

## **Record of Decision**

### **Secretarial Determination Pursuant to the Indian Gaming Regulatory Act and Trust Acquisition of 40 Acres in the City of Porterville, California, for the Tule River Indian Tribe of the Tule River Reservation, California**

**U.S. Department of the Interior  
Bureau of Indian Affairs  
September 2019**

## U.S. Department of the Interior

**Agency:** Bureau of Indian Affairs

**Action:** Issuance of a Record of Decision (ROD) for a Secretarial Determination pursuant to the Indian Gaming Regulatory Act (IGRA) for the 40-acre Airpark Site in the City of Porterville, Tulare County, California, for the Tule River Indian Tribe of the Tule River Reservation, California (Tribe).

**Summary:** In September of 2016, the Tribe submitted a fee-to-trust application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) accept trust title to land totaling approximately 40 acres in the City of Porterville, Tulare County, California (the Airpark Site) for gaming and other purposes. Additionally, in September 2018, the Tribe submitted an application requesting that the Department issue a Secretarial Determination pursuant to IGRA, determining whether the Airpark Site is eligible for gaming. The Tribe proposes to develop the Airpark Site with a class III casino-resort and relocate the Eagle Mountain Casino to the Airpark Site (Proposed Project).

The proposed fee-to-trust acquisition and Secretarial Determination (Proposed Action) were analyzed in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act under the direction and supervision of the BIA Pacific Regional Office. The BIA issued the Draft EIS for public review and comment on September 21, 2018. After a comment period, public hearing, and consideration and incorporation of comments received on the Draft EIS, the BIA issued the Final EIS on May 31, 2019. The Draft and Final EIS evaluated a reasonable range of alternatives that would meet the purpose and need for the Proposed Action, analyzed the potential effects of those alternatives, and identified feasible mitigation measures.

With this ROD, the Department announces that Alternative A, which includes the issuance of a Secretarial Determination and the fee-to-trust transfer of the 40-acre Airpark Site and subsequent development of a casino-hotel complex, is the Preferred Alternative to be implemented. The Department has considered potential effects to the environment, including potential impacts to local governments and other tribes. The Department has adopted all practicable means to avoid or minimize environmental harm, and has determined that potentially significant effects will be adequately addressed by these mitigation measures, as described in this ROD.

This decision is based on the thorough review and consideration of the Tribe's fee-to-trust application, request for a Secretarial Determination, and materials submitted pursuant to IGRA; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the Draft EIS; the Final EIS; the administrative record; and comments received

from the public, federal, state, and local governmental agencies; and potentially affected Indian tribes.

This ROD announces the Secretary's Determination that a gaming establishment at the Ai\_r\_p ark Site would 1) be in the best interest of the Tribe and its members, and, 2) would not be detrimental to the surrounding community. *See* 25 U.S.C. § 2719 (b)(1)(A). A decision whether to accept the 40-acre Ai\_r\_p ark Site in trust pursuant to the Indian Reorganization Act, 25 U.S.C. § 5108, and its implementing regulations at 25 C.F.R. Part 151 will be made at a later date.

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**ATTACHMENTS**

- Attachment I Final EIS Notices
- Attachment II Comments and Response to Comments on the Final EIS
- Attachment III Mitigation Monitoring and Enforcement Plan
- Attachment IV Secretarial Determination

## **1.0 INTRODUCTION**

### **1.1 SUMMARY**

In September of 2016, the Tule River Indian Tribe of the Tule River Reservation, California (Tribe), submitted a fee-to-trust application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) accept trust title to land totaling approximately 40 acres in Tulare County, California (the Airpark Site) for gaming and other purposes. Additionally, in September 2018, the Tribe submitted an application requesting that the Secretary of the Interior (Secretary) make a two-part determination of gaming eligibility (Secretarial Determination) pursuant to the Indian Gaming Regulatory Act (IGRA).

The BIA analyzed the potential environmental impacts of the proposed fee-to-trust acquisition of the Airpark Site and Secretarial Determination (Proposed Action) in an Environmental Impact Statement (EIS). The Draft EIS, issued for public review on September 21, 2018, and the Final EIS, issued May 31, 2019, considered various alternatives to meet the stated purpose and need, and analyzed in detail potential effects of a reasonable range of alternatives. As stated in the Final EIS, the Department has identified Alternative A as the Preferred Alternative to be implemented, which consists of the construction of an approximately 104,637 square foot (sf) casino, a 250-room hotel, ancillary infrastructure, and mitigation measures presented in **Section 6.0** of this Record of Decision (ROD). With the issuance of this ROD, the Department announces that it intends to implement the Proposed Action, including the Secretarial Determination and the fee-to-trust acquisition of the Airpark Site as proposed under the Preferred Alternative. The Secretarial Determination is included as Attachment IV of this ROD. *See* 25 U.S.C. § 2719 (b)(1)(A); 25 C.F.R. § 292.22. A decision whether to accept the 40-acre Airpark Site in trust pursuant to the Indian Reorganization Act, 25 U.S.C. § 5108, and its implementing regulations at 25 C.F.R. Part 151 will be made at a later date.

The Department has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Action. The Department's decision is based on the thorough review and consideration of the Tribe's fee-to-trust application, request for a Secretarial Determination, and materials submitted pursuant to IGRA; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the Draft EIS; the Final EIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies; and potentially affected Indian tribes. A decision whether to accept the 40-acre Airpark Site in trust pursuant to the Indian Reorganization Act, 25 U.S.C. § 5108, and its implementing regulations at 25 C.F.R. Part 151 will be made at a later date.

### **1.2 DESCRIPTION OF THE PROPOSED ACTION**

The federal Proposed Action is the fee-to-trust acquisition of the 40-acre Airpark Site for the Tribe pursuant to the Secretary's authority under the Indian Reorganization Act, 25 USC § 5108 and issuing a two-part Secretarial Determination under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719 (b)(1)(A). The Tribe subsequently proposes to develop a casino, hotel, conference center, food and beverage facilities, administrative space, multipurpose events center, and associated parking and infrastructure. The Airpark Site is

located in the City of Porterville (City), approximately 15 miles west of the Tribe's Reservation and 17 miles west of the Tribe's existing Eagle Mountain Casino.

### **1.3 PURPOSE AND NEED**

The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus, satisfying both the Department's land acquisition policy as articulated in the Department's trust land regulations at 25 C.F.R. Part 151, and the principle goal of IGRA as articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 C.F.R. §§ 151.12 and 292.22.

#### **1.3.1 Background**

The Tribe's needs related to facilitation of tribal self-sufficiency, self-determination, and economic development are as follows:

The Tule River tribal government is responsible for providing a full range of services to its membership, including education, health and recreation, public safety and law enforcement, tribal court, public utilities, natural resources management, economic development, and community assistance. The Tribe's Reservation was established via two Executive Orders in 1873 and 1878 and currently totals 55,396 acres in the foothills of the Sierra-Nevada mountain range.

The Tule River Tribe provided a report that summarizes information regarding the Tribe's vision, goals, present economic situation, and basic needs associated with providing governmental programs for its members, including health care, education, social services, elder services, housing, public utilities, transportation facilities, cultural planning and preservation, and environmental protection. The Tribe wishes to improve its short-term and long-term economic condition and promote self-sufficiency, both with respect to its government operations and its members. The existing Eagle Mountain Casino is located within the Tribe's Reservation and has been owned and operated by the Tribe since its construction in 1996. Due to a growing tribal population, increased demand for support service, and the general inflation of support costs, revenues from the Casino are no longer able to keep pace with the needs of the Tribe.

Several factors limit the economic potential of the existing Casino. The location of the Casino within the Tribe's reservation is a safety issue. Patrons must drive over 12 miles from State Route (SR) 190 along a steep, winding two-lane road that is devoid of many safety features. The existing Casino site has a limited developable area. And, there is a limited supply of water on the Reservation. These factors limit the Tribe's ability to expand the existing Casino.

The Tribe, like much of the rest of the State of California, is facing a drought and water availability issues that limit further development. The Casino is the single largest user of water on the Tribe's Reservation. Many members of the Tribe living on the Reservation do not have access to a reliable supply of water. Due to lack of water, the Tribe has placed a building moratorium on new structures within the Reservation, including tribal housing. The

Tribe has a housing waiting list of over 200 members, and expects this number to grow as the tribal population increases.

#### **1.4 PROCEDURAL BACKGROUND**

The requested federal Proposed Action requires compliance with the National Environmental Policy Act (NEPA). Accordingly, the BIA published a Notice of Intent (NOI) in the *Federal Register* on December 30, 2016 (Volume 81 page 96477) describing the Proposed Action, announcing the BIA's intent to prepare an EIS for the Proposed Action, and inviting public and agency comments. The comment period was open until January 30, 2017, and the BIA held a scoping meeting in the City of Porterville on January 23, 2017. The BIA issued a report outlining the results of scoping in April 2017. The scoping report summarized the major issues and concerns from the comments received during the scoping process. The BIA considered scoping comments in developing the project alternatives and analytical methodologies presented in the EIS. During the NEPA process, the BIA invited five Cooperating Agencies: (1) Tribe, (2) City of Porterville, (3) Federal Aviation Administration (FAA), (4) California Department of Transportation (Caltrans), and (5) U.S. Environmental Protection Agency (USEPA). The USEPA, Tribe, Caltrans, and City of Porterville accepted the invitation, while the FAA declined. Additionally, Tulare County requested to participate as a cooperating agency; the BIA granted the request.

The BIA circulated an administrative version of the Draft EIS to cooperating agencies in July 2017 for review and comment. The BIA considered comments and revised the Draft EIS as appropriate prior to public release. In September 2018, the BIA made the Draft EIS available to federal, tribal, state, and local agencies and other interested parties for review and comment. The Notice of Availability (NOA) for the Draft EIS was published in the *Federal Register* on September 21, 2018 (Volume 83, page 47935), initiating a 45-day public review period. The BIA also published the NOA in *The Porterville Recorder*, which circulated in Tulare County and surrounding area on September 21, 2018. The NOA provided information concerning the Proposed Action, public comment period, and the time and location of the public hearing to receive comments from the public concerning the Draft EIS. The BIA held a public hearing at the Porterville Veterans Memorial Building in Porterville, California on October 15, 2018. The comment period on the Draft EIS ran through November 5, 2018.

Public and agency comments on the Draft EIS received during the comment period, including those submitted or recorded at the public hearing, were considered in the preparation of the Final EIS. Volume I of the Final EIS contains responses to the comments received and relevant information was revised in Volume II of the Final EIS as appropriate to address those comments. The BIA circulated an administrative version of the Final EIS to cooperating agencies on March 29, 2019 for review. All comments received from cooperating agencies were considered, and changes to the Final EIS were made as appropriate. The BIA published a NOA for the Final EIS in the *Federal Register* on May 31, 2019 (Volume 84, page 25303). Consistent with the BIA NEPA Handbook, the NOA for the Final EIS was also published in the local newspaper, the *Porterville Recorder* on May 31, 2019. A copy of the Final EIS NOA is included as **Attachment I** of this ROD. The 30-day waiting period ended on July 1, 2019. The comments received during this period, and BIA's responses to issues that were not previously raised and responded to in the EIS process are included in the Supplemental Response to Comments document, **Attachment II** of this ROD.

The Tribe entered into a Memorandum of Understanding with the City, to facilitate the development of the Proposed Project and ongoing cooperation between the Tribe and the City.<sup>1</sup> The Memorandum of Understanding articulates the services that the City will provide to the Proposed Project and the compensation the Tribe will provide for those services. The Memorandum of Understanding also articulates the Tribe's responsibility to mitigate project related traffic impacts.

## **2.0 ANALYSIS OF ALTERNATIVES**

### **2.1 ALTERNATIVE SCREENING PROCESS**

A range of possible alternatives to meet the purpose and need for the Proposed Action were considered in the EIS, including non-casino alternatives, alternative water/wastewater infrastructure arrangements, reduced development configurations, alternative sites, and expansion of the existing casino. Alternatives, other than the No Action/No Development Alternative, were screened based on four criteria: 1) extent to which they meet the purpose and need for the Proposed Action, 2) feasibility, 3) ability to reduce environmental impacts, and 4) ability to contribute to a reasonable range of alternatives. Alternatives considered but rejected from detailed analysis are described in the Final EIS, Section 2.9, and included: alternative sites owned by the Tribe; an expanded site alternative; alternative scenarios for wastewater treatment and recycled water use; and an alternative involving widening and improvements to the 12-mile long roadway that provides access to the Tribe's existing casino.

### **2.2 REASONABLE ALTERNATIVES CONSIDERED IN DETAIL**

The Draft EIS and Final EIS evaluated the following reasonable alternatives and the mandatory No Action Alternative in detail. Additional details on these alternatives are located in the Final EIS, Section 2.0.

#### **2.2.1 Alternative A-Proposed Project on Airpark Site**

Alternative A, which is the Tribe's Proposed Project and has been identified as the BIA's Preferred Alternative (see Final EIS, Section 2.11), consists of the following components: (1) the transfer of the 40-acre Airpark Site from fee to trust status on behalf of the Tribe; (2) the issuance of a two-part determination by the Secretary under the IGRA that the Proposed Action is in the best interest of the Tribe and not detrimental to the surrounding community, thus making the site eligible for gaming; (3) the subsequent development of the Airpark Site with a casino-resort and the Off-site Improvement Areas with supporting infrastructure; and (4) the closure of the existing Casino and conversion of the facility into tribal administrative offices and service uses. Components of Alternative A are described below.

