

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF SAN DIEGO AND
THE PAUMA BAND OF LUISENO MISSION INDIANS OF THE
PAUMA & YUIMA RESERVATION, PURSUANT TO THE
TRIBAL-STATE GAMING COMPACT DATED JUNE 21, 2004**

This Agreement ("Agreement") is entered into this sixth day of August, 2008, between the County of San Diego, a political subdivision of the State of California ("County"), and the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, a federally recognized Indian Tribe located within the geographical boundaries of the County of San Diego, State of California ("Tribe" or "Pauma Band of Mission Indians"). The County and the Tribe shall be collectively referred to as the "Parties".

RECITALS

A. The Board of Supervisors of the County of San Diego and the General Council of the Pauma Band of Mission Indians, a sovereign governmental entity, recognize that each is responsible for the welfare of its people.

B. The County recognizes that all lands title to which are held in trust by the United States for the Tribe within the geographical boundaries of San Diego County (the "Reservation") are subject to Pauma Tribal and applicable federal laws and regulatory authority. The Tribe recognizes that non-trust unincorporated lands located in San Diego County are subject to State law and County regulatory authority.

C. The County and the Tribe recognize that residents of the Reservation and the residents of San Diego County are neighbors with legitimate concerns over safety, development, and the character of life in San Diego County.

D. In 1988, Congress enacted the Indian Gaming Regulatory Act (P.L. 100-497, codified at 18 U.S.C. § 1166 *et seq.* and 25 U.S.C. § 2701, *et seq.*) ("IGRA") to regulate certain gaming activities on Indian lands in the United States. IGRA provides a regulatory framework for the operation of gaming by Indian tribes as a means, among other things, of promoting tribal economic development, self-sufficiency, and strong tribal government.

E. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are, among other things, conducted in conformity with a tribal-state compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

F. On September 10, 1999, the Tribe and the Governor of California entered into a tribal-state gaming compact (the "Compact") to permit the Tribe to conduct Class

III gaming activities on its trust lands in compliance with IGRA. A Compact Amendment was approved by the Governor on June 21, 2004, ratified by the California State Legislature on July 1, 2004, and approved by the U.S. Department of the Interior on August 20, 2004 ("Amended Compact").

G. Pursuant to IGRA and the Amended Compact, the Tribe intends to construct a nineteen story hotel with 400 rooms; a 102,372 square foot casino consisting of 73,583 square feet of gaming area; 56,500 square feet of food/beverage/retail facilities; 16,842 square feet of resort facilities including spa, pool, garden and bar; a 19,383 square feet indoor multi-purpose events center; a 34,902 square feet conference and meeting center; 120,547 square feet of administrative and service facilities; a six-level 1,500-space parking garage and surface parking for 2,350 spaces; up to three new groundwater wells; a 500,000 gallon water reservoir; wastewater treatment plant expansion; and a third sediment retention basin. The existing temporary casino will be decommissioned and removed upon completion of the new casino/hotel facility. The project is collectively referred to in this Agreement as the "Casino Expansion Project" or "Project".

H. Pursuant to Section 10.8.1 of the Amended Compact, and pursuant to requirements of the National Indian Gaming Commission (NIGC), the Tribe caused to be prepared an Environmental Assessment and Tribal Environmental Impact Report ("EA/TEIR") before the commencement of any planned expansion of its Gaming Facility. The Tribe issued a Notice of Preparation for the EA/TEIR on January 17, 2006 and subsequently issued the Draft EA/TEIR on August 8, 2007. Public Notice was provided pursuant to the Compact. The County and the public reviewed and commented on both the Notice of Preparation and the Draft EA/TEIR. NIGC issued a Finding of No Significant Impact on May 5, 2008 and the Tribe certified the Final Tribal Environmental Impact Report on May 5, 2008.

I. Pursuant to Section 10.8.8 of the Amended Compact the Tribe is required to negotiate with the County of San Diego and enter into an agreement.

J. The Tribe and the County have a longstanding, government-to-government relationship based on mutual respect and consideration of their respective jurisdiction, laws, regulations and duties to their citizens.

NOW, THEREFORE, the Parties hereby agree that this Agreement satisfies the requirements of Section 10.8.8 of the Amended Compact and sets forth (1) the County and Tribe's obligations in providing Mitigation Measures for any potentially Significant Effect on the Off-Reservation Environment; (2) the provisions relating to compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe as a consequence of the Casino Expansion Project; (3) provisions providing for reasonable compensation for programs designed to address gambling addiction; (4) provisions providing for mitigation of any effect on public safety attributable to the Casino Expansion Project; and (5) a continued

strengthening of the government-to-government relationship between the County and the Tribe.

A. MITIGATION MEASURES ASSOCIATED WITH THE PROJECT

In preparing the Final EA/TEIR, the Tribe and the County met several times, including meetings between technical staff, to analyze the impacts of the Casino Expansion Project on the off-Reservation environment. In compliance with the Compact as amended, the parties analyzed each of the matters set forth in Section 10.8.1 of the Off-Reservation Environmental Impact Analysis Checklist. The parties agree that implementation of the following mitigation measures will address the off-Reservation environmental impacts of the Casino Expansion Project.

Unless otherwise stated, the mitigation measures agreed to herein shall be performed by Tribe, and Tribe shall inform County in writing of the completion of such measures, prior to allowing public access to the facilities constructed for the Casino Expansion Project. The date that public use commences for any of the new facilities constructed in the Casino Expansion Project shall be referred to as the "Casino Expansion Start Date". To allow construction phasing, new parking facilities constructed in the Casino Expansion Project may be used prior to the Casino Expansion Start Date.

For payments from Tribe to County that are to be paid annually:

1. First Quarterly Payment Due Date. One fourth of the annual payment amount shall be due on the last day of the calendar quarter in which the Casino Expansion Start Date occurs, and the amount shall be prorated if the Casino Expansion Start Date occurs on any day other than the first day of that quarter.
2. Subsequent Quarterly Payments. After the end of the first calendar quarter in which the Casino Expansion Start Date occurs, subsequent quarterly payments shall be due on the 15th of the second month of the calendar quarter (February 15th, May 15th, August 15th, November 15th).
3. Consumer Price Index adjustments. After each anniversary of the "First Quarterly Payment Due Date", quarterly payments for each subsequent year shall be adjusted commensurate with the previous 12 month change in the Consumer Price Index (not seasonally adjusted) for All Urban Consumers in the Los Angeles, California area, published by the U.S. Department of Labor (CPI), provided however, that in no event shall the annual increase in the CPI exceed four percent (4%) per annum.
4. Final payment. The final payment shall be prorated to reflect the number of days in the final calendar quarter of casino operation.
5. The parties to this Agreement may choose to jointly agree to change from quarterly payments to annual payments. Such agreement shall be in the form of a written amendment to this Agreement.

6. For payments to County that are due on the same date, Tribe may consolidate those payments into a single payment that equals the total due.

County shall notify Tribe in writing of any concerns or need for clarifying information regarding completion of the mitigation measures contained in this Agreement. Tribe agrees to respond to requests for clarifying information and to cooperate with County in resolving concerns County may raise. In addition, Tribe shall promptly respond to County inquiries concerning compliance with mitigation measures set forth below that are to be complied with during future operation of the expanded Casino.

