



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 07 2019

The Honorable Gavin Newsom
Governor of California
Sacramento, California 95814

Dear Governor Newsom:

On September 16, 2016, the Tule River Indian Tribe of the Tule River Reservation (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to accept into trust approximately 40 acres of land known as the Airpark Site (Site) in the City of Porterville, Tulare County, California, in order to relocate the Eagle Mountain Casino. The Tribe submitted its application to have the Site acquired in trust pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5801. The Tribe also submitted a request to the BIA for a determination that the Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*

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

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

Under this exception, the Governor of the State in which the gaming activity is to be conducted must concur in the Secretary’s “two-part determination” before the applicant tribe may operate gaming on the proposed site.

We completed our review of the Tribe’s application and determined that the proposed gaming establishment at the Site would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community.

We based our decision on the analysis set forth in the enclosed Secretarial Determination and accompanying Record of Decision. As you will see from our analysis, the Tribe is suffering from a water shortage issue that is exacerbating a housing shortage. The Tribe has a larger than average number of minors and a higher than average poverty rate, which makes the availability

of housing an important issue. Additionally, the Tribe is experiencing budget constraints that further limit its ability to address the needs of its members.

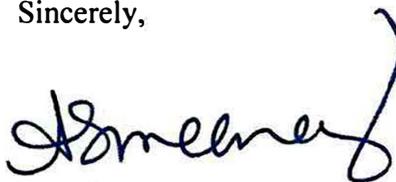
To address these issues, the Tribe seeks to relocate its Eagle Mountain Casino to the Site. The casino is the largest water user on the Reservation. This will allow the Tribe to re-allocate water to tribal housing. Relocating the casino would also allow the Tribe to expand the casino into a casino-resort, thereby improving the Tribe's revenue stream.

The availability of water is a significant concern for the local community, where many tribal members live. The Tribe will partner with the City to develop a water reclamation facility near the Site, resulting in an increase of available City-supplied potable water. I note the support of local governments and the collaboration between the Tribe and the City to address the availability of water, a vital resource for both the Tribe and the surrounding community.

Much of the information relied on in the Secretarial Determination contains the Tribe's commercial and/or financial information which is customarily and actually treated as private by the Tribe, and was submitted to the Department under an assurance of privacy. The Department will withhold this information in its entirety from the public because it is *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). I request that this information be similarly withheld by the State under equivalent provisions of the California Public Records Act, CAL. GOV'T CODE § 6250, *et seq.*

I request your concurrence in this Secretarial Determination, pursuant to 25 U.S.C. § 2719(b)(1)(A), within one year of the date of this letter. After one year this Secretarial Determination will no longer be valid in accordance with the Department's regulations at 25 C.F.R. § 292.23(c). If you need additional time, or at the request of the Tule River Tribe, the Department's regulations at 25 C.F.R. § 292.23, permits me to grant an extension of 180 days. I look forward to your response and thank you for your time and attention to this matter.

Sincerely,



Tara Sweeney
Assistant Secretary – Indian Affairs

Enclosures

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

DECISION

On September 16, 2016, the Tule River Indian Tribe of the Tule River Reservation (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to accept into trust approximately 40 acres of land known as the Airpark Site (Site) in the City of Porterville, Tulare County, California, for gaming and other purposes.¹ The Tribe also submitted a request to the BIA for a determination that the Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*²

The Tribe proposes to construct a casino-resort, including a hotel, conference and event center, parking, and supporting facilities (Proposed Project). The Proposed Project would replace the Tribe's existing on-reservation Eagle Mountain Casino, which the Tribe would then convert to educational, health care, and tribal government services. The Site lies approximately 15 miles west of the Tribe's Reservation boundary.

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

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

¹ See Memorandum to Paula Hart, Director, Office of Indian Gaming, from Amy Dutschke, Regional Director, Pacific Region, *Findings of Pacific Region on the 25 C.F.R. Part 292 Factors* [hereinafter R.D.'s Part 292 Findings] (Aug. 13, 2019) and *Findings of Pacific Region on the 25 C.F.R. Part 151 Factors* [hereinafter R.D.'s Part 151 Findings] (Aug. 13, 2019). See also Memorandum to Amy Dutschke, Regional Director, Pacific Region, from Neil Peyron, Chairman, Tule River Indian Tribe (Sept. 16, 2016) transmitting the Tule River Indian Tribe Off Reservation Fee-to-Trust Application for Gaming Purposes [hereinafter Tribe's 151 Application]. See also Tule River Indian Tribe Resolution No. FY2016-247, *Resolution Approving Applications To Place Land into Trust for Off-Reservation Gaming Purposes* (Sept. 13, 2016)

² See Tule River Indian Tribe 292 Application (June 27, 2018) [hereinafter Tribe's 292 Application], see also Tule River Indian Tribe Resolution No. FY2018-166, *Authorizing the Chairman to Submit the 292 Application to the Secretary of the Interior* (June, 27, 2019).

Under this exception, the Governor of the State in which the gaming activity is to be conducted must concur in the Secretary's "two-part determination" before the applicant tribe may operate gaming on the proposed site.

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

The Tribe is suffering from a water shortage issue that is exacerbating a housing shortage. The Tribe has a larger than average number of minors and a higher than average poverty rate, which makes the availability of housing an important issue. Additionally, the Tribe is experiencing budget constraints that further limit its ability to address the needs of its members.

To address these issues, the Tribe seeks to relocate its Eagle Mountain Casino to the Site. The casino is the largest water user on the Reservation. This will allow the Tribe to re-allocate water to tribal housing. Relocating the casino would also allow the Tribe to expand the casino into a casino-resort, thereby, improving the Tribe's revenue stream.

The availability of water is a significant concern for the local community, where many tribal members live. The Tribe will partner with the City to develop a water reclamation facility near the Site, resulting in an increase of available City-supplied potable water. I note the support of local governments and the collaboration between the Tribe and the City to address the availability of water, a vital resource for both the Tribe and the surrounding community.

Much of the information relied on in the 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, 43 C.F.R. §§ 2.23 and 2.24.

BACKGROUND

Proposed Project

The Tribe plans to relocate the Eagle Mountain Casino by constructing a casino-resort at the Site.³ The Proposed Project will feature a 104,637-square foot casino, a 250-room hotel, food and beverage facilities, administrative space, a multi-purpose events center, a conference center, a fire station, and associated parking and infrastructure.

The Proposed Project will connect to the City's municipal water supply and wastewater facilities.⁴ In partnership with the City, the Tribe will also construct a water reclamation facility on city-owned property. The water reclamation facility will treat secondary effluent from the

³ Final Environmental Impact Statement titled *Tule River Indian Tribe Fee-to-Trust and Eagle Mountain Relocation Project*, published May 31, 2019 [hereinafter FEIS] at § 2.3, available at <https://www.tulerivereis.com/>.

⁴ FEIS § 2.3.3.

City's wastewater treatment plant to provide recycled water to the Proposed Project and to the Porterville Sports Complex. The Sports Complex, consisting primarily of grass ball-fields, is located north of the Site and uses 138,500 gallons per day of potable City water for irrigation. Recycled water from the water reclamation facility will replace the potable water currently used at the Sports Complex. Because the Proposed Project will use less potable water than is currently used to irrigate the Sports Complex, there will be a 73,828-gallon per day increase in available potable water for the City.

The Tribe will also repurpose the existing Eagle Mountain Casino building for tribal governmental uses.⁵ The relocation of the existing casino will increase the availability of on-reservation water by 27,863 gallons per day.

The Tule River Indian Tribe

In 1851, the United States negotiated treaties with California tribes, including the predecessors of the Tule River Indian Tribe.⁶ Congress failed, however, to ratify the treaties.⁷ In 1856, the California Superintendent of Indian Affairs established the original Tule River Reservation on 2,240 acres of prime farmland on the banks of the Tule River near the present City of Porterville.⁸ Numerous Indian villages relocated to the Tule River Reservation.⁹

In 1860, the Superintendent's clerk gained personal title to the original Tule River Reservation and rented it to the United States for use as a reservation.¹⁰ Rather than purchase or repossess the property, as was authorized by Congress,¹¹ the United States relocated the Tribe 15 miles east to the Sierra Nevada Mountains.¹² In 1873, two executive orders created the Tribe's Reservation in the foothills of the Sierra Nevada Mountains.¹³ In 1878, a third executive order reduced the size of the Reservation. Since then, the boundaries of the Reservation have changed little. The current Reservation includes more than 55,000 acres of primarily steep and rocky terrain.

⁵ FEIS § 2.3.3.

⁶ *Indian Affairs, Laws and Treaties*, Vol. IV, compiled and edited by Charles J. Kappler (1927) at 1099, Treaty with the Chu-Nute, Wo-Wol, etc. June 3, 1851.