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<sup>1</sup> Memorandum of Understanding between the Tule River Indian Tribe, the Tule River Tribe Gaming Authority, and the City of Porterville, Aug. 5, 2019 (hereinafter MOU).

Casino Resort: Alternative A would result in the development of a casino-resort within the Airpark Site, consisting of an approximately 104,637 sf casino, 250-room hotel, food and beverage facilities, administrative space, multi-purpose events center, conference center, fire station, and associated parking and infrastructure. The proposed hotel would be an approximately 100-foot tall, 7-story building with a gross footprint of approximately 151,836 sf. The hotel would also feature a fitness center and outdoor pool. A total of 2,100 parking spaces would be available for guests and employees, including 1,260 surface spaces as well as an additional 840 spaces within a 48-foot-tall, 5-level parking garage. The garage would occupy approximately 303,500 sf.

Water Supply: Under Alternative A, the Airpark Site would continue to receive water from the City's municipal water system. The Memorandum of Understanding specifies that the City will supply water and the Tribe will pay the expenses associated with providing service to the Airpark Site. In order to ensure sufficient potable water service for Alternative A without added burden on the City's system, Alternative A includes the development of a water reclamation facility (WRF) and associated recycled water infrastructure to offset project demands. The WRF would be constructed on an Off-site Improvement Area; either (1) a 40-acre City-owned property just southwest of the Airpark Site (40-acre site), or (2) an 8-acre City-owned property just east of the Airpark Site (8-acre-site). This proposed WRF would treat secondary effluent produced from the City's WWTP and provide recycled water to the Proposed Project and for irrigation of the Porterville Sports Complex, located just north of the Airpark Site, which is currently irrigated with potable, well-drawn City water. This use of recycled water at the City's Sports Complex would fully offset the use of potable water under Alternative A, resulting in a reduction of City-wide water demands by approximately 73,800 gallons per day relative to the existing baseline.

Wastewater Treatment and Disposal: The Memorandum of Understanding specifies that the City will provide wastewater treatment services and the Tribe will pay the expenses associated with providing service to the Airpark Site. Alternative A would connect to the City's wastewater treatment plant via existing sewer lines located on and in the immediate vicinity of the Airpark Site. Wastewater service is currently provided to the Airpark Site via a network of 8-inch municipal sewer lines. The sewer pipelines discharge wastewater generated at the Airpark Site into Lift Station No. 12, from which the flows are pumped through four subsequent lift station and approximately 5.0 miles of sewer pipeline to the City's WWTP. While the City's WWTP has the capacity to handle flows generated under Alternative A, some components of the City's conveyance system are either currently deficient or would not be adequate to accommodate wastewater flows generated by Alternative A. As described in detail in Section 2.3.3 of the Final EIS, various improvements would be made to several city wastewater components as part of Alternative A.

Grading, Drainage, and Excavation: Construction would involve grading and excavation for building pads and parking lots. In addition to the existing 5.7 acres of impervious surfaces on the Airpark Site, approximately 22.0 acres of impervious surfaces would be created during construction, for a total of 27.7 acres of impervious surfaces within the 40-acre Airpark Site.

If the 40-acre site is selected as the location of the WRF, approximately 38,720 cubic yards of surface soils that primarily consist of biosolids would need to be removed from the site and replaced; if the 8-acre site is selected as the location of the WRF, approximately 19,360 cubic

yards of surface soils that likely contain lead deposits from the site's former use as a shooting range would need to be removed.

Drainage and Stormwater: Under Alternative A, the existing storm drain facilities within the Airpark Site, including existing pipes and minor structures adjacent to West Street that extend into the project boundaries, will be reconfigured as necessary to accommodate the project design. Stormwater infrastructure developed under Alternative A would retain differential runoff for a 1-day/10-year storm event by means of chamber cistern units located throughout the Airpark Site. Alternative A also includes the construction of a 200 acre-foot (AF) regional retention basin in the northern portion of the 40-acre site and the connection of the existing 60-inch storm drain running beneath West Street to this basin. Excess runoff beyond a 1-day/10-year storm event would be directed to this retention basin system.

Fire Protection/Emergency Response. Alternative A includes building a tribally operated fire station at the Airpark Site. It is also anticipated that the Tribe will enter into mutual aid agreements with the Porterville Fire Department and the Tulare County Fire Department for the provision of supplementary fire and emergency response services to the Airpark Site and vicinity as needed. Additionally, the Memorandum of Understanding provides that the Tribe will make annual payments to the City, part of which will fund project related fire protection training for the City and Tribal fire personnel.

Security/Law Enforcement. The Memorandum of Understanding specifies that Tribe will seek a law enforcement services agreement with the Tulare County Sheriffs Department and if the Tribe is unable to the City will negotiate law enforcement services agreement. The Porterville Police Department and/or the Tulare County Sheriffs Department would have the authority to enforce all non-gaming state criminal laws on the proposed trust lands pursuant to Public Law 23-280. Additionally, the Memorandum of Understanding provides that the Tribe will make annual payments to the City to mitigate project related increased law enforcement costs.

Energy: Electrical service to the Airpark Site is currently provided by Southern California Edison (SCE). No existing natural gas service lines connect to the Airpark Site. Southern California Gas Company currently supplies natural gas services to customers in the vicinity of the Airpark Site, and service may be extended to the site. Southern California Edison serves the project vicinity out of its Poplar Substation, located 4.3 miles southwest of the Airpark Site, and improvements may be needed to extend service to the site.

Renovation of Existing Casino: Under Alternative A, the Tribe's existing Eagle Mountain Casino would be converted to tribal governmental uses. It is anticipated that the re-purposed space would be used to accommodate existing tribal departments, including healthcare and educational facilities within the Reservation that are currently undersized. Thus, while the location of tribal governmental and service facilities may shift within the Reservation, no new uses would be created. Therefore, traffic, water demands, and wastewater flows would be expected to decrease on the Reservation as a result of relocating the Eagle Mountain Casino.

Best Management Practices: Construction and operation of Alternative A would incorporate a variety of industry standard best management practices (BMPs) that *would* avoid or minimize

potential adverse effects resulting from the development of Alternative A. These are listed in **Section 6.0** of the ROD.

### **2.2.2 Alternative B - Proposed Project with On-Site Water & Wastewater Systems**

Alternative B is identical to Alternative A with one key difference. Alternative B would not incorporate any connections of the Airpark Site to the municipal water and wastewater systems. Instead, the Tribe would drill two groundwater wells on the Airpark Site to meet the water demand for all non-irrigation needs, including domestic use, emergency supply, and fire protection. Additionally, under Alternative B, the Airpark Site would not be connected to the municipal wastewater system, and thus none of the improvements to the wastewater infrastructure surrounding the Airpark Site that are necessary under Alternative A would be required under Alternative B, including the WRF. The Tribe would construct an on-site package extended aeration activated sludge plant and package tertiary filter system to treat effluent generated at the Airpark Site, as well as a leach field complex beneath the proposed parking lot.

Construction would involve grading and excavation for building pads and parking lots. Approximately 25.8 acres of impervious surfaces would be created on-site, for a total of 31.5 acres of impervious surfaces within the Airpark Site. It is anticipated that approximately 11,100 cubic yards of fill would be necessary to construct the on-site components of Alternative B (Appendix D of the Final EIS). On-site and off-site stormwater infrastructure development under Alternative B would be the same as under Alternative A, however, the total volume of the on-site cistern chamber units would be approximately 2.1 AF larger (for a total volume of 5.7 AF) as a result of the small increase in impervious surfaces and post-development runoff compared to Alternative A.

### **2.2.3 Alternative C - Reduced Intensity Hotel and Casino on Airpark Site**

Alternative C includes the same development components as Alternative A, but on a reduced scale. Alternative C would result in the development of a casino-resort within the Airpark Site, consisting of an approximately 76,024 sf casino, 250-room hotel, food and beverage facilities, administrative space, conference center, and associated parking and infrastructure. The proposed hotel would be identical to the hotel proposed under Alternative A, with the same gross footprint and room scheme. Dining facilities would be similar to those proposed under Alternative A, but on a reduced scale. The convention space would be slightly reduced, with a gross footprint of approximately 19,900 sf. Alternative C does not include a multi-purpose event center. Alternative C does not include the construction of a parking garage. A total of 1,360 surface parking spaces would be available for guests and employees.

Water supply would be provided through connection to the City's municipal system as described under Alternative A (Water Option 1) or through the development of on-site wells as described under Alternative B (Water Option 2). Wastewater treatment would either be provided through connection to the City's municipal system as described under Alternative A (Wastewater Option 1) or through the development of an on-site WWTP as described under Alternative B (Wastewater Option 2). Construction would involve grading and excavation for building pads and parking lots. Approximately 16.9 acres of impervious surfaces would be created if the off-site water supply and wastewater treatment and disposal options are

selected, while 17.8 acres of impervious surfaces would be created if the on-site options are selected (for total impervious surface acreages of 22.6 and 17.8, respectively).

#### **2.2.4 Alternative D - Non-Gaming Hotel and Conference Center on Airpark Site**

Alternative D differs from the other alternatives in that it does not include a casino. Alternative D would still occur on the 40-acre Airpark Site and involve its transfer into federal trust status, but it would not require a two-part determination for the purpose of gaming. Under this alternative, the existing Eagle Mountain Casino would remain operational. Alternative D would result in the development of a hotel, convention space, dining facilities, parking, and associated parking and infrastructure. The proposed hotel would be identical to the hotel proposed under Alternative A, with the same gross footprint and room scheme. Alternative D includes dining and retail facilities, but on a smaller scale than Alternative A. There would be approximately 166 total seats split between several dining options. One small 250 sf retail shop is also proposed. As with Alternative C, Alternative D also includes the construction of 19,900 sf of convention space with a 9,000 sf divisible ballroom; however, Alternative D does not include a multi-purpose event center. Alternative D does not include the construction of a parking garage. A total of 435 surface parking spaces would be available for guests and employees.

As with Alternative B, Alternative D would involve the drilling of two on-site groundwater wells and construction of a pump station and a storage tank for operational use, emergency supply, and fire protection. As with Alternative C, the options for wastewater treatment and disposal are similar to those described under Alternatives A and B. Construction would involve grading and excavation for building pads and parking lots. Approximately 4.0 acres of impervious surfaces would be created if the off-site wastewater treatment and disposal option are selected, while 4.6 acres of impervious surfaces would be created if the on-site option is selected (for total impervious surface acreages of 9.7 and 10.3, respectively).

#### **2.2.5 Alternative E - Expansion of Existing Eagle Mountain Casino**

Alternative E consists of expanding the Tribe's existing 54,500 sf Eagle Mountain Casino, located within the Tribe's Reservation on the approximately 12-acre Eagle Mountain Casino Site which is approximately 17 miles east of the Airpark Site. A fee-to-trust acquisition and Secretarial Determination would not be necessary for Alternative E because the existing Casino is on land that is already in federal trust for the Tribe that is eligible for gaming under IGRA. Alternative E would add an additional 16,500 sf of new building space and 350 electronic gaming devices to the Tribe's existing casino and a new 3,500 sf dining venue would be constructed. Alternative E includes the construction of a new parking garage, which would provide 600 parking spaces.

The current average daily water demand at the existing facility is 30,226 gpd. The proposed expansion would add an average daily demand of 5,381 gpd, bringing the new total to 35,607 gpd. Due to the shortage of available water supply on the Reservation, water would need to be trucked to the Eagle Mountain Casino to meet the additional demand under Alternative E. The projected average daily wastewater flow resulting from expansion under Alternative D would be approximately 5,023 gpd, bringing the total average daily flow to 35,249 gpd. Wastewater generated at the Eagle Mountain Casino Site is currently treated at an on-site, 20-

year-old sequencing batch reactor WWTP with a capacity of 80,000 gpd. Following the completion of the expanded facility, the Casino would be connected to the Reservation-wide wastewater treatment system and the use of the on-site sequencing batch reactor (SBR) and leach field complex would be phased out.

The Tribal Police Department (TPD) operating under the Tribe's Department of Public Safety (DPS) would continue to provide primary law enforcement service to the Ai\_r\_p ark Site. The Tulare County Sheriffs Department provides law enforcement services throughout the Reservation, including to the existing Eagle Mountain Casino Site, and would continue to do so under Alternative E. Security and emergency medical response staff under the jurisdiction of the Tribe's Gaming Commission would continue to monitor the casino complex for health and safety issues and gaming violations. The California Highway Patrol (CHP) patrols roadways in and around the Reservation, and would continue to do so under Alternative E. Primary fire protection and emergency medical response services would be provided by the Tribe-operated Tule River Fire Department, with secondary service provided by the Tulare County Fire Department via a mutual aid agreement.

### **2.2.6 Alternative F - No Action**

Under the No Action Alternative, none of the five development alternatives (Alternatives A, B, C, D, or E) considered within this EIS would be implemented. The No Action Alternative assumes that the existing uses on the Ai\_r\_p ark Site and Eagle Mountain Casino Site would not change.

## **3.0 PREFERRED ALTERNATIVE**

For the reasons discussed herein and in the Final EIS, the Department has determined that Alternative A is the agency's Preferred Alternative because it best meets the purpose and need for the Proposed Action. The BIA's mission is to enhance the quality of life and to promote economic opportunity in balance with meeting the responsibility to protect and improve the trust resources of American Indians, Indian Tribes, and Alaska Natives. This mission is reflected in the policies underlying the statutory authorities governing the Proposed Action, namely, the IRA, which was enacted to promote Indian self-government and economic self-sufficiency, and IGRA, which was enacted to govern Indian gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Of the alternatives evaluated within the EIS, Alternative A would best meet the purposes and needs of the BIA, consistent with its statutory mission and responsibilities to promote the long-term economic vitality, self-sufficiency, self-determination, and self-governance of the Tribe.