1. Aesthetics

- a) Permanent Exterior Lighting. Exterior lighting shall be compliant with standards consistent with San Diego County's Light Pollution Code.
- b) Coordination with Palomar Observatory. Tribe will provide the Palomar Observatory 30 day written notice prior to holding any event where outdoor lighting could impact the Observatory, and Tribe shall work collaboratively with the Palomar Observatory to mitigate effects on the Observatory's operations.
- c) Temporary Exterior Lighting. Tribe shall not utilize search lights or "Sky Tracker" lights.
- d) Building Height. Building height of the Project shall not exceed 19 stories tall nor 225 feet above grade (1193 feet above mean sea level).
- e) Casino Signage. County recognizes the Tribe's desire for a Project sign. Upon application by the Tribe for an administrative permit for a sign in the vicinity of the southeastern corner of the intersection of SR-76 and Pauma Reservation Road, the County shall expedite the processing of an application for such sign pursuant to County Ordinance Section 6207.5. The sign shall comply with the County's Dark Sky Ordinance and may include an LED reader-board if equipped with display dimming capabilities and a horizontal light shield to avoid any upward light spillage upon approval of the County Director of Planning and Land Use. The sign shall be designed to blend into the environment by landscaping utilizing local flora or water features. For any permit action required by Caltrans for the sign that otherwise is allowed by County, County will recommend to Caltrans that the sign be approved.

2. Air Quality

- a) Dust suppression during grading operations. During grading for the Project, all exposed active grading areas shall be watered at least three times daily if necessary to suppress dust.

- b) Volatile Organic Content (VOC) coatings. Architectural coatings used on the Casino Expansion Project shall average no more than 150 grams per liter of VOC.
- c) Wastewater Treatment Plant odor control. Wastewater treatment plant design shall incorporate odor control features that will eliminate significant odor impact at downwind receptors. The plant design shall be prepared by a professional engineer (PE) registered in the State of California with a specialty in wastewater treatment. The PE shall inspect and approve the plant odor control facilities prior to the operation of the plant.
- d) Commercial power for construction. Commercial electrical power shall be provided to the Project construction site at the start of construction and used during construction to the maximum extent feasible. Accordingly, the use of diesel or gasoline engine portable generators shall be minimized or avoided.
- e) Dust control. Project construction specifications shall require standard dust control practices, such as watering all active grading areas and storage piles, cessation of grading in high winds, the limiting of vehicle speeds on unpaved roads to 15 miles per hour, and preventing the track out of dirt from unpaved areas to off-Reservation paved roadways.
- f) Construction during high winds. During periods of high winds (i.e., wind speed sufficient to cause fugitive dust to impact off-Reservation properties and roads), all clearing, grading, earth-moving, and excavation operations shall be curtailed to the degree necessary to prevent fugitive dust created by on-site activities and operations from being an off-Reservation nuisance or hazard during Project construction.
- g) Sweep construction soil from roads. If visible soil material is carried over to adjacent roads as the direct result of any Project construction, the streets and roads shall be swept in a timely manner.
- h) Utilize low-emission construction equipment. During Project construction, whenever reasonably available and feasible, low-sulfur diesel equipment and electric equipment will be utilized.

3. **Hazardous Materials**

- a) During Project construction and operation, hazardous materials will be transported and stored in appropriate and approved containers. Required clearances will be maintained and materials will be handled in accordance with applicable laws and regulations. The Tribe shall ensure the source of any leak is immediately controlled and any spill of hazardous materials or waste is immediately contained using appropriate spill containment and countermeasures. Clean-up and disposal, if any is

required, would also be handled in accordance with all applicable laws and regulations by licensed hazardous materials handlers and haulers for disposal at approved disposal sites.

- b) Tribe will contract with the County Office of Emergency Services (OES), Hazardous Incident Response Team (HIRT), for hazardous materials emergency response services. Tribe will annually provide payment for HIRT contract costs estimated to be no greater than \$5,000.

4. **Water Resources**

- a) Groundwater. To avoid impacts to the off-Reservation areas, the Tribe agrees as follows:

- (1) For the Casino Expansion Project's groundwater requirements, no new wells shall be placed in the area designated in Appendix A, and no existing wells in the area designated in Appendix A shall be used for the Casino Expansion Project's groundwater requirements. Nothing herein shall limit Tribe's right and ability to construct wells for non-Project purposes within the area designated in Appendix A.
- (2) All Project wastewater treatment plant effluent shall be disposed of via on-Reservation percolation ponds, leach fields or reclaimed for beneficial use for on-Reservation agricultural irrigation or landscaping. No groundwater shall be used for Project landscaping or the 9.36 acres of groves to be replanted as part of the Project.

- b) Storm Water – Tribe shall:

- (1) Assure the use of appropriate construction best-management-practices (BMPs) at the Casino Expansion Project construction site to prevent off-Reservation water quality impacts throughout the duration of construction.
- (2) Assure that the construction contractor has prepared and implements a storm water pollution prevention plan (SWPPP) to meet Environmental Protection Agency (EPA) NPDES requirements.
- (3) Assure that runoff that goes off-Reservation from the parking and roof areas is treated via filters and oil-water separators.
- (4) Construct an additional drainage detention basin of at least 0.8 acres in size.

5. Noise

- a) No permanent outdoor concert venue. There will be no outdoor amphitheatre or permanent open-air outdoor concert facility included in the Casino Expansion Project. The Multi-purpose Events Center shall be an indoor facility.
- b) Outdoor concerts at non-permanent concert venue. The Tribe may conduct outdoor concerts at non-permanent concert venues for the Project. Such concerts shall be limited to 12 or fewer days per year. When concerts are conducted:
 - (1) The outdoor concert shall be in compliance with the County of San Diego Noise Ordinance; or
 - (2) Noise measurements shall be taken during the first concert at various off-Reservation locations to determine sound levels at the first concert and, if County Noise Ordinance standards are exceeded, the Tribe shall implement adjustments to sound levels or other configurations to mitigate future concert noise levels to meet County Noise Ordinance standards; and
 - (3) The outdoor concert sound level shall not exceed County Noise Ordinance standards at the nearest off-Reservation receptors based upon a reference sound level at 100 feet from the stage. Once this relationship is established for the specifics of the concert venue, sound levels will be monitored at 100 feet from the stage. Bands shall be required to turn down the volume if concert conditions indicate this is necessary; and
 - (4) The outdoor concerts must end by 10:00 p.m.; and
 - (5) Upon seven (7) days advance notice, the Casino shall inform any neighbors that are significantly affected by the concert noise of an outdoor concert and offer them complimentary concert tickets or complimentary meals at one of the Casino dining venues during the concert.
- c) Construction Noise. Heavy truck traffic and use of heavy equipment for the Project shall occur only on Monday through Saturday, and not continue beyond 30 minutes after the hours of daylight, as published by the U.S. Naval Observatory, or 7:00 p.m. whichever is later. In no event shall the Tribe conduct pile driving or jack-hammering after 7:00 p.m. After enclosure of the facilities, construction for the Project shall comply with the County's light and noise ordinances.
- d) Backup electrical generators. Emergency generators shall be designed and operated such that the noise generated at the casino property lines will not exceed 50dB(A) Leq between the hours of 7:00 a.m. and 10:00 p.m., or 45 dB(A) Leq between 10:00 p.m. and 7:00 a.m., consistent with the requirements of the County Noise Ordinance. Testing of emergency generators shall occur between 7:00 a.m. and 7:00 p.m., Monday through Friday.

