United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 17 2022

The Honorable Octavio Escobedo
Chairman, Tejon Indian Tribe
1731 Hasti Acres Drive #108
Bakersfield, California 93309

Dear Chairman Escobedo:

In 2014, the Tejon Indian Tribe (Tribe) submitted a fee-to-trust application to the Bureau of Indian Affairs (BIA) requesting that the Department of the Interior (Department) acquire in trust approximately 320.04 acres of land, more or less (Mettler Site) near the City of Mettler in Kern County, California, for gaming and other purposes.[1] On October 24, 2018, the Tribe submitted a supplemental and restated fee-to-trust application.[2] The Tribe also requested a determination that it is eligible to conduct gaming on the Mettler Site pursuant to the Indian Gaming Regulatory Act (IGRA).[3]

The Tribe proposes to develop a casino-resort on a portion of the Mettler Site. At some point in the future, the Tribe may use the remaining acreage to provide governmental services to its members such as housing, health care, and wellness.[4]

I have completed my review of the Tribe's request, the Regional Director's Part 151 Findings of Fact, comments received, and documentation in the record. As discussed below, I determine that

---

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

[2] *See* Letter from Octavio Escobedo, Chairman, Tejon Indian Tribe, to Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs (October 24, 2018) (hereafter Tribe's Application).

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

[4] *See* Memorandum, *Findings of the Pacific Region on the 25 C.F.R. Part 151 Factors for the Tejon Indian Tribe, Homeland Parcel/Mettler Site* from Regional Director, Bureau of Indian Affairs Pacific Region, to Director, Office of Indian Gaming (June 30, 2022) (on file with the Office of Indian Gaming) (hereafter Regional Director's Part 151 Findings of Fact).

the Mettler Site will be acquired in trust for the benefit of the Tribe for gaming and other purposes pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108. Once acquired in trust, the Tribe is eligible to conduct gaming on the Mettler Site pursuant to Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719.

BACKGROUND

In 1851, the United States established treaties with certain tribes including the Tejon Tribe (herein referred to as the 1851 Treaty). Under the terms of the 1851 Treaty, the signatory tribes agreed to cede their aboriginal lands to the United States in exchange for a 763,000-acre reservation between Tejon Pass and the Kern River. By February 1852, the 1851 Treaty, along with 17 additional treaties negotiated with other California Indians, had been submitted to the United States Senate for consideration and ratification. On June 8, 1852, the Senate declined to ratify any of the treaties negotiated with the California tribes and sealed the treaties. Accordingly, the described reservation, identified as Royce Area 285[5], was never formally set aside.[6] The Mettler Site is located within the boundaries of the reservation that would have been set aside had the 1851 treaty been ratified. Until recently, the Tribe had no land held in trust.[7]

DESCRIPTION OF THE PROPERTY

The Mettler Site is centrally located within the area reserved by the 1851 Treaty between the Tribe and the United States, situated within the County of Kern, State of California, consisting of four (4) parcels containing approximately 320.04 acres referenced as Assessor's Parcel Numbers 238-204-02, 238-204-04, 238-204-07, and 238-204-14. The property is not contiguous to lands held in trust for the Tejon Tribe, the Tejon Community Center trust property, acquired in trust in 2020, see Enclosure III. Maps of the Mettler Site are included in Enclosure I. The legal description of the Mettler Site is included as Enclosure II.

PROPOSED PROJECT

The Tribe proposes to develop a Hard Rock casino resort on approximately 80 acres of the Mettler Site.[8] The Proposed Project will include a 166,500-sf gaming floor with electronic gaming machines and table games, a 400-room hotel with a multi-use facility, 4,500 parking

---

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

[6] *See* discussion of Tejon Treaty and subsequent history of Tribal land loss in 2019 Memorandum Opinion; *see also* discussion of the loss of Tejon lands in Secretarial Determination at 2, 15, and 27.

[7] *See* Decision Letter to Acquire Land in Trust from Assistant Secretary –Indian Affairs to Chairman, Tejon Indian Tribe (Sept. 4, 2020) (hereafter Tejon Community Center Trust Decision). As a result of the Community Center Trust Decision, on October 23, 2020, the United States accepted the Tribal Community Center Property containing approximately 10.46 acres in trust for the Tribe. The Tejon Community Center Trust Decision is included in Enclosure III. *See* Notice, Land Acquisitions; Tejon Indian Tribe, 85 Fed. Reg. 55471 (Sept. 8, 2020) (notice that on Sept. 1, 2020, the Assistant Secretary- Indian Affairs decided to acquire an approximately 10.36-acre parcel in trust for the Tejon Tribe).

[8] *See* Final Environmental Impact Statement, Tejon Indian Tribe Trust Acquisition and Casino Project (Oct. 2020), Vol. I (hereafter FEIS) § 2.2. 1 (available at www.tejoneis.com).

spaces, and 220 RV parking spaces. The Proposed Project will also include restaurants, retail space, joint fire/sheriff station, water infrastructure, and wastewater treatment and disposal facilities.[9]

PRIOR DETERMINATIONS

The Indian Gaming Regulatory Act

Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988, subject to several exceptions. One exception, known as the "Secretarial Determination" or "two-part determination" permits a tribe to conduct gaming on lands acquired after October 17, 1988.

On January 8, 2021, the Assistant Secretary – Indian Affairs issued a positive Secretarial Determination finding the Tribe's proposed gaming establishment on trust land near Mettler would be in the best interest of the Tribe and its members, and that gaming on that trust lands would not be detrimental to the surrounding community.[10] The Secretarial Determination is included as Enclosure IV. On June 13, 2022, Governor Newsom concurred with the Secretarial Determination. [11]

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

The National Environmental Policy Act

The Department's regulations require that issuance of a Secretarial Determination and approval of a tribe's trust acquisition application comply with the National Environmental Policy Act (NEPA), 42 U.S.C § 4321 *et seq*.[12] As discussed in detail in Section 151.10(h) below, the Assistant Secretary – Indian Affairs issued a Record of Decision for the Mettler Site on January 8, 2021. The Record of Decision determined that the issuance of the Secretarial Determination, the acquisition of the Mettler Site in trust, and the subsequent development of the Proposed Project will have no significant impact on the quality of the human environment. The Record of Decision is included as Enclosure V.

TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

[9] *Id.*

[10] *See* Letter from Tara Sweeney, Assistant Secretary –Indian Affairs, to Governor Gavin Newsom, transmitting, *Secretarial Determination for the Tejon Indian Tribe Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(l)(A)* (January 8, 2021) (hereafter Secretarial Determination).

[11] *See* letter from Gavin Newsom, Governor of California, to Secretary Bryan Newland, Assistant Secretary –Indian Affairs, concurring with Secretarial Determination (June 13, 2022), included as Enclosure VI.

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

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA).[13] The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA.

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

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

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

The acquisition of the Mettler Site in trust satisfies the criteria of Section 151.3(a)(3).[14] As discussed in the Secretarial Determination[15] (attached), the Proposed Project will facilitate Tribal self-determination and economic development by funding social, educational, and employment programs for the Tribe.

The Regional Director found, and I concur, that the acquisition of the Mettler Site into trust satisfies the requirements of 25 C.F.R. § 151.3(a)(3) because the acquisition is necessary to facilitate Tribal self-determination and economic development.[16]

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

We consider the Tribe's application under the off-reservation criteria of Section 151.11 because the Mettler Site is not contiguous to the Tribal Community Center Property. Thus, the regulations require that the Tribe's application be evaluated under the Part 151 off-reservation criteria, which incorporate and add requirements to the on-reservation criteria, including the criteria listed in Sections 151.10(a) through (c), (e) through (h), and 151.11(b) through (e), as discussed below.

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

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

---

[13] 25 U.S.C. § 5108.
[14] Although only one factor in Section 151.3(a) must be met, the Tribe's Application also satisfies the requirements of subsection (a)(2) because the Tribe's application contains an agreement with SCCR Tejon, LLC, which owns title and has agreed to transfer the property to the United States to be held in trust for the Tribe should the Department accept the land into trust for gaming and other purposes. *See* Tribe's Application at 4.
[15] *See* Secretarial Determination at 19.
[16] *See* Regional Director's Part 151 Findings of Fact at 9.

reasons explained below, the Tribe is eligible for the land into trust provisions contained in 25 U.S.C. § 5108.

Carcieri Analysis[17]

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition, and if such authority exists, to consider any limitations contained in it. The Department additionally analyzes the effect, if any, of the decision in *Carcieri v. Salazar.*[18] In 2014, the Solicitor of the Interior (Solicitor) memorialized the Department's understanding of the phrase "now under federal jurisdiction" in the Indian Reorganization Act[19] in light of *Carcieri*, in the Sol. Op. M-37029 (M-37029).[20] The Solicitor provided a two part procedure to determine if a tribe was under Federal jurisdiction before 1934, and whether that jurisdictional status remained intact in 1934.[21] The Solicitor further provided that the decision in *Carcieri* requires some indicia of Federal authority beyond the general principle of plenary authority, in the form of evidence that demonstrates the Federal Government's exercise of responsibility for and obligation toward a tribe and its members in or before 1934.

In a 2019 Memorandum Opinion, the Deputy Solicitor – Indian Affairs concluded that the Secretary was authorized to acquire land in trust for the Tejon Tribe under the Indian Reorganization Act.[22] The 2019 Memorandum Opinion sets out a detailed analysis that demonstrates that the Tejon Tribe was under Federal jurisdiction continuously from 1851 to the present.[23] In addition to the detailed history of the loss of the Tejon Tribe's ancestral lands, the opinion analyzed evidence that the Tribe was under Federal jurisdiction. The 2019 Memorandum Opinion states that from the time of the Treaty of Guadalupe Hidalgo and the

---

[17] In a 2020 decision to acquire the Community Center Parcel in trust, the BIA Regional Director, Pacific Region, found that the continuing course of dealings between the Tribe and the Federal Government from 1851 and through 1934, establishes that the Tribe was subject to the jurisdiction of the United States through the application and administration of the Federal Government's plenary authority. The evidence presumptively demonstrates that the tribe was "recognized" in or before 1934 and remained "under federal jurisdiction" through 1934. The decision concluded that the Secretary has the statutory authority to acquire land in trust for the Tribe under Section 5 of the IRA. The BIA Regional Director's 2020 decision relied on a Memorandum Opinion: *Federal Jurisdiction Status of Tejon Indian Tribe in 1934*, (June 30, 2020) by the Deputy Solicitor for Indian Affairs. The Deputy Solicitor's Memorandum Opinion extensively analyzed whether the Tribe was "under federal jurisdiction" for purposes of the IRA. The opinion relied on four-step procedure for determining eligibility. *See* Decision Letter to Acquire Land in Trust from Assistant Secretary –Indian Affairs to Chairman, Tejon Indian Tribe at 30 (Sept. 4, 2020).

[18] 555 U.S. 379 (2009).

[19] Indian Reorganization Act, 48 Stat. 984-988 (1934) (codified at 25 U.S.C. § 5108 *et seq.*).

[20] Sol. Op. M-37029, *The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act* (Mar. 12, 2014) (M-37029).

[21] *Id.* at 19.

[22] *See* Memorandum Opinion: *Federal Jurisdiction Status of Tejon Indian Tribe in 1934*, Deputy Solicitor – Indian Affairs (Feb. 14, 2019) (hereafter 2019 Memorandum Opinion).

[23] The conclusion of the Solicitor's Office and the application of the two-part analysis is consistent with the Department's 2011 Reaffirmation Decision of the Tejon Indian Tribe. Then Assistant Secretary –Indian Affairs Larry Echo Hawk concluded that the Tejon Tribe's relationship with the United States remained intact from 1851 to the time of his decision in 2011, and that the Tribe had been improperly excluded from the list of Indian Entities Eligible to Receive Services from the Bureau of Indian Affairs. The Solicitor's Office noted that in an April 24, 2012, Memorandum, Assistant Secretary – Indian Affairs, Larry Echo Hawk, provided a detailed analysis in support of his decision.

United States' possession of the territory of California, the Federal Government asserted jurisdiction over the Tejon Indian Tribe.[24] The 2019 Memorandum Opinion concluded that:

> "based on the record as a whole, I conclude that the Tejon Tribe satisfies both steps of the "under federal jurisdiction" inquiry established by Sol. Op. M-37029. The record demonstrates that the Tribe's ancestors were first recognized and brought under federal jurisdiction when the United States negotiated the 1851 Treaty. From 1851 through 1934, there is no evidence demonstrating that the United States ever terminated the Tribe's recognized status."
>
> In the years following the Treaty, the federal government treated the Tejon Tribe as a federally recognized tribe, during which time federal officials continued a course of dealings with the Tribe and its members. These included efforts to establish a land base for the Tribe through purchase and affirmative litigation; taking responsibility for educating the Tribe's children; and enumerating the Tribe's members in censuses and on lists of tribes under the authority of federal Indian agencies in California.[25]

The Regional Director's Part 151 Findings of Fact relies upon and agrees with the conclusion reached by the Office of the Solicitor that the Tejon Tribe was under Federal jurisdiction continuously from 1851 to the present and that the Secretary is authorized to acquire land in trust for the Tejon Tribe under the Indian Reorganization Act.[26] I concur.

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

Section 151.10(b) requires the Secretary to consider a tribe's need for additional land. For generations, the Tribe has persevered without a permanent homeland. The Tribe's landlessness has been a direct result of Federal actions and policies that over time have resulted in significant health, welfare, and economic hardships and disparities for the Tribal members. The impacts of landlessness on the Tribe were exacerbated by the Department's error in not including the Tribe on its first list of federally recognized tribes.[27] From 1979 to 2012, the Tribe was not listed among the tribes eligible for funding and services from the Federal Government notwithstanding the clear existence of a Federal relationship with the Tribe.[28] As a landless Tribe, Tejon did not have access to the services and programs provided to all federally recognized tribes. The lack of a homeland is presumptive evidence of the Tribe's need for land.

---

[24] 2019 Memorandum Opinion at 22.
[25] *Id.*
[26] *See* Regional Director's Part 151 Findings of Fact at 33.
[27] *See Indian Tribal Entities Recognized and Eligible To Receive. Services From the United States Bureau of Indian Affairs*, 44 Fed. Reg. 7235 (Feb. 6, 1979).
[28] Letter, Larry Echo Hawk, Assistant Secretary –Indian Affairs to Kathryn Morgan, Chairwoman Tejon Tribe (Dec. 30, 2011).

The Tribe needs a stable revenue source to begin funding economic development and essential governmental services. Without a revenue source, the Tribe has limited capacity to provide for the social welfare and other needs of its members. The Tribe's members struggle for jobs, housing, and education. Because of the few jobs available to Tribal members the median annual household income is $17,208 and more than half of Tribal members live below the Federal poverty line for a household of three.[29] Thirty-three percent of Tribal households participate in the Supplemental Nutrition Assistance Program, which is nearly twice the rate of that in Kern County.[30] Permanent housing is also an issue for the Tribe. Sixty-two percent of Tribal members either rent or live at a location without payment of rent whereas nationally 64% of individuals either own or have a home mortgage,.[31] Tejon Tribal members lag far behind the rest of the country and Kern County residents in education with only 11% holding an associate degree or higher compared to 39% nationally and 24% in Kern County.[32]

The acquisition of the Mettler Site is an essential component of the Tribe's self-determination and broader economic initiatives to establish Tribal self-sufficiency through a long-term revenue base that will strengthen the Tribe's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development. The Tribe's demographics highlight the need for a permanent Tribal homeland from which they can deliver programs and services. This acquisition directly addresses those fundamental needs by providing revenue for: (1) a governmental center from which to provide social services: (2) a health center from which to provide medical and wellness services; (3) an organic farm to provide healthy, traditional foods; (4) housing; (5) community and recreational opportunities for Tribal youth and green space for Tribal elders; and (6) jobs for able Tribal members to support their families.

The Regional Director found, and I concur, that acquisition of the Mettler Site in trust will address the Tribe's need for additional land.[33]

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

Section 151.10(c) requires the Secretary to consider the purposes for which the land will be used. The Tribe proposes to develop a casino-resort on the Mettler Site. The Proposed Project will include a 166,500-sf gaming floor with electronic gaming machines and table games, a 400-room hotel with a multi-use facility, 4,500 parking spaces, and 220 RV parking spaces on approximately 80 acres of the Mettler Site.[34] The Proposed Project will also include restaurants, retail space, a joint fire/sheriff station, water infrastructure, and wastewater treatment and disposal facilities.[35] The Tribe's Application satisfies the requirements of this Section.

---

[29] *See* Secretarial Determination at 3.
[30] FEIS at 3.7.1.
[31] *Id.*
[32] *Id.*
[33] *See* Regional Director's Part 151 Findings of Fact at 34.
[34] FEIS § 2.2.1.
[35] *Id.*

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

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

By correspondence dated September 28, 2020, the BIA Pacific Region solicited comments from state and local governments and interested parties on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments.[36]

In response to the notification, the Department received comments from the Kern County Administrative Office and the Kern County Treasure Tax Collector. By letter dated October 13, 2020, the Kern County Administrative Office provided the following information:

- The County provides law enforcement and fire services to the property as well as general government services for public health, planning and building inspection.
- The current year assessed values for the property are:
    - APN 238-204-02 $5,251,776
    - APN 238-204-04 $1,345,278
    - APN 238-204-07 $3,958,926
    - APN 238-204-16 $1,508,351
- The property is zoned A-1 (Limited Agriculture), which does not permit the type of commercial gaming facility proposed.
- The Board supports the approval and construction of the project.

In addition, the Kern County Board of Supervisors stated that they have executed an Intergovernmental Agreement with the Tejon Indian Tribe that will fully mitigate all impacts on public services.[37]

By letter dated October 28, 2020, the Kern County Treasurer-Tax Collector provided a copy of the 2020 tax bill and a spreadsheet totaling the amounts for each of the taxing agencies that are collected on the tax bills. The information showed that the Mettler Site's assessed property taxes for 2020-2021 were $152,024.17 but did not provide information regarding impacts to the County's overall budget.[38] The annual operating budget for Kern County for 2020-2021 was

---

[36] The BIA sent its request for comments to the following: California State Clearinghouse; Senior Advisor for Tribal Negotiations, Office of the Governor; U.S. Senator Dianne Feinstein; U.S. Senator Kamala Harris; Kevin McCarthy, Congressman 23rd District; Ms. Sara J. Drake, Deputy Attorney General, State of California; Stand Up for California; Kern County Board of Supervisors; Kern County Assessor; Kern County Planning Department; Kern County Treasurer & Tax Collector; Kern County Sheriff's Department; City of Bakersfield; Kern Families Against Casino Expansion; I-5/99 Vista Corridor Preservation Group; and Superintendent, Bureau of Indian Affairs, Central California Agency. *See* Regional Director's Part 151 Findings of Fact at 35-36.

[37] *See* Regional Director's Part 151 Findings of Fact at 36-37.

[38] *See* letter to the Pacific Regional Office, from Chase Nunneley, Kern County Assistant Treasurer and Tax Collector (October 28, 2018).

$2,562,023,527.[39] Taxes collected comprised $429,662,808.[40] Thus, the $152,024.17 in taxes from the Mettler Site is minimal, when compared with the entire amount of taxes collected by the County.

The loss of property tax revenue will be minimal and more than offset by increased business activity from the Proposed Project. The Proposed Project will generate substantial tax revenue for state and local governments from economic activity associated with construction and operation.[41]

The Regional Director found, and I concur, that the impact of removing the Mettler Site from the tax rolls is minimal and will be offset by the benefits that will accrue to the region from the increased economic activity from the Proposed Project.[42]

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

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

As discussed in Section 151.10(e) above, the BIA Pacific Region requested comments regarding jurisdictional problems and potential conflicts of land use from state and local governments.

In 1953, Congress passed Public Law 83-280, a statute granting to five states, including California, jurisdiction over most crimes and some civil regulatory matters on Indian reservations in the states.[43] Public Law 280 left intact the inherent civil and criminal jurisdiction of Indian nations because it did not specifically extinguish Tribal jurisdiction.[44]

Placing the Mettler Site into trust will not create jurisdictional problems under Public Law 83-280. Once the land is accepted into trust for the benefit of the Tribe, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons, and transactions on the land as the State has over other Indian lands within the State. Pursuant to the inter-governmental agreement between the Tribe and Kern County, the Tribe will develop a joint police and fire substation on the Mettler Site. Additionally, the Tribe will compensate the County for the cost of providing law enforcement, fire protection, and emergency response services.[45]

[39] County of Kern Adopted Budget 2020-2021, Board of Supervisors County of Kern, Preface (adopted Aug. 25, 2020) (available at https://www.auditor.co.kern.ca.us/budget/2020-21AdoptedBudget.pdf).
[40] *Id.*
[41] For additional discussion on the tax impacts and mitigation of impacts to the surrounding community, *see* Secretarial Determination at 25-28.
[42] *See* Regional Director's Part 151 Findings of Fact at 37.
[43] Act of Aug. 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. §1360; *see generally* COHENS HANDBOOK OF FEDERAL INDIAN LAW Section 6.04[3][a], at 537 (Nell Jessup Newton ed., 2012.)
[44] *Id at* 6.04[3][c], at 557-558.
[45] FEIS at 3.7.4.1.

Placing the Mettler Site into trust will not create any land use problems. As determined in the Record of Decision, the development of the Proposed Project will replace existing agricultural land use, which differs from adjacent land uses of the property, which is currently zoned for agriculture. The Proposed Project, however, will be implemented in a manner that is consistent with most of the policies of the County General Plan and will not physically disrupt neighboring land uses, will not prohibit access to neighboring parcels, and would not otherwise significantly conflict with neighboring land uses.[46] The Mettler Site's multi-purpose uses, with mitigation, are consistent with nearby land uses. Kern County, which has jurisdiction over the Site until acquired in trust, supports the Proposed Project.

The Regional Director found, and I concur, that the acquisition of the Site would not cause jurisdictional problems or conflicts of land use.[47]

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

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

The Regional Director has found, and I concur, that the BIA has sufficient resources to assume the additional responsibilities resulting from the acquisition, and that acquiring the Mettler Site in trust would not impose any significant additional responsibilities or burdens on the BIA.[48]

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

Section 151.1 0(h) requires the Secretary to consider the availability of information necessary for compliance with the NEPA, 42 U.S.C. § 4321 *et seq*., and a determination on the presence of hazardous substances.

602 DM 2, Land Acquisitions: Hazardous Substances Determinations

On November 12, 2019, the BIA certified a Phase 1 Environmental Site Assessment (ESA) for the Mettler Site, which determined that there were no hazardous materials or contaminants. The BIA certified an updated ESA on July 12, 2022.[49] This fulfills the requirements of 602 DM 2.

---

[46] *See Record of Decision for Secretarial Determination Pursuant to the Indian Gaming Regulatory Act and Trust Acquisition of Approximately 320.04 acres in Kern County, California, for the Tejon Indian Tribe* at U.S. Department of the Interior, Bureau of Indian Affairs (2021) at 22.

[47] *See* Regional Director's Part 151 Findings of Fact at 38.

[48] *See* Regional Director's Part 151 Findings of Fact at 39.

[49] *See* Memorandum From Felix, Kitto, Acting Regional Environmental Scientist, *Phase I Certification-TR-4313-P5 J51 630T Mettler 305.82 DTA.*

National Environmental Policy Act

On January 8, 2021, the BIA issued a Record of Decision (ROD) for the Secretarial Determination and the fee-to-trust acquisition of the Mettler Site.[50] The ROD adopted Alternative A1, the Proposed Project, which was analyzed in the Final Environmental Impact Statement. The ROD concluded the Department's compliance with NEPA for the Proposed Project.

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

The Mettler Site is located in Kern County less than five miles from the Tribal Community Center trust property. It is 675 miles from the northern border of California and 210 miles from the southern border of California.

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

The Tribe provided its Economic Benefits Plan, which provided projections of income, balance sheets, fixed assets account and cashflow statements. The Department analyzed this information in detail under the analysis of best interest of the Tribe and its members in the Secretarial Determination.[51]

The Regional Director found, and I concur, that the financial projections are reasonable and indicate that the Proposed Project would provide much-needed revenue for the Tribe.[52]

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

As more fully discussed in Sections 151.10(e)-(f) above, the BIA Pacific Region sent notices to state and local governments on September 28, 2020. The comments received during the Notice period for the 151 application focused on their support of the Proposed Project.[53] None of the 151 comments opposed the Proposed Project.

DECISION TO APPROVE THE TRIBE'S FEE-TO-TRUST APPLICATION

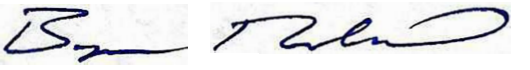
Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, I have determined that the Department will acquire the Mettler Site in trust for the Tejon Indian Tribe. After the Mettler Site is acquired in trust, the Tribe will be eligible to conduct gaming on the Site pursuant to Section 20 of IGRA, 25

---

[50] *See Record of Decision for Secretarial Determination Pursuant to the Indian Gaming Regulatory Act and Trust Acquisition of Approximately 320.04 acres in Kern County, California, for the Tejon Indian Tribe*, U.S. Department of the Interior, Bureau of Indian Affairs (2021).
[51] *See* Secretarial Determination at 8-14.
[52] *See* Regional Director's Part 151 Findings of Fact at 54.
[53] *Id.*

U.S.C. § 2719 (b)(1)(A). Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the Mettler Site in trust. This decision constitutes a final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

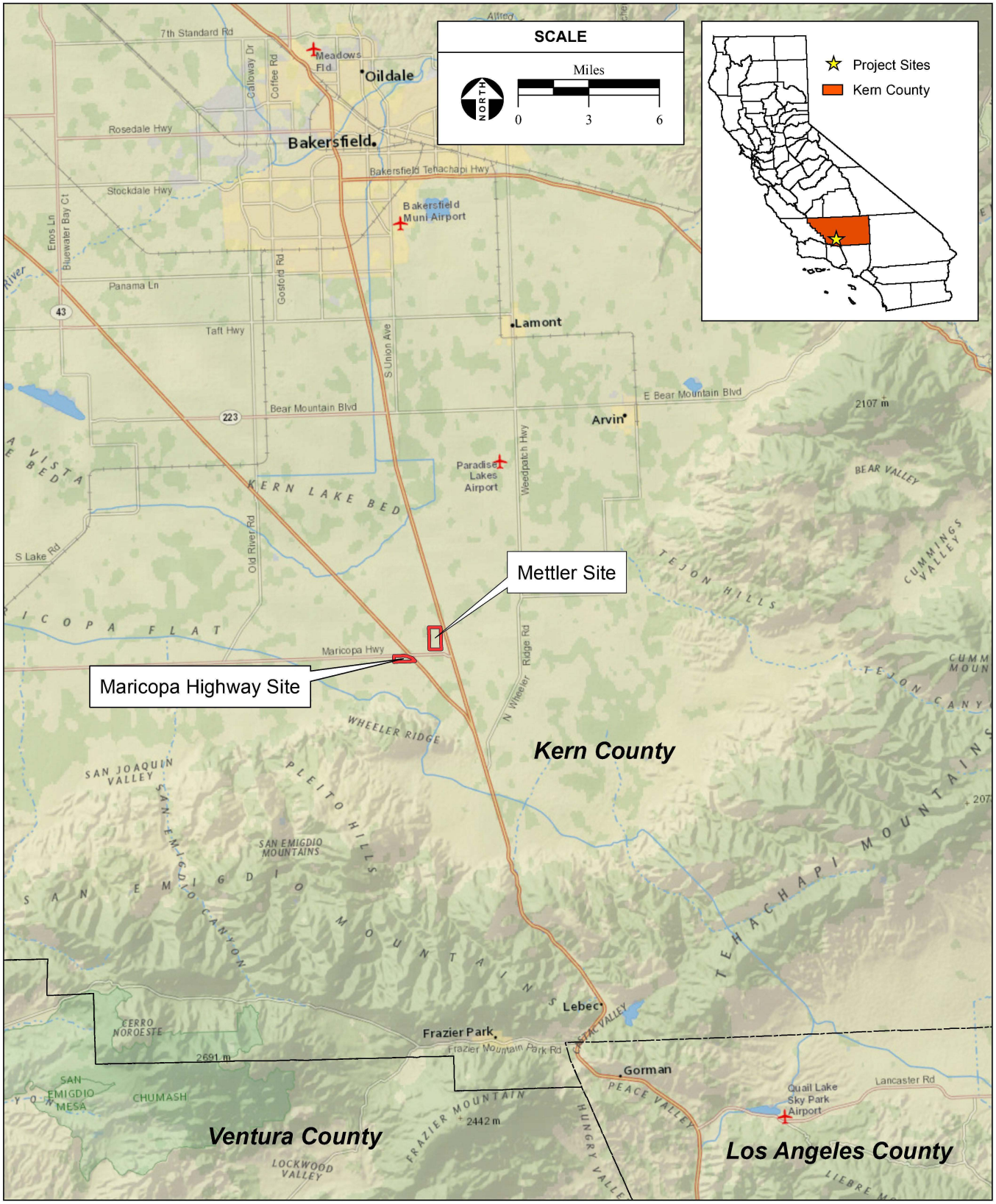
Enclosures:

I. Maps
II. Legal Description
III. Community Center Property Trust Acquisition Decision
IV. Secretarial Determination
V. Record of Decision
VI. Governor Newsom's Concurrence

cc: Regional Director, Pacific Region

ATTACHMENT I

MAPS



SOURCE: NatGeo 2019; AES, 4/16/2019

Figure 2-1
Regional Location

ATTACHMENT II

LEGAL DESCRIPTION

EXHIBIT “A”

REAL PROPERTY IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 11 NORTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

ALSO KNOWN AS: LOT NO. 1 AND LOT NO. 2, SECTION 2 AS SHOWN ON THE APPROVED FEBRUARY 3, 1863 GENERAL LAND OFFICE OFFICIAL PLAT OF TOWNSHIP 11 NORTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 2:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 11 NORTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 3:

THE WEST HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 11 NORTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID LAND, OR THAT MAY BE PRODUCED AND SAVED THEREFROM, PROVIDING HOWEVER, GRANTOR, HIS SUCCESSORS AND ASSIGNS SHALL NOT CONDUCT DRILLING OR OTHER OPERATIONS UPON THE SURFACE OF SAID LAND, BUT NOTHING HEREIN CONTAINED SHALL BE DEEMED TO PREVENT THE GRANTOR, HIS SUCCESSORS AND ASSIGNS, FROM EXTRACTING OR CAPTURING SAID MINERALS BY DRILLING ON ADJACENT OR NEIGHBORING LANDS AND/OR FROM CONDUCTING SUBSURFACE DRILLING OPERATIONS UNDER SAID LAND AT A DEPTH OF 100 FEET BELOW THE SURFACE OF SAID LAND, SO AS NOT TO DISTURB THE SURFACE OF SAID LAND OR ANY IMPROVEMENTS THEREON, AS RESERVED BY CHANSLOR-WESTERN OIL AND DEVELOPMENT COMPANY, A DELAWARE CORPORATION, SUCCESSOR IN INTEREST TO CHANSLOR-CANFIELD MIDWAY OIL COMPANY, A CALIFORNIA CORPORATION, IN DEED RECORDED NOVEMBER 8, 1954, IN BOOK 2317, PAGE 102, OF OFFICIAL RECORDS.

PARCEL 4:

ALL THAT PORTION OF SECTION 11, TOWNSHIP 11 NORTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 11, THENCE SOUTH 78°07’ 14” WEST 184.02 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°48’ 55” WEST 40.00 FEET; THENCE NORTH 0°11’ 05” WEST 40.00 FEET; THENCE NORTH 89°48’ 55” EAST 40.00 FEET; THENCE SOUTH 0°11’ 05” EAST 40.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES WITHIN OR UNDERLYING SAID LAND AS RESERVED BY KERN COUNTY LAND COMPANY, IN DEED DATED OCTOBER 3, 1945, RECORDED IN BOOK 1283, PAGE 212, OF OFFICIAL RECORDS.

ATTACHMENT III

COMMUNITY CENTER PROPERTY DECISION

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP - 4 2020

The Honorable Octavio Escobedo
Chairman, Tejon Indian Tribe
1731 Hasti Acres Drive #108
Bakersfield, California 93309

Dear Chairman Escobedo:

This notice of decision is a result of our analysis of an application filed by Tejon Indian Tribe (Tribe) for trust acquisition of fee lands. The property, Community Center Property, contains 10.36 acres more or less, is described as follows:

The northerly 589.34 feet of section 28, township 12 north, range 19 west, San Bernardino Meridian, according to the official plat of survey of said land on file in the Bureau of Land Management situated west of the westerly line of Wheeler Ridge Road and south of the southerly line of David Road, in the County of Kern, State of California.

Excepting therefrom all oil, gas and other hydrocarbon substances in, on and under said land, as reserved in previous deeds of record.

Regulatory Authority

The applicable regulations are set forth in the Code of Federal Regulations (CFR) Title 25, Part 151. The regulations specify that it is the Secretary of the Interior's (Secretary) policy to accept lands "in trust" for the benefit of Tribes when such acquisition is authorized by an Act of Congress; and, (1) when such lands are within the exterior boundaries of the Tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the Tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

This acquisition facilitates tribal self-determination and Indian housing, therefore, it is within the land acquisition policy as set forth by the Secretary. Pursuant to 25 CFR Part 151.10, the Secretary will consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located within or contiguous to the tribe's reservation, and the acquisition is not mandated:

> (a) The existence of Statutory Authority for the acquisition and any limitations contained in such authority; (b) need of the individual Indian or the Tribe for additional land; (c) the purpose for which the land will be used; (d) if the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs; (e) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (f) jurisdictional problems and potential conflict of land use which may arise; (g) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and, (h) the extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions.

As there is no land base where the United States recognizes the Tribe having governmental jurisdiction, this application was processed as an off-reservation acquisition where the Secretary shall consider the additional factors at 25 CFR § 151.11.

Our review of the application determined the following:

25 CFR § 151.10 (a) Statutory Authority for the Acquisition of the Property.

Section 151.10(a) requires analysis of the statutory authority for the acquisition and any limitations on such authority. The primary authority for this acquisition is the Indian Reorganization Act (IRA) of 1934, 48 Stat. 984. Section 5 (25 U.S.C. § 5108) provides in relevant part:

> "The Secretary of the Interior is authorized in his discretion, to acquire through purchase, relinquishment, gift exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee is living or deceased, for the purpose of providing lands for Indians."

Section 19 (25 U.S.C. §5129) of the IRA defines those "Indians" eligible for its benefits as:

> "all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood."

No limitations on that authority are applicable here, including those limitations described in *Carcieri v. Salazar*, 555 U.S. 379 (2009). In *Carcieri*, the United States Supreme Court held that the Secretary's authority to acquire land in trust for Indian tribes under the first definition of "Indian" in the IRA extended only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934.

I have evaluated the applicability of *Carcieri* to the Tribe's application and have determined that the Secretary is authorized to acquire land in trust for the tribe under 25 U.S.C. § 5108. For the reasons set forth below, I find that the Tribe satisfies the first definition of "Indian"[1] which the Court has construed as meaning recognized tribes "under federal jurisdiction" in 1934, and therefore, the Secretary has the authority to take the subject parcel into trust for the Tribe using the authority of Section 5 of the IRA.

I. BACKGROUND

The Tribe is located in Kern County, California. The Tribe's temporary governmental offices are located on fee land owned by the Tribe in Bakersfield, California, where the majority of its tribal members currently reside.

In 1979, the Bureau of Indian Affairs (BIA) published its first formal list of federally recognized tribes, which did not include the Tejon Tribe.[2] In 2006, the Tribe requested that BIA confirm its status as a federally recognized tribe.[3] In support of this request, the Tribe submitted detailed historical records.[4] Concluding that the

[1] I did not determine whether or not the Tribe may satisfy any other definitions of Indian.
[2] U.S. Dept. of the Interior, Bureau of Indian Affairs, "Indian Tribal Entities That Have A Government-to-Government Relationship with the United States," 44 Fed. Reg. 7235 (Feb. 6, 1979).
[3] Letter, Chairwoman Kathryn Montes Morgan, Tejon Indian Tribe, to Associate Deputy Secretary James Cason, Dept. of the Interior (June 29, 2006).

Tribe had been inadvertently omitted from the BIA's list of recognized tribal entities,[5] on December 30, 2011, Assistant Secretary – Indian Affairs (Assistant Secretary) Larry Echo Hawk reaffirmed the Tribe's federally recognized status.[6] Assistant Secretary Echo Hawk determined that failure to include the Tribe on the 1979 list was the result of administrative error,[7] and that the Tribe's government-to-government relationship with the United States had never lapsed or been terminated.[8] The evidence that demonstrated the Tribe's prior acknowledgment included treaty negotiations with the Tribe in 1851; the establishment of the Tule River Indian Reservation for Tejon Indians and other tribes in 1864; federal efforts to secure land on behalf of Tribal members who remained on Tejon Ranch lands; and the withdrawal of 880 acres of public domain lands for the Tribe's use between 1916 and 1962.[9] As a result, the Tribe was added to the Department of the Interior's (Department) list of recognized tribal entities in August 2012.[10]

The Tribe's Historical Background

A. 1851 Treaty

The confluence of two seminal events in California history – the discovery of gold at Sutter's Mill and the United States' acquisition of California at the end of the Mexican-American War – served as the trigger for the first federal interactions with the Tribe.[11] The Mexican-American War ended in February 1848 with the signing of the Treaty of Guadalupe Hidalgo.[12] The treaty transferred ownership of the territory that would become California to the United States.[13] The discovery of gold at Sutter's Mill just days prior to the treaty set off the California gold rush and a massive migration to the newly acquired territory. The influx of newcomers resulted in dramatic impacts on California Indian communities,[14] as well as conflicts between miners, settlers and the various tribes.[15]

To relieve tensions, the United States sought to negotiate treaties with the California Indians.[16] In September 1850, Congress enacted legislation authorizing the President to appoint three treaty commissioners,[17]who arrived in San Francisco in early 1851 and began meeting and treating with tribes located throughout the State shortly thereafter.[18]

On June 10, 1851, Commissioner George W. Barbour met with tribal leaders and headmen at Tejon Pass in south-central California.[19] The tribal leaders represented nearly 600 Indians from the southern San Joaquin

---

[4]*See* Tejon Indian Tribe, Request for Confirmation of Status (June 30, 2006); Request and Supporting Materials, Historical Exhibits, Vols. I-III (June 30, 2006).

