APPENDIX V

RESPONSE TO COMMENTS

RESPONSE TO COMMENTS

TEJON INDIAN TRIBE
TRUST ACQUISITION AND CASINO PROJECT

OCTOBER 2020

LEAD AGENCY:

U.S. Department of the Interior
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way # W2820
Sacramento, CA 95825

PREPARED BY:

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Introduction

SECTION 1.0
INTRODUCTION

This response to comments document has been prepared for the Final Environmental Impact Statement for the proposed Tejon Indian Tribe's (Tribe) Trust Acquisition and Casino Project pursuant to the requirements of the National Environmental Policy Act (NEPA). Additionally, at the request of the Tribe, this response to comments document has been prepared to comply with the expected requirements of a tribal environmental ordinance, which may require a Tribal Environmental Impact Report (TEIR). The three Proposed Actions and subsequent development by the Tribe are:

- the transfer of approximately 306 acres in Kern County (County), California (referred to herein as the Mettler Site), into federal trust status for the benefit of the Tribe,
- the issuance of a Two-Part Determination by the Secretary of the Interior (Secretary) under the Indian Gaming Regulatory Act (IGRA),
- the approval by the Chairperson of the National Indian Gaming Commission (NIGC) of a management contract, and
- subsequent development of a portion of the Mettler Site by the Tribe with a variety of uses including a casino resort, recreational vehicle (RV) park, fire and sheriff station, water infrastructure, wastewater treatment and disposal facilities, and other supporting facilities (Proposed Project).

The Notice of Availability (NOA) of the Draft EIS was published by the Bureau of Indian Affairs (BIA) and U.S. Environmental Protection Agency in the Federal Register on June 12, 2020. Additionally, in accordance with the Tribal-State Gaming Compact, the NOA was filed with the State clearinghouse for distribution to State agencies, was published in local papers, and was mailed to interested parties. Copies of the federal register NOA and newspaper publications are provided in Appendix AA of the Final EIS. The Draft EIS was made 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 verbal comments on the Draft EIS were received. In total, 62 comment letters, 18 verbal comments submitted via voicemail, and 49 verbal comments submitted during the virtual public hearing were received during the comment period for the Draft EIS, and one comment letter was received after the end of the comment period.

SECTION 2.0

Comment Letters

SECTION 2.0
COMMENT LETTERS

This section provides a list all of the comments received by the Bureau of Indian Affairs (BIA) on the Draft Environmental Impact Statement (EIS). The comments presented herein were submitted to the BIA by way of letter, email, voicemail, or verbally at the public hearing held for the Draft EIS.

The Council on Environmental Quality (CEQ) provides guidance that comments on environmental documents be addressed if they are: 1) substantive and relate to inadequacies or inaccuracies in the applied environmental analysis or methodologies; 2) identify new impacts or recommend reasonable new alternatives or mitigation measures; or 3) involve substantive disagreements on interpretations of significance and scientific or technical conclusions (40 Code of Federal Regulations [CFR] § 1503.3). According to 40 CFR § 1500, the goal of the National Environmental Policy Act (NEPA) is to improve decision-making by providing decision makers and the public with pertinent and accessible information on potential project impacts on the environment. Comments received that further NEPA's purposes are addressed in the Final EIS. Responses are not required for comments that do not raise a substantive issue regarding the content of the EIS, such as comments merely expressing an opinion. However, such comments, as well as comments received after the end of the comment period, are part of the administrative record and thus will be considered by the BIA in its decision to identify which alternative will become the agency's Preferred Alternative.

Many of the comments received were expressions of opinion either for or against the proposed Tejon Indian Tribe's (Tribe) Trust Acquisition and Casino Project, rather than the analysis presented in the Draft EIS. Furthermore, other comments that were received did not raise a substantive environmental issue. Based on the information specified criteria specified above, comments are organized into three categories: comments that contain substantive content, referred to as "Substantive"; those that do not contain substantive content, referred to as "Non-Substantive"; and those that were received after the end of the comment period, referred to as "Late". All comments that were received by the BIA are indexed in **Table 2-1**. Each Substantive comment letter is assigned a unique number (e.g., 1), and then individual comments within the letters have been bracketed into specific substantive comments, that are then numbered (e.g., 1-01) for ease of reference. Only Substantive comments are presented in their entirety after the table, and **Section 3.0** contains responses that correspond to the numbered substantive comments. Non-Substantive and late comments are included in their entirety in **Attachment A**, but are not numbered or responded to in **Section 3.0**. The transcript from the public hearing is included in its entirety in **Attachment B**.

TABLE 2-1
COMMENT INDEX

Substantive			
Number	**Name**	**Agency/Organization/Tribe**	**Date**
1	Gavin McCreary	Department of Toxic Substances Control	07/07/20
2	Lorelei H. Oviatt	Kern County Planning and Natural Resources	07/21/20
3	Karen Vitulano	U.S. Environmental Protection Agency	07/22/20
4	Regina K Houchin	Mettler County Water District	07/27/20
5	Jeevan Muhar	Arvin-Edison Water Storage District	07/27/20
6	Chris Jones	California Department of Conservation, Geologic Energy Management Division	07/27/20
7	Lupita Mendoza	California Department of Transportation	07/27/20

8	Gordon L. Nipp	Sierra Club	07/27/20
9	Cheryl Schmit	Stand Up For California	07/27/20
10	Dennix Fox	NA	06/12/20
11	James E Adams	NA	06/18/20
12	Dr. Donna Miranda-Begay	Tubatulabal Tribal Cultural Practitioner and Researcher	07/08/20
13	Retired Educator	NA	07/11/20
14	Rey Ramirez	NA	07/18/20
15	Vincent Zaragoza	Bakersfield Resident	07/26/20
16	Margarita Martinez	Community Member of Mettler	07/27/20
17	Brenda Mann	Resident of Mettler	07/27/20
18	Francis Martinez	NA	07/27/20
19	Grace Walden	NA	07/27/20
20	Dr. Donna Miranda-Begay	Public Hearing Speaker	07/08/20
21	David Laughing Horse Robinson	The Kawaiisu Tribe of Tejon	07/24/20
22	Lt. S.C. Crosswhite	Department of California Highway Patrol	07/20/20
Non-Substantive			
Number	**Name**	**Agency/Organization/Tribe**	**Date**
—	Alexandria Diostato	Resident of Kern County	07/08/20
—	Amanda Frank	Resident of Kern County	07/27/20
—	Amy Edwards	Resident of Kern County	07/08/20
—	Brittany Williams	NA	07/18/20
—	Charlotte Viaz	NA	07/27/20
—	Cheryl Schmit	Stand Up For California	06/19/20
—	Deandia Garcia	NA	07/16/20
—	Deandia Guerrero	NA	07/15/20
—	Debra J Gomez	NA	07/15/20
—	Desiree Mackall	Purchasing Manager, Applied Technology Group, Inc	07/20/20
—	Dianne Sohka	NA	07/27/20
—	Donna Yoon	NA	07/22/20
—	Dr. Donna Miranda-Begay	Tubatulabal Tribal Cultural Practitioner and Researcher	07/08/20
—	Evelyn M. Lozano	Member of the Tejon Indian Tribe	07/26/20
—	Franciso Martinez	President of the Mettler Community Water District	07/27/20
—	George Jones	NA	07/15/20
—	George Jones	NA	07/15/20
—	Gloria A Morgan	Member of the Tejon Indian Tribe	07/08/20
—	Grace Walden	NA	07/27/20
—	Gregory Matherly	NA	07/18/20
—	Guadalupe Smith	NA	07/15/20
—	Hertz Ramirez	Business Manager, LiUNA! Local 220	07/13/20
—	Ian Hoose	Resident of Kern County	07/08/20

—	Janet Maldonado	NA	07/15/20
—	Janet Vandenk	NA	07/15/20
—	Jeremy Subriar	Member of the Tejon Indian Tribe	07/09/20
—	Juana Delgado	NA	07/16/20
—	Judy Rice	NA	07/15/20
—	Kathy May	NA	07/08/20
—	Kathy Streich	NA	07/15/20
—	Keith Kraemer	NA	07/15/20
—	Kelly Albright	NA	07/08/20
—	Kim Person	NA	07/08/20
—	Lily Alvarez	NA	07/20/20
—	Lori Barnes	President, Applied Technology Group, Inc	07/15/20
—	Lori Barnes	President, Applied Technology Group, Inc	07/08/20
—	Maarten Verhoeven	NA	07/15/20
—	Marsha Harwardt	NA	07/15/20
—	Mary Lou Martinez	NA	07/24/20
—	Michael D Budak	NA	07/19/20
—	Nick Hill III	President/C.E.O., Kern County Black Chamber of Commerce	07/09/20
—	Noah Rodriguez	Resident of Kern County	07/08/20
—	None given	Mountain Enterprises	06/17/20
—	Patricia Rangel	Diegueno Tribe Member	07/15/20
—	Pete Leveroni	NA	07/15/20
—	Rebecca Gonzalez	Member of the Tejon Indian Tribe	07/08/20
—	Renee Donato	Clean Water and Air Matter	06/16/20
—	Richard Lougo	SBS of Bakersfield	07/15/20
—	Richard Subriar	Member of the Tejon Indian Tribe	07/21/20
—	Samantha C. Riding-Red-Horse	Member of Kern River Valley Tübatulabal Tribe	07/26/20
—	Shane Layman	NA	07/15/20
—	Teresa Mejia	NA	07/15/20
—	Tim George	NA	07/09/20
—	Tim George	NA	07/16/20
—	Tulao Visesio	NA	07/08/20
—	Valerie J Mena	NA	07/15/20
—	William Hoose	Resident of Bakersfield	07/08/20
—	Xavier Lopez	NA	07/17/20
—	Zoe Gonzales	Member of the Tejon Indian Tribe	07/08/20
—	Octavio Escobedo	Public Hearing Speaker	07/08/20
—	Nick Ortiz	Public Hearing Speaker	07/08/20
—	Dick Taylor	Public Hearing Speaker	07/08/20
—	Jim Elrod	Public Hearing Speaker	07/08/20
—	Richard Chapman	Public Hearing Speaker	07/08/20

—	Ronda Newport	Public Hearing Speaker	07/08/20
—	Ryan Alsop	Public Hearing Speaker	07/08/20
—	Jay Tamsi	Public Hearing Speaker	07/08/20
—	Kevin Burton	Public Hearing Speaker	07/08/20
—	Berry Zoeller	Public Hearing Speaker	07/08/20
—	Nick Hill	Public Hearing Speaker	07/08/20
—	Dave Noerr	Public Hearing Speaker	07/08/20
—	Jaime Briceno	Public Hearing Speaker	07/08/20
—	Josh Bathe	Public Hearing Speaker	07/08/20
—	Kathryn Morgan	Public Hearing Speaker	07/08/20
—	Julian Najera	Public Hearing Speaker	07/08/20
—	Max Goossen	Public Hearing Speaker	07/08/20
—	Josh Taylor	Public Hearing Speaker	07/08/20
—	David Witt	Public Hearing Speaker	07/08/20
—	Leticia Perez	Public Hearing Speaker	07/08/20
—	Joseph Burnett	Public Hearing Speaker	07/08/20
—	Susie Aspeitia	Public Hearing Speaker	07/08/20
—	Thomas Gonzales	Public Hearing Speaker	07/08/20
—	Joe Ashley	Public Hearing Speaker	07/08/20
—	David Womack	Public Hearing Speaker	07/08/20
—	Christina Appodaca	Public Hearing Speaker	07/08/20
—	Keith Saltvick	Public Hearing Speaker	07/08/20
—	Michael Turnipseed	Public Hearing Speaker	07/08/20
—	Jose Santos	Public Hearing Speaker	07/08/20
—	June Nachor	Public Hearing Speaker	07/08/20
—	Colin Rambo	Public Hearing Speaker	07/08/20
—	Lisa Bradley	Public Hearing Speaker	07/08/20
—	Robin Mangarin Scott	Public Hearing Speaker	07/08/20
—	Stephanie Holcroft	Public Hearing Speaker	07/08/20
—	Janie Kineones	Public Hearing Speaker	07/08/20
—	Sandra Hernandez	Public Hearing Speaker	07/08/20
—	Joey Lozano Jr.	Public Hearing Speaker	07/08/20
—	Tom Castleman	Public Hearing Speaker	07/08/20
—	Vivian Lozano	Public Hearing Speaker	07/08/20
—	Eric Lualemana	Public Hearing Speaker	07/08/20
—	Robert Nadal	Public Hearing Speaker	07/08/20
—	John Spaulding	Public Hearing Speaker	07/08/20
—	Leilani Quezada	Public Hearing Speaker	07/08/20
—	Delilah Calderon-Buck	Public Hearing Speaker	07/08/20
—	Anthony McElrath	Public Hearing Speaker	07/08/20
—	Jennifer McElrath Hea	Public Hearing Speaker	07/08/20
—	Ashley Holcraft	Public Hearing Speaker	07/08/20

—	Dina Nachor	Public Hearing Speaker	07/08/20
Late			
Number	**Name**	**Agency/Organization/Tribe**	**Date**
—	Lorelei H. Oviatt	Kern County Planning and Natural Resources	08/21/20

Department of Toxic Substances Control

Jared Blumenfeld
Secretary for
Environmental Protection

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Gavin Newsom
Governor

July 7, 2020

Mr. Chad Broussard
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, California 95825
chad.broussard@bia.gov

DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR TEJON INDIAN TRIBE TRUST ACQUISITION AND CASINO PROJECT – DATED JUNE 2020 (STATE CLEARINGHOUSE NUMBER: 2015084002)

Ms. Broussard:

The Department of Toxic Substances Control (DTSC) received a Draft Environmental Impact Statement (EIS) for Tejon Indian Tribe Trust Acquisition and Casino Project (Site). The proposed project is the acquisition of approximately 306-acres of fee land in trust by the United States upon which the Tejon Indian Tribe would construct gaming and associated facilities. The Proposed Project consists of the construction of an approximately 715,800 square foot casino resort, an RV park, fire and sheriff stations, and associated facilities such as water treatment and disposal facilities on the subject property. The Site is in unincorporated Kern County, immediately west of the town of Mettler and approximately 14 miles south of the City of Bakersfield. 1-01

DTSC recommends that the following issues be evaluated in the EIS Hazards and Hazardous Materials section:

1. The EIS should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The EIS should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight. 1-02
2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive 1-03

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in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the EIS.

1-03 (Cont.)

3. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the EIS. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to DTSC's 1998 Abandoned Mine Land Mines Preliminary Assessment Handbook (https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/11/aml_handbook.pdf).

1-04

4. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 *Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers* (https://dtsc.ca.gov/wpcontent/uploads/sites/31/2018/09/Guidance_Lead_Contamination_050118.pdf).

1-05

5. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to *DTSC's 2001 Information Advisory Clean Imported Fill Material* (https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/SMP_FS_Cleanfill-Schools.pdf).

1-06

6. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the EIS. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 *Interim Guidance for Sampling Agricultural Properties (Third Revision)* (https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/Ag-Guidance-Rev-3-August-7-2008-2.pdf).

1-07

DTSC appreciates the opportunity to comment on the EIS. Should you need any assistance with an environmental investigation, please submit a request for Lead Agency Oversight Application, which can be found at: https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/VCP_App-1460.doc. Additional information regarding voluntary agreements with DTSC can be found at: https://dtsc.ca.gov/brownfields/. 1-08

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Sincerely,

Gavin McCreary
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Ms. Lora Jameson, Chief
Site Evaluation and Remediation Unit
Department of Toxic Substances Control
Lora.Jameson@dtsc.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
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Lorelei H. Oviatt, AICP, Director
2700 "M" Street, Suite 100
Bakersfield, CA 93301-2323
Phone: (661) 862-8600
Fax: (661) 862-8601 TTY Relay 1-800-735-2929
Email: planning@kerncounty.com
Web Address: http://kernplanning.com/

PLANNING AND NATURAL RESOURCES DEPARTMENT

Planning
Community Development
Administrative Operations

July 21, 2020

File: Tejon Tribe BIA EIS

US Department of Interior
Bureau of Indian Affairs
Pacific Regional Office
Amy Dutschke Regional Director
Attn: Chad Broussard
2800 Cottage Way Room W -2820
Sacramento, California 95825

RE: DEIS Comments, Tejon Indian Tribe Casino Project

Dear Ms. Dutschke,

Kern County, as a Cooperating Agency, appreciates the opportunity to comment on the Draft Environmental Impact Statement and Draft Conformity Determination for the Tejon Indian Tribe's Proposed Fee-to-Trust Acquisition and Casino Resort Project. The project as proposed, along with all alternatives, are within the unincorporated areas of Kern County.