- e) Wastewater treatment plant. Wastewater treatment plant shall be designed and operated such that the noise generated at the Reservation border shall not exceed 50dB(A) Leq between the hours of 7:00 a.m. and 10:00 p.m., and 45dB(A) Leq between 10:00 p.m. and 7:00 a.m., consistent with the requirements of the County Noise Ordinance.

6. **Traffic/Transportation**

Tribe and County agree that a combination of mitigation measures is required to adequately address traffic impacts, particularly between I-15 and the Pauma Casino.

The following mitigation measures are expected to reduce the traffic volume generated by the Casino Expansion Project and therefore reduce traffic impacts:

- a) Encourage use of buses/vans for Casino patrons. Tribe will continually seek ways to expand the availability of van/bus services for Casino customers, to reduce individual vehicular traffic levels, and where feasible, Tribe will contract with companies that use low-emission vehicles.
- b) Encourage Casino employee carpooling. Tribe will continue to encourage employees to carpool, vanpool or rideshare and provide ride-matching services. Employees who carpool shall receive priority parking privileges. The goal of these activities is that each day at least 20% of the Project's employees participate in carpools, vanpools, or ridesharing.
- c) Support creation of Tribal Transportation Management Association (TTMA). Under Reservation Transportation Authority (RTA) management, the TTMA will serve as the entity to create and administer trip reduction strategies and services in partnership with Southern California Tribes. Year 1 dues to the RTA TTMA have been tentatively set as \$80,000 and Year 2 and 3 dues at \$45,000; timing of payment of dues is contingent on when the TTMA is formed. The Tribe shall determine in its sole and absolute discretion whether to become a member of the TTMA.
- d) Fund SR76 East Transit Infrastructure Study. Tribe shall contribute \$5,000 to the San Diego Association of Governments (SANDAG) to enable SANDAG to produce a transit infrastructure plan study to identify infrastructure improvements that could be made to the SR76 East corridor to enhance the mobility and safety of buses.
- e) Funding support for potential Park and Ride/Transit Facility at I-15/SR76 intersection. Though specific plans have not been determined, Tribe agrees that it may participate in discussions with SANDAG and/or California Department of Transportation (Caltrans) concerning the development of the Park and

Ride/Transit Facility at the I-15 and SR-76 intersection and will consider providing its fair-share contribution for the infrastructure costs of such a Park and Ride/Transit Facility at the I-15/SR76.

- f) Construct North County Transit District (NCTD) bus stop. Tribe shall construct a bus stop near the Casino to serve Casino patrons and employees, subject to receipt of written confirmation from the North County Transit District (“District”) that the District shall serve the bus stop on a regular and periodic basis. Tribe shall coordinate specifications for the bus stop with the District. County shall work in good faith with the Tribe and the District to ensure the bus stop will be served by the District, and to obtain confirmation of service from the District before the Tribe shall be obligated to construct the bus stop.

To enhance traffic safety and reduce congestion at key intersections and along SR76 and Pauma Reservation Road, the Tribe shall take the following actions to provide physical improvements to roads:

- g) Fair Share Contributions to I-15/SR76 Interchange Improvements. Tribe shall pay \$6,000,000 towards Caltrans’ planned construction project for improvements to the I-15/SR76 interchange within 48 months of the Casino Expansion Start Date or 30 days after Caltrans awards the construction contract for said improvements, whichever is later.
- h) Improvements to Pauma Reservation Road and the Intersection of Pauma Reservation Road and SR76.
- i. Improvements to Intersection of Pauma Reservation Road and SR76. Tribe shall improve the intersection of SR-76 and Pauma Reservation Road in accordance with Caltrans and County requirements. Tribe agrees to pay 100% of the costs necessary to accomplish the project including right of way acquisition, design, environmental review, permitting, and construction. The total estimated cost of project development, right of way acquisition and construction is \$3,000,000. Improvements shall include, but not be limited to, intersection signalization and widening of all three approaches to the intersection including:
- East Bound SR76: left turn lane and through lane
 - Westbound SR76: right turn lane and through lane
 - Southbound Pauma Reservation Road: left turn lane and right turn lane
- ii. Improvements to Intersection of Pauma Reservation Road and Casino entrance. Tribe shall improve the intersection of Pauma Reservation Road and the Casino entrance in accordance with County requirements. At a minimum, improvements shall include turn lanes to provide adequate capacity at the entrance. County agrees to expeditiously process necessary design review, environmental review and permits, and agrees to coordinate such improvements

with Caltrans in order to allow Tribe to expeditiously begin and accomplish construction of the improvements. Tribe agrees to pay 100% of the costs necessary to accomplish the project, including right of way acquisition, design, environmental review and construction. The total estimated cost of project development, right of way acquisition and construction is \$1,000,000.

iii. Improvements to Pauma Reservation Road between Casino entrance and SR76.

Tribe shall improve Pauma Reservation Road in accordance with County requirements. At a minimum, improvements shall include widening and realigning Pauma Reservation Road to a minimum 40 feet of pavement within 60 feet of right of way, realigning the existing approximately 400 foot radius curve to meet the minimum curve radius requirements of the County's Public Road Standards and improvements to provide adequate drainage conveyance to meet standards, all to the satisfaction of County. County agrees to expeditiously process necessary design review, environmental review and permits, to allow Tribe to expeditiously begin and accomplish construction of the improvements. Tribe agrees to pay 100% of the costs necessary to accomplish the project, including right of way acquisition, design, environmental review, permitting and construction. The total estimated cost of project development, right of way acquisition and construction is \$2,500,000.

iv. Timing of Improvements. The Tribe and County intend to expeditiously process necessary design reviews, environmental reviews and permits, and County agrees to coordinate with Caltrans so that Tribe may expeditiously construct the improvements to Pauma Reservation Road and the intersection of Pauma Reservation Road and SR76.

- a. County supports expedited construction of the foregoing improvements and will expedite processing the permits required to enable construction to proceed. To accomplish this goal, a meeting with Caltrans and County shall be conducted as soon as possible, no later than thirty (30) days after the execution of this Agreement, to identify scheduling goals for the project scope and significant permitting milestones. County will assist Tribe in scheduling periodic follow-up meetings with Caltrans to review progress and for issue resolution. Until permits are issued, these meetings shall occur no less than once per month unless otherwise agreed by the Parties.
- b. Tribe shall complete the improvements to Pauma Reservation Road and the intersection of Pauma Reservation Road and SR76 prior to the Casino Expansion Start Date. The milestone schedule to be developed by Caltrans and County for the permitting process is meant to provide a goal to enable the improvements to be permitted and constructed prior to a Casino Expansion Start Date that could be as early as June 2010.