⁷ *Id.* at 1082, Note 1, containing the Senate's unanimous resolution to refuse ratification of the 18 California treaties on June 28, 1852.

⁸ FEIS § 3.6.2. See also G. Frank, C. E. Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, Yale University Press (2010) [hereinafter *Defying the Odds*] at 40-44.

⁹ *Defying the Odds* at 40-44.

¹⁰ *Id.*

¹¹ Act to Provide for the Better Organization of Indian Affairs in California, 13 Stat. 39 (1846).

¹² *Defying the Odds* at 48.

¹³ *Executive Orders Relating to Indian Reserved from May 14, 1855, to July 1, 1902*, compiled by the Indian Office under authority of act of Congress approved May 17, 1882 (22 Stats., p.88), Government Printing Office (1902) at 34.

Socioeconomics of the Tribe

Socioeconomics can be measured by a combination of employment, income, and education. The Tribe experiences higher than average unemployment and underemployment rates relative to the surrounding community. The Tribe's unemployment rate for members living on the Reservation in 2016 was 40%, while the unemployment rate for the County was 11%. Of the Tribe's members who are employed, many are underemployed, earning below the poverty threshold.¹⁴ In 2017, approximately 44% of the Tribe's members lived in households that were near or below the poverty threshold. The poverty rate for the County was approximately 24%.

The Tribe attributes its unemployment and underemployment rates to its members' lower college education rate. The Tribe's adult members have a significantly lower rate of college education at approximately 7%, compared to the County at 13.3%.

The Tribe currently has 1,875 enrolled members and expects a growth rate of 3% per year.¹⁵ The Tribe has a larger number of minors than the surrounding community with approximately 41%, while minors make up 35% of the County's population.¹⁶ The Tribe's demographics indicate that its members are likely to need more governmental assistance than other populations due to the high unemployment and underemployment and the relatively large number of minor children who are living in households that are at or near poverty. The Tribe intends to address these areas of concern through increased programmatic funding and economic development.¹⁷

The Eagle Mountain Casino

In 1996, the Tribe opened the Eagle Mountain Casino, which is the main revenue source for the Tribe.¹⁸ The casino is one of the largest employers in the County and currently provides more than 400 jobs. The casino's remote location, however, limits its economic benefit. Employees and patrons must travel on the only access road to the casino, which creates significant safety concerns due to sharp turns, limited sight distance, and narrow road widths. The casino does not offer alcoholic beverages, as do competing venues, due to concerns for public safety.

¹⁴ Tribe's 292 Application, Exhibit A at 5. In 2005, 48% of the Tribe's members who had jobs were earning below the poverty threshold, the Tribe did not supply more recent data but asserts that number has not changed significantly since then.

¹⁵ FEIS § 3.7.2.

¹⁶ FEIS § 3.7.2. See also Tribe's 292 Application, Exhibit A at 5. The Tribe conducted an enrolled members demographic survey during the winter of 2017-2018. Tribe's 292 Application, Exhibit A, *The Tule River Tribe Unmet Needs Report* contains the Tribe's commercial and/or financial information which is customarily and actually treated as private by the Tribe, and was submitted to the Department under an assurance of privacy. The Department will withhold *The Tule River Tribe Unmet Needs Report* in its entirety from the public because it is confidential within the meaning of Exemption 4 of the Freedom of Information Act (FOIA) 43 C.F.R. §§ 2.23 and 2.24. See Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356 (2019).a

¹⁷ Tribe's 292 Application at 12-22, 24; and Exhibit A at 5.

¹⁸ FEIS § 1.3.

On-Reservation Water Shortage

The Tribe is experiencing a severe shortage of on-reservation potable water.¹⁹ The Tribe's water supply includes surface water from the South Fork of the Tule River, spring water, and groundwater from wells.

The Tribe draws the majority of its potable water supply from the South Fork of the Tule River, but has a limited allocation. Many of the Reservation's larger springs are suitable only for agricultural use due to the presence of carbon dioxide in the water. The Tribe relies on groundwater from three wells to make up supply deficits, but the Reservation's wells suffer from yield and water quality issues.

The Tribe's combined water supply are insufficient to meet the water demand in the late summer and early fall due to declining seasonal flows of the South Fork of the Tule River. This has resulted in many on-reservation households running out of water on a recurring basis despite water conservation notices.²⁰

On-Reservation Housing Restrictions

The water shortage has forced the Tribe to issue a building moratorium. The Tribe has a housing waiting list of over 200 members. The Tribe has identified the lack of adequate housing coupled with the water shortage as a significant limitation for the quality of life for its members living on the Reservation.²¹

The Tribe's on-reservation housing is lacking in both quantity and quality resulting in a significant shortage of on-reservation housing that is compounded by the water shortage.²² The Tribe has approximately 350 houses on the Reservation. The Tribe estimates that approximately 25% of the Tribe's on-reservation houses need to be replaced immediately. The Tribe will need to replace approximately 58% of the on-reservation houses within the next 10 years. In total, the Tribe anticipates the need for nearly 700 new housing units over the next 20 years.²³

On-Reservation Water Distribution System Limitations

The Tribe's water distribution system needs approximately \$25 million of infrastructure improvement to modernize the system.²⁴ The Tribe's water distribution system is undersized and outdated.²⁵ The water system includes a series of storage tanks ranging in size from 3,000 gallons to 200,000 gallons. These tanks, however, do not function as a coordinated storage

¹⁹ FEIS §§ 3.7.2 and 3.10.1.

²⁰ Tribe's 292 Application at 8.

²¹ Tribe's 292 Application, Exhibit A at 9-11.

²² FEIS § 3.7.2.

²³ Tribe's 292 Application at 2.

²⁴ *Id.* at 9.

²⁵ FEIS § 3.10.1.

system, limiting the Tribe's ability to accommodate demands. The water system distributes potable water through 6- and 8-inch distribution pipes of varying ages, a 4-inch pipe that is roughly 50 years old, and 1- and 2-inch pipes that connect individual—or, in one instance, up to five—homes. Individual homes are not metered, and few of the system's components are monitored regularly or thoroughly. The amount of water lost due to leakage may be significant, and the lack of metering and monitoring makes quantifying losses difficult.

Tribal Budgetary Limitations

In addition to the water shortage, housing shortage, and aging infrastructure, the Tribe is experiencing budgetary limitations.²⁶ The Tribe's annual general fund has operated at a deficit in recent years, forcing budget and staffing reductions. The following tribal government departments have experienced the largest reductions in budget and personnel over the course of the last year:

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

Despite these cuts, the Tribe expects that the annual deficit will continue to grow to approximately \$8 million. The Tribe will need to implement further cuts to departments and programs, diminishing the Tribe's ability to provide services 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.

²⁶ R.D.'s Part 292 Findings at 13.

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.

The Tribe's name is:

Tule River Indian Tribe of
the Tule River Reservation

The Tribe's mailing address is:

P.O. Box 589
Porterville, California 93258

The Tribe's address is:

340 North Reservation Road
Porterville, CA 93257

The Tribe's phone numbers are:

(559) 781-4271 phone
(559) 781-4610 fax

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

The Site includes 17 parcels totaling approximately 40 acres, located on West Street, in the City of Porterville, Tulare County, California.²⁷ The parcels are identified by APN: 302-400-001 through 302-400-017. A legal description is included as **Appendix II**.

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

The Tribe owns the Site in fee simple. The Tribe purchased the Site from the City in 1990.²⁸ The Tribe submitted a commitment for title insurance, identified as File No.: 01180-183174-Amended No. 1, effective September 1, 2016, issued by Stewart Title Guaranty Company.²⁹

²⁷ R.D.'s Part 292 Findings at 6, and R.D.'s Part 151 Findings at 4. See also Tribe's 151 Application at 3-4, and Tribe's 292 Application at 16.

²⁸ Tribe's 292 Application, Exhibit F.

²⁹ R.D.'s Part 292 Findings at 6, and R.D.'s Part 151 Findings at 4. See also Tribe's 151 Application at 3-4, and Tribe's 292 Application at 16.

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

The Site is located approximately 15 miles from the Reservation boundary, and approximately 18.5 miles by road from the Tribe's headquarters.³⁰

(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 has 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 has submitted the required information.

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

On September 13, 2016, the Tule River Tribal Council approved Tribal Resolution No. FY2016-247, authorizing the preparation and submission of an application for transfer into trust of the 40-acre Site for gaming purposes.³¹ On June 27, 2018, the Tule River Tribal Council approved Tribal Resolution No. FY2018-166, authorizing the preparation and submission of an application for a Secretarial Determination pursuant to Section 20 of IGRA and the Department's implementing regulations at 25 C.F.R. Part 292.³²

(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 National Indian Gaming Commission approved amendments to the Tribe's Gaming Ordinance on March 14, 2019.³³ The Tribe will submit to the National Indian Gaming Commission any necessary amendments to the Gaming Ordinance in accordance with IGRA.³⁴

³⁰ R.D.'s Part 292 Findings at 6.

