of flow, however EPA has not included stormwater retention in its analysis as a conservative assumption.

Peak storm runoff was estimated using the rational method described in Appendix A of the *Erosion & Sediment Control Guidelines for the Developing Areas of the Sierra 1981* (referred to hereafter as the Guidelines) acquired from Amador County Public Works. Peak storm runoff was estimated for the project site in the existing and proposed conditions for the 25 year, 24 hour event and the 100 year, 24 hour peak runoff event, obtained from the *Technical Drainage Study, addendum No. 1 for Flying Cloud Casino at Buena Vista Rancheria*, (Kimley-Horn and Associates, Inc. September, 2005).

Existing Runoff Volumes:

Runoff: 59.8 cfs in the 25-year storm event.

Runoff: 67.4 cfs in the 100-year storm event.

Proposed:

Project Runoff: 71.6 cfs in the 25-year storm event.

Runoff: 80.8 cfs in the 100-year storm event.

Increase:

Runoff: 11.8 cfs in the 25-year storm event.

Runoff: 13.4 cfs in the 100-year storm event.

Therefore, a conservative projection of the combination peak wastewater treatment flow and the peak 100 year, 24 hour event would increase flow by **14 cfs**.

During summer months, flows from the proposed project will be less than **0.39 cfs** due to irrigation use of the discharge water.

Conclusions

During storm events, the proposed project may increase flows in Jackson Creek by up to 1% (14 cfs of 1500 cfs).

During the summer, the proposed project may increase flows in Jackson Creek by less than 8% (0.39 cfs of 5 cfs). During low flows, there is virtually no potential for increased erosion of the stream banks.

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



June 1, 2010

In Reply Refer To: EPA070228A

John Tinger
U.S. Environmental Protection Agency
Region IX NPDES Permits Branch
75 Hawthorne Street WTR-5
San Francisco, California 94105-3901

Re: Execution of Memorandum of Agreement for the Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project, Buena Vista, Amador County, California..

Dear Mr. Tinger:

Enclosed find one fully executed copy of the *Memorandum of Agreement Among the U.S. Environmental Protection Agency, The U.S. Army Corps of Engineers, The California State Historic Preservation Officer, and the Buena Vista Rancheria of Me-Wuk Indians Regarding the Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project, Buena Vista, Amador County, California.*

If you require further information, please contact William Soule, Associate State Archeologist, at phone 916-654-4614 or email wsoule@parks.ca.gov.

Sincerely,

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

CC:

Kathy Norton
Ecologist/Sr. Project Manager
U.S. Army Corp of Engineers
Sacramento District Regulatory Division
California South Branch
1325 J Street, Room 1480
Sacramento, California 95814-2922

**MEMORANDUM OF AGREEMENT
AMONG**

**THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE U.S. ARMY CORPS OF ENGINEERS,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS
REGARDING THE BUENA VISTA RANCHERIA
OF ME-WUK INDIANS GAMING AND ENTERTAINMENT FACILITY PROJECT
BUENA VISTA, AMADOR COUNTY, CALIFORNIA**

WHEREAS, the Buena Vista Rancheria of Me-Wuk Indians ("Tribe"), a federally recognized tribe, proposes to construct a gaming and entertainment facility ("proposed project") on tribal land located on the east side of Coal Mine Road near the unincorporated town of Buena Vista in Amador County; and

WHEREAS, the Tribe applied to the U.S. Environmental Protection Agency Region IX ("EPA") for a National Pollutant Discharge Elimination System ("NPDES") permit under Section 402 of the Clean Water Act (CWA) to operate a wastewater treatment facility as part of the proposed project, and also applied to the U.S. Army Corps of Engineers ("Corps") for issuance of a permit under Section 404 of the CWA; and

WHEREAS, EPA determined that the proposed project is an "undertaking," as defined in 36 C.F.R. § 800.16(y); and

WHEREAS, EPA and the Corps agreed that EPA would assume the role as lead federal agency, as provided in 36 C.F.R. § 800.2(a)(2); and

WHEREAS, EPA has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800, the regulations implementing Section 106 of the NHPA; and

WHEREAS, in accordance with 36 C.F.R. § 800.3(f)(2), EPA has identified the following federally recognized Indian Tribes as those that may attach religious or cultural significance to historic properties in the project area: Ione Band of Miwok Indians, Jackson Rancheria of Me-Wuk Indians, and Shingle Springs Band of Miwok Indians ("Potentially Affected Tribes"); and

