



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 11 2020

The Honorable Neil Peyron
Chairman, Tule River Indian Tribe
340 N. Reservation Road
Porterville, California 93275

Dear Chairman Peyron:

In 2016, the Tule River Indian Tribe of the Tule River Reservation, California, (Tribe) submitted an application to the Bureau of Indian Affairs (BIA), requesting that the United States acquire in trust approximately 40 acres of land known as the Airpark Site in the City of Porterville, Tulare County, California (Site).¹ The Tribe also requested a determination whether it is eligible to conduct gaming on the Site.²

The Tribe proposes to construct a casino-resort with a hotel, conference facilities, event center, and fire station (Proposed Project). The Proposed Project will replace the Tribe's existing on-reservation Eagle Mountain Casino, which the Tribe will then convert to educational, health care, and tribal government services. The Tribe will also construct a water reclamation facility on a city-owned parcel adjacent to the Site. The facility will treat municipal wastewater to irrigate the playing fields of the neighboring Porterville Sports Complex, which is currently irrigated with the City's potable water. This facility will offset the Proposed Project's potable water demand and result in a net reduction in demand on the City's potable water supply.

We have completed our review of the Tribe's request, the Regional Director's Findings of Fact, all comments received, and documentation in the record. As discussed below, I determine that the Site will be acquired in trust for the benefit of the Tribe for gaming and other purposes pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108. Once acquired in trust, the Tribe is eligible to conduct gaming on the Site pursuant to Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719.

¹ See Letter from Neil Peyron, Chairman, Tule River Tribal Council, to Amy Dutschke, Regional Director, Pacific Region, Bureau of Indian Affairs (Sept. 16, 2016), transmitting *Tule River Indian Tribe Fee to Trust Application for Gaming Purposes* (hereinafter Tribe's Fee-to-Trust Application).

² See *Tule River Indian Tribe of California 292 Application* (June 27, 2018) (hereinafter Tribe's Part 292 Application).

Background

In 1851, the United States negotiated treaties with California tribes, including the predecessors of the Tule River Indian Tribe.³ Congress failed, however, to ratify the treaties.⁴ In 1856, the California Superintendent of Indian Affairs established the original Tule River Reservation on 2,240 acres of prime farmland on the banks of the Tule River near the present-day City of Porterville.⁵ Numerous Indian villages relocated to the Tule River Reservation.⁶

In 1860, the Superintendent's clerk gained personal title to the original Tule River Reservation and rented it to the United States for use as a reservation.⁷ Rather than purchase or repossess the property, as was authorized by Congress,⁸ the United States relocated the Tribe 15 miles east to the Sierra Nevada Mountains.⁹ In 1873, two executive orders created the Tribe's Reservation in the foothills of the Sierra Nevada Mountains, and in 1878, a third executive order reduced the size of the Reservation.¹⁰ Since then, the boundaries of the Reservation have changed little. The current Reservation includes more than 55,000 acres of primarily steep and rocky terrain, which limits development opportunities.

In 1996, the Tribe opened the Eagle Mountain Casino, which is the main revenue source for the Tribe.¹¹ The facility's remote location, however, limits its economic benefit. Employees and patrons must travel on the only access road to the facility, which creates significant safety concerns due to sharp turns, limited sight distance, and narrow road widths.¹²

Description of the Property

The Site is located within the boundaries of the City of Porterville, Tulare County, California, approximately 15 miles west of the Tribe's Reservation. The Tribe purchased the Site from the City in 1990.¹³ Maps of the Site are included as Enclosure 1. The legal description of the Site is included as Enclosure 2.

³ *Indian Affairs, Laws and Treaties*, Vol. IV, compiled and edited by Charles J. Kappler (1927) at 1099, Treaty with the Chu-Nute, Wo-Wol, etc. June 3, 1851.

⁴ *Id.* at 1082, Note 1, containing the Senate's unanimous resolution to refuse ratification of the 18 California treaties on June 28, 1852.

⁵ Final Environmental Impact Statement, *Tule River Indian Tribe Fee-to-Trust and Eagle Mountain Relocation Project* (May 31, 2019), Volume II (hereinafter FEIS) at § 3.6.2. See also Gelya Frank et al., *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, Yale University Press (2010) (hereinafter *Defying the Odds*) at 40-44.

⁶ *Defying the Odds* at 40-44.

⁷ *Id.*

⁸ See Act to Provide for the Better Organization of Indian Affairs in California, 13 Stat. 39 (1846).

⁹ *Defying the Odds* at 48.

¹⁰ *Executive Orders Relating to Indian Reservations from May 14, 1855, to July 1, 1902*, compiled by the Indian Office under authority of act of Congress approved May 17, 1882 (22 Stats. 88), Government Printing Office (1902) at 34.

¹¹ FEIS § 1.3.

¹² The gaming facility does not offer alcoholic beverages, as do competing venues, due to public safety concerns.

