

**Secretarial Determination for the Tejon Indian Tribe
Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(A)¹**

Decision

In 2014, the Tejon Indian Tribe (Tribe) submitted an application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) acquire in trust approximately 320.04 acres of land² (Mettler Site) in Kern County, California, for gaming and other purposes.³ The Tribe also requested that the Secretary of the Interior (Secretary) determine whether the Tribe is eligible to conduct gaming on the Mettler Site pursuant to the Indian Gaming Regulatory Act (IGRA).⁴ The Tribe proposes to construct a casino-resort, including a hotel, recreational vehicle (RV) park, and a joint fire/sheriff station on the Mettler Site.

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

¹ See Table of Contents in Attachment 1. Much of the information relied on in this Secretarial Determination is confidential commercial and/or financial information of the Tribe and would not customarily be released to the public, therefore, it is confidential and should be withheld from the public under Exemption 4 of the Freedom of Information Act. See 43 C.F.R. §§ 2.23 and 2.24.

² The Tribe's application used the figure 306 acres of land. See Memorandum to Director, Office of Indian Gaming, from Regional Director, Pacific Region, Bureau of Indian Affairs (December 9, 2020) at 1, *transmitting Findings of the Pacific Region on the 25 C.F.R. Part 292 Factors for the Tejon Indian Tribe's Homeland Parcel/Mettler Site (December 9, 2020)* (hereafter Regional Director's Findings of Fact). Without changes to the boundaries of the Mettler Site, the Bureau of Land Management surveyors clarified and corrected the acreage in July 2020 to approximately 320.04 acres. The Tribe's use of 306 acres was based on Kern County's report of 305.82 acres that it used for tax purposes. However, the acreage shown on Kern County tax documents is for tax assessment purposes only and should not be used for title transfer. See Memorandum to Arvada Wolifn, Pacific Regional Office, from H. Alan Kimbrough, BLM Indian Lands Surveyor (July 29, 2020). The clarified and corrected acreage does not affect the conclusions of the Environmental Impact Statement, which describes the Mettler site as having 306 acres, because it does not represent physical changes on the land or changes to environmental conditions.

³ The Tribe sent its initial application by letter dated May 4, 2014. See Letter to Carmen Facio, Realty Office, Pacific Regional Office, Bureau of Indian Affairs, from Kathryn M. Morgan, Chair, Tejon Indian Tribe (May 4, 2014). In response, the Pacific Regional Office requested additional information to complete the Tribe's application. See Letter to Kathryn M. Morgan, Chair, Tejon Indian Tribe, from Regional Director, Pacific Regional Office (July 16, 2014). The Tribe responded in part and requested additional time. See Letter to Amy Dutschke, Regional Director, from Kathryn Montes Morgan, Chair, Tenon Indian Tribe (Aug. 8, 2014). In 2018, the Tribe supplemented its application. See Letter to Amy Dutschke, Regional Director, from Octavio Escobedo, Chairman, Tejon Indian Tribe (Oct. 24, 2018), *transmitting Tejon Indian Tribe's Supplemented and Restated Fee-to-Trust Application (October 24, 2018)*.

⁴ See Letter to Tara Sweeney, Assistant Secretary – Indian Affairs, from Octavio Escabedo III, Chairman, Tejon Indian Tribe (Aug. 6, 2020), *transmitting Tejon Indian Tribe Request for Secretarial Determination Pursuant to 25 U.S.C. § 2719(b)(1)(A) and 25 C.F.R. Part 292, Subpart C (August 6, 2020)* (Tribe's Secretarial Determination Application).

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

Under this exception, the governor of the state in which the gaming activity is to be conducted must concur in the Secretarial Determination before the applicant tribe may operate a gaming establishment on the proposed site.

I have completed my review of the Tribe's application and determined that the proposed gaming establishment at the Mettler Site would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community.

Proposed Project

The Proposed Project consists of casino-resort developed as a Hard Rock franchise, including a hotel, multi-purpose event center, convention space, restaurants, parking, RV park, and a joint fire/sheriff station on approximately 80 acres of the Mettler Site.⁵ The approximately 715,800-square foot (sf) Proposed Project will include a 166,500-sf gaming floor with electronic gaming machines and table games, a 400-room hotel with a multi-use facility, 4,500 parking spaces, and 220 RV parking spaces. The Proposed Project will also include restaurants, retail space, joint fire/sheriff station, water infrastructure, and wastewater treatment and disposal facilities.⁶ See Attachment 2 for a location map.

Tejon Indian Tribe

In 1851, the United States established treaties with certain tribes including the Tejon Tribe (herein referred to as the 1851 Treaty). Under the terms of the 1851 Treaty, the signatory tribes agreed to cede their aboriginal lands to the United States in exchange for a 763,000-acre reservation between Tejon Pass and the Kern River. By February 1852, the 1851 Treaty, along with 17 additional treaties negotiated with other California Indians, had been submitted to the United States Senate for consideration and ratification. On June 8, 1852, the Senate declined to ratify any of the treaties negotiated with the California tribes. Accordingly, the described reservation, identified as Royce Area 285,⁷ was never formally set aside. The Mettler Site is located within the boundaries of the reservation that would have been set aside had the 1851 treaty been ratified.

⁵ Final Environmental Impact Statement, Tejon Indian Tribe Trust Acquisition and Casino Project (Oct. 2020), Vol. I (hereafter FEIS) § 2.2.1 (available at www.tejoneis.com).

⁶ *Id.*

⁷ Charles C. Royce, Eighteenth Annual Report of the Bureau of American Ethnology, Part 2, p. 782 (Bureau of American Ethnology, 1851).

The Mettler Site is located within 15 miles of the Tribe's government offices.⁸ Until recently, the Tribe had no land held in trust.⁹

Tribal Need

The Tribe needs a stable revenue source to begin funding economic development and essential governmental services. Without a revenue source, the Tribe has a very limited capacity to provide for the social welfare and other needs of its members. While the Tribe has obtained some federal funding to provide basic governmental services for its members, it is still drastically underfunded.¹⁰ The Proposed Project will allow the Tribe to finance and build tribal facilities such as housing, a health clinic, schools, and provide other essential governmental services for its members.¹¹

The Tribe has a population of approximately 1,050.¹² More than 60 percent of the Tribe's members reside in Kern County.¹³ The median age among tribal members is significantly lower when compared to the United States population overall. Approximately 32 percent of the Tribe's members are under the age of 18 with a median age of 26.¹⁴ In comparison, 24 percent of the United States' population is under the age of 18 with a median age of 38. Furthermore, Tejon elders represent 5 percent of the population compared to the national average of 13 percent.¹⁵

The median annual household income is \$17,208, and more than half of the population lives below the federal poverty line for a household of three.¹⁶ One-third of tribal households participate in the Supplemental Nutrition Assistance Program, nearly double Kern County's overall rate of 17 percent.¹⁷

Tribal Government and Administration

The Tribe provides few tribal programs for its members. The programs that the Tribe provides rely heavily on federal funding and ongoing distributions from the Revenue Sharing Trust Fund established by tribal-state gaming compacts in California.¹⁸ The Tribe's annual budget for government services is \$3 million, which permits employment of only nine full-time tribal

⁸ FEIS § 1.3.

⁹ On October 23, 2020, the United States accepted the Tribal Community Center Property containing approximately 10.46 acres in trust for the Tribe. *See* Notice, Land Acquisitions; Tejon Indian Tribe, 85 Fed. Reg. 55471 (Sept. 8, 2020) (notice that on Sept. 1, 2020 the Assistant Secretary- Indian Affairs made a decision to acquire an approximately 10.36-acre parcel in trust for the Tejon Tribe).

¹⁰ Regional Director's Findings of Fact at 1-2.

¹¹ Tribe's Secretarial Determination Application at 1.

¹² FEIS § 3.7.1.

¹³ Tribe's Secretarial Determination Application at 5.