WHEREAS, EPA consulted with and solicited information from the Potentially Affected Tribes to assist EPA in identifying properties which may be of religious or cultural significance to them and may be eligible for the National Register, in accordance with 36 C.F.R. § 800.4 and invited such tribes to be consulting parties in accordance with 36 C.F.R. Part 800; and

WHEREAS, Ione Band of Miwok Indians and Jackson Rancheria Band of Me-Wuk Indians ("Participating Tribes") expressed interest to EPA in participating in the consultation and have been invited to concur on this Memorandum of Agreement ("MOA"); and

WHEREAS, Amador County expressed interest to EPA in participating in the consultation and has been invited to concur on this MOA; and

WHEREAS, the Participating Tribes and Amador County have participated in the consultation process, have been invited to concur on this MOA, and have declined to concur on this MOA; and

WHEREAS, based on information obtained from a reasonable and good faith effort to identify historic properties in the area of potential effect ("APE"), and following consultation with the SHPO, EPA determined that the Buena Vista Peaks and CA-AMA-411/H (sometimes referred to herein as "Upüsüni Village"), two cultural resources located in the APE, are "historic properties," as defined in 36 C.F.R. §800.16(l) and are both eligible for the National Register of Historic Places (NRHP) under criterion A, and CA-AMA-411/H is additionally eligible under criterion D; and

WHEREAS, EPA determined and the SHPO concurred that the area located between the Buena Vista Peaks and Upüsüni Village, where the Tribe proposes to build its proposed project, does not have any intact or potentially eligible cultural resources, and confirmed that such area is not included within the recorded site areas for either historic property; nevertheless, EPA and SHPO acknowledge that the two historic properties are associated traditional cultural properties; and

WHEREAS, the EPA has determined that the proposed project constitutes an undertaking as defined at 36 C.F.R. §800.16(y), and found, in consultation with SHPO and Participating Tribes that the undertaking will adversely affect (visual and audible) the Buena Vista Peaks and Upüsüni Village; and

WHEREAS, EPA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding and invited the ACHP to participate in the consultation to resolve adverse effects and the ACHP concluded that its participation was not needed in accordance with Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, "Protection of Historic Properties" (36 C.F.R. Part 800); and

WHEREAS, EPA provided the public, Potentially Affected Tribes, SHPO, Tribe and the County with: (1) an opportunity to comment during the consultation process; and (2) access to the administrative record compiled in accordance with the documentation standards set forth in 36 C.F.R. § 800.11; and

WHEREAS, consistent with 36 C.F.R. § 800.2(a)(3), while remaining responsible for complying with section 106 requirements, EPA has and will continue to use the services of the Tribe and its consultants to prepare information, analyses and recommendations required by this MOA; and

WHEREAS, this MOA is not a fiscal or funds obligation document and does not require the signatory agencies to obligate or expend funds in excess of available appropriations; moreover, projects and activities that involve the transfer of funds, services, or property between the signatories will require the execution of a separate funding agreement, the negotiation, execution, and administration of which must comply with all applicable statutes and regulations,

not materially alter the character of the undertaking, and not conflict with the measures stipulated herein.

NOW, THEREFORE, EPA, the SHPO, and the Corps ("Signatory Parties") and Tribe ("Concurring Party") agree that the undertaking will be implemented in accordance with the following stipulations.

STIPULATIONS

EPA will ensure that the following measures are carried out; and by signing this MOA as a "Concurring Party," intending to be legally bound, the Tribe agrees to the following:

I. DEFINITIONS

The definitions set forth at 36 C.F.R. § 800.16 are applicable throughout this MOA.

II. AREA OF POTENTIAL EFFECTS

Consistent with the provisions of 36 C.F.R. § 800.4, EPA has identified the geographic areas that the undertaking may directly or indirectly cause alterations in the character or use of historic properties to determine the APE. For the purpose of administering the measures in this MOA, the APE has been divided into areas referred to as "Direct APE" and "Indirect APE." These areas are depicted in Attachment 1.