- c. The milestone schedule will be premised on the Tribe's preparation of timely, complete and accurate submissions of all materials required to meet such schedule.
 - d. For improvements to Pauma Reservation Road, a County-maintained road, County will work with Tribe with the goal of designing necessary improvements within existing County right-of-way or within Tribe's Reservation or fee owned land. Additional right-of-way that is beyond Tribe's control will only be required by County if necessary improvements cannot be satisfactorily designed to occur within existing County right-of-way or upon land within Tribe's control.
 - e. County agrees to expedite review of Tribe's submittals as contemplated by the milestone schedule and to attend the meetings described in subparagraph (a) of this "Timing of Improvements" section.
- i) SR76 Operational Improvements. Tribe agrees to pay \$25,500,000 for 100% of the costs necessary to accomplish operational improvements to SR76 that will enhance safety and relieve congestion on SR76 subject to the provisions below. This amount shall cover 100% of Caltrans costs necessary to accomplish the operational improvements, including design, environmental review, environmental mitigation measures, right of way acquisition, permitting and construction. County will coordinate with Caltrans to accomplish these improvements expeditiously. In no event shall Tribe's obligation under this section exceed \$25,500,000.

Project Development

- (1) So that Caltrans may proceed with project development for SR-76 Operational Improvements, Tribe shall provide payment in the amount of \$500,000 prior to the Project construction start date.

Priority SR-76 Operational Improvements

- (2) \$11,500,000 is allocated to the following "Priority SR-76 Operational Improvements":
 - 1 Curve realignment at SR-76 Post Mile 28.3
 - 2 Intersection improvements at Cole Grade/SR-76 intersection (not to exceed \$3,000,000)
- (3) Payments for the "Priority SR-76 Operational Improvements" shall be provided by Tribe per the following schedule:

Prior to the Casino Expansion Start Date: \$3,000,000

36 months after Casino Expansion Start Date:	\$6,750,000
48 months after Casino Expansion Start Date:	\$1,750,000

Additional SR-76 Operational Improvements

- (4) Tribe agrees to pay \$13,500,000 to Caltrans for additional SR-76 operational improvements within the area bounded by the eastern end of the frontage improvements being constructed by Pala Band of Mission Indians under its 2007 Agreement with the County, easterly to Valley Center Road. Such improvements may include passing lanes, turnouts, shoulder widening, curve realignment, and/or intersection improvements. Tribe agrees to act reasonably in developing with Caltrans proposed improvements to SR-76. Notwithstanding anything else to the contrary in this Agreement, when Caltrans has provided Tribe with proposed improvements, the Tribe has the right in its sole and absolute determination to agree or disagree with the desired improvements. If the Tribe does not agree with a project proposed by Caltrans, such project shall not be funded by any portion of the \$13,500,000. Tribe shall only pay Caltrans for an improvement to SR-76 pursuant to this paragraph after a written agreement concerning that project has been entered into between Caltrans and the Tribe. If agreement between Tribe and Caltrans has not been reached as to the use of the \$13,500,000, or any part thereof, by August 31, 2011, Tribe shall no longer be obligated to pay for improvements pursuant to this paragraph.

Any Variance in Cost of "Priority SR-76 Operational Improvements"

- (5) If cost of the "Priority SR-76 Operational Improvements" exceeds \$11,500,000, Caltrans may either seek to obtain additional funds from County or other sources, or may seek to agree with Tribe to allocate a portion of the funding pursuant to the previous paragraph to cover the shortfall.
- (6) If cost of the "Priority SR-76 Operational Improvements" is less than \$11,500,000, Caltrans may either direct any remaining funding to other needed SR-76 Operational Improvements or seek agreement with the Tribe to combine those funds with the \$13,500,000 for "Additional SR-76 Operational Improvements" pursuant to Paragraph (4) above.
- j) Traffic Mitigation Agreement and Frontage Improvements. The County has adopted a certain Resolution of the San Diego County Board of Supervisors Approving Procedures and Criteria for Processing Liquor License Applications for Indian Gaming and Resort Facilities (Resolution No. 01-162) for the purpose of establishing criteria for determining whether to protest the issuance of liquor licenses for Indian gaming and resort facilities. Two of these criteria relate to matters addressed in this Agreement. In order to facilitate future cooperation

between the County and Tribe, the County hereby agrees that: (1) this Agreement constitutes the Traffic Mitigation Agreement contemplated in Paragraph A.1 of Resolution No. 01-162 and (2) completion of the improvements to Pauma Reservation Road and the intersection of SR76 and Pauma Reservation Road pursuant to this Agreement shall satisfy the requirements for completion of "frontage improvements" set forth in Paragraph A.2 of Resolution No. 01-162.

7. Wastewater Treatment

- a) Tribe shall construct a state-of-the-art extended aeration wastewater treatment plant (WTP) expansion to treat additional flows from the Casino Expansion Project. The new plant will be on-Reservation adjacent to the existing plant. Treatment will be to tertiary treatment Title 22 standards.
- b) All of the new WTP's effluent shall be disposed of via on-Reservation percolation ponds or leach fields, or be reclaimed for beneficial use such as on-Reservation landscaping and agricultural uses.
- c) Tribe shall dispose of sludge off-Reservation at appropriately permitted landfills in accordance with applicable federal, state and local laws.
- d) A licensed professional engineer shall certify that the combination of leach fields, percolation ponds, and emergency storage resulting from the Casino Expansion Project, provides 82 days of wet weather storage or recharge capability. The certification shall be provided to County before the Casino Expansion Start Date.

8. Solid Waste

- a) Solid waste that is not diverted for recycling/reuse will be disposed of only at permitted off-Reservation landfills.
- b) To minimize impacts to off-Reservation landfills, Tribe will, to the extent feasible, separate and divert solid waste to reuse or recycling including at a minimum all wastes consisting of cardboard, mixed paper, glass, plastic, copper, aluminum, tin, white goods and green waste resulting from landscaping activities. The goal of this activity is to separate and divert 50% of the solid waste of the facilities. If in the future the County is required by the state to increase the County's diversion goal above 50%, the Tribe will similarly increase the diversion goal for the facilities.
- c) During construction of the Casino Expansion Project, to the extent feasible, waste materials from construction activities shall be recycled or diverted for reuse. The goal of this activity is that 90% of inert wastes and 70% of non-inert wastes shall be recycled or diverted for reuse.

9. Security and Law Enforcement

The Tribe and the Sheriff, respectively, shall provide security and law enforcement as set forth below.

- a) Security. The Tribe agrees to provide on-site security in the Casino Expansion Project during all hours of operations. The Tribe acknowledges that assistance from the County Sheriff may be required from time to time with respect to the apprehension and arrest of persons engaged in suspected criminal activity.
- b) Law Enforcement Responsibilities. County and Tribe agree that under Public Law 280 (18 U.S.C. § 1162), the County and the County Sheriff have concurrent jurisdiction with the Tribe over crimes committed on the Reservation. The Valley Center/Pauma Sheriff Substation provides and will continue to provide law enforcement services for the Valley Center/Pauma Valley area which includes the Project.
- c) Compensation to County for Sheriff Department. Tribe agrees to pay County \$400,000 annually to compensate for deputy sheriff support and associated non-labor costs including vehicles and weapons. After the first annual payment, subsequent annual payments shall be increased by 3.8% per year to cover annual salary and cost increases.
- d) County of San Diego District Attorney Tribal Liaison Project. The Tribe shall pay County annually for a portion of the cost of the District Attorney's Office – Tribal Liaison Project that consists of dedicated District Attorney Staff who work closely with tribes in the County of San Diego to prosecute Indian gaming-related crime. The first annual payment shall be \$10,000. These funds will be due for as long as the County's District Attorney has dedicated staff working solely on Indian gaming related crimes.
- e) Criminal Prosecution Caseload. The Tribe shall pay County annually for costs of processing additional Criminal Prosecution Caseload. First annual payment shall be \$30,000.