¹⁴ FEIS § 3.7.1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Regional Director's Findings of Fact at 7.

positions.¹⁹ The Tribe relies on 136 tribal volunteers²⁰ to provide governmental services such as enrollment, cultural resources, and education.²¹ With additional revenue from the Proposed Project, the Tribe intends to construct a tribal government center to house employees and tribal programs in order to have a fully functioning tribal government. The Tribe anticipates that construction of the center will cost over \$10 million and will need at least a \$5,703,580 annual operating budget.²²

Law Enforcement and Emergency Management Services

The Tribe does not have its own law enforcement or emergency services. The Tribe relies on local jurisdictions for these services. In 2019, the Tribe entered into an Intergovernmental Agreement (IGA) with Kern County to construct a new fire/sheriff joint substation to serve the Mettler Site.²³ In addition, the Tribe anticipates the need for tribal law enforcement to serve its community. Under the IGA, the joint substation will cost approximately \$10 million to construct.²⁴ The Tribe estimates that new patrol cars and fire trucks will cost approximately \$2,892,000. It will also cost approximately \$5,375,000 to staff and operate both stations annually. These costs will increase annually as provided in the agreement. As the Tribe's governing infrastructure expands, the Tribe will need to establish a judicial system with judges, administrators, and tribal court facilities. The Tribe also anticipates law enforcement needs to serve its community. The Tribe estimates that costs of these needs will be a minimum of \$500,409 annually.²⁵

Housing and Related Services

The Tribe has critical housing needs. The Tribe anticipates a minimum annual unmet need of \$9,468,124.²⁶ Nationally 64 percent either own or have a home mortgage, however, 62 percent of tribal members either rent or live at a location without payment of rent.²⁷ The Tribe reports that it needs to establish a housing authority to address the housing shortage and assist tribal members in financing and securing their own homes. Using revenue from the Proposed Project, the Tribe intends to construct an elder housing program to provide homes to the Tribe's elderly and also assist the Tribe's elders to make repairs and maintain their existing homes.²⁸

¹⁹ Tribe's Secretarial Determination Application at 7.

²⁰ *Id.* at Attachment F at 5 (hereafter Tribal Needs Report).

²¹ *Id.* at 7.

²² *Id.*

²³ See Intergovernmental Agreement (July 23, 2019), in FEIS, Appendix D.

²⁴ Tribal Needs Report at 13.

²⁵ *Id.*

²⁶ *Id.* at 12.

²⁷ FEIS § 3.7.1.

²⁸ Tribal Needs Report at 12.

Health Services

The Tribe has significant health needs among its members. The Tribe notes that tribal members have poor access to healthcare, little access to health insurance, and an unusually high percentage of its members in need of acute or preventative healthcare support.²⁹ The Tribe needs to construct a health clinic, at a cost of \$4.4 million, to provide basic services to its members, including dental services, elder care, substance abuse programs, and preventative health programs. The Tribe estimates minimum annual operating costs to be at least \$16,738,352.³⁰

Social Services

The Tribe's members need significant levels of social services but the Tribe reports that it has no social service workers and cannot provide assistance to children, adults, or families.³¹ The Tribe lacks the resources to implement proper safeguards for youth protection. The Tribe needs staff to deliver social services to children and families, including support for family services, kinship care, community support, veterans' services, and child support enforcement. The Tribe anticipates that it will need specialists and additional resources to ensure Tribal members receive the proper representation and services they need.³²

Education/Career Training

Tribal members lag behind both Kern County residents and the United States in education. While 15.8 percent of Kern County and 32.5 percent of the United States hold a bachelor's degree, only 3 percent of Tejon members have attained a comparable level of education.³³

The Tribe has significant needs for tribal education services, language and art programs, libraries, and cultural heritage. The Tribe estimates it has annual unfunded operational budget of at least \$11,682,287.³⁴ The Tribe reports that it needs educational programs for early childhood learning, K-12 tribal school with a language immersion program, before and after school care, day care, tribal scholarships, adult vocational training and GED classes, a library, and language and cultural resources.³⁵ With revenue from the Proposed Project, the Tribe will establish and operate its own tribal programs to incorporate its own cultural values and traditions, including language learning programs.³⁶

In addition to these programs, the Tribe needs additional funding for economic development, cultural preservation, transportation services, environmental protection, among other needs. The

²⁹ *Id.* at 3.

³⁰ *Id.* at 10.

³¹ *Id.* at 5.

³² *Id.* at 11-12.

³³ *Id.* at 4.

³⁴ *Id.* at 8.

³⁵ *Id.* at 8-9.

³⁶ *Id.* at 9.

increase in revenue from the Proposed Project will provide financial resources to fund tribal programs and provide resources to its members.

Review of the Tribe's Application Pursuant to IGRA and Part 292, Subpart C

The Department's regulations at 25 C.F.R. Part 292 set forth the procedures for implementing Section 20 of IGRA. Subpart C of Part 292 governs Secretarial Determinations.

Sections 292.13 through 292.15 identify the conditions under which a tribe may conduct gaming.

Sections 292.16 through 292.18 identify the information that must be included in a tribe's request for a Secretarial Determination.

Section 292.17 pertains to an evaluation of whether the gaming establishment would be in the best interest of the tribe and its members.

Section 292.18 pertains to an evaluation of whether there is detriment to the surrounding community.

Application Contents

Section 292.16 provides that a tribe's application requesting a Secretarial Determination under section 292.13 must include the following information:

- (a) *The full name, address, and telephone number of the tribe submitting the application.*

Tejon Indian Tribe
4941 David Road
Bakersfield, CA 93307
(661) 834-8566

- (b) *A description of the location of the land, including a legal description supported by a survey or other document.*

The Mettler Site is located in an unincorporated portion of the County, west of the Town of Mettler and State Route 99, north of State Route 166, east of Interstate 5, south of Valpredo Road, and approximately 14 miles south of the City of Bakersfield.³⁷ The Mettler Site includes four parcels identified as tax Assessor's Parcel Numbers APN: 238-204-02, APN: 238-204-04, APN: 238-204-07, and APN: 238-204-14.³⁸ The legal description of the Mettler Site is included as Attachment 3.

³⁷ FEIS § 2.2.1.

³⁸ Regional Director's Findings of Fact at 4.

(c) Proof of identity of present ownership and title status of the land.

The Mettler Site is owned in fee by SCCR Tejon, LLC, a Nevada limited liability company that is majority owned by Hard Rock International (Hard Rock), which is wholly owned by the Seminole Tribe of Florida.³⁹ The Tribe entered into an agreement with SCCR Tejon, LLC to transfer the property to the United States to be held in trust and develop the Proposed Project on the Mettler Site.⁴⁰ The Tribe provided a commitment for title insurance, identified as File No. 1503-5992479, effective July 12, 2019, issued by First American Title Insurance Company, which shows the current ownership of the Site in fee simple status.⁴¹

(d) Distance of the land from the Tribe's reservation or trust lands, if any, and tribal government headquarters.

The Mettler Site is located approximately five miles from the Tribe's headquarters on the Tribal Center Parcel, which was acquired in trust on October 23, 2020.⁴² Prior to the trust acquisition of the Tribal Community Center Property the Tribe was landless. The Proposed Project is located within the area designated as Tribe's reservation in the unratified 1851 Treaty.

(e) Information required by section 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members.

As discussed more fully below under Section 292.17, the Tribe submitted the required information.

(f) Information required by section 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community.

As discussed more fully below under Section 292.18, the Tribe submitted the required information.

(g) The authorizing resolution from the tribe submitting the application.

The Tribe authorized submission of its application pursuant to Resolution No. T2014-30 (May 11, 2014). The Resolution petitions the Secretary to: (1) determine that the proposed project would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, and requests that the Governor of California concur in the Secretary's determination; and (2) acquire the Mettler Site in trust for the benefit of the Tribe.⁴³

³⁹ Tribe's Secretarial Determination Application at 1.

⁴⁰ Regional Director's Findings of Fact at 5

⁴¹ *Id.*

⁴² *Id.* See Notice, Land Acquisitions; Tejon Indian Tribe, 85 Fed. Reg. 55471 (Sept. 8, 2020).

⁴³ Regional Director's Findings of Fact at 5.