Staff has coordinated a review of the project for public services impacts and the Kern County Board of Supervisors has executed an Intergovernmental Agreement with the Tejon Indian Tribe that will fully mitigate all impacts on public services. The Kern County Board of Supervisors supports the approval and construction of Alternative A1 – Casino and Mixed-Use Development Alternative.

2-01

Staff has reviewed the DEIS and have no comments on the findings or mitigation measures.

At the July 8, 2020 virtual public hearing, Ryan Alsop, County Administrative Officer spoke and provided comments which, due to technical difficulties, were incomplete. Complete comments are attached for the record.

Thank you for the opportunity to participate in the environmental review process for this important project.

Sincerely,

Lorelei H. Oviatt, AICP
Director

Attachments

cc: County Administrative Officer
County Counsel

COMMENTS OF RYAN ALSOP, KERN COUNTY CAO

Good evening, my name is Ryan Alsop, and I'm the Chief Administrative Officer for Kern County.

The Tejon Tribe Trust Acquisition and Hard Rock Hotel and Casino project presents a unique opportunity for Kern County. Our County's future is tied to partners like the Tribe, and Hard Rock International, that bring new opportunity to our region that bolster standard of living and quality of life, through investment, job growth and increased economic diversification.

We are, in fact, a region in need of additional economic investment and job creation. Historically, the health of our region's economy has been predominately tied directly to two principal industries: Oil and Agriculture. While these industries will continue to play a vital, although diminishing, role in our local economy going forward, the need to diversify and attract new industry is essential.

This project is estimated to create more than 1,000 construction jobs, and 2,000 permanent jobs once completed, with a projected $60 million annual payroll. There is a Local Hiring provision that is consistent with the BOS policy to encourage at least 50% of workers for the project come from local communities within the County of Kern.

It is anticipated, based on 2019 Jose data, that the project could generate an additional 1,240 jobs in the local economy, which could yield an additional $85.3 million in indirect and induced compensation and an estimated $275.8 million in indirect and induced sales on an annual basis.

The estimated value of the one-time and recurring payments to the County of Kern, through our approved Intergovernmental Agreement are estimated at nearly $220 million over the 20-years, which begins on commencement of operation. This

2-02

- General Fund Allocation $140,120,865
- Fire Fund Allocation $77,729,150

This project will substantially enhance public safety services in the southern part of our County:

The IGA will provide up to $13.3 million in **one-time** payments to:

- Build a joint Fire/Sheriff substation
- Purchase new 110-ft. ladder truck
- Purchase new Type-6 Wildland Fire vehicle
- Purchase 12 new, fully equipped Sheriff patrol vehicles
- Fund a Deputy Sheriff training academy

The IGA will provide recurring annual payments for the next 20 years to provide:

- Ongoing fire staffing at the joint substation (9 new positions)
- Ongoing sheriff's deputy staffing at the joint substation (13 new positions)
- Capital outlay for the replacement of fire/sheriff equipment at the joint substation
- Direct General Fund contribution based on a calculation of standard property tax formulas and a 6% Occupied Room Fee
- Gambling treatment program

Our county staff has reviewed the document for environmental impacts on our communities and with the Intergovernmental Agreement executed with the Tribe all impacts on law enforcement and fire safety facilities and staffing have been addressed.

Approval of this project in 2020, so that construction can begin, is vital to Kern County as we face the devastating effects of collapsed oil prices and the effects of COVID 19.

2-02
(Cont.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 22, 2020

Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Subject: Draft Environmental Impact Statement for the Tejon Indian Tribe Trust Acquisition and Casino Project, Kern County, California (EIS No. 20200121)

Dear Amy Dutschke:

The U.S. Environmental Protection Agency has reviewed the above-referenced document. We are providing comments pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. EPA is a cooperating agency on the project and provided scoping comments (September 3, 2015) and comments on the Administrative Draft EIS (September 19, 2019).

The Proposed Action would transfer approximately 306 acres of fee land into trust in Kern County, California. The Tejon Indian Tribe proposes to construct a casino resort on the trust property including a hotel, convention center, multipurpose event space, several restaurant facilities, parking facilities, a recreational vehicle park, fire and sheriff stations, and water infrastructure and wastewater treatment and disposal facilities. 3-01

In our comments submitted on the Administrative DEIS in September 2019, we expressed concerns regarding the proposal to develop the project in a floodplain at the Mettler site. Based on our review of the DEIS, we continue to have concerns regarding floodplain development. In addition to impacts to floodplain values, including reduced floodplain capacity, the location would require importing a large amount of fill to raise the site 2.5 feet to be sufficiently out of the floodplain. Trucking this large amount of fill would cause air quality impacts in an extreme ozone nonattainment area that could be avoided with selection of the Alternative B site. Locating critical facilities such as water and wastewater infrastructure in a floodplain is also potentially problematic. We request that the Final EIS contain additional information regarding consistency with relevant siting criteria for the location of the percolation pond in the floodplain, which the DEIS indicates would operate in wet weather as well as dry. 3-02 3-03 3-04

In our previous comments, we recommended the project include maximum recycling of treated wastewater since the groundwater basin is critically overdrafted. We appreciate the clarification in the DEIS that the casino resort will be plumbed to utilize recycled water for toilet flushing. We also commend the BIA and the Tribe for the mitigation that would fully offset groundwater impacts in the critically overdrafted groundwater basin, and commitments to avoid impacts to neighboring wells to be 3-05

determined via a groundwater study. We suggest keeping these mitigations in the final project for whichever site is chosen.

3-05 (Cont.)

Please see our attached detailed comments for more information and recommendations.

3-06

Effective October 22, 2018, the EPA no longer includes ratings in our comment letters. Information about this change and the EPA's continued roles and responsibilities in the review of federal actions can be found on our website at: https://www.epa.gov/nepa/epa-review-process-under-section-309-clean-air-act.

3-07

The EPA appreciates the opportunity to review this DEIS. When the FEIS is released for public review, please send one electronic copy to Karen Vitulano, the lead reviewer for this project, at vitulano.karen@epa.gov. If you have any questions, please contact me at (415) 947-4167, or contact Ms. Vitulano at 415-947-4178.

Sincerely,

JEAN PRIJATEL

Digitally signed by JEAN PRIJATEL
Date: 2020.07.22 14:43:57 -07'00'

Jean Prijatel
Manager, Environmental Review Branch

Enclosure: EPA's Detailed Comments

cc: Octavio Escobedo, Chairperson, Tejon Indian Tribe
Patia Siong, San Joaquin Air Pollution Control District
Craig M. Pope, County of Kern

EPA'S DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE TEJON INDIAN TRIBE TRUST ACQUISITION AND CASINO PROJECT, KERN COUNTY, CALIFORNIA, JULY 22, 2020

Impacts to Water Resources

Floodplain development

In our comments on the Administrative DEIS, the EPA cautioned against locating the project within a Special Flood Hazard Area subject to the 100-year flood (Mettler site). Floodplains provide several important ecosystem services including the storage of water during storm events which reduces flooding in downstream communities. The decline in floodplain functionality and ecosystem services can damage natural ecosystems, infrastructure and agricultural lands, the latter which could affect the project since an organic farm is identified as a potential future land use in the DEIS. Additionally, maintaining floodplain capacity is of increasing importance for adapting to changing precipitation patterns including projected increases in the frequency of wet weather extremes in the 21st century. 3-08

The project proposes to include a levee to protect the wastewater treatment plant and percolation pond and a retaining wall to protect the casino. These features would decrease the floodplain capacity of the site and the DEIS indicates that neighboring properties would experience increased flooding of 0.41 feet, while the highest elevation increase modeled onsite was 2.6 feet, which occurred on the south side of the casino building and resulted in a flood water depth of 3.3 feet (p. 3-15). We appreciate that the access routes from the on-site fire and sheriff station to the casino resort would be raised above the flood elevation for safety purposes during emergency situations, and all aboveground fuel storage tanks would be built to National Fire Protection Association standards and be above the floodplain in order to prevent accident release, consistent with our comment recommendations on the Administrative Draft EIS.

We remain concerned that the wastewater treatment plant and potable water system are proposed for location in a floodplain. The Federal Emergency Management Agency identifies water and wastewater treatment plants as critical facilities requiring special consideration since even a slight chance of flooding can pose too great a threat to the delivery of services offered by these facilities. According to FEMA, critical facilities should be located outside all high-risk flood hazard areas if possible.[1] The Maricopa Highway site in Alternative B is not located in a floodplain and is consistent with the guidance of Executive Order 11988; FEMA suggests rigorous alternative site evaluations and higher design standards for critical facilities. 3-09

> ***Recommendation:*** Consider selecting the Maricopa Highway site alternative since it is not located in a floodplain, is consistent with E.O. 11988, and would result in fewer environmental and health and safety impacts.

Wastewater effluent disposal

We appreciate that the wastewater effluent percolation pond has been resized to accommodate the maximum effluent generation rate, not the average rate, consistent with our earlier recommendations. We also recommended percolation testing to confirm the infiltration rate for the percolation pond location since the range identified for the Mettler site appears to be slower than the Kern County criteria cited in the document. The DEIS states that percolation testing will be conducted at the ultimate selected project site to confirm the final required percolation pond size, presumably after the Record of Decision. 3-10

[1] FEMA Fact Sheet "Critical Facilities and Higher Standards". Available: https://www.fema.gov/media-library-data/1436818953164-4f8f6fc191d26a924f67911c5eaa6848/FPM_1_Page_CriticalFacilities.pdf

The DEIS states that percolation of excess effluent would continue during rainfall and storm events throughout the wet weather season (App G, p. 3-9). The DEIS states that the stormwater detention basin would occupy approximately 6 acres of the water retention and wastewater reclamation area (p. 3-16). It is not clear whether this indicates that the stormwater would be mixed with the effluent in the same pond, nor is it clear how the percolation rate for the effluent would be affected during periods of rain.

3-10 (Cont.)

The mitigation measures for water resources states that the wastewater treatment plant would be in compliance with all permit requirements and regulations (p. 4-2). We are not aware of applicable regulations or permits for the onsite wastewater treatment plant located on tribal land as proposed in the EIS; therefore, it is not clear with which permits and regulations the treatment plant would comply. The DEIS references County of Kern standards in several places but it is not clear whether the project would be adopting these standards as part of the project description. The County's standards[2] for onsite wastewater systems include multiple siting criteria, in addition to percolation rates, which are appropriate factors to evaluate when assessing impacts, regardless of whether the standards are adopted by the project.

> ***Recommendations***: Identify the regulations and permits referred to in Water Resources Mitigation Measure B. Confirm in the Final EIS whether County of Kern standards will be adopted for the design and construction of the onsite wastewater treatment system and amend the project description as necessary to indicate this adoption. Because the project is proposed in a floodplain, we recommend that the Final EIS discuss the proposal's ability to conform with the minimum siting criteria for onsite wastewater treatment systems in the Kern County Onsite Systems Manual[3] in order to make this information available to decision-makers prior to site selection. Minimum siting criteria involve soil depth, vertical separation to ground water, ground slope, horizontal setbacks, and areas of flooding, in addition to percolation rates. For areas of flooding, we note that the County's siting criteria do not permit construction of an onsite wastewater treatment system in the floodplain unless measures are taken to minimize infiltration of floodwaters into the system and discharges from the system into the floodwater. Clarify in the Final EIS whether this can be achieved onsite and discuss the potential loss of percolation capacity during very rainy periods.

3-11

Groundwater impacts

The DEIS indicates that reclaimed water from the on-site WWTP would be used for casino resort toilet flushing and landscape irrigation, which would reduce the average water demand. We appreciate the commitment to this water conservation feature, along with commitments for low-water usage appliances and drought tolerant landscaping. We agree with the DEIS conclusion that because the Kern County Subbasin is considered a critically overdrafted basin, any increase in groundwater extraction is a significant impact. We commend the commitment to fully offset groundwater extraction associated with the selected project alternative (Mitigation Measure 2-H) by the transfer of surface water to other agricultural lands within the Kern County Subbasin that currently use groundwater for irrigation with required reduction in the other lands' groundwater pumping by at least the same amount; implementing a groundwater recharge project; and/or working with and compensating the County or local water district to implement a water conservation program and/or a conjunctive water use program.

3-12

[2] Kern County Onsite Systems Manual, June 2016. Available at https://kernpublichealth.com/wp-content/uploads/2017/07/KCEHD-Onsite-Systems-Manual.pdf

[3] See *Section 1.2 Siting Criteria and Site Evaluation* of the Kern County Onsite Systems Manual

***Recommendation*:** Retain the recommended mitigation measures for groundwater impacts in the Final EIS and Record of Decision. In the Final EIS, provide an update on which measure(s) are expected to be implemented.

3-12 (Cont.)

Drinking Water Wells

We appreciate the addition of mitigation measures 2E-2G which address our Administrative DEIS comments on development of an on-site drinking water system that would be classified as a public water system under the Safe Drinking Water Act. These mitigation measures commit the project to consulting with EPA Region 9's Tribal Drinking Water Office when establishing the well system and submitting baseline groundwater monitoring data to the EPA prior to public water usage. It also commits the project to: avoid impacts to the 15 active wells within a 1-mile radius of the Mettler Site or the 16 wells located within a 1-mile radius of the Maricopa Highway Site; avoid placement of wells or related infrastructure within the percolation pond's cone of influence; and conduct a groundwater study.

3-13

***Recommendation*:** Retain the mitigation measures identified above in the Final EIS and Record of Decision. For questions regarding establishment of the public drinking water system, please contact Karl Banks in our Tribal Drinking Water Office at (415) 972-3557 or banks.karl@epa.gov.

Air Quality and General Conformity

The Proposed Action is located in the 100-year floodplain and developing the Mettler site would require importing a large amount of soil to raise the site 2.5 feet above the existing ground level (p. 3-16). According to Appendix N of the DEIS, this would require 52,426 haul trips associated with material import to the site which is located in an extreme ozone nonattainment area. We note that Alternative B on the Maricopa Highway site would require just 797 haul trips since it is not located in a floodplain.

Table 3.4-3 indicates that, for the Proposed Action, the estimates of construction emissions of Nitrogen Oxides (NOx) for the first year of construction are 9.87 tons, which is just below the de minimis value of 10 tons per year. Since the predicted emissions are close to the de minimis threshold, we note that should any changes or refinements to the project occur later that would increase the total emissions to or above the de minimis level, a conformity determination would be required before the revision to the project action could be approved.[4]

3-14

The draft general conformity determination, contained in Appendix N, provides two possible methods to demonstrate conformity for the operations phase: offsetting emissions through the purchase of emission reduction credits (ERCs) or mitigating emissions through a voluntary emission reduction agreement (VERA) with the San Joaquin Valley Air Pollution Control District.

Recommendation: Ensure any project changes or refinement do not result in construction emissions that meet or exceed the NOx de minimis threshold of 10 tons per year. In the Final EIS/conformity determination, we recommend including a Memorandum of Understanding for a VERA and/or discuss whether the San Joaquin Valley Air Pollution Control District has identified ERCs for use on the project.