³¹ Tribe's 151 Application, Exhibit B.

³² Tribe's 292 Application, Exhibit D.

³³ Jonodev Chaudhuri, NIGC Chairman, letter to Kerry K. Patterson, Legal Council for the Tule River Tribe, March 14, 2019, regarding amendments to the Tule River Tribe Gaming Ordinance, available at <https://www.nigc.gov/images/uploads/gamingordinances/20190314TuleRiverOrdAmendApproval.pdf> (last accessed August 1, 2019).

³⁴ Tribe's 292 Application at 17.

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

The Tribe is organized under the Indian Reorganization Act.³⁵ The Tribe is governed by its Constitution and Bylaws that were ratified on January 15, 1936, and last amended on March 4, 1974. The Tribe submitted a copy of its Constitution and Bylaws.³⁶

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

In 2017, the Tribe and the State of California entered into a new class III tribal–state gaming compact (Tribal-State Compact).³⁷ Section 4.2 of the Tribal-State Compact authorizes gaming on lands held in trust for the Tribe in 2017. However, Section 4.2 also states “[i]f additional land is placed in trust for the Tribe pursuant to [a Secretarial Determination] the Tribe may request and the State shall agree to enter into negotiations to allow the Tribe to operate a gaming facility on that trust land.”

(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.

See above.

(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 will manage the Proposed Project directly, therefore, this section does not apply.³⁸

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.

When considering whether a proposed gaming project is in the best interest of the Tribe and its members, we examine the income statement, which projects the income and expenses in

³⁵ Indian Reorganization Act, 48 Stat. 984, Public Law 73-383 (June 18, 1934).

³⁶ Tribe's 292 Application, Exhibit G.

³⁷ Tribal-State Compact between the State of California and the Tule River Indian Tribe of California, dated August 2017 [hereinafter Tribal-State Compact].

³⁸ Tribe's 292 Application at 18.

accordance with generally accepted accounting principles. We use the income statement to determine the profitability of a proposed gaming project.

We also review the balance sheet, which lists assets, liabilities, and capital. From the balance sheet, we can identify various ratios to determine if a proposed gaming project will grow, and whether it will have the resources to pay its obligations in the short term and long term. It also allows us 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 the ongoing investments the Tribe will make, what debt will be incurred or repaid, and the projected utilization of non-cash expenses, such as depreciation and amortization. We review 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, we 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, we examine the financial information to determine whether they are reasonable. This assists us in reaching conclusions that the proposed gaming project will likely perform according to the projections.

Reports

The Tribe submitted the *Eagle Mountain Casino Resort Business Plan* (Business Plan) prepared by the Innovation Group. The Business Plan includes pro-forma financing statements, including income statement, balance sheet, and statement of cash flows for the first five years of operations.³⁹ The Innovation Group based the Business Plan and financial projections on a feasibility study prepared by KlasRobinson Q.E.D. as well as on design features of the Proposed Project and certain assumptions discussed below.

As part of the environmental review process, KlasRobinson Q.E.D. prepared an analysis of the economic impact of the Proposed Project in the *Economic Impact of Planned New Eagle Mountain Casino* (Economic Impact Analysis).⁴⁰ The Economic Impact Analysis analyzed impacts to the local economy and the Tribe from construction of the Proposed Project and its subsequent operation. KlasRobinson Q.E.D. based the Economic Impact Analysis on its feasibility study which contained market projections based on certain assumptions discussed below.

³⁹ Tribe's 292 Application, Exhibit E. The *Eagle Mountain Casino Resort Business Plan* contains the Tribe's commercial and/or financial information which is customarily and actually treated as private by the Tribe, and was submitted to the Department under an assurance of privacy. The Department will withhold the Business Plan in its entirety from the public because it is *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).

⁴⁰ KlasRobinson Q.E.D. *Economic Impact of Planned New Eagle Mountain Casino*, November 15, 2016, Appendix B to the DEIS [hereinafter Economic Impact Analysis].

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

Analysis

The Tribe's Eagle Mountain Casino captured approximately 10.7% of the local market in 2016.⁴¹ The Business Plan projects that the Proposed Project will nearly double the Tribe's capture rate of the local gaming market. The Proposed Project includes a different mix of games and amenities than the existing casino, resulting in a slightly higher win per visit. With the higher capture rate and win per visit, the Proposed Project will significantly increase the Tribe's net revenue in the first year of operation with stabilized growth for the following years. The Economic Impact Analysis estimates the Proposed Project would generate \$103.6 million in new annual revenue.

The Business Plan anticipates that construction costs for the Proposed Project would be \$245 million.⁴² The Business Plan projects that the Tribe may obtain a loan of \$220.5 million, representing a 90/10 debt-to-equity ratio. Based on the high debt-to-equity ratio, the Business Plan anticipates that interest rates could be in the range of 12% to 18%, but the pro-forma financial statement assumes a 14.5% interest rate, and long-term debt with a term of 15 years. The Cash Flow Statement projects that at the end of the first year of operation, after covering expenses and servicing debts, the Proposed Project will be profitable.

The Regional Director found, and we concur, that the Tribe submitted the required financial documentation. Our analysis of the financial projections finds that they are reasonable, and indicates that the Proposed Project would provide needed revenue for the Tribe.⁴³

⁴¹ Tribe's 292 Application, Exhibit E at 60.

⁴² *Id.* at 50.

⁴³ We have carefully reviewed all of the financial and economic documents and the analysis and projections contained therein. We have limited our discussion of these documents here because they contain confidential commercial and financial information of the Tribe, 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).

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

The Economic Impact Analysis projects that construction of the Proposed Project will create 1,200 temporary construction jobs.⁴⁴ Operation of the casino-resort will provide approximately 978 permanent jobs and expand to approximately 1,215 permanent jobs once fully-operational. That equates to 790 new positions after factoring in the relocation of the Tribe's employees from the Eagle Mountain Casino. The Proposed Project will create substantial employment opportunities for unemployed and underemployed tribal members, including salaried staff, hourly full-time employees, and hourly part-time employees.⁴⁵

The Tribe utilizes an Indian preference policy for hiring and intends to offer training programs to assist tribal members and local residents in becoming qualified for employment at the Proposed Project. The Tribe's goal is to develop tribal members' leadership and management skills.⁴⁶

The Tribe also intends to use increased revenue from the Proposed Project to expand governmental services, including education and career training for its members.⁴⁷ Further, the Tribe expects that the additional revenue will support employment opportunities for tribal members in tribal government or tribal programs.

The Regional Director found, and we concur, that the Tribe submitted the required projections of tribal employment, job training, and career development.⁴⁸ The record shows that the Proposed Project will create employment opportunities, job training, and career development for tribal members.

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

The Tribe expects that the Proposed Project will lead to increased visitation to the City and County.⁴⁹ The close proximity of two highways, state route 65 and state route 190, provides access to the Site. The Proposed Project is a high quality casino-resort that includes gaming, lodging, entertainment, dining, and shopping experiences. The Tribe reports that no other hotel or lodging establishment in the surrounding area provides the multiple amenities and first-class service that the Proposed Project will offer. The 20,000 square-foot convention space, 9,000 square-foot divisible ballroom, and other breakout rooms, will make the Proposed Project ideal for conferences, conventions, and other business events. In addition, the Proposed Project will have a 1,700-seat entertainment venue that would host shows, as well as cultural and other events for the Tribe. The addition of the hotel, conference space, and event center to the casino will encourage increased tourism in and around Porterville. The Economic Impact Analysis

⁴⁴ FEIS § 4.7; *see also* Tribe's 292 Application at 21.

⁴⁵ R.D.'s Part 292 Findings at 12.

⁴⁶ Tribe's 292 Application at 22.

⁴⁷ R.D.'s Part 292 Findings at 12.

⁴⁸ *Id.*

⁴⁹ *Id.* at 12-13.

estimates that approximately 74% of new spending at the Proposed Project will come from outside of the County, with 22% of that coming from out-of-state.⁵⁰

Businesses owned by or employing tribal members will benefit from increased tourism in and around Porterville.⁵¹ The Proposed Project will also increase knowledge of the Tribe and its history by encouraging patrons to visit the Tribe's Cultural Center.

The Regional Director found, and we concur, that the Tribe submitted the required projections of benefits to the Tribe and its members from tourism.⁵² The record shows that the Proposed Project will stimulate local tourism and benefit the local businesses and economy by creating an influx of non-resident consumers.