- (h) *The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C § 2710, if any.*

The Tribe has not yet submitted a gaming ordinance to the National Indian Gaming Commission (NIGC).⁴⁴

- (i) *The tribe's organic documents, if any.*

The Tribe is organized under the Indian Reorganization Act. The Tribe is governed by its Constitution and Bylaws that were established on July 18, 2015, and last amended on April 21, 2018.⁴⁵

- (j) *The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated.*

The Tribe has not negotiated a class III gaming compact with the State of California. The Tribe intends to enter into a compact similar to what other tribes have in California.⁴⁶

- (k) *If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment.*

The approximately 715,800-square-sf Proposed Project will include a 166,500-sf gaming floor, 73,300-sf restaurant space, 226,000-sf hotel, 77,000-sf back of house space, and 177,000-sf entertainment/retail/mixed-use space.

- (l) *A copy of the existing or proposed management contract required to be approved by the NIGC under 25 U.S.C. § 2711 and 25 CFR Part 533, if any.*

The Tribe provided a proposed Management Agreement dated August 25, 2014, between the Tejon Indian Tribe and SCCR Tejon Management, LLC, for review and approval by the NIGC.⁴⁷

Analysis of Best Interest of the Tribe and Its Members

Section 292.17 provides that an application must contain:

- (a) *Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe.*

⁴⁴ Tribe's Secretarial Determination Application at 21.

⁴⁵ Regional Director's Findings of Fact at 6.

⁴⁶ Tribe's Secretarial Determination Application at 22.

⁴⁷ Regional Director's Findings of Fact at 7.

When considering whether a proposed gaming project is in the best interest of a tribe and its members, the Department examines the income statement, which projects the income and expenses in accordance with generally accepted accounting principles. The Department uses the income data to determine the likely profitability of a proposed gaming project. The Department also reviews the balance sheet, which lists assets, liabilities, and capital. From the balance sheet, it identifies ratios to determine if a proposed gaming project will grow, and whether the tribe will have the resources to pay its obligations in the short-term and long-term. It also allows the Department to review the ownership composition of the proposed gaming project.

Cash flow statements project the distribution to the various stakeholders, such as debt holders and owners. They project ongoing investments the tribe will make, debt that will be incurred or repaid, and the projected utilization of non-cash expenses, such as depreciation and amortization. The Department reviews cash flow statements to determine the amounts that will go to the manager/developer, the debt holders, the state and its political subdivisions, and the tribe. From cash flow statements, the Department can generally determine whether the tribe will be the primary beneficiary of the proposed gaming project.

Because the financial documents are based on projections rather than actual performance, the Department examines the financial information to determine whether they are reasonable, which assists in reaching conclusions that the proposed gaming project will likely perform according to the projections.

Reports

The Tribe submitted several reports:

- The *Tejon Economic and Community Impact Analysis* (Economic Impact Analysis) prepared by the Innovation Group.⁴⁸ The Economic Impact Analysis analyzes impacts to the local economy and the Tribe from construction of the Proposed Project and its subsequent operation. The Innovation Group based the Economic Impact Analysis on a Gaming Market Assessment included in the report. The Gaming Market Assessment uses a complex drive-time gravity model that measures gamer visits, propensity, frequency, Market Potential Index, win per visit, and attraction factors.⁴⁹ The assessment estimates gamer visits and resulting gaming revenue, as well as “win per visit” and “win per position” per day for the facility.⁵⁰ The gravity model included the identification of 12 discrete market areas based on drive times and other geographic features and the

⁴⁸ The Innovation Group, *Economic & Community Impact Analysis, Tejon Indian Tribe, Kern County, CA* (December 2018) (hereafter Economic Impact Analysis), in FEIS, Appendix I.

⁴⁹ The gravity model defines the behavior of a population based on travel distance and the availability of goods or services at various locations. The general form of the equation is that attraction is directly related to a measure of availability such as square feet and inversely related to the square of the travel distance. Thus, the gravity model quantifies the effect of distance on the behavior of a potential patron and considers the impact of competing venues. See Economic Impact Analysis at 13-15.

⁵⁰ *Id.* at 13.

competitive environment. Operating impacts are based on the Innovation Group's internal models.

- Financial Projections that include pro-forma financing statements, income statement, balance sheet, cash flow statement, and financing assumptions, which provide anticipated financial performance of the Proposed Project for its first 10 years of operation.⁵¹
- An Economic Benefits Plan and additional confidential agreements concerning the development and management of the Proposed Project by SCCR Tejon, LLC.⁵² The Economic Benefits Plan outlines the anticipated economic benefits that will be generated by the Proposed Project. The development and management agreements contain the terms agreed upon between the Tribe and SCCR Tejon, LLC, to develop and manage the Proposed Project.

I find these reports to be reasonable by industry standards.

Analysis

The Economic Impact Analysis estimates that construction and development of the gaming facility and hotel will cost \$596,000,000.⁵³ The Economic Impact Analysis assumes the Proposed Project will be open by 2023, with its first full year of operations in 2024.

The Economic Impact Analysis projects that based on 2018 data, the market includes gamers from the 12 identified market areas.⁵⁴ The Innovation Group estimates the Proposed Project will annually capture an average of 14.9 percent of gamer visits of the total market, or 4,103,893 gaming visits with an average win per visit of \$85 during the first year of operation.⁵⁵ When including out of market gaming visits, the total number of gaming visits increases to 4,417,841.

In total, the Economic Analysis estimates that the Proposed Project's total direct revenue for the first year of operation will be \$378.2 million, including \$327 million from gaming revenue,

⁵¹ Tribe's Secretarial Determination Application, Attachment E, Financial Projections.

⁵² *Id.* at Attachment E-1, Economic Benefits Plan (2020). The Tribe's application includes Title Documents and Transfer Agreement, Financial Projections, an Economic Benefits Plan, a First Amendment to Development Agreement between Tejon Indian Tribe and SCCR Tejon Development, LLC, and a Management Contract. These documents contain the Tribe's commercial and/or financial information which is customarily and actually treated as private by the Tribe and was submitted to the Department under an assurance of privacy. The Department will withhold these documents in their entirety from the public because they are confidential within the meaning of Exemption 4 of the Freedom of Information Act (FOIA) 43 C.F.R. §§ 2.23 and 2.24. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

⁵³ Economic Impact Analysis at 19 - 20.

⁵⁴ The Economic Impact Analysis identified the Tejon Market Area as including twelve distinct market areas from which the Proposed Project will draw visitors. These include the following: Primary, Secondary West, Secondary Northwest, Lake Isabella, Secondary East, Palmdale, Santa Clarita, Thousand Oaks, Tertiary North West, Tertiary North, Porterville, and Los Angeles. Economic Impact Analysis at 17.

⁵⁵ *Id.* at 21.

\$15.1 million from the hotel, \$32.7 million from food and beverage, and \$13.4 million from entertainment.⁵⁶ The hotel is an important component of the development because it increases the earnings of the Proposed Project by increasing the length of stay for visitors and by increasing the propensity of visitors and the length of stay for those who come to the facility. Both of which increase the earnings derived from each visitor. The hotel also produces its own revenue from room rental. Similar to the hotel, the restaurants and other amenities at the gaming facility increase the attractiveness of the facility and increase the propensity and frequency of visits.

The Tribe anticipates the class II and class III gaming at the Proposed Project will generate increasing net revenue to the Tribe over the first ten years of operation.⁵⁷ The analysis shows detailed annual projected gross revenues and expenses for each category of operations including, casino gaming, hotel, food and beverage, entertainment, retail, spa and other income.⁵⁸ Gross revenues are expected to increase by 11 percent between years 1 and 2, followed by an increase of 4.8 percent for year 3. The projections anticipate a modest 2 percent increase for the following 7 years.⁵⁹ The documents submitted show that the proposed gaming project will grow and that it will have the resources to pay its obligations in the short term and long term.

The Tribe submitted the required income statements that show net revenues for the first ten years of the Proposed Project. Based on the analysis prepared by SCCR Tejon, LLC, the loan to construct and begin operation the Proposed Project will be subject to an interest rate of 11 percent. The financial analysis projects the Tribe will refinance in year 3 and then steadily pay down the principal.⁶⁰ The financial submissions show that the Proposed Project will have sufficient earnings before interest, tax, depreciation, amortization, and management fees increasing each year through year ten.⁶¹ The income statements and other financial submissions show that the proposed project will be profitable.