[4] See Question #34 at https://19january2017snapshot.epa.gov/sites/production/files/2016-03/documents/airport_qa.pdf

Mettler County Water District
1822 Stevens Drive
Mettler, CA 93313

July 24, 2020

DEIS Comments,Tejon Indian Tribe Casino Project

Mettler County Water District provides domestic water service to 50 connections within the approximate 65 acres that encompasses the District. The District is classified as an extremely disadvantaged community and most of the residents have lived in their homes 20 years or longer. Mettler provides water to its residents by Ground Water Wells, which is distributed to businesses on the East Side of Highway 99 and businesses and homes on the West side of Highway 99 at Highway 166 and then through the community to within 1/2 of a mile of Valpredo Avenue. Sewer is accumulated in resident/business owned septic tanks. Entry to Mettler is by way of 3 offramps from Highway 99 on the east by way of Copus Road or Valpredo Avenue and from the South on Highway 166. Interstate 5 is approximately 2 Miles West of Mettler. The proposed project is less than ¼ mile from the westerly boarder of the District and residences. The Mettler County Water District is a California Special District and the only governmental body located in Metter and is served by a 5-member elected board. 4-01

On behalf of the Mettler County Water District, I want to take this opportunity to express their comments on the above project and express the concerns of the District and residents. Unfortunately, the District has not been in discussion with the Tribe prior to this week due to lack of communication, verbally or written. Please consider the following comments and concerns:

- Potential water table fluctuations due to the volume of people, use, project size. Any water table variances could adversely affect water constituents, requiring remediation of contaminants, prior to providing to the distribution system and the District customers. Changes in nitrate levels are of great concern. 4-02
- Increased traffic from all roads accessed by Mettler residents. The increased exposure to auto accidents due to volume and drivers unfamiliar with foggy conditions. Increased traffic would potentially affect the District infrastructure, due to the age and proximity to the project. 4-03
- Increased noise from traffic and the project itself, due to the close proximity to Mettler 4-04
- Invasive sky lighting due to the size of the project and lighting conditions associated with this type of project and the proximity to Mettler. 4-05
- Crime and other negative components brought with the number of non-residents and type of project. Mettler's crime rate is currently minimal and there is no homeless population. 4-06

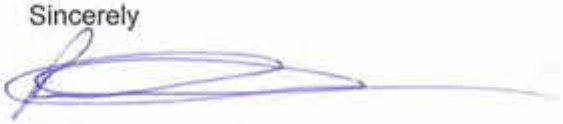
These are some of the main issues that will negatively affect the Mettler County Water District and surrounding residents. It is unfortunate that the Mettler County Water District was not on the contact list or provided the opportunity to meet with the Tribe or Project representatives for discussion or to provide information. 4-07

I will state that once the District was made aware of the looming comment period deadline last Friday, and provided contact names and phone numbers, I was able to speak to representatives of the Tejon Indian Tribe Proposed Fee-to-Trust Acquisition and Casino Resort Project. During those conversations, assurances were given that the Tribe wants to be a good neighbor and would like to meet with the District and work towards resolving the concerns voiced above. It is extremely important that those conversations begin immediately, therefore I will be contacting the Mettler County Water District and project representatives to schedule something early this week.

4-07
(Cont.)

Thank you for the opportunity to submit with comments and concerns regarding the Tejon Indian Tribe Proposed Fee-to-Trust Acquisition and Casino Resort Project.

Sincerely



Regina K Houchin
Secretary to the Board
Mailing Address:
PO Box 874
Buttonwillow, CA 93206
(661) 764-5273

Comment Letter 5

ARVIN-EDISON WATER STORAGE DISTRICT

July 27, 2020

Chad Broussard
Environmental Protection Specialist
Bureau of Indian Affairs
Via Electronic Mail: chad.broussard@bia.gov

Amy Dutschke, Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Re: Draft Environmental Impact Statement Comments - Tejon Indian Tribe Casino Project

DIRECTORS
Edwin A. Camp
President
Jeffrey G. Giumarra
Vice President
John C. Moore
Secretary/Treasurer
Derek J. Yurosek
Ronald R. Lehr
Dennis B. Johnston
Charles Fanucchi
Catalino M. Martinez
Kevin E. Pascoe

STAFF
Jeevan S. Muhar
Engineer-Manager
David A. Nixon
Deputy General Manager
Steven C. Collup
Director of Water Resources
Christopher P. Krauter
General Superintendent

Mr. Broussard:

This email provides comments by the Arvin-Edison Water Storage District (AEWSD) on the Tejon Indian Tribe Casino Draft Environmental Impact Statement (DEIS). AEWSD has been working directly with leadership at the Tejon Indian Tribe on the Casino Project (Project) and are appreciative of the efforts by the Tribe to address our concerns and to execute an *Agreement Between Arvin-Edison Water Storage District and the Tejon Indian Tribe (Agreement)*.

This *Agreement* establishes terms and conditions under which the Project and property in trust will operate as it pertains to AEWSD's water resources, finances, and facilities. Having the *Agreement* and meeting the conditions and requirements in the *Agreement*, is a key factor for the success of the Project and property in trust. 5-01

A copy of the *Agreement* is attached to this comment letter and we look forward to a long and mutually productive partnership with the Tejon Indian Tribe over the life of the Project.

Thank you for the opportunity to comment.

Sincerely,

Jeevan Muhar, P.E.
Engineer-Manager

Enc.

cc: Board of Directors
David A. Nixon, Deputy GM
Scott Kuney, Esq.
John Bezdek, Esq.

JSM:sj\AEWSD\Tejon Tribe Casino\Broussard Chad Tejon Indian Tribe Casino comment ltr 07.20.docx

FOR THE BENEFIT OF THE DISTRICT
RECORDING REQUESTED BY:

ARVIN-EDISON WATER STORAGE
DISTRICT, AS OFFICIAL BUSINESS.

WHEN RECORDED MAIL TO:

ARVIN-EDISON WATER STORAGE DISTRICT
Post Office Box 175
Arvin, California 93203-0175

AGREEMENT BETWEEN
ARVIN-EDISON WATER STORAGE DISTRICT
AND
TEJON INDIAN TRIBE

THIS AGREEMENT (this "Agreement"), is entered into on this 23rd day of July, 2020, and shall be effective upon the date the Property (as hereinafter defined) is taken into trust by the United States of America for the benefit of the TEJON INDIAN TRIBE, a federally-recognized Indian tribe, hereinafter referred to as "Water User," (the "Effective Date"). This Agreement is further entered into in pursuance of powers granted by the Water Storage District Law, Division 14 of the California Water Code, between ARVIN-EDISON WATER STORAGE DISTRICT, hereinafter referred to as "District", a California water storage district organized under the California Water Storage District Law, and Water User. District and Water User shall sometimes be referred to herein collectively as the "Parties" and individually as a "Party."

WITNESSETH, that:

EXPLANATORY RECITALS

WHEREAS, District has constructed and operates the Arvin-Edison Water Storage District Distribution System and related facilities to deliver water from the Federal Central Valley Project and other sources to landowners within the District; and

WHEREAS, District's manner and methods of water delivery are governed by the District's enabling statute, the California Water District Law (California Water Code § 34000 *et seq.*), the District's Rules and Regulations for Distribution of Water (as may be amended from time to time, the "Rules"), Contract No. 14-06-200-229AD with the United State Bureau of Reclamation for Project Water Service from the Friant Division of the CVP and for Facilities Repayment (the "Repayment Contract"), the District's standard form of Agreement for Agricultural Water Service, the Sustainable Groundwater Management Act (California Water Code § 10720 *et seq.*) ("SGMA"), and the Groundwater Sustainability Plan for the District (as may be amended from time to time, the "GSP") and other laws and regulations applicable to the District's water storage project; and

WHEREAS, Water User intends to develop and operate a resort hotel and casino project on land to be held in trust for Water User by the federal government, referred to in the Bureau of Indian Affairs draft Environmental Impact Statement for the resort hotel and casino as the "Trust Acquisition and Casino Project" (the "Project") in addition to tribal governmental and community facilities, continued agricultural needs, and other improvements resulting in urban water demands to be determined by Water User at a later date (the "Additional Uses"); and

WHEREAS the land on which Water User plans to construct the Project and Additional Uses (the "Property") consists of approximately 306 acres, is situated entirely within the boundaries of the District and what the Rules define as the District's "Surface Water Service Area" (the "SWSA"), and is subject to that certain Contract for Agricultural Water Service recorded in the Official Records of Kern County as Document No. 0201051529 (the "CAWS"); and

WHEREAS, the Project will rely solely on groundwater rather than surface water made available to the Property under the CAWS; and

WHEREAS, the CAWS is limited to delivery of water for agricultural use only, and the District is prepared to enter into a separate agreement of limited duration with Water User consistent with Section 2(i) of the CAWS as necessary and appropriate to accommodate the Additional Uses to the extent such Additional Uses constitute use for municipal, industrial and domestic purposes; and

WHEREAS, the Parties intend that the development and operation of the Property must maintain a "neutral to positive" water balance as detailed below; and

WHEREAS, Water User desires to assign some or all of its rights to use surface water under the CAWS to other landowners within the District, in exchange for Water User's ability to extract groundwater for the non-agricultural demands for the Property, which exchange will assist in the maintenance of "neutral to positive" groundwater levels in the vicinity of the Property; and

WHEREAS, Water User and the District desire to establish the terms and conditions under which Water User will operate the Property in a manner that is consistent with the District's efforts to effectively and responsibly manage the District's water resources, finances, and facilities.

NOW, THEREFORE, in consideration of the mutual promises and covenants and for other good and valuable consideration as set forth herein, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

1. ADMINISTRATION OF WATER SUPPLIES AVAILABLE UNDER THE CONTRACT FOR AGRICULTURAL WATER SERVICE

(a) The Parties shall coordinate on assignments from time to time of the surface water available to Water User under the CAWS to other landowners within the District that are eligible to receive surface water service from the District. Eligibility will be based on such factors as the District 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 Property will further the purpose of this Agreement (i) to effectively and responsibly manage the District's water resources, and (ii) to assist Water User in maintaining the "neutral to positive" groundwater levels in the vicinity of the Property. The Parties acknowledge that, after the Effective Date, the Project will require an initial assignment of approximately 80 acres of Water User's right, title and interest under the CAWS (the "Initial Assignment"). Future assignment(s) of remaining supplies under the CAWS will occur as necessary to accommodate the development of the Property to non-agricultural Additional Uses (the "Future Assignments").

(b) Simultaneously with the transfer of the Property from current owner to the United States of America, the Parties shall enter into an amendment to the CAWS to provide for the elimination of the lien provisions contained therein, to reference this Agreement, and to address other items as necessary to be consistent with this Agreement.

(c) As to the Initial Assignment, Water User shall, in consultation and cooperation with the District and at Water User's sole cost, construct any new pipelines or extensions of existing pipelines and related facilities and grant permanent easements, subject to the approval of the Bureau of Indian Affairs, as are necessary to convey surface water to the lands receiving the transferred water supplies. In no event shall Water User's obligations hereunder involve the construction of new or extended pipeline that exceeds 3,500 linear feet of pipe, and said pipe will not be required to exceed 24 inches of outside diameter.

(d) The Parties shall cooperate in good faith on Future Assignments regarding construction of any new pipelines or extensions thereof, including without limitation facilities and permanent easements related thereto. Water User will not be obligated to make a financial contribution to pipelines associated with Future Assignments.

(e) If Future Assignments do not occur due to conditions outside of District or Water User control, the Parties shall meet and confer to discuss and resolve any potential negative impacts to groundwater levels that might result.

(f) The District confirms that satisfaction of the terms and conditions of this Section 1 shall be deemed to fulfill the requirements under Section III.1.b of the Rules concerning exclusion of lands from the SWSA.

2. USE OF GROUNDWATER AND/OR SURFACE WATER

(a) Project and Additional Uses shall be administered in a manner consistent with the terms and conditions of this Agreement. Water User intends to use groundwater produced from the Basin as defined in the Bulletin 118 (Subbasin Number 5-022.14) and which is underlying the District for the construction and operation of the Property as an alternative to the use of surface water provided under the CAWS. Water User shall use no more than 734 acre-feet per year (2.4 acre-feet per acre) of groundwater and/or surface water on the Property. The Parties acknowledge that the restricted water use of 734 acre-feet per year (2.4 acre-feet per acre) is appropriate to assist in maintaining the "neutral to positive" water level objective for the Property based on the historical use of surface water on the Property, as adjusted pursuant to SGMA and the District's GSP.

(b) Water User agrees the maximum threshold of 734 acre-feet per year (2.4 acre-feet per acre) of water is inclusive of any and all water rights including but not limited to federal or state reserved rights.

(c) Groundwater produced pursuant to this Agreement shall be used only on the Property and only for the Project and the Additional Uses.

(d) To measure Water User's extraction of groundwater and confirm the Water User's compliance with Section 2(a) above, Water User shall install metering devices on all extraction wells constructed and operated for production of groundwater on the Property. District shall continue to measure Water User's use of surface water through its metered turnout facility. No later than March 31 of each year, Water User shall provide the District with a report of the production of groundwater from each well on the Property for the immediately preceding period of March 1 through the last day of February. Water User may not carry over to any following period any unused portion of the water (groundwater or surface water).

(e) Water User intends to install a water treatment facility for the Project and Additional Uses needs. Provided treated water is produced, used, and treated on the Property and metered into a groundwater recharge facility, such recharge shall result in a "credit" for purposes of calculating net groundwater use under this Agreement. The "credit" shall be equal to ninety-five percent (95%) of the meter reading to account for evaporation losses. Delivery of treated water not originating from wells on the Property shall not result in a "credit".

(f) If Water User's aggregate net use of groundwater plus any surface water on the Property exceeds 734 acre-feet per year (2.4 acre-feet per acre), then Water User shall, in Water User's sole and absolute discretion, do one or more of the following to correct for the overage (each, a "Corrective Action"):

a. Pay the District $5,000 per acre-foot of water used by Water User on the Property in excess of the 734 acre-feet per year limitation. The amount provided for herein shall be indexed to inflation and shall be adjusted on January 1st of each year starting on January 1, 2021, regardless of when the Term commences, using the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 for

December (CPI) of the calendar year immediately preceding the calendar year with respect to which the adjusted amount is being made;

b. Cause to be imported into the District, at Water User's sole cost, supplemental surface water, other than water available to the District under the Repayment Contract, in a volume equal to 110% of the overage (accounting for District conveyance and distribution system losses) for delivery to the District, which delivery must 1) generally occur in the period immediately following the period when Water User exceeded the limitation, 2) be subject to District approved schedule and 3) be subject to Water User's payment of District's standard turnout delivery charges plus a $36.09 per acre-foot O&M wheeling charge subject to CPI in 2(f)(a); or

c. At Water User's sole cost, dedicate a sufficient portion of the Property for recharge purposes and recharge flows in the period immediately following the period when Water User exceeded the limitation supplemental surface water, other than water available to the District under the Repayment Contract in a volume equal to 110% of the overage (accounting for District conveyance and distribution system losses). Such recharge shall occur 1) as soon as reasonably possible following the exceedance, 2) be subject to District approved schedule and 3) be subject to payment of District's standard turnout delivery charges plus a $36.09 per acre-foot O&M wheeling charge subject to CPI in 2(f)(a);

(g) As examples of these Corrective Actions, for purposes of illustration only, if the total water use on the Property is 800 acre-feet in a period of March 1 through the last day of February, then Water User must do one or a combination of the following:

a. Pay the District $330,000 ($5,000 x 66 acre-feet);

b. Purchase 73 acre-feet of supplemental water (66 acre-feet plus District conveyance and distribution losses) for importation into the District; or

c. At Water User's sole cost, dedicate recharge acreage depending on conveyance flowrates, site percolation rates, hydrologic cycles, etc., and recharge water supplies.

(h) Notwithstanding anything in the foregoing to the contrary, if Water User is unable for any reason to accomplish the necessary import or recharge within two (2) years following the period of exceedance, the District shall have the right but not the obligation to impose the remedy provided for in Section 2(f)(a).

(i) Notwithstanding anything in the foregoing to the contrary, Water User can engage in the importation and recharge of new surface water that is of a character described in Sections 2(f)(b) and 2(f)(c) above at any time during the Term, subject to District's schedule, available conveyance capacity and Water User's recharge capacity, as applicable. Any such water not specifically imported as a corrective action under Section 2(f) above will be available to Water User as a credit toward a future overage.

(j) District and Water User shall meet and confer to discuss other mutually agreeable means to reach Corrective Action.

(k) The character and quality of groundwater that is the subject of this Agreement may vary from time to time, and District does not guarantee the character and quality of such groundwater in any respect. Water User shall be responsible for undertaking such measures and developing such facilities as are necessary for making the groundwater usable for purposes of the Project and the Additional Uses.