[5] Memorandum, Larry Echo Hawk, Assistant Secretary – Indian Affairs to Pacific Regional Director (Apr. 24, 2012) ("2012 Memo").

[6] Letter, Larry Echo Hawk, Assistant Secretary – Indian Affairs to Kathryn Morgan, Chairwoman Tejon Tribe (Dec. 30, 2011).

[7] *Id.*

[8] 2012 Memo at 4.

[9] *Id.*

[10] Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs, 77 Fed. Reg. 47,871 (Aug. 10, 2012).

[11] Phillips, *supra* note 11, at 24; *See also*, Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, 9 Stat. 922 (1848)("Treaty of Guadalupe Hidalgo").

[12] Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic, 9 Stat. 922 (Feb. 2, 1848)("Treaty of Guadalupe Hidalgo").

[13] *Id.*

[14] *See* Phillips, *supra* note 11, at 24.

[15] *See* Phillips, *supra* note 11, Chap. 2.

[16] *Karuk Tribe of California v. Ammon*, 209 F.3d 1366, 1370 (Fed. Cir. 2000).

[17] 9 Stat. 519 (Sept. 28, 1850); 9 Stat. 544, 558 (Sept. 30, 1850)(Appropriating $25,000 "to enable the President to hold treaties with the various Indian tribes in the State of California").

[18] Brief of the United States Solicitor, *Stuart v. United States*, 1859 WL 5368 (Ct. Cl. 1859).

[19] Treaty Made and Conducted at Camp Persifer F. Smith, at the Texan Pass, State of California, June 10, 1851, Between George W. Barbour, United States Commissioner, and the Chiefs, Captains and Head Men of the "Castake," "Texon," &c., Tribes of Indians ("1851

Valley region, including the Tejon Tribe, represented by[20] Chief Vicente and his brother Chico. At the conclusion of negotiations, leaders from 11 tribes, including 6 representatives from the Tejon Tribe, signed the 1851 Treaty.[21] Under the terms of the 1851 Treaty, the signatory tribes agreed to cede their aboriginal lands to the United States in exchange for a 763,000-acre reservation between Tejon Pass and the Kern River.[22] The signatory tribes also acknowledged themselves to be under the "exclusive jurisdiction, control and management of the government of the United States."[23]

By February 1852, the 1851 Treaty – along with 17 additional treaties negotiated with other California Indians – had been submitted to the United States Senate for consideration and ratification.[24] On June 8, 1852, the Senate declined to ratify any of the treaties negotiated by the commissioners with the California tribes.[25]

B. 1852 to 1911

Although the Senate declined to ratify any of the California Indian treaties, in March 1853, Congress authorized the President to make five military reservations from the public domain in California "for Indian purposes."[26] That fall, Edward Fitzgerald Beale, Superintendent of Indian Affairs for California, met with tribal headmen and chiefs from in and around Tejon Pass for two days to explain the Federal Government's intentions in relation to their "future support."[27] In his subsequent report to the Commissioner of Indian Affairs, Superintendent Beale noted the Indians' anxiety "to know the intentions of the government towards them."[28] Their farming agent, already employed by Superintendent Beale to assist the tribes, had been unable to assure them of "anything permanent in relation to their affairs."[29]

Superintendent Beale proposed that the Federal Government commence a system of farming and instruction to enable the tribes to support themselves by their own labor in time.[30] For this purpose, Beale explained, the Federal Government would provide them with seed of all kinds and provisions sufficient to allow them to live until they could become self-sufficient.[31] Beale's report to the Commissioner of Indian Affairs expressly noted the example of the Tejon Indians, "who had embraced this new mode of life."[32] He closed this report with the following words:

> [I]t gives me pleasure to state that I have entire confidence in the ultimate success of the plan I have proposed for the support of the Indians in California, and that if this plan is pursued, that

---

Treaty"); *see also,* Letter, Special Indian Agent Asbury to Commissioner of Indian Affairs (Aug. 18, 1914) (relaying that early reports described an 1851 treaty with the Tejon Indian Tribe and clarifying that the spelling "Texon," is a spelling variation on Tejon).

[20] *See* Phillips, *supra* note 11, at 24, 36.

[21] 1851 Treaty at Art. I.

[22] *Id.* at Art. 3.

[23] *Id.* at Art. I.

[24] *Karuk Tribe of California v. Ammon*, 209 F.3d 1366, 1371 (C.A. Fed. 2000) (The three commissioners divided California into eighteen regions and negotiated similar treaties with the tribes in each region.).

[25] *Karuk Tribe of California v. Ammon*, 209 F.3d 1366, 1372 (Fed.Cir. 2000); Richard E. Crouter and Andrew Rolle, "Edward Fitzgerald Beale and the Indian Peace Commissioners in California, 1851-1854", HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA QUARTERLY, Vol. 42 (June 1960) 107-132, 119.

[26] 10 Stat. 226, 238 (Mar. 3, 1853) ("1853 Act").

[27] Report No. 92, Supt. E.F. Beale to Commissioner of Indian Affairs (Sept. 30, 1853), in ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS at 229-232 (1853) ("ARCIA").

[28] *Id.* at 229.

[29] *Ibid.*

[30] *Ibid.*

[31] *Ibid.*

[32] *Id.* at 230.

> they will ultimately form industries and useful communities. The small experiment I have already made proves that they are worthy of the paternal care of the government.[33]

Superintendent Beale further explained the need for the Indians to settle at a point where "the government would be able to watch over and protect them from the whites, as well as the whites from them."[34] The Tejon Indians remained reluctant to give up their old mode of life until Superintendent Beale "had promised them that the reserve selected for them" would be near to the Tejon Pass.[35]

As Superintendent Beale noted, however, the 1853 Act presumed "a sufficiency of vacant public land" on which the reserve could be established, which was not the case. Superintendent Beale found it almost impossible to find any lands unclaimed by Spanish or Mexican land grants or free from pre-emption claims by white settlers.[36] Complicating matters, Superintendent Beale complained that the 1853 Act provided "no authority to purchase lands for the United States" for Indian purposes.[37] Superintendent Beale therefore recommended that authority be obtained to purchase Spanish and Mexican land grants for that purpose while inexpensive land was still available.[38] With that expectation in mind, Superintendent Beale therefore continued his farming system on behalf of the Tejon Tribe, "leav[ing] it to Congress to purchase the land should the title prove good, or remove the Indians to some less suitable locality."[39]

Pursuant to the policy announced in the 1853 Act, and consistent with his stated plan, Superintendent Beale mapped and named a 50,000-acre military reserve for William K. Sebastian of Arkansas, Chairman of the Senate Committee on Indian Affairs Committee.[40] Superintendent Beale began gathering groups from surrounding tribal communities to join those already settled on the reserve.[41] However, the area proposed for the Sebastian Military Reserve was actually located on a Mexican land grant rather than on public land. And despite no formal designation as such, contemporaries and Indian Agents commonly referred to the Sebastian Military Reserve as the "Tejon Reservation."[42]

In 1854, Beale was removed from his post as Superintendent, in part because he had focused too much of his efforts on improving the Tejon Reservation.[43] Supervision of the Tejon Tribe continued under T.J. Henley, who succeeded Beale as Superintendent. In August of 1854, Superintendent Henley wrote to George Manypenny, Commissioner of Indian Affairs, that:

> [I] have visited the Indian reservation at Tejon, (the only reservation at which, as yet, any Indians have been collected,) and taken possession and supervision of the public property, schedules of which will accompany my report at the expiration of the quarter.[44]

---

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid.*

[37] *Ibid.*

[38] *Id.* at 231. Beale further reported that he had consulted on the issue with the California congressional delegation.

[39] *Id.* at 230.

[40] *See* Map of the Sebastian Military Reserve as surveyed by H.S. Washburn, under the direction of E.F. Beale, Superintendent of Indian Affairs, Approved by Maj. Gen J.E. Wool Com. Pac. Div. U.S.A., Cont +/- 49,928 Acres; *see also* National Park Service, *Five Views: An Ethnic Historic Site Survey for California*, https://www.nps.gov/parkhistory/online_books/5views/5views1h92.htm (last visited May 1, 2020)(citing Latta, Frank, *Handbook of the Yokuts Indians,* 2nd ed., 736 (1977)).

[41] John R. Johnson, Ph.D., *Ethnohistory of the Tejon Indian Tribe* (Sep. 2016)(citing Latta, Frank, *Handbook of the Yokuts Indians,* 2nd ed., 736 (1977)).

[42] *See* Phillips, *supra* note 11, at 120 (noting that the Sebastian Military Reserve was more commonly known by the name Tejon Reservation).

[43] Phillips, *supra* note 11, at pg. 131 (President Pierce removed Beale on May 31, 1854 and appointed Thomas Henley as superintendent of Indian Affairs in California).

[44] Letter, T.J. Henley, Superintendent of Indian Affairs in California, to Commissioner Manypenny (Aug. 28, 1854).

By 1862, the Tejon Reservation had fallen into a state of decay.[45] Through neglect or willful destruction, most of the crops were destroyed.[46] In 1862, Superintendent John P.H. Wentworth noted the presence of the Kitanemuk (ancestors of the Tejon Tribe) at the Tejon Reservation and provided a census for their numbers, including Chief Vicente, a signatory to the 1851 Treaty.[47]

That same year, Superintendent Wentworth urged William Dole, Commissioner of Indian Affairs, to have the Tejon Reservation set aside by an act of Congress for the exclusive use of the Indians, and indicated that he believed private parties claimed the land under a Mexican land grant. In his report to Commissioner, he suggested that the district's United States Attorney determine title to the property.[48]

On April 8, 1864, Congress passed a law stating that no more than four tracts of land in California would "be retained by the United States for the purpose of Indian Reservations."[49] At the time, there were five tracts in use for this purpose: Smith River, Round Valley, and Mendocino in Northern California; and Tejon and Tule River in the Central California.[50] In response to the 1864 Act, Austin Wiley, the recently appointed Superintendent, ordered the relocation of as many Indians as possible from the Tejon Reservation to the Tule River Farm.[51] As part of the federal relocation, Superintendent Wiley, in a report that year to the Commissioner of Indian Affairs, noted the lack of food at the Tejon Reservation.[52]

The underlying ownership status of the Tejon Reservation also presented uncertainty for those Tejon Indians who remained. Between 1855 and 1866, the land underlying the Tejon Reservation became available to private parties through patents issued by the Federal Board of Commissioners. The tracts that would eventually comprise the Tejon Reservation and later the Tejon Ranch began as four Mexican land grants: the Rancho Los Alamos y Agua Caliente; Rancho El Tejon; Rancho Castac; and Rancho La Liebre.[53] The Sebastian Military Reserve had been established on the Rancho El Tejon in 1853. In 1855, Beale, no longer Superintendent, purchased Rancho La Liebre. He bought Rancho El Tejon and Rancho de los Alamos y Agua Caliente in 1865, and Rancho Castac in 1866. With the purchase of these four Mexican land grants, Beale created the Tejon Ranch.[54] In total, Beale acquired approximately 265,000 acres of the Tejon Valley, including most or all of the Tejon Tribe's aboriginal territory.[55]

Despite Superintendent Wiley's attempt to remove the Tribe from the Tejon Ranch, approximately 300 such Indians remained – approximately the same number Beale reported in the area when he mapped the reserve in 1853.[56]

---

[45] Phillips, *supra* note 11, at 240.

[46] *Ibid.*

[47] Extract from Report No. 67, Report to the Commissioner of Indian Affairs, Annual Report, 1862, by P.H. Wentworth Superintendent for the Southern District of California (Aug. 30, 1862)("The Indians properly belonging at present to the Tejon reservation may be numbered at about 1,370. . . ." The Sierra or Caruana Indians [Kitanemuk] under their chief, Vicente, number 36 men, 40 women, and 20 children . . . .").

[48] Extract from Report No. 67, Report to the Commissioner of Indian Affairs, Annual Report, 1862, by P.H. Wentworth Superintendent for the Southern District of California (Aug. 30, 1862).

[49] 13 Stat. 39 (Apr. 8, 1864) ("1864 Act").

[50] Phillips, *supra* note 11, at 250.

[51] *Ibid.* (the Tule River Indian Reservation was created by Executive Order in 1873, prior to that it was referred to as Tule River Farm).

[52] ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS at 131 (1864).

[53] Phillips, *supra* note 11, at 254.

[54] Phillips, *supra* note 11, at 254; *Robinson v. Jewell*, 790 F.3d 910, 915 (9th Cir. 2015).

[55] Phillips, *supra* note 11, at 250. Beale purchased grants as land became available through patents issued by the Federal Board of Commissioners to private parties. By 1867 Beale had acquired patents to 265,215 acres of the Tejon Valley.

[56] Phillips, *supra* note 11, at 250; *see also*, David S. Whitley, "Sebastian Indian Reserve Discontiguous Archeological District", unpublished National Register of Historic Places registration forms (2013)(Asserting that the cultural and genetic diffusion that occurred on the Tejon Reservation is responsible for the ethnogenesis of the Tejon Indian Tribe).

Beale died in 1893, leaving management of the Tejon Ranch to his son, Truxton Beale. While Beale and his son owned Tejon Ranch, federal officials reported that the Tribe lived on the Tejon Ranch in relative peace.[57] In 1911, Truxton Beale sold Tejon Ranch to a Los Angeles business consortium, the Tejon Ranch Syndicate.[58]

C. 1911 to 1934

Notwithstanding the lack of a formal reservation, the Federal Government continued to take actions that reflected federal obligations, duties, responsibility for and authority over the Tribe and its members while they resided on the Tejon Ranch. The United States took repeated steps to secure land for the Tribe's benefit, enumerated the Tribe in censuses, and appropriated funding to build a schoolhouse and educate the Tribe's children.

1. Federal Oversight and Efforts to Secure Land

In 1914, at the direction of the Commissioner of Indian Affairs, Special Agent C.H. Asbury visited the Tejon Ranch and made careful inquiry into the Tribe's living conditions.[59] In summarizing old reports from the Commissioner of Indian Affairs, he noted the many references to the Tribe "from the time the *jurisdiction* of the United States was extended over them."[60] He indicated that the Tejon Indians had lived at the same place for many years, but that their numbers had been diminished by death and removal to other places.[61]

Based on his visit, Special Agent Asbury estimated about 60 Tejon Indians continued to make their home at Tejon Ranch.[62] Special Agent Asbury initiated federal negotiations with the owners of the Tejon Ranch to purchase a tract of land for the Tribe.[63] He stated that "unless some ground can be found to support the claim of the Indians to rights to the land occupied it seems that it will be necessary for us to buy the land, if it can be bought, or to try to buy land of some one [*sic*] else in that same locality."[64]

By 1915, federal officials had received a number of complaints regarding the Tejon Tribe's treatment. Special Agent J.J. Terrell investigated the complaints and concluded that the ranch owners and manager treated the Tribe's members poorly.[65] He recommended that the Federal Government make appropriations to purchase land for the Tribe.[66] He also provided as an attachment to his report a "Census of the Indians of El Tejon Band in Kern Co. Calif,"[67] in which he stated that there were 79 Tejon Indians residing on the Tejon Ranch.[68]

Special Agent Terrell described the Tribe's welfare again the following year, and recommended that the Tribe remain in its territory.[69] He indicated that it would be a mistake to remove the Tribe from its present location and if possible "(...) to have set aside for use of these Indians all Government lands remaining untaken within

---

[57] Letter, Assistant Secretary to Attorney General, (1916)(the Assistant Secretary provided as an attachment to the letter his report to the Secretary of the Interior which relayed that "no complaints were made by the Indians, who were unmolested.").
[58] Giffen & Woodward, *supra* note 8, at 51.
[59] *Ibid.*
[60] Asbury Report (emphasis added).
[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid.*
[64] *Ibid.*
[65] Report, Special Indian Agent Terrell to Commissioner of Indian Affairs (Dec. 12, 1915) ("Terrell Census").
[66] *Ibid.*
[67] *Ibid.* The reaffirmation Letter issued by the Assistant Secretary - Indian Affairs cited the importance of the 1915 Terrell Census as it related to the Tribe's citizens, *supra* note 12 at 9.
[68] Terrell Census.
[69] Report, Special Indian Agent Terrell to Commissioner of Indian Affairs (Sept. 21, 1916).

these three Ranges and Township at the earliest possible moment."[70] Based on Special Agent Terrell's reports, the Commissioner of Indian Affairs agreed that "the present condition of these Indians is unsatisfactory."[71]

Special Agent Terrell, in his September 21, 1916, letter to the Commissioner of Indian Affairs, described his "hope that I might find suitable location for their removal either by purchase or allotments on Government lands (...)."[72] He described travelling with "Juan Lozada, Chief of this band" in an effort to find land suitable to the Chief because removal would otherwise be out of the question.[73] He explained that the majority of the Tribe living at the Rancheria had lived there all their lives and were "more ignorantly and persistently attached than ordinarily to the Tejon Canyon and its narrow thread of valley land where nestles their little cabin homes."[74] He explained, "[t]heir dead as far back as they know are sleeping their last sleep within their every day [*sic*] sight."[75] Special Agent Terrell recommended in his letter that "the following lands may be (...) set aside as an Indian Reservation (...),"[76] and he provided a sketch and a legal description for 1,070 acres made up of portions of Sections 2, 12, 26, 28 and 34 within Township 11 North, Range 17.[77] Special Agent Terrell believed that setting aside the land for the Tribe would mean "we will have succeeded in forever retaining these Indians in their beloved Tejon Valley . . ."[78]

The Secretary accepted Special Agent Terrell's recommendation with a slight modification, resulting in the withdrawal of 880 acres in 1916.[79] The Secretary ordered the lands withdrawn from the public domain "for the use of the El Tejon Band of Indians, Kern County, California.[80] However, no Tejon Indians relocated to the withdrawn land, as it was "steep hillside grazing land of poor quality without water."[81]

The withdrawal order for the 880-acre reservation anticipated a suit to quiet title and specifically referenced a request by the Department on October 25, 1916, that the Attorney General file suit against the Tejon Ranch.[82] The order recommended the temporary withdrawal of the reservation lands "should the United States be unsuccessful in this suit (...)" or the Tejon Ranch seek to eject them.[83]

As part of an effort to negotiate with the Tejon Ranch owners, Special Assistant to the Attorney General George Fraser sent a letter to Harry Chandler, a member of the Tejon Ranch Board of Directors on May 28, 1920. The letter outlined the Tejon Tribe's use of the land and the legal theory in support of the United States' claim that the Tejon Tribe retained rights under Spanish, Mexican and American law because of their uninterrupted occupancy.[84] The letter detailed efforts by the Tejon Ranch owners to steadily reduce the Tribe's numbers living on Tejon Ranch and asserted that those efforts were contrary to law.[85] The letter requested that in lieu of litigation, the Tejon Ranch voluntarily grant the United States fee title to an area on the Ranch that would serve

---

[70] *Ibid.*
[71] Report to the Secretary of Interior (1916).
[72] Letter, John Terrell to Commissioner of Indian Affairs, 1 (Sept. 21, 1916).
[73] *Id.* at 2.
[74] *Id.* at 6.
[75] *Ibid.*
[76] *Id.* at 7.
[77] *Ibid.*
[78] *Id.* at 8.
[79] Order, Approving request to withdraw land from the public domain for the El Tejon band of Indians (Nov. 9, 1916).
[80] *Ibid.*
[81] Letter, Leonard Hill, Area Director, to Commissioner, Bureau of Indian Affairs (Sept. 29, 1961).
[82] Order, Approving request to withdraw land from the public domain for the El Tejon band of Indians (Nov. 9, 1916).
[83] *Ibid.*
[84] Letter, George Fraser, Special Assistant to the Attorney General to Harry Chandler, Tejon Ranch Syndicate (May 28, 1920).
[85] *Id.* at ¶ 3.

as a permanent home for the Tejon Tribe.[86] Correspondence between Mr. Fraser and Mr. Chandler continued into July, but by December, the United States had filed suit in federal district court to quiet title.[87]

The United States Department of Justice actively asserted the Federal Government's guardian-ward relationship with the Tribe in its Complaint:

> "[t]his is a suit by the United States, as *guardian* of certain Mission Indians, to quiet in them a 'perpetual right' to occupy, use, and enjoy a part of a confirmed Mexican land grant in Southern California, for which the defendants hold a patent from the United States" and that ". . . said Indians are and from time immemorial have been tribal Indians, and at all times since July 7, 1846, have been and now are *wards* of the United States (...)."[88]

The United States sought to confirm the Tribe's perpetual right to occupy a 5,364 acre tract located within the boundaries of the Tejon Ranch.[89] The United States asserted that the Tribe's right of possession to the land was based on its occupancy, as well as on Spanish and Mexican land claims.[90] The lawsuit ultimately failed when the Supreme Court held on appeal that the Tribe's title had been extinguished as a result of its failure to comply with the time limitations imposed by the California Claims Act.[91]

After the Supreme Court decision, the Office of Indian Affairs (OIA) again attempted to negotiate with the owners of the Tejon Ranch to purchase a tract of land for the Tejon Tribe.[92] On June 19, 1924, Assistant Commissioner E.B. Merritt, responding to a telegram from Superintendent L.A. Dorrington, wrote that Dorrington should make an investigation into "how large an appropriation should be requested at the next session of Congress to adequately provide land for the Tejon Indians, in addition to the $7,900 you have already been authorized to use (...)."[93]

The Tejon Ranch Board of Directors entered into an agreement allowing continued occupation by the Tejon Tribe, so long as no further claims were made against Tejon Ranch.[94] In 1925, the BIA investigated the Tribe's condition and reported on its status, including its occupation of Tejon Ranch.[95] Superintendent L.A. Dorrington wrote to the Commissioner of Indian Affairs regarding efforts to purchase land for the Tribe, the rental agreement for occupation at Tejon Ranch, and the futility of purchasing other land, as the Tribe would refuse to move.[96]

---

[86] *Id.* at ¶ 11.

[87] Letter, George Fraser, Special Assistant to the Attorney General to Harry Chandler, Tejon Ranch Syndicate (July 12, 1920); United States Bill of complaint, filed Dec. 20, 1920 (The Bill of complaint filed in the United States District Court for the Southern District of California is included as part of the Transcript of Record on Appeal from the Ninth Circuit Court of Appeals in *United States v. Title Ins. & Tr. Co.*, 265 U.S. 472 (1924)) ("U.S. Complaint").

[88] U.S. Complaint at Sec. I (emphasis added).

[89] *Ibid.*

[90] *Id.* at Sec. V.

[91] *United States v. Title Ins. & Tr. Co.*, 265 U.S. 472, 481(1924). In March of 1851 Congress sought to determine the validity of prior Spanish and Mexican land grants protected by the Guadalupe Hidalgo Treaty by passing the California Claims Act of March 3, 1851. The Act effectively required California's Indian tribes to perfect their claims within two years or they were deemed abandoned.

[92] *See* Telegram, E.B. Merritt, Assistant Commissioner to F.G. Collette (June 14, 1924); Letter, E.B. Merritt, Assistant Commissioner to L.A. Dorrington, Superintendent (June 19, 1924); Letter, Hubert Work, Secretary of the Interior, to the Attorney General (Sept. 12, 1924); Letter, L.A. Dorrington, Superintendent, to Commissioner of Indian Affairs (Oct. 18, 1924); Letter, E.C. Finney, Acting Secretary of the Interior, to the Attorney General (Nov. 8, 1924).

[93] Letter, E.B. Merritt, Assistant Commissioner, to L.A. Dorrington, Superintendent (June 19, 1924).

[94] *See supra* note 129.

[95] *See,* Letter, E.B. Merritt, Assistant Commissioner, to L.A. Dorrington, Superintendent (Apr. 3, 1925); Letter, L.A. Dorrington, Superintendent, to E.B. Merritt, Assistant Commissioner (May 8, 1925); Letter, L.A. Dorrington, Superintendent to Commissioner of Indian Affairs (Dec. 16, 1925).

[96] Letter, L.A. Dorrington, Superintendent to Commissioner of Indian Affairs (June 25, 1927).

In 1929, the OIA published a list entitled "Indian tribes of the United States," and included the Tejon Tribe as a separate entity under the jurisdiction of the Tule River Subagency.[97] In 1930, the Secretary responded to an inquiry from the Vice President of the United States regarding the welfare of the Tejon Tribe, recounting the agreement to occupy the Tejon Ranch for nominal consideration. The Secretary stated that he "question[s] the wisdom of disturbing [the Tribe] in their present occupancy of the privately owned lands or in any way disrupting their evident orderly and peaceful mode of living."[98] In March 1938, the Assistant Commissioner of Indian Affairs again recounted the agreement for the Tribe's occupation of the Tejon Ranch in response to a letter from a local California attorney inquiring as to the Tribe's status on Tejon Ranch.[99]

2. Federal Support and Funding for Tribal School

At the same time, the Federal Government sought to provide the Tribe with a permanent land base, it also took responsibility for constructing and funding a schoolhouse on the Tejon Ranch for the purpose of educating the Tribe's children.

In his April 13, 1915, letter to the Commissioner of Indian Affairs, Special Agent Asbury reported on the status of education for the Tejon Indian Tribe's children.[100] Special Agent Asbury recommended that the Federal Government cooperate with the county superintendent to share in the expense of educating the Tribe's children.[101] He stated in his letter "[f]rom my present information, I would favor the building of a small school house and paying a reasonable tuition for these children, in order that the Government may cooperate with the county in the education of these children."[102]

On this recommendation, in 1916 and 1917, the OIA approved contracts with Kern County for children of the Tribe to attend a public school approximately nine miles from the Tribe's settlement.[103] However, due the impracticability of transportation to the school and a reluctance from some to send their children to the school, it was determined that a school was needed at Tejon Ranch.[104]

In 1922, the United States leased a tract of land from the El Tejon School District in order to provide school facilities for the Tribe's children residing at the Tejon Ranch.[105] Justification for the expenditure indicated that "[t]he Indians are wards of the Government and very poor."[106] The Lease for the property similarly stated that consideration for the lease included "[i]nstruction given unto Indian children, wards of the Federal Government (...)."[107] Once the location was secured, the Federal Government contracted with the El Tejon School District to

---

[97] Bulletin No. 23, *Indian Tribes of the United States*, Department of Interior, Office of Indian Affairs (1929).
[98] Letter, Ray Wilbur, Secretary of the Interior to Charles Curtis, Vice President (June 26, 1930).
[99] Letter, William Zimmerman Assistant Commissioner to George W. Hurley (Mar. 28, 1938).
[100] Letter, Special Indian Agent Asbury to Commissioner of Indian Affairs (Apr. 13, 1915).
[101] *Ibid.*
[102] *Ibid.*
[103] Application for Public School Contract, (Nov. 22, 1916).
[104] Letter, Special Indian Agent Dorrington to Commissioner of Indian Affairs, (June 25, 1917).
[105] Lease, El Tejon School, between Superintendent of the Tule River Indian School and Trustees of the El Tejon School District (June 28, 1922)("School Lease"). The lease is between the federal government and the school district. Tejon Ranch was not a party to the lease. Other evidence makes clear however that the school was constructed on Tejon Ranch lands. *See,* Letter, T.J. Brown, Tejon Ranch to Chenoweth, Superintendent of Schools (Sept. 25, 1926); *see also*, Letter, Superintendent Rockwell to Commissioner of Indian Affairs (May 29, 1945)(indicating the El Tejon Schoolhouse is located on Tejon Ranch and that the building is on the Office of Indian Affairs property list).
[106] Justification for Schoolhouse (Jan. 7, 1921)(Indicates that arrangement is being made whereby school district agrees to removal of any improvements that the United States may place on the tract of land leased for school purposes.).
[107] School Lease at 1.

provide education at the school site.[108] Applications for Public School Contracts between the Federal Government and the El Tejon School District indicate that a portable wooden building was erected for use as a schoolhouse.[109]

D. Federal Jurisdiction through 1934 and after

The Department has been able to locate contracts for the school at the Tejon Ranch through school year 1926-1927,[110] but there is strong evidence that the school at Tejon Ranch operated through 1934 and until 1945.[111] Reports submitted by teacher Anna Knowles record 6-8 students in attendance at the school in various months from 1934-35.[112] And the portable schoolhouse erected on the Tejon Ranch lands continued to be carried on the OIA property list until 1945.[113]

In his May 29, 1945, letter, Superintendent John Rockwell wrote to the Commissioner of Indian Affairs recommending that the government close the El Tejon School and instead transport the children to the Sunset Public School,[114] noting that "[t]he El Tejon Schoolhouse is on our property list."[115]

In response to Superintendent Rockwell's letter, the Commissioner of Indian Affairs indicated that "[t]he building was acquired in 1921 from 'Indian School Support' and 'Indian School Buildings' at an approximate cost of $1,940."[116] He further recommended that the school be razed and the materials salvaged for use at the Sunset Public School, where the Indian children enrolled at the Tejon school would soon be attending.[117]

This correspondence indicates that the Tejon school was operational up to and through 1934; that the Federal Government built and funded the Tejon school; and that the United States recognized a federal responsibility for the Tejon children's education by contracting with the public school district to provide a teacher.

The Federal Government continued to hold the 880 acres of land withdrawn for the Tribe's benefit through 1934. Indeed, not until 1961 did the Department examine the status of the withdrawn land and determine that it should be restored to the public domain,[118] and then only after the Area Director determined that the land was largely unusable, and that no Tejon Indians were living there.[119] A 1962 Public Land Order restored the land to the public domain and the jurisdiction of the Bureau of Land Management (BLM).[120] While there is no evidence that the Federal Government treated the withdrawn land as the Tribe's "reservation" or that the Tribe ever occupied the lands, the Federal Government continued to hold the land for the Tribe's use. Consistent with

---

[108] Application for Public School Contracts, (July 28, 1923); Application for Public School Contracts, (Aug. 21, 1924); Application for Public School Contracts (May 25, 1925); Application for Public School Contracts, (Aug. 21, 1926); ("School Contracts") All four contracts indicate that one teacher was paid to teach pupils from the Tejon Indian Tribe ranging from 5 to 17 years old.

[109] School Contracts.

[110] School Contracts. (The Aug. 21, 1926 School Contract was for the 1926-27 school year).

[111] Letter, Superintendent Rockwell to Commissioner of Indian Affairs (May 29, 1945). The letter indicates Rockwell's recommendation is to close the school and have the children transported to a different school. He also indicated that the "[o]ffice is perpetuating a rather poor school at El Tejon." This contemporary statement indicates the school was operational at the time of Rockwell's letter.

[112] Report, Teacher's Monthly Report of Attendance of Indian Pupils in Public Schools (Oct. 31, 1934; Dec. 31, 1934; Nov. 30, 1934; Jan. 31, 1935; Apr. 20, 1935; Mar. 29, 1935; June 7, 1935).

[113] Letter, Superintendent Rockwell to Commissioner of Indian Affairs, (May 29, 1945).

[114] *Ibid.*

[115] *Ibid.*

[116] Letter, Commissioner of Indian Affairs to Superintendent Rockwell (Sept. 12, 1945).

[117] *Ibid.*

[118] Letter, Leonard Hill, Area Director, to Commissioner, Bureau of Indian Affairs (Sept. 29, 1961).

[119] *Ibid.*

[120] Public Land Order 2738, Revoking Departmental Order of November 9, 1916, 27 Fed. Reg. 7,636 (Aug. 2, 1962)

this is the fact that between 1928 and 1933, the BIA continued to enumerate the Tribe' members as under the jurisdiction of California Indian agencies.[121]

II. STANDARD OF REVIEW

A. Four-Step Procedure to Determine Eligibility.

Section 5 of the IRA provides the Secretary discretionary authority to acquire any interest in lands for the purpose of providing lands in trust for Indians.[122] Section 19 defines "Indian" in relevant part as including the following three categories:

> **[Category 1]** all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and **[Category 2]** all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include **[Category 3]** all other persons of one-half or more Indian blood.[123]

In 2009, the Supreme Court in *Carcieri v. Salazar*[124] construed the term "now" in Category 1 to refer to 1934, the year of the IRA's enactment. The Supreme Court did not consider the meaning of the phrase "under federal jurisdiction," however, or whether it applied to the phrase "recognized Indian tribe."

To guide the implementation of the Secretary's discretionary authority under Section 5 after *Carcieri*, the Department in 2010 prepared a two-part procedure for determining when an applicant tribe was "under federal jurisdiction" in 1934.[125] The Solicitor of the Interior (Solicitor) later memorialized the Department's interpretation in Sol. Op. M-37029.[126] Despite this, however, uncertainty persisted over what evidence could be submitted for the inquiry and how the Department would weigh it, prompting some tribes to devote considerable resources to researching and collecting any and all forms of potentially relevant evidence, in some cases leading to submissions totaling thousands of pages. To address this uncertainty, in 2018, the Solicitor's Office began a review of the Department's eligibility procedures to provide guidance for determining relevant evidence. This prompted questions concerning Sol. Op. M-37029's interpretation of Category 1, on which its eligibility procedures relied. This uncertainty prompted the Solicitor to review Sol. Op. M-37029's two-part procedure for determining eligibility under Category 1, and the interpretation on which it relied.

---

[121] *See Extracts from the Annual Report of the Secretary of the Interior, Fiscal Year 1928, Relating to the Bureau of Indian Affairs* (GPO 1928) at 37 ("Indian Table 1. Indian population of the United States, exclusive of Alaska, as of June 30, 1928") (listing Tejon as under jurisdiction of Tule River Subagency); ARCIA FY1930 at 38 ("Table 2. Indian population in continental United States enumerated at Federal agencies according to tribe, sex, and residence, April 1, 1930") (listing Tejon at Tule River Reservation and under the jurisdiction of the Sacramento Agency); ARCIA FY1931 at 46 ("Table 2. Indian population in United States enumerated at Federal agencies according to tribe, sex, and residence, April 1, 1931") (listing Tejon under public domain allotments within jurisdiction of Sacramento Agency); ARCIA FY1932 at 38 (Table 2. Indian Population in Continental United States Enumerated at Federal Agencies According to Tribe, Sex, and Residence April 1, 1932") (listing Tejon among "Tulare County Indians" within the jurisdiction of the Sacramento Reservation).

[122] 25 U.S.C. § 5108.

[123] 25 U.S.C. § 5129 (bracketed numerals added).

[124] 555 U.S. 379.

[125] U.S. Dep't. of the Interior, Assistant Secretary, Record of Decision, *Trust Acquisition of, and Reservation Proclamation for the 151.87-acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe* at 77-106 (Dec. 17, 2010) ("Cowlitz ROD"). *See also* Memorandum from the Solicitor to Regional Solicitors, Field Solicitors, and SOL-Division of Indian Affairs, Checklist for Solicitor's Office Review of Fee-to-Trust Applications (Mar. 7, 2014), *revised* (Jan. 5, 2017).

[126] Sol. Op. M-37029, *The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act* (Mar. 12, 2014) ("M-37029").

On March 9, 2020, the Solicitor withdrew Sol. Op. M-37029. The Solicitor concluded that its interpretation of Category 1 was not consistent with the ordinary meaning, statutory context, legislative history, or contemporary administrative understanding of the phrase "recognized Indian tribe now under federal jurisdiction."[127] In its place, the Solicitor issued a new, four-step procedure for determining eligibility under Category 1 to be used by attorneys in the Office of the Solicitor (Solicitor's Office).[128]

At Step One, the Solicitor's Office determines whether or not Congress enacted legislation after 1934 making the IRA applicable to a particular tribe. The existence of such authority makes it unnecessary to determine if the tribe was "under federal jurisdiction" in 1934. In the absence of such authority, the Solicitor's Office proceeds to Step Two.

Step Two determines whether the applicant tribe was under federal jurisdiction in 1934, that is, whether the evidence shows that the Federal Government exercised or administered its responsibilities toward Indians in 1934 over the applicant tribe or its members as such. If so, the applicant tribe may be deemed eligible under Category 1 without further inquiry. The Solicitor's Guidance describes types of evidence that presumptively demonstrate that a tribe was under federal jurisdiction in 1934. In the absence of dispositive evidence, the inquiry proceeds to Step Three.

Step Three determines whether an applicant tribe's evidence sufficiently demonstrates that the applicant tribe was "recognized" in or before 1934 and remained under jurisdiction in 1934. The Solicitor determined that the phrase "recognized Indian tribe" as used in Category 1 does not have the same meaning as the modern concept of a "federally recognized" (or "federally acknowledged") tribe, a concept that did not evolve until the 1970s, after which it was incorporated in the Department's federal acknowledgment procedures.[129] Based on the Department's historic understanding of the term, the Solicitor interpreted "recognition" to refer to indicia of congressional and executive actions either taken toward a tribe with whom the United States dealt on a more or less government-to-government basis or that clearly acknowledged a trust responsibility consistent with the evolution of federal Indian policy. The Solicitor identified forms of evidence that establish a rebuttable presumption that that an applicant tribe was "recognized" in a political-legal sense before 1934 and remained under federal jurisdiction in 1934. In the absence of such evidence, the inquiry finally moves to Step Four.