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

As detailed above, the tribal government is facing annual budget deficits despite cuts to many programs and departments. The Tribe anticipates that the Proposed Project will generate much needed additional revenue.⁵³ The Tribe will use the increased revenue to promote tribal economic development and improve the quality of life of tribal members through better-funded tribal departments and programs. The increased revenue will also help stabilize the Tribe's budget promoting tribal self-sufficiency and strong tribal government.

The Regional Director found, and we concur, that the Tribe submitted the required projections of benefits to the Tribe and its members from the uses of the increased tribal income.⁵⁴ The Tribe's application demonstrates a clear commitment to strengthening its government and advancing its social, political, and economic opportunities. The Tribe's intent to use the gaming revenue to address unmet social and economic needs of its members demonstrates that the Proposed Project is in the best interest of the Tribe and its members.

(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 non-Indian community. The Tribe already has a strong relationship with the community of Porterville. The Proposed Project's water recycling facility that the Tribe will construct on city-owned property resulted from this strong relationship. The Tribe entered into a Memorandum of Understanding with the City, to facilitate the development of the Proposed Project and ongoing cooperation

⁵⁰ Economic Impact Analysis at 9.

⁵¹ R.D.'s Part 292 Findings at 13.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 14.

between the Tribe and the City.⁵⁵ 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.

Further, the Tribe continues its outreach efforts with the surrounding communities by meeting with local civic and business leaders, community groups, service organizations, industry groups, and employee/trade associations to discuss the Proposed Project.⁵⁶ By doing so, the relationship between the Tribe and local community remains strong.

The Regional Director found, and we concur, that the Proposed Project already has generated positive impacts to the relationship between the Tribe and the non-Indian communities.⁵⁷ The Tribe has developed a strong relationship with the non-Indian communities surrounding the Site. The record contains a number of support letters from City and County officials as well as representatives from other organizations.⁵⁸ The Proposed Project reflects collaboration between the Tribe and the City to address the availability of water, a vital resource for any community. The Tribe intends to continue to work with community leaders and businesses to strengthen their relationship.

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

The Tribe has not experienced significant adverse impacts to itself or its members from the operation of the Eagle Mountain Casino.⁵⁹ Further, the Tribe does not anticipate the Proposed Project will create any significant adverse impacts to its members. The Tribe will continue to offer various support programs to help mitigate problem gambling, including but not limited to distribution of pamphlets, self-exclusion programs, and information cards.

The Regional Director found, and we concur, that the Tribe submitted the required information regarding possible adverse impacts on the Tribe and its members and plans for addressing those impacts.⁶⁰

⁵⁵ 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].

⁵⁶ R.D.'s Part 292 Findings at 14.

⁵⁷ *Id.*

⁵⁸ *Id.*; see also Tribe's 292 Application, Exhibit B.

⁵⁹ Tribe's 292 Application at 26.

⁶⁰ R.D.'s Part 292 Findings at 14.

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

The Site is located in the City of Porterville, California, approximately 15 miles from the Reservation boundary, and approximately 18.5 miles by road from the tribal headquarters.⁶¹ The Regional Director found, and we concur, that the Tribe submitted the required information regarding the distance of the Site from the Tribe's headquarters.

(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 owns the Site in fee simple.⁶² The Tribe purchased the Site from the City in 1990. The Regional Director found, and we concur, that the Tribe submitted the required information regarding the Tribe's ownership of the Site.

(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 proposed site as a factor in determining whether gaming on the proposed site would be in the best interest of the Tribe and its members.⁶³

The Tribe has a long history in the area. The Site is approximately 5 miles north of the Tribe's unratified 1851 treaty territory, and approximately 5 miles southwest of the original Tule River Reservation, which included part of the present day Porterville.⁶⁴ A culturally significant rock shelter called Painted Rock is located along the Tule River on the Reservation and contains pictographs depicting the creation story of the Tribe.

The Regional Director found, and we concur, that the Tribe has long-standing historical connections to the Site.⁶⁵

⁶¹ R.D.'s Part 292 Findings at 15.

⁶² *Id.*; see also Tribe's 292 Application, Exhibits C and F.

⁶³ Section 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.

⁶⁴ FEIS § 3.6.2.

⁶⁵ R.D.'s Part 292 Findings at 15.

- (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 owns the Site in fee simple and intends to manage and operate the Proposed Project. As discussed above, the Business Plan reflects the Tribe's intent to finance 90% of the construction cost and anticipates servicing that level of debt. The Tribe is exploring funding mechanisms including grants, municipal and TED bonds to finance the hotel and water reclamation facility.⁶⁶ At this early stage in the development process, we recognize the Tribe has not yet secured financing and thus no financing or loan agreements are in place. However, we defer to the business judgment of the Tribe regarding the proposed financing mechanism.

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 on-reservation water supply, strengthen the tribal government, and create jobs. Tribal members living on or near the Reservation will benefit from the increased on-reservation water supply, which will allow the Tribe to address tribal housing needs. The Tribe also intends to use increased revenue from the Proposed Project to expand governmental services for its members. Tribal members living on or near the Reservation will have access to jobs related to construction and operation of the Proposed Project. The Tribe's application states that increased revenue will fund tribal governmental operations and programs, general welfare of the tribe and its members.⁶⁷

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

⁶⁶ Tule River Part 292 Supplemental Questions and Responses, dated August 5, 2019.

⁶⁷ R.D.'s Part 292 Findings at 13.

ANALYSIS OF DETRIMENT TO THE SURROUNDING COMMUNITY

Section 292.18 provides that to satisfy the requirements of § 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).

The Department oversaw the preparation of an environmental impact statement (EIS) to evaluate the potential impacts of gaming at the 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 proposed 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 proposed action consists of the following components: (1) issuance of a Secretarial Determination by the Secretary; (2) concurrence by the Governor in the Secretarial Determination; (3) acquisition of the approximately 40-acre Site in trust by the United States for the benefit of the Tule River Tribe; and (4) the subsequent development of a casino-resort and associated facilities on the Site by the Tribe.

The BIA published a notice of intent to prepare an EIS in the Federal Register on December 30, 2016. The BIA also held a public hearing on January 23, 2017. The BIA and U.S. Environmental Protection Agency (EPA) published the Notice of Availability (NOA) of the Draft EIS in the Federal Register on September 21, 2018. The BIA published the NOA in local papers, and mailed it to interested parties. Additionally, the Tribe filed the NOA with the state clearinghouse for distribution to state agencies. The BIA made the Draft EIS available for public review and comment for a 45-day period that ended on November 5, 2018. On October 15, 2018, the BIA held a public hearing in Porterville, and received verbal and written comments on the Draft EIS. The BIA with the EPA published the NOA of the Final EIS in the Federal Register and the local newspaper on May 31, 2019. The BIA received written comments from three cooperating agencies and seven individuals on the Final EIS. The BIA reviewed and considered all comment letters on the Final EIS during the decision making process for the Proposed Action. Copies of these comments are provided with the Record of Decision.

The EIS provided extensive information on the existing environment and provided environmental analysis of six alternatives including a no action alternative. For the remainder of this Determination we refer to the EIS as the Final EIS (FEIS):

Alternative A – Proposed Project (FEIS § 2.3)

Alternative A involves the transfer of the Site into trust, and includes the Tribe's development of a 104,637-sf casino, a 250-room hotel, food and beverage facilities, administrative space, a multi-purpose events center, a conference center, a fire station, and associated parking and infrastructure. The Proposed Project will connect to the City's municipal water supply and wastewater facilities. As part of the Proposed Project, the Tribe will construct a water reclamation facility on city-owned property. The Tribe will relocate the existing Eagle Mountain Casino and repurpose the building for tribal governmental uses, increasing available on-reservation water by 27,863 gallons per day.

Alternative B – Proposed Project with On-Site Water & Wastewater Systems (FEIS § 2.4)

Alternative B involves transfer of the Site into trust, and includes all of the same development components as Alternative A, with the exception of utilizing on-site water and wastewater treatment facilities instead of connecting to City infrastructure for water supply and wastewater service. Two on-site wells, along with pumping, storage, and disinfection facilities, would supply potable water. A waste water treatment plant would be constructed on the Site to treat wastewater to a tertiary level; treated wastewater would then be disposed of through a leach field below the development's parking lot.

Alternative C – Reduced Intensity Hotel and Casino (FEIS § 2.5)

Alternative C involves transfer of the Site into trust, and includes the Tribe's construction of a similar development as that described under Alternatives A and B, but at a smaller scale. Water and wastewater services would be provided either through connection to City facilities (as described under Alternative A) or through development of on-site facilities (as described under Alternative B). As with Alternatives A and B, Alternative C would include the renovation of the existing Eagle Mountain Casino for tribal government uses.