¹³ See Memorandum from Regional Director, Pacific Region, to Director, Office of Indian Gaming (Aug. 13, 2019) (transmitting *Findings of the Pacific Region on the 25 C.F.R. Part 151 Factors for the Tule River Indian Tribe of the Tule River Reservation, California, Airpark Site*) (hereinafter Regional Director's Part 151 Findings of Fact) at 4.

Prior Determinations

The Indian Gaming Regulatory Act

Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988, subject to several exceptions. One exception, known as the “Secretarial Determination” or “two-part determination” permits a tribe to conduct gaming on lands acquired after October 17, 1988, where the Secretary of the Interior (Secretary), after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that:

1. A gaming establishment on the trust lands would be in the best interest of the tribe and its members; and
2. The Secretary also determines that gaming on the trust lands would not be detrimental to the surrounding community.

The governor of the state in which the gaming activity is to be conducted must concur in the Secretarial Determination before the applicant tribe may conduct gaming on the proposed site.

On October 7, 2019, the Secretary issued a positive Secretarial Determination finding the Tribe’s proposed gaming establishment on trust land in Porterville would be in the best interest of the Tribe and its members, and that gaming on the trust lands would not be detrimental to the surrounding community. The Secretarial Determination is included as Enclosure 3. On August 3, 2020, Governor Newsom concurred with the Secretarial Determination.¹⁴ See Enclosure 4. The Governor noted that IGRA was enacted as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments, and stated:

These goals were also reflected when California voters chose to enact Proposition 1A on the promise, in the ballot materials, that it would ‘ensure that Indian self-reliance is protected once and for all.’ This casino project achieves those aims.¹⁵

Accordingly, once acquired in trust, the Tribe is eligible to conduct gaming on the Site pursuant to Section 20 of IGRA.

The National Environmental Policy Act

The Department’s regulations require that issuance of a positive Secretarial Determination and approval of a tribe’s trust acquisition application comply with the National Environmental Policy Act (NEPA), 42 U.S.C § 4321 *et seq.*¹⁶ As discussed in detail in Section 151.10(h) below, I issued a

¹⁴ Letter from Gavin Newsom, Governor of California, to Tara Sweeney, Assistant Secretary – Indian Affairs (Aug. 3, 2020), available at www.gov.ca.gov/wp-content/uploads/2020/08/8.03.2020-Tule-Ruver-Concurrence-letter.pdf.

¹⁵ *Id.* at 1, citing 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments”).

¹⁶ See 25 C.F.R. § 292.18(a) (requiring NEPA compliance for a Secretarial Determination) and § 151.10(h) (requiring NEPA compliance for a trust acquisition determination).

Record of Decision on October 7, 2019, determining that the issuance of the Secretarial Determination, acquisition of the Site in trust, and subsequent development of the Proposed Project will have no significant impact on the quality of the human environment. The Record of Decision is included as Enclosure 5.

Trust Acquisition Determination Pursuant to 25 C.F.R. Part 151

The Secretary's general authority for acquiring land in trust is found in Section 5 of the IRA. The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA.

25 C.F.R. § 151.3 – Land acquisition policy.

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The acquisition of the Site in trust satisfies the criteria of Section 151.3(a)(3).¹⁷ As discussed below, the acquisition of the Site in trust and development of the Proposed Project will facilitate tribal self-determination, economic development, and Indian housing by funding social, educational, and employment programs for the Tribe.

The Tribe needs additional revenue to fund programs for its members. The Tribe has approximately 1,875 enrolled members and expects a growth rate of 3 percent per year.¹⁸ The Tribe has a larger number of minors than the surrounding community with approximately 41 percent, while minors make up 35 percent of the County's population.¹⁹ Given the age profile of the tribal population, the growth rate may be higher in the near future. The Tribe's growing population is causing financial strain, limiting the Tribe's ability to provide services to its members.

The Tribe has higher than average unemployment and underemployment rates relative to the surrounding community. The Tribe's unemployment rate for members living on the Reservation in

¹⁷ Although only one factor in Section 151.3(a) must be met, the Tribe's application also satisfies the requirements of subsection (a)(2) because the Tribe owns the Site in fee. See Regional Director's Part 151 Findings of Fact at 9.

¹⁸ FEIS § 3.7.2.