3. PAYMENT OBLIGATIONS

(a) Upon invoicing by District, Water User shall pay to the District the District's annual General Administrative Service Charge and General Project Service Charge (together, the "Charges") in such amounts as the District may establish from time to time for all landowners in the District. For reference such Charges for 2020 are $114.57 per acre. The Charges provided for herein are authorized by Sections 43006 and 47180 of the California Water Code and are intended to be provisionally in lieu of assessments authorized under said Code.

(b) Payment of the foregoing Charges shall be made at such manner as provided in the Rules, as they may be amended from time to time.

(c) Water User shall comply with (1) any future increases to Charges in accordance with the procedures required by Proposition 218, and (2) any assessment or fees arising from implementation of SGMA or the District's GSP, both in the same manner as will be applicable to all other lands in the District.

(d) In lieu of a lien on the Property, Water User shall prepay to District for the total estimated surface water charges payable under the CAWS in advance by the 1st day of each water year (March 1) during each year of the Term. For reference such total water charges for the Property in 2020 were $169.00 per acre foot.

(e) In the event prepayment is exhausted prior to the year ending, Water User will not have access to surface water until an additional prepayment is made. In the event the actual amount of total surface water used by Water User in any year is less than the amount paid in advance by the Water User for such year, the District shall refund such overpayment within forty-five (45) days following the end of such year.

(f) Nothing contained herein shall limit the power of District to levy assessments from time to time, in accordance with benefits as provided by law and to collect such amounts as may be found necessary by District to meet its financial requirements.

(g) Water User's payment obligations set forth in this Section 3 shall be in addition to, and not exclusive of, Water User's payment obligations set forth in Section 2 above.

4. TERM OF AGREEMENT

This Agreement shall be effective on the Effective Date, and shall thereafter be effective for a (50) fifty-year term ("Term"). This Agreement shall be renewed on terms and conditions mutually agreeable to the Parties.

5. FACILITIES

(a) Water User shall comply with and recognize all existing District easements and rights-of-way within or near the boundaries of the Property.

(b) If necessary or required to do so due to the final Project and Additional Uses road alignments and paving, Water User may, upon approval from the District and at Water User's sole cost, relocate District turnouts, pipelines, valves, air vents or other above-ground appurtenances to avoid District operations and maintenance concerns.

(c) Water User plans to construct new groundwater extraction wells for domestic, municipal and other uses. To support the District's efforts to maintain consistency and compliance with SGMA and the District's GSP, Water User will assist the District in good faith regarding such compliance including cooperating in the monitoring, testing, and reporting of groundwater levels and groundwater quality.

6. LIMITED WAIVER OF WATER USER'S SOVEREIGN IMMUNITY

(a) As a federally recognized Indian tribe, Water User possesses sovereign immunity from unconsented suit and other legal proceedings. Water User hereby irrevocably waives its sovereign immunity and all defenses based thereon, with respect only to claims brought by the District, and no other person or entity, against Water User for the limited purpose of enforcing the terms of this Agreement. Water User also consents to the jurisdiction and venue of the court identified in Section 7(j) of this Agreement and the courts having appellate jurisdiction thereof.

(b) Water User's Executive Committee has received a resolution from Water User's General Council that authorizes (i) Water User to waive Water User's sovereign immunity as set forth in this Agreement, and (ii) Water User's Chairman to execute this Agreement on behalf of Water User, and such resolution is attached to this Agreement.

7. GENERAL PROVISIONS

(a) Each Party shall defend, indemnify and hold harmless the other Party from and against any and all third-party claims arising from or in connection with any act or omission of the indemnifying Party related to the indemnifying Party's exercise of its rights or obligations under this Agreement.

(b) Any waiver or claim of waiver at any time by either Party of its rights with respect to a default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any subsequent default or matter.

(c) This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. All understandings and agreements heretofore had between the Parties respecting this transaction, including without limitation, any offers, counteroffers or letters of intent, are merged in this Agreement, which fully and completely expresses the agreement of the Parties. There are no representations, warranties, covenants or agreements except as specifically and expressly set forth herein and in the exhibits annexed hereto.

(d) When a reference is made in this Agreement to sections, or exhibits, such reference shall be to a section of or exhibit to this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes," and "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." No provision of this Agreement shall be construed to require any person to take any action that would violate any applicable law, rule, or regulation.

(e) Neither this Agreement nor any of the rights, interests, or obligations set forth herein may be assigned by either Party without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns. This Agreement (including the documents and instruments referred to herein) is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

(f) No change in or addition to this Agreement or any part hereof shall be valid unless in writing and signed by both Parties.

(g) All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if served personally on the person to whom notice is to be given, (b) on the next business day after deposit with a recognized overnight delivery service, or (c) or on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To District: Arvin-Edison Water Storage District
Attn: Engineer-Manager
Post Office Box 175
20401 East Bear Mountain Boulevard
Arvin, California 93203-0175

To Water User: Tejon Indian Tribe
Attn: Chairperson
4941 David Road
Bakersfield, CA 93307

or at such other address as any Party may, by like notice, designate to the other Party in writing.

(h) Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provision of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

(i) Notwithstanding any choice of law rule to the contrary, this Agreement shall be governed and construed under and in accordance with the laws of the State of California.

(j) The venue for any action or proceeding filed by either Party to enforce the terms of this Agreement shall be in the Superior Court of the State of California in and for the County of Kern.

(k) The District and Water User shall each take further action, and execute and deliver whatever additional documents may be reasonably required, to effectuate the provisions of this Agreement.

(l) Where the terms of this Agreement provide for action to be based upon the opinion or determination of either party to this Agreement, whether or not stated to be conclusive, said

terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious or unreasonable opinions or determinations.

(m) The Parties do not intend this Agreement or any of its terms or conditions to run with the land, create a lien against or encumbrance upon the Property, or otherwise create any property interests in the Property.

DISTRICT

ARVIN-EDISON WATER STORAGE DISTRICT

By:_____
Name: Edwin A. Camp
Title: District Board President

WATER USER

TEJON INDIAN TRIBE

By:_____
Name: Octavio Escobedo III
Title: Tejon Tribe Chairman

Tejon Indian Tribe
Tribal Executive Committee
Resolution No. T2020-113

WHEREAS, the Tejon Indian Tribe ("Tribe") is a federally recognized Indian Tribe possessing inherent sovereign authority; and

WHEREAS, pursuant to the Tejon Indian Tribe Constitution and Bylaws, as amended April 21, 2013, and as further amended April 21, 2018 ("Constitution"), the Tribal Executive Committee ("Executive Committee") has the authority and power (i) to engage in any business or other economic transaction that is intended to further economic development of the Tribe; (ii) to represent the Tribe in negotiations with federal, state and local governments; (iii) to manage the property of the Tribe, including tribal lands and all other resources; and (iv) to promote and protect the health, education and general welfare of the members of the Tribe; and

WHEREAS, the Executive Committee believes that is in the best interest of the Tribe and its members to pursue a tribal governmental and gaming development project ("Project") on certain lands to be acquired and held in trust for the benefit of the Tribe ("Property") in order to further economic development of the Tribe and as a means to generate revenues that will serve to promote and protect the health, education and general welfare of the members of the Tribe; and

WHEREAS, the Executive Committee has been diligently pursuing the Project for over a decade and continues to do so; and

WHEREAS, the development and operation of the Project will require the use of certain water resources, including groundwater, at the Property; and

WHEREAS, the Arvin-Edison Water Storage District ("District") has constructed and operates the Arvin-Edison Water Storage District Distribution System and related facilities to deliver water from the Federal Central Valley Project and other sources to landowners within the District; and

WHEREAS, the Executive Committee and the District have negotiated and desire to enter into that certain "Agreement between Arvin-Edison Water Storage District and the Tejon Indian Tribe" ("Water Use Agreement") that will govern, among other things, the Tribe's use of groundwater and surface water at the Property; and

WHEREAS, the Property is situated entirely within the boundaries of the District and its Surface Water Service Area; and

P.O. Box 640 Arvin, CA 93203 | 4941 David Rd. Bakersfield, CA 93307 | (661) 834-8566

WHEREAS, the Constitution provides that any rights, powers or other expressions of sovereignty vested in the Tribe but not expressly addressed by the Constitution, are reserved to the Tribal General Council ("General Council"); and

WHEREAS, pursuant to the Constitution, the Executive Committee can exercise any other power which may be delegated to it by the General Council; and

WHEREAS, the Water Use Agreement contains a limited waiver of the Tribe's sovereign immunity in favor of the District; and

WHEREAS, the Constitution does not expressly delegate to the Executive Committee the authority and power to waive the Tribe's sovereign immunity; and

WHEREAS, the General Council has recognized that in order for the Tribe to pursue, develop and operate the Gaming Project, it will be necessary for the Tribe to enter into binding contracts with various private and public entities, including agreements with other governments and such other agreements as the Executive Committee deems necessary or desirable for the Project (collectively, "Project Agreements") and that such Project Agreements may contain waivers of the Tribe's sovereign immunity; and

WHEREAS, pursuant to General Council Resolution No. T2014-39, the General Council, by unanimous vote taken at a duly called, noted, and convened meeting held on August 23, 2014, at which a quorum was present, expressly (i) authorized the Project Agreements; (ii) delegated to the Executive Committee the authority and power to enter into the Project Agreements; and (iii) delegated to the Executive Committee the authority and power to waive the Tribe's sovereign immunity and other rights as may be set forth in the Project Agreements; and

WHEREAS, the Water Use Agreement is a Project Agreement that the Executive Committee believes is both necessary and desirable for the Project; and

WHEREAS, the Executive Committee further believes it is in the best interest of the Tribe and its members for the Tribe to enter into the Water Use Agreement and to waive the Tribe's sovereign immunity as set forth therein.

NOW, THEREFORE, LET IT BE RESOLVED THAT, the Executive Committee, pursuant to the powers granted to it by the Constitution and General Council Resolution No. T2014-39, hereby (i) approves the Water Use Agreement; (ii) authorizes the limited waiver of the Tribe's sovereign immunity as set forth therein; and (iii) authorizes the Chairman of the Tribe to execute the Water Use Agreement on behalf of the Tribe.

CERTIFICATION

I, the undersigned Chairman of the Tejon Indian Tribe, as the representative of the Tejon General Council, do hereby certify that the Tejon Executive Council met as a body of whom 5, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened, and held on the 23rd day of July, 2020, and that the foregoing Resolution was duly adopted by the affirmative vote of 5 members, with 0 opposing, and with 0 abstaining.

Dated this 23rd day of July, 2020,

Octavio Escobedo III, Tribal Chairman

ATTEST:

Thomas Gonzales, Vice Chairman

Tejon Indian Tribe
Tribal General Council
Resolution No. T2014-39

WHEREAS, the Tejon Indian Tribe ("Tribe") is a federally-recognized Indian Tribe possessing inherent sovereign authority;

WHEREAS, the Tejon Indian Tribe Constitution and Bylaws, as amended April 20, 2013 ("Constitution"), provides that any rights, powers or other expressions of sovereignty vested in the Tribe but not expressly addressed by the Constitution, are reserved to the Tribal General Council ("General Council");

WHEREAS, pursuant to the Constitution, the Tribal Executive Committee ("Executive Committee") has the authority and power to engage in any business or other economic transaction that is intended to further economic development of the Tribe;

WHEREAS, the Executive Committee also has the authority and power pursuant to the Constitution, to represent the Tribe in negotiations with private corporations, and to promote and protect the health, education and general welfare of the members of the Tribe;

WHEREAS, pursuant to the Constitution, the Executive Committee can exercise any other power which may be delegated to it by the General Council;

WHEREAS, the Executive Committee believes that it is in the best interest of the Tribe and its members to pursue a tribal governmental gaming development project ("Gaming Project") in order to further economic development of the Tribe and as a means to generate revenues that will serve to promote and protect the health, education and general welfare of the members of the Tribe;

WHEREAS, the Executive Committee has been diligently pursuing the Gaming Project for a number of years and continues to do so;

WHEREAS, in order for the Tribe to pursue, develop and operate the Gaming Project, it will be necessary for the Tribe to enter into binding contracts with various private and public entities, including contracts for the provision of development, financing and management services, agreements with other governments, and such other agreements as the Executive Committee deems necessary or desirable for the Gaming Project (collectively, "Project Agreements");

WHEREAS, in furtherance of the Gaming Project, the Executive Committee desires and intends for the Tribe to enter into and execute the following agreements and instruments (collectively, the "SCCR Transaction Documents"):

WHEREAS, the SCCR Transaction Documents contain or will contain, as the case may be, limited waivers of the Tribe's and its affiliates' sovereign immunity and other rights;

WHEREAS, it is likely that other Project Agreements will contain limited waivers of the Tribe's and its affiliates' sovereign immunity;

WHEREAS, the Constitution does not expressly delegate to the Executive Committee the authority and power to waive the Tribe's or its affiliates' sovereign immunity;

WHEREAS, the General Council believes it is in the best interest of the Tribe and its members for the Tribe to pursue and develop the Gaming Project and acknowledges that such waivers of sovereign immunity and other rights are necessary in connection therewith;

WHEREAS, the General Council also believes it is in the best interest of the Tribe and its members for the Tribe to enter into the SCCR Transaction Documents and the Project Agreements; and

WHEREAS, the General Council also believes that it is in the best interest of the Tribe and its members for the Executive Committee to have the authority and power to waive the Tribe's and its affiliates' sovereign immunity in agreements related to the Gaming Project, including without limitation, the SCCR Transaction Documents and other Project Agreements.

NOW, THEREFORE, LET IT BE RESOLVED THAT, the General Council hereby (i) approves the SCCR Transaction Documents and authorizes the other Project Agreements; (ii) delegates to the Tribal Executive Committee the authority and power to enter into the SCCR Transaction Documents and the other Project Agreements; and (iii) hereby waives the Tribe's sovereign immunity and other rights as set forth in the SCCR Transaction Documents and as

may be set forth in the other Project Agreements and, to the fullest extent permitted by the Constitution, delegates to the Tribal Executive Committee the authority and power to waive the Tribe's and its affiliates' sovereign immunity and other rights as set forth in the SCCR Transaction Documents and as may be set forth in the other Project Agreements.

CERTIFICATION

I, the undersigned, as Chairwoman of the Tejon Indian Tribe, certify that a meeting of the Tejon Tribal General Council was duly called, noted, convened and held on August 23, 2014, at which a quorum was present, and that the foregoing Resolution was duly adopted by a unanimous vote of such General Council.

Dated this 23rd day of August, 2014

Kathryn M. Morgan, Tribal Chairwoman

ATTEST:

Sandra Hernandez, Treasurer

California
Department of Conservation
Geologic Energy Management Division

Gavin Newsom, Governor
David Shabazian, Director
801 K Street, MS 18-05
Sacramento, CA 95814
T: (916) 445-9686

07/27/2020

Bureau of Indian Affairs (11394)
Chad Broussard
Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Room W–2820, Sacramento, CA 95825, USA
chad.broussard@bia.gov

Construction Site Well Review (CSWR) ID: 1011979

Assessor Parcel Number(s): 23820402, 23820404, 23820407, 23820414

Property Owner(s): Tejon Indian Tribe

Project Location Address: State Route 99, Maricopa Highway 166, Interstate 5, Mettler, California, 93381

Project Title: SCH #2015084002; Tejon Indian Tribe Trust Aquisition and Casino Project; Mettler, CA

Public Resources Code (PRC) § 3208.1 establishes well reabandonment responsibility when a previously plugged and abandoned well will be impacted by planned property development or construction activities. Local permitting agencies, property owners, and/or developers should be aware of, and fully understand, that significant and potentially dangerous issues may be associated with development near oil, gas, and geothermal wells.

The Division of Oil, Gas, and Geothermal Resources (Division) has received and reviewed the above referenced project dated 7/27/2020. To assist local permitting agencies, property owners, and developers in making wise land use decisions regarding potential development near oil, gas, or geothermal wells, the Division provides the following well evaluation.

The project is located in Kern County, within the boundaries of the following fields:

Our records indicate there are 0 known oil or gas wells located within the project boundary as identified in the application.