The casino-resort complex described under Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the tribal government. Under such conditions, the tribal government would be stable and better prepared to establish, fund, and maintain governmental programs to meet the unmet needs of the Tribe, as well as help alleviate a portion of the water supply shortage on the Tribe's Reservation, as described in **Section 1.3.1** of this ROD. The development of Alternative A would meet the purpose and need of the Proposed Action better than the other development alternatives due to the greater environmental impacts of Alternatives B and D and the reduced revenues that would be

expected from the operation of Alternatives C, D, and E (described in detail in Section 2.11 of the Final EIS). While Alternative A would have greater environmental impacts than the No Action Alternative, that alternative does not meet the purpose and need for the Proposed Action, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD.

#### **4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)**

Among all of the alternatives, the No Action Alternative (Alternative F) would result in the fewest environmental impacts. Under the No Action Alternative, no parcels within the Airpark Site would be taken into trust and the Tribe would continue to operate its existing Casino as it does presently. The Airpark Site would likely be developed because of its location, existing improvements, and infrastructure. Because it cannot be predicted with certainty the exact type of development that would occur under the No Action Alternative, it is difficult to accurately assess whether the scope of impacts would be comparable to those under the development alternatives. However, the No Action Alternative would not meet the stated purpose and need. Specifically, it would not facilitate tribal self-sufficiency, self-determination, and economic development. The No Action alternative also would likely result in substantially less economic benefits to Tulare County and the City of Porterville than any of the development alternatives.

Among the development alternatives, the expansion of the existing Eagle Mountain Casino (Alternative E) would result in the least environmental impacts. This is because Alternative E has a significantly smaller footprint than the other development alternatives and development would take place on previously graded areas, largely within the existing parking lot. Because less economic development would be feasible due to the remote location of the existing casino, fewer patron vehicle trips and associated traffic, noise and air quality impacts would occur. While Alternative E would necessitate water to be trucked in on a daily basis as sufficient supplies are not currently available on the Reservation, traffic, noise and air quality impacts from the truck trips would be less than the impacts from traffic generated by the larger economic development alternatives on the Airpark Site (i.e., Alternatives A through D).

### **5.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS**

#### **5.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN FINAL EIS**

A number of specific issues were raised during the EIS scoping process and public and agency comments on the Draft EIS. Each of the alternatives considered in the Final EIS was evaluated relative to these and other issues. The categories of the most substantive issues raised include:

- Geology and Soils
- Water Resources
- Air Quality
- Biological Resources
- Cultural and Paleontological Resources
- Socioeconomic Conditions

- Transportation/Circulation
- Land Use
- Public Services
- Noise
- Hazardous Materials
- Aesthetics
- Indirect and Growth-Inducing Effects
- Cumulative Effects

The evaluation of project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments for the Final EIS were accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the Final EIS. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues. Section 4 of the Final EIS describes environmental impacts of Alternatives A through E in detail. The environmental impacts of the Preferred Alternative (Alternative A) are described below.

### **5.1.1 Geology and Soils**

Topography-Alternative A would involve grading the majority of the Airpark Site for building pads and parking lots. The Airpark Site is generally flat and does not contain any distinctive topographical features. On-site grading would facilitate proper drainage. Alternative A, given the proposed design, would result in a minimal impact on topography. With respect to the Off-site Improvements, the import and export of soil associated with the construction of the WRF in the southern portion of the 40-acre site would not significantly alter the site topography. While construction of the regional retention basin under Alternative A would alter the topography of the 40-acre site, the temporary and permanent impacts associated with this alteration would be less than significant, and no mitigation is required. On-site grading of the 8-acre site would maintain the original drainage route; therefore, the impact to topography would be minimal. Therefore, effects to topography under Alternative A would be less than significant, and no mitigation is required.

Soils/Geology - Alternative A could potentially impact soils due to erosion during construction, operation, and maintenance activities, including clearing, grading, trenching, and backfilling. The primary soils on the Airpark Site and Off-site Improvement Areas have a moderate erosion potential based on soil type and slope gradient. Alternative A would be constructed in accordance with the National Pollutant Discharge Elimination System (NPDES) general construction permit, which requires sediment control and erosion prevention into navigable (surface) waters of the U.S. As part of the NPDES permit compliance, a Stormwater Pollution Prevention Plan (SWPPP) would be prepared and implemented. The design and construction of Alternative A would not significantly affect soils or create erosion or sedimentation issues on the Airpark Site.

Seismicity- There are no known active faults in the vicinity of the Airpark Site. Neither the Airpark Site nor the Off-site Improvement Areas fall within an Alquist-Priolo Fault Zone, and

are therefore not subject to any building restrictions. The project facilities would be constructed to standards consistent with the California Building Code (CBC) guidelines, particularly those pertaining to earthquake design, in order to safeguard against major structural failures and loss of life. Alternative A would not have significant effects related to seismic hazards.

Mineral Resources - Given that there are no known or recorded mineral resources within the Airpark Site or Off-site Improvement areas, construction and operation of Alternative A would not adversely affect known or recorded mineral resources. No significant impacts to mineral resources would occur.

### **5.1.2 Water Resources**

Flooding - The Airpark Site and Off-site Improvement Areas are located entirely outside of both the 1.0 percent (100-year) and 0.2 percent (500-year) annual chance flood plain. No associated structures, utilities, or storage areas are proposed for development within the 100-year or 500-year floodplain. Therefore, no significant impacts associated with flooding would occur as a result of Alternative A.

Construction - Construction activities under Alternative A would include ground-disturbing activities such as clearing and grubbing, mass grading, and excavation, which could lead to erosion of topsoil. Erosion from construction could increase sediment discharge to surface waters during storm events, thereby degrading downstream water quality. Discharges of pollutants to surface waters from construction activities and accidents are a potentially significant impact. Erosion control measures will be employed in compliance with the NPDES General Construction Permit for construction activities. A SWPPP will be developed prior to any ground disturbance at the development sites and will include BMPs to reduce potential surface water contamination during storm events. After implementation of mitigation measures discussed in **Section 6.1 and 6.2** below and Section 5.0 of the Final EIS, construction of Alternative A would not result in a significant adverse effect on surface water quality.

Stormwater Runoff - A drainage and stormwater treatment analysis for the development alternatives has been completed and is included in Appendix D of the Draft EIS. Alternative A would alter the existing drainage pattern of the Airpark Site and would increase stormwater runoff as a result of increased impervious surfaces on the site. Stormwater runoff from the Airpark Site would be held in on-site chamber cistern units or the regional retention basin in the northern portion of the 40-acre site. Therefore, no discharge to Waters of the U.S. would occur, either through non-point source stormwater runoff or through point source discharge of stormwater from a culvert or outfall. Accordingly, there would be no impact to off-site drainages and no pollutants would be discharged to nearby surface waters. If the 40-acre site is selected as the location of the WRF, a 200-AF regional retention basin located immediately to the north of the WRF would retain all runoff and provide sufficient stormwater quality control. If the 8-acre site is selected as the location of the WRF, chamber cistern units with a total volume of approximately 0.1 AF would be constructed at the 8-acre site, which would fully retain all differential runoff resulting from development of the 8-acre site. Combined with the erosion BMPs described in **Section 6.1** below and Section 5.0 of the Final EIS, these

factors ensure that the impacts to regional stormwater runoff and surface water quality would be less than significant.

Wastewater-Alternative A would connect to the City's WWTP via the existing wastewater infrastructure located on and in the immediate vicinity of the Airpark Site. The existing 8-inch sewer pipelines at the Airpark Site would be sufficient to handle increased flows under Alternative A; however, several features of the municipal wastewater system in the immediate vicinity of the Airpark Site either are deficient under existing conditions or would require renovations to handle Alternative A wastewater flows. Estimated flows from Alternative A are well within the WWTP's limits and under the 80 percent threshold for expansion. Therefore, no expansion of the WWTP would be necessary and no exceedance of wastewater conveyance or treatment capacities would occur that would result in significant effects to the physical environment, and no mitigation is required.

The 40-acre site is currently used as a dispersal field for biosolid waste generated at the City's WWTP. The City would no longer be able to use it as a biosolid dispersal field under Alternative A due to the development of the regional retention basin. The loss of the 40-acre site as a disposal field would be accommodated through adjustments in the farming and dispersal practices at the City's other biosolid application fields. Therefore, development of the 40-acre site would not result in a significant impact on municipal wastewater treatment and disposal services.

Groundwater- Under Alternative A, the Airpark Site would continue to receive water from the City's municipal water system for domestic use, emergency supply, and fire protection. This system relies almost exclusively on groundwater for supplying municipal water services. The use of groundwater as the water supply for Alternative A could significantly impact groundwater resources if use resulted in a significant reduction in groundwater levels in the Tule Groundwater Sub-basin, which is currently classified as critically overdrafted. However, Alternative A includes the development of a WRF and associated recycled water infrastructure to offset project demands. The WRF and associated storage facilities proposed under Alternative A would have the capacity both to offset 100 percent of the potable water used to irrigate the Porterville Sports Complex and to supply Alternative A's projected maximum-month recycled water demand. Therefore, implementation of Alternative A would yield a net surplus of water within the City's potable water supply relative to the existing baseline. Consequently, Alternative A would result in a net decrease in groundwater pumping in the Tule Groundwater Sub-basin, and no adverse impacts to regional groundwater levels would occur. Nonetheless, measures described in **Section 6.2.2** below Section 5.0 of the Final EIS, would reduce the amount of potable water used under Alternative A.

The construction of the WRF would introduce approximately five acres of impermeable surfaces to either the 40-acre or 8-acre site, which has the potential to reduce groundwater discharge in areas where surface percolation accounts for a large percentage of natural recharge. However, the operation of the regional retention basin on the 40-acre site would allow stormwater to percolate into the groundwater table. Development of the regional retention basin and of the lift station and pipeline improvement areas would not introduce significant amounts of new impervious surfaces. Therefore, the introduction of impermeable surfaces to the Off-site Improvement Areas would not have a significant adverse impact on groundwater recharge. No mitigation is warranted.

In the Memorandum of Understanding, the City identifies the WRF as a beneficial impact because it would:

- reduce the City's potable water use at the Sports Complex,
- reduces the City's need to develop additional potable water supply,
- reduces the amount of sewage disposed of by the City by diverting it for reuse, and
- allow the City to treat its own effluent at the water reclamation facility, with an option to expand capacity, and provide treated water for higher value uses.

Alternative A would include the routine use of potentially hazardous construction materials such as concrete washings, solvents, paint, oil, and grease, which may spill onto the ground and enter stormwater. These pollutants may percolate to shallow groundwater from construction activities and cause a potentially significant impact. The mitigation measures in **Section 6.1, 6.2,** and Section 5.0 of the Final EIS, would minimize groundwater pollution during construction and reduce potential impacts to groundwater quality from construction to a less-than-significant level.

### **5.1.3 Air Quality**

Construction Emissions - Alternative A would generate air pollutants through construction although it would not exceed regulatory emissions threshold levels. However, to further reduce project-related construction criteria pollutants and diesel particulate matter (DPM) emissions, the best management practices described in **Section 6.3** below and Section 5.0 of the Final EIS would further reduce impacts from construction emissions.

Operational Emissions - Buildout of Alternative A would result in the generation of mobile emissions from patron, employee, and delivery vehicles, as well as area and energy criteria pollutant emissions. Also, stationary source emissions from combustion of natural gas in boilers, stoves, heating units, and other equipment on the Airpark Site would result from buildout of Alternative A. Emissions of the ozone precursor nitrogen dioxide (NO<sub>x</sub>) from operation of Alternative A would exceed the applicable General Conformity *de minimis* threshold. Mitigation provided in **Section 6.3** below and Section 5.0 of the Final EIS would minimize criteria air pollutant emissions through the implementation of measures intended to reduce on-site area emissions, vehicle idling, and mobile emissions. Additionally, mitigation requires the purchase of credits to fully offset NO<sub>x</sub> emissions. After mitigation, impacts to the regional air quality environment resulting from operation of Alternative A would be reduced to less than significant.

Operation of the proposed WRF and recycled water pump station would result in operational emissions associated with worker trips and electricity usage from the equipment and pumps. Operation of off-site infrastructure improvements would not cause emissions that would exceed the San Joaquin Valley Air Pollution Control District's thresholds. Operational emissions from off-site infrastructure would be less than significant. The WRF would treat secondary wastewater to tertiary levels and is not expected to result in any perceptible odors at off-site locations. Additionally, the elimination of biosolid dispersal at the 40-acre site would likely reduce the propensity for odors at the site. Impacts associated with odor from development of off-site infrastructure improvements would be less than significant.

#### 5.1.4 Biological Resources

Wildlife and Habitats - Development of Alternative A would impact the entire 40 acres of the Ai<sub>r,p</sub>ark Site, including the disked fallow field and ruderal/developed habitat types. These habitat types are of low value and have no particular significance to wildlife occurring within the project region. Although habitats within the Ai<sub>r,p</sub>ark Site may be suitable for the federal and State special-status species discussed below, they are not, in and of themselves, listed as critical or sensitive under federal designation. Therefore, impacts to wildlife habitat resulting from development of the Airpark Site are less than significant and no mitigation is required.