¹⁹ *Id.* See also *The Tule River Tribe Unmet Needs Report* (hereinafter Tribe's Unmet Needs Report) at 5, in Tribe's 292 Application, Exhibit A. The Tribe's Unmet Needs Report contains the Tribe's commercial and/or financial information, which is customarily and actually treated as private by the Tribe, and was submitted to the Department under an assurance of privacy. The Department will withhold *The Tule River Tribe Unmet Needs Report* in its entirety from the public because it is confidential within the meaning of Exemption 4 of the Freedom of Information Act, 43 C.F.R. §§ 2.23 and 2.24. See *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

2016 was 40 percent, while the unemployment rate for the County was 11 percent.²⁰ Of the Tribe's members who were employed, many were underemployed with earnings below the poverty threshold. In 2017, 44 percent of the Tribe's members lived in households that were near or below the poverty threshold, while the poverty rate for the County was 24 percent.²¹

The Tribe also had lower education rates relative to the surrounding community. Twenty-four percent of enrolled tribal members age 25 or older had not attained a high school diploma or the equivalent, which is lower than the Tulare County attainment average of 32 percent.²² The Tribe's members also had lower college education rates at approximately 7 percent, compared to the County at 13.3 percent.²³

Tribal Budgetary Shortfalls

The acquisition of the Site in trust will facilitate economic development by providing additional revenue. The Tribe's existing sources of revenue are inadequate to meet its current and future expenditures. The Tribe has several off-reservation businesses that generate limited income for the Tribe, but the income from the businesses is not sufficient to meet budgetary shortfalls.²⁴ The Tribe's gaming facility generates the highest revenue of the Tribe's businesses, but it is aging and undersized, and is in a remote location. These factors contribute to declining revenue and an inability to compete with other gaming operations in the region.²⁵ A water shortage on the Reservation also limits expansion of the casino as a viable option.

The Tribe reduced departmental budgets in fiscal year 2016 to 2017, and eliminated employee positions due to a lack of funding.²⁶ The following departments had the largest reductions in budget and personnel:

- Department of Public Safety: \$346,212 in budget cuts and elimination of 14 full-time positions.
- Department of Family and Social Services: \$312,883 in budget cuts and elimination of 2 full-time positions.
- Department of Public Works: \$108,938 in budget cuts and elimination of 5 full-time positions.²⁷

Despite these cuts, the Tribe expects that the annual deficit will continue to grow to approximately \$8 million.²⁸

²⁰ Tribe's Unmet Needs Report at 5.

²¹ *Id.* In 2005, 48% of the Tribe's members who had jobs were earning below the poverty threshold, the Tribe did not supply more recent data but states that number has not changed significantly since then.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 7-8.

²⁵ *Id.* at 6.

²⁶ FEIS § 3.7.2.

²⁷ Tribe's Unmet Needs Report at 6.

²⁸ *Id.* at 9.

Expenditures will continue to increase over time as a result of the Tribe's increasing population, and the need to address inadequate and deteriorating infrastructure.²⁹ Without additional revenue sources, the Tribe's annual general fund deficit is expected to increase. In response, the Tribe will have to use its diminishing reserves or institute further cuts to departments and programs, either of which would have significant consequences for the provision of governmental services. Revenue from the Proposed Project will assist in alleviating budgetary shortfalls.

On-Reservation Water Shortage

The acquisition of the Site in trust will facilitate self-determination by providing funds to address water concerns. The Tribe is experiencing a severe shortage of on-reservation potable water. The Tribe's water supply includes surface water from the South Fork of the Tule River, spring water, and groundwater from wells. Water drawn from the South Fork of the Tule River makes up the majority of the Tribe's potable water supply.³⁰ Like much of California, however, the Reservation has been subject to drought in recent years.

The Tribe relies on groundwater to make up any supply deficits. The Reservation's wells suffer from yield and water quality issues, however, and the presence of carbon dioxide in many of the larger springs makes that water suitable only for agricultural use.³¹ Further, although the Tribe owns 22 wells on the Reservation, only a few are operational.³² The Tribe discontinued use of the other wells due to poor water quality or insufficient production. The capacity of the operational wells is limited because most are technologically outdated, and several are located near grazing lands, areas of concentrated human activity, failing septic systems, and other conditions that could result in contamination. In addition, the Tribe's water distribution system needs approximately \$25 million of infrastructure improvements to modernize the system because it is undersized and outdated.³³ The Tribe's combined water supply is insufficient to meet the water demand in the late summer and early fall due to declining seasonal flows of the South Fork of the Tule River. This has resulted in many on-reservation homes running out of water on a recurring basis despite water conservation.³⁴ With relocation of the gaming facility to the Site and the additional revenue from the Proposed Project, the Tribe will be able to address its water shortages.

On-Reservation Housing Shortages

The acquisition of the Site in trust and development of the Proposed Project will facilitate self-determination by providing funds to support the Tribe's housing program. The Tribe's on-reservation housing supply lacks both quantity and quality. The water shortage forced the Tribe to issue a building moratorium. As a result, the Tribe has a housing waiting list of over 200 members.³⁵ In addition, 82 of the 350 existing homes need to be replaced due to general degradation.³⁶ Further, mobile homes

²⁹ FEIS § 3.7.2.

³⁰ FEIS § 3.10.1.

³¹ *Id.*

³² Tribe's Unmet Needs at 10.

³³ FEIS § 3.10.1.