Alternative D – Non-Gaming Hotel and Conference Center (FEIS § 2.6)

Alternative D involves the transfer of the Site into trust, and includes the Tribe's development of a hotel as described under Alternative A, and a slightly smaller conference center. Alternative D does not require a Secretarial Determination because there would be no casino. Alternative D also does not include a multi-purpose events center. As with Alternative C, Alternative D would either connect to City wastewater infrastructure or develop on-site facilities. As with Alternative B, Alternative D would involve the construction of two on-site wells and associated pumping, storage, and disinfection facilities to supply potable water. Under Alternative D, the existing Eagle Mountain Casino would continue to operate.

Alternative E – Expansion of Existing Eagle Mountain Casino (FEIS § 2.7)

Alternative E involves the Tribe's expansion of the existing Eagle Mountain Casino within the Reservation. The expanded gaming component of the facility would consist of 16,500 sf of new building space, 350 additional EGDs, and a new 3,500-sf dining venue. Alternative E does not require federal action.

Alternative F – No Action Alternative (FEIS § 2.8)

Under the No Action Alternative, the Department would not implement any of the development alternatives considered within the FEIS. The No Action Alternative assumes that no parcels within the Site would be transferred into trust and the Tribe would continue to operate its existing Eagle Mountain Casino as it does presently.

Selection of the Alternative A

The project design of the Proposed Project (Alternative A) incorporates Best Management Practices (BMPs) which eliminate or substantially reduce environmental consequences to less-than-significant levels (FEIS § 2.3.3). The FEIS describes additional mitigation measures in Section 5.0 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 impacts to these resources would be less-than-significant. Based on a review of the FEIS and its analysis of potentially affected resources, we have determined that the Proposed Project (Alternative A) would best meet the purpose and need for acquiring the Site in trust as explained in the attached Record of Decision.

(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 §§ 4.7.1, 4.10.1, and 5.10.3) There is a general belief that the introduction of legalized gambling into a community increases crime. This argument, however, is based more on anecdotal evidence rather than empirical evidence. Whenever large volumes of people are introduced into an area, the volume of crime would also be expected to increase. This is true of any large-scale development. Taken as a whole, literature on the relationship between gambling and crime rates suggests that communities with gaming facilities are as safe as communities without. A study published in 2011 compared crime effects from different forms of tourism growth.⁶⁸ The study revealed that ski tourism resulted in a larger increase in crime than casino development. Another study published in 2017 examined casinos and crime rates across the United States from 1994 to 2012.⁶⁹ That study found on average there was an increase in crime in counties that opened tribal casinos for the first two years and after there was a decreased crime rate from pre-casino levels. Further, that study concluded there was no long-term increase in crime resulting from casinos.

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 would likely

⁶⁸ *Casino Gaming and Crime: Comparisons Among Gaming Counties and Other Tourism Places*, Journal of Travel Research, 50(3), 280-302, by M. Park & P.A. Stokowski (2011).

⁶⁹ *The Impact of Legalized Casino Gambling on Crime*, Regional Science and Urban Economics, M.W. Nichols & M.S. Tosun (2017)

increase in the vicinity of the Site, as would be expected with a large development of any type. Conversely, the number of people traveling to the existing Eagle Mountain Casino would decrease, and the rate of criminal incidents in the vicinity of the Eagle Mountain Casino Site would be expected to experience a corresponding decline. The Tribe will enter into a service agreement with Porterville Police Department and/or Tulare County Sheriff's Department to reimburse them for quantifiable direct and indirect costs incurred from the provision of law enforcement services at the Site. Through the implementation of this agreement, the on-site security measures, and the mitigation described in the FEIS, impacts would be addressed and the Proposed Project would result in a less-than-significant effect on law enforcement services and crime.

Alcohol Service: (FEIS §§ 4.10.1. and 5.10.3) The Tribe will adopt a Responsible Alcoholic Beverage Policy at the Proposed Project.⁷⁰ This policy will include, but not be limited to, checking identification of patrons and refusing service to intoxicated patrons. As a result, potential impacts to law enforcement, fire protection, and emergency medical service would be reduced.

Environmental Justice for Minority and Low Income Populations: (FEIS §§ 3.7.1, 4.7.1, and 5.2-.13) The minority population in the City and the County are above 50%, qualifying it as a minority community. The Proposed Project would have a direct beneficial impact to minority and low-income populations. These benefits include decreased unemployment and underemployment as well as related decreases in poverty rates and increases in standards of living.

The Proposed Project would also have beneficial effects on the Tribe (considered a minority population) including increased revenue for tribal governmental 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. Tribal members would have access to new jobs created on the Site resulting in decreased unemployment and underemployment. The Proposed Project would provide approximately 1,215 direct employment positions; of these, 790 would be a direct net addition after the relocation of the existing Eagle Mountain Casino.

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. The Proposed Project would not result in significant adverse effects to minority or low-income communities.

Impacts on infrastructure

Water Resources (Supply and Wastewater): (FEIS §§ 2.3.3, 4.10.1, and 5.3, *see also* MOU) The Proposed Project will connect to the City's municipal water supply and wastewater facilities. As part of the Proposed Project, the Tribe will construct a water reclamation facility on city-owned

⁷⁰ Tribe's 292 Application at 31.

property. The water reclamation facility will treat secondary effluent from the City's wastewater treatment plant to provide recycled water to the Proposed Project and to the Porterville Sports Complex. Because the Proposed Project will use less potable water than is currently used to irrigate the Sports Complex, it will result in a 73,828 gallon per day increase in available potable water for the City. Additionally, Section 5.3 of the FEIS provides water conservation measures to minimize potable water use at the Site.

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

- t reduce the City's potable water use at the Sports Complex,t
- t reduces the City's need to develop additional potable water supplies,t
- t reduces the amount of sewage disposed of by the City by diverting it for reuse, andt
- t allow the City to treat its own effluent at the water reclamation facility, with an option tot expand capacity, and provide treated water for higher value uses.t

The Proposed Project would help address the City of Porterville's water supply shortage, reduce the overall water demands within the City, and lay the groundwork to address the City's future capacity needs, thus, creating a beneficial impact for the City.

Transportation Infrastructure and Traffic Volume: (FEIS §§ 3.8, 4.8.2, 4.15.3, 5.8, and Appendix I; *see also* MOU) Development of the Proposed Project, in combination with anticipated growth, would result in increased traffic flow, congestion, and decreased levels of service. Both the cumulative and direct traffic impacts would be reduced to less-than-significant levels by the Tribe's fair share contributions and other mitigation measures articulated in the FEIS and the Memorandum of Understanding between the Tribe and the City. The Proposed Project would have a less-than-significant effect on all traffic study locations.

Air Quality: (FEIS §§ 3.4, 4.4.2, and 5.4) The Site is in an area designated as "nonattainment" for O₃ and PM_{2.5}. Emissions of individual criteria pollutants from construction of the Proposed Project would not exceed applicable *de minimis* levels. Operation of the Proposed Project, however, will produce emissions of the ozone precursor NO_x exceeding applicable levels. This would be a significant adverse impact. Section 5.4 of the FEIS contains mitigation measures and BMPs that would minimize criteria air pollutant emissions from construction and operation of the Proposed Project by reducing fugitive dust, diesel particulate matter, on-site area emissions, vehicle idling, and mobile emissions. Additionally, Section 5.4 of the FEIS requires the Tribe to offset NO_x emissions by purchasing credits. After implementing BMPs and mitigation measures, construction and operation of the Proposed Project would have less-than-significant impacts to the regional air quality.

Solid Waste Service: (FEIS §§ 3.10, 4.10.1, and 5.10.2) Construction of the Proposed Project would temporarily generate construction related solid waste. Operation of the Proposed Project would generate approximately 4.5 tons per day of solid waste representing approximately 0.56% of the daily capacity of Teapot Dome Landfill. Following the planned closure of the Teapot Dome Landfill, the County projects that solid waste from the Site region will be disposed of at the Visalia Landfill and represent approximately 0.23% of its daily capacity. Construction and

operation of the Proposed Project would have no significant impact to these facilities. Section 5.10.2 of the FEIS contains BMPs including recycling and composting, which would further reduce the amount of solid waste disposed of at the landfill(s).

Energy & Natural Gas: (FEIS §§ 3.10, 4.10.1, and 5.10.4) Southern California Edison (SCE) will continue to provide electricity to the Site. Operation of the Proposed Project will require an increase in capacity of both the servicing circuit and the substation. SCE expects to complete a planned expansion of the substation in 2019, which will increase its capacity and satisfy the Proposed Project's electricity demands. Additionally, improvements to the circuit that serves the Site would include the addition of a new circuit breaker at the substation, as well as the installation of new overhead and underground electrical lines in the region between the substation and the Site.