10. Public Health and Safety

- a) New Tribal Fire Department. The Tribe shall construct and operate a new fire department on its Reservation that consists of, at a minimum:
 - (1) A full-time fire chief
 - (2) Four (4) professional fire fighters on duty 24 hours a day, 7 days a week, 365 days a year
 - (3) Two (2) paramedics cross-trained as fire fighters, on duty 24 hours a day, 7 days a week, 365 days a year

- (4) One (1) Type 1 Engine
 - (5) One (1) Type 3 Engine
- b) Additional Fire Fighting Resources. The Tribe shall include in its Fire Department or obtain via an agreement with CAL-FIRE and County, an additional four (4) professional fire fighters on duty 24 hours a day, 7 days a week, 365 days a year (one of which may be a reserve), and an additional Type 1 Engine, heavy rescue engine, ladder truck or a light and air unit. The resources may be housed at the CAL FIRE Station located near the intersection of Valley Center Road and SR-76, on the Reservation, or a combination thereof.
- c) Regional Coordination. If the Tribe pursues the agreement option in sub-section (b) above, as an important additional resource in the area's fire-fighting and emergency medical response system, the Tribal Fire Department shall coordinate its operations with nearby fire fighting and emergency medical response providers based on the closest resource concept through automatic aid and common dispatch. The Tribe shall conduct quarterly interagency training and drills at the new facilities to maintain high rise firefighting practices.
- d) Maintenance of Facility Life Safety Systems. Tribe shall perform ongoing testing and maintenance of the Project's life safety systems to meet or exceed California Title 19 and 24 standards and appropriate National Fire Protection Association (NFPA) standards.
- e) Mutual Aid Agreements. As delineated in the Final EA/TEIR, the Tribe has mutual aid agreements with nearby fire departments and will maintain those mutual aid agreements at the same levels or as agreed via the reopener provision of this section. Copies of the agreements shall be provided to County upon County request.
- f) Regional Light/Air Unit. Tribe will cooperate with County in supporting its North County regional emergency response light/air unit. Such cooperation shall include a one-time payment of \$10,000 to assist in equipping the unit. The unit is being developed to assist emergency response personnel entering large facilities such as the Casino Expansion Project by providing a pre-positioned vehicle with twenty mobile self-contained breathing apparatus and emergency lighting capability.
- g) Reopener Provision. Tribe and County shall review the requirements of this Section 10, Public Health and Safety, within one year after the Casino Expansion Start Date and every three years thereafter. Based on review of adequacy of emergency response, response times, and changing conditions, the Parties may agree to amend the requirements of this Section per the Amendment procedure prescribed in Section E of this Agreement.

11. Impacts of Gambling Addiction

- a) Tribe's Responsible Gambling Program. Tribe shall assure its Casino Manager ("Manager") adopts a comprehensive Responsible Gambling Program ("Program") to support the development of awareness and prevention programs for problem and underage gambling on its property. The Manager shall provide a copy of the Program to the Director of the County's Pathological Gambling Treatment Program for review and comment, and shall consider all comments received, and shall strive to improve the Program on a continuing basis.
- b) Coordination.
 - (1) County and Tribe shall each designate a representative for coordination of the County's Pathological Gambling Treatment Program with the Tribe's Responsible Gambling Program.
 - (2) Within three months of this Agreement, the two representatives shall meet to review opportunities for coordinating and for reviewing the effectiveness of the County's and Tribe's programs. Additional meetings shall be scheduled quarterly or as determined by the representatives, for the purpose of ongoing coordination and continual improvement of the parties' programs.
- c) Compensation to County. Tribe shall pay County \$200,000 annually for programs designed to address gambling addiction. These funds shall be segregated by County and shall only be used for gambling addiction treatment programs.
- d) Tribe's Responsible Gambling Program components. At a minimum, the Tribe's Responsible Gambling Program shall ensure:
 - (1) The Casino shall provide information to its guests through signage, pamphlets, and an Internet website that describe the symptoms of problem gambling. Informational brochures shall be available throughout the Casino that discuss how a person knows that he or she has a gambling problem and the ramifications of such a problem in terms of family, friends and social obligations. The brochures shall provide a hotline number that is available to call 24 hours each day, including the Council on Compulsive Gambling of California's 24-hour free and confidential Helpline, which offers problem gamblers and their family's information and referral to self-help and professional services.
 - (2) All appropriate casino employees shall receive training in the identification of problem gambling. Employees shall offer customers information about available problem gambling resources when signs of problem gambling are evident.

- (3) The Casino shall maintain a Self-Exclusion Policy whereby patrons may request a halt to casino promotional mailings, check cashing privileges, and player club privileges. A patron may also request to be physically excluded from the Casino. Procedures shall be established that allow problem gamblers to assume the responsibility of excluding themselves from any form of gambling. The procedures shall outline the steps involved in the initiation of a Self-Exclusion Form, and provide for the processing and retention of the Self-Exclusion Form, patron's return and patron's reinstatement process.
 - (4) The Casino shall maintain an Involuntary Exclusion Policy whereby a patron may be involuntarily subjected to the same provisions associated with the Self-Exclusion Policy, for purposes of preventing the patron's pathological or problem gambling.
 - (5) The Casino shall take special measures to prevent underage gambling (as defined in the Amended Compact) including, at a minimum: (a) appropriate signage, detailing the age limit and possible penalties, shall be posted at all casino entrance points; (b) casino floor personnel shall be instructed to contact Security when they suspect that a minor is gambling; and (c) Security shall escort the minor from the building, and contact the appropriate law enforcement officials when warranted.
 - (6) The Casino shall provide training to all appropriate employees regarding the identification of intoxicated patrons gambling; and shall adopt procedures to prohibit intoxicated persons from gambling at the Casino; and shall provide information to intoxicated gambling patrons regarding the dangers of intoxicated gambling, and available counseling and treatment resources.
- (e) Support to California Council on Problem Gambling. Tribe shall also provide non-monetary support to the California Council on Problem Gambling, a California nonprofit public benefit corporation that:
- i. Conducts Responsible Gambling workshops for Casino employees
 - ii. Staffs a 24 hour/day, 7 days/week "Problem Gambling Help Line" with live professional counselors who can provide first contact crisis intervention
 - iii. Trains and certifies California Certified Gambling Counselors
 - iv. Provides information on cost accessible programs for those with compulsive gambling program
 - v. Maintains a "Speakers Bureau" of volunteers to help educate children and adults at schools and community service forums

B. DISPUTE RESOLUTION

1. Dispute Resolution Procedures. In an effort to foster good government-government relationships, and to assure that the Tribe is not unreasonably prevented from engaging in activities authorized under the Compact and benefiting therefrom, while assuring that the off-Reservation environment is not negatively impacted by the construction and operation of the existing casino and the Casino Expansion Project, the County and the Tribe agree to the following:

a) Mediation. The Tribe and the County shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Disputes between the Tribe and the County shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Agreement as follows:

(i) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(ii) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days after receipt of the notice, unless both parties agree in writing to an extension of time.