³⁴ Tribe's Unmet Needs at 10.

³⁵ FEIS § 7.2.

³⁶ *Id.*

currently house 120 families on the Reservation, and because these mobile homes were constructed in 2007, they have reached the halfway point of their 25-year life span.³⁷ In total, the Tribe anticipates the need for nearly 500 new housing units over the next 20 years.³⁸ Revenue from the Proposed Project will assist in alleviating these on-reservation housing shortages.

Health Care Services

The acquisition of the Site in trust and development of the Proposed Project will facilitate self-determination by providing funds to support the Tribe's health programs. The Tribe has unmet health care needs. The Tule River Indian Health Center, Inc. (Health Center) provides health care services on the Reservation. The Health Center was designed to serve a smaller population and is undersized to serve the current tribal membership. The Health Center faces challenges such as long wait times to see a doctor, difficulty in attracting professionals to fill positions, and lack of services.³⁹ To serve patients effectively, the Tribe needs updated technology, three additional primary care physicians, and nurse practitioners or physician's assistants. In addition, the Tribe needs to establish its own on-reservation ambulance service. The Tribe's fire department provides ambulance services, but only basic life support. Tribal ambulances can only transport patients to the border of the Reservation, at which point, the patient must be transferred to a private ambulance. The Tribe needs a tribal ambulance service with two ambulances capable of providing advanced life support, four emergency medical technicians, and four paramedics.⁴⁰ Revenue from the Proposed Project will ensure that the Tribe's members receive adequate health care.

Conclusion

The Regional Director determined, and we concur, that the acquisition of the Site is necessary to facilitate tribal self-determination, economic development, and Indian housing.⁴¹

25 C.F.R. § 151.11 – Off-Reservation Acquisition.

We consider the Tribe's application under the off-reservation criteria of Section 151.11 because the Site is located outside of and noncontiguous to the Tribe's existing Reservation. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), (e) through (h), and 151.11(b) through (e), as discussed below.

25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority.

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Tribe's Unmet Needs Report at 40.

⁴⁰ *Id.* at 41.

⁴¹ Regional Director's Part 151 Findings of Fact at 10.

As referenced above, the authority for the acquisition of the Site is Section 5 of the Indian Reorganization Act of 1934.⁴² No limitations on that authority are applicable here, including those limitations described in *Carcieri v. Salazar*.⁴³

In *Carcieri*, the United States Supreme Court held that the Secretary's authority to acquire land in trust for Indian tribes under the first definition of "Indian" in the IRA extended only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934. The Department's Office of the Solicitor evaluated the applicability of *Carcieri* to the Tribe's application and advises that the Secretary is authorized to acquire land in trust for the Tribe under Section 5 of the IRA.⁴⁴

In 1934, the United States understood that the Tribe and its Reservation were under the federal jurisdiction and supervision of the United States, and that the adult residents of the Tribe's Reservation met the IRA's definition of "Indian." As detailed in the Haas Report, on November 17, 1934, a majority of the adult Indians residing on the Reservation elected to accept the IRA by a vote of 50 to 2 in an election conducted by the Department pursuant to section 18 of the IRA.⁴⁵ The Tribe then drafted and adopted a tribal constitution, which the Department approved on January 15, 1936.⁴⁶ Both the 1934 election and the Department's 1936 approval of the Tribe's constitution under the IRA constitute dispositive evidence of federal supervisory or administrative authority over Indians in 1934. Accordingly, there is statutory authority for the trust acquisition of the Site.

25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land.

Section 151.10(b) requires the Secretary to consider a tribe's need for additional land.

The Tribe needs additional land for economic development and tribal self-determination. The Tribe has several off-reservation businesses that generate limited income for the Tribe, but the income from these businesses is not sufficient to meet the shortfalls the Tribe is experiencing.⁴⁷ Acquisition of the Site in trust will facilitate the Tribe's relocation and expansion of its gaming facility. The acquisition of the Site is an essential component of the Tribe's self-determination and broader economic initiatives to establish a long-term revenue base that will strengthen the Tribe's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development.

The Regional Director determined, and I concur, that the Site will address the Tribe's need for additional land.⁴⁸

⁴² 48 Stat. 984, 25 U.S.C. § 5108.

⁴³ 555 U.S. 379 (2009).

⁴⁴ See memorandum from the Office of the Solicitor to the Assistant Secretary - Indian Affairs (Oct. 1, 2020).

⁴⁵ Theodore H. Haas, *Ten Years of Tribal Government under IRA* (Haas Report) at 16 (listed under the Sacramento Agency as Tule River).

⁴⁶ *Id.* at 26.

⁴⁷ Tule River Tribe's Unmet Needs Report at 7-8.

⁴⁸ Regional Director's Part 151 Findings of Fact at 12.

25 C.F.R. § 151.10(c) - The purposes for which the land will be used.

Section 151.10(c) requires the Secretary to consider the purposes for which the land will be used.