Step Four assesses the totality of an applicant tribe's non-dispositive evidence to determine whether it is sufficient to show that a tribe was "recognized" in or before 1934 and remained "under federal jurisdiction" through 1934. Given the historical changes in federal Indian policy over time, and the corresponding evolution of the Department's responsibilities, a one-size-fits-all approach for evaluating the totality of a tribal applicant's evidence is not possible or desirable. Attorneys in the Solicitor's Office must evaluate the evidence on a case-by-case basis within the context of a tribe's unique circumstances, and in consultation with the Deputy Solicitor for Indian Affairs and the Associate Solicitor, Division of Indian Affairs.

To further assist Solicitor's Office attorneys in implementing this four-step procedure by understanding the statutory interpretation on which it relies, the Solicitor's Guidance includes a memorandum[130] detailing the Department's revised interpretation of the meaning of the phrases "now under federal jurisdiction" and "recognized Indian tribe" and how they work together.

---

[127] Sol. Op. M-37055, *Withdrawal of M-37029, The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act* (Mar. 9, 2020).

[128] *Procedure for Determining Eligibility for Land-into-Trust under the First Definition of "Indian" in Section 19 of the Indian Reorganization Act*, Memorandum from the Solicitor to Regional Solicitors, Field Solicitors, and SOL-Division of Indian Affairs (Mar. 10, 2020) ("Solicitor's Guidance").

[129] 25 C.F.R. Part 83.

[130] *Determining Eligibility under the First Definition of "Indian" in Section 19 of the Indian Reorganization Act of 1934*, Memorandum from the Deputy Solicitor for Indian Affairs to the Solicitor (Mar. 5, 2020) ("Deputy Solicitor's Memorandum").

B. The Meaning of the Phrase "Now Under Federal Jurisdiction."

1. Statutory Context.

The Solicitor first concluded that the phrase "now under federal jurisdiction" should be read as modifying the phrase "recognized Indian tribe."[131] The Supreme Court in *Carcieri* did not identify a temporal requirement for recognition as it did for being under federal jurisdiction,[132] and the majority opinion focused on the meaning of "now" without addressing whether or how the phrase "now under federal jurisdiction" modifies the meaning of "recognized Indian tribe."[133] In his concurrence, Justice Breyer also advised that a tribe recognized *after* 1934 might nonetheless have been "under federal jurisdiction" *in* 1934.[134] By "recognized," Justice Breyer appeared to mean "*federally* recognized"[135] in the formal, political sense that had evolved by the 1970s, not in the sense in which Congress likely understood the term in 1934. He also considered how "later recognition" might reflect earlier "Federal jurisdiction,"[136] and gave examples of tribes federally recognized after 1934 with whom the United States had negotiated treaties before 1934.[137] Justice Breyer's suggestion that Category 1 does not preclude eligibility for tribes "federally recognized" *after* 1934 is consistent with interpreting Category 1 as requiring evidence of federal actions toward a tribe with whom the United States dealt on a more or less sovereign-to-sovereign basis or for whom the Federal Government had clearly acknowledged a trust responsibility in or before 1934, as the example of the Stillaguamish Tribe of Indians of Washington (Stillaguamish Tribe) shows.[138] It is also consistent with the Department's policies that in order to apply for trust-land acquisitions under the IRA, a tribe must appear on the official list of entities federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as such.[139]

The Solicitor noted that Category 1's grammar supports this view. The adverb "now" is part of the prepositional phrase "under federal jurisdiction,"[140] which it temporally qualifies.[141] Prepositional phrases function as modifiers and follow the noun phrase that they modify.[142] Category 1's grammar therefore supports interpreting the phrase "now under federal jurisdiction" as intended to modify "recognized Indian tribe." This interpretation finds further support in the IRA's legislative history, discussed below, and in Commissioner of Indian Affairs John Collier's statement that the phrase "now under federal jurisdiction" was intended to limit the IRA's

---

[131] Deputy Solicitor's Memorandum at 19. *See also Cty. of Amador*, 872 F.3d at 1020, n. 8 (*Carcieri* leaves open whether "recognition" and "jurisdiction" requirements are distinct requirements or comprise a single requirement).

[132] *Carcieri* at 382-83.

[133] *Ibid.*

[134] *Id.* at 398 (Breyer, J., concurring).

[135] *Ibid.*

[136] *Id.* at 399 (Breyer, J., concurring).

[137] *Id.* at 398-99 (Breyer, J., concurring) (discussing Stillaguamish Tribe, Grand Traverse Band of Ottawa and Chippewa Indians, and Mole Lake Chippewa Indians).

[138] *Ibid.*

[139] Federally Recognized Indian Tribe List Act of 1994, tit. I, § 104, Pub. L. 103-454, 108 Stat. 4791, codified at 25 U.S.C. § 5131 (mandating annual publication of list of all Indian tribes recognized by Secretary as eligible for the special programs and services provided by the United States to Indians because of their status as Indians). The Department's land-into-trust regulations incorporate the Department's official list of federally recognized tribe by reference. *See* 25 C.F.R. § 151.2.

[140] *Grand Ronde*, 830 F.3d 552, 560 (D.C. Cir. 2016). The *Grand Ronde* court found "the more difficult question" to be which part of the expression "recognized Indian tribe" the prepositional phrase modified. *Ibid.* The court concluded it modified only the word "tribe" "before its modification by the adjective 'recognized.'" *Ibid.* But the court appears to have understood "recognized" as used in the IRA as meaning "federally recognized" in the modern sense, without considering its meaning in historical context.

[141] H. C. House and S.E. Harman, *Descriptive English Grammar* at 163 (New York: Prentice-Hall, Inc. 1934) (hereafter "House and Harman) (adverbs may modify prepositional phrases).

[142] L. Beason and M. Lester, *A Commonsense Guide to Grammar and Usage* (7th ed.) at 15-16 (2015) ("Adjective prepositional phrases are always locked into position following the nouns they modify."); *see also* J. E. Wells, *Practical Review Grammar* (1928) at 305. A noun phrase consists of a noun and all of its modifiers. *Id.* at 16.

application.[143] This suggests Commissioner Collier understood the phrase "now under federal jurisdiction" to limit and thus modify "recognized Indian tribe." This is further consistent with the IRA's purpose and intent, which was to remedy the harmful effects of allotment.[144] These included the loss of Indian lands and the displacement and dispersal of tribal communities.[145] Lacking an official list of "recognized" tribes at the time,[146] it was unclear in 1934 which tribes remained under federal supervision. Because the policies of allotment and assimilation went hand-in-hand,[147] left unmodified, the phrase "recognized Indian tribe" could include tribes disestablished or terminated before 1934.

2. Statutory Terms.

The Solicitor concluded that the expression "now under federal jurisdiction" in Category 1 cannot reasonably be interpreted as synonymous with the sphere of Congress's plenary authority[148] and is instead better interpreted as referring to tribes with whom the United States had clearly dealt on or a more or less sovereign-to-sovereign basis or as to whom the United States had clearly acknowledged a trust responsibility in or before 1934.

The contemporaneous legal definition of "jurisdiction" defined it as the "power and authority" of the courts "as distinguished from the other departments."[149] The legal distinction between judicial and administrative jurisdiction is significant. Further, because the statutory phrase at issue here includes more than just the word "jurisdiction," its use of the preposition "under" sheds additional light on its meaning. In 1934, BLACK'S LAW DICTIONARY defined "under" as most frequently used in "its secondary sense meaning of 'inferior' or 'subordinate.'[150] It defined "jurisdiction" in terms of "power and authority," further defining "authority" as used "[i]n government law" as meaning "the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties."[151]

Congress added the phrase "under federal jurisdiction" to a statute designed to govern the Department's administration of Indian affairs and certain benefits for Indians. Seen in that light, these contemporaneous definitions support interpreting the phrase as referring to the Federal Government's exercise and administration of its responsibilities for Indians. Further support for this interpretation comes from the IRA's context.

---

[143] Sen. Hrgs. at 266 (statement of Commissioner Collier). *See also Carcieri*, 555 U.S. at 389 (citing Letter from John Collier, Commissioner, to Superintendents (Mar. 7, 1936) ([IRA Section 19] provides, in effect, that the term 'Indian' as used therein shall include—(1) all persons of Indian descent who are members of any recognized tribe *that was under Federal jurisdiction at the date of the Act* * * *") (emphasis added by Supreme Court)); *Cty. of Amador*, 872 F.3d at 1026 (""under Federal jurisdiction" should be read to limit the set of "recognized Indian tribes" to those tribes that already had *some* sort of significant relationship with the federal government as of 1934, even if those tribes were not yet "recognized" (emphasis original)); *Grand Ronde*, 830 F.3d at 564 (though the IRA's jurisdictional nexus was intended as "some kind of limiting principle," precisely how remained unclear).

[144] *Readjustment of Indian Affairs. Hearings before the Committee on Indian Affairs, House of Representatives, Seventy-Third Congress, Second Session, on H.R. 7902, A Bill To Grant To Indians Living Under Federal Tutelage The Freedom To Organize For Purposes Of Local Self-Government And Economic Enterprise; To Provide For The Necessary Training Of Indians In Administrative And Economic Affairs; To Conserve And Develop Indian Lands; And To Promote The More Effective Administration Of Justice In Matters Affecting Indian Tribes And Communities By Establishing A Federal Court Of Indian Affairs,* 73d Cong. at 233-34 (1934) (hereafter "H. Hrgs.") (citing Letter, President Franklin D. Roosevelt to Rep. Edgar Howard (Apt. 28, 1934)).

[145] *Ibid.*

[146] In 1979, the BIA for the first time published in the *Federal Register* a list of federally acknowledged Indian tribes. "Indian Tribal Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," 44 Fed. Reg. 7235 (Feb. 6, 1979); *see also Cty. of Amador*, 872 F.3d at 1023 ("In 1934, when Congress enacted the IRA, there was no comprehensive list of recognized tribes, nor was there a 'formal policy or process for determining tribal status'" (citing William Wood, *Indians, Tribes, and (Federal) Jurisdiction*, 65 U. KAN. L. REV. 415, 429-30 (2016))).

[147] *Hackford v. Babbitt*, 14 F.3d 1457, 1459 (10th Cir. 1994).

[148] Deputy Solicitor's Memorandum at 9.

[149] BLACK'S LAW DICTIONARY at 1038 (3d ed. 1933) (hereafter "BLACK'S").

[150] BLACK'S at 1774.

[151] BLACK'S at 171. It separately defines "subject to" as meaning "obedient to; governed or affected by."

Congress enacted the IRA to promote tribal self-government but made the Secretary responsible for its implementation. Interpreting the phrase "now under federal jurisdiction" as modifying "recognized Indian tribe" supports the interpretation of "jurisdiction" to mean the continuing administration of federal authority over Indian tribes already "recognized" as such. The addition of the temporal adverb "now" to the phrase provides further grounds for interpreting "recognized" as referring to a *previous* exercise of that same authority, that is, in or before 1934.[152]

3. Legislative History.

The IRA's legislative history lends additional support for interpreting "now under federal jurisdiction" as modifying "recognized Indian tribe." A thread that runs throughout the IRA's legislative history is a concern for whether the Act would apply to Indians not then under federal supervision. On April 26, 1934, Commissioner Collier informed members of the Senate Committee on Indian Affairs ("Senate Committee") that the original draft bill's definition of "Indian" had been intended to do just that:[153]

> Senator THOMAS of Oklahoma. (....) In past years former Commissioners and Secretaries have held that when an Indian was divested of property and money in effect under the law he was not an Indian, and because of that numerous Indians have gone from under the supervision of the Indian Office.
>
> Commissioner COLLIER. Yes.
>
> Senator THOMAS. Numerous tribes have been lost (....) It is contemplated now to hunt those Indians up and give them a status again and try do to something for them?
> Commissioner COLLIER: This bill provides that any Indian who is a member of a recognized Indian tribe or band shall be eligible to [*sic*] Government aid.
>
> Senator THOMAS. Without regard to whether or not he is now under your supervision?
>
> Commissioner COLLIER. Without regard; yes. *It definitely throws open Government aid to those rejected Indians.*[154]

The phrase "rejected Indians" referred to Indians who had gone out from under federal supervision.[155] In Commissioner Collier's view, the IRA "does definitely recognize that an Indian [that] has been divested of his property is no reason why Uncle Sam does not owe him something. It owes him more."[156] Commissioner

---

[152] Our interpretation of "now under federal jurisdiction" does not require federal officials to have been aware of a tribe's circumstances or jurisdictional status in 1934. As explained below, prior to M-37029, the Department long understood the term "recognized" to refer to political or administrative acts that brought a tribe under federal authority. I interpret "now under federal jurisdiction" as referring to the issue of whether such a "recognized" tribe maintained its jurisdictional status in 1934, i.e., whether federal trust obligations remained, not whether particular officials were cognizant of those obligations.

[153] *To Grant to Indians Living Under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise: Hearings on S. 2755 and S. 3645 Before the S. Comm. on Indian Affairs*, 73rd Cong. at 80 (Apr. 26, 1934) (hereafter "Sen. Hrgs."). *See also Grand Ronde*, 75 F.Supp.3d at 387, 399 (noting same).

[154] Sen. Hrgs. at 79-80 (Apr. 26, 1934) (emphasis added).

[155] *See* LEWIS MERIAM, THE INSTITUTE FOR GOVT. RESEARCH, STUDIES IN ADMINISTRATION, THE PROBLEM OF INDIAN ADMINISTRATION at 763 (1928) (hereafter "MERIAM REPORT") (noting that issuance of patents to individual Indians under Dawes Act or Burke Act had "the effect of removing them in part at least from the jurisdiction of the national government"). *See also* Sen. Hrgs. at 30 (statement of Commissioner Collier) (discussing the role the Allotment Policy had in making approximately 100,000 Indians landless).

[156] Sen. Hrgs. at 80.

Collier's broad view was consistent with the bill's original stated policy to "reassert the obligations of guardianship where such obligations have been improvidently relaxed."[157]

On May 17, 1934, the last day of hearings, the Senate Committee continued to express concerns over the breadth of the bill's definition of "Indian," returning again to the draft definitions of "Indian" as they stood in the committee print. Category 1 now defined "Indian" as persons of Indian descent who were "members of any recognized Indian tribe."[158] As on previous days,[159] Chairman Wheeler and Senator Thomas questioned both the overlap between definitions and whether they would include Indians not then under federal supervision or persons not otherwise "Indian."[160]

The Senate Committee's concerns for these issues touched on other provisions of the IRA as well. The colloquy that precipitated the addition of "now under federal jurisdiction" began with a discussion of Section 18, which authorized votes to reject the IRA by Indians residing on a reservation. Senator Thomas stated that this would exclude "roaming bands" or "remnants of a band" that are "practically lost" like those in his home state of Oklahoma, who at the time were neither "registered," "enrolled," "supervised," or "under the authority of the Indian Office."[161] Senator Thomas felt that "If they are not a tribe of Indians they do not come under [the Act]."[162]

Chairman Wheeler conceded that such Indians lacked rights at the time, but emphasized that the purpose of the Act was intended "as a matter of fact, to take care of the Indians that are taken care of at the present time,"[163] that is, those Indians then under federal supervision.

Acknowledging that landless Indians ought to be provided for, Chairman Wheeler questioned how the Department could do so if they were not "wards of the Government at the present time."[164] When Senator

---

[157] H.R. 7902, tit. III, § 1. *See* Sen. Hrgs. at 20 ("The bill does not bring to an end, or imply or contemplate, a cessation of Federal guardianship and special Federal service to Indians. On the contrary, it makes permanent the guardianship services, and reasserts them for those Indians who have been made landless by the Government's own acts.").

[158] Sen. Hrgs. at 234 (citing committee print, § 19). The revised bill was renumbered S. 3645 and introduced in the Senate on May 18, 1934. *Tribal Self-Government and the Indian Reorganization Act of 1934*, 70 MICH. L. REV. 955, 963 n. 55 (1972) (hereafter "*Tribal Self-Government*") (citing 78 CONG. REC. 9071 (1934)). S. 3645 which, as amended, became the IRA, differed significantly from H.R. 7902 and S. 2755, and its changes resulted from discussions between Chairman Wheeler and Commissioner John Collier to resolve and eliminate the main points in controversy. Sen. Hrgs. at 237. The Senate Committee reported S. 3645 out four days after its reintroduction, 78 CONG. REC. 9221, which the Senate debated soon after. The Senate passed the bill on June 12, 1934. *Id.* at 11139. The House began debate on June 15. *Id.* at 11724-44. H.R. 7902 was laid on the table and S. 3645 was passed in its place the same day, with some variations. *Id.* A conference committee was then formed, which submitted a report on June 16. *Id.* at 12001-04. The House and Senate both approved the final version on June 16. *Id.* at 12001-04, 12161-65, which was presented to the President and signed on June 18, 1934. *Id.* at 12340, 12451. *See generally Tribal Self-Government* at 961-63.

[159] *See, e.g.,* Sen. Hrgs. at 80 (remarks of Senator Elmer Thomas) (questioning whether bill is intended to extend benefits to tribes not now under federal supervision); *ibid.* (remarks of Chairman Wheeler) (questioning degree of Indian descent as drafted); *id.* at 150-151; *id.* at 164 (questioning federal responsibilities to existing wards with minimal Indian descent).

[160] *See, e.g.,* Sen. Hrgs. at 239 (discussing Sec. 3), 254 (discussing Sec. 10), 261-62 (discussing Sec. 18), 263-66 (discussing Sec. 19).

[161] Sen. Hrgs. at 263.

[162] *Ibid.* By "tribe," Senator Thomas here may have meant the Indians residing on a reservation. A similar usage appears earlier in the Committee's discussion of Section 10 of the committee print (enacted as Section 17 of the IRA), Sen. Hrgs. at 250-55. Section 10 originally required charters to be ratified by a vote of the adult Indians residing within "the territory specified in the charter." *Id.* at 232. Chairman Wheeler suggested using "on the reservation" instead to prevent "any small band or group of Indians" to "come in on the reservation and ask for a charter to take over tribal property." *Id.* at 253. Senator Joseph O'Mahoney recommended the phrase "within the territory over which the tribe has jurisdiction" instead, prompting Senator Peter Norbeck to ask what "tribe" meant—"Is that the reservation unit?" *Id.* at 254. Commissioner Collier then read from Section 19, which at that time defined "tribe" as "any Indian tribe, band, nation, pueblo, or other native political group or organization," a definition the Chairman suggested he could not support. *Ibid.* As ultimately enacted, Section 17 authorizes the Secretary to issue charters of incorporation to "one-third of the adult Indians" if ratified, however, "by a majority vote of the adult Indians living on the reservation."

[163] *Ibid.*

Thomas mentioned that the Catawbas in South Carolina and the Seminoles in Florida were "just as much Indians as any others,"[165] despite not then being under federal supervision, Commissioner Collier pointed out that such groups might still come within Category 3's blood-quantum criterion, which was then one-quarter.[166] After a brief digression, Senator Thomas asked whether, if the blood quantum were raised to one-half, Indians with less than one-half blood quantum would be covered by the Act with respect to their trust property.[167] Chairman Wheeler thought not, "unless they are enrolled at the present time."[168] As the discussion turned to Section 19, Chairman Wheeler returned to the blood quantum issue, stating that Category 3's blood-quantum criterion should be raised to one-half, which it was in final version of the Act.[169]

Senator Thomas then noted that Category 1 and Category 2, as drafted, were inconsistent with Category 3. Category 1 would include any person of "Indian descent" without regard to blood quantum, so long as they were members of a "recognized Indian tribe," while Category 2 included their "descendants" residing on a reservation.[170] Senator Thomas observed that under these definitions, persons with remote Indian ancestry could come under the Act.[171] Commissioner Collier then pointed out that at least with respect to Category 2, the descendants would have to reside within a reservation at the present time.[172]

After asides on the IRA's effect on Alaska Natives and the Secretary's authority to issue patents,[173] Chairman Wheeler finally turned to the IRA's definition of "tribe,"[174] which as then drafted included "any Indian tribe, band, nation, pueblo, or other native political group or organization."[175] Chairman Wheeler and Senator Thomas thought this definition too broad.[176] Senator Thomas asked whether it would include the Catawbas,[177] most of whose members were thought to lack sufficient blood quantum under Category 3, but who descended from Indians and resided on a state reservation.[178] Chairman Wheeler thought not, if they could not meet the blood-quantum requirement.[179] Senator O'Mahoney from Wyoming then suggested that Categories 1 and 3 overlapped, suggesting the Catawbas might still come within the definition of Category 1 since they were of Indian descent and they "certainly are an Indian tribe."[180]

Chairman Wheeler appeared to concede, admitting there "would have to [be] a limitation after the description of the tribe."[181] Senator O'Mahoney responded, saying "If you wanted to exclude any of them [from the Act] you certainly would in my judgment."[182] Chairman Wheeler proceeded to express concerns for those having little or

---

[164] *Ibid.*
[165] *Ibid.*
[166] *Ibid.*
[167] *Id.* at 264.
[168] *Ibid.*
[169] *Ibid.* (statement of Chairman Burton Wheeler) ("You will find here [*i.e.*, Section 19] later on a provision covering just what you have reference to.").
[170] *Id.* at 264-65.
[171] *Id.* at 264.
[172] *Ibid.*
[173] *Id.* at 265.
[174] *Ibid.* at 265.
[175] *Compare* Sen. Hrgs. at 6 (S. 2755, § 13(b)), *with id.* at 234 (committee print, § 19). The phrase "native political group or organization" was later removed.
[176] Sen. Hrgs. at 265.
[177] *Ibid.*
[178] *Id.* at 266. The Catawbas at the time resided on a reservation established for their benefit by the State of South Carolina. *See* Catawba Indians of South Carolina, Sen. Doc. 92, 71st Cong. (1930).
[179] *Id.* at 264.
[180] *Id.* at 266.
[181] *Ibid.* at 266.
[182] *Ibid.* Nevertheless, Senator O'Mahoney did not understand why the Act's benefits should not be extended "if they are living as Catawba Indians."

no Indian descent being "under the supervision of the Government," persons he had earlier suggested should be excluded from the Act.[183] Apparently in response, Senator O'Mahoney then said, "If I may suggest, that could be handled by some separate provision excluding from the act certain types, but [it] must have a general definition."[184] It was at this point that Commissioner Collier, who attended the morning's hearings with Assistant Solicitor Felix S. Cohen,[185] asked,

> "Would this not meet your thought, Senator: After the words 'recognized Indian tribe' in line 1 insert 'now under Federal jurisdiction'? That would limit the act to the Indians now under Federal jurisdiction, except that other Indians of more than one-half Indian blood would get help."[186]

Without further explanation or discussion, the hearings adjourned.

The IRA's legislative history does not unambiguously explain what Congress intended "now under federal jurisdiction" to mean or in what way it was intended to limit the phrase "recognized Indian tribe." However, the same phrase was used in submissions by the Indian Rights Association to the House of Representatives Committee on Indian Affairs (House Committee), where it described "Indians under Federal jurisdiction" as not being subject to State laws.[187] Variations of the phrase appeared elsewhere, as well. In a memorandum describing the draft IRA's purpose and operation, Commissioner Collier stated that under the bill, the affairs of chartered Indian communities would "continue to be, as they are now, *subject to* Federal jurisdiction rather than State jurisdiction."[188] Commissioner Collier elsewhere referred to various western tribes that occupied "millions of contiguous acres, tribally owned and *under* exclusive Federal jurisdiction."[189] Assistant Solicitor Charles Fahy, who would later become Solicitor General of the United States,[190] described the constitutional authority to regulate commerce with the Indian tribes as being "*within* the Federal jurisdiction and not with the States' jurisdiction."[191] These uses of "federal jurisdiction" in the governmental and administrative senses stand alongside its use throughout the legislative history in relation to courts specifically.

The IRA's legislative history elsewhere shows that Commissioner Collier distinguished between Congress's plenary authority generally and its application to tribes in particular contexts. He noted that Congress had delegated "most of its plenary authority to the Interior Department or the Bureau of Indian Affairs," which he further described as "clothed with the plenary power."[192] But in turning to the draft bill's aim of allowing tribes to take responsibility for their own affairs, Commissioner Collier referred to the "absolute authority" of the Department by reference to "its rules and regulations," to which the Indians were subjected.[193] Indeed, even before 1934, the Department routinely used the term "jurisdiction" to refer to the administrative units of the OIA having direct supervision of Indians.[194]

---

[183] *Ibid.*
[184] *Ibid.*
[185] *Id.* at 231.
[186] *Id.* at 266.
[187] H. Hrgs. at 337 (statement of John Steere, President, Indian Rights Association) (n.d.).
[188] *Id.* at 25 (Memorandum from Commissioner John Collier, *The Purpose and Operation of the Wheeler-Howard Indian Rights Bill (S. 2755; H.R. 7902)* (Feb. 19, 1934) (emphasis added)).
[189] *Id.* at 184 (statement of Commissioner Collier) (Apr. 8, 1934).
[190] Assistant Solicitor Fahy served as Solicitor General of the United States from 1941 to 1945. *See* https://www.justice.gov/osg/bio/charles-fahy.
[191] *Id.* at 319 (statement of Assistant Solicitor Charles Fahy).
[192] *Id.* at 37 (statement of Commissioner Collier) (Feb. 22, 1934).
[193] *Ibid.* at 37 (statement of Commissioner Collier) (Feb. 22, 1934).
[194] *See, e.g.*, U.S. Dept. of the Interior, Office of Indian Affairs, Circ. No. 1538, Annual Report and Census, 1919 (May 7, 1919) (directing Indian agents to enumerate the Indians residing at their agency, with a separate report to be made of agency "under [the agent's] jurisdiction"); Circ. No. 3011, Statement of New Indian Service Policies (Jul. 14, 1934) (discussing organization and operation of Central Office related to "jurisdiction administrations," *i.e.*, field operations); ARCIA for 1900 at 22 (noting lack of "jurisdiction" over

Construing "jurisdiction" as meaning governmental supervision and administration is further consistent with the term's prior use by the Federal Government. In 1832, for example, the United States by treaty assured the Creek Indians that they would be allowed to govern themselves free of the laws of any State or Territory, "so far as may be compatible with the general jurisdiction" of Congress over the Indians.[195] In *The Cherokee Tobacco* cases, the Supreme Court considered the conflict between subsequent Congressional acts and "[t]reaties with Indian nations within the jurisdiction of the United States."[196] In considering the 14th Amendment's application to Indians, the Supreme Court in *Elk v. Wilkins* also construed the Constitutional phrase, "subject to the jurisdiction of the United States," in the sense of governmental authority:[197]

> The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance.[198]

The terms of Category 1 suggest that the phrase "under federal jurisdiction" should not be interpreted to refer to the outer limits of Congress's plenary authority, since it could encompass tribes that existed in an anthropological sense but with whom the Federal Government had never exercised any relationship. Such a result would be inconsistent with the Department's understanding of "recognized Indian tribe" at the time, discussed below, as referring to a tribe with whom the United States had clearly dealt on a more or less sovereign-to-sovereign basis or for whom the Federal Government had clearly acknowledged a trust responsibility.

If "under federal jurisdiction" is understood to refer to the application and administration of the Federal Government's plenary authority over Indians, then the complete phrase "now under federal jurisdiction" can further be seen as resolving the tension between Commissioner Collier's desire that the IRA include Indians "[w]ithout regard to whether or not [they are] now under [federal] supervision" and the Senate Committee's concern to limit the Act's coverage to Indian wards "taken care of at the present time."[199]

C. The Meaning of the Phrase "Recognized Indian Tribe."

Despite suggesting that the term "recognized" meant something different in 1934 than it did in the 1970s, Sol. Op. M-37029 had appeared to use these historically distinct concepts interchangeably. And while today's concept of "federal recognition" merges the cognitive sense of "recognition" and the political-legal sense of "jurisdiction," as *Carcieri* makes clear, the issue is what Congress meant in 1934, not how the concepts later evolved.[200] Congress's authority to recognize Indian tribes flows from its plenary authority over Indian

---

New York Indian students); *id.* at 103 (reporting on matters "within" jurisdiction of Special Indian Agent in the Indian Territory); *id.* at 396 (describing reservations and villages covered by jurisdiction of Puyallup Consolidated Agency); MERIAM REPORT at 140-41 ("[W]hat strikes the careful observer in visiting Indian jurisdictions is not their uniformity, but their diversity…Because of this diversity, it seems imperative to recommend that a distinctive program and policy be adopted for each jurisdiction, especially fitted to its needs."); Sen. Hrgs. at 282-98 (collecting various comments and opinions on the Wheeler-Howard Bill from tribes from different OIA "jurisdictions").

[195] Treaty of March 24, 1832, art. XIV, 7 Stat. 366, 368. *See also* Act of May 8, 1906, 34 Stat. 182 (lands allotted to Indians in trust or restricted status to remain "subject to the exclusive jurisdiction of the United States" until issuance of fee-simple patents).

[196] *The Cherokee Tobacco*, 78 U.S. 616, 621 (1870). The Court further held that the consequences of such conflicts give rise to political questions "beyond the sphere of judicial cognizance." *Ibid.*

[197] *Elk v. Wilkins*, 112 U.S. 94, 102 (1884). *See also United States v. Ramsay*, 271 U.S. 470 (1926) (the conferring of citizenship does not make Indians subject to laws of the states).

[198] *Ibid.*

[199] Sen. Hrgs. at 79-80, 263. The district court in *Grand Ronde* noted these contradictory views. *Grande Ronde*, 75 F.Supp.3d at 399-400. Such views were expressed while discussing drafts of the IRA that did not include the phrase "now under federal jurisdiction."

[200] M-37029 at 8, n. 57 (citing *Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries,* 512 U.S. 267, 272 (1994) (in the absence of a statutory definition of a term, the court's "'task is to construe it in accord with its ordinary or natural meaning."); *id.* at 275 (the court "presume[s] Congress intended the phrase [containing a legal term] to have the meaning generally accepted in the legal community at the time of enactment.")).

affairs.[201] Early in this country's history, Congress charged the Secretary and the Commissioner of Indian Affairs with responsibility for managing Indian affairs and implementing general statutes enacted for the benefit of Indians.[202] Because Congress has not generally defined "Indian,"[203] it left it to the Secretary to determine to whom such statutes apply.[204] "Recognition" generally is a political question to which the courts ordinarily defer.[205]

Sol. Op. M-37029 had understood that a tribe could be considered "recognized" for purposes of the IRA so long as it is "federally recognized" when the Act is applied.[206] Arguendo, M-37029 concluded that even if "now" did modify "recognized Indian tribe," the meaning of "recognized" was ambiguous.[207] It described the term as having been used historically in two senses: a "cognitive" or "quasi-anthropological" sense indicating that federal officials "knew" or "realized" that a tribe existed; and a political-legal sense connoting "that a tribe is a governmental entity comprised of Indians and that the entity has a unique political relationship with the United States."208 The Solicitor concluded that this interpretation departs from the Department's prior, long-held understanding of "recognition" as referring to actions taken by appropriate federal officials toward a tribe with whom the United States clearly dealt on a more-or-less sovereign-to-sovereign basis or for whom the Federal Government had clearly acknowledged a trust responsibility in or before 1934.

---

[201] *United States v. Wheeler*, 435 U.S. 313, 319 (1978) (citing *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903) ("Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government.")).

[202] 25 U.S.C. § 2 (charging Commissioner of Indian Affairs with management of all Indian affairs and all matters arising out of Indian relations); 43 U.S.C. § 1457 (charging Secretary with supervision of public business relating to Indians); 25 U.S.C. § 9 (authorizing President to prescribe regulations for carrying into effect the provisions of any act relating to Indian affairs). *See also* H. Hrgs. at 37 (remarks of Commissioner Collier) ("Congress through a long series of acts has delegated most of its plenary authority to the Interior Department or the Bureau of Indian Affairs, which as instrumentalities of Congress are clothed with the plenary power, an absolutist power"); *id.* at 51 (Memorandum of Commissioner John Collier) (providing statutory examples of "the broad discretionary powers conferred by Congress on administrative officers of the Government").

[203] U.S. Dept. of Interior, Commissioner of Indian Affairs, "Indian Wardship," Circular No. 2958 (Oct. 28, 1933) ("No statutory definition seems to exist of what constitutes an Indian or of what Indians are wards of the Government."); *Eligibility of Non-enrolled Indians for Services and Benefits under the Indian Reorganization Act*, Memorandum from Thomas W. Fredericks, Associate Solicitor, Indian Affairs, to Acting Deputy Commissioner of Indian Affairs (Dec. 4, 1978) ("there exists no universal definition of "Indian"). *See also* Letter from Kent Frizzell, Acting Secretary of the Interior, to David H. Getches, Esq. on behalf of the Stillaguamish Tribe, at 8-9 (Oct. 27, 1976) (suggesting that "recognized Indian tribe" in IRA § 19 refers to tribes that were "administratively recognized" in 1934).

[204] *Secretary's Authority to Extend Federal Recognition to Indian Tribes*, Memorandum from Reid P. Chambers, Associate Solicitor, Indian Affairs to Solicitor Kent Frizzell, at 1 (Aug. 20, 1974) (hereafter "Chambers Memo") ("the Secretary, in carrying out Congress's plan, must first determine, i.e., recognize, to whom [a statute] applies"); Letter from LaFollette Butler, Acting Dep. Comm. of Indian Affairs to Sen. Henry M. Jackson, Chair, Senate at 5 (Jun. 7, 1974) (hereafter "Butler Letter") (same); *Dobbs v. United States*, 33 Ct. Cl. 308, 315-16 (1898) (recognition may be effected "by those officers of the Government whose duty it was to deal with and report the condition of the Indians to the executive branch of the Government").

[205] *Baker v. Carr*, 369 U.S. 186, 216 (1962) (citing *United States v. Holliday*, 70 U.S. 407, 419 (1865) (deferring to decisions by the Secretary and Commissioner of Indian Affairs to recognize Indians as a tribe as political questions)). *See also* Memorandum from Alan K. Palmer, Acting Associate Solicitor, Indian Affairs, to Solicitor, Federal "Recognition" of Indian Tribes at 2-6 (Jul. 17, 1975) (hereafter "Palmer Memorandum").

[206] M-37029 at 25 (interpreting IRA as not requiring determination that a tribal applicant was "a recognized Indian tribe" in 1934).

[207] *Id.* at 24 ("To the extent that the courts (contrary to the views expressed here) deem the term 'recognized Indian tribe' in the IRA to require recognition in 1934").

[208] *Ibid.* M-37029 also notes that the political-legal sense of "recognized Indian tribe" evolved into the modern concept of "federal recognition" or "federal acknowledgment" by the 1970s, when the Department's administrative acknowledgment procedures were developed. *See* 43 Fed. Reg. 39,361 (Aug. 24, 1978). Originally classified at Part 54 of Title 25 of the Code of Federal Regulations, the Department's administrative acknowledgment procedures are today classified as Part 83. 47 Fed. Reg. 13326 (Mar. 30, 1982).

1. Ordinary Meaning.

The 1935 edition of WEBSTER'S NEW INTERNATIONAL DICTIONARY first defines the verb "to recognize" as meaning "to know again (…) to recover or recall knowledge of."[209] Most of the remaining entries focus on the legal or political meanings of the verb. These include, "To avow knowledge of (…) to admit with a formal acknowledgment; as, to *recognize* an obligation; to *recognize* a consul"; Or, "To acknowledge formally (…); specif: (…) To acknowledge by admitting to an associated or privileged status." And, "To acknowledge the independence of (…) a community (…) by express declaration or by any overt act sufficiently indicating the intention to recognize."[210] These political-legal understandings seem consistent with how Congress used the term elsewhere in the IRA. Section 11, for example, authorizes federal appropriations for loans to Indians for tuition and expenses in "recognized vocational and trade schools."[211] While neither the Act nor its legislative history provide further explanation, the context strongly suggests that the phrase "recognized vocational and trade schools" refers to those formally certified or verified as such by an appropriate official.

2. Legislative History.

The IRA's legislative history supports interpreting "recognized Indian tribe" in Category 1 in the political-legal sense.[212] Commissioner Collier, himself a "principal author" of the IRA,[213] also used the term "recognized" in the political-legal sense in explaining how some American courts had "recognized" tribal customary marriage and divorce.[214] The IRA's legislative history further suggests that Congress did not intend "recognized Indian tribe" to be understood in a cognitive, quasi-anthropological sense. The concerns expressed by some members of the Senate Committee for the ambiguous and potentially broad *scope* of the phrase arguably prompted Commissioner Collier to suggest inserting "now under federal jurisdiction" in Category 1 as a limiting phrase.[215]

As originally drafted, Category 1 referred only to "recognized" Indian tribes, leaving unclear whether it was used in a cognitive or in a political-legal sense. This ambiguity appears to have created uncertainty over Category 1's scope and its overlap with Section 19's other definitions of "Indian," which appear to have led Congress to insert the limiting phrase "now under federal jurisdiction." As noted above, I interpret "now under federal jurisdiction" as modifying "recognized Indian tribe" and as limiting Category 1's scope. By doing so,

---

[209] WEBSTER'S INTERNATIONAL NEW DICTIONARY OF THE ENGLISH LANGUAGE (2d ed.) (1935), entry for "recognize" (v.t.).