Although habitats within the Off-site Improvement Areas may be suitable for the federal and State special-status species discussed below, they are not, in and of themselves, listed as critical or sensitive under federal designation. Additionally, no features of the Off-site Improvement Areas have the potential to function as movement corridors for resident and migratory fish and wildlife species. The relatively small project area and nature of the off-site improvements has no potential to intersect wildlife movement corridors and influence regional wildlife movements. Therefore, impacts to wildlife habitat resulting from development of the Off-site Improvement Areas are less than significant, and no mitigation is required.

Special Status Species - Two special-status species have a very low potential to occur on the Ai<sub>r,p</sub>ark Site and the Off-site Improvement Areas (San Joaquin Kit Fox (*Vulpes macrotis mutica*; *SJKF*) and the American Badger (*Taxidea taxus*)). Mitigation listed in **Section 6.4** below and Section 5.0 of the Final EIS would reduce impacts to all species with the potential to occur on the Airpark Site to less than significant levels.

Migratory Birds - Alternative A could adversely affect active migratory bird nests if vegetation removal or loud noise-producing activities associated with construction were to occur during the nesting season (February 15 through September 15). Mitigation listed in **Section 6.4** below and Section 5.0 of the Final EIS would reduce potential impacts to migratory birds to less than significant levels.

Waters of the U.S - No wetlands or Waters of the U.S. were identified within the Ai<sub>r,p</sub>ark Site or the Off-site Improvement Areas. Therefore, Alternative A would not result in adverse effects to wetlands and Waters of the U.S. and no mitigation is required.

#### 5.1.5 Cultural Resources

No known historic properties or paleontological resources have been identified within the Ai<sub>r,p</sub>ark Site or the Off-site Improvement Areas. Under Alternative A, the potential exists for previously unknown archaeological or paleontological resources to be encountered during construction activities. With implementation of mitigation measures described in **Section 6.5** below and Section 5.0 of the Final EIS, impacts to cultural resources would be less than significant.

### 5.1.6 Socioeconomic Conditions and Environmental Justice

Socioeconomics Conditions - The construction and operation of Alternative A would result in economic output to Tulare County and the State of California in the form of jobs, purchases of goods and services, and through positive fiscal effects. The construction of Alternative A would result in indirect and induced economic activity among a variety of different industries and businesses throughout the County. Output received by Tulare County businesses would in turn increase their spending and labor demand, thereby further stimulating the local economy. This would be considered a beneficial impact.

The operation of Alternative A may have substitution or competitive effects on competing gaming venues, including tribal casinos and local cardrooms. The substitution effects would be greater for those gaming facilities that are closest to the proposed gaming project and most similar in terms of the types of customers that would visit the venue. Estimated substitution effects are anticipated to diminish after the first year of operation of Alternative A. The substitution effects resulting from Alternative A to competing tribal gaming facility revenues are not anticipated to significantly impact these casinos, or to cause their closure, or to significantly impact the ability of the tribal governments that own the facilities to provide essential services to their respective memberships.

Alternative A would result in decreased property taxes from those land parcels taken into trust. In addition, similar to commercial developments of comparable scale, operation of Alternative A would likely increase costs to local agencies for the provision of governmental services, including police, fire and emergency services due to increased service calls. These fiscal costs and crime would be partially offset through increased tax revenues that would be stimulated by the operation and increased employment of Alternative A. It is anticipated that the Tribe would enter into a service agreement with the Porterville Police Department and/or the Tulare County Sheriffs Department to fully reimburse the affected department for quantifiable direct and indirect costs incurred in conjunction with the provision of law enforcement services at the Airpark Site. The Tribe will address these impacts through the implementation of on-site security measures and the mitigation described in **Section 6.6** below and Section 5.0 of the Final EIS, therefore, Alternative A would result in a less-than-significant effect on law enforcement services and crime

Alternative A would have a less than significant effect on local housing values, housing supply, parks, and libraries. Alternative A would have a beneficial impact on the Tribe and would generate new income to fund the operation of the tribal government. This income is anticipated to have a beneficial effect on tribal quality of life, health, education, culture, and expectations by funding tribal programs that serve tribal members, including education, health care, housing, social services, and tribally-sponsored cultural events, and by supporting tribal self-sufficiency and self-determination.

Environmental Justice - Alternative A would have a direct beneficial impact to minority and low-income populations. These benefits will likely occur in the form of more and better employment, and the social improvements that are related thereto. Other effects to minority and low-income persons, such as traffic, air quality, noise, etc. would be less than significant, after the implementation of the specific mitigation measures related to these environmental effects. Therefore, with the implementation of the mitigation measures described in this ROD

and Section 5.0 of the Final EIS, Alternative A would not result in significant adverse effects to minority or low-income communities.

### 5.1.7 Transportation/Circulation

Alternative A would result in temporary impacts resulting from construction activities. These effects would include temporary inconveniences to travelers. This minimal addition of construction traffic would not result in significant traffic impacts. Mitigation included in **Section 6.7** below and Section 5.0 of the Final EIS would reduce construction impacts to a less than significant level.

Alternative A would result in four study intersections operating at an unacceptable level of service (LOS) during the opening year. The intersection of SR-190/Rockford Road (Road 208) (weekend peak hour) is projected to operate at an unacceptable LOSE. The intersection of SR-190/Westwood Street (weekday AM and PM peak hours) is projected to operate at an unacceptable LOS E. However, the intersection SR-190/Westwood Street is the location of a programmed roundabout scheduled to be constructed before opening year. The roundabout would result in an acceptable LOS at this intersection with the addition of traffic from Alternative A, and therefore, no mitigation is required regarding this intersection. The intersection of Scranton Avenue/West Street (weekday PM and weekend peak hours) is projected to operate at an unacceptable LOS F. The intersection of Scranton Avenue/SR-65 was projected to operate at an unacceptable LOS F during weekday PM and an unacceptable LOSE during weekend peak hour; however recent improvements at this intersection, including the installation of a traffic signal, would improve operations to acceptable levels. All study roadway segments would operate under acceptable levels of service at the opening year with traffic from Alternative A except for the segment of SR-65 from Road 204 (Spruce Road) to Hermosa Street. However, this is not considered a significant impact, as Alternative A would result in a volume-to-capacity (V/C) increase of less than 0.05 for a roadway segment that is already operating unacceptably and would continue to operate unacceptably in the future even without the addition of project-related traffic. Upon implementation of recommended mitigation detailed in **Section 6.7** below and Section 5.0 of the Final EIS and required by the Memorandum of Understanding, Alternative A would have a less-than-significant effect on all traffic study locations.

Implementation of Alternative A would develop the Airpark Site with limited pedestrian-oriented walkways to connect different land uses with parking areas within the site. The project would not disrupt or otherwise prevent roadway improvements, including the addition of Class II bike paths, planned by the City or County in the vicinity of the Airpark Site. The project would also not disrupt existing transit services in the vicinity of the Airpark Site. Impacts to transit, bicycle, and pedestrian facilities under Alternative A would be less-than-significant.

### 5.1.8 Land Use

Alternative A would result in approximately 40 acres of land at the Airpark Site being transferred from fee to federal trust, thereby removing the property from the City's land use jurisdiction. The commercial uses proposed under Alternative A would be generally compatible with the type and intensity of uses that would be allowable under the City's

General Plan and zoning designations for the Airpark Site and would be generally consistent with local land use plans. Land uses under Alternative A would replace existing vacant and undeveloped land, and there are no land uses in the vicinity of the site that would be disrupted by the construction of a casino/hotel resort. The Airpark Site received a combined land evaluation and site assessment Farmland Conversion Impact Rating (FCIR) score of 69, which is under the 160-point threshold for evaluation of alternative sites. Additionally, there are no active agricultural activities occurring on the Airpark Site and it is not designated for agricultural uses in local planning documents. Therefore, there would be no significant impacts to agriculture from development of Alternative A on the Airpark Site.

Alternative A may result in the construction of a WRF on the 40-acre site. The 40-acre site is zoned for Agricultural/Conservation (AC) by the City; this designation does not explicitly allow major utilities. Should the 40-acre site be selected as the location for the proposed WRF, the City would process any approvals and permits necessary to allow the WRF through actions that may include either issuance of a special use permit or a zoning map amendment to allow major utilities. The proposed WRF is generally compatible with the AC designation, and would not generate significant noise, odor, or other concerns that would interfere with adjacent land uses. Alternative A would also result in the construction of a regional retention basin on the 40-acre site. The regional retention basin, like the WRF, is generally compatible with the AC designation, and would not generate significant noise, odor, or other concerns that would interfere with adjacent land uses. Therefore, development of proposed infrastructure improvements on the 40-acre site under Alternative A would have a less-than-significant impact on land use.

The 40-acre site is actively farmed and is designated Farmland of Statewide Importance by the Farmland Monitoring and Mapping Program. The 40-acre site received an FCIR score of 117, which is under the 160-point threshold for evaluation of alternative sites. The 40-acre site is currently under a Williamson Act Contract, restricting the land to agricultural use only. Under Alternative A, the City would withdraw from the Williamson Contract and no project-related construction would take place on the parcel until after cancellation is complete. Development on the 40-acre site would result in a conversion of 0.003 percent of the farmland in the County. This represents a negligible conversion of farmland, and would be a less-than-significant impact.

Alternative A may result in the construction of a WRF on the 8-acre site. The 8-acre site is currently zoned Parks and Public Recreation Facilities (PK); major utilities are not specifically permitted within this designation. Should the 8-acre site be selected as the location for the proposed WRF, the City would process any approvals and permits necessary to allow the WRF through actions that may include either issuance of a special use permit or a zoning map amendment to allow major utilities. The proposed WRF is generally compatible with the PK designation, and would not generate significant noise, odor, or other concerns that would interfere with adjacent land uses. Therefore, development of proposed infrastructure improvements on the 8-acre site would have a less-than-significant impact on land use. The 8-acre site received FCIR score of 63, which is under the 160-point threshold for evaluation of alternative sites. Additionally, there is no active agriculture occurring on the 8-acre site and the site is not designated for agricultural uses in local planning documents.

Therefore, there would be no significant impacts to agriculture from development of the WRF on the 8-acre site.

### **5.1.9 Public Services**

Water Supply - No off-site water supply infrastructure would be needed to supply water to Alternative A; therefore, no exceedance of water system capacities that would result in significant effects to the physical environment would occur. However, water conservation mitigation measures are provided in **Section 6.2** below and Section 5.0 of the Final EIS, to ensure that potable water use is minimized. Additionally, to ensure sufficient potable water service for Alternative A without added burden on the City's system, Alternative A includes the development of a WRF and associated recycled water infrastructure to offset project demands.

Wastewater Service - The Tribe has expressed its intent to contract with the City for wastewater treatment services and pay the expenses associated with providing service to the Airpark Site. Several features of the municipal wastewater system in the immediate vicinity of the Airpark Site either are deficient under existing conditions or would require renovations to handle Alternative A's wastewater flows. Upgrades to these facilities are a component of Alternative A. No exceedance of wastewater conveyance or treatment capacities would occur that would result in significant effects to the physical environment, and no mitigation is required.

Solid Waste Service - Construction of the Proposed Project under Alternative A would result in a temporary increase in the generation of solid waste. Mitigation measures are presented in **Section 6.9.1** below and Section 5.0 of the Final EIS to reduce the amount of construction and demolition materials disposed of at the landfill and ensure impacts remain less than significant. The estimated daily and yearly solid waste streams under Alternative A represent a relatively small proportion of the daily intake limit and remaining capacity of both Teapot Dome Landfill and its projected successor, Visalia Landfill. No significant impact to these facilities would occur. However, additional mitigation measures are presented in **Section 6.9.1** below and Section 5.0 of the Final EIS, which would further reduce the amount of solid waste disposed of at the landfill(s).

Law Enforcement, Fire Protection, and Emergency Medical Services - Alternative A has the potential to increase demand for law enforcement, fire protection, and emergency medical services. Implementation of mitigation measure described in **Section 6.9.3** below and Section 5.0 of the Final EIS and required by the Memorandum of Understanding would reduce impacts to less than significant levels.

Energy and Natural Gas - Construction on the Airpark Site could damage underground utilities, leading to outages and/or serious injury. This would result in a significant adverse effect. Mitigation measures are presented in **Section 6.9.5** below and Section 5.0 of the Final EIS to reduce impacts to less-than-significant levels. A new circuit would need to be installed prior to the operation of Alternative A. This would include the addition of a new circuit breaker at the Poplar Substation, as well as the installation of new overhead and underground electrical lines in the region between the substation and the Airpark Site. The Tribe would be required to pay a fair share of the upgrades needed to serve Alternative A to receive service.

Potential impacts of the circuit expansion are anticipated to be minor. Therefore, no significant effects to the physical environment would occur because of these off-site improvements. **Section 6.3** below and Section 5.0 of the Final EIS include mitigation measures related to greenhouse gas emissions that would reduce the energy demand of Alternative A. The Tribe would be required to pay a fair share of the improvement costs necessary to service the Airpark Site to receive gas service. Alternative A would not result in significant adverse effects to natural gas services or the physical environment.

Off-Site Improvements - Construction and operation of the proposed WRF, regional retention basin, recycled water pipelines, lift stations, and wastewater force mains would have minimal to no effect on water supply, law enforcement, fire protection and EMS, and natural gas. Therefore, no exceedance of the capacities of these services would occur that would result in significant effects to the physical environment. Development of the off-site improvements has the potential to impact solid waste services due to the need to remove existing soil prior to construction on the 40-acre site and the 8-acre site, municipal wastewater services due to the loss of the 40-acre site as a biosolid dispersal location, and electrical services due to the need to extend distribution lines to the 40-acre site or the 8-acre site.