III. TREATMENT OF HISTORIC PROPERTIES

- A. The Tribe shall ensure that the adverse effects of the undertaking on Buena Vista Peaks and Upüsüni Village are resolved by implementing the historic property treatment plan (HPTP) attached to this MOA as "Attachment 2".
- B. The HPTP was prepared by the Tribe, in consultation with EPA, the Corps, and the SHPO.
- C. Amendment of the HPTP, as set forth hereunder (Stipulation IX.D.), will not require amendment of this MOA. Amendments to the HPTP will go into effect upon written agreement by all Signatory Parties.

IV. NOTICES TO PROCEED WITH CONSTRUCTION

EPA may issue Notices to Proceed (NTP) under any of the conditions listed below. Issuance of a NTP by the EPA does not constitute and shall not be interpreted to be authorization to discharge dredged and/or fill material pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344.

- A. EPA, in consultation with SHPO, determines that there are no unevaluated historic properties within the APE for a particular construction segment; or
- B. EPA, in consultation with SHPO, determines that there are no historic properties within the APE for a particular construction segment; or
- C. EPA, in consultation with SHPO and signatories, determines that for a particular construction segment:
 - (1) the fieldwork phase of the "Archaeological Testing Program," provision of the HPTP has been completed; and
 - (2) EPA has accepted a summary of the fieldwork performed and a reporting schedule for that work.
- D. EPA, in consultation with SHPO and signatories, determines that conditions resulting in the issuance of a "Stop Work," under the HPTP have been resolved.

V. REPORTING REQUIREMENTS

- A. After EPA, in consultation with SHPO, has determined that all measures required in the HPTP which is required under Stipulation III have been completed, EPA will ensure preparation and concurrent distribution to the reviewing parties (SHPO and Corps), a draft "Treatment Measure Documentation and Report," as provided in the HPTP, that documents the methods and results of implementing the requirements of that provision. The reviewing parties will be afforded thirty (30) days following receipt of the draft report to submit any written comments to the EPA. Failure of these parties to respond within this time frame shall not preclude EPA from authorizing revisions to the draft report as appropriate. EPA will provide the reviewing parties with written documentation ("Review Response") indicating whether and how the draft report will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to EPA within thirty (30) days following receipt, EPA may modify the draft report as indicated in the Review Response. All objections shall be resolved pursuant to Stipulation IX.C. Thereafter, the EPA may issue the report in final form and distribute this document in accordance with paragraph B of this stipulation.
- B. Copies of the final "Treatment Measure Documentation and Report" documenting the methods and results of implementing the requirements of Stipulation III, will be distributed to the reviewing parties. If findings of an archaeological nature are made during implementation of the requirements of Stipulation III, including during the implementation of the "Archaeological Testing Program," then an archaeological technical report shall also be prepared and submitted to the California Historical Resources Information System's North Central Information Center at California State University, Sacramento, subject to the terms of Stipulation IX.B. The procedures for preparation and review of an archaeological technical report, if one is necessary, shall conform to the procedures described in Stipulation V. A.

VI. NATIVE AMERICAN CONSULTATION

EPA has consulted with a number of Indian tribes and the Native American Heritage Commission regarding the proposed Undertaking and its effect on historic properties, and has consulted with Participating Tribes through open meetings, site visits, letters, electronic mail, and telephone calls, and has afforded the Participating Tribes the opportunity to participate in the development and implementation of this MOA. Such participation will include, but is not necessarily limited to, scheduling site visits during archaeological monitoring and documentation efforts described in the HPTP (Attachment 2).

VII. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN

The Tribe has developed a plan per the HPTP section entitled, "Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects," (Attachment 2) which formalizes procedures for the treatment of Native American human remains, funerary objects, ceremonial items and items of cultural patrimony that may be found during the implementation of the undertaking. Such plan, at a minimum, will ensure that all materials and records subject to curation are maintained in accordance with 36 C.F.R. Part 79. The parties to this MOA agree that Native American burials and related items discovered during the implementation of the MOA's measures, at a minimum, will be respectfully treated in accordance with the herein-described plan.