[210] *Ibid.*, entries 2, 3.c, 5. *See also id.*, entry for "acknowledge" (v.t.) "2. To own or recognize in a particular character or relationship; to admit the claims or authority of; to recognize."

[211] The phrase "recognized Indian tribe" appeared in what was then section 9 of the committee print considered by the Senate Committee on May 17, 1934. Sen. Hrgs. at 232, 242. Section 9 provided the right to organize under a constitution to "[a]ny recognized Indian tribe." It was later amended to read "[a]ny Indian tribe, or tribes" before ultimate enactment as Section 16 of the IRA. 25 U.S.C. § 5123. The term "recognized" also appeared several times in the bill originally introduced as H.R. 7902. In three it was used in legal-political sense. H.R. 7902, 73d Cong. (as introduced Feb. 12, 1934), tit. I, § 4(j) (requiring chartered communities to be "recognized as successor to any existing political powers..."); tit. II, § 1 (training for Indians in institutions "of recognized standing"); tit. IV, § 10 (Constitutional procedural rights to be "recognized and observed" in courts of Indian offenses). H.R. 7902, tit. I, § 13(b) used the expression "recognized Indian tribe" in defining "Indian."

[212] *See, e.g.*, Sen. Hrgs. at 263 (remarks of Senator Thomas of Oklahoma) (discussing prior Administration's policy "not to recognize Indians except those already under [Indian Office] authority"); *id.* at 69 (remarks of Commissioner Collier) (tribal customary marriages and divorces "recognized" by courts nationally). Representative William W. Hastings of Oklahoma criticized an early draft definition of "tribe" on the grounds it would allow chartered communities to be "recognized as a tribe" and to exercise tribal powers under section 16 and section 17 of the IRA. *See id.* at 308.

[213] *Carcieri*, 555 U.S. at 390, n. 4 (citing *United States v. Mitchell*, 463 U.S. 206, 221, n. 21 (1983)).

[214] Sen. Hrgs. at 69 (remarks of Commissioner Collier) (Apr. 26, 1934). On at least one occasion, however, Collier appeared to rely on the cognitive sense in referring to "recognized" tribes or bands *not* under federal supervision. Sen. Hrgs. at 80 (remarks of Commissioner Collier) (Apr. 26, 1934).

[215] Justice Breyer concluded that Congress added "now under federal jurisdiction" to Category 1 "believing it definitively resolved a specific underlying difficulty." *Carcieri*, 555 U.S. at 397-98 (Breyer, J., concurring).

"now under federal jurisdiction" may be construed as disambiguating "recognized Indian tribe" by clarifying its use in a political-legal sense.

3. Administrative Understandings.

Compelling support for interpreting the term "recognized" in the political-legal sense is found in the views of Department officials expressed around the time of the IRA's enactment and early implementation. Assistant Solicitor Cohen discussed the issue in the Department's HANDBOOK OF FEDERAL INDIAN LAW (HANDBOOK), which he prepared around the time of the IRA's enactment. The HANDBOOK's relevant passages discuss ambiguities in the meaning of the term "tribe."[216] Assistant Solicitor Cohen explains that the term "tribe" may be understood in both an ethnological and a political-legal sense.[217] The former denotes a unique linguistic or cultural community. By contrast, the political-legal sense refers to ethnological groups "recognized as single tribes for administrative and political purposes" and to single ethnological groups considered as a number of independent tribes "in the political sense."[218] This suggests that while the term "tribe," standing alone, could be interpreted in a cognitive sense, as used in the phrase "recognized Indian tribe" it would have been understood in a political-legal sense, which presumes the existence of an ethnological group.[219]

Less than a year after the IRA's enactment, Commissioner Collier further explained that "recognized tribe" meant a tribe "with which the government at one time or another has had a treaty or agreement or those for whom reservations or lands have been provided and over whom the government exercises supervision through an official representative."[220] Addressing the Oklahoma Indian Welfare Act of 1936 (OIWA), Solicitor Nathan Margold opined that because tribes may "pass out of existence as such in the course of time, the word "recognized" as used in the [OIWA] should be read as requiring more than "past existence as a tribe and its historical recognition as such," but "recognition" of a currently existing group's activities "by specific actions of the Indian Office, the Department, or by Congress."[221]

The Department maintained similar understandings of the term "recognized" in the decades that followed. In a 1980 memorandum assessing the eligibility of the Stillaguamish Tribe for IRA trust-land acquisitions,[222] Hans Walker, Jr., Associate Solicitor for Indian Affairs, distinguished the modern concept of formal "federal recognition" (or "federal acknowledgment") from the political-legal sense of "recognized" as used in Category 1 in concluding that "formal acknowledgment in 1934" is not a prerequisite for trust-land acquisitions under the IRA, "*so long as* the group meets the [IRA's] other definitional requirements."[223] These included that the tribe have been "recognized" in 1934. Associate Solicitor Walker construed "recognized" as referring to tribes with whom the United States had had "a continuing course of dealings or some legal obligation in 1934 *whether or not that obligation was acknowledged at that time*."[224] Associate Solicitor Walker then noted the Senate Committee's concerns for the potential breadth of "recognized Indian tribe." He concluded that Congress

---

[216] Cohen 1942 at 268.

[217] Cohen separately discussed how the term "Indian" itself could be used in an "ethnological or in a legal sense," noting that a person's legal status as an "Indian" depended on genealogical and social factors. Cohen 1942 at 2.

[218] *Id.* at 268 (emphases added).

[219] *Ibid.* at 268 (validity of congressional and administrative actions depend upon the [historical, ethnological] existence of tribes); *United States v. Sandoval*, 231 U.S. 28 (1913) (Congress may not arbitrarily bring a community or group of people within the range of its plenary authority over Indian affairs). *See also* 25 C.F.R. Part 83 (establishing mandatory criteria for determining whether a group is an Indian tribe eligible for special programs and services provided by the United States to Indians because of their status as Indians).

[220] Letter, Commissioner John Collier to Ben C. Shawanesee (Apr. 24, 1935).

[221] I OP. SOL. INT. 864 (Memorandum from Solicitor Nathan M. Margold to the Commissioner of Indian Affairs, Oklahoma – Recognized Tribes (Dec. 13, 1938)); Cohen 1942 at 271.

[222] Memorandum from Hans Walker, Jr., Associate Solicitor, Indian Affairs, to Assistant Secretary, Indian Affairs, Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe at 1 (Oct. 1, 1980) (hereafter "Stillaguamish Memo").

[223] *Id.* at 1 (emphasis added). Justice Breyer's concurring opinion in *Carcieri* draws on Associate Solicitor Walker's analysis in the Stillaguamish Memo. *See Carcieri*, 555 U.S. at 397-98 (Breyer, J., concurring).

[224] *Id.* at 2 (emphasis added).

intended to exclude some groups that might be considered Indians in a cultural or governmental sense, but not "any Indians to whom the Federal Government had *already* assumed obligations."[225] Implicitly construing the phrase "now under federal jurisdiction" to modify "recognized Indian tribe," Associate Solicitor Walker found it "clear" that Category 1 "requires that some type of obligation or extension of services to a tribe must have existed in 1934."[226] As already noted, in the case of the Stillaguamish Tribe, such obligations were established by the 1855 Treaty of Point Elliott and remained in effect in 1934.[227]

Associate Solicitor Walker's views in 1980 were consistent with the conclusions reached by the Solicitor's Office in the mid-1970s following its assessment of how the Federal Government had historically understood the term "recognition." This assessment was begun under Reid Peyton Chambers, Associate Solicitor for Indian Affairs, and offers insight into how Congress and the Department understood "recognition" at the time the Act was passed. In fact, it was this historical review of "recognition" that contributed to the development of the Department's federal acknowledgment procedures.[228]

Throughout the United States' early history, Indian treaties were negotiated by the President and ratified by the Senate pursuant to the Treaty Clause.[229] In 1871, Congress enacted legislation providing that no tribe within the territory of the United States could thereafter be "acknowledged or recognized" as an "independent nation, tribe, or power" with whom the United States could contract by treaty.[230] Behind the act lay the view that though Indian tribes were still "recognized as distinct political communities," they were "wards" in a condition of dependency who were "subject to the paramount authority of the United States."[231] While the question of "recognition" remained one for the political branches,[232] the contexts within which it arose expanded with the United States' obligations as guardian.[233]

After the close of the termination era in the early 1960s, during which the Federal Government had "endeavored to terminate its supervisory responsibilities for Indian tribes,"[234] Indian groups that the Department did not otherwise consider "recognized" began to seek services and benefits from the Federal Government. The most notable of these claims were aboriginal land claims under the Nonintercourse Act;[235] treaty fishing-rights claims by descendants of treaty signatories;[236] and requests to the BIA for benefits from groups of Indians for which no

---

[225] *Id.* at 4 (emphasis added). This is consistent with Justice Breyer's concurring view in *Carcieri*.

[226] *Id.* at 6. In the case of the Stillaguamish Tribe, such obligations arose in 1855 through the Treaty of Point Elliott, and they remained in effect in 1934.

[227] Justice Breyer's concurring opinion in *Carcieri* draws on the analysis in the Stillaguamish Memo. *See Carcieri*, 555 U.S. at 397-98 (Breyer, J., concurring).

[228] 25 C.F.R. Part 83.

[229] U.S. CONST., art. II, § 2, cl. 2. *See generally* Cohen 1942 at 46-67.

[230] Act of March 3, 1871, c. 120, § 1, 16 Stat. 544, 566. Section 3 of the same Act prohibited further contracts or agreements with any tribe of Indians or individual Indian not a citizen of the United States related to their lands unless in writing and approved by the Commissioner of Indian Affairs and the Secretary of the Interior. *Id.*, § 3, 16 Stat. 570-71.

[231] *Mille Lac Band of Chippewas v. United States*, 46 Ct. Cl. 424, 441 (1911).

[232] *United States v. Holliday*, 70 U.S. 407, 419 (1865).

[233] *See* Cohen 1942 at 17-19 (discussing contemporaneous views on the conflicts between sovereignty and wardship). *Compare, e.g., Worcester v. Georgia*, 31 U.S. 515 (1832) *with United States v. Kagama*, 118 U. S. 375 (1886).

[234] *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 503 (1986). *See also* Cohen 2012 at § 1.06 (describing history and implementation of termination policy). During the termination era, roughly beginning in 1953 and ending in the mid-1960s, Congress enacted legislation ending federal recognition of more than 100 tribes and bands in eight states. Michael C. Walsh, *Terminating the Indian Termination Policy*, 35 STAN. L. REV. 1181, 1186 (1983). Congress has since restored federal recognition to some terminated tribes. *See* Cohen 2012 at § 3.02[8][c], n. 246 (listing examples).

[235] *See, e.g., Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 388 F. Supp. 649, 655 (D. Me.), *aff'd sub nom. Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975) (Nonintercourse Act claim by unrecognized tribe in Maine); *Mashpee Tribe v. Town of Mashpee*, 447 F. Supp. 940, 944 (D. Mass. 1978), *aff'd sub nom. Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 (1st Cir. 1979) (Nonintercourse Act claim by unrecognized tribe in Massachusetts).

[236] *United States v. State of Wash.*, 384 F. Supp. 312, 348 (W.D. Wash. 1974), *aff'd and remanded*, 520 F.2d 676 (9th Cir. 1975) (treaty fishing rights of unrecognized tribes in Washington State)

government-to-government relationship existed,[237] which included tribes previously recognized and seeking restoration or reaffirmation of their status.[238] At around this same time, Congress began a critical historical review of the Federal Government's conduct of its special legal relationship with American Indians.[239] In January 1975, it found that federal Indian policies had "shifted and changed" across administrations "without apparent rational design,"[240] and that there had been no "general comprehensive review of conduct of Indian affairs" or its "many problems and issues" since 1928, before the IRA's enactment.[241] Finding it imperative to do so,[242] Congress established the American Indian Policy Review Commission[243] to prepare an investigation and study of Indian affairs, including "an examination of the statutes and procedures for granting Federal recognition and extending services to Indian communities."[244] It was against this backdrop that the Department undertook its own review of the history and meaning of "recognition."[245]

The Palmer Memorandum

In July 1975, the acting Associate Solicitor for Indian Affairs prepared a 28-page memorandum on "Federal 'Recognition' of Indian Tribes" (the "Palmer Memorandum").[246] Among other things, it examined the historical meaning of "recognition" in federal law, and of the Secretary's authority to "recognize" unrecognized groups. After surveying statutes and case law before and after the IRA's enactment, as well as its early implementation by the Department, the memorandum notes that "the entire concept is in fact quite murky."[247] The Palmer Memorandum finds that the case law lacked a coherent distinction between "tribal existence and tribal recognition," and that clear standards or procedures for recognition had never been established by statute.[248] It further finds there to be a "consistent ambiguity" over whether formal recognition consisted of an assessment "of *past* governmental action" – the approach "articulated in the cases and [Departmental] memoranda" – or whether it "included authority to take such actions *in the first instance*."[249] Despite these ambiguities, the Palmer Memorandum concludes that the concept of "recognition" could not be dispensed with, as it had become an accepted part of Indian law.[250]

---

[237] AMERICAN INDIAN POLICY REVIEW COMMISSION, *Final Report, Vol. I* [Committee Print] at 462 (GPO 1977) (hereafter "AIPRC Final Report") ("A number of [unrecognized] Indian tribes are seeking to formalize relationships with the United States today but there is no available process for such actions."). *See also* TASK FORCE NO. 10 ON TERMINATED AND NONFEDERALLY RECOGNIZED INDIANS, *Final Report to the American Indian Policy Review Commission* (GPO 1976) (hereafter "*Report of Task Force Ten*").

[238] Kirsten Matoy Carlson, *Making Strategic Choices: How and Why Indian Groups Advocated for Federal Recognition from 1977 to 2012*, 51 LAW & SOC'Y REV. 930 (2017).

[239] Pub. L. No. 93-580, 88 Stat. 1910 (Jan. 2, 1975), *as amended*, (hereafter "AIPRC Act"), *codified at* 25 U.S.C. § 174 note.

[240] *Ibid.* Commissioner John Collier raised this same issue in hearings on the draft IRA. *See* H. Hrgs. at 37. Noting that Congress had delegated most of its plenary authority to the Department or BIA, which Collier described as "instrumentalities of Congress...clothed with the plenary power." Being subject to the Department's authority and its rules and regulations meant that while one administration might take a course "to bestow rights upon the Indians and to allow them to organize and allow them to take over their legal affairs in some self-governing scheme," a successor administration "would be completely empowered to revoke the entire grant."

[241] *Ibid.* (citing MERIAM REPORT).

[242] *Ibid.*

[243] AIRPC Act, § 1(a).

[244] *Id.*, § 2(3).

[245] *See, e.g.*, Letter from LaFollette Butler, Acting Dep. Comm. of Indian Affairs to Sen. Henry M. Jackson, Chair, Senate (Jun. 7, 1974) (hereafter "Butler Letter") (describing authority for recognizing tribes since 1954); Memorandum from Reid P. Chambers, Associate Solicitor, Indian Affairs to Solicitor Kent Frizzell, Secretary's Authority to Extend Federal Recognition to Indian Tribes (Aug. 20, 1974) (hereafter "Chambers Memo") (discussing Secretary's authority to recognize the Stillaguamish Tribe); Memorandum from Alan K. Palmer, Acting Associate Solicitor, Indian Affairs, to Solicitor, Federal "Recognition" of Indian Tribes (Jul. 17, 1975) (hereafter "Palmer Memo").

[246] Associate Solicitor Reid P. Chambers approved the Palmer Memo in draft form. *Ibid.* The Palmer Memo came on the heels of earlier consideration by the Department of the Secretary's authority to acknowledge tribes.

[247] Palmer Memo at 23.

[248] *Id.* at 23-24.

[249] *Id.* at 24. The memorandum concluded that the former question necessarily implied the latter.

[250] *Ibid.* at 24.

Indirectly addressing the two senses of the term "tribe" described above, the Palmer Memorandum found that before the IRA, the concept of "recognition" was often indistinguishable from the question of tribal existence,[251] and was linked with the treaty-making powers of the Executive and Legislative branches, for which reason it was likened to diplomatic recognition of foreign governments.[252] Though treaties remained a "prime indicia" of political "recognition,"[253] the memorandum noted that other evidence could include Congressional recognition by non-treaty means and administrative actions fulfilling statutory responsibilities toward Indians as "domestic dependent nations,"[254] including the provision of trust services.[255]

Having noted the term's ambiguity and its political and administrative uses, the Palmer Memorandum then surveyed the case law to identify "indicia of congressional and executive recognition."[256] It describes these indicia as including both federal actions taken toward a tribe with whom the United States dealt on a "more or less sovereign-to-sovereign basis," as well as actions that "clearly acknowledged a trust responsibility"[257] toward a tribe, consistent with the evolution of federal Indian policy.[258]

The indicia identified by the Solicitor's Office in 1975 as evidencing "recognition" in a political-legal sense included the following: treaties;[259] the establishment of reservations; and the treatment of a tribe as having collective rights in land, even if not denominated a "tribe."[260] Specific indicia of Congressional "recognition" included enactments specifically referring to a tribe as an existing entity; authorizing appropriations to be expended for the benefit of a tribe;[261] authorizing tribal funds to be held in the federal treasury; directing

---

[251] The Palmer Memo noted that based on the political question doctrine, the courts rarely looked behind a "recognition" decision to determine questions of tribal existence per se. *Id.* at 14.

[252] *Id.* at 13. *See also* Cohen 1942 at 12 (describing origin of Indian Service as "diplomatic service handling negotiations between the United States and Indian nations and tribes").

[253] *Id.* at 3.

[254] *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831). *See also* AIPRC Final Report at 462 ("Administrative actions by Federal officials and occasionally by military officers have sometimes laid a foundation for federal acknowledgment of a tribe's rights."); *Report of Task Force Ten* at 1660 (during Nixon Administration "federally recognized" included tribes recognized by treaty or statute and tribes treated as recognized "through a historical pattern of administrative action.").

[255] Palmer Memo at 2; AIPRC Final Report at 111 (treaties but one method of dealing with tribes and treaty law generally applies to agreements, statutes, and Executive orders dealing with Indians, noting the trust relationship has been applied in numerous nontreaty situations). Many non-treaty tribes receive BIA services, just as some treaty-tribes receive no BIA services. AIPRC Final Report at 462; Terry Anderson & Kirke Kickingbird, An Historical Perspective on the Issue of Federal Recognition and Non-Recognition, Institute for the Development of Indian Law at 1 (1978). *See also Legal Status of the Indians-Validity of Indian Marriages*, 13 YALE L.J. 250, 251 (1904) ("The United States, however, continued to regard the Indians as nations and made treaties with them as such until 1871, when after an hundred years of the treaty making system of government a new departure was taken in governing them by acts of Congress.").

[256] *Id.* at 2-14.

[257] *Id.* at 14.

[258] Having ratified no new treaties since 1868, ARCIA 1872 at 83 (1872), Congress ended the practice of treaty-making in 1871, more than 60 years before the IRA's enactment. *See* Act of March 3, 1871, ch. 120, § 1, 16 Stat. 566, *codified at* 25 U.S.C. § 71. This caused the Commissioner of Indian Affairs at the time to ask what would become of the rights of tribes with which the United States had not yet treated. ARCIA 1872 at 83. As a practical matter, the end of treaty-making tipped the policy scales toward expanding the treatment of Indians as wards under federal guardianship, expanding the role of administrative officials in the management and implementation of Indian Affairs. Cohen 1942 at 17-19 (discussing contemporaneous views on the conflicts between sovereignty and wardship); *Brown v. United States*, 32 Ct. Cl. 432, 439 (1897) ("But since the Act 3d March, 1871 (16 Stat. L., 566, § 1), the Indian tribes have ceased to be treaty-making powers and have become simply the wards of the nation."); *United States v. Kagama*, 118 U.S. 375, 382 (1886) ("But, after an experience of a hundred years of the treaty-making system of government, congress has determined upon a new departure,-to govern them by acts of congress. This is seen in the act of March 3, 1871...").

[259] Butler Letter at 6; Palmer Memo at 3 (executed treaties a "prime indicia" of "federal recognition" of tribe as distinct political body).

[260] Butler Letter at 6 (citing Cohen 1942 at 271); Palmer Memo at 19.

[261] Butler Letter at 5; Palmer Memo at 6-8 (citing *United States v. Sandoval*, 231 U.S. 28, 39-40 (1913), *United States v. Nice*, 241 U.S. 591, 601 (1916), *United States v. Boylan*, 265 F. 165, 171 (2d Cir. 1920)); *id.* at 8-10 (citing *United States v. Nice*, 241 U.S. 591, 601 (1916); *Tully v. United States*, 32 Ct. Cl. 1 (1896) (recognition for purposes of Depredations Act by federal officers charged with responsibility for reporting thereon).

officials of the government to exercise supervisory authority over a tribe; and prohibiting state taxation of a tribe. Specific indicia of Executive or administrative "recognition" before 1934 included the setting aside or acquisition of lands for Indians by Executive order;[262] the presence of an Indian agent on a reservation; denomination of a tribe in an Executive order;[263] the establishment of schools and other service institutions for the benefit of a tribe; the supervision of tribal contracts; the establishment by the Department of an agency office or Superintendent for a tribe; the institution of suits on behalf of a tribe;[264] and the expenditure of funds appropriated for the use of particular Indian groups.

The Palmer Memorandum also considered the Department's early implementation of the IRA, when the Solicitor's Office was called upon to determine tribal eligibility for the Act. While this did not provide a "coherent body of clear legal principles," it showed that Department officials closely associated with the IRA's enactment believed that whether a tribe was "recognized" was "an administrative question" that the Department could determine.[265] In making such determinations, the Department looked to indicia established by federal courts.[266] There, indicia of Congressional recognition had primary importance, but in its absence, indicia of Executive action alone might suffice.[267] Early on, the factors the Department considered were "principally retrospective," reflecting a concern for "whether a particular tribe or band *had* been recognized, not whether it *should* be."[268] Because the Department had the authority to "recognize" a tribe for purposes of implementing the IRA, the absence of "formal" recognition in the past was "not deemed controlling" *if there were sufficient indicia* of governmental dealings with a tribe "on a sovereign or quasi-sovereign basis."[269] The manner in which the Department understood "recognition" before, in, and long-after 1934[270] supports the view that Congress and the Department understood "recognized" to refer to actions taken by federal officials with respect to a tribe for political or administrative purposes in or before 1934.

D. Construing the Expression "Recognized Indian Tribe Now Under Federal Jurisdiction" as a Whole.

Based on the interpretation above, the phrase "any recognized Indian tribe now under federal jurisdiction" as a whole should be interpreted as intended to limit the IRA's coverage to tribes who were brought under federal jurisdiction in or before 1934 by the actions of federal officials clearly dealing with the tribe on a more or less sovereign-to-sovereign basis or clearly acknowledging a trust responsibility, and who remained under federal authority in 1934.

Each phrase referred to a different aspect of a tribe's trust relationship with the United States. Before and after 1934, the Department and the courts regularly used the term "recognized" to refer to *exercises* of federal authority over a tribe that initiated or continued a course of dealings with the tribe pursuant to Congress' plenary authority. By contrast, the phrase "under federal jurisdiction" referred to the supervisory and administrative responsibilities of federal authorities toward a tribe thereby established. The entire phrase "any recognized

---

[262] Palmer Memo at 19 (citing Cohen 1942 at 271)); Butler letter at 4.

[263] Palmer Memo at 19 (citing Cohen 1942 at 271).

[264] *Id.* at 6, 8 (citing *United States v. Sandoval*, 231 U.S. 28, 39-40 (1913), *United States v. Boylan*, 265 F. 165, 171 (2d Cir. 1920) (suit brought on behalf of Oneida Indians)).

[265] *Id.* at 18.

[266] *Ibid.*

[267] *Ibid.*

[268] *Ibid.* (emphasis in original). *See also* Stillaguamish Memo at 2 (Category 1 includes "all groups which existed and as to which the United States had a continuing course of dealings or some legal obligation in 1934 whether or not that obligation was acknowledged at that time.").

[269] Palmer Memo at 18.

[270] *See, e.g.*, Stillaguamish Memo. *See also* 25 C.F.R. § 83.12 (describing evidence to show "previous Federal acknowledgment" as including: treaty relations; denomination as a tribe in Congressional act or Executive Order; treatment by Federal government as having collective rights in lands or funds; and federally-held lands for collective ancestors).

Indian tribe now under federal jurisdiction" should therefore be interpreted to refer to recognized tribes for whom the United States maintained trust responsibilities in 1934.

Based on this understanding, the phrase "now under federal jurisdiction" can be seen to exclude two categories of tribe from Category 1. The first category consists of tribes never "recognized" by the United States in or before 1934. The second category consists of tribes who *were* "recognized" before 1934 but no longer remained under federal jurisdiction in 1934. This would include tribes who had absented themselves from the jurisdiction of the United States or had otherwise lost their jurisdictional status, for example, because of policies predicated on "the dissolution and elimination of tribal relations," such as allotment and assimilation.[271] Though outside Category 1's definition of "Indian," Congress may later enact legislation recognizing and extending the IRA's benefits to such tribes, as *Carcieri* instructs.[272] For purposes of the eligibility analysis, however, it is important to bear in mind that neither of these categories would include tribes who were "recognized" and for whom the United States maintained trust responsibilities in 1934, despite the Federal Government's neglect of those responsibilities.[273]

III. ANALYSIS

A. Procedure for Determining Eligibility.

As noted above, the Solicitor's Guidance provides a four-step process to determine whether a tribe falls within Category 1 of Section 19.[274] It is not, however, necessary to proceed through each step of the procedure for every fee-to-trust application.[275] The Solicitor's Guidance identifies forms of evidence that presumptively satisfy each of the first three steps.[276] Only in the absence of presumptive evidence should the inquiry proceed to Step Four, which requires the Department to weigh the totality of an applicant tribe's evidence.[277] The Tribe, as explained below, provided dispositive evidence under Step Two demonstrating that it was "under federal jurisdiction" in 1934. Therefore, the Tribe is eligible for the benefits of Section 5 of the IRA. I note that in addition to providing dispositive evidence of federal jurisdiction in 1934, the Tribe's evidence also demonstrates that it was "recognized" in or before 1934 and remained "under federal jurisdiction" in 1934 under Step Three.

B. Dispositive Evidence of Federal Jurisdiction in 1934.

Having identified no separate statutory authority making the IRA applicable to the Tribe under Step One, our analysis proceeds to Step Two of the eligibility inquiry, which looks to whether any evidence unambiguously demonstrates that the Tribe was under federal jurisdiction in 1934.[278] Certain types of federal actions, including

---

[271] *Hackford v. Babbitt*, 14 F.3d 1457, 1459 (10th Cir. 1994) ("The "ultimate purpose of the [Indian General Allotment Act was] to abrogate the Indian tribal organization, to abolish the reservation system and to place the Indians on an equal footing with other citizens of the country."); *see also Montana v. United States*, 450 U.S. 544, 559 (1981) (citing 11 CONG. REC. 779 (Sen. Vest), 782 (Sen. Coke), 783–784 (Sen. Saunders), 875 (Sens. Morgan and Hoar), 881 (Sen. Brown), 905 (Sen. Butler), 939 (Sen. Teller), 1003 (Sen. Morgan), 1028 (Sen. Hoar), 1064, 1065 (Sen. Plumb), 1067 (Sen. Williams) (1881); SECRETARY OF THE INTERIOR ANN. REP. 1885 at 25–28; SECRETARY OF THE INTERIOR ANN. REP. 1886 at 4; ARCIA 1887 at IV–X; SECRETARY OF THE INTERIOR ANN. REP. 1888 at XXIX–XXXII; ARCIA 1889 at 3–4; ARCIA 1890 at VI, XXXIX; ARCIA 1891 at 3–9, 26; ARCIA 1892 at 5; SECRETARY OF THE INTERIOR ANN. REP. 1894 at IV). *See also* Cohen 1942 at 272 ("Given adequate evidence of the existence of a tribe during some period in the remote or recent past, the question may always be raised: Has the existence of this tribe been terminated in some way?").

[272] *Carcieri*, 555 U.S. at 392, n. 6 (listing statutes by which Congress expanded the Secretary's authority to acquire land in trust to tribes not necessarily encompassed by Section 19).

[273] *See, e.g., Grand Traverse Band of Ottawa & Chippewa Indians v. Office of U.S. Atty. for W. Div. of Michigan*, 198 F. Supp. 2d 920, 934 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004) (improper termination of treaty-tribe's status before 1934).

[274] Solicitor's Guidance at 1.

[275] *Ibid.*

[276] *Ibid.*

[277] *Ibid.*

[278] Solicitor's Guidance at 2.

federal land acquisitions,[279] may constitute dispositive evidence of federal supervisory or administrative authority over Indians in 1934.[280] Where any of these forms of evidence exist, then the Solicitor's Office may consider the tribe to have been under federal jurisdiction in 1934 and eligible under Category 1.[281] The Tribe, as explained below, provided dispositive evidence under Step Two that it was "under federal jurisdiction" in 1934.

In 1915, Special Agent Terrell reported that the Federal Government needed to make appropriations to purchase land for the Tribe.[282] Based on Terrell's recommendation, in November 1916, the Secretary withdrew 880 acres from the public domain "for the use of the El Tejon Band of Indians, Kern County, California."[283] In the 1920s, as part of its effort to establish a land base for the Tribe, the United States also sought to confirm through litigation the Tribe's perpetual right to occupy land within the boundaries of the Tejon Ranch.[284] When the litigation was unsuccessful, the OIA attempted to negotiate with owners of the Tejon Ranch to buy a tract of land for the Tejon Indians residing there.[285] Even though the Federal Government's efforts to secure a portion of the Tejon Ranch for the Tribe were unsuccessful, the United States continued to hold the 880 acres of land withdrawn for the Tribe's benefit until a 1962 Public Land Order restored the land to the public domain and placed the land under the jurisdiction of the BLM.[286]

As the Solicitor's Guidance explains "[c]lear evidence that the United States took efforts to acquire lands on behalf of an applicant tribe in the years leading up to 1934" presumptively demonstrates that the tribal applicant was under federal jurisdiction in 1934.[287] Here the United States' sought to acquire land for the Tribe through negotiation, litigation and withdrawal from the public domain in the years leading up to 1934. The Federal Government's efforts coupled with the fact that the United States held 880 acres in trust for the Tribe from 1916 to 1962, provides dispositive evidence that the Tribe was under federal jurisdiction in 1934.

C. Presumptive Evidence Demonstrating Federal Jurisdiction in 1934.

Though I find the Tribe satisfies the requirements of Category 1 under Step Two of the Solicitor's Guidance, because of the significant weight of the Tribe's evidence, I also note the Tribe's eligibility under Step Three. Step Three looks to whether an applicant tribe's evidence sufficiently demonstrates that it was "recognized" in or before 1934 and remained "under federal jurisdiction" in 1934.[288]

Step Three first examines whether a tribe was unambiguously "recognized" before 1934. The Solicitor's Guidance identifies general and specific indicia of such recognition. General indicia include *inter alia* treaties; the establishment of reservations; and the treatment of a tribe as having collective rights in land, even if not denominated as a tribe.[289] Specific indicia of Executive or administrative recognition include *inter alia* the institution of suits on behalf of a tribe and the establishment of schools for the tribe's benefit.[290]

---

[279] *Id.* at 5.
[280] *Id.* at 2-4.
[281] *Id.* at 2.
[282] Report, Special Indian Agent Terrell to Commissioner of Indian Affairs (Dec. 12, 1915) ("Terrell Census").
[283] *Ibid.*
[284] *Ibid.*
[285] *See* Telegram, E.B. Merritt, Assistant Commissioner to F.G. Collette (June 14, 1924); Letter, E.B. Merritt, Assistant Commissioner to L.A. Dorrington, Superintendent (June 19, 1924); Letter, Hubert Work, Secretary of the Interior, to the Attorney General (Sept. 12, 1924); Letter, L.A. Dorrington, Superintendent, to Commissioner of Indian Affairs (Oct. 18, 1924); Letter, E.C. Finney, Acting Secretary of the Interior, to the Attorney General (Nov. 8, 1924).
[286] Public Land Order 2738, Revoking Departmental Order of November 9, 1916, 27 Fed. Reg. 7,636 (Aug. 2, 1962)
[287] Solicitor's Guidance at 5.
[288] Solicitor's Guidance at 6.
[289] Solicitor's Guidance at 7.
[290] Solicitor's Guidance at 7-8.

Here, the Tribe's negotiations with Commissioner Barbour in 1851 resulted in an executed, though unratified treaty. By entering into treaty negotiations with the Tribe, the United States acknowledged the Tribe as a sovereign entity capable of treaty-making, thus "recognizing" the Tribe as that term was understood in 1934. Further, the balance of the record evidence demonstrates that from 1852 through 1934, federal officials continued to take actions that reflect a course of dealings demonstrating that the Tejon Indians were under federal authority. The United States supervised and acknowledged a responsibility for the welfare of the Tribe, even though the Tribe was residing on the privately held Tejon Ranch.[291] The Federal Government engaged in persistent efforts to acquire lands for the Tribe, and the United States, as *guardian*, initiated litigation to secure land on the Tribe's behalf.[292] At the same time, the Federal Government sought to provide the Tribe with a permanent land base, it also took responsibility for constructing and funding a schoolhouse on the Tejon Ranch for the education of the Tribe's children, which it maintained through 1934.[293]

The Solicitor's four-step procedure is premised on the understanding that "under federal jurisdiction" as used in Category 1 does not refer to the outer limits of Congress's plenary authority,[294] but rather the "*application* and *administration* of the federal government's plenary authority over Indians."[295] The continuing course of dealings between the Tribe and the Federal Government from 1851 and through 1934, establishes that the Tribe was subject to the jurisdiction of the United States through the application and administration of the Federal Government's plenary authority. The evidence presumptively demonstrates that the tribe was "recognized" in or before 1934 and remained "under federal jurisdiction" through 1934 and thus supports a finding that the Tribe satisfies Category 1.

D. Conclusion that Tribe was Under Federal Jurisdiction in 1934 is Consistent with Reaffirmation Decision.

The Solicitor's Guidance recognizes that the Department on occasion "reaffirmed the federally acknowledged status of tribes through administrative means other than Part 83" and that "the Solicitor's Office should determine the eligibility under Category 1 of any applicant tribe that was administratively restored or reaffirmed outside Part 83 based on the specific facts of each case."[296] Evidence that a tribe was "federally recognized or reaffirmed after 1934 does not in itself preclude a finding that the tribe was under federal jurisdiction in 1934."[297]

Assistant Secretary Echo Hawk concluded that the Department improperly excluded the Tribe from the list of Indian Entities Eligible to Receive Services from the BIA's finding that the Tribe's relationship with the United States began as early as 1851 and remained intact at the time of reaffirmation in 2011.[298] In his April 24, 2012, Memorandum, Assistant Secretary Echo Hawk provided a detailed analysis in support of his decision.[299] Significantly, Assistant Secretary Echo Hawk indicated that, "[t]he Federal Government's withdrawal of land from the public domain in 1916 for the Tribe, as well as its repeated attempts to secure ownership of the land at the Tejon Ranch for the Tribe provide evidence, through a unique history, of the United States' acknowledgment of the Tribe as a political entity *under its jurisdiction*."[300]

---

[291] Discussed above, Section I, (C) (1).
[292] *Ibid.*
[293] Discussed above, Section I, (C) (2); *Id.* at (D).
[294] Deputy Solicitor's Memo at 18.
[295] *Ibid.* (emphasis added).
[296] Solicitor's Guidance at 10.
[297] Solicitor's Guidance at 9.
[298] Letter, Larry Echo Hawk, Assistant Secretary – Indian Affairs to Kathryn Morgan, Chairwoman Tejon Tribe (Dec. 30, 2011).
[299] Memorandum, Larry Echo Hawk, Assistant Secretary – Indian Affairs to Pacific Regional Director (Apr. 24, 2012).
[300] *Id.* at 4 (emphasis added).

Assistant Secretary Echo Hawk's decision to reaffirm the Tribe's status analyzed much of the same historical evidence at issue for this opinion. The Department's reaffirmation decision does not preclude a finding that the Tribe was under federal jurisdiction in 1934.

IV. CONCLUSION

For the foregoing reasons, I conclude that the Tejon Indian Tribe satisfies Category 1, and that the Secretary has the statutory authority to acquire land in trust for the Tribe under Section 5 of the IRA.

25 CFR § 151.10 (b) – The Need of the Individual Indian or a Tribe for additional Land

The Tribe's need for the proposed acquisition is demonstrated by the fact that it currently has no trust land. On June 10, 1851, Tejon tribal representatives were among the signatories to execute a treaty that, in exchange for ceding aboriginal title to the United States, would have established a 763,000 acre reservation between Tejon Pass and the Kern River (1851 Treaty). As with seventeen similar treaties with other California tribal groups, the United States Senate declined to ratify the 1851 Treaty. By the early twentieth century, the BIA's attempt to establish a reservation for the Tribe failed. The BIA tried alternative routes to secure a land base for the Tribe by withdrawing land from the public domain for the Tribe in 1916 and attempting to purchase land for the Tribe's occupation from the Tejon Ranch throughout the 1920's. Additionally, the Department of Justice pursued a land claim on the Tribe's behalf to establish continued tribal ownership of some portion of its aboriginal territory within Tejon Ranch. These efforts were unsuccessful and the 1916 withdrawal was ultimately restored to the public domain in 1962. Since that time, the Tribe has had no land base held in trust. Their relationship with the United States was reaffirmed in late December 2011.