The Tribe submitted the required financial statements that shows that the developer will be paid a percentage of net revenues as a management fee from years one through seven.⁶² The Tribe will also pay a development fee of a percentage of net revenue for years one through seven.⁶³ The Tribe will make one-time and annual payments to Kern County.⁶⁴ Based on the Proposed Project operating 2000 gaming machines and 75 table games, the Tribe will make annual revenue sharing payments to the State of California.⁶⁵ The cash flow to the Tribe, coupled with

⁵⁶ *Id.* at 30 and Table 17.

⁵⁷ Economic Benefits Plan at 2.

⁵⁸ *Id.* at 3.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 1.

⁶² *Id.* at 1, 19.

⁶³ *Id.*

⁶⁴ *Id.* at 1, 18.

⁶⁵ *Id.* at 5. These are projected costs because the Tribe does not currently have a tribal-state gaming compact with the State of California. See Economic Impact Analysis at 56.

the Tribe's equity in the Proposed Project over ten years, shows the Tribe will be the primary beneficiary of the Proposed Project.

The Tribe submitted the required projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the Tribe. I find the financial projections reasonable, based on the underlying reports, and conclude that the Proposed Project would provide much needed revenue for the Tribe.

(b) Projected tribal employment, job training, and career development

The Proposed Project will create employment opportunities that will benefit tribal members and residents of Kern County. Construction of the proposed project will create 3,974 total jobs (2,879 direct and 1,095 indirect) with wages and benefits estimated to be \$233.1 million.⁶⁶ Operation of the Facility will create 3,594 total jobs (2,356 direct and 1,238 indirect) with total wages and benefits estimated to be \$161.3 million.⁶⁷

The Tribe provides a tribal member preference when hiring employees.⁶⁸ The Tribe's members need or will need employment, job training, and career development. More than 60 percent of the tribal members reside in Kern County.⁶⁹ The Tribe and its management partners, the Seminole Tribe and Hard Rock, are committed to investing in job training and career development for tribal members and Kern County residents.⁷⁰ The IGA expressly includes a local hiring provision that encourages at least 50 percent of employees be from local communities in Kern County.⁷¹ The IGA provides for coordination with local training programs and local job fairs. **Hard Rock expects to invest over \$15 million in preopening wages and job training before the facilities open and \$200,000 annually after opening.**⁷² The Tribe's management partner has numerous programs in place to encourage and enhance the hiring, development and training of tribal members to provide quality educational and employment opportunities.

The Tribe is currently able to employ only nine full-time individuals and relies heavily on volunteers to serve on various governmental committees and provide governmental services to the elderly and youth. In addition to creating jobs at the Proposed Project, the development will create jobs with the Tribe, which intends to reinvest net gaming revenues to hire individuals in order to provide governmental services.⁷³

⁶⁶ FEIS § 3.7.2, Table 3.7-4.

⁶⁷ *Id.*

⁶⁸ Tribe's Secretarial Determination Application at 5.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 6.

I find that the Proposed Project will create meaningful employment opportunities and increased opportunities for job training and career development for tribal members.

(c) Projected benefits to the tribe and its members from tourism

Increased tourism in the Kern County area will benefit the Tribe and its members. The Tribe intends to use the Mettler Site for a number of tourism-related purposes, including an RV park, recreational facilities that could host local athletic tournaments, a cultural center, and Hard Rock amenities associated with the Proposed Project, including restaurants, a hotel and conference space, and a concert venue.⁷⁴ Based on the number of individuals visiting the Proposed Project, it is reasonable to conclude that some of the visitors will use the additional tourism-related amenities. The Tribe and its members will derive benefits from tourism.

(d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income

The Tribe has many significant unmet needs. Currently, it provides governmental services on a budget of approximately \$3 million.⁷⁵ The funding primarily comes from federal appropriations through the BIA, Indian Health Service (IHS), Department of Housing and Urban Development (HUD), and the Environmental Protection Agency.⁷⁶ In addition, one third of the Tribe's budget is funded from the Revenue Sharing Trust Fund established through tribal-state gaming in California.⁷⁷

The Proposed Project will reduce dependence on government funding and increase available revenue to operate the Tribe's governmental programs and services. The Tribe anticipates the increased income will have a beneficial effect by funding programs that serve its members and by providing additional employment opportunities with the tribal government.

The Tribe will use revenue from the Proposed Project to fund core tribal programs such as administration, education and culture, health and social services, environmental, elder care, housing, law enforcement and the judiciary, and public works. For example, the Tribe plans to invest net revenues in tribal infrastructure.⁷⁸ Aside from its tribal headquarters site recently purchased using HUD funding, the Tribe does not have any land or infrastructure.⁷⁹ The tribal headquarters site requires significant rehabilitation and repair, which is estimated to cost \$700,000 with annual maintenance and repair costs of \$120,000.⁸⁰

⁷⁴ Regional Director's Findings of Fact at 11.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Tribe's Secretarial Determination Application at 9.

⁷⁹ Regional Director's Findings of Fact at 12.

⁸⁰ *Id.*

The Tribe reports that the IHS projects a forty-year waiting list for the construction of new health care facilities in California.⁸¹ The Tribe proposes to construct a health care clinic on the Mettler Site at an estimated cost of nearly \$4 million in construction and \$750,000 to equip the clinic. Annual operational costs will be borne by the Tribe from net gaming revenues.⁸²

The Tribe's application shows that the Tribe will use the increased income from the Proposed Project to address unmet tribal needs.⁸³

(e) Projected benefits to the relationship between the tribe and non-Indian communities

The Proposed Project will enhance the relationship between the Tribe and the local communities. The Tribe has established a strong relationship with Kern County and the neighboring communities and expects the development and operation of the Proposed Project to further strengthen those relationships.⁸⁴ The Tribe has engaged in community outreach efforts that have resulted in many local community members and organizations expressing enthusiasm for the Proposed Project. The local support is demonstrated by the letters of support included in the Tribe's application. The Tribe received letters of support from the groups that represent over 6,000 small business in Kern County.⁸⁵

As discussed above, the Proposed Project will generate substantial economic output for the region from construction and operation of the Proposed.⁸⁶ Ongoing operations would generate an estimated \$5.4 million in tax revenue to local governments.⁸⁷ Additionally, under the IGA with Kern County, the Tribe agrees to pay Kern County up to \$13.3 million in one-time payments and \$8.1 million in recurring payments.⁸⁸ The benefits to relationships between the Tribe and non-Indian communities also include revenue-sharing opportunities, employment and job training opportunities, and tourism dollars that will be spent in the local communities.

The development and operation of the Proposed Project has benefitted the Tribe's relationship with the local non-Indian communities.⁸⁹

⁸¹ Tribe's Secretarial Determination Application at 7.

⁸² *Id.*

⁸³ See Regional Director's Findings of Fact at 12.

⁸⁴ *Id.*

⁸⁵ *Id.* Notable organizations sending in letters of support include: Tejon Ranch, Greater Bakersfield Chamber of Commerce, Kern County Hispanic Chamber of Commerce, Black Chamber of Commerce, Kern County Taxpayers' Association, Kern County Economic Development Corporation, Bakersfield Board of Realtors, Taft Chamber of Commerce, and North of the River Chamber of Commerce.

⁸⁶ FEIS § 3.7.4.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Regional Director's Findings of Facts at 12.

(f) *Possible adverse impacts on the tribe and its members and plans for addressing those impacts*

Neither the Tribe nor the EIS has identified any adverse impacts to the Tribe or its members from the Proposed Project.⁹⁰ Although, problem gambling prevalence is not anticipated to increase, the Tribe has committed to dedicate at least \$50,000 annually to assist those struggling with problem gambling.⁹¹ The Tribe intends to implement multiple resources to mitigate problem gaming, including employee training, self-help brochures available on-site, signage near automatic teller machines and cashiers, and self-banning procedures to help those who may be affected by problem gaming. The signage and brochures should include problem gambler hotlines and websites.⁹²

(g) *Distance of the land from the location where the tribe maintains core governmental functions*

The Tribe's headquarters is located less than five miles from the Mettler Site.