Southern California Gas Company (SoCalGas) will continue to provide natural gas to the Site for the Proposed Project. SoCalGas may need to increase the capacity of the servicing distribution line to accommodate the estimated maximum peak operational demand of the Proposed Project. Sections 5.4.2 and 5.10.4 of the FEIS contain BMPs to reduce energy demands and minimize potential construction impacts to utility service providers. Further, the Tribe would pay a fair share of the upgrades needed to serve the Proposed Project to receive service. Any infrastructure improvements required by the development of the Proposed Project would comply with California Environmental Quality Act regulations and other applicable federal, state, and local laws. Therefore, the Proposed Project with BMPs and mitigation would have less-than-significant impacts to electricity and natural gas services.

Impacts on services

Library Services, Schools, and Recreation: (FEIS §§ 3.7.1, and 4.7.1) The Proposed Project would not result in a substantial increase in population or housing in the community surrounding the Site. Therefore, the demand for library services, additional schools, and recreational facilities would not substantially increase. Development of the Proposed Project would result in less-than-significant impacts to library services, schools, and recreation.

Law Enforcement: (FEIS §§ 3.10.4, 4.10.1, and 5.10.3, *see also* MOU) The City of Porterville Police Department (City P.D.) and/or the Tulare County Sheriff's Department (Sheriff's Department) would continue to provide law enforcement services to the Site and the surrounding area. The Tule River Tribal Gaming Security would provide security patrol and monitoring of the casino resort. The Tribe would expand the Tule River Tribal Gaming Security to just over 90 full- and part-time personnel, 12 of whom would be full-time EMS officers.

Operation of the Proposed Project will increase the number of calls for service placed to City P.D. and/or Sheriff's Department. The FEIS estimates the number of calls for law enforcement service at the Proposed Project would be 33 calls per month, based on the estimated increase in traffic to the Site. Section 5.10.3 of the FEIS includes BMPs to minimize the potential service calls as well as mitigation measures including a requirement for the Tribe to enter into a reimbursement agreement with City P.D. and or Sheriff's Department for quantifiable direct and indirect costs incurred in conjunction with the provision of law enforcement services. The Tribe

has entered into a Memorandum of Understanding with the City that includes reimbursement payments to the City for anticipated project related law enforcement costs. The Memorandum of Understanding, and other mitigation described in the FEIS, would address impacts law enforcement services. Further, the on-site security measures and BMPs would reduce the expected on-site law enforcement service calls to City P.D. and/or Sheriff's Department. Therefore, the Proposed Project would result in a less-than-significant effect on law enforcement services.

Fire Protection & Emergency Medical Services: (FEIS §§ 2.3, 3.10.5, 4.10.1, and 5.10.3 *see also* MOU) The Proposed Project includes constructing a Tule River Fire Department (Tribal F.D.) fire station at the Site. The Tribal F.D. would provide primary fire protection and emergency medical services to the Proposed Project. The proposed on-site fire station would be capable of a much faster response times than the City of Porterville Fire Department (City F.D.) or the Tulare County Fire Department (County F.D.). The Tribe has entered into a Memorandum of Understanding with the City that includes reimbursement payments to the City for anticipated project related fire protection costs and training.

The Proposed Project will increase the number of service calls for fire protection or emergency medical services. The Tribal F.D. fire station at the Site will be equipped to handle the service calls for fire protection or emergency medical services at the Site. Additionally, the Tribe's on-site security staff would include 12 full-time emergency medical services personnel who could respond to emergency medical services calls at or around the Site. Further, the presence of a Tribal F.D.-staffed fire station at the Site could reduce the number of existing service calls near the Site for the City F.D. and County F.D. Sierra View Medical Center is the nearest full-service emergency room to the Site and is located approximately 3.6 miles away in Porterville. Sierra View Medical Center is in the process of doubling the capacity of its emergency department from 22 to 44 beds; this expansion is anticipated to be completed in two to three years, and would allow Sierra View Medical Center to accommodate any increase in emergency room visits. Therefore, the Proposed Project's impact on fire protection and emergency room services would be less-than-significant.

Impacts on housing

Impacts on housing are predominantly expected from employment induced relocation (FEIS §§ 3.7.1, 4.7.1, and Appendix B). The Proposed Project will create approximately 790 new jobs after factoring in the Tribe's existing casino workforce. Due to the existing unemployed and underemployed workforce in the County, the Proposed Project is not likely to require employees to relocate their housing but rather change their commute patterns. The Proposed Project may cause some in-migration, resulting in new occupation of between 41 and 65 housing units by employees seeking to relocate their place of residence to the County. The City has approximately 1,242 vacant housing units and the County has approximately 11,222 vacant housing units. The regional housing stock contains more than enough vacant homes to support potential impacts to the regional labor market under the Proposed Project. Therefore, the Proposed Project is not expected to stimulate regional housing development. The Proposed Project would not cause a significant adverse impact to the housing market.

Impacts on community character and land use

Visual Resources: (FEIS §§ 3.13, 4.13.1, and 5.13) The Proposed Project would change the existing views of the Site from disked open fields with several office buildings to a casino-resort complex. 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. BMPs included in Section 5.13 of the FEIS would further reduce the potential for aesthetic impacts from implementation of the Proposed Project. The City's General Plan designates the Site and vicinity for industrial use. The intensity of use of the Site under the Proposed Project is considered compatible with future surrounding land uses as development occurs in accordance with the General Plan. The Proposed Project would result in a visually cohesive development that may be considered more aesthetically pleasing than the existing office and storage structures within the Site and the Proposed Project would have a less-than-significant aesthetic impact.

Noise: (FEIS §§ 3.11, 4.11.1, 5.11) 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 (FHWA). Grading and construction activities associated with the Proposed Project would be intermittent and temporary in nature and would not result in significant adverse effects associated with the ambient noise environment. Operational noise sources could include traffic, heating ventilation, and air conditioning (HVAC) systems, special events, parking lots, and delivery trucks. The nearest sensitive receptors are far enough away that the anticipated noise from operation including during events at the outdoor amphitheater would not exceed applicable NAC standards. The Proposed Project would increase traffic on certain roadways and would result in increases in ambient noise above the FHWA NAC threshold of 67 dBA Leq for several sensitive receptors. The Tribe will construct sound barrier walls or other noise attenuating features to reduce the ambient noise level at those sensitive receptors. After mitigation, traffic noise impacts from the Proposed Project along these roadways would be reduced to less-than-significant levels.

Land Use: (FEIS §§ 3.9, 4.9.1, and 5.9) The Proposed Project would result in the approximately 40-acre Site being transferred from fee to federal trust, thereby removing the Site from the City's land use jurisdiction. The Proposed Project would develop a casino-resort on vacant and undeveloped land. The City's General Plan designates the Site and vicinity for industrial use. The Proposed Project's commercial use of the Site 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 Site. There are no land uses in the vicinity of the Site that would be disrupted by the Proposed Project, however, mitigation measures contained in Section 5.9 of the FEIS would further reduce any potential land use incompatibilities to less-than-significant. Therefore, the Proposed Project is generally consistent with local land use plans.

Biological Resources: (FEIS §§ 3.5.2, 4.5.1, and 5.5) The Proposed Project includes development of the entire 40-acre Site, which currently includes 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 region. Although habitats within the Site and the City owned off-site improvement areas (for the water reclamation facility) may be suitable for

federal and State special-status species, 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 Site and the City owned off-site improvement areas are less-than-significant and no mitigation is required.

Surveys conducted during the FEIS process identified no wetlands or Waters of the U.S. within the Site or City owned off-site improvement areas. Therefore, the Proposed Project would not result in adverse effects to wetlands and Waters of the U.S. and no mitigation is required.

Two special-status species have a very low potential to occur on the Site and the City owned off-site improvement areas (San Joaquin Kit Fox and the American Badger). Mitigation listed in Section 5.5 of the FEIS would reduce impacts to all species with the potential to occur on the Site to less-than-significant levels. The Proposed Project 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 5.5 of the FEIS would reduce potential impacts to migratory birds to less-than-significant levels.

Cultural Resources: (FEIS §§ 3.6.4, 4.6.1, and 5.6) Surveys conducted during the FEIS process identified no known historic properties or paleontological resources within the Site or the City owned off-site improvements areas. The Proposed Project ground disturbing construction activities potentially unearthing previously unknown archaeological or paleontological resources. Section 5.6 of the FEIS contains mitigation measures to address the inadvertent discovery of cultural resources resulting in less-than-significant impacts.