The need of enrolled tribal members is also great and the majority of tribal members continue to reside in Kern County but are poor in comparison to their non-Indian neighbors. The average tribal household has an annual income that is less than half of the median income of Kern County residents.

This application serves the fundamental purpose of the IRA to provide a permanent homeland for the rehabilitation of tribe. It will directly facilitate tribal self-government by providing a base from which the Tribe can conduct its government and administer services to its members, and a first step toward providing a stable tribal community.

25 CFR § 151.10 (c) – Purpose for which the Property will be used.

Currently, the property contains four structures which include an auditorium, a commercial grade kitchen, bathroom, and offices. The Tribe plans to renovate and make improvements to the existing structures and include a Tribal Center which will be used to house the tribal government and administration of tribal programs.

25 CFR § 151.10 (d) – If the Land is to be Acquired for an Individual Indian, the amount of Trust or Restricted Land already owned by or for that Individual and the Degree to which he needs Assistance in Handling his Affairs.

Not applicable.

25 CFR § 151.10 (e) – Impact on State and its Political Subdivisions resulting from the removal of this Property from the Tax Rolls.

Lands accepted into federal trust status are exempt from taxation and would be removed from the Kern County's (County) taxing jurisdiction. In the 2016-2017 tax years, the assessed value of the parcel, land and improvements, was $1,002,865. The assessed value of all property in the County was $89.2 billion, which the

subject property represented only .00091% of the overall assessment value to the County. Additionally, the 2016-2017 assessor records stated the total taxable value of the Tribal Center property was zero. The parcel was recently owned by a non-profit corporation, therefore the parcel was not taxed by the County.

In the 2019-2020 tax years, the total assessed taxes on the subject property is $9,296.63. There were no comments pertaining to taxes received during the comment period.

Transferring the subject property into trust will not have a significant impact on the State of California or the County's tax revenue because the amount of property taxes assessed on these parcels is small in comparison to the County's annual property tax revenue.

25 CFR § 151.10 (f) – Jurisdictional Problems and Potential Conflicts of Land use

The County has current jurisdiction over the land use on the property subject to this application. The County's land use regulations are presently the applicable regulations when identifying potential future land use conflicts.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and the County. Once the land is accepted into trust, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons, and transactions on the land as the State has over other Indian communities within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land.

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the subject property into trust. The Tribe's intended purposes of renovate and make improvements to the existing structures and include a Tribal Center are not inconsistent with the surrounding uses. On November 14, 2016, the Kern County Board of Supervisors met in a regular session to consider, among other things, approval of a Memorandum of Understanding (MOU) with the Tribe relating to the Tribal Center property. Following a lengthy discussion, the Kern County Board of Supervisors voted unanimously to adopt a resolution approving the MOU with the Tribe.

Among other things, the MOU identifies the following: non-gaming uses of the property as the establishment of a Tribal headquarters and community center; acknowledges that most state criminal laws will remain in effect on the property; commits the Tribe to adopt the County's building code as Tribal law; obliges the County to provide emergency law enforcement and emergency medical, fire and hazmat services upon request by the Tribe; obligates the Tribe to pay for said requested services in accordance with a stated schedule of rates; and includes a reciprocal, limited waiver of sovereign immunity by the parties.

25 CFR § 151.10 (g) – Is the Bureau of Indian Affairs equipped to Discharge the additional Responsibilities.

The Tribe falls within the jurisdiction of the BIA-Central California Agency (Agency). The Agency provides services for trust lands located in 21 California counties and is equipped to provide services for the proposed trust acquisition and discharge its responsibilities. Acceptance of the acquired land into federal trust status will not impose any additional responsibilities or burdens to the BIA beyond those already inherent in the federal trusteeship.

25 CFR § 151.10 (h) – Environmental Compliance:

National Environmental Policy Act Compliance

The Department has complied with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the implementing guidelines as set forth in the Bureau of Indian Affairs Manual (59 IAM). An Environmental Assessment (EA) for the proposed action was completed in December 2018 and distributed for public review and comment for the period beginning June 10, 2019, and noticed to end on July 10, 2019. The EA documents and analyzes potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resources use patterns (transportation, land use, and agricultural), public services, public health/hazardous materials, and other values (noise and visual resources).

Based on the analysis presented in the EA, our review and consideration of the public comments received during the review period, responses to the comments, and mitigation measures imposed, the BIA has determined that the proposed federal action is not a major federal action significantly affecting the quality of the human environment, as defined by NEPA. A Finding of No Significant Impact (FONSI) was signed on August 1, 2019. Therefore, preparation of an Environmental Impact Statement is not required.

Hazardous Substances Determination

In accordance with the Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential for and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" completed August 2018, reflecting that there were no hazardous materials or contaminants.

25 CFR § 151.11 (a) – The Criteria listed in listed in § 151.10 (a) through (c) and (e) through (h).

See information and discussion noted above.

25 CFR § 151.11 (b) - The Location of the Land relative to the State boundaries, and its distance from the Boundaries of the Tribe's Reservation.

The Tribe does not currently have a reservation, however the property is located within the State of California, County of Kern, which is where the Tribe's current headquarters and the majority of its members are located. Further, the parcel is located within the area reserved under the unratified 1851 Treaty. It is within fifteen miles of the lands withdrawn from the public domain for the Tribe in 1916 and the remnant of the aboriginal territory that was the subject of the United States' lawsuit on behalf of the Tribe. This history weighs favorably for the Tribe when evaluating the concerns of state and local governments under §151.11(d) as addressed below.

25 CFR § 151.11 (c) - Where Land is being acquired for Business purposes, the Tribe shall provide a plan which specifies the anticipated Economic Benefits associated with the Proposed use.

The Tribe plans to renovate and make improvements to the existing structures and include a Tribal Center which will be used to house the tribal government and administrative offices. The proposed property is not being acquired for business purposes; therefore no business plan is required for the acquisition.

25 CFR § 151.11 (d) - Contact with state and local governments pursuant to §151.10 (e) and (f).

On April 8, 2019, we issued, by certified mail, return receipt requested, notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Senior advisor for Tribal Negotiations, Office of the Governor; Sara Drake, Deputy Attorney General,

State of California; Office of the Honorable Senator Dianne Feinstein; Kern County Board of Supervisors; Kern County Assessor; Kern County Planning Department; Kern County Treasurer and Tax Collector; Kern County Sheriff's Department; City of Bakersfield; Cheryl Schmit, Stand up for California; and Superintendent, Central California Agency.

The effect of the proposed acquisition on the local tax base and any jurisdictional or land use conflicts are addressed in the 25 CFR § 151.10 (e) and (f) discussion above.

There was opposition to the fee to trust acquisition expressed from the organization, Stand Up for California! (Stand Up!) by letter dated May 27, 2019. The Tribe provided a response letter to the BIA on May 30, 2019, referencing the comments received from Stand Up!. Stand Up! asserts that (1) environmental impacts were not fully considered through a California Environmental Quality Act (CEQA) review; (2) that the Assistant Secretary–Indian Affairs 2012 reaffirmation decision creates "an unfortunate problem;" and (3) that the BIA must address the whether the decision will influence other pending fee-to-trust applications. I have reviewed the issues and responses raised in these submissions and address the commenter's concerns as follows.

Compliance with Environmental Regulations

Stand Up! asserts that BIA failed to provide a review under the CEQA. As stated above, the BIA fulfilled its §151.10(h) obligations with a NEPA review that produced a thoroughly documented EA, ultimately leading to a FONSI for the proposed trust acquisition. The CEQA is a state statute governing the decisions of state entities. While CEQA generally does not apply to federal actions or affect lands held in trust by the United States[301], the EA nonetheless included reports that addressed various elements of California's environmental compliance regime.[302]

Federally Recognized Tribe

Stand Up! acknowledges the Tribe's listed status as a federally recognized tribe is not in dispute but questions the manner in which the Tribe obtained federal recognition. Specifically, Stand Up! challenges the BIA's 2012 reaffirmation decision. In 2006, the Tribe requested that BIA confirm its status as a federally recognized tribe.[303] In support of this request, the Tribe submitted detailed historical records.[304] Concluding that the Tribe had been inadvertently omitted from the BIA's list of recognized tribal entities,[305] on December 30, 2011, Assistant Secretary Larry Echo Hawk reaffirmed the Tribe's federally recognized status.[306] Assistant Secretary Echo Hawk determined that failure to include the Tribe on the 1979 list was the result of administrative error,[307] and that the Tribe's government-to-government relationship with the United States had never lapsed or been administratively terminated.[308] As a result, the Tribe was added to the Department's list of recognized tribal entities in August 2012, where it remains today.[309]

---

[301] *See County of Colusa, CA v. Pacific Regional Director, BIA*, 38 IBIA 274, 279 (2003) (rejecting argument that CEQA applied to trust land because some State discretionary action was required for off-reservation aspects of the project, the Board held "that fact does not authorize the application of that statute, or any other State law, to on-reservation aspects of the project.")

[302] *See* EA at Appx. C (Architectural Evaluation), Appx. D (Phase 1 Environmental Site Assessment).

[303] Letter, Chairwoman Kathryn Montes Morgan, Tejon Indian Tribe, to Associate Deputy Secretary James Cason, Dept. of the Interior (June 29, 2006).

[304] *See* Tejon Indian Tribe, Request for Confirmation of Status (June 30, 2006); Request and Supporting Materials, Historical Exhibits, Vols. I-III (June 30, 2006).

[305] Memorandum, Larry Echo Hawk, Assistant Secretary – Indian Affairs to Pacific Regional Director (Apr. 24, 2012) ("2012 Memo").

[306] Letter, Larry Echo Hawk, Assistant Secretary – Indian Affairs to Kathryn Morgan, Chairwoman Tejon Tribe (Dec. 30, 2011).

[307] *Id.*

[308] 2012 Memo at 4.

[309] Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs, 77 Fed. Reg. 47,871 (Aug. 10, 2012).

Federal law prohibits the Department from making any decision or determination under the IRA with respect to a federally recognized Indian tribe that would diminish the privileges and immunities of that tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.[310] The reaffirmation of tribes outside of the Part 83 process has been affirmed as a valid exercise of the Department's discretionary authority.[311] Pursuant to §151.10(a), as detailed above, I have determined that the Tribe was under federal jurisdiction in 1934 for purposes of there being sufficient authority for this acquisition under Section 5 of the IRA. Thus, I disagree with any characterization that there is some "unfortunate problem" to resolve concerning the Tribe's recognition status or the authority for this acquisition.

Other Trust Acquisition Applications

Finally, Stand Up! asserts that BIA "must address....whether or not [this] trust transaction...will influence the Tribes pending gaming application." This assertion is without merit. This decision fully details the authorities and required analysis under Part 151 for the acquisition of the subject parcel for the Tribal Center. Any application that the Tribe may have before the Department for the trust acquisition of any other parcel for any other purpose is not relevant within the confines of this decision.

25 CFR § 151.13 - Title Examination

Title review by the Office of the Solicitor, Pacific Southwest Region, was requested on March 7, 2019, and a favorable opinion was issued on March 18, 2019. The procedure for acquiring title to the subject Property by the United States of America in trust for the Tribe is acknowledged and in accordance with the Department's procedures.

Conclusion

Based on the foregoing, we do hereby issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Tejon Indian Tribe in accordance with 25 U.S.C. § 5108, Indian Reorganization Act of June 18, 1934 (48 Stat. 985).

Decision

This decision constitutes a final agency action under 5 U.S.C. § 704.

Sincerely,

Tara Sweeney
Assistant Secretary – Indian Affairs

cc: Director, Bureau of Indian Affairs
Regional Director, Pacific Region
Associate Solicitor, Indian Affairs

---

[310] 25 U.S.C. §5123(f).

[311] *See Koi Nation of Northern California v. United States Department of the Interior*, 361 F.Supp. 3d 14, 42-43 (D.D.C. 2019). While the Department published guidance in 2015 to constrain future recognition decisions within the Part 83 petition process, the directive did "not affect the validity of any determination made prior to the institution of this policy guidance." *See* 80 Fed. Reg. 37539 (July 1, 2015).

ATTACHMENT IV

SECRETARIAL DETERMINATION

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

Decision

In 2014, the Tejon Indian Tribe (Tribe) submitted an application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) acquire in trust approximately 320.04 acres of land[2] (Mettler Site) in Kern County, California, for gaming and other purposes.[3] The Tribe also requested that the Secretary of the Interior (Secretary) determine whether the Tribe is eligible to conduct gaming on the Mettler Site pursuant to the Indian Gaming Regulatory Act (IGRA).[4] The Tribe proposes to construct a casino-resort, including a hotel, recreational vehicle (RV) park, and a joint fire/sheriff station on the Mettler Site.

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

---

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

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

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

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

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

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

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

Proposed Project

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

Tejon Indian Tribe

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

---

[5] Final Environmental Impact Statement, Tejon Indian Tribe Trust Acquisition and Casino Project (Oct. 2020), Vol. I (hereafter FEIS) § 2.2.1 (available at www.tejoneis.com).
[6] *Id.*
[7] Charles C. Royce, Eighteenth Annual Report of the Bureau of American Ethnology, Part 2, p. 782 (Bureau of American Ethnology, 1851).

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

Tribal Need

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

The Tribe has a population of approximately 1,050.[12] More than 60 percent of the Tribe's members reside in Kern County.[13] The median age among tribal members is significantly lower when compared to the United States population overall. Approximately 32 percent of the Tribe's members are under the age of 18 with a median age of 26.[14] In comparison, 24 percent of the United States' population is under the age of 18 with a median age of 38. Furthermore, Tejon elders represent 5 percent of the population compared to the national average of 13 percent.[15]

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

Tribal Government and Administration

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

---

[8] FEIS § 1.3.

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

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

[11] Tribe's Secretarial Determination Application at 1.

[12] FEIS § 3.7.1.

[13] Tribe's Secretarial Determination Application at 5.

[14] FEIS § 3.7.1.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Regional Director's Findings of Fact at 7.

positions.[19] The Tribe relies on 136 tribal volunteers[20] to provide governmental services such as enrollment, cultural resources, and education.[21] With additional revenue from the Proposed Project, the Tribe intends to construct a tribal government center to house employees and tribal programs in order to have a fully functioning tribal government. The Tribe anticipates that construction of the center will cost over [redacted] and will need at least a [redacted] annual operating budget.[22]

Law Enforcement and Emergency Management Services

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

Housing and Related Services

The Tribe has critical housing needs. The Tribe anticipates a minimum annual unmet need of [redacted].[26] Nationally 64 percent either own or have a home mortgage, however, 62 percent of tribal members either rent or live at a location without payment of rent.[27] The Tribe reports that it needs to establish a housing authority to address the housing shortage and assist tribal members in financing and securing their own homes. Using revenue from the Proposed Project, the Tribe intends to construct an elder housing program to provide homes to the Tribe's elderly and also assist the Tribe's elders to make repairs and maintain their existing homes.[28]

---

[19] Tribe's Secretarial Determination Application at 7.
[20] *Id.* at Attachment F at 5 (hereafter Tribal Needs Report).
[21] *Id.* at 7.
[22] *Id.*
[23] *See* Intergovernmental Agreement (July 23, 2019), in FEIS, Appendix D.
[24] Tribal Needs Report at 13.
[25] *Id.*
[26] *Id.* at 12.
[27] FEIS § 3.7.1.
[28] Tribal Needs Report at 12.

Health Services

The Tribe has significant health needs among its members. The Tribe notes that tribal members have poor access to healthcare, little access to health insurance, and an unusually high percentage of its members in need of acute or preventative healthcare support.[29] The Tribe needs to construct a health clinic, at a cost of [redacted], to provide basic services to its members, including dental services, elder care, substance abuse programs, and preventative health programs. The Tribe estimates minimum annual operating costs to be at least [redacted].[30]

Social Services

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

Education/Career Training

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

The Tribe has significant needs for tribal education services, language and art programs, libraries, and cultural heritage. The Tribe estimates it has annual unfunded operational budget of at least [redacted].[34] The Tribe reports that it needs educational programs for early childhood learning, K-12 tribal school with a language immersion program, before and after school care, day care, tribal scholarships, adult vocational training and GED classes, a library, and language and cultural resources.[35] With revenue from the Proposed Project, the Tribe will establish and operate its own tribal programs to incorporate its own cultural values and traditions, including language learning programs.[36]

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

---

[29] *Id.* at 3.
[30] *Id.*at 10.
[31] *Id.* at 5.
[32] *Id.* at 11-12.
[33] *Id.* at 4.
[34] *Id.* at 8.
[35] *Id.* at 8-9.
[36] *Id.* at 9.

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

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

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

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

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

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

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

Application Contents

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

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

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

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

The Mettler Site is located in an unincorporated portion of the County, west of the Town of Mettler and State Route 99, north of State Route 166, east of Interstate 5, south of Valpredo Road, and approximately 14 miles south of the City of Bakersfield.[37] The Mettler Site includes four parcels identified as tax Assessor's Parcel Numbers APN: 238-204-02, APN: 238-204-04, APN: 238-204-07, and APN: 238-204-14.[38] The legal description of the Mettler Site is included as Attachment 3.

[37] FEIS § 2.2.1.
[38] Regional Director's Findings of Fact at 4.

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

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

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

The Mettler Site is located approximately five miles from the Tribe's headquarters on the Tribal Center Parcel, which was acquired in trust on October 23, 2020.[42] Prior to the trust acquisition of the Tribal Community Center Property the Tribe was landless. The Proposed Project is located within the area designated as Tribe's reservation in the unratified 1851 Treaty.

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

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

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

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

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

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

---

[39] Tribe's Secretarial Determination Application at 1.
[40] Regional Director's Findings of Fact at 5
[41] *Id.*
[42] *Id. See* Notice, Land Acquisitions; Tejon Indian Tribe, 85 Fed. Reg. 55471 (Sept. 8, 2020).
[43] Regional Director's Findings of Fact at 5.

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

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

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

The Tribe is organized under the Indian Reorganization Act. The Tribe is governed by its Constitution and Bylaws that were established on July 18, 2015, and last amended on April 21, 2018.[45]

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

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

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

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

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

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

Analysis of Best Interest of the Tribe and Its Members

Section 292.17 provides that an application must contain:

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

---

[44] Tribe's Secretarial Determination Application at 21.
[45] Regional Director's Findings of Fact at 6.
[46] Tribe's Secretarial Determination Application at 22.
[47] Regional Director's Findings of Fact at 7.

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

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

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

Reports

The Tribe submitted several reports:

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

[48] The Innovation Group, *Economic & Community Impact Analysis, Tejon Indian Tribe, Kern County, CA* (December 2018) (hereafter Economic Impact Analysis), in FEIS, Appendix I.
[49] The gravity model defines the behavior of a population based on travel distance and the availability of goods or services at various locations. The general form of the equation is that attraction is directly related to a measure of availability such as square feet and inversely related to the square of the travel distance. Thus, the gravity model quantifies the effect of distance on the behavior of a potential patron and considers the impact of competing venues. *See* Economic Impact Analysis at 13-15.
[50] *Id.* at 13.

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

- Financial Projections that include pro-forma financing statements, income statement, balance sheet, cash flow statement, and financing assumptions, which provide anticipated financial performance of the Proposed Project for its first 10 years of operation.[51]

- An Economic Benefits Plan and additional confidential agreements concerning the development and management of the Proposed Project by SCCR Tejon, LLC.[52] The Economic Benefits Plan outlines the anticipated economic benefits that will be generated by the Proposed Project. The development and management agreements contain the terms agreed upon between the Tribe and SCCR Tejon, LLC, to develop and manage the Proposed Project.

I find these reports to be reasonable by industry standards.

Analysis

The Economic Impact Analysis estimates that construction and development of the gaming facility and hotel will cost $596,000,000.[53] The Economic Impact Analysis assumes the Proposed Project will be open by 2023, with its first full year of operations in 2024.

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

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

---

[51] Tribe's Secretarial Determination Application, Attachment E, Financial Projections.
[52] *Id.* at Attachment E-1, Economic Benefits Plan (2020). The Tribe's application includes Title Documents and Transfer Agreement, Financial Projections, an Economic Benefits Plan, a First Amendment to Development Agreement between Tejon Indian Tribe and SCCR Tejon Development, LLC, and a Management Contract. These documents contain the Tribe's commercial and/or financial information which is customarily and actually treated as private by the Tribe and was submitted to the Department under an assurance of privacy. The Department will withhold these documents in their entirety from the public because they are confidential within the meaning of Exemption 4 of the Freedom of Information Act (FOIA) 43 C.F.R. §§ 2.23 and 2.24. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).
[53] Economic Impact Analysis at 19 - 20.
[54] The Economic Impact Analysis identified the Tejon Market Area as including twelve distinct market areas from which the Proposed Project will draw visitors. These include the following: Primary, Secondary West, Secondary Northwest, Lake Isabella, Secondary East, Palmdale, Santa Clarita, Thousand Oaks, Tertiary North West, Tertiary North, Porterville, and Los Angeles. Economic Impact Analysis at 17.
[55] *Id.* at 21.

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

The Tribe anticipates the class II and class III gaming at the Proposed Project will generate increasing net revenue to the Tribe over the first ten years of operation.[57] The analysis shows detailed annual projected gross revenues and expenses for each category of operations including, casino gaming, hotel, food and beverage, entertainment, retail, spa and other income.[58] [redacted][59] The documents submitted show that the proposed gaming project will grow and that it will have the resources to pay its obligations in the short term and long term.

The Tribe submitted the required income statements that show [redacted].[60] The financial submissions show that the Proposed Project will have sufficient earnings before interest, tax, depreciation, amortization, and management fees increasing each year through year ten.[61] The income statements and other financial submissions show that the proposed project will be profitable.

The Tribe submitted the required financial statements that shows that [redacted][62] [redacted][63] The Tribe will make one-time and annual payments to Kern County.[64] Based on the Proposed Project operating 2000 gaming machines and 75 table games, the Tribe will make annual revenue sharing payments to the State of California.[65] The cash flow to the Tribe, coupled with

[56] *Id.* at 30 and Table 17.
[57] Economic Benefits Plan at 2.
[58] *Id.* at 3.
[59] *Id.*
[60] *Id.*
[61] *Id.*at 1.
[62] *Id.* at 1, 19.
[63] *Id.*
[64] *Id.* at 1, 18.
[65] *Id.* at 5. These are projected costs because the Tribe does not currently have a tribal-state gaming compact with the State of California. *See* Economic Impact Analysis at 56.

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

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

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

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

The Tribe provides a tribal member preference when hiring employees.[68] The Tribe's members need or will need employment, job training, and career development. More than 60 percent of the tribal members reside in Kern County.[69] The Tribe and its management partners, the Seminole Tribe and Hard Rock, are committed to investing in job training and career development for tribal members and Kern County residents.[70] The IGA expressly includes a local hiring provision that encourages at least 50 percent of employees be from local communities in Kern County.[71] The IGA provides for coordination with local training programs and local job fairs. [redacted][72] The Tribe's management partner has numerous programs in place to encourage and enhance the hiring, development and training of tribal members to provide quality educational and employment opportunities.

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

---

[66] FEIS § 3.7.2, Table 3.7-4.
[67] *Id.*
[68] Tribe's Secretarial Determination Application at 5.
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.* at 6.

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

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

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

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

The Tribe has many significant unmet needs. Currently, it provides governmental services on a budget of approximately [redacted].[75] The funding primarily comes from federal appropriations through the BIA, Indian Health Service (IHS), Department of Housing and Urban Development (HUD), and the Environmental Protection Agency.[76] [redacted][77]

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

The Tribe will use revenue from the Proposed Project to fund core tribal programs such as administration, education and culture, health and social services, environmental, elder care, housing, law enforcement and the judiciary, and public works. For example, the Tribe plans to invest net revenues in tribal infrastructure.[78] Aside from its tribal headquarters site recently purchased using HUD funding, the Tribe does not have any land or infrastructure.[79] The tribal headquarters site requires significant rehabilitation and repair, which is estimated to cost [redacted][80]

---

[74] Regional Director's Findings of Fact at 11.
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] Tribe's Secretarial Determination Application at 9.
[79] Regional Director's Findings of Fact at 12.
[80] *Id.*

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

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

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

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

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

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

---

[81] Tribe's Secretarial Determination Application at 7.
[82] *Id.*
[83] *See* Regional Director's Findings of Fact at 12.
[84] *Id.*
[85] *Id.* Notable organizations sending in letters of support include: Tejon Ranch, Greater Bakersfield Chamber of Commerce, Kern County Hispanic Chamber of Commerce, Black Chamber of Commerce, Kern County Taxpayers' Association, Kern County Economic Development Corporation, Bakersfield Board of Realtors, Taft Chamber of Commerce, and North of the River Chamber of Commerce.
[86] FEIS § 3.7.4.
[87] *Id.*
[88] *Id.*
[89] Regional Director's Findings of Facts at 12.

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

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

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

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

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

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

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

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

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

---

[90] Tribe's Secretarial Determination Application at 11.
[91] *Id.*
[92] FEIS § 2.
[93] Regional Director's Findings of Fact at 13.
[94] Tribe's Secretarial Determination Application, Attachment J, *Development Agreement*, at § 2.8.
[95] 25 C.F.R. § 292.17(i) does not require an applicant tribe to demonstrate an aboriginal, cultural, or historical connection to the land in order to receive a positive Secretarial Determination.

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

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

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

Conclusion: Best Interest of Tribe and its Members

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

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

Analysis of Detriment to the Surrounding Community

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

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

[96] Regional Director's Findings of Fact at 13.

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

Purpose and Need

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

The purpose of the Proposed Actions is to facilitate tribal self-sufficiency, self-determination, and economic development, thus, satisfying both the Department's land acquisition policy as articulated in the Department's trust land regulations at 25 C.F.R. Part 151, and the principal goal of IGRA as articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's trust land acquisition regulations at 25 C.F.R. §§ 151.10(h) and 151.12, and the Department's Secretarial Determination regulations at 25 C.F.R. §§ 292.18(a) and 292.21.

Procedural Background

The BIA published a Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on August 13, 2015.[97] The BIA held a scoping meeting in City of Bakersfield on September 1, 2015. The BIA published a Notice of Availability (NOA) of the Draft EIS in the *Federal Register* on June 12, 2020.[98] The BIA filed the NOA with the California state clearinghouse for distribution to state agencies. The BIA also published the NOA in *The Bakersfield Californian*, which circulated in Kern County and surrounding area on June 12, 2020, and mailed the NOA to interested parties. The Draft EIS was available for public comment for a 45-day period that concluded on July 27, 2020. On July 8, 2020, a virtual public hearing was held during which the BIA received verbal and written comments on the Draft EIS.

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

[97] 80 Fed. Reg. 48559 (Aug. 13, 2015).
[98] 85 Fed. Reg. 35930 (June 12, 2020).

BIA published the NOA for the FEIS in the *Federal Register* on October 23, 2020.[99] The BIA also published the FEIS in the local newspaper, *The Bakersfield Californian*. The Assistant Secretary - Indian Affairs concluded the NEPA process by signing a Record of Decision (ROD) for the Secretarial Determination. The ROD is included as Attachment 4.

The FEIS analyzed four development alternatives:

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

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

Alternative A2 Reduced Casino Resort Alternative (FEIS § 2.2.3)

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

Alternative A3 – Organic Farming Alternative (FEIS § 2.2.4)

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

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

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

Alternative C – No Action Alternative (FEIS § 2.4)

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

---

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

Selection of the Alternative A1

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

The casino resort described under Alternative A1 would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the tribal government. Under such conditions, the tribal government would be stable and better prepared to establish, fund, and maintain governmental programs to meet the Tribe's needs, including providing services and economic opportunities for its members. The development of Alternative A1 would meet the purpose and need for the Proposed Actions better than the other development alternatives due to the reduced revenues that would be expected from the operation of Alternatives A2, A3, B, and C (described in Section 2.6 of the FEIS). While Alternative A1 would have greater environmental impacts than the No Action Alternative, the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in the ROD.

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

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

Impacts on Social Structure

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

Environmental Justice for Minority and Low-Income Populations (FEIS § 3.7.3): The review of the demographics of census tracts in the vicinity of the Mettler Site showed that seven census tracts contain a substantial minority community, but no low-income communities. The Tribe is considered a minority community affected by the alternatives. Increased economic development and employment opportunities would positively affect the minority community in the vicinity of the Mettler Site. Therefore, impacts to minority or low-income communities under the Proposed Project would be less than significant. Other effects to minority and low-income persons, such as traffic, air quality, noise, etc., would be less-than-significant, after the implementation of the specific mitigation measures related to these environmental effects.

Impacts on infrastructure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Impacts on services

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

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

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

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

Impacts on housing

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

Impacts on community character and land use

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

Construction Economic Impact (FEIS § 3.7.4.1, Appendix I)

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

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

Operational Economic Impact (FEIS § 3.7.4.1, Appendix I)

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

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

Substitution Effects (FEIS § 3.7.4.1, Appendix I)

The Proposed Project is projected to cause a decline in revenue at competing gaming establishments within an approximate two-hour drive of the Mettler Site. Two competing gaming facilities are expected to experience a substitution effect and decrease in revenue by the following percentages: the relocated Eagle Mountain Casino by 27.8 percent and Tachi Palace by13.7 percent.[100] The largest impacts would be experienced by the nearest casino (15 miles) at the relocated Eagle Mountain Casino. However, the analysis estimates that even after the impact of the Proposed Project, gaming revenue at the relocated Eagle Mountain Casino would remain higher than at its current location. Three tribal casinos that have patron bases in the northern Los Angeles market - Chumash, San Manuel and Morongo - could potentially experience impacts of approximately 6 percent under the Proposed Project. Although the competing facilities are projected to experience a decrease in revenues, typically properly managed facilities should have the ability to absorb the impacts and remain operational. I note that the IGRA does not guarantee that tribes operating existing facilities will conduct gaming free from tribal and non-tribal competition.[101] Nor is competition in and of itself sufficient to conclude a detrimental impact on a tribe.[102]

Conclusion

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

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

Property Taxes: The Proposed Project includes the transfer of the Mettler Site into trust, resulting in the loss of local property taxes. In the 2018/2019 tax year, the fee-to-trust parcels within the Mettler Site generated $40,696.[103] Because property held in trust is not subject to local taxes, these property taxes would be lost to state and local governments. This loss would be more than offset by tax revenues generated for state and local governments from economic activity associated with the construction and operation of the Proposed Project.

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

---

[100] Economic Impact Analysis at 23.
[101] *See Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 947 (7th Cir. 2000).
[102] *See Citizens for a Better Way v. U.S. Dep't of the Interior,* No. 2:12-cv-3021-TLN-AC, 2015 WL 5648925, at *21-22 (E.D. Ca. Sep. 24, 2015), *aff'd sub. nom., Cachil Dehe Band of Wintun Indians v. Zinke*, 889 F.3d 584 (9th Cir. 2018).
[103] Regional Director's Findings of Fact at 29.

However, under the provisions in the IGA, the Tribe will pay both one-time and recurring costs to the County for additional services to the Mettler Site. One-time payments for construction of the fire/sheriff station, purchase of emergency vehicles, and training of emergency service personnel are expected to be up to $13,392,000 as well as recurring annual payments for fire, law enforcement, general fund, and problem gambling are expected to total $8,104,444.[104]

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

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

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

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

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

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

[104] FEIS § 3.7.4.1.
[105] *Id.* at § 3.6.
[106] *Id.* at Appendix P.
[107] Regional Director's Findings of Fact at 33.

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

Conclusion: Detriment to Surrounding Community

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

Consultation

Section 292.19 provides that in conducting the consultation process:

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

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

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

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

- Kern County Board of Supervisors
- City of Tehachapi
- City of Taft
- Ventura County
- Los Angeles County
- Tule River Tribe of the Tule River Reservation, California[109]

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

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

Conclusion

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

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

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

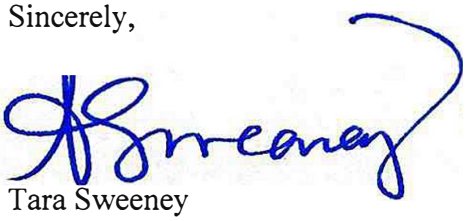
---

[109] *Id.* at 33 (under analysis for § 292.18 (f)).
[110] *Id.* at 34.
[111] *Id.*

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

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

Sincerely,



Tara Sweeney
Assistant Secretary Indian Affairs

Attachments

Attachment 1

Table of Contents

ATTACHMENT V

RECORD OF DECISION

Record of Decision

Secretarial Determination Pursuant to the Indian Gaming Regulatory Act and Trust Acquisition of Approximately 320.04 acres in Kern County, California, for the Tejon Indian Tribe

U.S. Department of the Interior
Bureau of Indian Affairs
January 2021

U.S. Department of the Interior

Agency: Bureau of Indian Affairs

Action: Issuance of a Record of Decision (ROD) for a Secretarial Determination, pursuant to the Indian Gaming Regulatory Act (IGRA), and trust acquisition of the Mettler Site in unincorporated Kern County, California, for the Tejon Indian Tribe (Tribe).

Summary: In 2014, the Tribe submitted an application to the Bureau of Indian Affairs (BIA) requesting that the Department of the Interior (Department) acquire in trust approximately 320.04 acres of land in an unincorporated portion of Kern County, California, (the Mettler Site) for gaming and other purposes. The Tribe also requested that the Secretary of the Interior issue a Secretarial Determination, also known as a Two-Part Determination, to determine whether the Mettler Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act. The Tribe proposes to develop the Mettler Site with a casino resort, recreational vehicle (RV) park, joint fire/sheriff station, and supporting facilities (Proposed Project).

The BIA analyzed the proposed Secretarial Determination and trust acquisition (Proposed Actions) in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act under the direction and supervision of the BIA Pacific Regional Office. The BIA issued the Draft EIS for public review and comment on June 12, 2020. After consideration of comments received during the public comment period and at the public hearing on the Draft EIS, the BIA issued the Final EIS on October 23, 2020. The Draft and Final EIS evaluated a reasonable range of alternatives that would meet the purpose and need for the Proposed Actions, analyzed the potential effects of those alternatives, and identified feasible mitigation measures.

With this ROD, the Department announces that it will implement Alternative A1 as the Preferred Alternative and implement the Proposed Action of issuing a Secretarial Determination pursuant to IGRA. A decision whether to implement the Proposed Action of acquiring the Mettler Site in trust pursuant to the Indian Reorganization Act will be made after the Governor determines whether he will concur with the Secretarial Determination as required by IGRA.

The Department considered potential effects to the environment, including potential impacts to local governments and other tribes. The Department has adopted all practicable means to avoid or minimize environmental harm and has determined that potentially significant effects will be adequately addressed by these mitigation measures, as described in this ROD. This decision is based on the thorough review and consideration of the Tribe's trust acquisition application, request for a Secretarial Determination; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the Draft EIS; the Final EIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies; and potentially affected Indian tribes.

For Further Information Contact:

Mr. Chad A. Broussard
Environmental Protection Specialist, Division of Environmental, Cultural Resources Management and Safety
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

TABLE OF CONTENTS

1.0 INTRODUCTION

1.1 SUMMARY

In 2014, the Tejon Indian Tribe (Tribe) submitted an application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) acquire in trust approximately 320.04 acres of land in an unincorporated area of Kern County, California, (the Mettler Site) for gaming and other purposes.[1] The Tribe also requested that the Secretary of the Interior (Secretary) issue a Secretarial Determination, also known as a Two-Part Determination, to determine whether the Mettler Site is eligible for gaming. In addition, the Tribe is seeking approval of a management contract from the National Indian Gaming Commission (NIGC). These actions are the Proposed Actions.

The BIA analyzed the potential environmental impacts of the Proposed Actions in an Environmental Impact Statement (EIS). The Draft EIS, issued for public review on June 12, 2020, and the Final EIS, issued October 23, 2020, considered various alternatives to meet the stated purpose and need, and analyzed in detail potential effects of a reasonable range of alternatives. With this Record of Decision (ROD), the Department announces that Alternative A1 is the Preferred Alternative to be implemented, which consists of the construction of an approximately 715,800 square foot (sf) casino resort that includes a 400-room hotel, ancillary infrastructure, and mitigation measures presented in **Section 6.0** of this ROD.

The Department has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Actions by promoting the long-term tribal self-sufficiency, self-determination, and economic development of the Tribe. Implementing the Preferred Alternative will provide the Tribe with the best opportunity for attracting and maintaining a stable, long-term source of revenue. This revenue will enable the Tribe to provide essential governmental programs, thereby improving the quality of life for tribal members and their families.