6-01

- Number of wells Not Abandoned to Current Division Requirements as Prescribed by Law and Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Not Abandoned to Current Division Requirements as Prescribed by Law and Not Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Abandoned to Current Division Requirements as Prescribed by Law and Projected to Be Built Over or Have Future Access Impeded by this project: 0
- Number of wells Abandoned to Current Division Requirements as Prescribed by Law and Not Projected to Be Built Over or Have Future Access Impeded by this project: 0

As indicated in PRC § 3106, the Division has statutory authority over the drilling, operation,

California
Department of Conservation
Geologic Energy Management Division

Gavin Newsom, Governor
David Shabazian, Director
801 K Street, MS 18-05
Sacramento, CA 95814
T: (916) 445-9686

maintenance, and abandonment of oil, gas, and geothermal wells, and attendant facilities, to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil, gas, and geothermal deposits; and damage to underground and surface waters suitable for irrigation or domestic purposes. In addition to the Division's authority to order work on wells pursuant to PRC §§ 3208.1 and 3224, it has authority to issue civil and criminal penalties under PRC §§ 3236, 3236.5, and 3359 for violations within the Division's jurisdictional authority. The Division does not regulate grading, excavations, or other land use issues.

If during development activities, any wells are encountered that were not part of this review, the property owner is expected to immediately notify the Division's construction site well review engineer in the Inland district office, and file for Division review an amended site plan with well casing diagrams. The District office will send a follow-up well evaluation letter to the property owner and local permitting agency.

6-01
(Cont.)

Should you have any questions, please contact me at (661) 326-6016 or via email at Victor.Medrano@conservation.ca.gov

Sincerely,

Rohit Sharma for

Chris Jones
Acting District Deputy

Comment Letter 7

DEPARTMENT OF TRANSPORTATION
DISTRICT 6 OFFICE
1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA 93778-2616
PHONE (559) 445-5421
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Making Conservation a California Way of Life

July 27, 2020

06-KER-99
TEJON CASINO
DRAFT ENVIRONMENTAL
IMPACT REPORT

SENT VIA EMAIL

Mr. Chad Broussad
Environmental Protection Specialist
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

Dear Mr. Broussad:

Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) for the Tejon Casino located in Kern County. The project proposes two (2) different sites but three alternatives (Alternative A1, Alternative A2, and Alternative B). The first site has two alternatives (Alternative A1 and Alternative A2) and is proposed on the west side of State Route (SR) 99, on the south side of Valpredo Avenue. The second site (Alternative B) is proposed on the southwest quadrant of Interstate 5 (I-5) and SR 166 (Maricopa Highway).

The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. The Local Development -Intergovernmental Review (LD-IGR) Program reviews land use projects and plans through the lenses of our mission and state planning priorities of infill, conservation, and travel-efficient development. To ensure a safe and efficient transportation system, we encourage early consultation and coordination with local jurisdictions and project proponents on all development projects that utilize the multimodal transportation network. 7-01

Caltrans provides the *following comments* consistent with the State's smart mobility goals that support a vibrant economy and sustainable communities:

1. In Alternative A1, access for project traffic would be from the north extension of S. Sabodan Street, north of SR 166. The remaining project traffic would access the site through the SR-99/Valpredo Avenue interchange and the S. Sabodan Street extension to Valpredo Avenue. 7-02

2. Access for Alternative A2 would remain the same as Alternative A1. However, facilities and parking are all reduced under Alternative A2 compared to Alternative A1.

3. In Alternative B, most of the traffic is assumed to access the site from the easterly driveway on SR 166. The remaining traffic is assumed to access the site at the westerly driveway on SR 166.

7-02 (Cont.)

4. The study determined 100 average daily trips per 1,000 square feet of gaming area is the standard for environmental assessment for Indian gaming projects. Internal trip capture rates were not estimated in this study; however, it is inferred that the uses complement each other to keep users on site for extended periods of time. Instead, lower rates than ITE were used to calculate trip generation for hotel daily rate which were lower than the typical rates from Trip Generation manual.

7-03

5. Introduction on page 1 in the Economic and Community Impact Analysis for the Tejon Indian Tribe Trust Acquisition and Casino EIS document, it states there is 73,300 square feet of food and beverage facilities in the proposed development. **Please confirm that all the casinos used in the study to estimate the Project's trip generation also included restaurant facilities since restaurant land use is not included separately in the ITE Trip Generation tables.**

7-04

6. Per the study, under Section 4.0 "Mitigation Measures", it states the Stevens Drive/Maricopa Highway Intersection will include a traffic signal and provide an exclusive West Bound (WB) left-turn lane on Maricopa Highway at Stevens Drive, or install a roundabout. Similarly, the Maricopa Highway/S. Sabodan Street suggests a traffic signal. **Please note that any new project that may require employing full control at state highway intersections has to consider all three intersection control strategies (i.e. to control all approaching traffic via use of signal, stop or yield control) and the supporting design configurations per the Intersection Control Evaluation (ICE) guidelines.**

7-05

7. For the Mettler Alternatives, due to increasing traffic volumes by the Casino project, the SR 166/I-5 Southbound and northbound ramp Intersections will need an exclusive WB left-turn lane on SR 166 and an exclusive East Bound (EB) left-turn lane on SR 166. **These should be provided as part of the opening-day improvements by the project proponent.** The SR 166 to northbound I-5 ramp merge will need an auxiliary lane on the northbound I-5 mainline at the merge. Caltrans analysis is an attempt to help the lead agency avoid any potential delays to the Projects' encroachment permit process. The DEIR

7-06

should identify, evaluate and propose mitigation for potential impacts to the State Highway System (SHS) that includes the entire width of the State right-of-way. To avoid delays to the encroachment permit process a thorough environmental analysis will be required for the proposed mitigation of impacts to the SHS and should be included in the environmental document. 7-06 (Cont.)

8. Caltrans recommends that Alternative B's site plan needs to match the correct right-of-way and confirm its proposed driveway from SR 166 does not produce conflicting movements with Chevron's driveway on the north side of SR 166. 7-07

9. Caltrans Transportation Concept Report states this segment of SR 166 is currently a 2-lane conventional highway with 100 feet of right of way. The ultimate transportation corridor within this segment is a 4-lane conventional highway within 146 feet of right of way. The right-of-way needed for the ultimate facility is 84 feet within the frontage of the project. To attain the ultimate right-of-way, **it is recommended that an Irrevocable Offer of Dedication (IOD) of approximately 23 feet be obtained.** 7-08

10. Caltrans recommends that the project proponent continue to work with the County to further implement improvements to reduce vehicles miles traveled and offer a variety of transportation modes for its employees. 7-09

11. Caltrans recommends the project provide charging stations for electric vehicles as part of the statewide efforts to reduce greenhouse emissions. 7-10

12. An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Engineering plans, calculations, specifications, and reports (documents) shall be stamped and signed by a licensed Engineer or Architect. Engineering documents for encroachment permit activity and work in the State right-of-way may be submitted using English Units. The Permit Department and the Environmental Planning Branch will review and approve the activity and work in the State right-of-way before an encroachment permit is issued. The Streets and Highways Code Section 670 provides Caltrans discretionary approval authority for projects that encroach on the State Highway System. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." Encroachment permits do not run with the land. A change of ownership requires a new permit application. Only the legal property owner or his/her authorized agent can pursue obtaining an encroachment permit. Please call the Caltrans 7-11

Encroachment Permit Office - District 6: 1352 W. Olive, Fresno, CA 93778, at (559) 488-4058. Please review the permit application checklist at: https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=TR0402&distpath=MAOTO&brapath=PERM

7-11 (Cont.)

If you have any other questions, please call Lupita Mendoza, Transportation Planner at (559) 488-4260.

Sincerely,

Lorena Mendibles

LORENA MENDIBLES, Chief
Transportation Planning – South

1

SIERRA CLUB

KERN-KAWEAH CHAPTER

P.O. Box 3357
Bakersfield, CA 93385
July 27, 2020

VIA ELECTRONIC MAIL

Chad Broussard, Environmental Protection Specialist
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way, Room W-2820
Sacramento, California 95825

Re: Tejon Indian Tribe Trust Acquisition and Indian Casino Project

Dear Planners:

The Sierra Club has reviewed available documents and offers a number of comments about the Bureau of Indian Affairs' (BIA) Draft Environmental Impact Statement (DEIS) for the proposed trust acquisition of approximately 306 acres for the Tejon Indian Tribe (Tribe) in an unincorporated area of Kern County. The Tribe proposes to develop approximately 80 acres of the Mettler Site with a casino resort and associated facilities, a fire and sheriff station, water infrastructure, and wastewater treatment and disposal facilities.

8-01

The Sierra Club is supportive of the Tejon Tribe's cause and, with reservations noted below, is supportive of this proposed casino project. Native American tribes have traditional bonds to the land and the environment. It is in the appreciation of this spirit and in the clear need to address environmental justice issues, a need often unmet by this DEIS, that we offer the following comments.

CLIMATE CRISIS - GREENHOUSE GAS EMISSIONS

Global warming is a serious issue, perhaps the most serious issue that we as a species will ever have to face. Dr. James Hansen, Director of the NASA Goddard Institute for Space Studies writes, "The stakes, for all life on the planet, surpass those of any previous crisis. The greatest danger is continued ignorance and denial, which could make tragic consequences unavoidable."

8-02

Many scientists say that the world is reaching tipping points beyond which global temperature increases will be irreversible (see http://www.reuters.com/article/2012/03/26/climate-thresholds-

idUSL6E8EQ4GA20120326?feedType=RSS&feedName=everything&virtualBrandChannel=11563).

Global surface CO2 concentrations are currently dangerously high at 414 ppm and rising. See https://www.esrl.noaa.gov/gmd/ccgg/trends/global.html#global.

The recent UN Emissions Gap Report (https://newclimate.org/2019/11/26/emissions-gap-report-2019/) says that even if all current unconditional commitments under the Paris Agreement are implemented, temperatures are expected to rise by 3.2°C, bringing even wider-ranging and more destructive climate impacts. Collective ambition must increase more than fivefold over current levels to deliver the cuts needed over the next decade for the 1.5°C goal.

In its report at http://www.ipcc.ch/report/sr15/, the Intergovernmental Panel on Climate Change (IPCC) offered a stark warning about the challenges facing humanity. Not only does the IPCC show that climate change is real and that its impacts are happening faster than anticipated, but it says that governments need to work towards a complete phase out of fossil fuel emissions. The IPCC makes it clear that emissions need to go to zero if the world is to keep global warming below the internationally agreed limit of 2DegC. For the best chance of avoiding severe levels of warming, governments will need to peak emissions, rapidly phase fossil fuels down to zero and transition to 100 percent renewable energy.

8-02 (Cont.)

A recent article (http://www.atmos-chem-phys-discuss.net/15/20059/2015/acpd-15-20059-2015.html) concludes that even a 2º C global warming will be "highly dangerous."

Pope Francis recently said that climate change has brought our world to "the limits of suicide".

In the California Global Warming Solutions Act of 2006, the State has declared, "Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California." This legislation requires statewide greenhouse gas (GHG) emissions to be reduced to 1990 levels by 2020.

The California Supreme Court has written, "the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties." California courts have ruled, "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." Requirements of NEPA.

NEPA serves the dual purpose of informing agency decision makers of the environmental effects of proposed major federal actions and ensuring that relevant information is made available to the public. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). NEPA is needed to ensure "important effects will not be overlooked or underestimated." Id. To comply with NEPA, agencies must take a "hard look" at environmental impacts before "taking substantive environmental protections off the books." *Cal. ex rel. Lockyer v. United States Dep't of Agric.*, 575 F.3d 999, 1014-16 (9th Cir. 2009) (agency violated NEPA by failing to analyze impacts of rescinding nationwide regulation). Taking a hard look means the agency must consider

8-03

"the direct, indirect, and cumulative" impacts of its proposed action, including "health" impacts. 40 C.F.R. § 1508.8; *see also* 40 C.F.R. §§ 1508.7, 1508.27(b)(7).

Agencies must consider impacts "as soon as it can reasonably be done." *Kern v. BLM*, 284 F.3d 1062, 1072 (9th Cir. 2002) (rejecting agency's attempt to defer analysis to later site-specific proposals);

8-03 (Cont.)

By now it is well-settled that "the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin., 538 F.3d 1172, 1217 (9th Cir. 2008) ("CBD v. NHTSA"). NEPA requires agencies to analyze the effects of its actions on global climate change, including "ecological,... economic, [and] social" impacts, "whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8(b). To adequately analyze the Project's incremental contribution to climate change, the agency must provide necessary contextual information about the cumulative and incremental environmental impacts of the of the project. Id.

The EIS's analysis of the Project's impact on climate change does not amount to the "hard look" required by NEPA. By way of background and context, the Draft EIS explains that: "Climate change would have global impacts, such as more erratic weather patterns, more frequent droughts, and a rising sea level, as well as regional and local impacts. For California, climate change has the potential to reduce the snow pack in mountainous regions, increase drought periods, and reduce water tables (CARB, 2007)." EIS at p. 3-29. This discussion is much to abbreviated and does not provide any meaningful context. The impacts of climate change on California are much more complex and numerous than this passage would have the reader believe. For example, sea-level rise, which is directly linked to climate change, will significantly affect California's coastline.

8-04

According to Table 3.4-5, the project will emit 116,674 metric tons per year of operational GHG emissions, largely as a result of motor vehicle and energy use.

Referring only to AB 32, the DEIS states, "Alternatives A1 and A2 would comply with applicable emission reduction strategies of the State. Therefore, with the implementation of BMPs, implementation of Alternatives A1 or A2 would not result in a significant adverse cumulative impact associated with climate change." The EIS violates NEPA by not considering any additional alternatives or mitigation measures in addition to those suggested by AB 32. Under NEPA, the agency is required to consider all potentially feasible alternatives and mitigation measures. The agency must "[r]igorously explore and objectively evaluate all reasonable alternatives." CBD v. NTHS, supra, 538 F.3d at 1217, citing 40 C.F.R. § 1502.14(a).(" NEPA requires that alternatives ... be given full and meaningful consideration," whether the agency prepares an EA or an EIS." Id. (internal citations omitted)

Here, the EIS does not consider a sufficiently broad range of alternatives as required by NEPA. For example, the EIS does not consider alternative sites that would reduce the emissions caused by vehicle trips by locating the casino closer to population centers. 8-04 (Cont.)

The EIS also violates NEPA because its discussion of mitigation measures is perfunctory and incomplete. "The requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of the Act and, more expressly, from CEQ's implementing regulations. Implicit in NEPA's demand that an agency prepare a detailed statement on "any adverse environmental effects which cannot be avoided should the proposal be implemented," *352 42 U.S.C. § 4332(C)(ii), is an understanding that the EIS will discuss the extent to which adverse effects can be avoided. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351–52 (1989). "[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the "action-forcing" function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects. Id., at 352.

As explained below, the DEIS's discussion of mitigation measures violates NEPA:

- The emission reduction targets set forth in AB 32 mark only a first and interim step toward avoiding dangerous climate change. Greenhouse gas emission reduction targets extend beyond 2020 and are much larger than the 2020 target; California Executive Order B-30-15 targets a GHG reduction of 40% below 1990 levels by 2030, codified in SB 32. California's SB 32 requires that statewide GHG emissions be reduced to 40% below 1990 levels by 2030. Executive Order S-3-05 sets an 80% reduction of GHG from 1990 levels in 2050 as a goal. The DEIS does not address SB 350. In order to achieve GHG emission reduction goals beyond 2020, the DEIS must require feasible mitigation measures that would reduce GHG emissions beyond the AB 32 goals 8-05

- The Best Management Practices (BMPs) listed on page 2-7, while worthy, will likely have minimal impact in reducing the projected 116,674 metric tons per year of operational GHG emissions. The DEIS is deficient in not having quantified the GHG reductions associated with these BMPs. The insignificance conclusion is not supported without this quantification.

- References above make it clear that the climate crisis must be taken seriously, that the world is reaching tipping points beyond which global temperature increases will be irreversible and destructive. California courts have ruled, "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." The projected 116,674 metric tons per year of operational GHG emissions must be considered significant and addressed. 8-06

The EIS violates NEPA because it does not impose any specific mitigation measures to reduce the cumulative impact of this project on climate change.