Agriculture: (FEIS §§ 3.9.3 and 4.9.1) The Site received a combined land evaluation and site assessment Farmland Conversion Impact Rating 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 Site and it is not designated for agricultural uses in local planning documents. However, one of the City owned off-site improvement areas is actively farmed for the production of non-human consumption crops and is designated “Farmland of Statewide Importance” by the Farmland Monitoring and Mapping Program, as well as under a Williamson Act Contract. Under the Proposed Project, the City would withdraw the Williamson Contract and no project-related construction would take place on the parcel until after cancellation is complete. There are 1,239,000 acres of farmland in the County (USDA, 2012). The Proposed Project would result in a conversion of 0.003% of the farmland in the County. This represents a negligible conversion of farmland. Therefore, there would be no significant impacts to agriculture from development of the Proposed Project.

Hazardous Materials: (FEIS §§ 3.12.2, 4.12.1, and 5.12) The BIA conducted a Phase I Environmental Site Assessment of the Site in 2016 which identified some on-site debris which were subsequently removed. Database searches revealed no known potential contamination at the Site. The Proposed Project’s ground disturbing activities could expose previously undiscovered contaminated soil and/or groundwater the Site from migration of hazardous materials from off-site properties or unknown hazardous materials dumping. The City owned off-site improvement areas may be contaminated from either agricultural chemical use or

previous use as a shooting range. Additionally, use of fill material imported from other sites may carry a risk of contamination. Section 5.12 of the FEIS contains soil related mitigation measures and BMPs, including further soil testing and, if necessary, remediation as well as verification that fill material is clean. 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. 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. Section 5.12 of the FEIS also contains construction related mitigation measures and BMPs to limit accidental release of hazardous material. With these measures, the Proposed Project would not result in significant adverse effects associated with hazardous materials during construction or operation.

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 Proposed Project would result in less-than-significant significant impacts to these resources. In fact, the Proposed Project would have beneficial impacts on the City's services and infrastructure in particular potable water provision.

(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 substantial temporary and permanent employment opportunities. The available workforce in the City and the County primarily would fill these jobs resulting increases in local wages and spending.

KlasRobinson Q.E.D. prepared an analysis of the economic impact of the Proposed Project in the *Economic Impact of Planned New Eagle Mountain Casino* (Economic Impact Analysis). The Economic Impact Analysis analyzed impacts to the local economy and the Tribe from construction of the Proposed Project and its subsequent operation. The Economic Impact Analysis also analyzed the Proposed Projects impact on existing gaming operations and non-gaming operations including hotels, restaurants, bars, and entertainment.

Construction Economic Impact

The construction of the Proposed Project will result in economic output to the County and the State of California in the form of jobs, purchases of goods and services and through positive fiscal effects (FEIS § 4.7.1 and Appendix B). The Economic Impact Analysis estimated the Proposed Project would cost approximately \$245 million to construct, the majority of that cost will flow to workers, residents, businesses, and local governments located in the County. This construction cost includes approximately \$98.7 million on hard construction and site work

expenditures. Construction of the Proposed Project would generate approximately 1,165 full-time equivalent construction jobs with approximately \$80.3 million in wages. The construction cost also includes approximately \$66 million on furnishings, fixtures, equipment, fees, working capital, and pro-opening costs and construction interest. In addition, the construction of the Proposed Project would result in indirect and induced economic activity among a variety of different industries and businesses throughout the County. Impacted businesses in the County would in turn increase their spending, and labor demand, thereby further stimulating the local economy. The Department considers all of this economic activity a beneficial impact.

Operational Economic Impact

The Economic Impact Analysis contains estimates of revenue and expenditures from the operation of the Proposed Project (FEIS § 4.7.1 and Appendix B). The Economic Impact Analysis estimates the Proposed Project would generate \$103.6 million in new revenue or output within the County. The Economic Impact Analysis estimates net increases in indirect and induced outputs within the County are \$19.3 million and \$14.8 million, respectively. Overall, operation of the Proposed Project would generate approximately \$137.7 million annually within the County. The Economic Impact Analysis estimates approximately 70% of revenue would be direct expenditures. Output received by the County businesses would in turn increase their spending, and labor demand, thereby further stimulating the local economy. The Department considers all of this economic activity a beneficial impact.

The Economic Impact Analysis calculated operation of the Proposed Project would generate approximately 1,075 new full-time equivalent jobs (including direct, indirect, and induced) in the County after accounting for the closure of the existing Eagle Mountain Casino. Considering the closure of the existing Eagle Mountain Casino, which currently supports 424 employment positions, the Proposed Project would create 790 new job with \$23.1 million in new wages. The Economic Impact Analysis estimated the Proposed Project would generate approximately 166 new indirect jobs with \$7.2 million in new wages, and 119 new induced jobs with \$4.3 million in new wages. In total, the operation of the Proposed Project would generate an increase of \$34.6 million in wages in the County.

Estimated Annual Operational Economic Impacts

| Type of Impact | Employment | Labor Income | Economic Output |
|----------------------|------------|----------------|-----------------|
| Direct Operational | 790 | \$23.1 million | \$103.6 million |
| Indirect Operational | 166 | \$7.2 million | \$19.3 million |
| Induced Operational | 119 | \$4.3 million | \$14.8 million |

Substitution Effects

The Economic Impact Analysis contains estimates of substitution effects on competing gaming establishments and non-gaming establishments from the operation of the Proposed Project (FEIS § 4.7.1 and Appendix B). The Proposed Project is expected to cause a decline in revenue at competing gaming establishments, which include three Indian Tribe casinos and one commercial cardroom. The nearest tribally operated casino is the Santa Rosa Indian Community of the Santa Rosa Rancheria's Tachi Palace Hotel and Casino located in Lemoore, Kings County, California. The Economic Impact Analysis projects the Tachi Palace would experience a 10.4% decrease in revenue during the first year of operation of the Proposed Project. The Picayune Rancheria of Chukchansi Indians of California's Chukchansi Gold Resort & Casino, located in Madera County, California would experience a 2.4-percent decrease in revenue during the first year of operation of the Proposed Project. The Table Mountain Rancheria's Table Mountain Casino located in Fresno County, California would experience a 1.6% decrease in revenue during the first year of operation of the Proposed Project. The commercial cardroom, Aviator Casino, in Delano, Kern County, California, would experience a 3.9% decrease in revenue during the first year of operation of the Proposed Project. Each of these facilities would return to baseline (no-project condition) in four to ten years. Each of these facilities would continue to operate and for the Tribal facilities continue to provide their respective tribal governments revenue. We must note that IGRA does not guarantee that tribes operating existing facilities will conduct gaming free from tribal and non-tribal competition.⁷¹ Nor is competition in and of itself sufficient to conclude a detrimental impact on a tribe.⁷²

Conclusion

The Regional Director found and we concur, 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 activity directly and indirectly. The Proposed Project will directly create significant employment opportunities for the surrounding community and will provide a significant source of income.

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

The Tribe anticipates that several of the impacts of operation of the Proposed Project, while less-than-significant, would nevertheless result in incremental costs to the surrounding community. The Tribe intends to address all such costs through Memoranda of Understanding with affected local government entities, paying its fair share of costs to improve existing infrastructure, and where possible, providing services on-site.

⁷¹ See Sokaogon Chippewa Cmty. V. Babbit, 214 F.3d 947 (7th Cir. 2000).

⁷² See Citizens for a Better Way, et. al. v. DOI, 2015 U.S. Dist. LEXIS 128745, 2015 WL 5648925 (E.D. Cal. Sept. 24, 2015)

Property Taxes: (FEIS § 4.7.1 and Appendix B) The Proposed Project includes the transfer of the 17 parcels that make up the Site from fee status into federal trust for the benefit of the Tribe, resulting in the loss of local property taxes. During the 2016-2017 tax year, state, county, and local governments assessed property taxes for the Site of \$37,504. Because property in trust is not subject to local taxes, these property taxes would be lost to state and local governments.

Law Enforcement: (FEIS §§ 3.10.4, 4.10.1, and 5.10.3 *see also* MOU) The City of Porterville Police Department (City P.D.) and/or the Tulare County Sheriff's Department (Sheriff's Department) would continue to provide law enforcement services to the Site and the surrounding area. During operation of the Proposed Project, the Tule River Tribal Gaming Security would provide security patrol and monitoring of the casino resort complex. Section 5.10.3 of the FEIS includes BMPs to minimize the potential service calls as well as mitigation measures including a requirement for the Tribe to enter into a reimbursement agreement with City P.D. and or Sheriff's Department for quantifiable direct and indirect costs incurred in conjunction with the provision of law enforcement services. The MOU provides the Tribe will pay the City an annual payment, of which \$250,000 shall be used annually for the City's increased law enforcement costs related to the project. The MOU and other mitigation described in the FEIS would address impacts law enforcement services.