The Tribe proposes to construct and operate a class II and class III gaming facility on the Site. The Proposed Project includes approximately 1,750 gaming machines and 20 table games.⁴⁹ The gaming facility will consist of 104,637 square feet (sf) with a 250-room hotel, food and beverage facilities, administrative space, multi-purpose events center, conference center, fire station, and associated infrastructure. Approximately 2,100 parking spaces consisting of 1,260 surface-level spaces and 840 spaces within a five-level parking garage will be available for patrons and employees. The Proposed Project will replace the Tribe's on-reservation gaming facility, which the Tribe will then convert to educational, health care, and tribal government services.

The Tribe will also construct a water reclamation facility on a city-owned parcel adjacent to the Site. The facility will treat municipal wastewater to irrigate the playing fields of neighboring Porterville Sports Complex, which is currently irrigated with the City's potable water. This will offset the Proposed Project's potable water demand and result in a net reduction in demand on the City's potable water supply.

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

By correspondence dated September 18 and 24, 2018,⁵⁰ the BIA solicited comments from the following state and local governments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments:

- Office of the Governor
- Office of the Attorney General
- U.S. Senator Diane Feinstein
- Tulare County Board of Supervisors
- Tulare County Tax Assessor
- City Council of Porterville⁵¹

⁴⁹ FEIS, Executive Summary, ES.3-ii.

⁵⁰ Regional Director's Part 151 Findings of Fact, Tabs 5 and 7.

⁵¹ The BIA also sent requests to subdivisions of the State (State Clearinghouse, California Department of Forestry and Fire Protection), Tulare County (Sheriff's Department, Fire Department, Office of Public Works), and surrounding jurisdictions (Cities of Lindsay, Visalia, Tulare, Delano, Concoran, Woodlake, Farmersville, Exeter, McFarland). *Id.*

In response, the Tulare County Administrative Officer reported that the property taxes levied on the Site were \$40,195.74 for 2018-2019 with no special assessments.⁵² The City Manager of Porterville responded that the City is allocated \$4,320.22 from the property tax levied by the County.⁵³ The BIA received no substantive comments regarding removing the Site from the tax rolls.

The Governor and officials from Tulare County and the City of Porterville have expressed their support for the Proposed Project.⁵⁴ For example, the Mayor of the City of Porterville stated:

The City of Porterville continues to enthusiastically support the [Proposed] Project and continues to possess a strong collaborative relationship with the Tribe. In addition, the Tribe has fully committed to mitigating the impacts of the [Proposed] Project pursuant to an approved Memorandum of Understanding with the City The [Proposed] Project will also have a significant positive impact on the City's potable water supply. The City and the Tribe have committed to constructing a tertiary water facility that will result in a net increase in potable water available to the City and its residents. With the City being located in an area significantly impacted by drought, this benefit cannot be overstated.⁵⁵

Economic Output and Employment

The Proposed Project would result in a variety of benefits to the regional economy, including increases in overall economic output and employment. The Proposed Project will impact the regional economy in three beneficial ways. First, the direct impact of the initial construction spending and annual operating revenue of the casino and retail space. Second, the indirect impact of companies supplying the construction company, and companies supplying operations. Third, the induced impact of the employees of these companies receiving a paycheck and spending it in the regional economy. KlasRobinson Q.E.D. prepared an economic impact study, *Economic Impact of Planned New Eagle Mountain Casino* (Economic Impact Analysis), which estimated that the annual net economic impact for Tulare County will be \$103.6 million in direct output, \$19.3 million in indirect output and \$14.8 million in induced output.⁵⁶

Construction and Operation of the Proposed Project will create new jobs in the region. Construction of the Proposed Project will create 1,165 direct jobs and generate \$80.3 million in construction payroll.⁵⁷

⁵² See Letter from Jason T. Britt, County of Tulare, County Administrative Officer, to Amy Dutschke, Regional Director (Oct. 18, 2018), in Regional Director's Part 151 Findings of Fact, Tab 5, Exhibit 1.

⁵³ See Letter from John D. Lollis, City Manager, City of Porterville, to Amy Dutschke, Regional Director, Pacific Region, (Oct. 31, 2018), in *Id.*

⁵⁴ See Regional Director's Part 151 Findings of Fact at 18. The BIA also received letters raising concerns related to impacts to natural resources and procedural requirements. See e.g., Letter from Cheryl Schmit, Director, Stand Up For California, to Tara Sweeney, Assistant Secretary – Indian Affairs (Oct. 11, 2018), in Regional Director's Part 151 Findings of Fact, Tab 5, Exhibit 1. These concerns are addressed in this Decision, the Secretarial Determination, and the FEIS and its Response to Comments.

⁵⁵ Letter from Martha A. Flores, Mayor, City of Porterville, to David Bernhardt, Secretary, Department of the Interior (Oct. 4, 2019).

