

*County of Amador v. City of Plymouth* (April 17, 2007), 149 Cal.App.4th 1089  
Plymouth entered into a Municipal Services Agreement (MSA) with the Ione Band of Miwok Indians in which the City pledged to support the tribe's application to the Secretary of the Interior to take a 228-acre site into trust for eventual development as a casino. The MSA also provided for the tribe to pay the City to mitigate casino impacts, compensate the City for municipal services that it will provide to the site, and committed the City to vacating a loop road on the casino site. No CEQA document was prepared for the MSA. The County brought suit and the trial court invalidated the MSA.

The tribe appealed. The Court of Appeal upheld the trial court. The Court opined that "[t]he public works and road vacation constitute a project subject to CEQA and the MSA constitutes approval or contingent approval of the project." Because the City has no formal approval over taking land into trust or over future gaming development, those actions were not part of the CEQA project.

The Court considered that Government Code Section 12012.40(b)(1) exempts from CEQA the execution of an intergovernmental agreement negotiated pursuant to the express authority of a tribal-state gaming compact. However, the MSA did not qualify for this exemption because no compact had been entered into with the State.

Because the City had not addressed the potential environmental impacts of the public works and road vacation that it committed to in the MSA, it had failed to comply with CEQA. The Court expressed its concern that the tribe's monetary commitments would build a "financial momentum that provides a strong incentive to ignore environmental concerns which could more easily be dealt with at this early stage of the process." Further, "[a]n assumption that the project will go forward notwithstanding its environmental consequences violates the principle that an EIR not be used to justify a decision already made."

The tribe argued unsuccessfully that this MSA was similar to the MOU upheld in *Citizens to Enforce CEQA v. City of Rohnert Park*. The Court differentiated this case by noting that the MOU was a voluntary arrangement that did not obligate Rohnert Park to any specific construction project.