Impacts from soil removal would be temporary and not significant given that Visalia Landfill has an adequate capacity to accommodate the temporary increase in waste generated by the development of the 40-acre site and 8-acre site. The 40-acre site is currently used as a dispersal field for biosolid waste generated at the City's WWTP. The City would no longer be able to use it as a biosolid dispersal field under Alternative A due to the development of the regional retention basin. The loss of the 40-acre site as a disposal field would be accommodated through adjustments in the farming and dispersal practices at the City's other biosolid application fields. Therefore, development of the 40-acre site would not result in a significant impact on municipal wastewater treatment and disposal services. Due to the small electricity demand of the WRF relative to that of the Airpark Site development under Alternative A, it is not anticipated that operation of this facility would significantly impact SCE's ability to provide electricity in the region subsequent to the above-described upgrades. SCE has indicated that because the 8-acre site is landlocked, it may be necessary to obtain an easement prior to extending electrical services to that location.

#### **5.1.10 Noise**

Construction Noise - The maximum construction noise at the Airpark Site is estimated to be less than the Federal Highway Administration (FHWA) Noise Abatement Criteria (NAC) threshold of 78 dBA Leq for construction. The maximum construction noise level at the nearest portion of the Porterville Sports Complex located approximately 300 feet east of the Airpark Site would be more than the FHWA NAC threshold for residential sensitive receptors but less than the threshold of 83 dBA Leq for commercial areas. Because construction activities would be temporary, and because anticipated construction noise levels at the Sports Complex would not result in physical adverse effects (e.g. hearing damage) to sensitive receptors due to the nature of activities occurring there, this is considered a less-than-significant impact. Noise resulting from increased construction traffic for Alternative A would not result in a significant adverse effects to the ambient noise level during any phase of construction.

Operational Noise - With the exception of Teapot Dome Avenue, Scranton Avenue, and Road 216, none of the roadways that would experience the most increase in project related traffic would exceed the FHWA NAC threshold of 67 dBA Leq with the addition of project traffic. Therefore, the impacts to sensitive receptors along these roadways from Alternative A would be less than significant. Teapot Dome Avenue currently exceeds the FHWA NAC threshold for traffic noise levels. However, the increase in traffic resulting from Alternative A would not cause a discernible increase in noise levels along this segment (greater than 3 dBA Leq). Therefore, the impacts to sensitive receptors along Teapot Dome Avenue from Alternative A traffic noise would be less than significant. Alternative A would substantially increase the volume of traffic on the segment of Scranton Avenue between Rockford Road (Road 208) and SR 65, as well as along the segment of Road 216 between SR-190 and Scranton Avenue, compared to opening year without project conditions, causing ambient noise levels to exceed the FHWA NAC threshold. The increase in ambient noise levels resulting from traffic would be greater than 3 dBA Leq and therefore, significant. The mitigation provided in **Section 6.10** below and Section 5.0 of the Final EIS would reduce the ambient noise level at the affected sensitive receptors to below the FHWA NAC threshold of 67 dBA Leq through the construction of a sound barrier wall or other noise attenuating features. After mitigation, traffic noise impacts along these road segments for Alternatives A would be reduced to less-than-significant levels.

Off-Site Improvements - Alternative A may result in the construction of off-site recycled water, sewer, and stormwater infrastructure. The highest typical construction noise levels from construction of the off-site infrastructure improvements would not exceed the FHWA NAC threshold of 78 dBA Leq, but is higher than the City threshold of 60 dBA Leq for residential land uses. This is a potentially significant impact. Construction activities on the 40-acre site would not cause significant adverse noise-related impacts to the Porterville Sports Complex due to the distance between the sites. If construction occurs on the 8-acre site, noise levels in the southern portion of the Porterville Sports Complex, which borders the 8-acre site to the north, would exceed the FHWA NAC threshold. Mitigation measures are recommended in **Section 6.10** below and Section 5.0 of the Final EIS, including limiting construction activities to daytime hours in accordance with the City's noise ordinance to prevent sleep disturbance. As stated in Section 3.11.2 of the Final EIS, construction noise is exempt from City noise standards provided that construction activities do not take place before 6:00 AM or after 9:00 PM on any day except Saturday or Sunday, or before 7:00 AM or after 5:00 PM on Saturday or Sunday. Therefore, after mitigation, noise effects associated with construction of the proposed off-site infrastructure improvements would be less than significant.

Of the off-site infrastructure improvements, only operation of the proposed off-site WRF has the potential to generate an increase in the ambient noise environment. The components of this facility that would generate the most noise would be the pumps located on either the 40-acre site or the 8-acre site. The proposed WRF would not exceed the 60 dBA Leq City threshold. Accordingly, noise from operation of proposed off-site infrastructure would not result in significant adverse effects associated with the off-site ambient noise environment.

### 5.1.11 Hazardous Materials

The possibility *exists* that undiscovered contaminated soil and/or groundwater is present on the Airpark Site due to the migration of hazardous materials from off-site properties or unknown hazardous materials dumping. Construction personnel could encounter contamination during construction-related earth moving activities. BMPs presented in **Section 6.11** below and Section 5.0 of the Final EIS would minimize or eliminate adverse effects from undiscovered contaminated soil or groundwater. Additionally, use of fill material imported from other sites may carry a risk of contamination. Therefore, BMPs are presented in **Section 6.11** below and Section 5.0 of the Final EIS to verify fill is not contaminated before use. During grading and construction, the use of routine hazardous materials may include gasoline, diesel fuel, motor oil, hydraulic fluid, solvents, cleaners, sealants, welding flux, various lubricants, paint, and paint thinner. Specific BMPs presented in **Section 6.11** below and Section 5.0 of the Final EIS would minimize the risk of inadvertent release of these materials. With these measures, Alternative A would not result in significant adverse effects associated with hazardous materials during construction. Potential hazardous operational materials such as diesel fuel storage tanks, swimming pool and landscape materials, and small quantities of motor oil, cleaners, lubricants, and paint would not result in significant adverse effects with proper storage, handling, and disposal.

### 5.1.12 Aesthetics

During construction activities on all potential project sites, heavy construction equipment, materials, and work crews would be readily visible from stationary locations, as well as from vehicles traveling on nearby roadways. Aesthetic impacts from construction would be temporary in nature and would not result in obstructed views of scenic resources. The most visually dominant feature of the Proposed Project would be the 7-story hotel tower. To reduce visual impacts from the proposed development of Alternative A, the tower would not exceed 100 feet in height and the architecture of the proposed structures would incorporate native materials and colors and would be enhanced by landscaping using plants native to the region to be visually cohesive with surrounding land uses. Though the Proposed Project would alter the colors, lines, and texture of the landscape vegetation of the Airpark Site, the changes would not be out of character with typical development in the vicinity, nor would they alter any scenic vistas or resources. The potential for Alternative A to produce light and glare in the vicinity is a potentially significant adverse effect. Mitigation measures in **Section 6.12** below and Section 5.0 of the Final EIS are consistent with both the International Dark Sky Association's Model Lighting Ordinance and the Unified Facilities Criteria and would reduce *this* potential impact to a less-than-significant level. Therefore, Alternative A would have a less-than-significant aesthetic impact.

### 5.1.13 Indirect and Growth-Inducing Effects

#### Indirect Effects from Off-Site Traffic Mitigation and Gas and Electrical Utility

Improvements - Implementation of Alternative A on the Airpark Site would require construction of traffic mitigation and gas and electrical utility improvements off-site. The construction of traffic mitigation and utility improvements would require grading and the introduction of fill material to extend existing road shoulders and roadbed, and install electricity transmission lines. These activities would have potential significant effects to

geology and soils, water resources, air quality, biological resources, and cultural resources. A SWPPP would be developed that would include soil erosion and sediment control practices to reduce the amount of exposed soil, prevent runoff from flowing across disturbed areas, slow runoff from the site, and remove sediment from the runoff. Mitigation for these activities is provided in the relevant subsections of **Section 6.0** below and Section 5.0 of the Final EIS.

Growth-Inducing Effects - Alternative A would result in employment opportunities, including direct, indirect, and induced opportunities. Construction-related employment opportunities would be temporary in nature, and would not result in the permanent relocation of employees to the City or County. The potential for commercial growth resulting from the development of Alternative A would result from fiscal output generated throughout the County from direct, indirect, and induced economic activity. Indirect and induced output could stimulate further commercial growth; however, such demand would be diffused and distributed among a variety of different sectors and businesses in the City and County. There are estimated to be more than enough vacant homes to support potential impacts to the regional labor market under Alternative A. As such, significant regional commercial growth inducing impacts would not be anticipated to occur under Alternative A.

Alternative A has the potential to induce on-Reservation growth. Any future growth and development on the Reservation would continue to be subject to tribal and federal environmental regulations, including the Clean Water Act (CWA), Clean Air Act (CAA), federal Endangered Species Act (FESA), Safe Drinking Water Act, and National Historic Preservation Act (NHPA). Adherence to these regulatory requirements would minimize the environmental consequences associated with on-Reservation development.

#### **5.1.14 Cumulative Effects**

The development of Alternative A, when added to past, present, and reasonably foreseeable future actions would not result in significant cumulative impacts to geology and soils, surface water and flooding, groundwater quality, cultural resources, socioeconomic conditions, land use, water supply, wastewater, solid waste, fire protection and emergency medical services, hazardous materials, and aesthetics.

Water Quality- Concurrent construction of Alternative A and other cumulative projects identified above could result in cumulative effects to water quality. Construction activities could result in erosion and sediment discharge to surface waters, potentially effecting water quality in downstream water bodies. In addition, construction equipment and materials have the potential to leak, thereby discharging oils, greases, and construction supplies into stormwater, potentially affecting both surface water and groundwater. To mitigate potential adverse effects, approved developments would be required to implement erosion control measures and construction BMPs via a site-specific SWPPP in compliance with the State of California General Permit for Discharges of Storm Water Associated with Construction Activity, or compliance with USEPA stormwater regulations. With the implementation of measures identified in **Section 6.1 and Section 6.2** below and Section 5.0 of the Final EIS, Alternative A would not result in adverse cumulative effects to water quality.

Groundwater Supply - Buildout of the County and City General Plans could result in cumulative effects to groundwater if the total water demand of approved projects, including

the future developments identified above and Alternative A, exceed the recharge capacity of the groundwater basin. Future demands on the groundwater basin by cumulative development would be controlled by City and County land use authorities, as well as by the recently passed Senate Bill 1168, which requires local agencies to create groundwater management plans, and Assembly Bill (AB) 1739, which allows the state to intervene if local groups do not adequately manage groundwater resources. The inclusion of a greater than 100-percent groundwater use offset strategy within the project design of Alternative A, coupled with these state regulatory mechanisms and the BMPs specified in **Section 6.2** below and Section 5.0 of the Final EIS, would ensure that Alternative A's contribution to cumulative impacts to groundwater supply is not significant.

Air Quality- Because project emissions of NO<sub>x</sub> are above the applicable General Conformity *de minimis* threshold, air quality in the region has a potential to be cumulatively impacted under Alternative A. However, with the mitigation provided in **Section 6.3** below and Section 5.0 of the Final EIS, implementation of Alternative A would not cumulatively adversely impact the region's air quality.

Biological Resources - Two special-status wildlife species, San Joaquin kit fox (SJKF) and American badger, have the potential to occur on the Airpark Site and Off-site Improvement Areas. Mitigation identified in **Section 6.4** below and Section 5.0 of the Final EIS include measures that would avoid or minimize impacts to these species. Similarly, other projects in the region would be required to comply with the FESA and California Endangered Species Act (CESA) by avoiding or minimizing effects to protected species. Alternative A would not result in significant cumulative effects to nesting migratory birds. However, disturbance to migratory bird habitats and increases in human activity from other proposed projects in the area could incrementally contribute to past, present, and future effects to migratory birds. The development of other projects considered in the cumulative analysis is required to comply with the Migratory Bird Treaty Act (MBTA), which will reduce the overall impact to migratory birds. Mitigation measures provided in **Section 6.4** below and Section 5.0 of the Final EIS would minimize significant effects to migratory birds. Therefore, after mitigation, implementation of Alternative A would not contribute to adverse cumulative effects to special-status species and migratory birds.

Transportation - Development of Alternative A, in combination with anticipated growth, would result in increased traffic flow, congestion, and a number of intersections and roadway segments (listed in the Final EIS) that do not meet minimum LOS levels. Such effects would be reduced to less than significant levels through fair share contributions and other mitigation for direct project impacts described in **Section 6.7** below and Section 5.0 of the Final EIS.

Law Enforcement - While development of the Airpark Site has the potential for an increase in calls for service during operation of Alternative A and extended hours of operation at the Airpark Site, the Tribe would enter into a service agreement with either the Porterville Police Department or the Tulare County Sheriffs Department to fully reimburse the affected department for quantifiable direct and indirect costs incurred in conjunction with the provision of law enforcement services. Additionally, an increase in service demands to the CHP may result from development of the project. However, payments to the State under the Tribal-State Compact would offset any impacts to the CHP. Therefore, with implementation of the mitigation described in **Section 6.9.3** below and Section 5.0 of the Final EIS,

Alternative A would result in a less-than-significant cumulative effect to public law enforcement services.