Given the seriousness of the global warming issue, the EIS must consider all potentially feasible mitigation measures, especially those measures that also address criteria 8-07

pollutant emissions as well. **There are a number of possible potential feasible mitigation measures, including**:

- In order to encourage the use of non-polluting electric vehicles, the EIS should consider requiring this project to include fast charge Level 3 **EV charging facilities** open and accessible to the public. This project is adjacent to Highway 99, and such fast charge facilities could reduce pollution by encouraging intercity EV travel. See http://www.wind-works.org/cms/index.php?id=84&tx_ttnews%5Btt_news%5D=3401&cHash=ae60686195244d8cb5d31cad14e4aa92.
- In order to encourage the use of non-polluting electric vehicles, the EIR should consider requiring parking lots for all facets of this project to include dedicated EV parking. The stalls should be covered with photovoltaic cells both o protect parked vehicles from heating, and to generate clean energy for the Casino.
- Green building measures should be used, including passive solar design and a requirement that buildings be at least 25% more energy efficient than Title 24 standards current when permits are pulled.
- Satisfy LEED Silver or higher standards on the commercial buildings.
- Design features to reduce Vehicle Miles Traveled (VMT). Such features might include adjacent bus stops and/or other public transportation and should include bicycle-friendly features.
- **A requirement that structures contain enough solar photovoltaics (PV) and solar water heating to significantly offset energy usage.** Every kilowatt of solar PV power offsets about a ton per year of global warming gasses that would have otherwise been produced by a fossil fuel-fired power plant (according to Environment California Research and Policy Center in a publication entitled *The Economics of Solar Homes in California*).
- A requirement that the buildings meet the State goal of Zero Net Energy.
- A requirement that the buildings be all-electric.
- A requirement for partial funding of an area energy efficiency program (perhaps in a nearby environmental justice community) creating equivalent reductions in carbon emissions.
- A requirement that the project partially subsidize public transportation in nearby communities in order to reduce area VMT.
- A condition that parking lots be covered and that parking lot roofs contain solar PV.
- A requirement that the developer retrofit solar PV on existing area buildings. Retrofitting existing area buildings with solar PV would effectively offset emissions associated with this project in much the same way as the SJVAPCD

8-07 (Cont.)

uses ISR funds to fund offsite projects to offset criteria pollutants associated with development projects.

- A requirement that the developer contribute funding for area solar PV incentives. Most solar PV incentive programs use funding rebates to encourage PV construction.
- A requirement that the developer contribute a GHG fee to the San Joaquin Valley Air Pollution Control District to be used to fund projects that would reduce GHG emissions elsewhere. This could be built into a criteria pollutant VERA as the Air District has suggested in the past.

In order for the public and the decision-makers to be able to decide on the efficacy of the measures on climate change and on the energy sector, specific requirements should be presented before the project is approved.

The DEIS is deficient in not having evaluated these potential mitigation measures in order to require sufficient mitigation to substantially reduce the impact of the project on the climate crisis.

ELECTRIC VEHICLE FAST-CHARGING STATIONS

8-07 (Cont.)

The SB 32 2017 Scoping Plan includes the following strategy points:

- Put 4.2 million zero-emission vehicles (ZEVs) on the roads.
- Increase ZEV buses, delivery and other trucks.
- Improve freight system efficiency by 25 percent by 2030.
- Maximize use of near-zero emission vehicles and equipment powered by renewable energy.
- Deploy over 100,000 zero-emission trucks and equipment by 2030.

As best we can tell, this project as proposed will not contain electric vehicle (EV) charging stations nor is it committed to any of these strategy points.

Emissions from fossil-fueled vehicles are major contributors to air pollution and global warming. EVs (particularly when fueled by solar photovoltaic systems) have no such emissions, and, in order to help address air pollution and global warming, EV use is becoming more popular and must be encouraged. EVs are on the road now and most certainly are a type of vehicle that will be and should be on the road between now and 2030. Lack of EV charging stations is a major obstacle to the growth of EV use, and, whether or not this project is to include a fueling and service station to serve the motoring public, **it must include a varied row of EV fast-charging stations.**

Not only is it state policy to encourage EV use, commercial unit owners will make money from EV drivers charging their vehicles there, gambling, shopping, and eating. It

only makes sense that this partly commercial project on heavily traveled Highway 99 would accommodate an increasing use of electric vehicles over the years.

The developer should design and construct the Project with the electrical infrastructure necessary to support trucks that run at least partially on electricity by installing the infrastructure needed for electric charging of trucks in all truck parking areas.

The project should include Level 2 EV charging stations in employee parking lots and in hotels if included in the project.

8-07 (Cont.)

AIR POLLUTION

The southern San Joaquin Valley fights it out every year with Los Angeles for having the worst air pollution in the nation. See the American Lung Association report at http://www.lung.org/our-initiatives/healthy-air/sota/city-rankings/states/california/. Since our extreme air pollution affects the health of many residents, the DEIS must thoroughly address the issue.

According to Table 3.4-4 of the DEIS, annual project operational emissions of NOx, ROG, and PM2.5 will be 112.74 tons per year, 18.52 tons per year, and 16.9 tons per year, respectively, exceeding thresholds for NOx and ROG. These emissions would be considered significant under California law (CEQA).

8-08

According to Table 3.14-2 of the DEIS, annual project growth-induced operational emissions of NOx, ROG, and PM2.5 will be 11.42 tons per year, 10.03 tons per year, and 1.21 tons per year, respectively, exceeding thresholds for NOx and ROG.

The DEIS recommends full mitigation of NOx and ROG operational emissions and growth-inducing air quality impacts via Emission Reduction Credit (ERC) purchase for NOx and ROG or, alternatively, the option to enter into a Voluntary Emission Reduction Agreement (VERA) with the SJVAPCD. Each of these options is problematic:

- These measures are only recommendations and not actual requirements. In order to assure compliance, the BIA must actually require these measures.
- This comes at a time when ERCs are under fire from a new extremely critical report by the California Air Resources Board on their use . See https://ww2.arb.ca.gov/our-work/programs/san-joaquin-valley-emission-reduction-credit-program-review. To assure that the ERCs are real, surplus, permanent, quantifiable, and enforceable, the DEIS must require methodology to assure that ERC use is transparent to the public. It is likely that ERC use will be frozen anyway until the Air District fixes the issues from the CARB report.
- The DEIS does not specifically require full mitigation for NOx and ROG if the Tribe chooses the VERA option. The DEIS must be clear that it requires mitigation for 112.74 tons per year of NOx operational emissions, 18.52 tons per year of ROG operational emissions, 11.42 tons per year of growth-induced NOx emissions, and 10.03 tons per year of growth-induced ROG emissions in total even if the VERA option is chosen.

8-09

8

- There are major questions about the effectiveness of the SJVAPCD's VERA program. For example, the District's most recent annual report indicates that it received almost $43 million from emission reduction agreements for the period from July 1, 2018 to June 30, 2019 but was only able to spend $12.5 million and encumber another $6.6 million. (See https://www.valleyair.org/ISR/Documents/2019-Annual-Report.pdf.) The failure to spend these funds mean air pollution from new projects is increasing unabated and air quality is worsening. The significant, ongoing disparity between new emissions authorized and inadequate emissions reductions to compensate underscores the need for the DEIS to analyze the effectiveness of project air pollution mitigation via a VERA. Are there enough pollution-reduction projects available to offset the authorized pollution from this and other area projects?
- The BIA should insist that fee monies collected pursuant to air pollution mitigation be spent on pollution-reducing projects in Kern County, instead of allowing the District to spend the money elsewhere.
- The BIA can and should prioritize air pollution mitigation spending on pollution-reducing projects that directly benefit those community members who experience disproportionate socioeconomic and pollution burdens.

8-09 (Cont.)

The San Joaquin Valley is in nonattainment status for both federal and state PM2.5 standards, and the Valley's air quality remains the worst in the country for PM2.5. There are many other area projects in the building or planning stage (for example, the Houghton and 99 Industrial Park project is proposed nearby; the proposed Grapevine Specific and Community Plan intends to develop mixed use commercial uses on approximately 8,010 acres). On page 3-70, the DEIS itself states, "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." The DEIS is deficient in not having investigated and addressed the cumulative impact of this and other area projects on PM2.5 pollution..

8-10

In a region with arguably the dirtiest air in the nation and where one in six children have asthma, it is critical that air pollution impacts be addressed locally. There are **feasible and effective methods to help reduce the local impact**:

- Operational NOx emissions are primarily related to mobile sources. The project should provide employment opportunities and regular bus routes between the project and local low-income and minority communities (for example, Southeast Bakersfield, Lamont, Arvin) to transport workers. The buses should be electric vehicles charged from the project's photovoltaic panels.
- A requirement that the project partially subsidize public transportation would help to reduce area VMT.

8-11

- The project could encourage workers to drive low-emission vehicles, perhaps furnishing electric vehicles with no emissions whatsoever with onsite charging stations.
- In order to encourage areawide use of non-polluting electric vehicles (EVs), the project should be required to incorporate Level 3 EV fast-charging stations open to the public and accessible to EV drivers on Highway 99.
- Many of the potential feasible GHG mitigation measures listed above also reduce criteria pollutants and should be considered as air pollution reduction measures.

8-11 (Cont.)

The DEIS is deficient in not having evaluated these and similar mitigation measures to reduce the impact of this project on air pollution.

Trees and other plants in increasing elevation are negatively impacted by mobile and stationary source pollution from motor vehicles and industry. Sequoia National Forest and Sequoia-Kings Canyon National Parks are the most polluted parks and forests in the federal system. This pollution is directly attributed to San Joaquin Valley activities. See, for example, http://www.elsevier.com/books/ozone-air-pollution-in-the-sierra-nevada-distribution-and-effects-on-forests-2/bytnerowicz/978-0-08-044193-1 or http://www.fs.fed.us/psw/southernsierrascience/speakers/pdf/cisneros.pdf. The DEIS is defective in that it has not examined and mitigated the cumulative air pollution effects of this project on forest resources.

8-12

FARMLAND CONVERSION

The majority the 306-acre proposed project site is classified as Prime Farmland and is currently zoned for agriculture. The proposed project would convert approximately 100 acres of farmland to non-agricultural use.

On page 3-70, the DEIS states, "A project would have significant adverse effects if the development would inhibit adjacent land uses, conflict with regional zoning or ordinances, or convert a significant amount of prime farmland as determined by the Farmland Conversion Impact Rating (FCIR)."

The DEIS then contradicts itself by arguing, "Although the development proposed under Alternatives A1 and A2 would conflict with the land use designation of the Mettler Site, it is generally compatible with the surrounding land uses along the I-5 corridor. Thus, the inconsistency of Alternatives A1 and A2 with existing zoning would not result in significant adverse land use effects." The project clearly conflicts with regional zoning, the project site being currently zoned for agriculture. The argument that it is OK to ignore current zoning because the project is "compatible with the surrounding land uses" is arbitrary, irrational and unjustified, as it undercuts basic planning protocol. This is especially true as the EIS admits that the Project would induce additional non-farmland growth in the project's vicinity, which in turn would be incompatible with farming in the project's vicinity. The project's adverse impact on farmland conversion must be considered significant, and feasible mitigation must be proposed.

8-13

The DEIS makes several other questionable arguments in an attempt to justify its lack of farmland conversion mitigation.

- The DEIS argues that some farmlands must be taken out of production in the name of groundwater sustainability. While it may eventually come to that, there is no current plan to take specific farmlands out of production. Moreover, any such fallowing of farmland would be done according to a specific plan with the goal of maximizing water conservation and minimizing impact on farming. There is no reason to believe that loss of farmland in the project's vicinity would achieve these goals.. The DEIS does not justify taking the proposed project lands out of production on that basis.
- The proposed project site has an FCIR rating of 189, well above the FCIR lower threshold of 160. The DEIS argues that there are other lands with higher FCIR scores than this property, and it concludes that it is therefore justified to take this land out of agricultural production with no mitigation. If this reasoning were taken seriously, it is likely that only the few farmland acres with the absolute highest FCIR score would remain in production, clearly absurd. This argument is arbitrary and capricious.

8-13 (Cont.)

The project's adverse cumulative impact on farmland conversion must be considered significant, and feasible mitigation must be proposed.

Kern County routinely requires partial mitigation for significant farmland conversion. For example, the nearby proposed Houghton and 99 Industrial Park project is required to partially mitigate for the conversion of 314.30 acres of prime farmland to urban use. One feasible mitigation measure would require purchase of agricultural conservation easements to preserve agricultural lands elsewhere. Such conservation easements should be held by an accredited land trust, should be held in perpetuity, should include an endowment to pay for future monitoring and enforcement expenses, should require qualifying mitigation land to be of equal quality and under somewhat similar development pressure, and should require mitigation land to be local, if not in Kern County at least in the southern San Joaquin Valley.

BIOLOGICAL RESOURCES

Many sensitive and special status species have occurred historically in the vicinity of the project site. Many species such as birds of prey and the endangered San Joaquin Valley kit fox make a living along the margins of farmlands.

The DEIS neglects discussing the project's potential impact on the Swainson's hawk. There is at least one known Swainson's hawk nest within eighteen miles of this project. Kern County holds an easement for Swainson's hawk foraging habitat on agricultural land at Sandrini and South Edison Roads 6.8 miles from this project. The EIR must discuss whether the Project would have an impact on these areas known to provide habitat for Swainson's hawk. The EIR fails to provide needed information, such as whether there are large trees and utility poles adjacent to the proposed project that could provide suitable perching or nesting locations for the Swainson's hawk? Does the

8-14

project site contain suitable foraging habitat for the species? If so, the project should be required to plant trees that could serve as Swainson's hawk nesting sites, and the project should be required to purchase conservation easements on nearby Swainson's hawk foraging habitat.

The DEIS states, "The Mettler Site may provide habitat for four special-status species: blunt-nosed leopard lizard (*Gambelia sila*), Tipton kangaroo rat (*Dipodomys nitratoides*), San Joaquin kit fox (*Vulpes macrotis mutica*), and burrowing owl (*Athene cunicularia*)."

Loss of habitat is a major reason for species decline. While many of these species may have been driven out of the project site by mowing and disking operations, some of the native plant species should be reintroduced by replanting them in project open space areas. In addition, landscaping should include drought-tolerant and/or native plants.

8-14 (Cont.)

According to the publication *Conservation Strategies for San Joaquin Kit Foxes in Urban Environments* by Brian Cypher, Christine Van Horn Job, and Scott Phillips at http://esrp.csustan.edu/publications/pdf/cypher_etal_2012_urban_kitfox_conservation_esrp.pdf, "To the extent practical and possible, urban planners could design new developments in a manner that facilitates use by kit foxes." This project should be designed with urban kit fox conservation measures in mind, perhaps including artificial kit fox dens and movement corridors as suggested in the above document.

WATER

The DEIS must include verification of sufficient water supplies for the future and should discuss the environmental impacts of supplying future water to this project. In the Vineyard Area Citizens et al. vs County of Rancho Cordova et al. decision, the California Supreme Court stated, "We conclude that while the EIR adequately informed decision makers and the public of the County's plan for near-term provision of water to the development, it failed to do so as to the long-term provision and hence failed to disclose the impacts of providing the necessary supplies in the long term. While the EIR identifies the intended water sources in general terms, it does not clearly and coherently explain, using material properly stated or incorporated in the EIR, how the long-term demand is likely to be met with those sources, the environmental impacts of exploiting those sources, and how those impacts are to be mitigated."

8-15

In the context of this decision, a number of specific questions arise:

- Will groundwater be sufficient in the long term for the projected growth?
- What effect will increased groundwater pumping have on groundwater levels and on water quality? How will potential lowering of groundwater levels there affect nearby agricultural wells?
- What are the long-term competing uses for this groundwater, for the agricultural water, and for the recharge water?
- Are there any alternative available long-term water supplies for the project?
- What uncertainties are associated with long-term groundwater or alternative water supplies?

- What are the environmental impacts associated with securing and delivering these supplies? For example, what is the impact of water diversions on endangered species?
- What mitigation is feasible for these environmental impacts?

The DEIS is deficient in not effectively resolving these issues.

The DESI does not provide an adequate answer to these questions and thus fails to adequately analyze potential impacts on groundwater wells. Appendix G states the impact on Mettler County Water District (MCWD) wells would be insignificant, but this contention is not based on any analysis. Moreover, the DEIS fails to identify other domestic water wells in the vicinity of the different alternatives that could be affected by groundwater extraction needed to supply the Project.