(h) *Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States.*

The Tribe submitted proof that it holds contractual rights to cause the lands to be transferred from a third party directly to the United States. The Corporation Grant Deed recorded July 31, 2018, as Document No. 218096337 of the Official Records of Kern County shows SCCR Tejon, LLC, a Nevada limited liability company, currently holds title to the property.⁹³ SCCR Tejon, LLC will transfer the title to the Mettler Site directly to the United States to be held in trust for the Tribe after Notice of Intent to take the property in trust has been published.⁹⁴

(i) *Evidence of significant historical connections, if any, to the land.*

The Department's regulations require the Secretary to weigh the existence of a historical connection, if any, between an applicant tribe and its Mettler Site as a factor in determining whether gaming on the Mettler Site would be in the best interest of the Tribe and its members.⁹⁵

The Tribe has significant connections to the Mettler Site. The Mettler Site is located within the area reserved for the Tejon Tribe's ancestors in the unratified 1851 Treaty with the United States. The Mettler Site is located less than 10 miles from former tribal villages, approximately 5 miles

⁹⁰ Tribe's Secretarial Determination Application at 11.

⁹¹ *Id.*

⁹² FEIS § 2.

⁹³ Regional Director's Findings of Fact at 13.

⁹⁴ Tribe's Secretarial Determination Application, Attachment J, *Development Agreement*, at § 2.8.

⁹⁵ 25 C.F.R. § 292.17(i) does not require an applicant tribe to demonstrate an aboriginal, cultural, or historical connection to the land in order to receive a positive Secretarial Determination.

from the historic Kern Lake, which was used by the Tribe's ancestors for subsistence, and approximately 20 miles from land claimed by the United States on behalf of the Tribe in the 1920s.⁹⁶

- (j) *Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any: (1) Consulting agreements relating to the proposed gaming establishment; (2) Financial and loan agreements relating to the proposed gaming establishment; and (3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.*

The Tribe submitted development and management agreements for the Proposed Project. These documents include financial and loan agreements. The Tribe also submitted agreements relative to the acquisition, construction, and financing of the Proposed Project. The Tribe has no agreements that are not otherwise provided in its application.

Conclusion: Best Interest of Tribe and its Members

The record demonstrates the Proposed Project will be in the best interest of the Tribe and its members. It will increase the available revenue to the Tribe, strengthen the tribal government, and create jobs. Tribal members living in Kern County will benefit from the increased services that will become available because of increased tribal revenue. Members living near the Proposed Project will have preference for employment opportunities that did not previously exist. The Tribe also intends to use increased revenue from the Proposed Project to expand governmental services and tribal infrastructure to benefit its members. Tribal members will have access to jobs related to construction and operation of the Proposed Project. Increased revenue will fund tribal governmental operations and programs and enhance the general welfare of the Tribe and its members.

I have determined that a gaming establishment on the Mettler Site would be in the best interest of the Tribe and its members.

Analysis of Detriment to the Surrounding Community

Section 292.18 provides that to satisfy the requirements of Section 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:

- (a) *Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA).*

⁹⁶ Regional Director's Findings of Fact at 13.

The Department prepared an environmental impact statement (EIS) to evaluate the potential impacts of gaming at the Mettler Site pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* Based on the facts and available evidence, the environmental impact statement concluded that gaming at the Mettler Site would not result in significant impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic resources and environmental justice, transportation and circulation, land use, public services and utilities, visual resources, or noise. The EIS is available at: www.tejoneis.com.

Purpose and Need

The Proposed Actions consist of the following components: (1) issuance of a Secretarial Determination by the Secretary pursuant to Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), (2) acquisition of the Mettler Site in trust pursuant to section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108, and (3) approval of a management contract and related collateral agreements by the NIGC.

The purpose of the Proposed Actions 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 principal 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 trust land acquisition regulations at 25 C.F.R. §§ 151.10(h) and 151.12, and the Department's Secretarial Determination regulations at 25 C.F.R. §§ 292.18(a) and 292.21.

Procedural Background

The BIA published a Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on August 13, 2015.⁹⁷ The BIA held a scoping meeting in City of Bakersfield on September 1, 2015. The BIA published a Notice of Availability (NOA) of the Draft EIS in the *Federal Register* on June 12, 2020.⁹⁸ The BIA filed the NOA with the California state clearinghouse for distribution to state agencies. The BIA also published the NOA in *The Bakersfield Californian*, which circulated in Kern County and surrounding area on June 12, 2020, and mailed the NOA to interested parties. The Draft EIS was available for public comment for a 45-day period that concluded on July 27, 2020. On July 8, 2020, a virtual public hearing was held during which the BIA received verbal and written comments on the Draft EIS.

In preparing the Final EIS (FEIS), the BIA considered public and agency comments on the Draft EIS received during the comment period, including those submitted or recorded at the virtual public hearing. Responses to the comments were provided in Volume II, Appendix V of the FEIS. The BIA considered all comments and made changes to the FEIS as appropriate. The

⁹⁷ 80 Fed. Reg. 48559 (Aug. 13, 2015).

⁹⁸ 85 Fed. Reg. 35930 (June 12, 2020).

BIA published the NOA for the FEIS in the *Federal Register* on October 23, 2020.⁹⁹ The BIA also published the FEIS in the local newspaper, *The Bakersfield Californian*. The Assistant Secretary - Indian Affairs concluded the NEPA process by signing a Record of Decision (ROD) for the Secretarial Determination. The ROD is included as Attachment 4.

The FEIS analyzed four development alternatives:

Alternative A1 – Development on the Mettler Site (FEIS § 2.2)

Under Alternative A1, the Department will transfer the Mettler Site into trust for construction and development of a casino resort. The approximately 715,800-square-sf Proposed Project will include 166,500-sf of gaming floor, a 400-room hotel with a multi-use facility, 4,500 parking spaces, and 220 RV parking spaces. The Proposed Project will also include restaurants, retail space, joint fire/sheriff station, and water infrastructure, and wastewater treatment and disposal facilities.

Alternative A2 – Reduced Casino Resort Alternative (FEIS § 2.2.3)

Under Alternative A2, the Department will transfer the Mettler Site into trust. This Alternative includes the same development components as Alternative A, but on a smaller scale. Alternative B consist of an approximately 552,400-sf facility with 147,000-sf of gaming floor, a 300-room hotel, 3,600 parking spaces, and no RV parking. The square footage of the restaurants and retail space will be reduced.

Alternative A3 – Organic Farming Alternative (FEIS § 2.2.4)

Under Alternative A3, the Department will transfer the Mettler Site into trust and the Tribe will convert the Mettler Site from an agricultural farm to an organic farm. No casino resort or other supporting facilities would be developed.

Alternative B – Casino Resort on the Maricopa Highway Site (FEIS § 2.3)

Under Alternative B, the Department will transfer the approximately 118-acre site into trust and the Tribe would develop a casino resort as under Alternative A1. RV parking would be 50 spaces, Under Alternative B, the Department would have to determine whether the Tribe is eligible to conduct gaming on the site under Section 20 of IGRA, 25 U.S.C § 2719.

Alternative C – No Action Alternative (FEIS § 2.4)

Under the No Action Alternative, the Department will not transfer the Mettler Site into trust and none of the four development alternatives (Alternatives A1, A2, A3, or B) would be implemented. The No Action Alternative assumes that the existing uses on the Mettler Site and Maricopa Highway Site would not change in the near term.

⁹⁹ 85 Fed. Reg. 67561 (Oct. 23, 2020).

Selection of the Alternative A1

As discussed in more detail in the FEIS and ROD, I determine that Alternative A1, the Proposed Project, is the Preferred Alternative because it best meets the purpose and need for the Proposed Actions. Alternative A1 will promote the self-sufficiency, self-determination, and self-governance of the Tribe.

The casino resort described under Alternative A1 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 Tribe's needs, including providing services and economic opportunities for its members. The development of Alternative A1 would meet the purpose and need for the Proposed Actions better than the other development alternatives due to the reduced revenues that would be expected from the operation of Alternatives A2, A3, B, and C (described in Section 2.6 of the FEIS). While Alternative A1 would have greater environmental impacts than the No Action Alternative, the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in the ROD.

The project design of the Proposed Project (Alternative A1) incorporates Best Management Practices (BMPs) listed in § 2.2.2.9, which eliminate or substantially reduce environmental consequences to less-than-significant levels. The FEIS describes additional mitigation measures in Section 4.0 that the Tribe will implement to further mitigate potential environmental impacts. The FEIS concludes that development of the Proposed Project with BMPs and mitigation measures would ensure environmental impacts would be less-than-significant.