⁵⁶ KlasRobinson Q.E.D, *Economic Impact of Planned New Eagle Mountain Casino* (Nov. 2016) (hereinafter Economic Impact Analysis) at 14, in FEIS, Appendix B; FEIS § 4.7.1.

⁵⁷ FEIS § 4.7.1.

Operation of the Proposed Project will create approximately 1,075 total jobs.⁵⁸ With the closure of the Eagle Mountain Casino, which currently supports 424 jobs, the Proposed Project would result in a direct net increase of 790 jobs in Tulare County, with 166 indirect jobs and 119 induced jobs. Operation of the Proposed Project will generate approximately \$34.6 million in wages in Tulare County, consisting of \$23 million in direct wages, \$7.2 million in indirect wages, and \$4.3 million in induced wages.⁵⁹ The Proposed Project will create substantial employment opportunities for unemployed and underemployed tribal members.

Tax Impacts

The loss of property tax revenue will be offset by increased business activity from the Proposed Project. The increased economic activity will generate new tax revenue that will accrue to the State, Tulare County, the City of Porterville, and other local municipalities in the area. The Economic Impact Analysis projects that the Proposed Project will generate \$346,375 in new tax revenue, which will offset the loss of the \$40,195.74 from property taxes after the Site is acquired in trust.⁶⁰

On August 5, 2019, the Tribe entered into a Memorandum of Understanding with the City of Porterville (Porterville MOU), in which the Tribe commits to make annual payments to the City for \$96,084 to offset tax impacts.⁶¹ On January 7, 2020, the Tribe entered into a Memorandum of Understanding and Intergovernmental Agreement with Tulare County (Tulare County MOU), in which the Tribe commits to make annual payments to the County for \$550,000 to offset tax impacts.⁶² These annual payments will more than offset the loss of tax revenue from removal of land from the tax rolls.

Conclusion

The Proposed Project will provide substantial benefits to the regional economy. The Regional Director determined, and I concur, that the impact of removing the Site from the tax rolls is minimal when balanced with the benefits that will accrue to the region from the increased economic activity from the Proposed Project.⁶³

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise.

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

As discussed above, the BIA by correspondence dated September 18 and 24, 2018, requested comments regarding jurisdictional problems and potential conflicts of land use from state and local

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Economic Impact Analysis at 16.

⁶¹ See *Memorandum of Understanding Between the Tule River Indian Tribe, the Tule River Tribe Gaming Authority and the City of Porterville* (Porterville MOU) (Aug. 5, 2019) at § C(1).

⁶² See *Memorandum of Understanding and Intergovernmental Agreement Between the Tule River Indian Tribe, the Tule River Gaming Authority and the County of Tulare* (Tulare County MOU) (Jan. 7, 2020) at § 3.5.

⁶³ See Regional Director's Part 151 Findings of Fact at 17.

governments. The BIA received no comments regarding land use. The County stated its support of the Proposed Project provided it and the Tribe agree to mitigation measure for potential impacts, which they have done in the Tulare County MOU.⁶⁴

Land Use

The Site is located within the City's zoning designation A1 - Airport Industrial.⁶⁵ This zoning permits large-scale commercial entertainment and recreation, of which a casino is specifically identified. Uses near the Site include an adjacent solar farm, the Porterville Sports Complex, cleared fields, and agricultural operations. The Proposed Project will be compatible with the type and intensity of uses that are allowed under the City's General Plan and zoning designation for the Site.⁶⁶

The Site is located within the Porterville Municipal Airport's Area of Influence as well as its Traffic Pattern Zone, as identified in the Tulare County Comprehensive Airport Land Use Plan. The County's plan identifies gaming facilities as compatible uses in this zone. The Federal Aviation Administration issued a Determination of No Hazard to Air Navigation for the Site in 2017.⁶⁷ The Proposed Project would, therefore, be compatible with airport operations.

Jurisdiction

The Tribe entered into an agreement for law enforcement services with the City of Porterville Police Department and the Tulare County Sheriff's Department in the Tulare County MOU.⁶⁸ These departments have authority to enforce all non-gaming state criminal law at the Site pursuant to Public Law 83-280.⁶⁹ The Tribe will employ security personnel operating under the Compliance and Surveillance Departments of the Tribe's Gaming Commission to patrol the facilities to reduce and prevent criminal and civil incidents. Additionally, the Tribe will install surveillance equipment in the gaming facility and parking areas, and its security personnel will work cooperatively with the Police Department and Sheriff's Department to provide general law enforcement services to the Site.⁷⁰

The Proposed Project includes the construction of a tribal fire department on the Site, which will provide fire protection and emergency medical services to the Site. On November 1, 2019, the Tribe and County entered into a Mutual Aid Agreement for fire and emergency services.⁷¹

⁶⁴ See Letter from Jason T. Britt, County of Tulare, County Administrative Officer, to Amy Dutschke, Regional Director (Oct. 18, 2018), in Regional Director's Part 151 Findings of Fact, Tab 5, Exhibit 1.