(iii) If after thirty (30) days following the "meet and confer" meeting identified above (or such longer period as may be agreed upon), the parties are unable to resolve a dispute, either party shall be entitled to send the other party a notice of impasse. Thereupon, the parties shall have an additional ten (10) days in which to resolve the subject dispute. If the dispute remains unresolved after the end of such 10-day period, then upon the request of either party in writing, the dispute shall be submitted to binding arbitration in accordance with this section. The Tribe and the County will submit to any arbitration proceeding as described in this section, and consent to the jurisdiction of the United States District Court for the Southern District of California and, if the United States District Court for the Southern District of California finds that it lacks jurisdiction, to the jurisdiction of the Superior Court for the County of San Diego, State of California, in each case for the limited purpose of compelling arbitration in the event either party refuses to arbitrate any arbitral dispute as contemplated herein, and for the enforcement of any decision and collection of any award of the arbitrator as contemplated herein. The disputes to be submitted to arbitration shall be limited to claims of breach or violation of this Agreement. The arbitrator shall reach decisions including providing the substance of outstanding and unresolved portions of such agreements to make possible their conclusion and resolutions of any disputes

pursuant to this Agreement, within one hundred and twenty (120) days of the disputes or issues being first submitted to him or her.

(iv) If the County asserts, and provides the Tribe with a reasonable basis for such assertion, that the Tribe's activities are causing an imminent danger to the public health and safety, the Tribe agrees to cease such activity until the imminent danger to public health and safety has been abated. Nothing in this provision shall be cause for County to require the Tribe to discontinue operation of its Class III gaming activities.

(v) It is understood that certain disputes may take an extended period of time to resolve. Accordingly, the parties agree that a dispute shall be deemed to be resolved, if the parties meet and confer and develop a mutually satisfactory plan of action to resolve the subject dispute, taking into account the nature of the imminent danger to the public health and safety.

- b) Arbitration Rules. Any dispute between the Tribe and the County arising out of or relating to this Agreement, or the breach thereof, shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held on the Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location mutually agreeable to the parties. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. In any court action brought pursuant to this Agreement, neither party shall be entitled to recover attorney fees and costs except as otherwise provided by law. The arbitration shall be administered by a single neutral arbitrator. The American Arbitration Association shall recommend five (5) arbitrators for the Parties to select. The Parties shall make an attempt to mutually agree on an Arbitrator, but if an Arbitrator cannot be agreed upon, the Parties shall rank the recommended arbitrators by order of preference to allow the American Arbitration Association to make the best objective selection. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided however, that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding.

Any party to an arbitration in which an award has been made pursuant to this Agreement may petition the United States District Court for the Southern District of California, and if the United States District Court for the Southern District of California finds that it lacks jurisdiction, to the jurisdiction of the San Diego County Superior Court to confirm the award. The County and the Tribe expressly consent to be sued in such court for the purpose of confirmation of such an arbitration award which may include enforcement of the terms of this Agreement.

An award shall be confirmed, provided that:

(i) The award is limited to the purposes of arbitration stated in this Agreement.

(ii) No monetary damages are awarded other than those amounts determined to be payable under this Agreement. No damages for non-payment or such amounts may be awarded. (Awards may be made by the arbitrator for only such payments, for injunctive relief, for enforcement of provisions of such agreements, and for declaratory relief, all in respect only to this Agreement).

(iii) If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in civil action; and may be enforced like any other judgment of the court in which it is entered.

(iv) In no instance shall the Parties to this Agreement be entitled to consequential damages, punitive damages, or lost profits.

(v) In no instance shall the Parties be entitled to a judgment that would explicitly require Tribe to discontinue operation of its Class III gaming activities.

- c) No Waiver or Preclusion of Other Means of Dispute Resolution. This Dispute Resolution Section shall not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

C. CONSENT TO JURISDICTION: LIMITED EXPRESS WAIVER OF SOVEREIGN IMMUNITY

1. The Tribe expressly and irrevocably waives its sovereign immunity specifically and exclusively to the County for the limited purposes set forth in Subsection B. Additionally, the Tribe does hereby unconditionally waive any claim or defense of exhaustion of tribal administrative or judicial remedies. This waiver shall commence as of the date of execution of this Agreement.

2. The express waivers and consents provided for under this Section shall extend only to civil actions authorized by this Agreement, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating

from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Agreement, no other waivers or consents to be sued, either express or implied, are granted by either party.

3. Notwithstanding any other provision of this Agreement, the Tribe's waiver of sovereign immunity shall not extend to permit claims against any trust lands or trust property or any assets of the Tribe other than revenues that the Tribe receives from operation of the Project.

4. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties. This waiver is granted only to the County and not to any other individual or entity.

D. NOTICES

a) All notices required by this Agreement will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Tribe at their respective addresses as follows:

For the Tribe:

Tribal Chairman
Pauma Band of Mission Indians
P.O. Box 369
Pauma Valley, CA 92061

For the County:

John Snyder, Director
Dept of Public Works
5555 Overland Ave, Suite 2156
San Diego, CA 92123

With a Copy To:

Rosette & Associates
Attn: Robert Rosette
565 W. Chandler Blvd, Suite 212
Phoenix, AZ 85225

With a Copy to:

Claudia Anzures
Chief Deputy County Counsel
1600 Pacific Highway, Suite 355
San Diego, CA 92101

In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers are used:

To Tribe: Pauma Band of Mission Indians, Fax: 1-760-742-3422
Pauma Legal Counsel, Fax: 1-480-889-8990

To County: Chief Administrative Office, Fax: 619-531-5476
County Counsel, Fax: 619-531-6005

Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

E. LEGAL PROVISIONS

1. Term of Agreement. The term of this Agreement commences on the date of execution and runs concurrent with the term of the Amended Compact. The Tribe shall have the right to terminate the Agreement for any reason if the Project is abandoned or ceases to be open to the public or conduct Class III Gaming.

2. No Third Party Beneficiaries. This Agreement including Section C Waiver of Sovereign Immunity is not intended to, and shall not be construed to, confer a benefit on any third party or create any right or remedy for a third party to bring an action to enforce any of its terms.

3. Amendments. This Agreement may be amended only by written instrument duly signed and executed by the County and the Tribe.

4. Waiver. The waiver by either party or any of its officers, agents or employees, or the failure of either party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the County or of the Tribe.

5. Authorized Representatives. The persons executing this Agreement on behalf of the parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective party understand that both parties are relying on these representations in entering into this Agreement.

6. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each party.

7. Severability. The provisions of this Agreement are severable, and the adjudicated invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the Agreement shall remain in full force and effect. If a court of competent jurisdiction were to determine that a provision of this Agreement is invalid or unenforceable, then the parties agree to promptly use good faith efforts to amend this Agreement to reflect the original intent of the parties in accordance with applicable law and consistent with the Compact between the Tribe and the State of California. If the parties are unable to reach agreement, the parties will resolve the dispute in accordance with the Dispute Resolution Section of this Agreement.

8. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the United States, the Tribe and the State of California, and County ordinances wherein explicitly referenced.

9. Force Majeure. In the event of a forced delay in performance by either the Tribe or the County due to causes beyond the reasonable control of that party, including but not limited to fire, floods, drought, catastrophic weather events or other natural disasters, epidemics, embargoes, war, acts of war (whether or not war is declared), insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God, acts or inaction by the other party its employees or agents, unusual delay in transportation, unavailability of materials, the time for performance shall be extended for the period of the forced delay.