- (b) *Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.*

Impacts on Social Structure

Crime (FEIS §§ 2.2.2.8; 3.7.4.1): The Proposed Project would result in an increased number of patrons and employees traveling/commuting into the area on a daily basis. As a result, criminal incidents could increase in the vicinity of the Mettler Site, as would be expected with a large development of any type. The IGA between the Tribe and County includes compensation provisions for impacts to law enforcement, fire protection, and emergency services. In addition, the construction of the new joint fire/sheriff station would address impacts from the Proposed Project. Furthermore, the BMPs for law enforcement services would ensure protection for the Proposed Project. The operation of the Proposed Project would directly contribute approximately \$5.4 million to the State government on an annual basis, and indirect and induced effects would generate an estimated \$12.1 million in tax revenue to the State government. Potential effects would be offset by increased State tax revenues. With implementation of the on-site security measures and the development of a joint police and fire substation on the Mettler Site, impacts on law enforcement services would be less than significant.

Environmental Justice for Minority and Low-Income Populations (FEIS § 3.7.3): The review of the demographics of census tracts in the vicinity of the Mettler Site showed that seven census tracts contain a substantial minority community, but no low-income communities. The Tribe is considered a minority community affected by the alternatives. Increased economic development and employment opportunities would positively affect the minority community in the vicinity of the Mettler Site. Therefore, impacts to minority or low-income communities under the Proposed Project would be less than significant. 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.

Impacts on infrastructure

Water Resources (FEIS § 3.3.3.1): The Mettler Site is located within Flood Zone A (an area in which no base flood elevation has been determined) in a Special Flood Hazard Area subject to inundation by the one percent annual chance (100-year) flood and is within a floodplain. Pursuant to Executive Order (E.O.) No. 11988, a flood impact analysis was prepared and in order to minimize potential harm to or within the floodplain in compliance with E.O. 11988 Floodplain Management, the structures that are included as components of the Proposed Project would be raised approximately 2.5 feet above the existing ground level (one foot above the base flood elevation).

Construction impacts to surface water would be mitigated through erosion control measures in compliance with Phase I NPDES Construction General Permit for construction activities. A Stormwater Pollution Prevention Plan would be developed prior to any ground disturbance and would include BMPs to reduce potential surface water contamination during storm events. Implementation of mitigation measures as identified in Section 4.0 of the FEIS would reduce or prevent adverse effects to the local and regional watershed from construction activities on the Mettler Site. With mitigation, impacts on water quality during construction would be less than significant.

Implementation of the Proposed Project would alter the existing drainage pattern of the Mettler Site and increase stormwater runoff over pre-development rates during storm events. A stormwater detention basin is included in the project design to mitigate adverse impacts to stormwater runoff.

Reclaimed water from the on-site Wastewater Treatment Plant (WWTP) would be used for landscape irrigation. The BMPs listed in Section 2.2.2.9 would ensure that low-water usage appliances are utilized on-site and drought tolerant landscaping is used in addition to signage promoting water conservation.

The Proposed Project would increase the amount of groundwater extraction at the Mettler Site. The Tribe entered into a Water Agreement with Arvin-Edison Water Storage District (AEWSD). The AEWSD only provides water for agricultural uses. The amount of water that would have been used by the proposed water will be assigned to other landowners in the vicinity of the Mettler Site for irrigation. The landowners would then irrigate with surface water in lieu of

groundwater; thereby, reducing the net groundwater use of the Proposed Project and no mitigation is needed.

Groundwater would be used for drinking and commercial purposes within the casino resort. Fire protection would be supplied with reclaimed water. The Proposed Project will reduce the amount of agricultural land by approximately 100 acres. Compared to existing agricultural water use, overall water demand at the Mettler Site would be reduced 2 percent under the Proposed Project.

During construction and operation, potentially hazardous materials may spill onto the ground, enter stormwater and percolate into the ground. The on-site WWTP and implementation of mitigation measures as identified in Section 4.0, will reduce these potential impacts to less than significant.

Transportation/Circulation (FEIS § 3.8.3.1): The Proposed Project would result in temporary impacts resulting from construction activities that would cease upon completion of construction. This minimal addition of construction traffic would not result in significant traffic impacts. Operation of the Proposed Project would result in increased traffic flow, congestion, and decreased levels of service. With incorporation of BMPs listed in Section 2.2.2.9 and the mitigation measures in Section 4.0, impacts from traffic volumes from both construction and operation, would be less than significant.

Transit, Bicycle, and Pedestrian Facilities (§ 3.8.2.2): The Proposed Project would have no impact on transit, bicycle, or pedestrian facilities because there are not currently any pedestrian or bicycle facilities in the vicinity of the Mettler Site. Additionally, there are no plans regarding the alteration of the current local transit services.

Air Quality (FEIS § 3.4.4.2): The Proposed Project would result in the generation of mobile emissions as well as area and energy criteria pollutant emissions from the combustion of natural gas from equipment on the Mettler Site. Emissions estimates assumed the implementation of the BMPs described in Section 2.0 of the Final EIS, but emissions of ROG and NO_x from operation would exceed applicable thresholds. This would be a significant adverse impact. Implementation of mitigation measures discussed in Section 4.0 of the Final EIS would require the purchase of credits to fully offset ROG and NO_x emissions. After mitigation, impacts to the regional air quality levels would be less than significant.

Emissions of individual criteria pollutants from stationary sources would exceed the Tribal New Source Review (NSR) threshold of 2 tons per year (tpy) for ROG and 5 tpy for NO_x; therefore, a Tribal NSR permit would be required. The Tribe is therefore required to apply for and obtain a Tribal NSR permit in accordance with the USEPA guidelines and Tribal NSR regulations. Because project-related direct and indirect emissions occur in a nonattainment area and project-related operational emissions would exceed levels for the ozone precursors ROG and NO_x, a general conformity determination for ozone is required and has been completed.

Solid Waste Service (FEIS § 3.10.3.1): Construction of the Proposed Project would result in a temporary increase in solid waste generation. Construction waste that is not recycled would be collected and disposed of at the Bena Landfill or other permitted landfills that accept construction and demolition material. This impact would not be significant given that the landfill has an adequate capacity to accommodate the temporary increase in waste. Furthermore, BMPs presented in Section 2.2.2.9, of the FEIS would further reduce the amount of construction and demolition materials disposed of at the landfill. Impacts to solid waste services would be less than significant.

Energy and Natural Gas (FEIS § 3.10.3.1): Electricity would be provided by PG&E and natural gas would be provided by SoCalGas, the current providers for services to the Mettler Site. Both have sufficient capacity to serve and if either provider needs to construct additional lines to deliver service to the Mettler Site. Mitigation measures in Section 4.0 would reduce any impacts to less than significant. Impacts on energy and natural gas would be less than significant.

Impacts on services

Schools, Libraries, and Parks (FEIS § 3.10.3.1): The Proposed Project would not result in a substantial increase in population or housing in the community surrounding the Mettler Site. Therefore, the demand for library services, additional schools, and recreational facilities would not substantially increase. Impact to schools, libraries, and parks would be less than significant.

Law Enforcement (FEIS § 3.10.3.1): As discussed above, the IGA between the Tribe and County includes provisions for law enforcement services including an on-site fire/sheriff station. The BMPs described for law enforcement services in Section 2.2.2.9, would ensure further protection on-site for the Proposed Project. Impacts to law enforcement will be less than significant.

Fire Protection & Emergency Medical Services (FEIS § 3.10.3.1): Fire protection will be provided by the on-site fire station. Emergency services will be provided by Hall Ambulance Service, Inc. Two medical centers are within the vicinity of the Mettler Site. Construction could introduce potential sources of fire to the Mettler Site. This risk would be similar to those found at other construction sites. The BMPs would ensure impacts are less than significant. During operations, the Proposed Project would create additional risks from fires and add to firefighting responsibilities in the area. However, Alternative A1 would include an on-site fire station that would meet the needs of the Mettler Site as well as the surrounding area. In addition, timely detection of fires by employees, early intervention and firebreaks created by impervious surfaces (e.g., parking lots) would reduce the risk of fires. Finally, the casino resort structure would be constructed to meet CBCs as well as County fire codes, and adequate fire flows would be provided. Due to these features and the on-site fire station, impacts to public fire protection services would be less than significant. Due to the number of patrons and employees at the proposed casino resort facility, demands on emergency services would be expected to increase. Per the IGA, first responder and ambulance services from Hall Ambulance Service, Inc. would serve the Proposed Project. Furthermore, there are two medical centers in the vicinity of the

Mettler Site that provide 24-hour emergency services. Impacts on emergency medical services would be less than significant. Impacts to fire protection and emergency services will be less than significant.