VIII. DISCOVERIES AND UNANTICIPATED EFFECTS

If the Tribe determines during the implementation of either the HPTP or the Undertaking that such implementation will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, then the Tribe will order, consistent with the provisions of the "Archaeological Discovery Plan" and the "Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects," in the HPTP, that work be stopped within 100 feet of the newly identified property until a qualified archeologist can assess the significance of the property and, if necessary, develop appropriate treatment measures in consultation with the Signatory Parties and other appropriate parties as required under 36 C.F.R. § 800.13(1)(b) Discoveries without prior planning and the MOA. If EPA determines, after consultation with the SHPO and Tribe, that a discovered property is eligible for inclusion in the National Register, it shall be treated as such for the purposes of this MOA. The materials and records resulting from the activities shall be temporarily stored and treated in accordance with 36 C.F.R. Part 79 until the items are reburied.

accordance with 36 C.F.R. Part 79 at a facility acceptable to EPA, the Corps, and the SHPO.

IX. ADMINISTRATIVE STIPULATIONS

A. STANDARDS

- (1) Professional Qualifications. Where applicable, all activities prescribed by this MOA shall be carried out 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.
- (2) Historic Preservation Standards. Where applicable all activities prescribed by this MOA shall reasonably conform to applicable standards and guidelines established by the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740) and SHPO.

B. CONFIDENTIALITY

The parties to this MOA acknowledge that historic properties covered by this MOA are subject to the provisions of section 304 of the NHPA relating to the disclosure of archaeological site information, and having so acknowledged agree to follow the procedures set forth in 36 C.F.R. § 800.11(c), when applicable.

C. RESOLVING OBJECTIONS

- (1) Should any signatory party to this MOA object in writing to EPA at any time to the manner in which the terms of this MOA are implemented, or to any action carried out or proposed with respect to the implementation of this MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, EPA shall immediately notify the other Signatory Parties to this MOA of the objection and consult with the objecting party and the other Signatory Parties to the MOA for no more than fourteen (14) days to resolve the objection. EPA shall reasonably determine when this consultation will commence. If the objection is resolved through such consultation, the action in dispute may proceed in accordance with the terms of that resolution. If, after initiating such consultation, EPA determines that the objection cannot be resolved through consultation, then EPA shall forward all documentation relevant to the objection to the ACHP, including EPA's proposed response to the objection, with the expectation that the ACHP will, within thirty (30) days after receipt of such documentation:
 - a. advise EPA that the ACHP concurs in EPA's proposed response to the objection, whereupon EPA will respond to the objection accordingly; or
 - b. provide EPA with recommendations, which EPA will take into account in reaching a final decision regarding its response to the objection; or

- c. notify EPA that the objection will be referred for comment pursuant to 36 C.F.R. § 800.7(a)(4), and proceed to refer the objection and comment. EPA shall take the resulting comments into account, and respond to them, in accordance with 36 C.F.R. § 800.7(c)(4).
- (2) Should the ACHP not exercise one of the options set forth above, within thirty (30) days after receipt of all pertinent documentation, EPA may assume the ACHP's concurrence in its proposed response to the objection.
- (3) EPA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection. EPA's responsibility to carry out all other actions under this MOA that are not the subject of the objection will remain unchanged.
- (4) EPA shall provide all parties to this MOA, when the ACHP has issued comments hereunder, with a copy of its final written decision regarding and objection addressed pursuant to this stipulation.
- (5) EPA may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.
- (6) At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to such implementation be raised by a member of the public, EPA shall notify all parties, in writing, of the objection and take the objection into consideration. EPA shall consult with the objecting party and, if the objecting party so requests, the SHPO for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, EPA will render a decision regarding the objection and notify all parties of its decision in writing. In reaching its decision, EPA will take into account any comments from all parties regarding the objection, including the objecting party. EPA's decision regarding the resolution of the objection will be final. EPA may authorize any action subject to objection under this paragraph to proceed after the objection has been resolved in accordance with the terms of this paragraph.

D. AMENDMENTS

- (1) Any signatory party to this MOA may propose that this MOA be amended, whereupon the parties to this MOA will consult for no more than thirty (30) days to consider such amendment. This MOA may be amended only upon the written agreement of all the Signatory Parties. If it is not amended, this MOA may be terminated by any signatory party in accordance with Stipulation IX.E.
- (2) The HPTP may be amended through consultation among the Signatory Parties without amending the MOA proper (See Stipulation IX.C.).