10. Acknowledgement by County. The County acknowledges and agrees that the matters addressed in this Agreement are the only issues required of the Tribe in connection with the Tribe's development and operation of the Project and satisfies the Tribe's obligations under Section 10.8 of the Compact.

11. Entire Agreement.

(a) This Agreement constitutes the entire agreement between the County and the Tribe and supersedes all prior negotiations, representations, or other agreements, whether written or oral.

(b) In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above set forth.

TRIBE:

PAUMA BAND OF MISSION INDIANS,
a federally recognized Indian Tribe

By:

Chris Devers
Chris Devers, Chairman

COUNTY:

COUNTY OF SAN DIEGO
a political subdivision of the State
of California

By:

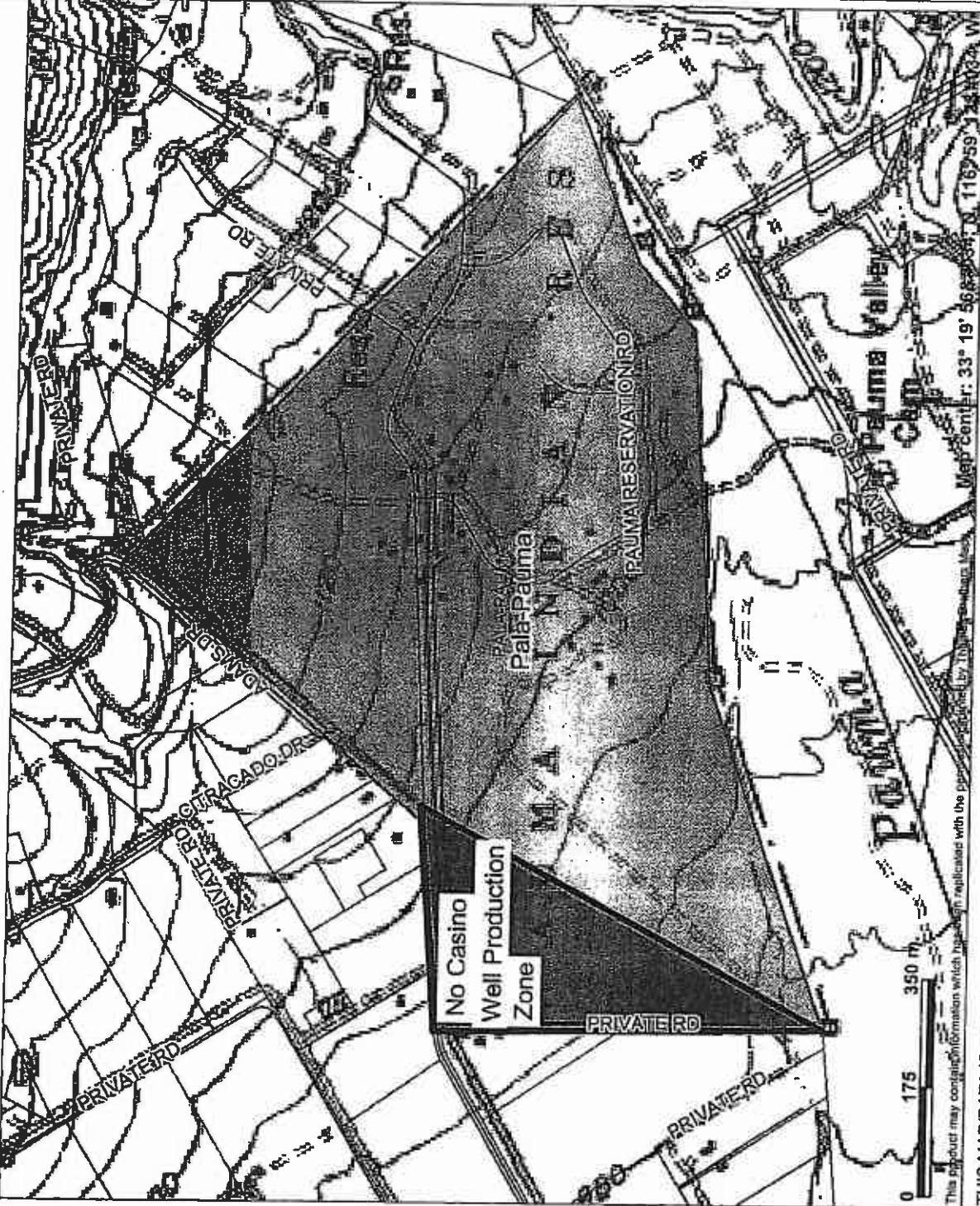
Thomas J. Pastuszka
Clerk of the Board of Supervisors

Approved and/or authorized by the Board
of Supervisors of the County of San Diego
Date 8/16/08 Minute Order No. 16
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By William Santos
Deputy Clerk

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

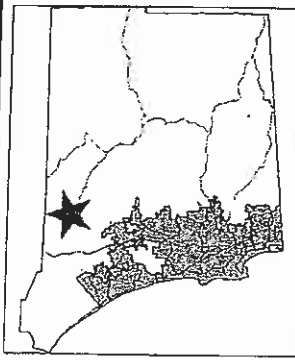
By Claudia Anzuris
CHIEF DEPUTY COUNTY COUNSEL

Pauma Indian Reservation Expansion - Well Restriction Zone



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Legend

- Parcels with out labels
- Highways
- Freeways
- Streets
- Water Bodies
- Water Bodies
- Indian Reservations
- Sponsor Groups
- Sponsor Groups
- Other
- Community Planning Area
- Community Planning Areas
- USGS 7.5 Min Topo Quad



Scale: 1:9,834



MIWOK
MAIDU

United Auburn Indian Community
of the Auburn Rancheria

JESSICA TAVARES
CHAIRPERSON

JOHN SUEHEAD
VICE CHAIR

DAVID KEYSER
SECRETARY

DOLLY SUEHEAD
TREASURER

GENE WHITEHOUSE
COUNCIL MEMBER

March 12, 2009

Mr. Dale Morris, Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento CA 95825

Dear Mr. Morris:

A. AUBURN OBJECTION TO ENTERPRISE PROPOSED LAND ACQUISITION

The United Auburn Indian Community ("Auburn") is aware that the Enterprise Rancheria of Maidu Indians of California ("Enterprise") seeks to conduct off-reservation gaming on certain lands near Olivehurst, Yuba County, California (the "Yuba County Lands"). To this end, Enterprise has applied to have the Yuba County Lands taken into trust by the Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq. Specifically, before the Secretary may take the subject land into trust, the Secretary must complete a two-part determination that addresses whether the proposed tribal casino on the newly acquired land (1) is in the best interest of Enterprise and its members; and (2) is not detrimental to the surrounding community. Further, the Governor of California must concur in the determination of the Secretary. This two-part Secretarial determination process has resulted in land acquisitions for tribes only three (3) times since the IGRA was passed over 20 years ago (the last such approval occurring in 2000). Accordingly, the process is quite rigorous and the Secretary must carefully scrutinize the application, as well as any objections received -- including any objections from nearby tribes.

For multiple reasons, Auburn opposes the land-into-trust application submitted by Enterprise. In brief, Auburn believes that the development and operation of a gaming facility on the Yuba County Lands would be environmentally, socially, and economically detrimental to Auburn as a neighboring Tribe, as well as to the greater community in and around the Yuba County Lands.