8-15 (Cont.)

The DEIS falsely claims the Project would result in overall reduction in water use compared to past agricultural use of proposed parcels. See App. G at 2-8. This analysis and conclusion, however, are patently misleading because the Project's water use is not comparable to the water used by past agricultural uses of the parcels. This is because agricultural water is supplied by local water storage districts, which do not use potable groundwater for farming. The Casino, on the other hand, would rely on potable groundwater which is in short supply in Kern County. Accordingly, the DEIS' s discussion of the Project's impact on groundwater is false and misleading.

While the DEIS does eventually get around to admitting that the Project would result in a net increase in groundwater extraction, which it admits would result in a significant impact because the Kern is in a state of critical overdraft. As such, and as the DEIS admits, the impact on the basin must be fully mitigated. Unfortunately, the proposed mitigation is toothless and uncertain and does not meet the requirements of NEPA.

Water Resources mitigation measure F provides that the "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 1-mile radius of the Mettler or Maricopa Highway Sites while optimizing groundwater usage onsite, such as avoiding the percolation pond's cone of influence. A groundwater study shall be conducted in order to achieve this objective." This mitigation is inconsistent with, and therefore contradicts, the DEIS' analysis of the Project's on neighboring wells. Appendix claims the Project would have an insignificant impact on MCWD wells which are about 3000 feet away from both alternative sites. This mitigation measure, however, suggest the Project wells could affect wells as far as 1 mile away. Moreover, this mitigation measure supports Sierra Club's argument, above, that the Project could affect other nearby private wells that do not belong to MCWD

8-16

Mitigation Measure H is intended to "fully offset groundwater extraction associated with the selected project alternatives. The DEIS, however, fails to adequately analyze these alternatives to establish that compliance with any of these measures would "fully offset groundwater extractions ..."

1. Amend the existing surface water contract for agricultural irrigation water with the appropriate water district (Arvin-Edison Water Storage District for the Mettler Site or Wheeler Ridge- Maricopa Water Storage District for the Maricopa Site) to allow the transfer of surface water to other agricultural lands within the Kern County Subbasin that currently uses groundwater for irrigation. As a condition of the agreement, the agricultural land receiving the surface water would be required to reduce groundwater pumping by at least the same amount as the surface water they are receiving.

The DEIS does not include any discussion of whether this proposed measure is feasible. It does not, for example, establish that additional surface water is available for transfer to Kern Basin. Accordingly, the feasibility of this measure is not established.

2. Implement a groundwater recharge project, such as constructing a basin to recharge water from the selected property's existing surface water contract.

Similarly, the DEIS does not establish whether this measure is feasible. There is no discussion, for example, whether this measure is cost-effective, or otherwise establish whether the construction of such a basin is feasible or effective.

8-16 (Cont.)

3. Work with and compensate the County or local water district to implement a water conservation program and/or a conjunctive water use program. The program shall (1) assess existing and potential sources of reclaimed wastewater within Kern County Subbasin, and determine potential points of use for the reclaimed wastewater, and/or (2) supplement the County's or local water district's existing water conservation programs to identify and implement additional conservation measures within Kern County Subbasin.

This mitigation measure is the most problematic of the three. The term "work with" and "compensate" are ambiguous and there is no discussion to establish any meaningful and discernable financial commitment. This measure, moreover, has no performance standards or other mechanism to ensure any conservation program or conjunctive-use program for this project would be effective in "fully offsetting" the project's groundwater extractions.

Flooding Impacts

The DEIS fails to adequately analyze the potential impacts of flooding on the facility and WWTP. The DEIS states:" The on-site water treatment plant and WWTP and associated facilities would be raised a minimum of 2.5 feet above ground level, be enclosed by a 2 to 4-foot flood control
levee, and have flood safety features to prevent accidental wastewater release via infiltration of flood water into the WWTP system,

8-17

14

The DEIS discussion of potential flooding issues is inadequate because the DEIS does not provide any analysis of whether the 2.5-foot height of the WWTP is sufficient to prevent a catastrophic release of untreated sewer in the event of flooding. The DEIS does not explain whether the proposed levee and the added height of the WWTP facilities would adequately mitigate the flooding impact in the event of a 100- or 500-year flood event. It should be noted that as a result of climate change, California will continue to experience bigger storms such that the frequency and size of storms would continue to increase. Accordingly, adequate flood protection mitigation is more important than ever.

Perfunctory or conclusory discussion of mitigation measures does not pass muster under NEPA. See, Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372 (9th Cir. 1998). Such measures do not satisfy the "hard look" required by NEPA.

8-17 (Cont.)

Please place the Sierra Club on the distribution list for the Tejon Indian Tribe Trust Acquisition and Indian Casino Project to receive any noticing of meetings, hearings, availability of documents, and to receive the environmental documents. We prefer email communications and electronic formatting of documents. Thank you for your consideration and for the opportunity to comment.

8-18

Sincerely,

Gordon L. Nipp

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"Citizens making a difference"

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July 27, 2020

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Re: DEIS Comments, Tejon Indian Tribe Casino Project

Dear Ms. Dutchke and Mr. Broussard:

Thank you for the opportunity to comment on the Bureau of Indian Affairs' (BIA) Draft Environmental Impact Statement (DEIS) for the Tejon Indian Tribe Trust Acquisition and Casino Project.

The three Proposed Actions involved in this case consist of the transfer of an approximately 306-acre property (Mettler Site) from fee to federal trust status for the benefit of the Tejon Tribe, issuing a Secretarial Determination, also known as a two-part determination, to determine whether the Tribe can conduct gaming on the Mettler Site, and the approval of a management contract by the National Indian Gaming Commission (NIGC). The Tribe proposes to develop approximately 80 acres of the Mettler Site with a casino resort and associated facilities, a fire and sheriff station, water infrastructure, and wastewater treatment and disposal facilities (Proposed Project). The casino would be managed by a professional management company on behalf of the Tribe pursuant to the terms of a management contract to be approved by the NIGC. For the reasons discussed in these comments, the DEIS is deficient in numerous respects, and we accordingly ask that the Bureau of Indian Affairs (BIA) prepare a Supplemental Environmental Impact Statement (SEIS) for this project.

9-01

A. Overview of Deficiencies

The National Environmental Policy Act (NEPA) requires the BIA to take a "hard look" at the environmental issues related to the Proposed Project and engage the public during BIA's decision-making process. The Indian Reorganization Act (IRA) and the BIA's own implementing regulations require BIA to consider community impacts from fee-to-trust applications and to analyze community impacts through the NEPA process before taking land into trust.

The Indian Gaming Regulatory Act (IGRA) and the implementing regulations require the Secretary, "after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, [to make a determination] that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination." 25 U.S.C. 22719(b)(1)(A). Although BIA has not yet sought comments for purposes of the two-part determination, that process is also built on the DEIS. 9-02

This DEIS contains many flaws, inaccuracies, and ambiguities regarding the Proposed Project's environmental and land use impacts, its alternatives, and impacts on the surrounding community. Moreover, the information is presented in a way that is not only atypical for any EIS, it appears designed to make understanding of the Proposed Project's environmental impacts more difficult and less accessible. As currently drafted, the document is deficient and an SEIS is required.

1. The DEIS ignores the current public health crisis and the associated economic fallout.

This year, there has been a world-wide public health crisis from the ongoing COVID-19 pandemic. Many experts believe that COVID-19 will be endemic for the foreseeable future. Because the DEIS ignores this issue entirely, it is inadequate and must be supplemented.

There are several aspects to this issue that the DEIS must address. First, BIA should have addressed the general public health and safety consequences to the local community and to casino employees and customers posed by concentrating a large number of people in an indoor facility. Indoor entertainment venues are increasingly identified as transmission "hotspots" tied to local outbreaks. The establishment of such a venue poses a clear risk to the surrounding community—a risk that the DEIS entirely fails to evaluate. The public health and safety concerns posed by such a venue raise other issues, as well. For example, social distancing requirements could substantially reduce the functional capacity of the proposed casino, requiring a much larger development to produce the same economic benefit to the Tribe. A larger development would, in turn, entail greater impacts. Alternatively, the economic benefit of the casino may not be realized because ongoing public health concerns are likely to result in reduced attendance. Even if the pandemic were to end in the next six months, the public health issues this pandemic has brought to the fore are not going to go away.[1] BIA's failure to address COVID-19 or to discuss any potential mitigation for future outbreaks not only fails to satisfy NEPA, it is fundamentally irresponsible. 9-03

[1] https://www.businessinsider.com/epidemiologists-on-chances-of-future-coronavirus-outbreak-2020-3

Second, COVID-19 has had profound impact on community health. The World Health Organization has found that health services have been partially or completely disrupted in many countries, with more than half surveyed reporting partially or completely disrupted services for hypertension treatment; 49% for treatment for diabetes and diabetes-related complications; 42% for cancer treatment, and 31% for cardiovascular emergencies.[2] The same is true in California. In mid-March, Governor Newsom announced a state-wide, shelter-in-place order. He also requested that hospitals increase their inpatient bed supply from approximately 80,000 to 130,000. But as COVID-19 containment efforts took hold, patient volume fell precipitously as hospitals discontinued elective and non-urgent care. Outpatient services—which represent about 40% of total California hospital volume—decreased by more than 50% in the 60-day period after the state-wide shelter-in-place order went into effect.[3] These developments are expected to have long-term economic impacts on hospitals and public health services, with social services facing substantial reductions. The DEIS remarkably does not address any of these pressing public health issues.

Nor does it address the economic impacts of COVID-19, which have been extensive. In May, California estimated a drop in anticipated revenue of $41 billion and over $10 billion in new coronavirus-related costs to the government. Unemployment in the State has grown from 350,000 receiving services in March to 2.9 million in July.[4] Such extensive unemployment will obviously affect the gaming market. The facility's primary gaming market is from population centers in Southern and Central California.[5] But unemployment in Los Angeles County has grown to over 20% and Kern County is now at 18%.[6]

9-03 (Cont.)

The DEIS says nothing about these issues or the possibility that the gaming market is likely to change in the near term. For example, the massive growth in online gaming is likely to affect the anticipated gaming revenues at brick and mortar facilities. In 2019, the significant increase in overall gaming profits in the United States was driven predominantly by the +13.9% growth in console game revenues.[7] In 2020, the global online gambling market is expected to grow from $58.9 billion in to $66.7 billion at a compound annual growth rate (CAGR) of 13.2%, largely because a significant portion of the population is confined due to COVID.[8] The market is then expected to reach $92.9 billion in 2023 at a CAGR of 11.64%—numbers which likely will result in declining revenues at brick and mortar facilities.[9] Nothing in the EIS addresses the economic consequences of the health crisis, including how long recovery might take or when it will even begin. At a minimum, BIA should have considered this massive public health and economic crisis the country is facing.

Fourth, the pandemic has highlighted another issue that should be addressed in the DEIS—the public risks associated with inconsistent public health policies within the same geographic area.

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[2] https://www.who.int/news-room/detail/01-06-2020-covid-19-significantly-impacts-health-services-for-noncommunicable-diseases
[3] https://www.chcf.org/wp-content/uploads/2020/06/FinancialImpactCOVID19CAHospitals.pdf
[4] https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/unemployment/
[5] DEIS, Appendix I, at 10.
[6] https://edd.ca.gov/newsroom/unemployment-june-2020.htm
[7] https://goldencasinonews.com/blog/2019/12/09/top-3-gaming-markets-hit-92-billion-revenue-in-2019/
[8] https://www.prnewswire.com/news-releases/tbrc-report-insights-free-time-due-to-coronavirus-lockdown-is-increasing-the-demand-for-online-gambling-301079346.html
[9] https://linchpinseo.com/trends-in-the-gambling-casino-industry/

California gaming operators have been very hard hit by COVID-related health policies. All 66 state-regulated card rooms voluntarily closed in mid-March. Many cardrooms briefly reopened in mid-June, only to be ordered by Governor Newsom to cease indoor operations in 19 counties in July. The closures have obviously adversely impacted the card rooms and their employees. And because the card rooms are subject to taxation, the detrimental impact of card room closures has extended beyond the operators and employees to the host communities. Despite these widespread impacts, the closures have been deemed essential to protecting public health.

Tribes have maintained, however, that they are not subject to State public health mandates, and the Governor has agreed.[10] Thus, while tribal casinos closed in mid- to late-March, they reopened over the objections of the Governor and have continued to operate, despite the Governor's efforts to reduce spread by ordering an immediate halt to all indoor activities at restaurants, bars, entertainment venues, zoos, and museums following a 20% spike in new COVID cases. As of July 23, California has 413,576 total cases and 7,870 deaths related to COVID-19. The continued operation of tribal casinos is hampering the State's efforts to protect public health.

9-03 (Cont.)

The inability of the State to implement public health measures that are consistent state-wide is directly relevant to the Secretary's analysis. The relevant test in this case is whether the Proposed Project "would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community." 25 U.S.C. § 2719 (b)(1)(A). The Governor must also concur in the Secretary's determination. *Id.* There is no way for the Secretary to determine that the Proposed Project is in the best interest of the Tribe or that it would not be detrimental to the surrounding community, in light of COVID-19 and the possibility of future pandemics.

2. BIA's scoping for the Proposed Project was out-dated.

Apart from its failure to address COVID-19, BIA's scoping for the Proposed Project was outdated. On April 4, 2019, Stand Up requested that BIA re-initiate scoping due to the long lapse between the Notice of Intent and the DEIS. BIA published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Proposed Project on August 13, 2015. It did not complete a scoping report for the Proposed Project until February 2019—three and a half years later. The original schedule called for a DEIS to be issued within six to eight months of the scoping hearing—more than four years ago.

9-04

The information BIA obtained during scoping in 2015 was stale by the time BIA issued its scoping report in 2019. Between 2015 and the date of the DEIS, new residential projects were approved and others formally proposed. Economic development along the I-5 corridor expanded. Groundwater management evolved as implementation deadlines in California's Sustainable Groundwater Management Act passed. BIA should have updated its scoping report to ensure that the public could have raised concerns related to the Propose Project in light of new developments.

3. BIA's selection of AES and its lack of oversight over the process renders the EIS inadequate.

[10] There is substantial controversy regarding the Governor's authority to close tribal casinos. *See* https://kmph.com/news/local/businesses-on-tribal-lands-operating-while-other-california-businesses-close.

Stand Up has significant concerns regarding the impartiality and objectivity of the environmental contractor, and therefore the reliability of the DEIS. The environmental contractor that prepared the EIS in this case is the same contractor that is used for virtually all gaming-related trust acquisitions and many other tribal projects— Analytical Environmental Services ("AES"). AES has been repeatedly accused of bias and producing sub-standard EISs. Other federal agencies do not use the same contractor for every project, as it creates the appearance of impropriety and can ultimately undermine the integrity of the NEPA review process, as the product tends to be very similar from one project to another. In the case of AES's EISs, there is, in fact, a remarkable similarity between documents. Not only do the documents look startlingly similar, AES has apparently never concluded that a project will have detrimental effects, based on Congressional questioning.[11]

In fact, AES identifies scores of tribes as clients, creating a conflict of interest, and if AES is listing *projects* that it has worked on, it clearly seems to misperceive who, in fact, is its client. Under federal law, it is the *agency* who is the client, not the tribe. The purpose of NEPA is to ensure informed and *objective* decision-making by federal agencies, which using the same environmental contractor for every project thwarts. Authorship of an EIS by a biased party —can prevent the fair and impartial evaluation required by NEPA. Indeed, AES has been alleged to have a "revolving door" with BIA where employees of BIA and AES have switched jobs and has a history of conflict of interest complaints.[12]

9-05

The concern regarding conflicts of interest is heightened because AES is paid directly by the Tribe, or the Tribe's gaming investors, rather than BIA. BIA must therefore disclose to the public the financial arrangement by which AES' services have been procured and the process by which AES was selected as the environmental contractor.

Most concerning, however, is the evidence that AES engages in direct back channel communications with tribal clients and their representatives on the substance of EISs—communications which are not included in BIA's administrative record. These communications include the exchange of drafts of EIS documents, allowing tribes and their representatives to effectively ghost write the EIS for their own projects. BIA does not regularly include these communications in the administrative record, nor produce them in response to FOIA requests, but evidence of this practice can be found in various administrative records for different projects. BIA must ensure that it is properly overseeing AES and must disclose the nature and extent of AES communications with the Tribe or its representatives.