Impacts on housing

Housing (FEIS § 3.7.4.1): Approximately 347 new workers will relocate for jobs at the Proposed Project. There are approximately 28,700 vacant housing units in the County, which is sufficient to accommodate relocated persons. Impact to the housing market would be less than significant.

Impacts on community character and land use

Visual Resources (FEIS § 3.13.3.1): There are no scenic resources within the vicinity of the Mettler Site. Though the Proposed Project would alter the colors, lines, and texture of the agricultural appearance of the Mettler Site, the changes would not be out of character with typical roadside development adjacent to SR-99. Because of these factors and because no scenic resources would be affected, the Proposed Project would have a less-than-significant aesthetic impact. Additionally, BMPs are included in Section 2.2.2.9, to further reduce any minor aesthetic impacts that might occur. Impacts to visual resources would be less than significant.

Noise (FEIS § 3.11.3.1): Grading and construction activities associated with the Proposed Project would be intermittent and temporary in nature. The closest sensitive receptors that would be exposed to potential noise impacts during construction are private residences located approximately 850 feet east of the Mettler Site. The assessment of the Proposed Project's noise-related effects is based on Federal Noise Abatement Criteria (NAC) standards used by the Federal Highway Administration. Traffic from construction vehicles, construction activities and vibration from construction of the Proposed Project would all fall below the NAC standards for ambient noise and construction vibration. During operation, increased traffic is expected, but all roadways evaluated showed noise would be less-than-significant. Impacts from noise would be less than significant.

Land Use (FEIS § 3.9.3.1): The County General Plan designates the Mettler Site as limited agriculture. Although the Proposed Project would not be consistent with the land use designation of the Mettler Site, it is generally compatible with the surrounding land uses along the I-5 corridor. The area around the Mettler Site includes rest stops along I-5, the Outlets at Tejon, and the proposed Grapevine Specific and Community Plan. The Mettler Site is located within the Edwards Air Force Base area of influence. However, the proposed developments under Alternative A1 would not exceed 500 feet in height; therefore, a military review is not required because the developments would not create significant military mission impacts due to height and no impact would occur. Impacts to land use would be less than significant. The Proposed Project would not physically disrupt neighboring land uses, would not prohibit access to neighboring parcels, and would not otherwise significantly conflict with neighboring land uses. Impacts on land use would be less than significant.

Biological Resources (FEIS § 3.5.3.1): No federally designated critical habitat occurs within, or near, the Mettler Site. There are likely no jurisdictional or other Waters of the U.S. within the Mettler Site. Three federally listed species have the potential to occur within the Mettler Site and one state-listed species have the potential to occur within the Mettler Site. Migratory birds have potential to nest on or within vicinity of the Mettler Site. With implementation of mitigation measures as listed in the biological assessment and in Section 4.0 of the FEIS, impacts to biological resources would be less than significant.

Cultural Resources (FEIS § 3.6.4.1): No known historic properties or paleontological resources have been identified within the Mettler Site. The State Historic Preservation Officer concurred that no National Register of Historic Properties-eligible cultural resources are on-site. Under the Proposed Project, the potential exists for previously unknown archaeological or paleontological resources to be encountered during construction activities. With implementation of mitigation measures in Section 4.0, impacts to cultural resources would be less than significant.

Agriculture (FEIS § 3.9.3.1): The Proposed Project would result in the direct conversion of approximately 100 acres of farmland. The Mettler Site received a combined land evaluation and site assessment Farmland Conversion Impact Rating (FCIR) of 189, which is over the 160-point threshold for evaluation of alternative sites. Although the Proposed Project is over the FCIR, it is less than the other alternatives considered. Furthermore, the area of conversion is relatively small, approximately 0.004 percent of the farmland in the County. The County General Plan has no specific policies against the conversion of farmland. Impacts to agricultural resources would be less than significant.

Hazardous Materials (FEIS § 4.12.2): The Proposed Project ground disturbing construction activities could potentially unearth undiscovered materials, but implementation of BMPs listed in Section 2.2.2.9 will reduce adverse impacts of hazardous materials to less-than-significant levels. During operation, any chemicals or other hazardous materials will be stored, used, and handled by qualified personnel. Impacts from hazardous materials would be less than significant.

The Mettler Site is located in a County with reported cases of an illness called Coccidioidomycosis, or Valley Fever caused by the fungus *C. immitis* that is found in the top 2 to 12 inches of soil. When the soil is disturbed (such as from earth-moving equipment), spores can become airborne and subsequently enter the lungs through inhalation. Because the Mettler Site is actively used for agricultural purposes, the soil is already disrupted. With implementation of BMPs as listed in Section 2.2.2.9, the probability of *C. immitis* on the site is reduced and does not pose a significant risk to construction personnel, employees, or patrons.

In October 2019, the BIA conducted a Phase I Environmental Site Assessment (ESA) of the Mettler Site and no recognized environmental conditions were identified. An updated ESA will be completed prior to transfer the Mettler Site into trust.

Conclusion

The Tribe submitted the required information regarding anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community. As discussed above, the record reflects that the Tribe is working with the local governments to ensure that the Proposed Project would result in less-than-significant impacts to these resources.

(c) Anticipated impacts on the economic development, income, and employment of the surrounding community.

The Proposed Project would result in a variety of beneficial impacts to the regional economy, including increases in overall economic output, employment opportunities, and tax revenue. Construction and operation of the Proposed Project would generate both temporary and permanent employment opportunities.

Construction Economic Impact (FEIS § 3.7.4.1, Appendix I)

The construction of the Proposed Project will result in economic output to the County in the form of jobs, purchases of goods and services, and beneficial fiscal effects. The Proposed Project will cost approximately \$596 million to construct. Direct output is estimated to be approximately \$429 million with indirect output of approximately \$65 million and induced impact of approximately \$109 million. Direct output is centered within the construction industry while indirect and induced output would be dispersed and distributed among a variety of different industries and businesses in the County. Output received by area businesses would in turn increase their spending and labor demand, which would further stimulate the local economy.

Construction of the Proposed Project would create approximately 2,879 direct construction jobs, with \$176.5 million in construction wages and benefits. Indirect and induced jobs would total approximately 1,095 with \$56.6 million in construction wages and benefits.

Operational Economic Impact (FEIS § 3.7.4.1, Appendix I)

The direct output of operation of the Proposed Project is estimated to \$378.2 million. Indirect and induced outputs are estimated to be \$97.0 million and \$75.9 million, respectively. Overall, approximately \$551.1 million (in 2019 dollars) would be generated annually during operation. Approximately 75 percent of these economic effects would accrue to County residents and businesses.

Operation of the Proposed Project would create approximately 2,356 direct jobs, with \$104.8 million in annual wages and benefits. Indirect and induced jobs would total approximately 1,238 with \$56.5 million in annual wages and benefits.

Substitution Effects (FEIS § 3.7.4.1, Appendix I)

The Proposed Project is projected to cause a decline in revenue at competing gaming establishments within an approximate two-hour drive of the Mettler Site. Two competing gaming facilities are expected to experience a substitution effect and decrease in revenue by the following percentages: the relocated Eagle Mountain Casino by 27.8 percent and Tachi Palace by 13.7 percent.¹⁰⁰ The largest impacts would be experienced by the nearest casino (15 miles) at the relocated Eagle Mountain Casino. However, the analysis estimates that even after the impact of the Proposed Project, gaming revenue at the relocated Eagle Mountain Casino would remain higher than at its current location. Three tribal casinos that have patron bases in the northern Los Angeles market - Chumash, San Manuel and Morongo - could potentially experience impacts of approximately 6 percent under the Proposed Project. Although the competing facilities are projected to experience a decrease in revenues, typically properly managed facilities should have the ability to absorb the impacts and remain operational. I note that the IGRA does not guarantee that tribes operating existing facilities will conduct gaming free from tribal and non-tribal competition.¹⁰¹ Nor is competition in and of itself sufficient to conclude a detrimental impact on a tribe.¹⁰²

Conclusion

I determine that the Tribe has submitted the required information regarding impacts to economic development, income, and employment of the surrounding community. The record reflects the Proposed Project will generate increases in economic direct and indirect activity and will create employment opportunities for the surrounding community.