Energy and Natural Gas - SCE would require distribution system upgrades in order to have sufficient capacity to provide service to the Airpark Site. It is also anticipated that Southern California Gas Company would require pipeline improvements to supply natural gas to the Airpark Site. Individual projects, including the cumulative projects listed in Section 4.15.2 of the Final EIS, would be responsible for paying development or user fees to receive electrical and natural gas services. As such, the Tribe would pay a fair share of the upgrades needed to avoid affecting the service of existing customers and any infrastructure necessary to provide service to Alternative A. The mitigation measure provided in **Section 6.9.5** below and Section 5.0 of the Final EIS would ensure that Alternative A would not cause significant cumulative effects to energy or natural gas providers.

Noise-Teapot Dome Avenue, Scranton Avenue, and Road 216 may experience an increase in project related traffic that would exceed the Federal Highway Administration (FHWA) Noise Abatement Criteria (NAC). The mitigation measure provided in **Section 6.10** below and Section 5.0 of the Final EIS would ensure that Alternative A would not cause significant cumulative effects to noise.

#### **5.1.15 Unavoidable Adverse Effects**

All potential adverse effects can be mitigated with measures outlined in **Section 6.0** of this ROD.

### **5.2 COMMENTS ON THE FINAL EIS AND RESPONSES**

The BIA received written comments from three cooperating agencies and seven individuals on the Final EIS, during the 30-day waiting period following EPA's NOA of the Final EIS on May 31, 2019. The BIA reviewed and considered all comment letters on the Final EIS during the decision making process for the Proposed Action. The Supplemental Response to Comments document, which is included as **Attachment II** to this ROD, contains the comment letters received and the BIA's responses to the comments.

### **6.0 MITIGATION MEASURES**

All practicable means to avoid or minimize significant environmental impacts from the Preferred Alternative have been identified and adopted. The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this decision. Specific BMPs and mitigation measures adopted pursuant to this decision are set forth below and included within the Mitigation Monitoring and Enforcement Plan (MMEP) (see **Attachment III** of this ROD).

## 6.1 GEOLOGY AND SOILS

The following measures shall be implemented for the Preferred Alternative in accordance with federal regulatory requirements:

- A. The project shall comply with the NPDES Construction General Permit from the USEPA for all construction site runoff during the construction phase in compliance with the CWA. A SWPPP shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. The SWPPP shall detail the BMPs to be implemented during construction and post-construction operation of the selected project alternative to reduce impacts related to soil erosion and water quality. The BMPs shall include, but are not limited to, the following:
  1. Existing vegetation shall be retained where practicable. To the extent feasible, grading activities shall be limited to the immediate area required for construction and remediation.
  2. Temporary erosion control measures (such as silt fences, fiber rolls, vegetated swales, a velocity dissipation structure, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed for disturbed areas.
  3. To the maximum extent feasible, no disturbed surfaces shall be left without erosion control measures in place.
  4. Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.
  5. Creating construction zones and grading only one area or part of a construction zone at a time shall minimize exposed areas. If practicable during the wet season, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone.
  6. Disturbed areas shall be re-vegetated following construction activities.
  7. Construction area entrances and exits shall be stabilized with large-diameter rock.
  8. Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures.
  9. A spill prevention and countermeasure plan shall be developed which identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.

10. Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the CWA (33 U.S.C. 1251 to 1387).
  11. Construction materials, including topsoil and chemicals, shall be stored, covered, and isolated to prevent runoff losses and contamination of surface and groundwater.
  12. Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.
  13. Sanitary facilities shall be provided for construction workers.
  14. Disposal facilities shall be provided for soil wastes, including excess asphalt during construction and demolition.
  15. Other potential BMPs include use of wheel wash or rumble strips and sweeping of paved surfaces to remove any and all tracked soil.
- B. Contractors involved in the project shall be trained on the potential environmental damage resulting from soil erosion prior to construction in a pre-construction meeting. Copies of the project's SWPPP shall be distributed at that time. Construction bid packages, contracts, plans, and specifications shall contain language that requires adherence to the SWPPP.

The following measures shall be implemented in accordance with applicable federal, state, and local regulatory requirements for the Preferred Alternative, as they apply to off-site improvements on non-tribal lands:

- C. A SWPPP specific to the 40-acre site shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. A SWPPP specific to the 8-acre site shall also be prepared, implemented, and maintained if the WRF is constructed on the 8-acre site. The SWPPP(s) shall detail the BMPs to be implemented during construction and post-construction operation of the selected project alternative to reduce impacts related to soil erosion and water quality. The BMPs shall include, but are not limited to, sub-measures 1 through 15 listed above under Mitigation Measure 6.1 (A).
- D. Materials that are excavated during the construction of the regional retention basin and stockpiled on the 40-acre site shall be covered by tarps or other appropriate materials and stabilized to prevent erosion until these materials are removed.

## **6.2 WATER RESOURCES**

The following BMPs will be implemented to prevent off-Reservation environmental effects to water supply resources in accordance with the anticipated requirements of the Tribal State Gaming Compact (Compact) for the Preferred Alternative:

- A. The Tribe shall adjust landscape irrigation based on weather conditions-reducing irrigation during wet weather-to prevent excessive runoff.

- B. Fertilizer use shall be limited to the minimum amount necessary and shall be adjusted for the nutrient levels in the water used for irrigation. Fertilizer shall not be applied within 24 hours of a rain event predicted by the National Oceanic and Atmospheric Administration.
- C. The Tribe shall implement water conservation measures, including but not limited to use of low flow faucets and showerheads, recycled water for toilets, and voluntary towel re-use by guests in the hotel; use of low-flow faucets, recycled water for toilets, and pressure washers and brooms instead of hoses for cleaning, in public areas and the proposed casino; use of garbage disposal on-demand, re-circulating cooling loop for water cooled refrigeration and ice machines where possible, and service of water to customers on request, in restaurants; and use of recycled and/or gray water for cooling.

### **6.3 AIR QUALITY**

#### **6.3.1 Construction**

To prevent violation of federal, state and local policies related to air quality imposed for the protection of the environment (40 CFR 1508.27[b][10]) the following BMPs will be implemented for the Preferred Alternative.

- A. A Dust Control Plan shall be prepared prior to construction which meets the general requirements of the San Joaquin Valley Air Pollution Control District (SNAPCD) Rule 8021 6.3. The following dust suppression measures shall be included in the plan and implemented during construction to control the production of fugitive dust (PM10) and prevent wind erosion of bare and stockpiled soils:
  - 1. Provide a CARB approved Visible Emissions Evaluation (VEE) person to evaluate fugitive dust emissions once per week.
  - 2. Spray exposed soil with water or other suppressant twice a day or as needed to suppress dust to 20% opacity.
  - 3. Use non-toxic chemical or organic dust suppressants on unpaved roads and traffic areas to suppress dust to 20 percent opacity.
  - 4. Construct and maintain wind barriers sufficient to limit windblown dust emissions to 20 percent opacity.
  - 5. Minimize dust emissions during transport of fill material or soil by wetting down loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, cleaning the interior of cargo compartments on emptied haul trucks before leaving a site, and/or covering loads.
  - 6. Promptly clean up spills of transported material on public roads.
  - 7. Restrict traffic speeds on site to 15 miles per hour to reduce soil disturbance.

8. Provide wheel washers to remove soil that would otherwise be carried off site by vehicles to decrease deposition of soil on area roadways.
  9. Cover Dirt, gravel, and debris piles as needed to reduce dust and wind-blown debris to less than 20 percent opacity.
  10. Provide education for construction workers regarding incidence, risks, symptoms, treatment, and prevention of Valley Fever in accordance with California Department of Public Health guidelines.
- B. The following measures will be implemented to reduce emissions of criteria pollutants, greenhouse gases (GHGs), and diesel particulate matter (DPM) from construction:
1. The Tribe shall control criteria pollutants and GHG emissions from the facility by requiring all diesel-powered equipment be properly maintained and minimize idling time to five minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation.
  2. Require all construction equipment with a horsepower rating of greater than 50 be equipped with diesel particulate filters, which would reduce approximately 85 percent of DPM.
  3. Require all construction equipment with a horsepower rating of greater than 50 be equipped with California Air Resources Board (CARB) rated Tier 3 engines, with the exception of scrapers.
  4. Require the use of low reactive organic gases (ROG; 150 grams per liter or less) for architectural coatings to the extent practicable.
  5. Environmentally preferable materials, including recycled materials, shall be used to the extent readily available and economically practicable for construction of facilities.

### **6.3.2 Operation and Climate Change**

The following mitigation measures will be implemented in accordance with federal regulatory requirements (Clean Air Act [CAA]) and the anticipated requirements of the Compact for the Preferred Alternative:

- C. The Tribe shall reduce emissions of criteria air pollutants and GHGs during operation of the project through the following actions:
  1. The Tribe shall use clean fuel vehicles in the vehicle fleet where practicable, which would reduce criteria pollutants and GHG emissions.

2. The Tribe shall provide preferential parking for employee vanpools and carpools, which would reduce criteria pollutants and GHGs.
3. The Tribe shall use low-flow appliances at the proposed facility. The Tribe shall use drought-tolerant landscaping and provide "Save Water" signs near water faucets.
4. The Tribe shall control criteria pollutants, GHG, and DPM emissions during operation of the project by requiring all diesel-powered vehicles and equipment be properly maintained and minimizing idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use; unless per engine manufacturer's specifications or for safety reasons more time is required. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation.
5. The Tribe shall use energy-efficient lighting at the facility, which would reduce indirect criteria pollutants and GHG emissions.
6. The Tribe shall install recycling bins throughout the hotel and casino for glass, cans, and paper products. Trash and recycling receptacles shall be placed strategically outside to encourage people to recycle. The Tribe shall reduce solid waste stream of the facility by 50 percent.
7. The Tribe shall plant trees and vegetation on site or fund such plantings off-site. The addition of photosynthesizing plants would reduce atmospheric carbon dioxide (CO<sub>2</sub>), because plants use CO<sub>2</sub> for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the building; thus reducing heat absorption, reducing air conditioning needs and saving energy.
8. The Tribe shall use energy-efficient appliances in the hotel and casino.
9. The Tribe shall provide a bus driver lounge at the facility and adopt and enforce an anti-idling ordinance for buses, which will discourage bus idling during operation of the project.

After implementation of mitigation measures 1 through 9 above, operational emissions would continue to exceed *de minimis* levels for NO<sub>x</sub>. Therefore, the following mitigation is required for the Preferred Alternative in accordance with the federal regulatory requirements of the General Conformity Rule of the CAA:

10. The Tribe shall purchase 35.60 tons of nitrogen oxides (NO<sub>x</sub>) emission reduction credits (ERCs) for the Preferred Alternative as specified in the Conformity Determination included in Appendix F of the Final EIS. Because the air quality effects are associated with operation of the facility and not with construction of the facility, real, surplus, permanent, quantifiable, and enforceable ERCs will be purchased prior to the opening day of the facility.

ERCs shall be purchased in accordance with the 40 CFR 93 Subpart B, conformity regulations. With the purchase of the ERCs the project would conform to the applicable SIP and result in a less than adverse effect to regional air quality. As an alternative to or in combination with purchasing the above ERCs, the Tribe has the option to enter into a Voluntary Emission Reduction Agreement (VERA) with the SJVAPCD. The VERA would allow the Tribe to fund air quality projects that quantifiably and permanently offset project operational emission.

#### 6.4 BIOLOGICAL RESOURCES

The following mitigation measures are required to avoid potential adverse effects to the San Joaquin kit fox (SJKF) under the Preferred Alternative, in accordance with federal regulatory requirements FESA:

- A. Preconstruction surveys shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance, construction activities, and/or any project activity likely to impact the SJKF. These surveys shall be conducted in all potential SJKF habitat on and within 200 feet of the Airpark Site and Off-site Improvement Areas. The primary objective is to identify SJKF habitat features (e.g., potential dens and refugia) within the project area and evaluate their use by SJKF. These surveys shall include the maintenance of photo stations and track plates at burrows falling within the dimensional range of a SJKF burrow. If an active SJKF den is detected within or immediately adjacent to the Airpark Site or Off-site Improvement Areas, the United States Fish and Wildlife Service (USFWS) shall be contacted immediately to determine the best course of action.
- B. Should SJKF be found during preconstruction surveys, the Sacramento Field Office of the USFWS shall be notified. A disturbance-free buffer shall be established around the burrows in consultation with the USFWS, and shall be maintained until a qualified biologist has determined that the burrows have been abandoned.
- C. Permanent and temporary construction activities and other types of project-related activities should be carried out in a manner that minimizes disturbance to SJKF. Minimization measures shall include: restriction of project-related vehicle traffic to established roads, construction areas, and other designated areas; inspection and covering of structures (e.g., pipes), as well as installation of escape structures, to prevent the inadvertent entrapment of SJKF; and proper disposal of food items and trash.
- D. Prior to the start of construction, the applicant shall retain a qualified biologist to conduct an informational meeting to educate all construction staff on the SJKF. This training shall include a description of the SJKF and its habitat needs; a report of the occurrence of SJKF in the project area; an explanation of the status of the species and its protection under the FESA; and a list of the measures being taken to reduce effects to the species during project construction and implementation. The training shall include a handout containing training information. The project manager shall use this

handout to train any additional construction personnel that were not in attendance at the first meeting, prior to starting work on the project.