⁶⁵ See Letter from John D. Lollis, City Manager, City of Porterville, to Amy Dutschke, Regional Director, Pacific Regional Office (Oct. 31, 2018).

⁶⁶ FEIS § 4.9.1.

⁶⁷ *Id.*

⁶⁸ See Tulare County MOU § 3.3.3.

⁶⁹ Act of Aug. 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. §§ 1321-1326, 18 U.S.C. § 1360) (Public Law 280 mandated a transfer of federal law enforcement authority within certain tribal nations to state governments in six states: California, Minnesota (except the Red Lake Nation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin (except later the Menominee Indian Reservation) and, upon its statehood, Alaska).

⁷⁰ FEIS § 2.2.2.

⁷¹ See Tulare County MOU § 3.4.2.

The Porterville MOU addresses the Tribe's commitment to mitigation related to construction and operation of the Proposed Project, the City's support of the Proposed Project, and development of the water reclamation facility.⁷² The Tulare County MOU addresses the Tribe's commitment to mitigation of off-site impacts related to traffic, law enforcement, and fire services. The Tribe and County also commit to cooperation to ensure effective law enforcement.⁷³

The Regional Director determined, and I concur, that the acquisition of the Site in trust would not cause conflicts of land use or other jurisdictional problems.⁷⁴

25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

Section 151.10(g) requires the Secretary to determine whether the BIA has the resources to assume additional responsibilities if the land is acquired in trust.

The Regional Director has determined, and I concur, that the BIA has sufficient resources to assume the additional responsibilities resulting from the acquisition, and that acquiring the Site in trust would not impose any significant additional responsibilities or burdens on the BIA.⁷⁵

25 C.F.R. § 151.10(h) - The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the NEPA, 42 U.S.C. § 4321 *et seq.*, and a determination on the presence of hazardous substances.

602 DM 2, Land Acquisitions: Hazardous Substances Determinations

The Department finalized a Phase 1 Environmental Site Assessment (ESA) in September 2016. The ESA identified no Recognized Environmental Concerns.⁷⁶ An updated ESA will be completed prior to acquiring the Site in trust.

National Environmental Policy Act

The BIA prepared an environmental impact statement (EIS) pursuant to NEPA. The EIS evaluated the issuance of a Secretarial Determination, acquisition of the Site in trust, and subsequent development of the Proposed Project by the Tribe.

⁷² See Porterville MOU §§ A, B, and E.

⁷³ See Tulare County MOU § 3.3.3.

⁷⁴ Regional Director's Findings of Fact at 18.

⁷⁵ *Id.*

⁷⁶ FEIS, Appendix K (Phase I Environmental Assessment).

The BIA published a Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on December 30, 2016, describing the Proposed Action, announcing the BIA's intent to prepare an EIS for the Proposed Action, and inviting public and agency comments.⁷⁷ The BIA held a scoping meeting in the City of Porterville on January 23, 2017. The BIA published a Notice of Availability (NOA) of the Draft EIS in the *Federal Register* on September 21, 2018.⁷⁸ The BIA also published the NOA in *The Porterville Recorder*. The BIA held a public hearing on October 15, 2018. The BIA published an NOA of the Final EIS in the *Federal Register* on May 31, 2019.⁷⁹ The BIA also published the NOA in *The Porterville Recorder*. The Draft and Final EISs are available at www.tulerivereis.com.

The EIS analyzed six alternatives:

- Alternative A (Proposed Project/Preferred Alternative) - Acquisition of the Site in trust with municipal water supply and a wastewater treatment facility
- Alternative B - Same as Alternative A, but with on-site water supply and wastewater treatment
- Alternative C - Same components as Alternative A, but on a smaller scale
- Alternative D - Acquisition of the Site in trust with a hotel and conference center, but no casino
- Alternative E - No acquisition of the Site in trust and the Tribe's expansion of the existing Eagle Mountain Casino.
- Alternative F (No Action Alternative) - No acquisition of the Site in trust.

The BIA considered potential impacts from the alternatives in the EIS and determined that potentially significant effects will be adequately addressed by mitigation measures.

On October 7, 2019, I issued a Record of Decision, determining that the issuance of the Secretarial Determination, acquisition of the Site in trust, and subsequent development of the Proposed Project will have no significant impact on the quality of the human environment. This fulfilled the requirements of NEPA as set out in the Council on Environmental Quality Regulations for implementing NEPA, 40 C.F.R. Parts 1500-1508 (2005, as amended), and the BIA NEPA Guidebook, 59 IAM 3-H (Aug. 2012). The ROD is included as Enclosure 5.