On January 16, 2009, the Bureau of Indian Affairs ("BIA") solicited comments on the Enterprise land-into-trust application from neighboring Tribes and other members of the local community in and around the Yuba County Lands. Pursuant to the letter, comments are to be submitted to the BIA on or before March 17, 2009. As a neighboring Tribe to Enterprise and a member of the community surrounding the Yuba County Lands, Auburn should have received notice of the opportunity to comment on the Enterprise application. Notwithstanding the obligation of the BIA to solicit Auburn's input, Auburn was not included on the distribution list for the January 16, 2009, letter. As a result, Auburn only

recently learned that the BIA was soliciting comments. Based on the fact that Auburn only just learned of the comment period, Auburn respectfully requests a 60-day extension, or until and including May 17, 2009, to fully respond to the issues raised by the proposed gaming facility.

While Auburn anticipates filing fully-developed comments regarding its opposition to the acquisition on or before May 17th, a brief summary of Auburn's objections to Enterprise's application is set forth below to preserve Auburn's objection on the record and in the event its extension request is not granted.

B. CONSULTATION WITH NEARBY TRIBES IS REQUIRED -- WHICH INCLUDES AUBURN

The IGRA and 25 C.F.R. 292 require the Secretary to consult with tribes located within 25 miles of the proposed gaming facility. Despite this requirement, the distribution list for the January 16, 2009 letter does not include any Indian tribes -- much less Auburn. Indeed, Auburn is located approximately 20 miles from the location of the proposed off-reservation gaming and therefore has a clear interest in the proceedings. As such, Auburn should have been on the distribution list and received notice of the request for comments. Based on Auburn's close proximity, Auburn is entitled under the IGRA to have sufficient time to prepare and submit comments.

The Revised 2007 Checklist for Gaming Acquisitions issued by the Secretary of the Interior's Office of Indian Gaming Management ("OIGM") sets forth, in great detail, the requirements for the Secretary completing a gaming land acquisition package and taking final action. The Checklist includes information on certain procedural steps to be followed. Among these requirements is consultation with local communities, nearby tribes and state officials.

Here, the Auburn Indian Community is located only 20 miles from the proposed gaming facility -- undisputably a "nearby" tribe. In fact, Auburn is located about 20 miles closer to the proposed site than the Enterprise Rancheria itself. As such, Auburn has a greater right to claiming that the land at issue is within Auburn's historical land base -- not the land base of Enterprise. Pursuant to the IGRA, 25 C.F.R. 292, and the OIGM Checklist, the BIA is mandated to consult with Auburn and permit Auburn the opportunity to lodge its objections to Enterprise's proposed land-into-trust acquisition.

C. PROPOSED GAMING FACILITY WOULD BE DETRIMENTAL TO AUBURN

As noted above, in rendering a two-part determination here, the Secretary must conclude the acquisition (1) is in the "best interest" of Enterprise and its members; and (2) will not be "detrimental" to the surrounding community. 25 U.S.C. § 2719(b)(1)(A).

Auburn believes Enterprise will have a difficult burden in demonstrating that the proposed land acquisition would not be detrimental to the surrounding community and

would be in the best of interest of Indian Country as a whole. Pursuant to the OIGM Checklist, the greater the distance the acquired land is from the Enterprise reservation, the greater the justification Enterprise will need to show to support the additional benefits to the Tribe. With the distance here being 45 miles from the Enterprise reservation, the justification will need to be significant and substantial.

In addition, Enterprise already has existing ancestral lands in another part of California on which gaming can occur. Enterprise is simply looking for better, more accessible land near an urban center on which to conduct gaming. Enterprise should not be allowed to "shop" for a better location to the detriment of Auburn, its members, its government, and its own economic development. To encroach on Auburn's historical lands would be unfair to Auburn and infringe on the cultural heritage and sovereignty of Auburn.

Auburn advocates that Enterprise use existing land or seek other land where it has the requisite historical and cultural nexus in which to engage in gaming and other economic development. Should it indeed prove impractical to use the existing Enterprise tribal lands, there are surely other tracts of land closer to the historical and cultural lands of Enterprise that can be taken into trust.

To be sure, the proposed Enterprise gaming facility would have a significant adverse impact on Auburn and its existing gaming operations. Auburn currently operates a casino in nearby Lincoln, California — approximately 20 miles from the proposed location. In the current economic environment, Auburn has postponed modifications to its existing facility. To further burden Auburn with competition from a nearby casino would be grossly unfair and would have a significant negative economic impact on Auburn.

D. ENVIRONMENTAL ISSUES

The following sets forth certain environmental impacts and mitigation regarding the proposed Enterprise land acquisition. If the extension request is granted, additional comments and detail will be provided. Page and figure numbers below reference the Draft EIS prepared for the project.

1. Flooding

A portion of the project (including the hotel) would be located within what is currently designated as a flood zone. While the project proposes to elevate structures out of the floodplain, it is unclear which structures would be elevated. The extent of the floodplain as shown in the Draft EIS (Figure 3.1.3-2) is different than the FEMA flood map included as Figure 2 of Appendix F (Drainage Study), making the extent of impacts unclear.

2. Soil Limitations

The project is located on soils with high shrink-swell potential (as noted on page 3.1.2-1) yet no impact discussion or mitigation measures are discussed for this limitation. Without

a geotechnical report and recommendations from a licensed professional, the extent of impacts is unknown and potentially significant.

3. Socioeconomic Impacts

The EIS should evaluate the economic impacts to existing Tribal gaming operation including Thunder Valley. For examples of similar studies, see the analysis conducted for the North Fork Casino EIS and Cowlitz Casino EIS.

4. Traffic

- No accident rate data or other safety assessment was provided for study intersections, even though this concern was identified in the Scoping Report. Traffic safety is discussed only with regard to SR-70/Pluñas Arboga Road. The proposed mitigation is unclear but seems to be prohibiting left turns at this intersection. The document does not analyze the impacts of prohibiting turns on the local road system (increased turning at other intersections) which could be significant.
- The Draft EIS does not provide LOS tables for the alternatives after the incorporation of mitigation; thus, it is unclear whether mitigation would adequately reduce impacts to a less than significant level.
- What assurances are provided that the Tribe would construct needed traffic improvements prior to and during operation? The EIS should define "fair share" payments, which are included as mitigation.
- The EIS does not include an analysis of traffic in conjunction with events at the Sleep Train Amphitheater.
- The EIS does not analyze impacts to California Highway Patrol for increased calls and traffic accidents on state routes.

5. Hazards

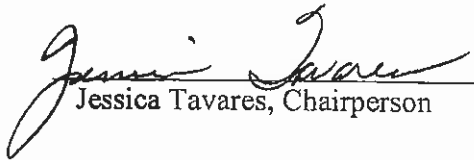
The EDR report prepared for the Phase I is dated 2003. This report should be updated to reflect any new conditions on surrounding properties.

6. Visual

This section provides no photographs of the discussed view sheds or simulations of the view sheds with the project. Without evidence, the document cannot conclude there is a less than significant impact.

E. CONCLUSION

Auburn anticipates developing the foregoing comments, as well as others, over the course of the next 60 days. The requested extension to the comment period will permit a full explanation of the adverse impact of the proposed gaming facility to Auburn. We appreciate very much your anticipated courtesy and cooperation in granting the requested extension to enable Auburn to have its voice heard in this matter.


Jessica Tavares, Chairperson