The Tribe will voluntarily implement the following mitigation measures for the Preferred Alternative to reduce potential impacts to the American Badger, a state-protected species:

- E. Prior to construction activities within the Airpark Site and Off-site Improvement Areas, a qualified biologist shall conduct a preconstruction survey for American Badger concurrent with the preconstruction survey for SJKF recommended under Mitigation Measure 5.5(A) to identify any active dens. If occupied dens are found during pre-construction surveys, the biologist would consult with California Department of Fish and Wildlife (CDFW) to determine whether the construction activities would adversely disrupt breeding behaviors of the badger. If it is determined that construction activities would disrupt breeding behaviors, then a 500-foot avoidance buffer shall be established around occupied burrow from March-August or until a qualified biologist can determine that juvenile badgers are self-sufficient enough to move from their natal burrow.
- F. A habitat sensitivity training shall be conducted for American badger. The same information would be provided to crewmembers for this species as was identified in the habitat sensitivity training for SJKF.

The following measures are required for the Preferred Alternative to avoid and/or reduce impacts to any potentially nesting migratory, raptor, and/or special-status bird species, in accordance with federal regulatory requirements under the Migratory Bird Treaty Act [MBTA]:

- G. If any construction activities (e.g., building, grading, ground disturbance, removal of vegetation) are scheduled to occur within the Airpark Site and Off-site Improvement Areas during the nesting season (February 15 to September 15), preconstruction nesting bird surveys shall be conducted. Preconstruction surveys for any nesting bird species shall be conducted by a qualified wildlife biologist throughout all areas of suitable habitat that are within 500 feet of any proposed construction activity. The surveys shall occur no more than 14 days prior to the scheduled onset of construction. If construction is delayed or halted for more than 14 days, another preconstruction survey for nesting bird species shall be conducted. If no nesting birds are detected during the preconstruction surveys, no additional surveys or mitigation measures are required.
- H. If nesting bird species protected under the MBTA are observed within 500 feet of construction areas during the surveys, appropriate "disturbance-free" buffers shall be established. The size and scale of nesting bird buffers shall be determined by a qualified wildlife biologist and shall be dependent upon the species observed and the location of the nest. Buffers shall be established around all active nest locations. The nesting bird buffers shall be completely avoided during construction activities. The qualified wildlife biologist shall also determine an appropriate monitoring plan and decide if construction monitoring is necessary during construction activities. Monitoring requirements are dependent upon the species observed, the location of the

nests, and the number of nests observed. The buffers may be removed when the qualified wildlife biologist confirms that the nest(s) is no longer occupied and all birds have fledged.

- I. If impacts (i.e., take) to migratory nesting bird species are unavoidable, consultation with USFWS shall be initiated. Through consultation, an appropriate and acceptable course of action shall be established.

The following mitigation measure is required for the Preferred Alternative, in accordance with applicable federal, state, and local regulatory requirements, as they apply to off-site traffic mitigation and utility improvements on non-tribal lands:

- J. Prior to the construction of any off-site traffic mitigation and utility infrastructure, a qualified biologist shall perform detailed, and if necessary, focused biological surveys of any undisturbed areas that would be affected by infrastructure development. If it is determined that off-site improvements have the potential to cause adverse effects to sensitive habitats, wetlands and/or Waters of the U.S., special-status species, and/or nesting birds, then project-specific mitigation requirements shall be developed and implemented and any necessary regulatory permits shall be obtained and adhered to.

**Section 6.12** will reduce the potential impacts of lighting to migratory birds. These mitigation measures include: shielding and downcast illumination of lighting, reduction of glare from lights and glass, and the inclusion of natural elements, such as earth paint tones and native building materials.

## **6.5 CULTURAL AND PALEONTOLOGICAL RESOURCES**

The following mitigation measures are required for the Preferred Alternative, in accordance with federal regulatory requirements:

- A. In the event of inadvertent discovery of prehistoric or historic archaeological or paleontological resources during construction-related earth-moving activities, the appropriate agency shall be notified. All work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR §61) can assess the significance of the find in consultation with the appropriate agency and the Tribe. If the find is determined to be significant by the archaeologist, then the archaeologist, in consultation with the appropriate agency and the Tribe, shall determine the appropriate course of action, including the development and implementation of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the archaeologist according to current professional standards.
- B. If human remains are discovered during ground-disturbing activities, all construction activities shall halt within 100 feet of the find. The Tribe, appropriate agency, and County Coroner shall be contacted immediately, and the County Coroner shall determine whether the remains are the result of criminal activity; if possible, a human osteologist shall be contacted as well. If Native American, the provisions of

appropriate federal or state laws is required. Construction shall not resume in the vicinity until final disposition of the remains has been determined.

- C. Prior to undertaking construction of off-site infrastructure, a qualified archaeologist shall conduct a survey for any areas to be disturbed during construction. If significant resources or significant archaeological sites are present, they shall be avoided, as feasible. If avoidance of such resources is not feasible, recordation of the sites shall be required, along with treatment as is recommended by the archaeologist after consultation with the State Historic Preservation Officer (SHPO) and, if the find is prehistoric, the Native American Heritage Commission (NAHC). If unknown resources are encountered during construction, recommendations, including the management recommendations listed in Mitigation Measures 6.5(A) and 6.5(8), shall be implemented to ensure that the resources are avoided, protected, and/or recorded. If off-site traffic mitigation occurs at the intersection of State Route (SR) 137 and SR-65, consistent with Mitigation Measure 6.7.3(J), identified resources shall be avoided by all project construction.

## **6.6 SOCIOECONOMICS**

The following mitigation measure is required in accordance with the anticipated requirements of Section 9.2 of the Compact for the Preferred Alternative:

- A. The Tribe shall implement policies at the new facility similar to or more effective than those in effect at the existing Eagle Mountain Casino, which include employee training, self-help brochures available on site, signage near automatic teller machines (ATMs) and cashiers, and self-banning procedures to help those who may be affected by problem gaming. The signage and brochures shall include advertising the problem gambler hotline and website.

## **6.7 TRANSPORTATION**

Where transportation infrastructure is shown as having an unacceptable level of service (LOS) with the addition of traffic from the Preferred Alternative (and caused at least in part from project traffic), the Tribe shall pay for a fair share of costs for the recommended mitigation (including right-of-way and any other environmental mitigation). In such cases, the Tribe shall be responsible for the incremental impact that the added project trips generate, calculated as a percentage of the costs involved for construction of the mitigation measure (referred to as the pro rata share). The pro rata share is calculated using the methodology presented in the California Department of Transportation (Caltrans) Guide for the Preparation of Traffic Impact Studies (Appendix I of the Final EIS). Weekday PM peak hour was chosen for pro rata share calculations because it generally represents the worst-case scenario; calculations are included in the traffic impact study (TIS; Appendix I of the Final EIS).

In accordance with the Memorandum of Understanding, the anticipated requirements of the Compact, and to prevent violation of federal, state and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the following traffic mitigation measures shall be implemented as identified within the TIS.

### **6.7.1 Construction**

The following mitigation measure is required under the Preferred Alternative to minimize transportation impacts associated with construction:

- A. A traffic management plan shall be prepared in accordance with standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (FHWA, 2003). The traffic management plan shall be submitted to each affected local jurisdiction and/or agency. Also, prior to construction, the contractor shall coordinate with emergency service providers to avoid obstructing emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the details of the construction schedule, location of construction activities, duration of the construction period, and any access restrictions that could impact emergency response services. Traffic management plans shall include details regarding emergency service coordination. Copies of the traffic management plans shall be provided to all affected emergency service providers.

### **6.7.2 Operation (Opening Year 2021)**

The Tribe shall make fair share contributions to the traffic mitigation measures identified below prior to initiation of project construction. Funds shall either be paid directly to the jurisdictional agency, or be placed in an escrow account for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design (funding shall be for design standards consistent with those required for similar facilities in the region, unless a deviation is approved by the entity with jurisdiction), obtain approvals/permits for, and construct the recommended road improvement. While the timing for the off-site roadway improvements is not within the Tribe's jurisdiction or ability to control, the Tribe shall make good faith efforts to assist the County and City with implementation of the improvements prior to opening day.

The following mitigation measures are required under the Preferred Alternative:

- B. The Tribe shall notify the City of Porterville of special events scheduled at the events center, and the Tribe shall meet with local agencies charged with traffic enforcement (including but not limited to the CHP, City of Porterville, and Tulare County) to obtain necessary permits and identify any necessary traffic control measures to be implemented. If determined to be necessary, a Traffic Management Plan (TMP) shall be prepared.
- C. SR-190/Rockford Road (Road 208). Conduct an Intersection Control Evaluation (ICE), and install a traffic signal or roundabout, pending the outcome of the ICE. Pro-rata share: 28.2 percent.
- D. Scranton Avenue/West Street. Install a traffic signal and widen northbound approach to accommodate left-turn lane or install a roundabout. Pro rata share: 85.6 percent.
- E. Scranton Avenue/Westwood Street. Install a traffic signal or a roundabout. Pro-rata share: 55.8 percent.

- F. The Tribe shall offer to enter into an agreement with the appropriate jurisdiction(s) regarding financial responsibility for improving the current conditions of West Street between Scranton Avenue and Yowlumne Avenue, Teapot Dome Avenue between Westwood Street (Road 224) and Newcomb Street, and Westwood Street between Scranton Avenue and approximately one half mile north of Scranton Avenue. The Tribe's one-time fair share towards these improvements would take into consideration other regional projects that contribute to traffic on these roadways, including the County's jail project. Based on the pro-rata fair share calculations provided in the TIS (Appendix I of the Final EIS) for Alternative A, the Tribe would be responsible for: 1) 100 percent of the cost of 1/3 mile of road pavement overlay on West Street between Scranton Avenue and Yowlumne Avenue, 2) 59.5 percent of the cost of one mile of road reconstruction on Teapot Dome Avenue between Westwood Street (Road 224) and Newcomb Street, and 3) 65.2 percent of the cost of 1/2 mile of road reconstruction immediately north of Scranton Avenue on Westwood Street.

### **6.7.3 Operation (Cumulative Year 2040)**

The Tribe shall make fair share contributions available for mitigation recommended for cumulative impacts prior to construction of the improvement. The timing for construction of each improvement will be at the discretion of the applicable jurisdictional agency. Funds shall be placed in an escrow account for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design (funding shall be for design standards consistent with those required for similar facilities in the region, unless a deviation is approved by the entity with jurisdiction), obtain approvals/permits for, and construct the recommended road improvement. While the timing for the off-site roadway improvements is not within the Tribe's jurisdiction or ability to control, the Tribe shall make good faith efforts to assist the County and City with implementation of improvements prior to 2040.

The following mitigation measures are required under the Preferred Alternative in the cumulative year 2040:

- G. SR-65 from Pioneer Avenue to SR-190: Upgrade facility to include auxiliary lanes between interchanges per Caltrans standards. Pro-rata share: 15.9 percent.
- H. SR-137/SR-63. Conduct an ICE if necessary. Widen northbound approach to accommodate an additional dedicated left turn lane, an additional dedicated thru lane and a dedicated right turn lane. Widen southbound approach to accommodate an additional thru lane. Widen eastbound approach to accommodate an additional dedicated left turn lane. Widen westbound approach to accommodate an additional dedicated thru lane and a dedicated right turn lane. Pro-rata share: 8.6 percent.
- I. SR-137/SR-65. Conduct an ICE if necessary, and widen eastbound approach to accommodate a dedicated thru lane with a shared thru/right turn lane. Pro rata share: 4.7 percent.
- J. SR-137/Road 204 (Spruce). Conduct an ICE if necessary, and widen westbound approach to accommodate two thru lanes and one free right turn-lane; widen southbound approach to accommodate dual-left turn lanes and shared thru-right lane;

widen eastbound approach to provide a thru and thru-right lane. Pro rata share: 4.6 percent.

- K. SR-190/Road 192. Conduct an ICE if necessary, and install a traffic signal or roundabout. Pro rata share: 31.0 percent.
- L. SR-190/Road 216. Conduct an ICE if necessary, and install a traffic signal or roundabout. Pro rata share: 14.7 percent.
- M. SR-198/Spruce Road (Road 204). Conduct an ICE if necessary. Traffic signal modifications to accommodate dual northbound left turn lanes and a shared thru/right lane. Eastbound approach, widen to accommodate dedicated right/thru/left lanes. Eastbound approach channelize right turn lane. Pro-rata share: 4.7 percent.
- N. Avenue 256/Spruce Road (Road 204). Install traffic signal or a roundabout. Pro-rata share: 7.0 percent.

## **6.8 LAND USE**

Mitigation in **Section 6.3**, **Section 6.7**, **Section 6.10**, and **Section 6.12** will reduce incompatibilities with neighboring land uses under the Preferred Alternative due to air quality, noise, traffic, and aesthetic impacts to less than significant levels.

## **6.9 PUBLIC SERVICES**

### **6.9.1 Solid Waste**

Implementation of the BMPs below, as well as **Mitigation Measure 6.3.2(C)(6)**, would reduce the amount of solid waste generated during construction. These measures are required for the Preferred Alternative in accordance with the Compact to prevent off-Reservation impacts associated with solid waste:

- A. Construction waste shall be recycled to the fullest extent practicable by diverting green waste and recyclable building materials (including, but not limited to, metals, steel, wood, etc.) away from the solid waste stream.

The following BMPs will be implemented for the Preferred Alternative to reduce the amount of solid waste generated on-site, in accordance with the Compact to prevent off-Reservation impacts associated with solid waste:

- B. A solid waste management plan for the new facility shall be developed and adopted by the Tribe that addresses recycling and solid waste reduction on site. These measures shall include, but not be limited to, the installation of a trash compactor for cardboard and paper products, and periodic waste stream audits.
- C. Security guards shall be trained to discourage littering on site.

