



GAMING LEGALNEWS

ENTERPRISE RANCHERIA READY TO CONSTRUCT CLASS II CASINO

by Patrick Sullivan

California's Estom Yumeka Maidu Tribe, also known as Enterprise Rancheria, has said it will begin construction of a scaled-down Class II gaming facility in Yuba County, instead of the Class III facility that has been opposed by neighboring Indian tribes, beset by litigation and stalled in the state legislature. The 105,750-square-foot facility will be roughly one-third the size of the formerly planned 318,000-square-foot Class III casino. The Tribe has announced that it has secured financing for the scaled-down project and is ready to break ground.

Enterprise Rancheria is located in Oroville in Butte County but selected the Yuba County site due to Butte County's saturated casino market. The Tribe's application to place the land in federal trust status for gaming cited its historical occupation of an area including both Butte and Yuba Counties. The Tribe gained the support of the City of Marysville and Yuba County for its application with promises of revenue sharing in intergovernmental agreements executed in 2002 and 2005, respectively.

Recent California Class III gaming compacts require tribes to enter into local agreements to mitigate impacts, but tribes are under no obligation to enter such agreements for Class II facilities, which do not require a compact. Accordingly, the enforceability of those revenue-sharing agreements depends on whether they can be interpreted to apply to Class II gaming facilities. Because the language negotiated in those agreements is not expressly limited to Class III gaming, the Tribe likely will be obliged to honor the agreements for its scaled-down casino. The Yuba County agreement calls for payments ranging from an initial \$800,000 to \$5 million at the fifth year of operation.

The Tribe had passed a major milestone on September 1, 2011, when the Interior Secretary determined that the Enterprise land was eligible for gaming as an "off-reservation" gaming facility, also known as a "two-part" determination pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). That determination required the Interior Secretary to determine that (1) the gaming establishment would be in the best interests of the Tribe and its citizens, and (2) gaming on the newly acquired lands would not be detrimental to the surrounding community. IGRA also requires the governor of the state in which the gaming will occur to concur in the Interior Secretary's determination. California Governor Jerry Brown concurred in the Secretary's determination, and the land was placed in trust status for gaming on November 21, 2012.

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At that point, the Tribe was authorized to conduct Class II gaming on the land, but Class III gaming would require a Class III gaming compact ratified by the California legislature and approved by the Interior Secretary. Governor Brown executed a compact with the tribe in August 2012, but the California legislature never acted to ratify it. The Enterprise ratification process was caught up in the referendum rejecting compacts for the North Fork and Wiyot Tribes sponsored by *Stand Up for California!*, a gaming watchdog group opposed to what it calls “reservation shopping” by California Indian tribes in general and to off-reservation gaming in particular.

Enterprise’s Class III plan faced its own opposition from anti-casino groups and neighboring Indian tribes that already offer Class III gaming in nearby casinos. The United Auburn Indian Community operates the Thunder Valley casino, and the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community (“Colusa”) operates the Colusa Casino Resort 39 miles from the Enterprise site. Along with a group calling itself “Citizens for a Better Way,” those Tribes sued the Department of the Interior for its 2012 decision to accept the casino site into trust for gaming purposes, complaining that the Department’s process failed to consult neighboring tribes, violated the National Environmental Policy Act (“NEPA”) and would injure the plaintiffs by “cannibalizing” the local gaming market.

In August 2014, in response to the California legislature’s failure to ratify its compact, Enterprise filed a federal lawsuit against the State for failure to negotiate in good faith as required by IGRA. North Fork Rancheria filed a similar action in March of this year. California’s laws enabling Indian gaming expressly waive the State’s Eleventh Amendment immunity to tribal suits for failure to negotiate compacts pursuant to IGRA, so those suits will go forward.

The 2002 agreement with the City of Marysville provided for a payment of \$100,000 upon the land being accepted into trust. Marysville claims the Tribe now owes it that payment despite the ongoing litigation challenging the trust acceptance. The Tribe has not made any payments, but has said it intends to honor its commitments to the City and County. Meanwhile, both the *Citizens for a Better Way, et al.*, lawsuit and the Enterprise lawsuit against the State are pending in federal court.

Disclosure: Dickinson Wright represents Butte County in gaming matters.