1.2 DESCRIPTION OF THE PROPOSED ACTION

The federal Proposed Actions are the transfer into trust of the Mettler Site pursuant to the Secretary's authority pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108, issuance of a Secretarial Determination pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719 (b)(1)(A), and the approval of a management contract by the NIGC pursuant to IGRA, 25 U.S.C. § 2711. The Tribe subsequently proposes to develop casino resort, recreational vehicle (RV) park, fire and sheriff station, water infrastructure, wastewater treatment and disposal facilities, and other supporting facilities (Proposed Project). The remainder of the Mettler Site would remain in agricultural production for the foreseeable future; however, in the

[1] The Tribe's application used the figure 306 acres of land. Without changes to the boundaries of the Mettler Site, the Bureau of Land Management surveyors clarified and corrected the acreage in July 2020 to approximately 320.04 acres. The Tribe's use of 306 acres was based on Kern County's report of 305.82 acres that it used for tax purposes. However, the acreage shown on Kern County tax documents is for tax assessment purposes only and should not be used for title transfer. *See* Memorandum to Director, Office of Indian Gaming, from Regional Director, Pacific Region, Bureau of Indian Affairs (December 9, 2020). The clarified and corrected acreage does not affect the conclusions of the Environmental Impact Statement, which describes the Mettler site as having 306 acres, because it does not represent physical changes on the land or changes to environmental conditions.

coming decades the Tribe's vision is to utilize the remaining acreage to deliver governmental services to its members such as housing, health care, and wellness (referred to collectively herein as potential future developments). The Tribe would determine, in accordance with applicable law, what developments are needed to facilitate the provision of governmental services to its members. The Mettler Site is located in unincorporated portion of Kern County, west of the Town of Mettler and State Route 99 (SR-99), north of State Route 166 (SR-166), east of Interstate 5 (I-5), south of Valpredo Road, and approximately 14 miles south of the City of Bakersfield.

1.3 PURPOSE AND NEED

The purpose of the Proposed Actions is to facilitate tribal self-sufficiency, self-determination, and economic development. This purpose satisfies the Department's land acquisition policy as articulated in the Department's trust land acquisition regulations at 25 C.F.R. Part 151, and is the principal goal of IGRA as articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's trust regulations at 25 C.F.R. §§ 151.10(h) and 151.12, the Department's Secretarial Determination regulations at §§ 292.18(a) and 292.21, and the NIGC's regulations for review of management contracts at 25 C.F.R. Part 533.

1.3.1 BACKGROUND

In 1851, the United States established treaties with certain tribes including the Tejon Tribe (herein referred to as the 1851 Treaty). Under the terms of the 1851 Treaty, the signatory tribes agreed to cede their aboriginal lands to the United States in exchange for a 763,000-acre reservation between Tejon Pass and the Kern River. By February 1852, the 1851 Treaty, along with seventeen additional treaties negotiated with other California Indians, had been submitted to the United States Senate for consideration and ratification. On June 8, 1852, the Senate declined to ratify any of the treaties negotiated with the California tribes. Accordingly, the described reservation, identified as Royce Area 285,[2] was never formally set aside. The Mettler Site is located within the boundaries of the reservation that would have been set aside had the 1851 treaty been ratified.

The Tribe has requested the trust acquisition of the Mettler Site to reestablish a homeland and generate its own governmental revenues through gaming to improve its short-term and long-term socioeconomic conditions, to promote its self-sufficiency, and to strengthen its ability to serve its citizens.

1.4 PROCEDURAL BACKGROUND

The Proposed Actions require compliance with the National Environmental Policy Act (NEPA). Accordingly, the BIA published a Notice of Intent (NOI) in the *Federal Register* on August 13, 2015, (80 Fed. Reg. 48559) describing the Proposed Actions, announcing the BIA's intent to prepare an EIS for the Proposed Actions, and inviting public and agency comments. The comment period was open until September 14, 2015, and the BIA held a scoping meeting in City of Bakersfield on September 1, 2015. The BIA issued a report outlining the results of scoping in February 2019. The scoping report summarized the major issues and concerns from the comments received during the scoping process. The BIA considered the scoping comments in developing the

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

project alternatives and analytical methodologies presented in the EIS. On September 1, 2015, Kern County requested cooperating agency status, which the BIA approved. Subsequently, the BIA formally invited four Cooperating Agencies: (1) Tribe; (2) the United States Environmental Protection Agency (USEPA); (3) National Indian Gaming Commission (NIGC); (4) California Department of Transportation (Caltrans). The Tribe, USEPA, NIGC, and Kern County accepted the invitation to serve as Cooperating Agencies.

The BIA circulated an administrative version of the Draft EIS to cooperating agencies in August 2019 for review and comment. The BIA took the comments into consideration and completed revisions as appropriate prior to public release. In June 2020, the BIA made the Draft EIS available to federal, tribal, state, and local agencies and other interested parties for review and comment. The BIA published the Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on June 12, 2020, (85 Fed. Reg. 35930). This initiated a 45-day public review period. The BIA also published the NOA in *The Bakersfield Californian*, which circulated in Kern County and surrounding area on June 12, 2020. The BIA also mailed the NOA to interested parties. The NOA provided information concerning the Proposed Actions, public comment period, and information regarding the virtual public hearing. The BIA held a virtual public hearing on July 8, 2020. The comment period on the Draft EIS ran through July 27, 2020.

In preparing the Final EIS, the BIA considered public and agency comments on the Draft EIS received during the comment period, including those submitted or recorded at the virtual public hearing. Responses to the comments received were provided in Volume II, Appendix V of the Final EIS, and the BIA revised Volume I of the Final EIS as appropriate to address those comments. The BIA considered all comments received and made changes to the Final EIS as appropriate. The BIA published the NOA for the Final EIS in the *Federal Register* on October 23, 2020 (85 Fed. Reg. 67561). The BIA also published the Final EIS in the local newspaper, *The Bakersfield Californian.* The comments received during this period, and the BIA's responses to issues that were not previously raised and responded to in the EIS process, are included in **Attachment 2** of this ROD.

2.0 ANALYSIS OF ALTERNATIVES

2.1 ALTERNATIVE SCREENING PROCESS

The BIA considered a range of possible alternatives in the EIS to meet the purpose and need for the Proposed Actions, including a non-casino alternative, reduced development configuration, and development of an alternative site. Alternatives, other than the No Action Alternative, were screened based on four criteria: 1) extent to which they meet the purpose and need for the Proposed Actions, 2) feasibility, 3) ability to reduce environmental impacts, and 4) ability to contribute to a reasonable range of alternatives. Alternatives considered but rejected from detailed analysis are described in the Appendix B of the Final EIS, and include: non-gaming development for each of the alternative locations within the Tribe's traditional territory, gaming development alternatives that do not include approval of a gaming management agreement by the NIGC, a future expansion alternative, development of a casino resort on the Tejon Industrial Complex Site, and development of a casino resort on the Taft Highway Site.

2.2 REASONABLE ALTERNATIVES CONSIDERED IN DETAIL

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

2.2.1 Alternative A1 – Proposed Project on Mettler Site

Alternative A1, which is the Tribe's Proposed Project and the BIA's Preferred Alternative, consists of the following components: (1) the transfer of the Mettler Site from fee into federal trust status for the benefit of the Tribe; (2) issuance of a Secretarial Determination by the Secretary; (3) the approval of the proposed management contract by the Chairperson of the NIGC; and (4) subsequent development of the Mettler Site with a variety of uses including a casino resort, parking, and other supporting facilities including a fire and sheriff station, water infrastructure, and wastewater treatment and disposal facilities. Components of Alternative A1 are described below.

Proposed Development: Alternative A1 consists of the construction of an approximately 715,800-sf casino resort, an RV park, joint fire/sheriff station, and associated facilities on the Mettler Site. The gaming component of the resort would consist of electronic gaming devices and table games within an approximately 166,500-sf gaming floor area. The hotel tower would be approximately 11 stories, or 134 feet high, and contain 400 hotel rooms. Proposed restaurant facilities include a buffet, café, food court, and other specialty restaurants and bars. Alternative A1 also includes the construction of an approximately 38,000-sf multi-purpose event center and approximately 53,000 sf of convention space. The event center would include an entertainment venue and associated supporting facilities to host shows and midweek entertainment, including concerts and stage performances. The convention space would include a divisible banquet room and meeting rooms for business events and conferences. These events would occur periodically, not daily. The RV Park would be located on 22 acres of the Mettler Site and consist of 220 spaces. The 10,000-sf joint fire/sheriff station would be located on 4 acres of land in the southwest corner of the property and would be staffed and operated by the County in accordance with the intergovernmental agreement executed in July of 2019. Approximately 4,500 surface parking spaces would be located contiguous to the casino resort and other facilities in the southern portion of the Mettler Site.

Agreements with Local Agencies: The Tribe entered into the following agreements with local agencies:

Kern County – Tribal Intergovernmental Agreement. The Tribe and Kern County executed an intergovernmental agreement (IGA) on July 24, 2019 (Appendix D of Final EIS). The primary purpose of the IGA is to provide a funding mechanism for the Tribe to compensate the County for law enforcement, fire protection, emergency services, to provide reasonable compensation for programs designed to treat problem gambling, to mitigate any effect to public safety attributable to the Proposed Project, and to mitigate all other impacts of the Proposed Project on the County. The funding mechanisms incorporated into the IGA include, but are not limited to, general fund payments, capital maintenance payments, and occupied room fee payments. Per the IGA, the Tribe would also provide the County proof of a reasonable effort to encourage all contractors of the Proposed Project to hire at least 50 percent of their workers from local communities in the County.

The Tribe is committed to strong public health and safety standards in both building and operation of the Proposed Project. Thus, Tribe has agreed to incorporate County inspection and enforcement mechanisms for the public health and safety standards noted in IGA Section 6(c) (Appendix D of Final EIS).

Arvin-Edison Water Storage District – Tribal Water Agreement. The Tribe and the Arvin-Edison Water Storage District (AEWSD) executed an agreement (Water Agreement; Appendix W of Final EIS), the purpose of which is to: (i) to effectively and responsibly manage the AEWSD's water resources, and (ii) to assist Tribe in maintaining the "neutral to positive" groundwater levels in the vicinity of the Mettler Site. Pursuant to the Water Agreement, surface water available to the Mettler Site for agriculture use under the Contract for Agricultural Water Service up to the amount of 734 Acre Feet per year (AFY) would be assigned to other landowners within the AEWSD that are eligible to receive surface water service from the AEWSD. Eligibility would be based on such factors as the AEWSD deems relevant in its sole discretion, including without limitation, whether the land to which the water to be transferred is reliant solely on groundwater, and whether the proximity of such land to the Mettler Site would further the purpose of the Water Agreement.

Water Supply: The on-site water supply would be provided by the two proposed on-site groundwater wells. Groundwater would be treated on-site through filtration, disinfection, and/or reverse osmosis for potable use depending on the purification needs. Use of recycled water would reduce the average water demand. Fire flows would be provided for the fire hydrants and sprinkler systems as specified in the International Fire Code, National Fire Protection Association Code 13, and County fire codes. Fire flow water would be supplied from a non-potable distribution system and would use an on-site storage tank and booster pump.

Wastewater Treatment and Reuse: An on-site wastewater treatment plant (WWTP) is proposed for wastewater treatment, reclamation, and reuse. The on-site WWTP would be sized to treat peak flow. An on-site gravity sewer collection system would flow into the WWTP. The WWTP would use either a membrane bioreactor (MBR) system or a package sequencing batch reactor (SBR). An MBR would not require any additional treatment beyond disinfection, whereas an SBR could require a supplemental filtration system. Biological solids or sludge would be stored on-site for periodic disposal to an approved landfill. The sludge accumulated would require a single truck disposal every two weeks. A detailed description of the WWTP and associated infrastructure is presented in Appendix G of the Final EIS.

All water used for reclamation/recharge would meet the equivalent of State standards governing the use of recycled water as described in Title 22 of the California Code of Regulations. Title 22 specifies redundancy and reliability features that must be incorporated into the reclamation plant. Under the current version of the Title 22 Water Recycling Criteria, the highest level of treatment is referred to as "Disinfected Tertiary Recycled Water." The proposed WWTP would produce effluent meeting the criteria for this highest level of recycled water. Reclaimed water from the on-site WWTP may be utilized for toilet flushing at the casino resort, landscape irrigation, crop irrigation, and/or groundwater recharge. To use recycled water for "in-building" purposes, the plumbing system within the building would have recycled water lines plumbed separately from the potable water system in the building with no cross connections. The dual plumbing systems would be distinctly marked and color coded. Treated effluent that is not used as reclaimed water would be

discharged to on-site ponds that would hold excess treated effluent and allow it to infiltrate into the soil. Final siting and design of the percolation ponds would ensure that percolation rates would meet current County standards.

Grading and Drainage: Construction would involve grading and excavation for building pads and parking lots. Approximately 75 acres of impervious surfaces would be created during construction of Alternative A1. It is anticipated that a net of approximately 485,000 cubic yards of fill would be necessary to develop the on-site components of Alternative A1. Approximately 80,000 cubic yards of cut soil would be available from the excavation of the proposed detention basins to be used as fill. Additional fill soil could be excavated from other areas of the Mettler Site that are not currently planned for immediate development (*i.e.*, the northwest portion of the site), and any remaining soil needs would be addressed with the importation of suitable fill material from within the region from either construction sites with excess fill material or from qualified suppliers. Any imported fill material would be screened by a qualified engineer prior to its use on the Mettler Site to ensure that it is of adequate quality, including testing to ensure the fill is not contaminated.

A storm drain system would be required to convey the on-site runoff from the developed areas of the site to the proposed on-site basin for storage and percolation. Parking lots would have a series of drain inlets and vegetated bioswales that would be connected to the storm drain conveyance system. Runoff from buildings would be collected via roof leaders directly connected to storm drain conveyance pipes. The site would be graded to allow stormwater runoff from the proposed improvements to drain via gravity. Under Alternative A1, the Mettler Site would require a stormwater detention basin with a capacity of approximately 32 AF. The basin would retain the 10-year, 5-day storm event and have a minimum of one foot of freeboard. The basin would occupy approximately six acres of the water retention and wastewater reclamation area. Structures and access driveways associated with Alternative A1 would be raised approximately 2.5 feet above the existing ground level in order to be a minimum of 1 foot above the base flood elevation.

Public Services and Utilities: Pursuant to the IGA described above, the Tribe would develop, build, and furnish a new fire and sheriff joint substation for lease by the Kern County Fire Department (KCFD) and Kern County Sheriff's Department (KCSD). The substation would provide fire protection, law enforcement, and emergency medical response services to the Mettler Site and surrounding areas in the County. The KCSD would have the authority to enforce non-gaming state criminal laws on the proposed trust lands pursuant to Public Law 23-280. The Tribe would employ security personnel to patrol the facilities to reduce and prevent criminal and civil incidents. Additionally, surveillance equipment would be installed in the casino resort and parking areas, and tribal security personnel would work cooperatively with the KCSD to provide general law enforcement services. Electrical service to the Mettler Site is currently provided by Pacific Gas and Electric Company (PG&E). No existing natural gas service lines connect to the site. Southern California Gas (SoCalGas) and other private providers currently supply natural gas services to customers in the vicinity of the Mettler Site, and service may be extended to the site.

Best Management Practices: Construction and operation of Alternative A1 would incorporate a variety of industry standard best management practices (BMPs) that would avoid or minimize potential adverse effects resulting from the development of Alternative A1. These are listed in Section 2.2.2.9 of the Final EIS.

2.2.2 Alternative A2 – Reduced Casino Resort Alternative

Alternative A2 includes the same components as Alternative A1, however, the size of the casino, restaurants, hotel, entertainment and retail, meeting rooms, pool, and parking facilities are reduced under Alternative A2 compared to Alternative A1. No RV parking would be constructed under Alternative A2. The IGA and Water Agreement apply to Alternative A2 and the Tribe has additionally committed to public health and safety standards noted in the IGA for casino development on the Mettler Site. Alternative A2 would be served by on-site water supply facilities, fire flow system, and wastewater reclamation facilities similar to those described for Alternative A1. Construction and operation of Alternative A2 would incorporate a variety of industry standard BMPs, which are listed in Section 2.2.2.9 of the Final EIS.

Under Alternative A2, approximately 58 acres of impervious surfaces would be created on the site for development. It is anticipated that approximately 362,000 cubic yards of fill would be necessary to construct Alternative A2. Approximately 79,000 cubic yards of cut soil would be available from excavation of the detention basins to be used as fill. As with Alternative A1, Additional fill soil could be excavated from other areas of the Mettler Site that are not currently planned for immediate development (*i.e.*, the northwest portion of the site), and any remaining soil needs would be addressed with the importation of suitable fill material from within the region from either construction sites with excess fill material or from qualified suppliers. Any imported fill material would be screened by a qualified engineer prior to its use on the Mettler Site to ensure adequate quality, including testing to ensure the fill is not contaminated.

Alternative A2 would feature a storm drain system similar to that of Alternative A1. Under Alternative A2, the Mettler Site would require a stormwater detention basin with a capacity of approximately 31 AF. The basin would be sized to retain a 10-year, 5-day storm event and its banks would be raised approximately 2.5 feet above the existing ground level in order to be a minimum of 1 foot above the base flood elevation.

2.2.3 Alternative A3 – Organic Farming Alternative

Alternative A3 consists of the transfer of the Mettler Site from fee to trust status, which would convert the Mettler Site from conventional agriculture to an organic farm. No casino resort or associated facilities would be developed as a part of Alternative A3. The existing residence in the central-eastern portion of the site would remain in place and be used for storage. The existing agricultural practices on the Mettler Site would be altered to follow U.S. Department of Agriculture (USDA) organic farming principles and regulations found in 7 C.F.R. § 205. No road improvements would occur. Alternative A3 would be served by the same public service and energy facilities and providers as are currently provided to the Mettler Site. Under Alternative A3, irrigation water for agricultural use would continue to be provided to the Mettler Site by the surface water contract with the Arvin-Edison Water Storage District and existing on-site wells. No additional wastewater treatments facilities would be required, and no additional impervious surfaces would be created on the site. Operation of Alternative A3 would not require BMPs more than those already utilized by the conventional farming at the site.

2.2.4 Alternative B – Casino Resort on the Maricopa Highway Site

Alternative B includes the same federal actions as Alternative A1 but specific to the Maricopa Highway Site instead of the Mettler Site. The Tribe would develop a similar casino resort as under Alternative A1. The size of the casino, restaurants, hotel, entertainment and retail, pool, and parking facilities are the same under Alternative B as under Alternative A1. RV parking under Alternative B, however, would be 50 spaces rather than the 220 spaces under Alternative A1. Alternative B would be served by on-site water supply facilities, fire flow system, and wastewater reclamation facilities similar to those described for Alternative A1. Construction and operation of Alternative B would incorporate a variety of industry standard BMPs, which are listed in Section 2.3.2.6 of the Final EIS.

The IGA does not apply to Alternative B. If Alternative B is implemented, the Tribe expects to negotiate a different intergovernmental agreement with Kern County similar to that described for Alternatives A1 and A2. Regardless of the language included within any potential IGA for Alternative B, the Tribe has agreed to incorporate the public health and safety standards noted in IGA Section 6(c). The Water Agreement also does not apply to Alternative B, because the Maricopa Highway Site is not in the Arvin-Edison Water Storage District.

Under Alternative B, approximately 49 acres of impervious surfaces would be created on the site for development. It is anticipated that 126,000 cubic yards of fill would be necessary to construct Alternative B. Approximately 119,000 cubic yards of cut soil would be available from excavation of the detention basin. Additional fill soil could be excavated from other areas of the Maricopa Highway Site that are not currently planned for immediate development (*i.e.*, the southwest portion of the site), and any remaining soil needs would be addressed with the importation of suitable fill material from within the region from either construction sites with excess fill material or from qualified suppliers. Any imported fill material would be screened by a qualified engineer prior to its use on the Maricopa Highway Site to ensure that it is of adequate quality, including testing to ensure the fill is not contaminated.

Alternative B would feature a storm drain system similar to that of Alternative A1. The site would be graded to allow stormwater runoff from the proposed improvements to drain via gravity. Parking lots would have a series of drain inlets and vegetated bioswales that would be connected to the storm drain conveyance system, and runoff from buildings would be collected via roof leaders directly connected to storm drain conveyance pipes. Under Alternative B, the Maricopa Highway Site would require a stormwater detention basin with a capacity of approximately 15 AF, and the basin would be sized to retain a 10-year, 5-day storm event.

2.2.5 Alternative C – No Action

Under the No Action Alternative, none of the four development alternatives (Alternatives A1, A2, A3, or B) considered within the EIS would be implemented. The No Action Alternative assumes that the existing uses on the Mettler Site and Maricopa Highway Site would not change as there are no development plans for the Mettler and Maricopa Highway Sites.

3.0 PREFERRED ALTERNATIVE

For the reasons discussed herein and in the Final EIS, the Department has determined that Alternative A1 is the Department's Preferred Alternative because it best meets the purpose and need for the Proposed Actions. Of the alternatives evaluated within the EIS, Alternative A1 would best meet the purposes and needs by promoting the long-term economic viability, self-sufficiency, self-determination, and self-governance of the Tribe.

The casino resort described under Alternative A1 would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the tribal government. Under such conditions, the Tribe would be better able to establish, fund, and maintain governmental programs to meet the needs of the Tribe, as well as reestablish a land base for the Tribe, as described in **Section 1.3.1** of this ROD. The development of Alternative A1 would meet the purpose and need for the Proposed Actions better than the other development alternatives due to the reduced revenues and beneficial effects to the Tribe that would be expected from the operation of Alternatives A2, A3, B, and C (described in detail in Section 7.0 of this ROD). While Alternative A1 would have greater environmental impacts than the No Action Alternative, that alternative does not meet the purpose and need for the Proposed Actions, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD.

4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)

Among all of the alternatives, the No Action Alternative (Alternative C) would result in the fewest environmental impacts. Under the No Action Alternative, the BIA would not transfer the Mettler Site into trust for the Tribe, and none of the development alternatives would be implemented. Under the No Action Alternative, there would be no change to existing uses on the Mettler and Maricopa Highway Sites. Development of the Mettler and Maricopa Highway Sites are not reasonably foreseeable under Alternative C. The Mettler Site would remain in its agricultural/rural-residential state and the Maricopa Highway Site would remain in its agricultural state for the foreseeable future. The No Action Alternative would not meet the purpose and need for the Proposed Actions. Specifically, it would not attract and maintain the same type of long-term, sustainable revenue stream, which would limit the Tribe's self-sufficiency, self-determination, and economic development. The No Action alternative would also likely result in substantially fewer economic benefits to the County.

Among the development alternatives, Alternative A3 would result in the fewest environmental impacts. This is because the entire site would be converted from conventional agriculture to an organic farm and no new structures or facilities would be developed as a part of Alternative A3. Therefore, Alternative A3 would avoid most of the environmental effects associated with the construction and operation of Alternatives A1, A2, and B, and have significantly fewer environmental effects, aside from water use. Alternative A3 would significantly reduce economic output for the Tribe and generate negligible tax revenues for the State and County. Further, Alternative A3 would not be the most effective means of attracting and maintaining a long-term, sustainable revenue stream.

5.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS

5.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN FINAL EIS

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

- Geology and Soils
- Water Resources
- Air Quality
- Biological Resources
- Cultural and Paleontological Resources
- Socioeconomic Conditions
- Transportation/Circulation
- Land Use
- Public Services
- Noise
- Hazardous Materials
- Aesthetics
- Indirect and Growth-Inducing Effects

The evaluation of project-related impacts included consultation with entities that have jurisdiction or special expertise to ensure that the impact assessments for the Final EIS were accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the Final EIS. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues. Section 3.0 of the Final EIS describes environmental impacts of Alternatives A through C in detail. The environmental impacts of the Preferred Alternative (Alternative A1) are described below.

5.1.1 Geology and Soils (Final EIS § 3.2)

Topography – The Mettler Site is generally flat and does not contain any distinctive topographical features. On-site grading would raise the development above flood elevations and facilitate proper drainage. Construction of Alternative A1 would require approximately 485,000 cubic yards of fill to raise the building pads above the base flood elevation. Approximately 80,000 cubic yards of fill would likely be available from the excavation of the proposed stormwater drainage basins located in the development area. Any additional fill soil required to fulfill soil needs would be acquired from off-site. Development of Alternative A1 would result in a minimal impact on topography; therefore, no mitigation is recommended. Impacts to topography would be less than significant.

Soils/Geology – Alternative A1 could potentially impact soils due to erosion during construction, operation, and maintenance activities, including clearing, grading, trenching, and backfilling. However, the soils on the Mettler Site have a low erosion potential based on soil properties and the flatness of the site. Alternative A1 would be constructed in accordance with the National Pollutant Discharge Elimination System (NPDES) general construction permit. As part of the NPDES permit compliance, a Stormwater Pollution Prevention Plan (SWPPP) would be prepared and implemented

for erosion prevention, sediment control, and control of other potential pollutants to prevent discharge into Waters of the U.S. This has been included as mitigation A and B in **Section 6.1** below and 1-A and 1-B in Section 4.0 of the Final EIS. With mitigation, Alternative A1 would not significantly affect soils or create erosion or sedimentation issues on the Mettler Site. Impacts to soils and geology would be less than significant.

Seismicity – Although the Mettler Site is not in an Earthquake Hazard Zone, there are at least 20 nearby historical faults. Therefore, development on the Mettler Site is subject to building restrictions. Alternative A1 would be constructed to standards no less stringent than the CBC (California Code of Regulations, Title 24), particularly those pertaining to earthquake design, in order to safeguard against major structural failures and loss of life. Impacts related to seismic hazards would be less than significant.

Mineral Resources – Given that there are no known or recorded mineral resources within the Mettler Site, construction and operation of Alternative A1 would not adversely affect known or recorded mineral resources. Impacts to mineral resources would be less than significant.

Cumulative Impacts: Geology and Soils – Cumulative effects associated with geology and soil resources could occur as a result of future development in combination with Alternative A1. Topographic changes may be cumulatively significant if the topography contributes significantly to environmental quality with respect to habitat, public safety, or other values. However, no significant changes to topography are proposed under Alternative A1. Soil loss could be cumulatively considerable even if the developments alone would not result in significant loss of topsoil, but taken together with all other developments may result in significant depletion of available soils. Local permitting requirements for construction would address regional geotechnical and topographic conflicts, seismic hazards, and resource extraction availability. Approved developments would be required to follow applicable permitting procedures. In addition, Alternative A1 and all other developments that disturb one acre or more, including the potential future developments for the Mettler Site, must comply with the requirements of the NPDES Construction General Permit. Cumulative impacts to soils and geology would be less than significant.

5.1.2 Water Resources (Final EIS § 3.3)

Flooding – The Mettler Site is located within the 100-year floodplain; however, no base flood elevations have been determined. Pursuant to Executive Order (EO) No. 11988, a flood impact analysis was prepared for the alternative sites. This flood impact analysis determined that flood water depths would increase at maximum 0.41 feet. On-site, the highest elevation increase estimated to be 2.6 feet, and resulted in a flood water depth of 3.3 feet in total. Alternative A1 would not cause an increase of 1.0 foot when compared to the existing conditions on neighboring properties. Therefore, Alternative A1 would not cause a substantial increase in flood elevations in the surrounding environment.

In order to minimize potential harm to or within the floodplain and be in compliance with EO 11988, Alternative A1's structures, including the water and wastewater treatment facilities, would be raised approximately 2.5 feet above the existing ground level (1 foot above the base flood elevation). Access routes from the on-site fire and sheriff station to the casino resort would remain

above the base flood elevation during emergency situations. Furthermore, all aboveground fuel storage tanks would meet National Fire Protection Association standards and be above the floodplain to prevent accident release. The raising of the casino resort and access aisles would slow down the flood flow on the south side of the structures and road, and would, thus, increase the floodplain storage at the Mettler Site by approximately 1.58 AF. To avoid potential flood impacts, Alternative A1 would include a stormwater drainage basin that is sized to retain potential flood waters displaced by the proposed development. Retaining walls around the casino resort would also help to isolate and keep it above the base flood elevations while the on-site water and wastewater treatment facilities would be enclosed by a 2 to 4-foot flood control levee. Furthermore, the wastewater treatment plant would have flood safety features to prevent accidental wastewater release via infiltration of flood water into the WWTP system, such as flood-activated float switches to override/disable pump operation. During a wet weather event, treated wastewater would be directed to the percolation ponds for groundwater recharge because there would be capacity for treated effluent during storm events. The actual rainfall during a storm event within the percolation pond area would be captured and collected in the ponds. By designing the percolation ponds with greater than 1 foot of freeboard, there would be adequate capacity for all expected storm events. Thus, the operation of on-site wastewater treatment facilities would not significantly impact flooding. Impacts from flooding would be less than significant.

Construction – Construction activities under Alternative A1 would include ground-disturbing activities such as grading and excavation that could lead to erosion of topsoil. Erosion from construction could increase sediment discharge to surface waters during storm events thereby degrading downstream water quality. Construction activities would also include the routine use of potentially hazardous construction materials. Discharges of pollutants to surface waters from construction activities and accidents (*e.g.* spills) are a potentially significant impact. To prevent potential impacts to surface water, erosion control measures would be employed in compliance with the Phase I NPDES Construction General Permit for construction activities. A SWPPP would be developed prior to any ground disturbance and would include BMPs to reduce potential surface water contamination during storm events. After implementation of mitigation measures discussed in **Sections 6.1** below and Section 4.0 of the Final EIS, impacts from construction on surface water quality would be less than significant.

Stormwater Runoff – Alternative A1 would both alter the existing drainage pattern of the Mettler Site and increase current stormwater runoff rates during storm events because of the approximate 75 acres increase in on-site impervious surfaces. Furthermore, stormwater runoff from the Mettler Site has the potential to significantly impact surface water quality if not treated properly prior to discharge. However, the project design for Alternative A1 includes various features to improve stormwater quality (Section 2.0 of the Final EIS) that would ensure protection of surface water quality. With regard to the increase in surface water runoff, a stormwater detention basin sized to retain a 10-year, 5-day storm event and have a minimum of 1 foot of freeboard is included in the project design. The stormwater detention basin would require approximately 32 AF of storage and occupy approximately six acres of the designated water retention and wastewater reclamation area under Alternative A1. In addition to the stormwater detention basin, parking lots would have a series of drain inlets and vegetated bioswales, and runoff from buildings would be collected via roof leaders. The parking lots and buildings drainage systems would be connected to the storm drain conveyance system with conveyance pipes sized to convey 10-year, 5-day storm event flow. The

conveyance pipes would be routed to one of the two detention basins. Finally, fill would be incorporated into the proposed improvements to allow stormwater runoff to drain via gravity.

Accordingly, impacts to stormwater runoff or surface water quality would be less than significant.

Groundwater Supply – Groundwater would be used for drinking water and general commercial purposes within the proposed casino resort, emergency supplies, and fire protection, which reclaimed water could be used for some of these purposed.

Alternative A1 would increase the amount of groundwater extraction at the Mettler Site because water currently provided by Arvin-Edison Water Storage District (AEWSD) cannot be used for non-agricultural uses. However, the Tribe and the AEWSD executed an agreement wherein surface water available to the Mettler Site for agriculture use under Contract for Agricultural Water Service up to the amount of 734 AFY would be assigned to other landowners within the AEWSD that are eligible to receive surface water service from the AEWSD. For the purposes of determining the net groundwater use of Alternative A1, a "credit" (95 percent of metered discharge to the percolation ponds) would be given to account for the amount of water treated at the proposed WWTP and discharged into the proposed on-site percolation ponds for groundwater recharge. Therefore, implementation of the Water Agreement would ensure that impacts to the groundwater basin from Alternative A1 is neutral to positive. No mitigation is required. Impacts to groundwater would be less than significant.

Groundwater Recharge – The conversion of agricultural land to commercial uses would introduce areas of impermeable surfaces, including the casino resort and paved parking lots. The introduction of these surfaces can reduce groundwater recharge in areas where surface percolation accounts for a large percentage of natural recharge. However, as described above, the development of detention ponds for capturing stormwater runoff on-site would allow collected stormwater to percolate into the groundwater table. On-site treated effluent percolation ponds would also contribute to groundwater recharge, and the percolation pond area would be sized to accept peak sewer flow rate. Furthermore, testing would be performed before construction of the percolation ponds to ensure that the infiltration rates meet County standards of no faster than 1 minute per inch (mpi) nor slower than 60 mpi. Therefore, the introduction of impermeable surfaces on the Mettler Site under Alternative A1 would not have a significant adverse impact on groundwater recharge. No mitigation is required. Impacts to groundwater recharge would be less than significant.

Neighboring Groundwater Wells – The existing Mettler Community Water District groundwater wells are approximately 3,000 feet away from the proposed well sites on the Mettler Site and have well depths in excess of 300 feet. With current groundwater level at maximum depth of approximately 400 feet, the effect of the new groundwater wells for Alternative A1 on the existing neighboring wells would be insignificant and no adverse impact would occur. With implementation of mitigation measures discussed in **Sections 6.2** below and Section 4.0 of the Final EIS, the potential adverse effects would be further reduced. Impacts to neighboring groundwater wells would be less than significant.

Groundwater Quality – The construction of Alternative A1 would include the routine use of potentially hazardous construction materials that could enter the stormwater if spilled, and then

percolate to shallow groundwater. This could cause a potentially significant impact. However, after implementation of mitigation measures discussed in **Sections 6.1** below and Section 4.0 of the Final EIS, these potential impacts to groundwater quality from construction would be less than significant.

During the operation of Alternative A1, runoff from the impervious surfaces on the Mettler Site, could potentially flush impervious surface accumulate, such as trash, debris, oil, sediment, and grease, into the stormwater runoff. Additionally, fertilizers used in landscaped areas could also enter stormwater if over applied. However, several project design features, including stormwater detention basins to remove suspended solids and vegetated swales that provide filtration for stormwater via capturing sediment and pollutants, would ensure adequately filtration before the stormwater percolates to the groundwater table. Thus, the impacts to groundwater quality from stormwater runoff would be less than significant.

In addition to the above-mentioned operation issue, effluent from the wastewater treatment facilities could cause contamination of the groundwater and thus influence groundwater quality for on-site and off-site supplies when discharged to the on-site percolation ponds if not treated sufficiently. This would be a significant impact. However, after implementation of the mitigation measures discussed in **Sections 6.2** below and Section 4.0 of the Final EIS, the potential adverse effects would be reduced to less than significant. Therefore, discharge of treated effluent would not adversely impact groundwater quality and potable water would not be exposed to treated effluent in the percolation ponds during transmission. Additionally, percolation through the soil would provide additional filtration. Impacts to groundwater quality from treated effluent would be less than significant.

Cumulative Impacts: Surface Water and Flooding – Cumulative effects to water resources may occur as the result of potential future buildout of the Mettler Site and regional development projects. Examples of potential effects include increased sedimentation, pollution, and stormwater flows. Changes in runoff characteristics due to the increase in impervious surfaces could increase drainage volumes, increase stream velocities, increase peak discharges, shorten the time to peak flows, and lessen groundwater contributions to stream base-flows during non-precipitation periods. Construction and implementation of the other proposed development projects may affect water quality. However, Alternative A1 would include erosion control measures in compliance with the NPDES permit program, and the stormwater detention basin would retain the overall required volume, including for potential future development. The federal and state water resources regulations would require that other cumulative projects would have similar precautionary features incorporated into their design. Therefore, implementation of Alternative A1 in combination with other cumulative development would not result in significant cumulative effects to surface water and flooding. Cumulative impacts from surface water and flooding would be less than significant.

Cumulative Impacts: Surface Water Quality – Concurrent construction of Alternative A1 and the other cumulative projects could result in cumulative effects to water quality. Construction activities could result in erosion and sediment discharge to surface waters, and construction equipment could leak potential hazardous materials into the environment. To mitigate potential adverse effects, approved developments would be required to implement erosion control measures and construction BMPs via a site-specific SWPPP in compliance with the State of California General Permit for

Discharges of Storm Water Associated with Construction Activity or compliance with USEPA stormwater regulations. With the implementation of Mitigation Measures specified in **Section 6.1** and Section 4.0 of the Final EIS, Alternative A1 in combination with other development projects in the region would not result in adverse cumulative effects to surface water quality. Cumulative impacts to surface water quality would be less than significant.

Cumulative Impacts: Groundwater Supply – Buildout of Alternative A1 with other cumulative projects could result in cumulative effects to groundwater if the total water demand of approved projects exceeds the recharge of the groundwater basin. Future demands on the Kern County Subbasin of the San Joaquin Valley Groundwater Basin, the County's primary water source, from cumulative development would be controlled by County land use authorities, Senate Bill 1168, which requires local agencies to create groundwater management plans, and Assembly Bill 1739, which allows the state to intervene if local groups do not adequately manage groundwater resources. Based on the short-term availability of groundwater for existing uses and planned development and the requirement for future groundwater management activities, cumulative impacts to groundwater would not be substantial. Cumulative impacts to groundwater supply would be less than significant.

Cumulative Impacts: Groundwater Quality – Wastewater generated by Alternative A1 would be treated at an on-site wastewater treatment plant (WWTP), and the WWTP would have sufficient capacity to meet the wastewater demands of Alternative A1, including the potential future development. To meet the USEPA criteria, the WWTP would provide tertiary-treated water for reuse or percolation. Reclaimed water from the on-site WWTP would be utilized for casino resort toilet flushing and landscape irrigation. Remaining treated effluent would be discharged to the on-site percolation ponds. Discharge of treated effluent would not adversely impact groundwater quality due to the high level of treatment and percolation through soils would act as additional filtration. Implementation of Mitigation Measures specified in **Section 6.1** and **6.2** and in Section 4.0 of the Final EIS would prevent groundwater pollution during construction and reduce potential impacts to groundwater quality from construction to a less-than-significant level. Therefore, Alternative A1 would not result in significant adverse cumulative effects to groundwater quality. Cumulative impacts to groundwater quality would be less than significant.