## 6.9.2 Law Enforcement, Fire Protection, and Emergency Medical Services

The mitigation measures below are related to security and shall be implemented in accordance with the Memorandum of Understanding, the Compact, and the Tribe's Gaming Ordinance for the Preferred Alternative:

- D. Areas surrounding the gaming facilities shall have "No Loitering" signs in place, be well lit and be patrolled regularly by roving security guards.
- E. The Tribe shall conduct background checks of all gaming employees and ensure that all employees meet licensure requirements established by the Indian Gaming Regulatory Act (IGRA) and the Tribe's Gaming Ordinance.

The following mitigation measures shall be implemented in accordance with the Compact and the Tribe's Gaming Ordinance for the Preferred Alternative:

- F. Prior to operation the Tribe shall enter into agreements to reimburse the Porterville Police Department and/or the Tulare County Sheriffs Department for quantifiable direct and indirect costs incurred in conjunction with providing law enforcement services.
- G. Parking areas shall be well lit and monitored by parking staff, and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other similar criminal activity.
- H. The Tribe shall adopt a Responsible Alcoholic Beverage Policy at the facility that shall include, but not be limited to, checking identification of patrons and refusing service to those who have had enough to drink.
- I. The Tribe shall make annual payments to the City of Porterville and/or Tulare County to offset the cost of increased provision of law enforcement and *fire* protection/emergency medical services in amounts of at least \$275,870 for the Preferred Alternative.

The following industry standard BMP shall be implemented for the Preferred Alternative:

- J. During construction, any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order. This includes, but is not limited to, vehicles, heavy equipment, and chainsaws. Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. The contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.

### **6.9.3 Electricity, Natural Gas, and Telecommunications**

The following industry standard BMP shall be implemented to minimize potential impacts related to electricity and natural gas utilities. This measure is recommended for the Preferred Alternative:

- K. The Tribe shall contact USA North 811, which provides a free "Dig Alert" to all excavators (e.g., contractors, homeowners, and others) in central California, including Tulare County. This call shall automatically notify all utility service providers at the excavator's work site. In response, the utility service providers shall mark or stake the horizontal path of underground facilities, provide information about the facilities, and/or give clearance to dig.

## **6.10 NOISE**

### **6.10.1 Construction**

The following measure is required in accordance with local statutory requirements for construction of off-site utility improvements under the Preferred Alternative:

- A. In accordance with the City's noise ordinance, construction activities shall not take place on the Off-site Improvement Areas before 6:00 AM or after 9:00 PM on any day except Saturday or Sunday, or before 7:00 AM or after 5:00 PM on Saturday or Sunday.

### **6.10.2 Operation**

The following measures are required for the Preferred Alternative during operation to prevent violation of the Federal Noise Abatement Criteria (NAC) standards used by the Federal Highway Administration (FHWA) imposed for the protection of the environment (40 CFR 1508.27[b][10]):

- B. The Tribe shall fund 100 percent of a noise reduction wall at the residence located on Road 216 between SR-190 and Scranton Avenue (Avenue 136), which will reduce the ambient noise level by a minimum of 3 dBA Leq. If requested by the residence, in lieu of a sound wall, the Tribe shall fund acoustic windows or a vegetative wall.
- C. The Tribe shall fund 100 percent of a noise reduction wall at the three residences located adjacent to Scranton Avenue between Rockford Road (Road 208) and SR-65, which will reduce the ambient noise level by a minimum of 3 dBA Leq. If requested by the residence, in lieu of a sound wall, the Tribe shall fund acoustic windows or a vegetative wall.

## **6.11 HAZARDOUS MATERIALS**

The following measures are required to prevent violation of federal requirements related to hazardous materials for the Preferred Alternative:

- A. If the 40-acre site is selected as the location of the WRF, soil sampling shall occur on the site to ensure agricultural chemical contamination is not present. If sampling and testing indicates hazardous materials contamination, the contaminated soils and/or groundwater shall be properly removed and/or remediated by qualified professionals consistent with an approved remediation plan.
- B. If the 8-acre site is selected as the location of the WRF, soil sampling for lead shall be conducted on the site. Contaminated soils that are determined to be hazardous shall be properly removed and/or remediated by qualified professionals consistent with an approved remediation plan.

The following BMPs are required to prevent violation of federal requirements related to hazardous materials for the Preferred Alternative:

- C. Prior to accepting fill material, it shall be verified to be clean through evidence such as a Phase I Environmental Site Assessment (ESA), soil sampling, or other appropriate measures.
- D. Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. BMPs that are designed to reduce the potential for incidents/spills involving the hazardous materials include the following:
  - 1. To reduce the potential for accidental release, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment.
  - 2. Catch-pans shall be placed under equipment to catch potential spills during servicing.
  - 3. Refueling shall be conducted only with approved pumps, hoses, and nozzles.
  - 4. All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
  - 5. Vehicle engines shall be shut down during refueling.
  - 6. No smoking, open flames, or welding shall be allowed in refueling or service areas.
  - 7. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
  - 8. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
  - 9. Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, state, and federal regulations.
  - 10. All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure.

- E. In the event that contaminated soil and/or groundwater is encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Tribe shall consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.

## **6.12 AESTHETICS**

The following BMPs will be implemented in accordance with the Compact to prevent off-Reservation impacts associated with lighting and glare for the Preferred Alternative:

- A. Lighting shall consist of limiting pole-mounted lights to a maximum of 25 feet tall.
- B. All lighting shall be high-pressure sodium or light-emitting diode (LED) with cut-off lenses and downcast illumination, unless an alternative light configuration is needed for security or emergency purposes.
- C. Placement of lights on buildings shall be designed in accordance with Unified Facilities Criteria (UFC) 3-530-01, Interior, Exterior Lighting, and Controls so as not to cast light or glare off-site. No strobe lights, spotlights, or floodlights shall be used.
- D. Shielding, such as with a horizontal shroud, shall be used in accordance with UFC 3-350-01 for all outdoor lighting so as to ensure it is downcast.
- E. All exterior glass shall be non-reflective low-glare glass.
- F. Screening features and natural elements shall be integrated into the landscaping design of the project to screen the view of the facilities from directly adjacent existing residences.
- G. Design elements shall be incorporated into the project to minimize the impact of buildings and parking lots on the viewshed. These elements include:
  - 1. Incorporation of landscape amenities to complement buildings and parking areas, including setbacks, raised landscaped berms and plantings of trees and shrubs.
  - 2. Use earth tones in paints and coatings, and use native building materials such as stone.

## **6.13 MITIGATION MEASURES THAT ARE NOT ADOPTED**

Council on Environmental Quality (CEQ) NEPA regulations 40 C.F.R. § 1505.2(c) call for identification in the ROD of any mitigation measures specifically mentioned in the Final EIS that are not adopted. Because Alternative A has been selected by BIA in this ROD, mitigation measures for other alternatives in the Final EIS are not adopted.

The FEIS included a mitigation measure for Alternative A under Section 5.8.2 (f) (Operation - Opening year 2021 ), which required the widening of the eastbound approach to accommodate a left-turn lane at Scranton Avenue/SR-65. However, this intersection has recently been signalized and has been improved to include additional lanes for all approaches. Therefore, no additional improvements are necessary and this mitigation measure will not be adopted.

## **7.0 DECISION TO IMPLEMENT THE PROPOSED ACTION / PREFERRED ALTERNATIVE**

The Department has determined that it will implement the Proposed Action as identified within the Preferred Alternative (Alternative A) which includes the issuance of a Secretarial Determination and the fee-to-trust transfer of the 40-acre Ai\_r\_p ark Site and subsequent development of a casino-hotel complex. This decision has been made based upon the environmental impacts identified in the EIS, a consideration of economic and technical factors, as well as the BIA's policy goals and objectives and the purpose and need for the project.

Of the alternatives evaluated in the EIS, Alternative A would best meet the purposes and needs of the BIA, consistent with its statutory mission and responsibilities, to promote the long-term economic vitality and self-sufficiency, self-determination, and self-governance of the Tribe. The construction of a casino-resort and other supporting facilities on the Ai\_r\_p ark Site would provide the Tribe the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government. This would enable the tribal government to establish, fund and maintain governmental programs that offer a wide range of health, housing, education, and welfare services to Tribal members, as well as provide the Tribe, its members, and local communities with greater opportunities for employment and economic growth.

The development of Alternative A would meet the purpose and need of the Proposed Action better than the other development alternatives due to the greater environmental impacts of Alternatives Band D and the reduced revenues that would be expected from the operation of Alternatives C, D, and E (described in detail in Section 2.11 of the Final EIS). While Alternative A would have greater environmental impacts than the No Action Alternative, that alternative does not meet the pu\_r\_p ose and need for the Proposed Action, and the BMPs and mitigation measures adopted in this ROD adequately address the environmental impacts of the Preferred Alternative. Accordingly, the Department will implement the Proposed Action subject to implementation of the applicable BMPs and mitigation measures listed in **Section 6.0** and Attachment III of this ROD.

## **7.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS**

The Preferred Alternative is reasonably expected to result in beneficial effects for residents of Tulare County, the City of Porterville, the Tribe, and its members. Key beneficial effects include:

- Establishment of a land base for the Tribe to establish a viable business enterprise. Revenues from the operation of the casino would provide funding for a variety of health, housing, education, social, cultural, and other programs and services for tribal members, and provide employment opportunities for its members.
- Revenue generated from the development will also provide capital for other development/improvement opportunities, and will allow the Tribe to achieve tribal self-sufficiency, self-determination, and a strong, stable tribal government.
- Generation of approximately 1,165 full-time equivalent (FTE) employment positions during the construction period, with total wages of \$80.3 million.
- Considering the closure of the existing Eagle Mountain Casino, Alternative A would result in a direct net increase of 790 job opportunities within Tulare County. Net indirect and induced employment opportunities are estimated to total 166 and 119, respectively. Operational activities associated with Alternative A would generate an increase of \$34.6 million in wages in Tulare County. Direct wages are estimated to total approximately \$23.1 million. Indirect and induced wages are estimated to total \$7.2 million and \$4.3 million, respectively.
- State, county, and local taxes resulting from operating activities of approximately \$308,875 per year, after adjusting for the elimination of the property taxes on the Airpark Site, once it is taken into trust.
- The Memorandum of Understanding articulates certain one time and annual payments to the City of Porterville.
- Recurring revenues to the state and local agencies through the Tribal-State Gaming Compact.

## **7.2 ALTERNATIVES BAND D WOULD RESULT IN GREATER ENVIRONMENTAL IMPACTS AND REQUIRE ADDITIONAL MITIGATION**

Environmental impacts under Alternatives B, C Water Option 2, and D would be greater than those under the Preferred Alternative, as Alternatives B, C Water Option 2, and D involve drilling groundwater wells on-site, which would have the potential to negatively impact groundwater levels in the Tule Groundwater Sub-basin, which is currently classified as critically overdrafted. The Final EIS identified this as a significant adverse impact despite the implementation of BMPs and mitigation measures.

### **7.3 REDUCED INTENSITY ALTERNATIVE RESTRICTS BENEFICIAL EFFECTS**

The Reduced Intensity Alternative (Alternative C) would have similar environmental impacts but would generate less revenue than the Preferred Alternative. As a result, this Alternative would restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. The reduced economic and related benefits of Alternative C as well as the unavoidable significant impact to water resources under Water Option 2 make it a less viable option, which would fulfill the purpose and need of the Proposed Action to a lesser extent than the Preferred Alternative.

### **7.4 NON-GAMING AT THE AIRPARK SITE RESTRICTS BENEFICIAL EFFECTS TO THE TRIBE AND SURROUNDING COMMUNITY**

The non-gaming alternative at the Airport Site (Alternative D) would result in less employment and economic growth for both the Tribe and neighboring communities than from the Preferred Alternative. As a result, it would restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. The reduced economic and related benefits of Alternative D as well as the unavoidable significant impact to water resources make it a less viable option, which would fulfill the purpose and need of the Proposed Action to a lesser extent than the Preferred Alternative.

### **7.5 EXPANSION OF THE EXISTING EAGLE MOUNTAIN CASINO WOULD NOT ALLOW THE TRIBE TO ADEQUATELY PROVIDE GOVERNMENTAL & SOCIAL SERVICES**

Expansion of the Tribe's existing Eagle Mountain Casino (Alternative E) would not produce a substantial additional revenue stream to fund essential governmental, social, and other services. Furthermore, because of a water shortage on the Reservation, Alternative E would require trucking water into the Reservation to meet the needs of the proposed expansion. Because of the remote location of the site, the revenue generated by Alternative E would be substantially lower than under Alternative A and may not be sufficient to cover the costs of construction and increased operational costs associated with trucking in water supplies. Additionally, Alternative E would not assist the Tribe in achieving more efficient allocation of limited water supplies within the Reservation.

### **7.6 NO ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED**

The No Action Alternative (Alternative F) would not meet the stated purpose and need. Specifically, it would not improve the water supply reliability within the Reservation or provide a more stable income source that will enable the tribal government to provide essential social, housing, educational, health, and welfare programs. Therefore, the No Action Alternative would not promote the economic development and self-sufficiency of the Tribe. The No Action alternative also would likely result in substantially less economic benefits to Tulare County and the City of Porterville than any of the development alternatives.

**8.0 SIGNATURE**

By my signature, I indicate my decision to implement the Proposed Action and issue a Secretarial Determination of gaming eligibility pursuant to the Indian Gaming Regulatory Act. A decision whether to accept the 40-acre Airpark Site in trust pursuant to the Indian Reorganization Act, 25 U.S.C. § 5108, and its implementing regulations at 25 C.F.R. Part 151 will be made at a later date.

OCT 07 2019

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Date

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Assistant Secretary - Indian Affairs