Fire Protection & Emergency Medical Services: (FEIS §§ 2.3, 3.10.5, 4.10.1, and 5.10.3 *see also* MOU) The Proposed Project includes constructing a Tule River Fire Department (Tribal F.D.) fire station at the Site. The Tribal F.D. would provide primary fire protection and emergency medical services to the Proposed Project. The Tribal F.D. fire station at the Site will be equipped to handle the service calls for fire protection or emergency medical services at the Site. Additionally, the presence of a Tribal F.D.-staffed fire station at the Site could reduce the number of existing service calls near the Site for the City F.D. and County F.D. The Tribe has discussed the Proposed Project with both the City F.D. and County F.D. and the parties will negotiate details of a mutual aid agreement. The Tribe has entered into a Memorandum of Understanding with the City that includes reimbursement payments to the City of \$50,000 for anticipated project related fire protection costs and training. The County F.D. has estimated servicing the Proposed Project would require one-time costs of new equipment at \$230,000 and hiring a new firefighter at an annual cost of \$73,000.⁷³

Transportation Infrastructure: (FEIS §§ 3.8, 4.8.2, 4.15.3, 5.8, and Appendix I) The Proposed Project would result in four study intersections operating at an unacceptable level of service (LOS) during the opening year. The traffic impact study estimated cumulative traffic volumes for the year 2040. Development of the Proposed Project, in combination with anticipated growth, would result in increased traffic flow, congestion, and a number of intersections and roadway segments that do not meet minimum LOS levels. Both the cumulative and direct traffic impacts would be reduced to less-than-significant levels through fair share contributions and other mitigation for the Proposed Project.

⁷³ Tribe's 292 Application at 34.

Mitigation of Economic Impacts on Local Governmental Services: (FEIS §§ 1.5, 4.7.1, 4.8.2, 4.10.1, 4.15.3, 5.8, 5.10, and Appendix B) The Proposed Project would result in increased costs to local governments as well as losses in property tax revenue. However, sections 5.8 and 5.10 of the FEIS requires the Tribe to make fair share contributions to offset anticipated costs from development of the Proposed Project. Additionally, the lost property taxes would be more than offset by the estimated increase in sales tax revenue on secondary economic activity generated by the Proposed Project of \$346,375. Further, the Proposed Project will create 790 jobs, which will decrease demands for unemployment and social services. Operation of the Proposed Project would generate substantial economic output for a variety of business in the region, and thus generate substantial tax revenues for state and local governments. Increased state and local tax revenues resulting from operation of the Proposed Project would offset the loss of property tax revenues resulting from trust acquisition of the Site.

Conclusion

The Regional Director found, and we concur, that the Tribe has submitted the required information regarding anticipated costs of impacts to the surrounding community and has identified sources of revenue to mitigate them. The Tribe has committed to negotiating fair share contributions for infrastructure improvements and increased demands on public services. Further, the record reflects the cumulative economic impact of the Proposed Project will generate increased employment and sales tax revenue for state and local governments.

(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 apply its existing responsible gambling and self-limitation policies as further described below:

Responsible Gambling Policies

The Tribe currently participates in funding State problem gaming prevention programs through its contributions to the Office of Problem Gambling as provided in section 9.2 of the Tribe's Tribal-State Gaming Compact (FEIS §§ 4.7.1 and 5.7). Furthermore, the Tribe intends to implement multiple resources to mitigate problem gaming, such as offering brochures and signage in the casino advertising the problem gambler hotline and website, and training employees on how to identify and manage problem gambling. The Tribe has also committed to implementing procedures to allow for voluntary self-exclusion and to revisit its policies on a regular basis to encourage responsible gaming practices. Through the Tribe's self-exclusion program, a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, the denial or restraint on the issuance of credit and check-cashing services, and exclusion from the Gaming Facility. Adherence to the requirements of the Tribal-State Gaming Compact and mitigation measures described in section 5.7 of the FEIS would further reduce this less-than-significant impact.

Conclusion

The Regional Director found and we concur that the Tribe has sufficiently addressed the anticipated costs to the surrounding community for treatment programs and compulsive gambling attributed to the Proposed Project.

(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 closest Indian Tribes to the Site are more than 25 miles away, therefore, there are no nearby Indian Tribes as defined at 25 C.F.R. 292.2, and no consultation is required. Also, as discussed above the Site is within the Tribe's historic territory.

(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 Tribe and the City entered into a Cooperative Agreement in 2010, which describes the intent of the parties to enter into a cooperative and mutually respectful relationship regarding the Tribe's development of the Site (FEIS § 1.5.2). That relationship is evidenced by Proposed Project's water reclamation facility and the City's letter of support dated October 25, 2016. The Proposed Project has the support of numerous local officials, other tribes, and local businesses. The Tribe has obtained eighteen letters of support from various entities including, but not limited to, the Mayor of Porterville, the District Attorney for the County, the Sheriff-Coroner for the County, the President and CEO of the Porterville Chamber of Commerce, the Assembly Member for the 26th District, and several members of the County Board of Supervisors.⁷⁴ The Tribe has involved the City and County during all stages of the process. The Tribe is continuing to negotiate with the City and the County regarding mitigation measures and public service agreements.

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 addressing the City's potable water supply, stimulating economic development, and employment. The Proposed Project incorporates BMPs and mitigation measures, which limit potential negative impacts to less-than-significant. The Tribe entered into a Memorandum of Understanding with the City, to facilitate the development of the Proposed Project and ongoing

⁷⁴ Tribe's 292 Application, Exhibit B.

cooperation between the Tribe and the City.⁷⁵ 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. Based on the Tribe's application and supporting documents, the FEIS and associated studies, the consultation process, submissions by citizens and local governmental representatives, and the entire record before us, we conclude that gaming at the 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 September 18, 2018, the Regional Director sent Consultation Notices to the State and local officials within a 25-mile radius of the Site.⁷⁶ Letters were sent to the following:

- California State Clearinghouse
- Office of the Governor, Senior Advisor for Tribal Negotiations
- Deputy Attorney General, State of California
- U.S. Senator Dianne Feinstein
- City of Porterville
- City of Lindsay
- City of Visalia
- City of Tulare
- City of Delano
- City of Concoran
- City of Woodlake
- City of Farmersville
- City of Exeter
- City of McFarland
- Tulare County Board of Supervisors

The BIA received letters from the Tulare County and the City of Porterville.

⁷⁵ MOU.

⁷⁶ R.D.'s Part 292 Findings, Tab 6.

The County of Tulare, County Administrative Office

The Tulare County Administrative Officer on behalf of the County expressed continued support for the Proposed Project as long as the Tribe and the County are able to arrive at an agreement providing satisfactory mitigation and potential impacts on the County and surrounding community. The County also provided a copy of the County's comments on the Draft EIS, which were addressed in the FEIS.⁷⁷

The City of Porterville

The City Manager, on behalf of the City, confirmed the City does not anticipate the Proposed Project would have a detrimental effect on the community. In particular, the City Manager noted the "robust and collaborative relationship" between the Tribe and the City as well as their ongoing negotiations regarding potential impacts. The City Manager also noted expected benefits for the community including project related economic development and jobs. The City Manager also concurred with section 4.9.1 of the FEIS that the Proposed Project would be compatible with the surrounding land use pattern identified in the Porterville General Plan.

Conclusion

We have fully reviewed and evaluated comments in the record, as discussed above, and find that there is sufficient evidence to make a positive Secretarial Determination concluding that a gaming establishment on the Site would be in the best interest of the Tribe and its members, and that gaming on the Site would not be detrimental to the surrounding community.

CONCLUSION

We have completed our review and analysis of the Tribe's application under 25 U.S.C. § 2719 (b)(1)(A), including submissions by state and local officials, citizens, and citizens' groups. For the reasons discussed above, we have determined that gaming on the Site in the City of Porterville, Tulare County, California, would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community, including nearby Indian tribes.

The Department respectfully requests 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 Site for gaming purposes after it has complied with all other requirements in IGRA and its implementing regulations, and upon its

⁷⁷ R.D.'s Part 292 Findings, Tab 6, Exhibit 1.

acquisition in trust.⁷⁸ If you do not concur in this determination, the Tribe may not use the Site for gaming purposes.

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). 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Tara Sweeney', written in a cursive style.

Tara Sweeney
Assistant Secretary – Indian Affairs

⁷⁸ See, e.g., 25 C.F.R. § 599 (Tribe must submit to the National Indian Gaming Commission a new facility license at least 120 days prior to opening a new gaming facility).