25 C.F.R. § 151.11(b) -The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation.

The Site is located approximately 328 driving miles from the Town of Pahrump, Nevada, located adjacent to the California-Nevada border and east of Porterville. The Site is located approximately 15 miles from the Tribe's Reservation boundary. *See* Maps, Enclosure 1.

⁷⁷ 81 Fed. Reg. 96477 (Dec. 30, 2016).

⁷⁸ 83 Fed. Reg. 47935 (Sept. 21, 2018).

⁷⁹ 84 Fed. Reg. 25303 (May 31, 2019).

25 C.F.R. § 151.11(c) -Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

The Tribe submitted the *Eagle Mountain Casino Resort Business Plan* (Business Plan) prepared by the Innovation Group.⁸⁰ The Business Plan includes pro-forma financing statements, including income statement, balance sheet, and statement of cash flows for the first five years of operations. The Innovation Group based the Business Plan and financial projections on the Economic Impact Analysis prepared by KlasRobinson Q.E.D., on design features of the Proposed Project, and on certain assumptions discussed below. The Economic Impact Analysis analyzed impacts to the local economy and the Tribe from construction of the Proposed Project and its subsequent operation.

The Business Plan and the Economic Impact Analysis utilized the following assumptions. The Proposed Project will be a high-quality facility, with 1,750 gaming machines including a mix of class II and class III machines some of which will be high-limit as well as table games and poker tables. The hotel and other amenities will be of a similar quality in design, décor, and service as existing and new competitors of a comparable size in California. The new location and high-quality amenities are expected to capture more of the gaming market and result in a higher win per visit than the existing facility. The pro-forma income statements identify expected visitation rates and win per visit. We find these assumptions to be reasonable by industry standards and the market research conducted for the Proposed Project.

Analysis

The Tribe's on-reservation gaming facility captured approximately 10.7 percent of the local market in 2016.⁸¹ The Business Plan projects that the Proposed Project will nearly double the Tribe's capture rate of the local gaming market. The Proposed Project includes a different mix of games and amenities than the existing gaming facility resulting in a slightly higher win per visit. With the higher capture rate and win per visit, the Proposed Project will increase the Tribe's net revenue in the first year of operation with stabilized growth for the following years. The Economic Impact Analysis estimates the Proposed Project would generate \$103.6 million in new annual revenue.⁸²

The Business Plan anticipates that construction costs for the Proposed Project would be \$245 million.⁸³ Because the Tribe has no debt and corporate income tax would not be applicable to the Proposed Project's profit, the Business Plan projects that the Tribe may obtain a loan of \$220.5 million, representing a 90/10 debt-to-equity ratio.⁸⁴ Based on the high debt-to-equity ratio, the Business Plan

⁸⁰ Innovation Group, *Eagle Mountain Casino Resort Business Plan* (hereinafter Business Plan), in Tribe's 292 Application, Exhibit E. The Business Plan contains the Tribe's commercial and/or financial information that is customarily and actually treated as private by the Tribe, and was submitted to the Department under an assurance of privacy. The Department will withhold the Business Plan in its entirety from the public because it is *confidential* within the meaning of Exemption 4 of the Freedom of Information Act, 43 C.F.R. §§ 2.23 and 2.24. See *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

⁸¹ Business Plan at 60.

⁸² Economic Impact Analysis at 9.

⁸³ Business Plan at 60.

⁸⁴ *Id.* at 50.

anticipates that interest rates could be in the range of 12 to 18 percent, but the pro-forma financial statement assumes a 14.5 percent interest rate and long-term debt with a term of 15 years. The cash flow statement projects that at the end of the first year of operation, after covering expenses and servicing debts, the Proposed Project will be profitable.⁸⁵

The Tribe allocates revenue from its existing gaming facility to fund various tribal programs for its members and to develop and maintain essential infrastructure. The projected revenue from the Proposed Project will provide much needed additional income to the Tribe for critical upgrades and additions to the Tribe's infrastructure and for housing inventory. Additional gaming revenue will allow the Tribe to improve the road and transportation conditions for tribal members living on and traveling to the Reservation.⁸⁶

The Regional Director determined, and I concur, that the construction, maintenance, and operation of the Proposed Project will provide a major economic benefit to the Tribe.⁸⁷

25 C.F.R. § 151.11(d) - Contact with state and local governments pursuant to sections 151.10(e) and (f).

See Sections 151.10(e) and (f) above.

Decision to approve the tribe's fee-to-trust application

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Site in trust for the Tule River Indian Tribe. After the Site is acquired in trust, the Tribe will be eligible to conduct gaming on the Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719 (b)(1)(A). Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the Site in trust. This decision constitutes a final agency action under 5 U.S.C. § 704.

Sincerely,



Tara Sweeney
Assistant Secretary – Indian Affairs

Enclosures

cc: Regional Director, Pacific Region

⁸⁵ *Id.* at 51.

⁸⁶ Regional Director's Part 151 Findings of Fact at 37.

⁸⁷ *Id.* at 37.