5.1.3 Air Quality (Final EIS § 3.4)

Construction Emissions – Effects on air quality during construction were evaluated by estimating the amount of criteria pollutants that would be emitted over the duration of the construction period for each phase of construction that is applicable. Implementation of construction BMPs is expected to control the production of fugitive dust (PM10 and PM2.5) and to reduce emissions of criteria pollutants and DPM. Emissions of individual criteria pollutants from the construction of Alternative A1 would not exceed applicable de minimis levels; therefore, Alternative A1 would not result in significant adverse effects associated with the regional air quality environment. No mitigation is warranted. Impacts to air quality from construction emissions would be less than significant.

Operational Emissions – Buildout of Alternative A1 would result in the generation of mobile emissions as well as area and energy criteria pollutant emissions from the combustion of natural gas from equipment on the Mettler Site. Emissions estimates assumed the implementation of the BMPs

described in Section 2.0 of the Final EIS, but emissions of ROG and NOx from the operation of Alternative A1 would exceed applicable thresholds. This would be a significant adverse impact. Implementation of mitigation measures discussed in **Sections 6.3** below and Section 4.0 of the Final EIS would require the purchase of credits to fully offset ROG and NOx emissions. After mitigation, impacts to the regional air quality levels would be less than significant.

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

Cumulative Impacts: Operation Emissions/General Conformity Review – Operation of Alternative A1 would result in the generation of mobile emissions from patron, employee, delivery vehicles, and stationary source emissions from the combustion of natural gas in boilers and other equipment. In the cumulative year 2040, operational emissions are expected to decrease due to improved fuel efficiency technology and stricter federal and state regulations.

Past, present, and future development projects contribute to a regional air quality conditions on a cumulative basis; therefore, by its very nature, air pollution is largely a cumulative impact. If individual emissions from a project contribute toward exceedance of the NAAQS, then the cumulative impact on air quality would be significant. In developing attainment designations for criteria pollutants, the USEPA considers the regions past, present, and future emission levels. The Mettler Site and the near vicinity is in nonattainment for ozone and $PM_{2.5}$. Because project emissions are above the thresholds for these pollutants, Alternative A1 has the potential to contribute towards significant cumulative impacts to air quality. Furthermore, Alternative A1 has the potential to induce growth within the Mettler Site that would result in additional emissions. The cumulative air quality effects of induced growth within the site in combination with emissions resulting from Alternative A1 is addressed within the Final General Conformity Determination. With implementation of the mitigation measures discussed in **Sections 6.3** below and Section 4.0 of the Final EIS, impacts to cumulative air quality would be less than significant.

Cumulative Impacts: Carbon Monoxide Hot Spot Analysis – Hot Spot Analysis is conducted on intersections that, after mitigation, would have a level of service (LOS) of D, E, or F (40 C.F.R. § 93.123). After the implementation of recommended mitigation for the project alternatives, no intersection would have an LOS or an increase in delay in the cumulative year 2040 that would warrant a Hot Spot Analysis. No significant cumulative impacts would occur, and no further analysis is needed.

Cumulative Impacts: Climate Change – Development of Alternative A1 would result in an increase in greenhouse gas (GHG) emissions related to construction, mobile sources, stationary sources, area sources, and indirect sources related to electrical power generation. Total GHG emissions are estimated to be approximately 118,000 metric tons (MT) of CO2e per year for Alternative A1, which the GHG emissions resulting from Alternative A1 is primarily indirect. BMPs have been

provided in Section 2.0 of the Final EIS to reduce project related GHG emissions. Operational BMPs would reduce indirect GHG emissions from a number of sources, including electricity use, water and wastewater transport, and waste transport *(e.g.* installation of energy efficient lighting). Operational BMPs would also reduce indirect mobile GHG emissions by requiring adequate ingress and egress to minimize vehicle idling and preferential parking for vanpools and carpools to reduce project-related trips.

Of the approximately 126 strategies and measures identified in the State Climate Change Scoping Plan required by AB 32 that would achieve a state-wide reduction in GHG emissions, only three would apply to Alternative A1. Alternative A1 would comply with applicable emission reduction strategies of the State. Therefore, with the implementation of BMPs, Alternative A1 would not result in a significant adverse cumulative impact associated with climate change. Cumulative impacts to climate change would be less than significant.

The effect of climate change on the alternatives is also considered in this EIS. Average temperatures in the County could increase. This would result in projected extreme heat days, increased wildfire risk, and increased chances of extreme weather conditions. The intensity of these effects is uncertain and will depend on future GHG emissions worldwide. However, the characteristics of Alternative A1 are not unique or especially vulnerable to the impacts from climate change.

5.1.4 Biological Resources (Final EIS § 3.5)

Habitats – No U.S. Fish and Wildlife Services (USFWS) designated critical habitat occurs within or near the Mettler Site, and the development of Alternative A1 would only directly affect habitat types within the Mettler Site that are not sensitive. A portion of the drainage ditch along the western perimeter would also be impacted, but this ditch has low habitat value and does not meet the criteria to be considered as U.S. Army Corps of Engineers (USACE) jurisdictional waters. The Mettler Site does not provide habitat connectivity, corridors, or nursery habitat. The stormwater facilities under Alternative A1 would minimize indirect effects to habitat by ensuring that the stormwater runoff generated from parking lots and rooftops is captured and infiltrated into native soils in percolation basins. Effluent produced by the proposed WWTP would be tertiary treated before discharge. Impacts to habitat would be less than significant.

Special-Status Species – Three federally listed wildlife species have the potential to occur on the Mettler Site: San Joaquin Kit Fox, blunt-nosed leopard lizard, and Tipton kangaroo rat. The only state special-status species with the potential to occur on-site is the burrowing owl. In the event that any of these species exist on the Mettler Site, development could result in take of that species. With implementation of mitigation measures specified in **Section 6.4** and Section 4.0 of the Final EIS, impacts to special status species would be less than significant.

Migratory Birds and Other Birds of Prey – Alternative A1 could adversely affect active migratory bird nests if vegetation removal and noise-producing activities associated with construction were to occur during the nesting season. Increased lighting could increase the collisions of birds with structures and cause a disorientation effect on avian species. With implementation of mitigation

measures specified in **Section 6.4** and Section 4.0 of the Final EIS, impacts to migratory birds and other birds of prey would be less than significant.

Wetlands and Waters of the U.S. – On-site aquatic drainage ditches and agricultural ponds do not meet standards of Waters of the U.S., and, therefore, do not require protecting or permitting if they are altered or removed. With mitigation measures specified in **Section 6.4** and Section 4.0 of the Final EIS, impacts to wetlands and waters of the U.S. would be less than significant.

Cumulative Impacts: Habitats – The Mettler Site does not contain designated critical habitat. Cumulative habitat disturbance from other projects in the vicinity would occur primarily in areas that are not sensitive biological communities. Cumulative impacts to habitats would be less than significant.

Cumulative Impacts: Federally Listed Species – Federally listed wildlife species have minimal potential to occur on the Mettler Site. Mitigation measures specified in **Section 6.4** and Section 4.0 of the Final EIS would avoid or minimize impacts to federally listed species. Similarly, all other projects in the region are required to comply with the ESA by avoiding or minimizing effects to protected species. With implementation of mitigation measures specified in **Section 6.4** and Section 4.0 of the Final EIS, cumulative impacts to federally listed species would be less than significant.

Cumulative Impacts: Migratory Birds and Other Birds of Prey – Cumulative disturbance and nighttime lighting due to Alternative A1 could incrementally affect migratory birds. Mitigation measures specified in **Section 6.4** and Section 4.0 of the Final EIS would avoid or minimize impacts to migratory bird species. Additionally, BMPs provided in Section 2.0 of the Final EIS would minimize significant effects to migratory birds. The development of other reasonably foreseeable projects in the area would also be subject to the Migratory Bird Treaty Act. With implementation of mitigation measures specified in **Section 6.4** and Section 4.0 of the Final EIS, cumulative impacts to nesting and migratory birds would be less than significant.

Cumulative Impacts: Wetlands and Waters of the U.S. –Wetlands and Waters of the U.S. must either be avoided or mitigated via the Section 404 permitting process under the Clean Water Act. This is the case for the project alternatives and all other cumulative projects in the vicinity. Indirect effects to wetlands and waterways therefore would be avoided, or project features would be implemented to minimize impacts and provide buffers to wetlands, control stormwater and wastewater discharges, and protect the quality of runoff water through conditions of the NPDES permit. With mitigation measures specified in **Section 6.4** of this ROD and Section 4.0 of the Final EIS, cumulative impacts to wetlands and Waters of the U.S. would be less than significant.

5.1.5 Cultural and Paleontological Resources (Final EIS § 3.6)

Buried Resources and Paleontological Resources – No known historic properties or paleontological resources have been identified within the Mettler Site, and the State Historic Preservation Officer has concurred that no National Register of Historic Properties-eligible cultural resources are on-site. Under Alternative A1, the potential exists for previously unknown archaeological or paleontological resources to be encountered during construction activities. With implementation of mitigation

measures described in **Section 6.5** of this ROD and Section 4.0 of the Final EIS, impacts to cultural resources would be less than significant.

Cumulative Impacts – Under Alternative A1, the potential exists for previously unknown archaeological or paleontological resources to be encountered during construction activities. With implementation of mitigation measures described in **Section 6.5** of this ROD and Section 4.0 of the Final EIS, impacts to cultural resources would be less than significant. Other approved projects would be required to follow federal, state, and local regulations regarding cultural resources and inadvertent discoveries of cultural resource, requiring mitigation or avoidance of impacts to cultural resources. Cumulative impacts to cultural and paleontological resources would be less than significant.

5.1.6 Socioeconomic Conditions and Environmental Justice (Final EIS § 3.7)

Economic Effects – Construction of Alternative A1 and A2 would generate substantial output to a variety of businesses in the County in the form of jobs, purchases of goods and services, and through positive fiscal effects. Output received by area businesses would in turn increase their spending and labor demand, thereby further stimulating the local economy. This would be considered a beneficial impact.

Substitution Effects – The substitution effect is dependent on many factors, such as specific location and other variables. The substitution effects would be greater for those gaming facilities that are closest to the proposed gaming project and most similar in terms of the types of customers that would visit the venues. Estimated substitution effects are anticipated to diminish after the first year of operation of Alternative A1 and would not cause significant substitution effects. While Alternative A1 would compete with other casinos, competition alone does not constitute an impact, and therefore Alternative A1 would have less-than-significant gaming market substitution effects. Furthermore, Alternative A1 rather would attract additional patrons to the local area and would not overly compete with the local businesses. Therefore, Alternative A1 is anticipated to have a positive impact on local businesses.

Fiscal Effects – Alternative A1 would result in a variety of fiscal impacts. The Tribe would not pay property taxes on the Mettler Site. Alternative A1 would also increase demand for public services, resulting in increased costs for local governments to provide these services. Tax revenues would be generated for the County from activities including secondary economic activity generated by Alternative A1. The taxes on secondary economic activity include corporate profits tax, income tax, sales tax, excise tax, property tax, and personal non-taxes, such as motor vehicle licensing fees, fishing/hunting license fees, other fees, and fines. Overall, Alternative A1 would result in a beneficial impact to the local economy in the County and State.

Employment – Construction and operation of Alternative A1 would generate substantial temporary and ongoing employment opportunities and wages that would be primarily filled by the available labor force in the region. The County is anticipated to be able to accommodate the increased demand for labor during the operation of Alternative A1. This would result in employment and wages for persons previously unemployed and would contribute to the alleviation of poverty among

lower income households. Therefore, Alternative A1 would result in a significant beneficial effect to employment.

Housing – It is possible that some new employees would move to the County, but most job relocation is not likely to require employees to relocate their housing. Furthermore, there are more than enough vacant homes to support potential housing impacts under Alternative A1. Impacts to the housing market would be less than significant.

Social Effects – Problem gambling prevalence is not anticipated to increase as a result of the proposed casino-resort given the availability of casino gaming already present throughout the area and State and other readily accessible forms of gambling. Consequently, the potential impacts to problem gambling as a result of Alternative A1 would be less than significant. Despite this, the IGA provides for a recurring payment towards a gambling treatment program, and BMPs in Section 2.0 of the Final EIS would further reduce the likelihood of problem gambling at the casino resort.

Under Alternative A1, criminal incidents would increase in the vicinity of the Mettler Site, which would be expected with a large development of any type. Specifically, police calls for service in the County for Alternative A1 would marginally increase, but such an increase constitutes a less-than-significant effect on law enforcement services and crime. Additionally, the gains in tax revenues that would accrue to the County as a result of increased economic activity generated by Alternative A1 would likely offset any increase in expenditures for the provision of law enforcement. Also, the implementation of the IGA would further reduce the effects of Alternative A1 on law enforcement services and crime. Impacts from social effects would be less than significant.

Community Effects – Employees that relocate to the project area in order to accept a position at the proposed casino resort may increase the number of kindergarten through 12th grade students enrolled in the area. However, it is expected that these effects would be negligible. Additionally, given that any anticipated new students would be distributed across all grade levels, any new students that may enroll in area school districts as a result of the project would be considered a nominal impact. Furthermore, the schools would likely collect additional tax revenue from the families of new students and would use these taxes to hire additional teachers to meet additional demand if necessary. Impacts to schools would be less than significant.

Effects to area libraries and parks could occur if the employees or patrons of Alternative A1 significantly increase the demand on these resources. However, it is expected that these effects would be negligible. Additionally, due to the location of Alternative A1, it is not anticipated that patrons would frequent local libraries or parks. Impacts to libraries and parks would be less than significant.

Effects to the Tejon Indian Tribe – Alternative Al would benefit the Tribe in several ways. It would generate new income to fund the operation of the Tribal government. This income would have a beneficial effect by funding programs that serve Tribal members. Furthermore, it would support tribal self-sufficiency and self-determination, and Tribal members would have access to new jobs that are associated with Alternative A1. The employment generated would not only allow tribal members to enjoy a better standard of living, but it would also provide an opportunity for

tribal members to reduce or end their dependence on government funding. Therefore, Alternative A1 would have a positive impact on the Tribe.

Environmental Justice – The Mettler Site has seven census tracts that contain a substantial minority community, but no low-income communities. The project would inherently impact members of the Tribe, and the Tribe is considered a minority community that would be affected by the alternatives. Effects to the Tribe are positive in nature, and the effects to other minority communities would also be positive due to the increased economic development and opportunity for employment. Other effects on minority communities, such as traffic and air quality, would be neutral after the implementation of mitigation measures specified in **Section 6.0** of this ROD and Section 4.0 of the Final EIS. Impacts to minority or low-income communities would be less than significant.

Cumulative Impacts – Alternative A1 would introduce new economic activity in the County and in the City of Bakersfield and would beneficially affect the region on several different socioeconomic levels. When considered in the context of the General Plan for the City of Bakersfield, Alternative A1 may contribute towards cumulative socioeconomic effects including impacts to the local labor market, housing availability, increased costs due to problem gambling, and impacts to local government. However, these cumulative effects would not be significant due to the existing economic and housing capacity in the region. Planning documents for the County and the City of Bakersfield will continue to designate land uses for businesses, industry, and housing as well as plan public services for anticipated growth in the region. Therefore, Alternative A1 would not contribute to significant adverse cumulative socioeconomic effects. Cumulative socioeconomic impacts would not be significant.

5.1.7 Transportation/Circulation (Final EIS § 3.8)

Construction Traffic – Impacts related to construction traffic would be temporary in nature and would cease upon completion of the project. All construction traffic would utilize I-5, SR-99, and SR-166 as a regional route to access S. Sabodan Street. With SR-99 and SR-166 are currently operating well above the acceptable LOS, the short-term addition of minimal construction traffic would not result in significant adverse impacts. I-5 is also primarily operating well above the acceptable LOS, and construction traffic would avoid interaction with the segment of I-5 between SR-99 and S. Wheeler Ridge Road. This would result in no adverse impact to this road segment. South Sabodan Street is the only road that provides access to the Mettler Highway Site. Major improvements to this roadway are included in the project plans, and, therefore, the addition of traffic associated with construction of Alternative A1 would not result in significant adverse impacts. With implementation of the BMPs described in Section 2.2.2 of the Final EIS, impacts to transportation/circulation would be less than significant.

Operation Traffic – The Mettler Site is well connected (accessed) from both I-5 and SR-99 with little to no local traffic, and most of the traffic to the site is regional in nature. With implementation of mitigation measures specified in **Section 6.7** of this ROD and Section 4.0 of the Final EIS, impacts to the operation of site access facilities would be less than significant.

Under Alternative A1, all intersections and roadway segments would operate at an acceptable LOS of D or better in year 2023 with implementation of the mitigation measures specified in **Section 6.6**

of this ROD and Section 4.0 of the Final EIS. Therefore, Alternative A1 would have no significant adverse impacts on traffic. Furthermore, Alternative A1 would not result in a decrease in speed of 1 mph on the freeway mainline. Therefore, impacts to on-ramps or off-ramps would be less than significant in opening year 2023.

Road Conditions – Operation of Alternative A1 would not generate a large volume of truck traffic that would increase the rate of roadway deterioration. Furthermore, trucks and other vehicles driving to and from the Mettler Site would contribute to County roadway maintenance funds when purchasing gasoline within the County, similar to other developments in the region. As needed, the County would perform maintenance activities on roadways affected by trips to and from the Mettler Site as is typical for all roadways within the County. Therefore, the need for ongoing roadway maintenance would not be considered a significant impact that would warrant mitigation.

Transit, Bicycle, and Pedestrian Facilities – Alternative A1 would have no impact on transit, bicycle, or pedestrian facilities because there are not currently any pedestrian or bicycle facilities in the vicinity of the Mettler Site. Additionally, there are no plans regarding the alteration of the current local transit services.

Cumulative Year 2040 – Under Alternative A1, all intersections and segments would operate at an acceptable LOS of D or better in year 2040 with implementation of the mitigation measures specified in **Section 6.7** of this ROD and Section 4.0 of the Final EIS. Cumulative impacts on traffic would be less than significant.

5.1.8 Land Use (Final EIS § 3.9)

Land Use Plan – The County General Plan designates the Mettler Site as limited agriculture. Although the development proposed under Alternative A1 would not be consistent with the land use designation of the Mettler Site, it is generally compatible with the surrounding land uses along the I-5 corridor. The area around the Mettler Site includes rest stops along I-5, the Outlets at Tejon, and the proposed Grapevine Specific and Community Plan. Recent development patterns show a regional shift to a more commercially and residentially developed area, particularly along I-5 and SR-99. Thus, the inconsistency of Alternative A with existing zoning would not result in significant adverse land use effects. This impact is considered less than significant. The Mettler Site is located within the Edwards Air Force Base area of influence. However, the proposed developments under Alternative A1 would not exceed 500 feet in height; therefore, a military review is not required because the developments would not create significant military mission impacts due to height (Kern County, 2017), and no impact would occur. Furthermore, the Mettler Site is not within any Natural Community Conservation Plans or any Habitat Conservation Plans; therefore, no impact would occur. Impacts to land use would be less than significant.

Land Use Compatibility – Alternative A1 would result in approximately 320.04 acres of land being transferred from fee to federal trust, thereby removing the property from County land use jurisdiction. Furthermore, Alternative A1 would include development that would replace existing agricultural land use and would differ from adjacent land uses as the property is currently zoned for agriculture. However, Alternative A1 would be implemented in a manner consistent with most of the policies of the County General Plan. Furthermore, it would not physically disrupt neighboring

land uses, would not prohibit access to neighboring parcels, and would not otherwise significantly conflict with neighboring land uses. However, agricultural operations on adjacent properties to the east, west, and south of the Mettler Site could result in land use compatibility impacts with Alternative A1, such as odor, dust, and noise from the operation of farm equipment and the use of pesticides. However, periodic odor, dust, and noise represent a potentially minor annoyance for on-site customers. Therefore, this impact would be less than significant.

Agriculture – Alternative A1 would result in the direct conversion of approximately 100 acres of farmland on the Mettler Site. In accordance with the Farmland Protection Policy Act (FPPA), a Farmland Conversion Impact Rating (FCIR) form was completed for Alternative A1 and submitted to the Natural Resources Conservation Service (NRCS) on May 10, 2019. The proposed converted farmland received a combined land evaluation and site assessment score of 189, indicating the potential for adverse effects to farmland resources and a need to consider alternative sites. Per FPPA guidelines, if a site receives an FCIR combined score of 160 or more, alternative sites should be considered. Although the proposed conversion exceeds an FCIR score of 160, the score of 189 is less than the other alternatives considered. Furthermore, the area of conversion is relatively small, approximately 0.004 percent of the farmland in the County, and the County General Plan has no specific policies against the conversion of farmland. Therefore, Alternative A1 is consistent with FPPA. Impacts to agricultural resources would be less than significant.

Cumulative Impacts – Future planned development projects within the County and the City of Bakersfield would be consistent with general plans, applicable specific plans, zoning ordinances, and redevelopment plans. This would, thus, prevent disorderly growth or incompatible land uses. While Alternative A1 would not be subject to local land use policies after it is acquired in trust, the development would occur in a manner that is generally consistent with County building codes, and it would not disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise conflict with neighboring land uses. Cumulative impacts to land use would be less than significant.

Although the FPPA is intended to minimize the impact federal programs have on the unnecessary and irreversible conversion of farmland to non-agricultural uses, the Mettler Site is not under Williamson Act contracts. Furthermore, while its FCIR score is higher than the FPPA threshold, it was determined that the Mettler Site FCIR had fewer total points than other considered alternatives. Cumulative impacts to agricultural lands would be less than significant.

5.1.9 Public Services (Final EIS § 3.10)

Water Supply and Wastewater Service – Alternative A1 would include the development of an on-site water supply system using on-site groundwater wells. Furthermore, recycled water from the proposed on-site WWTP would be used for indoor non-potable uses and for landscape irrigation, thus, reducing potable water demand (Appendix G of the Final EIS). No municipal water or wastewater systems would be affected by Alternative A1. Impacts to water supply and wastewater service would be less than significant.

Solid Waste Service – Construction of Alternative A1 would result in a temporary increase in solid waste generation. Construction waste that is not recycled would be collected by Mountainside Disposal, or a similar company, and disposed of at the Bena Landfill or other permitted landfills

that accept construction and demolition material. This impact would be temporary and not significant given that the landfill has an adequate capacity to accommodate the temporary increase in waste generated by the construction of Alternative A1. Furthermore, BMPs presented in Section 2.0 of the Final EIS would further reduce the amount of construction and demolition materials disposed of at the landfill. Impacts to solid waste service would be less than significant.

Waste generated under Alternative A1 during operations would be appropriately hauled to facilities. It is estimated that Alternative A1 would generate approximately 3.4 tons per day or 1,241 tpy of solid waste. Receptacles for trash and recycling would be placed strategically throughout the casino resort and associated facilities to discourage littering. Landscaping and maintenance staff would also pick up trash at the property. Waste that cannot be recycled would be disposed of at the Bena Landfill or another permitted facility. The Bena Landfill has sufficient capacity to maintain operations through 2046. The solid waste streams for Alternative A1 would represent approximately 0.076 percent of the daily and annual capacity of the Bena Landfill. In addition, the on-site WWTP facility would produce approximately 100 to 150 gpd of biosolids (sludge) in addition to solids (*e.g.*, debris). This quantity of biosolids would equate to a single disposal truck trip every two weeks. Both the biosolids and solids would be transported to the Bena Landfill for disposal. Finally, the treatment of groundwater to meet potable standards would produce brine waste from the reverse osmosis treatment process. Approximately 2,800 gpd of brine would be produced by operation of Alternative A1. The brine waste produced would be evaporated on-site and/or hauled to the Joint Water Pollution Control Plant in Carson, California. No impact would occur because brine waste would be properly disposed of. Implementation of BMPs presented in Section 2.0 of the Final EIS would further reduce the amount of solid waste disposed of in landfills. Impacts to waste services would be less than significant.

Law Enforcement – While there is no definitive link between casinos and crime, it is anticipated that the increased number of people that Alternative A1 would bring to the Mettler Site has the potential to result in an increase in the number of service calls to local law enforcement. An increase in service demands to the California Highway Patrol may result due to increased traffic.

The IGA between the Tribe and County include provisions for law enforcement services including an on-site fire/sheriff station. The BMPs described for law enforcement services in Section 2.0 of the Final EIS would ensure further protection on-site for the Proposed Project. Furthermore, operation of Alternative A1 would directly contribute approximately $5.4 million to the State government on an annual basis and indirect and induced effects from ongoing operations from Alternative A1 would generate an estimated $12.1 million in tax revenue to State government. Impacts to law enforcement would be less than significant.

Fire Protection and Emergency Medical Services – Construction could introduce potential sources of fire to the Mettler Site. This risk would be similar to those found at other construction sites. The BMPs presented in Section 2.0 of the Final EIS would ensure impacts are less than significant.

During operations, the Proposed Project would create additional risks from fires and add to firefighting responsibilities in the area. However, Alternative A1 would include an on-site fire station that would meet the needs of the Mettler Site as well as the surrounding area. In addition, timely detection of fires by employees, early intervention and firebreaks created by impervious

surfaces (*e.g.*, parking lots) would reduce the risk of fires. Finally, the casino resort structure would be constructed to meet CBCs as well as County fire codes, and adequate fire flows would be provided. Due to these features and the on-site fire station, impacts to public fire protection services would be less than significant.

Due to the number of patrons and employees at the proposed casino resort facility, demands on emergency services would be expected to increase. Per the IGA, first responder and ambulance services from Hall Ambulance Service, Inc. would serve the Proposed Project. Furthermore, there are two medical centers in the vicinity of the Mettler Site that provide 24-hour emergency services. Impacts on emergency medical services would be less than significant.

Energy – Construction on the Mettler Site could damage underground utilities and lead to outages and/or serious injury. This would result in an adverse effect. With implementation of BMPs presented in Section 2.0 of the Final EIS, impacts to energy would be less than significant.

During the operation of the facilities, energy usage would be less than significant as all buildings would be consistent with CBCs, specifically the California Energy Code. Pacific Gas & Electric (PG&E) serves the Mettler Site for electricity services. The SoCalGas serves for natural gas (if Alternative A1 requires natural gas). The mitigation measures specified in **Section 6.7** in this ROD and Section 4.0 of the Final EIS would ensure that no significant financial impacts would occur as a result of the relocation of existing PG&E facilities or any connection fees occurred by SoCalGas to accommodate the operation of Alternative A1. Impacts to energy usage would be less than significant.

Schools, Libraries, and Parks – The majority of employees for Alternative A1 are anticipated to come from the local labor market. Employees that relocate to the project area to accept a position at the proposed casino resort may increase the number of K - 12 grade students enrolled in local school districts by approximately 138 to 203 new students. However, these effects would be negligible, and the schools would collect additional funding from the State for each student. Additionally, given that any new students would be distributed across all grade levels, students that may enroll as a result would have a nominal impact on the school district. Therefore, increased enrollment would have a negligible effect on education services at existing levels. Similarly, the parks and libraries in the region are adequate to accommodate the nominal increase in population caused by employees relocating to the region. Impacts to school districts, libraries, and parks would be less than significant.

Cumulative Impacts – Alternative A1 would receive domestic water supply from the development of on-site groundwater wells and an on-site wastewater utility for treatment of all wastewater generated. Therefore, no cumulative adverse effect on municipal water supply or wastewater systems would occur. Cumulative impacts to the municipal water and wastewater system would be less than significant.

Projected solid waste generation for Alternative A1 would not significantly decrease the life expectancy of the disposal site and landfills in addition to cumulative growth in the region. Furthermore, brine waste produced from groundwater treatment on the Mettler Site would be limited in quantity, and the brine would be properly disposed of. Furthermore, cumulative projects

in the area are unlikely to produce significant quantities of brine waste. Therefore, no significant cumulative impact would occur as a result brine waste or solid waste. Impacts from brine waste or solid waste would be less than significant.

Per the IGA, a new fire and sheriff station would be adequate to serve the Mettler Site as well as the surrounding areas. The station would be adequately staffed to serve the region. Furthermore, emergency medical and emergency medical transportation costs are paid primarily by the individual requiring service. Accordingly, cumulative impacts on emergency medical services or public law enforcement and fire services would be less than significant.

The Tribe would be responsible for paying development or user fees to receive additional electrical and natural gas services for future development. As such, the Tribe would pay for upgrades needed to avoid affecting the service of existing customers and any infrastructure necessary to provide service for Alternative A1. Cumulative impacts A to energy and telecommunications providers would be less than significant.

Alternative A1 could cause a small population increase in the County that would add users of schools, libraries, and parks, and this would add to the new demands created by other cumulative projects. However, the IGA would compensate local governments for any impacts, and, thus, schools, libraries, and parks. Therefore, cumulative impacts on schools, libraries, and parks would be less than significant.

5.1.10 Noise (Final EIS § 3.11)

Construction Noise – Grading and construction activities associated with Alternative A1 would be intermittent and temporary in nature. Due to sparse trees and man-made and geographical barriers, an attenuation factor of 6 dBA Leq per doubling of distance was used in the analysis. The maximum noise level during construction without impact equipment (pile drivers) is approximately 89 dBA Leq at 100 feet. The noise level at the nearest sensitive noise receptors are approximately 70.4 dBA Leq, which is less than the FHWA threshold of 72 dBA Leq. BMPs provided in Section 2.0 of the Final EIS would reduce further the potential for stationary construction noise effects. Construction-related material haul trips and worker trips have the potential to raise ambient noise levels along local routes. Construction traffic and haul trips would access the Mettler Site via SR-166 to S. Sabodan Street. Although construction trips would generally occur outside of the peak hour, the worst-case scenario assumes that all construction trips occur during the AM peak traffic hour. Construction trips would increase traffic volumes on roads near sensitive receptors by approximately 1,188 vehicles during the AM peak hour. This would result in an increase in the ambient noise level at residential receptors of approximately 0.10 dBA Leq, and the existing ambient noise level in the vicinity of sensitive noise receptors is approximately 51.4 dBA Leq at the Mettler Site. The ambient noise level due to the increase in vehicles would be approximately 51.5 dBA Leq, which is less than the FHWA noise thresholds for residential of 72 dBA Leq. Therefore, impacts from increased construction traffic would be less than significant.

Vibration impacts from construction generally occur within 500 feet of a project site, and the most vibration-prone construction methods (such as pile driving) are not anticipated to be necessary for any alternative. The nearest sensitive receptor, a residence, at the Mettler Site is located

approximately 850 feet from the construction site. Impacts from vibration would be less than significant.

Operational Noise – During operations under Alternative A1, it is not anticipated that average vehicle speeds or the mix of trucks in the traffic would change in the vicinity of the Mettler Site, but traffic volumes from project patrons and employees would increase for the following roads:

- **State Route 99**: The existing ambient noise level in the vicinity of SR-99 was measured at 51.4 dBA Leq. Alternative A1 would not double the existing traffic volume on SR-99, but would result in a 0.015 dBA Leq increase in the ambient noise level. The ambient noise level would increase to a maximum of 51.42 dBA Leq, an imperceptible increase that is less than the NAC of 67 dBA Leq for residential sensitive receptors.
- **State Route 166**: Due to the smaller traffic volume as compared to SR-99, the ambient noise level would be negligible compared to SR-99.
- **S. Sabodan Street**: S. Sabodan Street has an ambient noise level of 48.4 dBA. Due to the lower traffic volume compared to SR-99, the ambient noise would be negligible compared to SR-99.

Impacts on ambient noise in relation to traffic increases would be less than significant.

Commercial uses on the Mettler Site could generate noise due to the operation of roof-mounted HVAC equipment in addition to noise from loading docks and surface parking lots. However, given the distance to the nearest sensitive noise receptor, a residence located approximately 850 feet away and the ambient noise associated with the Mettler Site, 63.5 dBA (Table 3.11-2), noise from roof-mounted HVAC equipment and the proposed loading docks would not be audible. Therefore, impacts from commercial uses on ambient noise would be less than significant.

Under Alternative A1, paved surface parking lot noise increases would be mainly due to slow moving and idling vehicles, opening and closing doors, and patron conversation, but is generally dominated by slow moving vehicles. Therefore, the ambient noise level in parking structures and parking lots is approximately 60 dBA, which is less than the NAC of 67 dBA. Impacts from parking structure and lots on ambient noise would be less than significant.

Cumulative Impacts – Noise and vibration from HVAC systems, parking structures and lots, and deliveries would be similar as in the buildout year, but cumulative year 2040 baseline traffic volumes and project traffic volumes would increase. Under Alternative A1, the baseline traffic and project would have approximately the same increase between the buildout year (2023) and the cumulative year (2040). Since the increase in ambient noise level is a ratio of the increase in project traffic and existing 2040 traffic, the ambient traffic noise levels would not increase beyond the noise threshold of 67 dBA. Cumulative impacts from Traffic-related noise would be less than significant in the buildout year and, therefore, would be less than significant in the cumulative year 2040.

5.1.11 Hazardous Materials (Final EIS § 3.12)

Construction – Undiscovered contaminated soil could be present on the Mettler Site, but this is not anticipated because there are no records of hazardous material incidents at the site. The Mettler Site

has a long history of agricultural use and there could be pesticide residues in the soil, such as organochlorinated pesticides. However, there is no indication of improper use of these agricultural chemicals. In the unlikely case that construction personnel do encounter contaminated soil of any type prior to or during eart h-moving activities, a significant hazardous material impact would exist However, the BMPs specified in Section 2.0 of the Final EIS would minimize the possible hazards associated with existing contamination, including organochlorinated pesticides if present. With these BMPs, impacts from undiscovered contaminated soil would be less than significant.

C. immitis, which causes Valley Fever, could inhabit the Mettler Site and pose a significant adverse effect when construction personnel disturb the soil. Furthermore, wind could transport *C. immitis* spores to off-site areas and expose nearby people and animals. If spore inhalation occurred, it could lead to an infection. However, because the Mettler Site is actively used for agricultural purposes, the probability of *C. immitis* on the site is reduced due the decreased likelihood of encountering *C. immitis* on disturbed soils. Additionally, C. *immitis* spores could also potentially be introduced from offsite sources if offsite fill is utilized for construction. With implementation of mitigation measures specified in **Section 6.8** of this ROD and Section 4.0 of the Final EIS, in additional to the Air Quality BMPs in Section 2.0 of the Final EIS, impacts from disturbed soil would be less than significant.

During construction operations, the existing farming complex buildings would be demolished, and construction workers could be exposed to hazardous materials typical during construction if they are present (*e.g.*, lead paint). Additionally, the small quantity of hazardous materials used during construction may cause significant effects if leaked or spilled. Following BMPs in Section 2.0 of the Final EIS would reduce or eliminate the risk (*e.g.*, inhaling asbestos particles) associated with demolition activities for construction personnel in addition to the potential risks posed from leaking hazardous materials. Impacts from hazardous materials during construction would be less than significant.

Operation – During operation under Alternative A1 the potential of *C. immitis* both off-site and on-site poses a possible risk to facility workers and patrons since landscape maintenance or earth-disrupting agricultural activities (e.g., tilling) from the surrounding agricultural lands could cause *C. immitis* spores to become airborne. However, the risk for *C. immitis* is reduced in areas with disturbed soil, such as actively cultivated areas. Additionally, the soil disrupted from landscape maintenance would be small once plants are established. Consequently, *C. immitis* does not pose a significant risk to the facility employees or patrons. Impacts from disturbed soil would be less than significant.

Diesel fuel storage tanks would be needed for emergency generators at the Proposed Project. The transport of diesel fuel for these would be infrequent. Furthermore, the storage tanks would have secondary containment systems, comply with National Fire Protection Association standards for aboveground storage tanks (including for hazards, such as flooding), and would not pose unusual storage, handling, or disposal issues. Materials would be stored, handled, and disposed of according to federal and manufacturer's guidelines. Impacts from fuel storage tanks would be less than significant.

Small quantities of hazardous materials will be utilized during the operation and maintenance of the casino resort and other project facilities. The presence of these hazardous materials could pose a risk to employees and casino resort patrons if not transported, stored, or applied appropriately. However, no significant adverse effects would occur for several reasons. All hazardous materials and waste produced (typical for commercial facilities) would be stored, handled, and disposed of according to federal and manufacturer's guidelines. For the WWTP and hotel pool, the chemicals would be stored within secure building and only qualified personnel would handle these chemicals. Furthermore, the quantities of these chemicals would be relatively small, and with appropriate management—such as following manufacturer's guidelines—no significant adverse effects would result from storage and use. Therefore, impacts from waste produced or hazardous materials used would be less than significant.

Cumulative Impacts – The current existing conditions in addition to the construction and operation of the facilities under Alternative A1 would not result in significant adverse effects provided that the BMPs and mitigations measures specified are implemented. However, the potential future development on the Mettler Site and other cumulative projects in the area could lead to cumulative hazardous material effects. Potential future development would not require any unusual hazardous material, and the manufacturer's guidelines along with proper regulations would be followed for each hazardous material. These factors also apply to other cumulative projects in the area. Therefore, no significant adverse cumulative effects would result from current or potential hazardous materials under Alternative A1. Cumulative impacts from hazardous materials would be less than significant.

5.1.12 Aesthetics (Final EIS § 3.13)

During construction activities, heavy construction equipment, materials, and work crews would be readily visible to the neighboring town of Mettler as well as from vehicles traveling along SR-99. Aesthetic impacts from construction would be temporary in nature. There are no scenic resources within the site and vicinity, therefore, construction would not obstruct views of scenic resources. Consequently, impacts to visual resources during construction would be less than significant.