(c) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.

Property Taxes: The Proposed Project includes the transfer of the Mettler Site into trust, resulting in the loss of local property taxes. In the 2018/2019 tax year, the fee-to-trust parcels within the Mettler Site generated \$40,696.¹⁰³ Because property held in trust is not subject to local taxes, these property taxes would be lost to state and local governments. This loss would be more than offset by tax revenues generated for state and local governments from economic activity associated with the construction and operation of the Proposed Project.

Mitigation of Economic Impacts on Local Governmental Services: The Proposed Project would result in increased costs to local governments as well as losses in property tax revenue.

¹⁰⁰ Economic Impact Analysis at 23.

¹⁰¹ See *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 947 (7th Cir. 2000).

¹⁰² See *Citizens for a Better Way v. U.S. Dep't of the Interior*, No. 2:12-cv-3021-TLN-AC, 2015 WL 5648925, at *21-22 (E.D. Ca. Sep. 24, 2015), *aff'd sub. nom.*, *Cachil Dehe Band of Wintun Indians v. Zinke*, 889 F.3d 584 (9th Cir. 2018).

¹⁰³ Regional Director's Findings of Fact at 29.

However, under the provisions in the IGA, the Tribe will pay both one-time and recurring costs to the County for additional services to the Mettler Site. One-time payments for construction of the fire/sheriff station, purchase of emergency vehicles, and training of emergency service personnel are expected to be up to \$13,392,000 as well as recurring annual payments for fire, law enforcement, general fund, and problem gambling are expected to total \$8,104,444.¹⁰⁴

- (e) *Anticipated cost if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.*

The Tribe intends to implement multiple resources to mitigate problem gaming. The BMPs listed in Section 2.2.2.9 of the FEIS to implement provisions that will include, but are not limited to, employee training, self-help brochures available on-site, signage near automatic teller machines and cashiers, and self-banning procedures to help those who may be affected by problem gaming. The signage and brochures should include problem gambler hotlines and websites. Section 3(a)(iv)(c) of the IGA requires the Tribe to provide compensation for programs to address problem gambling in the amount of \$50,000.00.

- (f) *If a nearby Indian Tribe has a significant historical connection to the land then the impact on that tribe's traditional cultural connection to the land.*

The California Native American Heritage Commission (NAHC) stated that it has no record of sacred lands within the project area.¹⁰⁵ The NAHC also supplied a list of 13 tribal representatives who may have additional information about cultural resources near the Mettler Site. The BIA contacted these representatives by letter and phone, but none identified significant historical connections to the Mettler Site.¹⁰⁶ The Tejon Tribe, as a Cooperating Agency, noted that the area is historically significant for the Tribe because the Mettler Site is centrally located within the reservation area established by the 1851 Treaty with the United States, and is within miles of the Tribe's cemetery and former residences on the Tejon Ranch. The Tejon Tribe further stated that it is not aware of any federally recognized Tribe that opposes its application or that has claimed a significant historical connection to the Site.¹⁰⁷

- (g) *Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and intergovernmental agreements with affected local governments.*

The Kern County Board of Supervisors unanimously approved the Intergovernmental Agreement in 2019. In approving the Intergovernmental Agreement, Kern County stated that the Tribe's proposed uses of the Mettler Site would not be detrimental to the County and the surrounding community. Section 4(a) of the Intergovernmental Agreement states:

¹⁰⁴ FEIS § 3.7.4.1.

¹⁰⁵ *Id.* at § 3.6.

¹⁰⁶ *Id.* at Appendix P.

¹⁰⁷ Regional Director's Findings of Fact at 33.

The County has determined that the payments referenced in Sections 2 and 3 of this Agreement are sufficient to (i) compensate the County for any public services to be provided by the County in connection with the Tribe's Project, and (ii) mitigate all other impacts of the Project on the County, and, as a result, the Trust Acquisition and the Project will not have a detrimental impact on the County and the surrounding community.

Conclusion: Detriment to Surrounding Community

The FEIS considered reasonable alternatives and analyzed the potential impacts. The FEIS found that the issuance of a Secretarial Determination and the development of the Proposed Project would not significantly affect the quality of the human environment within the meaning of NEPA. The Proposed Project would have beneficial impacts to the surrounding community including stimulating economic development and employment. The Proposed Project incorporates BMPs and mitigation measures, which limit potential negative impacts to less-than-significant levels. Based on the Tribe's application and supporting documents, the FEIS and associated studies, the consultation process, comments from the public and local governments, and the entire record before us, I conclude that gaming at the Mettler Site would not be detrimental to the surrounding community.

Consultation

Section 292.19 provides that in conducting the consultation process:

- (a) *The Regional Director will send a letter that meets the requirements in Section 292.20 and that solicits comments within a 60-day period from: (1) Appropriate State and local officials; and (2) Officials of nearby Indian Tribes.*

By letters dated August 19, 2020, the BIA sent Consultation Notices to the state and local officials and the Tule River Tribe of the Tule River Indian Reservation, California, which is located within a 25-mile radius of the Site.¹⁰⁸ Letters were sent to the following:

- California State Clearinghouse
- Senior Advisor for Tribal Negotiations, Office of the Governor
- Office of the Attorney General, State of California
- U.S. Senator Dianne Feinstein
- U.S. Senator Kamala Harris
- U.S. Representative Kevin McCarthy
- City of Bakersfield
- City of Maricopa
- City of Arvin

¹⁰⁸ *Id.* at 34. The Tule River Tribe of the Tule River Indian Reservation, California, wrote a letter of support for the Tejon Tribe's efforts to reestablish a permanent homeland in Kern County. See FEIS § 3.7.4.1.

- Kern County Board of Supervisors
- City of Tehachapi
- City of Taft
- Ventura County
- Los Angeles County
- Tule River Tribe of the Tule River Reservation, California¹⁰⁹

The Consultation Notice included a request to examine six areas as defined in 25 C.F.R. § 292.19: (1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts; (2) anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community; (3) anticipated impact on the economic development, income, and employment of the surrounding community; (4) anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them; (5) anticipated costs, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment; and (6) any other information that may assist the Secretary in determining whether the proposed gaming establishment would or would not be detrimental to the surrounding community.

The BIA received no comments.¹¹⁰ The Regional Director found, and I concur, that the consultation requirements of Section 292.18 have been met.¹¹¹

Conclusion

I have completed my review and analysis of the Tribe's application under 25 U.S.C. § 2719 (b)(1)(A), including submissions by state and local officials, and the public. For the reasons discussed above, I have determined that a gaming facility on the Mettler Site in Kern County, California, would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community.

On behalf of the Department, I respectfully request that you concur in this determination, pursuant to 25 U.S.C § 2719(b)(1)(A). Under the Department's regulations at 25 C.F.R. § 292.23, you have one year from the date of this letter to concur in this determination. You may request an extension of this period for up to 180 days. The Tribe may also request an extension of this period for up to 180 days.

If you concur in this determination, the Tribe may use the Mettler Site for gaming purposes after it has complied with all other requirements in IGRA and its implementing regulations, and upon its acquisition in trust. If you do not concur in this determination, the Tribe may not use the Mettler Site for gaming purposes.

¹⁰⁹ *Id.* at 33 (under analysis for § 292.18 (f)).

¹¹⁰ *Id.* at 34.

¹¹¹ *Id.*

This letter and its attachments contain commercial and financial information that is protected from release under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C § 552. Due to the sensitive nature of this information, it is the Department's practice to withhold it from the public under FOIA, and to contact the Tribe any time a member of the public requests it. We respectfully request that the State of California take appropriate steps to similarly protect the commercial interests of the Tribe to the maximum extent permitted by California law.

Thank you for your consideration of this important matter. My staff has included copies of the record for your review and consideration.

Sincerely,



Tara Sweeney
Assistant Secretary-Indian Affairs

Attachments



Attachment 1

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