E. TERMINATION

- (1) If any signatory party proposes termination of this MOA, the signatory party proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and consult with the other parties for a minimum of thirty (30) days to seek alternatives to termination, including an amendment per Stipulation VIII.D. Such consultation shall not be required if EPA proposes termination because the Undertaking no longer meets the definition set forth in 36 C.F.R. § 800.16(y).
- (2) Should such consultation result in an agreement by all Signatory Parties on an alternative to termination, then the Signatory Parties shall amend the MOA accordingly and proceed accordingly.
- (3) Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
- (4) If this MOA is terminated hereunder, and EPA determines that the Undertaking will nonetheless proceed, or if the EPA finds it necessary to materially alter the character of the Undertaking or modify the above measures to a degree that consultation under Stipulation IX.D above cannot accommodate, then EPA shall either consult in accordance with 36 C.F.R. § 800.6 to develop a new MOA or request the comments of the ACHP pursuant to 36 C.F.R. § 800.7.

F. DURATION OF THE MOA

Unless terminated pursuant to Stipulation IX.E. above, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the Signatory Parties until EPA, in consultation with the other Signatory Parties, determines that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have no further force or effect on the day that EPA notifies the other parties in writing of its determination that all stipulations of this MOA have been satisfactorily fulfilled.

- (1) The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the Effective Date of Stipulation IX.G below. If EPA determines that this requirement cannot be met, the parties to this MOA will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment, or termination. In the event of termination, EPA will comply with Stipulation IX.E.4 if it determines that the Undertaking will proceed notwithstanding termination of this MOA.

- (2) If the Undertaking has not been implemented within five (5) years following execution of this MOA, this MOA shall automatically terminate and have no further force or effect. In such event, EPA shall notify the other parties in writing and, if it chooses to continue with the Undertaking, shall comply with Stipulation IX.E.4.

G. PUBLIC PARTICIPATION

In providing notice and information to the public regarding the resolution of adverse effects of the Undertaking, consistent with 36 C.F.R. § 800.2(d)(3), EPA will follow the procedures for public involvement under NEPA.

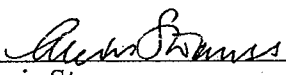
H. EFFECTIVE DATE

In order to more expeditiously implement the agreement set forth herein, the Parties to this MOA agree that the MOA may be executed in two or more counterparts as if all parties signed document and each counterpart shall be regarded as if it were an original document. This MOA will take effect on the date that it has been executed by all of the Parties to this MOA.

EXECUTION AND IMPLEMENTATION of this MOA, pursuant to 36 C.F.R. § 800.6, including its transmittal by the EPA to the ACHP in accordance with 36 C.F.R § 800.6 (b)(1)(iv), shall evidence that the EPA has taken into account the effects of this Undertaking on historic properties in order to resolve (avoid, minimize or mitigate) any adverse effects on historic properties and thereby comply with Section 106 of the NHPA, and shall further evidence that the EPA has afforded the ACHP an opportunity to comment on the Undertaking and its effect on historic properties.

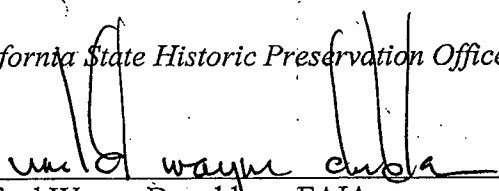
SIGNATORY PARTIES:

U.S. Environmental Protection Agency

By 
Alexis Strauss
Director, Water Division

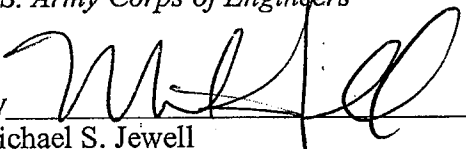
6 May 2010
Date

California State Historic Preservation Officer

By 
Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

1 JUN 2010
Date

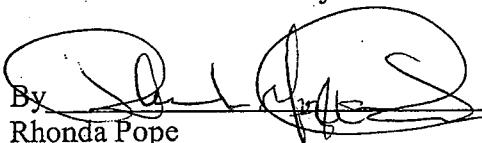
U.S. Army Corps of Engineers

By 
Michael S. Jewell
Chief, Regulatory Division

25 May 2010
Date

CONCURRING PARTY:

Buena Vista Rancheria of Me-Wuk Indians of California

By 
Rhonda Pope
Tribal Chairperson

5-6-10
Date