No designated aesthetic resources are present in the vicinity of the Mettler Site. Alternative A1 would transform the current agricultural property to a commercial one in appearance. Alternative A1 would not be visually incompatible with other urban development currently existing in the town of Mettler as well as along the SR-99 and I-5 corridors, including the Outlets at Tejon located approximately 5.5 miles to the south.

Alternative A1 would result in a visually cohesive development that may be considered more aesthetically pleasing than other regional commercial strip developments. Though the proposed development would alter the colors, lines, and texture of the agricultural appearance of the Mettler Site, the changes would not be out of character with typical roadside development adjacent to SR-99. Commercial development occurs along both SR 99 and I-5 in the region, and Alternative A1 would be consistent with other commercial developments along the highway corridors.

Alternative A1 would introduce new sources of light into the existing setting. Light spillover into the surrounding areas and increases in regional ambient illumination could result in potentially

significant effects if it were to cause traffic safety issues or create a nuisance to nearby residents. Alternative A1 would have exterior lighting integrated into the overall design. Lighting would be strategically positioned to minimize any direct lines of sight or glare to the public. Exterior signage would enhance the building architecture and the natural characteristics of the site by incorporating natural materials in combination with architectural trim. Illuminated signs would be designed to blend with the light levels of the building and landscape lighting in both illumination levels and color characteristics. Parking lot lighting would consist of pole-mounted lights with cut-off lenses and downcast illumination.

The use of glass panels and reflective ornamental detailing in the project design, including the proposed hotel, could increase the glare to adjacent residences and travelers on SR-99. Through the use of low-reflecting glass, downcast and directed lighting, and strategically positioned lighting fixtures, the impacts of off-site lighting would be minimized. With BMPs provided in Section 2.0 of the Final EIS, consistent with the International Dark-Sky Association's Model Lighting Ordinance (2011) and County Zoning Ordinance Chapter 19.81 Outdoor Lighting – Dark Skies, Alternative A1 would not result in significant adverse effects associated with light emissions and glare.

Because of these factors, no scenic resources would be affected. Additionally, BMPs are included in Section 2.0 to further reduce any minor aesthetic impacts that might occur. Impacts to scenic and aesthetic resources would be less than significant.

Cumulative Impacts: Aesthetics – All cumulative development, including potential future development of the Mettler Site, would be consistent with local land uses and regulations. Cumulative effects would include a shift from agriculture to views of developed areas as well as a minor increase in the density of urban uses within the County. Alternative A1would be visually compatible with the urban land uses in the project vicinity and would be generally consistent with local policies related to design and landscaping. Furthermore, with the proposed Grapevine Specific and Community Plan, it is anticipated that the vicinity will become more urban and, thus, future development would be even more visually compatible with nearby land uses. With the implementation of BMPs specified in Section 2.0 of the Final EIS, cumulative impacts to aesthetic resources would be less than significant.

5.1.13 Indirect and Growth-Inducing Effects (Final EIS § 3.14)

Indirect Effects from Off-Site Mitigation Improvements – Implementation of Alternative A1 on the Mettler Site would require construction of traffic mitigation and gas, electrical, and other utility improvements off-site. The construction of traffic mitigation and utility improvements would require grading and the introduction of fill material. These activities would have potential significant effects to geology and soils, water resources, air quality, biological resources, cultural resources, public services, and hazardous materials. A SWPPP would be developed that would include soil erosion and sediment control practices to reduce the amount of exposed soil, prevent runoff from flowing across disturbed areas, slow runoff from the site, and remove sediment from the runoff. Mitigation for these activities is provided in the relevant subsections of **Section 6.0** of this ROD and Section 4.0 of the Final EIS.

Growth-Inducing Effects – Alternative A1 would result in employment opportunities, including direct, indirect, and induced opportunities. Construction-related employment opportunities would be temporary in nature and would not result in the permanent relocation of employees to the County. The potential for commercial growth resulting from the development of Alternative A1 would result from fiscal output generated throughout the County from direct, indirect, and induced economic activity. Indirect and induced output could stimulate further commercial growth; however, such demand would be diffused and distributed among a variety of different sectors and businesses in the County. There are estimated to be more than enough vacant homes to support potential impacts to the regional labor market under Alternative A1. As such, significant regional commercial growth inducing impacts would not be anticipated to occur under Alternative A1.

Potential future development at the Mettler Site, as described in **Section 1.2** of this ROD**,** could result in indirect growth-inducing effects. Due to a lack of resources and governmental funding, the Tribe's only existing plans at the time are the development of the casino resort and associated facilities. In the coming decades, the Tribe envisions that the Mettler Site will include a mix of potential land uses after the gaming facility has been operating and generating net revenue sufficient for the provision of such governmental services. The Tribe's goals have been used for the purposes of the analysis in Section 3.14.2 of the Final EIS. The analysis found that with the implementation of mitigation included in **Section 6.0** below and Section 4.0 of the Final EIS, no significant impacts would occur.

5.2 COMMENTS ON THE FINAL EIS AND RESPONSES

During the 30-day waiting period following EPA's NOA of the Final EIS on October 23, 2020, the BIA received several comment letters from agencies and interested parties. The Supplemental Response to Comments document, which is included **Attachment 2** to this ROD, includes the comment letters received and specific responses thereto. The BIA reviewed and considered these comments in finalizing this ROD.

6.0 MITIGATION MEASURES

All practicable means to avoid or minimize significant environmental impacts from the Preferred Alternative have been identified and adopted. The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this decision. Specific mitigation measures adopted pursuant to this decision are set forth below and included within the Mitigation Monitoring and Enforcement Plan (MMEP) (*see* Attachment 3 of this ROD).

6.1 GEOLOGY AND SOILS

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

A. The project shall comply with the NPDES Construction General Permit from the USEPA for construction site runoff during the construction phase in compliance with the Clean Water

Act (CWA) (33 U.S.C. § 1251 *et seq.*). A SWPPP shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. The SWPPP shall detail the BMPs to be implemented during construction and post-construction operation of the selected project alternative to reduce impacts related to soil erosion and water quality. The SWPPP BMPs shall include, but are not limited to, the following.

1. Existing vegetation shall be retained where practicable. To the extent feasible, grading activities shall be limited to the immediate area required for construction.

2. Temporary erosion control measures (such as silt fences, fiber rolls, vegetated swales, a velocity dissipation structure, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed for disturbed areas.

3. To the maximum extent feasible, no disturbed surfaces shall be left without erosion control measures in place.

4. Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.

5. Creating construction zones and grading only one area or part of a construction zone at a time shall minimize exposed areas. If practicable during the wet season, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone.

6. Disturbed areas shall be re-vegetated following construction activities.

7. Construction area entrances and exits shall be stabilized with large-diameter rock.

8. Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures.

9. Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the CWA.

10. Construction materials, including topsoil and chemicals, shall be stored, covered, and isolated to prevent runoff losses and contamination of surface and groundwater.

11. Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.

12. Sanitary facilities shall be provided for construction workers.

13. Disposal facilities shall be provided for soil wastes, including excess asphalt during construction and demolition.

14. Other potential BMPs include use of wheel wash or rumble strips and sweeping of paved surfaces to remove any and all tracked soil.

B. Contractors involved in the project shall be trained on the potential environmental damage resulting from soil erosion prior to construction in a pre-construction meeting. Copies of the SWPPP shall be made available at that time. Construction bid packages, contracts, plans, and specifications shall contain language that requires adherence to the SWPPP.

6.2 WATER RESOURCES

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

A. Wastewater shall be fully treated to at least a tertiary level using membrane bioreactor (MBR) system or a package sequencing batch reactor (SBR) technology.

B. The on-site WWTP shall be staffed with operators who are qualified to operate the plant safely, effectively, and in compliance with all permit requirements and regulations. The operators shall have qualifications similar to those required by the Operator Certification Program for municipal WWTPs.

C. Water shall be treated on-site to USEPA standards prior to reuse or discharge into percolation ponds. Percolation ponds and reuse facilities shall be closely monitored by a responsible engineer. Periodic monitoring of the wastewater facility shall ensure the wastewater system is operating safely and efficiently.

D. Groundwater sampling and analysis shall be performed regularly, and all drinking water shall be treated to SDWA standards.

E. Prior to construction of the on-site wells, the USEPA shall be consulted in the early stages of establishing the well system. Furthermore, baseline monitoring of the groundwater shall be submitted to the USEPA prior to public water usage.

F. The on-site wells shall be positioned as to avoid to the maximum extent possible adverse effects on the established wells and surface water features within a one-mile radius of the Mettler Site while optimizing groundwater usage on-site, such as avoiding the percolation pond's cone of influence. A groundwater study shall be conducted in order to achieve thi s objective.

G. To avoid potential adverse influences on the on-site potable water supply, potable water transmission pipes shall not be located within the percolation pond's cone of influence.

6.3 AIR QUALITY OPERATION

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

The Tribe shall purchase 111.83 tons of NOx emission reduction credits (ERC) and 18.48 tons of ROG ERCs, as specified in the Final General Conformity Determination included in Appendix Z of the Final EIS. Because the air quality effects are associated with operation of the facility and not with construction of the facility, real, surplus, permanent, quantifiable, and enforceable ERCs shall be purchased prior to the opening day of the facility. ERCs shall be purchased in accordance with the 40 C.F.R. Part 93, Subpart B, conformity regulations. With the purchase of ERCs, the project would conform to the applicable State Implementation Plan (SIP) and result in a less than adverse effect to regional air quality. As an alternative to or in combination with purchasing the above ERCs, the Tribe has the option to enter into a Voluntary Emission Reduction Agreement (VERA) with the San Joaquin Valley Air Pollutions Control District (SJVAPCD). The VERA would allow the Tribe to fund air quality projects that quantifiably and permanently offset project operational emissions.

B. Prior to operation of the potential future development on the Mettler Site (as described in Table 3.14-2 of the Final EIS), the Tribe shall purchase 11.42 tons of NOx ERCs and 10.03 tons of ROG ERCs, as specified in the Final General Conformity Determination included in Appendix Z of the Final EIS. Because the air quality effects are associated with operation of the facility and not with construction of the facility, real, surplus, permanent, quantifiable, and enforceable, ERCs would be purchased prior to the opening day of the facility. ERCs shall be purchased in accordance with the 40 C.F.R. 9 Part 3, Subpart B, conformity regulations. With the purchase of ERCs, the project would conform to the applicable SIP and result in a less –than-adverse effect to regional air quality. As an alternative to or in combination with purchasing the above ERCs, the Tribe has the option to enter into a VERA with the SJVAPCD. The VERA would allow the Tribe to fund air quality projects that quantifiably and permanently offset project operational emissions.

6.4 BIOLOGICAL RESOURCES

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

6.4.1 Federally Listed and Other Sensitive Species

San Joaquin Kit Fox (Vulpes macrotis mutica)

A. Potential dens shall be visibly marked by a qualified biologist into an exclusion zone with a 100-foot buffer. No staging of materials or equipment, construction personnel, or other construction activity shall occur within the setback areas. The avoidance buffer shall be maintained until either the completion of construction, or the proper destruction of the den as described below. The USFWS guidelines for avoidance and minimization shall be followed.

B. A qualified biologist shall conduct a pre-construction survey to assess potential presence of this species two calendar weeks to 30 calendar days prior to commencement of ground disturbance. A report summarizing the findings of the survey shall be sent to the USFWS within five days of completion of any pre-construction surveys. If the construction activities stop on the site for a period of five days or more, then an additional pre-construction survey

shall be conducted no more than 48 hours prior to the start of construction. If no San Joaquin kit foxes or potential dens are found during the pre-construction survey, then no further action is required regarding this species.

C. If any San Joaquin kit fox potential dens are identified on the Mettler Site during the pre-construction survey or during construction activities (potential dens are defined as burrows at least 4 inches in diameter which open up within 2 feet), the USFWS shall be notified immediately and no construction activity shall occur within 100 feet of the potential den. An exclusionary zone shall be implemented as described in Measure A.

   Potential den entrances shall be monitored with trail cameras for three consecutive days or dusted for three consecutive days to register track of any San Joaquin kit fox present. If no activity is identified, potential dens may be destroyed by careful excavation followed by immediate filling and compacting of the soil. If activity is identified, a buffer zone of 250 feet shall be maintained around the den until the biologist determines that the den has been vacated. The den would be considered vacant when three days of den entrance dusting or trail camera monitoring results in no sign of the species, at which point only a 100-foot buffer becomes necessary. Should destruction of such a vacated natal den be necessary, USFWS shall be contacted, and the appropriate take permit issued. Where San Joaquin kit foxes are identified, the provisions of the USFWS's published *Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance* (2010) shall apply for den destruction and on-going operational recommendations.

D. A qualified biologist shall conduct habitat sensitivity training related to San Joaquin kit fox for project contractors and shall monitor construction during initial grading activities within the Mettler Site. Under this program, workers shall be informed about the presence of the species and their habitat, and that unlawful take of the animal or destruction of its habitat is not permitted. Prior to construction activities, a qualified biologist shall instruct and distribute informational materials to construction personnel about: (1) the life history of the San Joaquin kit fox; (2) the importance of habitat requirements for the species; (3) sensitive areas including those identified on-site, and (4) the importance of maintaining the required setbacks and detailing the limits of the construction area. Documentation of this training shall be maintained on the site.

E. The standards of the USFWS publication include provisions for educating construction workers regarding the San Joaquin kit fox, keeping heavy equipment operating at safe speeds, and checking construction pipes for species occupation during construction and similar activities.

Blunt-Nosed Leopard Lizard (Gambelia sila)

F. A pre-construction survey for the blunt-nosed leopard lizard shall be performed by a qualified biologist within the 30 days prior to construction activities to establish the presence of species on-site. The survey shall occur during the months of April through October to avoid surveying during peak hibernation months when the species is inactive. Should blunt-

nosed leopard lizards be observed, the USFWS shall be contacted to determine appropriate removal or avoidance measures. The survey methods shall be consistent with the Approved Survey Methodology for the blunt-nosed leopard lizard by the CDFW.

G. Access gates shall remain closed during periods of inactivity and have at least a 6-inch curtain in contact with the soil surface anchored by hay bales and sandbags. A designated individual shall check for blunt-nosed leopard lizards under vehicles and equipment such as stored pipes before the start of the workday. If the species is discovered, the vehicle or equipment shall not be moved until the animal has exited on its own. Pipes and other den-like structures should be capped at both ends until just before use to prevent potentially occurring blunt-nosed leopard lizards from being trapped.

H. Prior to construction activities, a qualified biologist shall instruct and distribute informational materials to construction personnel about blunt-nosed leopard lizards, including life history information, habitat requirements, and appropriate response to potential observations. The qualified biologist shall monitor construction during initial grading activities. Documentation of this training shall be maintained on-site.

I. Should blunt-nosed leopard lizards or other federally listed species be detected within the construction footprint at any point during construction or monitoring, grading activities shall halt, and the USFWS shall be consulted. No grading activities shall commence until USFWS authorizes the re-initiation of grading activities.

Tipton Kangaroo Rat (Dipodomys nitratoides nitratoides) and Giant Kangaroo Rat (Dipodomys ingens; Alternative B only):

J. A pre-construction survey for Tipton/giant kangaroo rat presence shall be conducted between two weeks and 30 calendar days before the start of ground-disturbing activities. A qualified biologist shall survey for Tipton/giant kangaroo rat signs, such as scat, burrows, tail drag marks, and tracks. If a confirmed observation of a Tipton/giant kangaroo rat occurs, the USFWS shall be contacted to determine if relocation procedures are necessary. The presence of a Tipton/giant kangaroo rat shall be assumed if positive signs for any Tipton/giant kangaroo rat are observed due to the difficulty of species-level identification without live trapping.

K. Should an active burrow be observed on-site, a 50-foot buffer shall be marked around the burrow entrance by the qualified biologist with high-visibility fencing. Should the active burrow be within the project footprint, the USFWS shall be contacted to determine the appropriate removal or avoidance measures.

L. Prior to construction activities, a qualified biologist shall instruct and distribute informational materials to construction personnel about Tipton/giant kangaroo rats including life history information, habitat requirements, and appropriate response to potential observations. The qualified biologist shall monitor construction during initial grading activities. Documentation of this training shall be maintained on-site.

Burrowing Owl (Athene cunicularia)

M. A qualified biologist shall conduct a pre-construction survey for burrowing owls within the 30 days prior to construction activities to establish the status of this species on the site. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction survey, the site shall be resurveyed. If burrowing owls are detected on or within approximately 500 feet of the site, a qualified biologist shall be consulted to develop measures to avoid "take" of this species prior to the initiation of any construction activities. Burrows observed on-site shall additionally be treated as potential burrowing owl dens and handled as outlined in the mitigation measures for burrowing owls. These measures include establishing appropriate buffers, and may require additional monitoring by a qualified biologist before destruction if burrowing owls are observed during pre-construction surveys.

N. Prior to construction activities, a qualified biologist shall instruct and distribute informational materials to construction personnel about: (1) the life history of the burrowing owl; (2) the importance of habitat requirements; (3) sensitive areas including those identified on-site, and (4) the importance of maintaining the required setbacks and detailing the limits of the construction area. Documentation of this training shall be maintained on-site.

Migratory Birds

O. Should ground-disturbing activities occur during the general nesting season (February 1 to September 15), a pre-construction nesting bird survey shall be conducted by a qualified biologist no more than 14 days prior to the start of ground-disturbing activities. Areas within 500 feet of ground-disturbing activities shall be surveyed for active nests.

P. Should an active nest be identified, an avoidance buffer shall be established based on the needs of the species identified and pursuant to consultation with CDFW and/or USFWS if necessary prior to initiation of ground-disturbing activities. Avoidance buffers may vary in size depending on habitat characteristics, project-related activities, and disturbance levels. Avoidance buffers shall remain in place until the end of the general nesting season or upon determination by a qualified biologist that young have fledged or the nest has failed.

6.5 CULTURAL AND PALEONTOLOGICAL RESOURCES

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

A. A qualified professional archaeologist shall complete pre-construction surveys of the off-site impact areas, documenting and assessing any resources encountered. If the find is determined to be significant by the archaeologist, then an appropriate course of action shall be implemented prior to construction in the vicinity of the find. Possible actions may include recordation, archaeological testing/data recovery, development of a Treatment Plan, or other measures. All significant archaeological materials recovered shall be subject to scientific analysis, professional curation as appropriate, and documentation prepared by the archaeologist according to current professional standards.

B. In the event of inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all work within 50 feet of the find shall cease until a professional archaeologist meeting the qualifications of the Secretary (36 C.F.R. Part 61) can assess the significance of the find. The BIA and the Tribe shall be notified immediately, and all such finds shall be subject to procedures for post-review discoveries without prior planning pursuant to 36 C.F.R. § 800.13. If the find is determined to be significant by the archaeologist, BIA, and/or Tribe, then the process in Mitigation Measure A shall be followed.

C. In the event of inadvertent discovery of paleontological resources during construction earth-moving activities, all work within 50 feet of the find shall cease until a qualified professional paleontologist can assess the significance of the find; the BIA shall also be notified. All such finds shall be subject to Section 101 (b)(4) of NEPA (40 C.F.R. §§ 1500-1508). If the find is determined to be significant by the paleontologist, then representatives of the BIA shall meet with the paleontologist to determine the appropriate course of action, including the development of an Evaluation Report and/or Mitigation Plan, if necessary. All significant paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional paleontologist according to current professional standards.

D. If human remains are discovered during ground-disturbing activities on Tribal lands, all work within 100 feet of the find shall cease immediately and the Tribe, BIA, and County Coroner shall be notified immediately. No further disturbance shall occur until the Tribe, BIA, and County Coroner have made the necessary findings as to the origin and disposition of the remains. If the remains are determined to be of Native American origin, the provisions of Native American Graves Protection and Repatriation Act shall be applied.

6.6 TRANSPORTATION/CIRCULATION

While the timing for the off-site roadway improvements is not within the jurisdiction or the Tribe's control, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day. The Tribe shall make fair share contributions to the traffic mitigation measures identified below prior roadway project construction as calculated in Section 19.3 in Appendix F of the Final EIS. Funding shall be for design standards consistent with those required for similar facilities in the region.

The following mitigation measures shall be implemented for the Preferred Alternative in Opening Year 2023 in accordance with federal regulatory requirements.

A. **Stevens Drive/Maricopa Highway Intersection**: Install a traffic signal and provide an exclusive WB left-turn lane on Maricopa Highway at Stevens Drive, or install a roundabout, based on the recommendations of an ICE study, with an associated fair share contribution of 100 percent for Alternatives A1 and A2.

B. **Maricopa Highway/S. Sabodan Street**: Install a traffic signal with an associated fair-share contribution of 100 percent for Alternatives A1 and A2 and the following geometry.

SB – Construct the north leg of the intersection and provide one left-turn lane and one right-turn lane in the SB direction and one NB lane.

WB – One left-turn lane, one thru lane, and one right-turn lane.

EB – One left-turn lane, one thru lane, and one shared thru/right lane. **NB** – One left-turn lane and one shared thru/right lane.

Alternatively, install a roundabout, based on the recommendations of an ICE study.

The following mitigation measures shall be implemented for the Preferred Alternative in Cumulative Year 2040 in accordance with federal regulatory requirements.

C. **Maricopa Highway/I-5 SB Ramps Intersection**: Contribute a fair share of 14 percent for Alternative A1 and 13 percent for Alternative A2 towards providing an exclusive WB left-turn lane on Maricopa Highway and installing a traffic signal or a roundabout with or without a loop ramp, based on the recommendations of an ICE study.

D. **Maricopa Highway/I-5 NB Ramps Intersection**: Contribute a fair share of 26 percent for Alternative A1 and 24 percent for Alternative A2 towards providing an exclusive EB left-turn lane on Maricopa Highway and installing a traffic signal or a roundabout with or without a loop ramp, based on the recommendations of an ICE study.

E. **SR-166 to NB I-5 Ramp Merge**: Contribute a fair share of 52 percent for Alternative A1 and 48 percent for Alternative A2 towards providing a 1,000-foot auxiliary lane on I-5 NB mainline at the merge.

6.7 PUBLIC SERVICES

The following mitigation measure shall be implemented for the Preferred Alternative in accordance with federal regulatory requirements.

The Tribe shall be responsible for a fair share of costs associated with any relocation of existing SoCalGas and PG&E facilities to accommodate the proposed development and traffic improvements. Appropriate funds shall be made available to conduct any necessary relocation and to construct any system upgrades required by the project.

6.8 HAZARDOUS MATERIALS

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

A. Workers and supervisors should be trained in Valley Fever locations, symptoms, and methods to minimize the risks of contracting Valley Fever before commencing work. This includes a "Valley Fever Training Handout," and a set schedule of educational sessions. The following documentation shall be assembled and retained by the Tribe.

1. A sign-in sheet of training participants, including names, signatures, and dates.

2. A written flier or brochure that includes educational information on the health effects of exposure to Valley Fever.

3. Training on methods that may be able to prevent Valley Fever Infection.

4. A demonstration to employees on how to use personal protective equipment, such as respiratory masks, in order to reduce potential exposure to *C. immitis* spores. This protective equipment should be readily available for employees to use during work hours. Proof of this training can consist of printed materials, DVD, photographs, and/or digital media files.

B. The Tribe shall develop a Valley Fever Dust Management Plan that addresses possible *C. immitis* spores and mitigations for potential infections from *C. immitis* spores. The plan should encompass a program to assess the possible exposure to *C. immitis* spores from construction activities and to outline appropriate safety precautions that would be implemented, as appropriate, to reduce the risk of exposure to spores from *C. immitis*. The plan shall include the following.

    1. When performing soil-disturbing related tasks, workers should be positioned upwind or crosswind when possible.

    2. Heavy equipment, vehicles and machinery with factory enclosed cabs should be furnished with high efficiency particulate air (HEPA) filters when able and the windows should be closed. Furthermore, proof of workers being trained on the proper use of applicable heavy equipment cabs shall be retained (*e.g.*, turning on the air conditioner before using equipment).

    3. Communication methods within enclosed cabs should be provided, such as two-way radios.

    4. When dust exposure is unavoidable, workers should wear approved respiration protection that covers the nose and mouth. The particulate filters should be rated at N95, N99, N100, or HEPA.

    5. Separate, clean dining areas with hand-washing stations shall be provided for employees.

    6. Equipment inspection stations shall be installed at access/egress points. At these stations, construction vehicles and equipment shall be inspected and cleaned of excess soil material as needed before being removed from the site.

    7. Workers should be trained on how to recognize Valley Fever symptoms and report symptoms surmised as being Valley Fever to a supervisor when encountered.

8. A medical professional shall be consulted in order to develop a medical protocol for evaluating employees with suspected Valley Fever.

9. An information handout concerning Valley Fever shall be disseminated to the public within a 3-mile radius of the project and no less than 30 days before the commencement of construction activities. The handout shall address the following topics about Valley Fever: potential sources and causes, common symptoms, options or remedies available if an individual should experience symptoms, and the locations of where tests are available for verifying Valley Fever.

7.0 DECISION TO IMPLEMENT THE PROPOSED ACTIONS / PREFERRED ALTERNATIVE

With this ROD, the Department announces that it will implement Alternative A1 as the Preferred Alternative. Of the alternatives evaluated in the EIS, Alternative A1 would best meet the purpose and need by promoting the long-term economic vitality and self-sufficiency, self-determination, and self-governance of the Tribe. The construction of Alternative A1 would provide the Tribe the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its government. This would enable the tribal government to establish, fund and maintain programs vital to tribal members, as well as provide greater opportunities for employment and economic growth.

The development of Alternative A1 would meet the purpose and need of the Proposed Actions better than the other development alternatives due to the reduced revenues that would be expected from the operation of Alternatives A2, A3, and C, and the reduced area for the RV park and potential future developments under Alternative B (as described in Section 2.6.2 of the Final EIS). While Alternative A1 would have greater environmental impacts than the No Action Alternative, that alternative does not meet the purpose and need for the Proposed Action, and the BMPs and mitigation measures adopted in this ROD adequately address the environmental impacts of the Preferred Alternative. Accordingly, the Department will implement the Proposed Actions subject to implementation of the applicable BMPs and mitigation measures listed in **Section 6.0** of this ROD.

7.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS

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

- Establishment of a land base for the Tribe to establish a viable business enterprise. Revenues from the operation of the casino would provide funding for a variety of health, housing, education, social, cultural, and other programs and services for tribal members, and provide employment opportunities for its members. Further, while the remainder of the Mettler Site would remain in agricultural production for the foreseeable future, in the coming decades the Tribe's vision is to utilize the remaining acreage to deliver governmental services to its members such as housing, health care, and wellness. The Tribe would determine, in accordance with applicable law, what developments are needed to facilitate the provision of governmental services to its members.

- Revenue generated from the development will also provide capital for other development improvement opportunities, and will allow the Tribe to achieve tribal self-sufficiency, self-determination, self-governance, and a strong, stable tribal government.

- Generation of approximately 2,356 full and part-time employment positions during the construction period. Direct wages are estimated to total approximately $104.8 million. Indirect and induced wages are estimated to total $32.6 million and $24 million, respectively.

- Ongoing operations would directly contribute to local governments on an annual basis approximately $944,000. Substantial annual and one-time payments to Kern County through the 2019 intergovernmental agreement (IGA).

- Neutral to Positive groundwater effects in the vicinity of the Mettler Site through the 2020 agreement between Tribe and the Arvin-Edison Water Storage District (AEWSD).

7.2 Reduced Casino Resort Alternative Restricts Beneficial Effects

The Reduced Intensity Alternative (Alternative A2) would generate less revenue than the Preferred Alternative. As a result, this Alternative would restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-governance.

7.3 Organic Farming Alternative Restricts Beneficial Effects to the Tribe and Surrounding Community

The organic farming alternative on the Mettler Site (Alternative A3) would produce 51 full-time employees compared to approximately 3,000 full-time employees under the Preferred Alternative. Additionally, Alternative A3 would generate negligible economic output for businesses in the region as well as negligible tax revenues for the State and County. As a result, it would restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-governance.

7.4 Casino Resort on the Maricopa Highway Site Alternative Restricts Beneficial Effects

A casino resort on the Maricopa Highway Site alternative (Alternative B) would result in an increase in employment and economic growth and the demand for goods and services to the same extent as the Preferred Alternative. However, Alternative B restricts beneficial effects in the following ways:

Suitability for Tribal Land Base and Social Impacts: The 118-acre Maricopa Highway Site is marginally adequate for fulfilling tribal needs in the short term. For example, the non-gaming amenities under Alternative B would occupy a smaller footprint than those under the Preferred Alternative simply because the Maricopa Highway Site is not large enough to accommodate the Preferred Alternative improvements. In the longer-term, the 320.04-acre Mettler Site is far superior to the 118-acre Maricopa Highway Site for purposes of meeting Tribal needs. Although the Maricopa Highway Site is large enough for the development of a resort hotel and casino and related

infrastructure, it would severely limit the Tribe's ability to provide future governmental services on its land base such as housing, health care, and wellness.

Water: The impacts to groundwater under Alternative B would be greater than those for the Preferred Alternative. Consequently, Alternative B would be markedly inferior to the Preferred Alternative when analyzed in terms of net impacts to groundwater. The Tribe has entered into the Water Agreement with the AEWSD. The Water Agreement allows amendment of the Tribe's surface water contracts by facilitating the transfer of some of its surface water rights to groundwater rights. Under this agreement the Preferred Alternative would result in a net neutral or positive addition to groundwater supply, and in all circumstances would result in a less than significant effect on groundwater. However, the Water Agreement applies specifically to the Mettler Site and not the Maricopa Highway Site, because the Maricopa Highway Site falls within a different water district. Even if a similar agreement could be made with respect to the Maricopa Highway Site, the mitigating effects of such an arrangement may not be as positive as those under the Water Agreement because the Maricopa Highway Site is smaller than the Mettler Site, and, thus, has less surface water available to recharge the groundwater aquifer. Specifically, the Mettler Site and Maricopa Highway Sites are approximately 320.04 acres and 118 acres, respectively.

County Opposition to Alternative B: Communications with the County (*see* Appendix AB of the Final EIS) state that the County is opposed. The County cites two primary reasons for its opposition. First, the Mettler Site is currently zoned Limited Agriculture (A-1) whereas the Maricopa Highway Site is zoned Exclusive Agriculture (A). The Maricopa Highway Site is within the boundaries of Agricultural Preserve No. 12. The County is opposed to development of the Maricopa Highway Site because it would take productive irrigated farmland zoned Exclusive Agriculture (A) permanently out of production. Second, the Mettler Site alternatives include the development of a new fire and sheriff joint substation. This facility would be centrally located for purposes of providing service in an area comprised roughly of I-5 (near the Mettler Site), SR-99 and the Grapevine that is currently underserved by existing facilities. The area around the Maricopa Highway Site is not currently underserved to the same degree.

Economics – Development Costs: The Tribe and its development partner have incurred substantial costs associated with the acquisition and ownership of the Metter Site. These costs include the payment of the purchase price, option payments, real estate commissions, property taxes, and interest expenses. In the event that neither the Preferred Alternative nor A2 is pursued, the Tribe believes that it would likely be able to recoup less than half the costs expended on the Mettler Site. In addition, the Tribe would have to expend an additional substantial amount to purchase the Maricopa Highway Site.

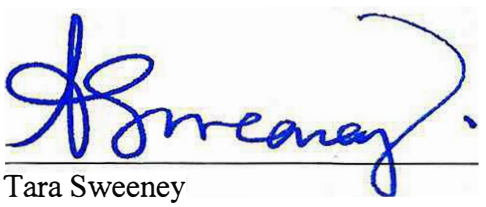
Economics – Schedule Delay: As stated in the Final EIS, the opening year for all project alternatives is assumed to be 2023. As a practical matter, the opening dates of Alternative B would likely be anywhere from a few months to a year or two later than a potential opening of the Preferred Alternative. This is because of the following factors: 1) the Tribe's ownership of the Mettler Site is more advanced than it is for the Maricopa Highway Site, 2) the existence of the Water Agreement with AEWSD, and 3) the Tribe's discussions and consultations with the County are more advanced with respect to the Mettler Site. A delay in the development and operation of the casino resort would cause an undue financial burden to the Tribe.

7.5 NO ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED

The No Action Alternative (Alternative C) would not meet the stated purpose and need. Specifically, it would not provide a more stable income source that will enable the tribal government to provide essential social, housing, educational, health, and welfare programs. Therefore, the No Action Alternative would not promote the economic development, self-determination, or self-governance of the Tribe.

8.0 SIGNATURE

By my signature, I indicate my decision to implement Alternative A1 as the Preferred Alternative and implement the Proposed Action of issuing a Secretarial Determination pursuant to Section 20 of the Indian Gaming Regulatory Act. A decision whether to implement the Proposed Action of acquiring the Proposed Site in trust pursuant to the Indian Reorganization Act will be made at a later date.



Tara Sweeney
Assistant Secretary – Indian Affairs

JAN 0 8 2021
Date

ATTACHMENT VI

GOVERNOR NEWSOM'S CONCURRENCE

OFFICE OF THE GOVERNOR

June 13, 2022

Bryan Newland, Assistant Secretary - Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W. MS-4660-MIB
Washington, D.C. 20240

Dear Assistant Secretary Newland:

On January 8, 2021, former Assistant Secretary – Indian Affairs Tara Sweeney requested my concurrence by January 8, 2022, in the determination pursuant to 25 U.S.C. § 2719(b)(1)(A) (Secretarial Determination) that a gaming establishment proposed by the Tejon Indian Tribe (Tribe) on approximately 320 acres of land known as the Mettler Site would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community. On December 20, 2021, my office requested an additional 180 days to respond. You granted that request on January 7, 2022, and stated that the U.S. Department of the Interior stands behind the Secretarial Determination.

Though I am reticent to allow gaming on land that is not currently eligible for gaming, after careful consideration I have decided to concur in the Secretarial Determination based on the Tribe's unique circumstances. Today, I have also signed a tribal-state class III gaming compact that will allow the Tribe to operate gaming on the Mettler Site once it is taken into trust for gaming.

A core policy goal of the Indian Gaming Regulatory Act is to promote tribal economic development, tribal self-sufficiency, and strong tribal governments. (25 U.S.C. § 2702.) When California voters considered and approved Proposition 1A to permit tribes to lawfully operate slot machines and banked and percentage card games on Indian land, they were asked in the ballot materials to approve the measure to "ensure that Indian self-reliance is protected once and for all." Gaming by the Tribe at the Mettler Site will further these goals.

The Mettler Site is located in unincorporated Kern County, approximately four miles southwest of a 10-acre parcel held in trust for the Tribe and used as a government and community center. It is within the boundaries of a 763,000-acre reservation that would have been established had the United States ratified an 1851 treaty negotiated with the Tribe and other signatory tribes. It is also within 10 miles of the Tribe's former villages and an area referred to by federal officials, but never formally established, as the Tejon reservation.

The Tribe has over 1,200 enrolled members, nearly a third of whom are under 18 years old. Over half of the Tribe's members live below the federal poverty line. One-third of Tribal households receive support from the Supplemental Nutrition Assistance Program for needy families. The Tribe's governmental services are drastically underfunded and heavily reliant on volunteers. The Tribe's ability to provide for critical welfare needs of its members, such as employment, education, health care, housing, and social services, is severely hampered by the lack of a stable revenue source. Revenue from the Tribe's proposed gaming establishment will help support a fully functioning Tribal government and bolster the Tribe's self-sufficiency and self-reliance. The proposed gaming establishment would be in the best interest of the Tribe and its members. Through the Tribe's contributions to the Revenue Sharing Trust Fund and the Tribal Nation Grant Fund under the terms of its new compact, the proposed gaming establishment will also foster stronger tribal governments and self-sufficiency for non- and limited-gaming tribes.

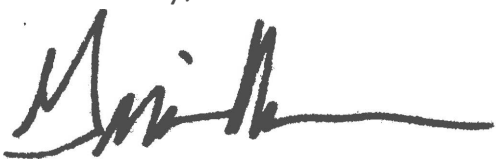
The Tribe's proposal for gaming on the Mettler Site benefits not only the Tribe, but also the surrounding community. More than 60 percent of the Tribe's members are residents of Kern County, which supports construction of the gaming establishment on the Mettler Site. The Tribe has signed an intergovernmental agreement with Kern County that will fully mitigate all impacts of the Tribe's gaming and create broader public safety benefits through the construction of a joint fire/law enforcement substation. Kern County experiences higher than average unemployment rates and the Tribe estimates its proposed gaming establishment will create over 1,000 construction and 2,000 permanent high-wage, high-benefit jobs, drawing heavily from the local workforce. The project is supported by local public and law enforcement representatives, labor unions, and a diverse array of community and business groups. I have concluded that gaming by the Tribe at the Mettler Site would not be detrimental to and will benefit the surrounding community.

In my review, I seriously considered the potential negative impact of the Tribe's gaming establishment on the gaming revenues of other tribes in the area. I also considered the project's expansion of tribal gaming to new lands. These issues are of immense concern to me. Based on the unique and exceptional

circumstances regarding the history of the Tribe, the Mettler Site's proximity to the Tribe's historic villages and unratified reservations, and the benefits of gaming on the site to the Tribe and the surrounding community, I chose to concur in the Secretarial Determination.

I would like to thank the U.S. Department of Interior, Indian Affairs for its review of the Secretarial Determination and the numerous tribes, local governments, labor, business, and community groups, and others who have provided information to help inform my decision.

Sincerely,



GAVIN NEWSOM

cc: Honorable Octavio Escobedo III, Chairperson
Tejon Indian Tribe