BIA's failure to properly supervise the DEIS and its virtually exclusive use of AES for all gaming applications renders the document inadequate.

4. Purpose and Need Statement and Range of Alternatives

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[11] *See* House Resources Committee, Subcommittee on Indian and Alaska Native Affairs Oversight Hearing on "Executive Branch standards for land-in-trust decisions for gaming purposes" (Sept. 19, 2013) (Congressmen LaMalfa 55:20).

[12] *See, e.g.*, Motion for Summary Judgment, *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. Jewell*, No. 12-03021-TLN, Doc. 98 at 13-15 (E.D. Cal., filed June 24, 2014).

BIA must revise the purpose and need statement to include the statutory purpose of avoiding detriment to the surrounding community and federal land acquisition policies—not just the purpose of furthering the Tribe's economic development and self-determination—and revise the range of alternatives accordingly. The purpose and need statement unlawfully assumes the Tribe's economic development interests satisfies the BIA's land acquisition policy without considering the development complies with the IRA, 25 U.S.C. § 5108, and BIA's regulations at 50 C.F.R. § 151.3. While BIA has discretion when defining the purpose and need of a project, an unreasonably narrow or pre-determined purpose and need statement violates NEPA.

As the Ninth Circuit has explained, "The stated goal of a project necessarily dictates the range of 'reasonable' alternatives . . . ." *City of Carmel-By-The-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1995) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C. Cir. 1991)). The analysis of alternatives is at the heart of an EIS. If the purpose and need statement is deficient, the EIS will not address an appropriate range of alternatives.

The statement of purpose and need is supposed to "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. BIA must first reasonably and fairly define the project's purpose. *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) (citing *Citizens Against Burlington*, 938 F.2d at 195–96). Importantly, BIA must "tak[e] responsibility for defining the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes." *Colo. Envtl. Coalition v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

9-06

BIA must also take into account its own statutory mandates. *See New York v. Dept. of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983). There are two statutes in play: 1) the Indian Reorganization Act, which relates to the trust acquisition decision; and 2) the IGRA gaming eligibility determination, which relates to where, when, and how gaming is to occur. The "statutory objectives" relevant here are the dual findings that the Secretary must make before seeking gubernatorial concurrence: that (1) gaming is beneficial to the Tribe and (2) not detrimental to the surrounding community. 25 U.S.C. § 2719(b)(1)(a). BIA's EIS purpose and need statement must incorporate both the need to promote the Tribe's economic development, self-sufficiency, and self-government and the need to avoid detriment to the surrounding community.

BIA's purpose and need statement is inadequate because, although it cites the relevant statutory and regulatory authority, it does not fully describe BIA's legal duties and the public interest factors that are required by those authorities to be balanced against the Tribe's desire for economic development. BIA must fully inform the public that, in addition to a determination that the project would not be detrimental to the surrounding community under 25 U.S.C. § 2719(b)(1)(a), BIA must also consider, among other things, the existence of statutory authority for the acquisition; the tribe's need for additional land; the impact on the State and local jurisdiction from removal of the land from the tax rolls; and jurisdictional problems and potential land use conflicts which may arise. 25 C.F.R. §§ 151.10(a)-(g).

An inadequate purpose and need statement skews the entire analysis. The bias and predetermination in favor of the Tribe's economic development, at the expense of impacts to the community, is evident in the "Comparison of Environmental and Economic Consequences," DEIS 2.6.2,

where the alternatives are described as "those which could accomplish most of the purpose and need for the Proposed Actions, *and* that could avoid or substantially lessen one or more of the significant effects of the Proposed Actions," as if avoiding or lessening impacts were not just as much a part of the purpose and need as economic development. (emphasis added). This bias is confirmed by the description of the no-action alternative:

> Alternative C would avoid all environmental effects associated with the development of Alternatives A and B, and thus would have significantly fewer environmental effects. However, this alternative would be the least effective in meeting the purpose and need for the Proposed Actions.

9-06 (Cont.)

Again, the relevant statutory mandates include avoiding and minimizing impacts, and in particular, preventing detriment to the surrounding community. These are not merely aspirational policy goals that take second place to the Tribe's economic development, and they are not optional. Nor are they separate from the purpose and need of the project. The failure to start with an accurate purpose and need statement skews BIA's entire analysis in favor of maximizing the economic benefits to the Tribe and minimizes the statutory mandate to avoid detriment to the surrounding community.

Given the statutory and regulatory requirements to consider impacts to the local community, a range of alternatives that only considers casino sites in a single community is not reasonable. Properly understood, the Purpose and Need for BIA's proposed action makes clear that alternative locations outside of the surrounding Kern County community must be evaluated.

The EIS must examine a reasonable range of alternatives to the proposed federal action (trust acquisition of the proposed site in Kern County). At a minimum, a reasonable range of alternatives must examine several locations outside of the surrounding Kern County community. Each location must be evaluated for both gaming and commercial non-gaming economic development. Different development scenarios for the same location, however, must not be treated as separate alternatives if the federal actions involved are the same (e.g., different development scenarios for large and small gaming operations on the same site do not require different federal actions). Further, alternative sites must not be chosen in locations that allow them to be rejected out of hand as unsuited for economic development. The surrounding Kern County community is not the only possible location for the Tribe's economic development.

9-07

Applying these principles, it is clear that the DEIS does not evaluate a reasonable range of alternatives. First and foremost, the DEIS does not consider any action alternative outside of the surrounding Kern County community. The Maricopa Highway Site is within the surrounding Kern County community (indeed, only 15 miles away). Given the statutory and regulatory requirements to consider impacts to the local community, a range of gaming alternatives that only considers sites in a single community is not reasonable. And given that the only non-gaming alternative considered would have only negligible economic benefits to the Tribe, and therefore does not meet the purpose and need of the project, it is clear that BIA has chosen a range of alternatives with only one possible outcome: development of a casino in the surrounding Kern County community.

In addition, the Maricopa site gaming alternative has impacts almost identical to the Mettler site gaming alternatives. BIA eliminated from consideration a non-gaming alternative at the Maricopa site because it would have similar impacts to the gaming alternatives at the Mettler site, and therefore wouldn't meaningfully add to the range of alternatives. DEIS App. B at 1. By the same logic, the Maricopa site gaming alternative does not meaningfully add the range of alternatives. The same logic also applies to the reduced gaming Mettler alternative, which also has impacts almost identical to the proposed alternative, and therefore doesn't meaningfully add to the range of alternatives.

Further, the non-gaming alternative at the Mettler Site provides negligible economic benefits to the Tribe, and therefore does not meet the purpose and need of the project. BIA eliminated a non-gaming alternative at the Maricopa site on this basis. Thus, it also does not add meaningfully to the range of alternatives.

Finally, the gaming and reduced gaming alternatives at the Mettler site are simply different development scenarios of the same alternative. The federal actions for each are identical, and there is no legal mechanism by which BIA can restrict the size of a casino once the land is in trust. No two-part determination has ever been qualified by specific project design parameters, and BIA's long-standing position is that its statutory authority to take land into trust does not include the ability to restrict the allowable uses of land once it has been placed into trust. 9-07 (Cont.)

The DEIS therefore only considers one meaningful action alternative—gaming development in the surrounding Kern County community. This is not a reasonable range of alternatives, and it raises the concern that BIA has predetermined the decision and chosen a range of alternatives that leaves only one real possible outcome.

BIA must therefore produce an SEIS that considers sites outside of the surrounding Kern County community. As Stand Up previously commented, this requires reinitiation of scoping to allow the public to comment on possible alternatives. In particular, BIA must explain how BIA screened and selected the range of alternatives. Neither the scoping report nor the DEIS adequately explain the alternatives screening process, including screening criteria and a specific assessment of each alternative regarding whether it met the criteria.

BIA must therefore identify *all* of the screening criteria used to identify alternatives. The scoping report and DEIS indicate that, apart from the criteria BIA identified, the "Historic 1851 Tejon Treaty Area" was used as a screening criterion to identify or reject alternative locations that meet the purpose and need of the proposed action. *See, e.g.*, Scoping Report at 2-11 ("[H]owever, as the Taft Highway Site is not located within the Tribe's Historic 1851 Tejon Treaty Area, this site was eliminated from further consideration."). This is inappropriate for several reasons, and by itself requires that BIA reinitiate the scoping process. 9-08

First, this criterion was not identified as part of the purpose and need of the proposed action at any point in the scoping process—indeed, it is not even included in the stated purpose and need in the DEIS. Furthermore, what area constitutes the "Historic 1851 Tejon Treaty Area" has not been previously disclosed to the public. The public cannot be expected to comment meaningfully on alternative locations if it is not informed of the geographic constraints being placed on alter-

native locations. Alternatives are, of course, the heart of the EIS process, and the failure to disclose this criterion irremediably taints the process unless scoping is reinitiated.

Second, this criterion is unnecessary. The purpose and need in the Notice of Initiation is identified to be the improvement of the economic status of the Tribal government. A casino project need not be located in the "Historic 1851 Treaty Area" to meet this purpose and need. To the contrary, the use of this criterion effectively restricts alternatives to the Kern County community, which fails to meet the purpose and need to consider alternatives that do not impact the surrounding community.

Third, this criterion lacks any legal basis or rationale. The "Historic 1851 Tejon Treaty Area" refers to the area that would have been set aside as a reservation for multiple tribes under an unratified 1851 treaty known as "Treaty D." As the Department is aware, the Tribe previously attempted to bypass the two-part determination process by requesting a determination that the Mettler Parcels were within the Tribe's "last recognized reservation" based on this unratified treaty.

As the Department is aware, this is incorrect for multiple reasons, including the fact that the existing Tule River Reservation was ultimately set aside for the Tribe (among others).[13] In 1864, Congress enacted a statute known as "the Four Reservations Act" authorizing the President to consolidate all the tribes of California into no more than four reservations in the State. Act of April 8, 1864, 13 Stat. 39. All other reservations were abandoned, as a matter of law. One of the four reservations the United States formally established pursuant to the 1864 Act was the Tule River Reservation, which President Grant established by Executive Order in 1873. The Department stated in its decision to reaffirm the Tejon that, "[i]n 1873, the Tule River Reservation was established by executive order *for the Tejon (Manche Cajon) and other bands of Indians*." 2012 Reaffirmation Memorandum at 4 (emphasis added); *see* Executive Order of January 9, 1873; I Kapp. 831.[14] As confirmed by the Supreme Court's recent decision in McGirt v. Oklahoma, a tribe's right to a reservation established for it cannot be terminated except by an unambiguous act of Congress. No such act exists, and therefore the Tribe continues to have the right to occupy the Tule River Reservation, and to conduct gaming there.

9-08
(Cont.)

The Tribe is therefore not "landless," and this fact must accordingly be incorporated into the purpose and need of the project and disclosed to the public to allow a meaningful scoping process to be completed. A reasonable range of alternatives must necessarily include development on or near the Tule River Reservation.

In addition, there is reason to believe that the Tribe's aboriginal territory was outside of and to the southeast of the "Historic 1851 Tejon Treaty Area" which again, was intended to be set aside for multiple tribes, rather than to preserve some portion of any single tribe's aboriginal territory. *See* Scoping Report, Comment Letter P-22. A renewed scoping process should therefore also consider possible sites within the Tribe's aboriginal territory.

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[13] We incorporate by reference into the administrative record the following: Letter from Perkins Coie to Assistant Secretary for Indian Affairs Kevin Washburn (April 7, 2015) (regarding the Tejon Tribe's request for an Indian Lands Opinion that the Mettler Site is within the Tribe's "last recognized reservation"); Letter from the Tejon Tribe to Assistant Secretary for Indian Affairs Kevin Washburn (June 1, 2015) (response); Letter from Perkins Coie to Assistant Secretary for Indian Affairs Kevin Washburn (July 22, 2015) (reply).

[14] *See also* Executive Orders of October 3, 1873 and August 3, 1878 (modifying boundaries).

Finally, the proposed action is to take the Mettler site into trust. It is imperative that the public be fully informed of the actual likelihood and feasibility of the proposed action being changed to taking the Maricopa site into trust instead. In particular, BIA must disclose the nature of any legal interest the Tribe may have in each site. The trust acquisition regulations require that the tribe "already own[] an interest in the land" to be acquired in trust. 25 CFR § 151.3(a)(2). The public was very misled by the last-minute change in proposed action from Galt to Elk Grove in the recent Wilton Rancheria gaming trust acquisition. Reinitiating the scoping process after identifying a reasonable range of alternative locations and disclosing the Tribe's legal interest in those sites will ensure that the public is able fully to comment on the scope of the project. 9-09

5. The mitigation measures and enforcement methods are inadequate.

The DEIS' conclusions regarding the significance of numerous impacts is inextricably bound to the assumption that various mitigation measures will be implemented. These conclusions are unsupported if those mitigation measures are not enforceable, because there is otherwise no reason to believe that they will in fact be implemented. Without some reasonable assurance of enforceability, the actual impact of the proposed action cannot be accurately predicted, analyzed, or commented on. In addition, the public has had no opportunity to comment on the adequacy and effectiveness of specific proposed methods of enforcement for each mitigation measure. The DEIS addresses enforceability in a single blanket statement that all mitigation is enforceable because it is either required under federal or state law, covered under terms of the Intergovernmental Agreement (IGA) with Kern County, or inherent in the project design. DEIS 4-1. The DEIS also states that Best Management Practices (BMPs) would be incorporated into project design to minimize potentially adverse environmental effects. DEIS 2-1. These conclusory statements, however, are insufficient.

While mitigation measures that might be required under federal law would indeed be enforceable, no federal approvals have yet been issued. The exact nature of the mitigation required in such federal approvals or permits is therefore uncertain. Nor would such federal permits or approvals include all of the mitigation measures relied upon by the DEIS. And again, the Department has long maintained that the use of trust lands cannot be restricted or conditioned through the trust acquisition process. 9-10

State law, of course, would generally not apply once the proposed site is taken into trust. To the extent Tribal law is relied upon, it is subject to unilateral change by the Tribe itself, and therefore cannot be considered an independent source of authority to enforce mitigation requirements against the Tribe. Some mitigation measures have no plausible means of enforcement. For example, mitigation measures intended to reduce greenhouse gas emissions are intended to ensure compliance with State law (indeed, Table 3.4-6 is titled "Compliance with State emission reduction strategies"), but of course, those measures will not be enforceable under State law once the proposed site has been taken into trust. Conclusory statements and blanket assurances that all mitigation measures are enforceable are insufficient to determine whether specific measures are enforceable, and therefore whether the proposed enforcement mechanisms, if any, are adequate and effective. Conclusions regarding the significance of impacts that rely on these mitigation measures are therefore unsupported by the record.

The IGA, to the extent it is enforceable, would include some, but by no means all, of the mitigation measures assumed by the DEIS. The IGA provides primarily for financial payments to compensate the County for public services provided to the Tribe and to mitigate other unspecified impacts. The IGA does not require that the mitigation measures identified in the EIS actually be implemented. The IGA asserts that the financial payments serve to mitigate all project impacts to the surrounding community, but the IGA does not require the County to use those funds to mitigate the specific impacts that will result if specific mitigation measures are not implemented. There are, moreover, significant questions regarding the effectiveness of the IGA. As an initial matter, the IGA is only enforceable by Kern County. The County, of course, has a direct financial interest under the IGA in the Tribe's gaming operations, and therefore would have a conflict of interest with respect to enforcing mitigation requirements.

Furthermore, many of the provisions in the proposed IGA are in reference to the "Gaming Facility", which is defined only as "any building on the Property in which class III gaming authorized under the Tribal-State Compact occurs." Thus, for example, the General Fund and Capital Maintenance Fund Payments would not be based on the value of separate commercial buildings, including potentially the hotel and event center, if such facilities are in separate buildings. The examples in the IGA and the estimated payments in the County staff report are based on the announced $600M value of the project as a whole, and may therefore be inaccurate. The IGA also provides that the County is not entitled to retain any payments in the event that the Tribal-State Compact terminates for any reason. Such compacts are often terminated for fairly routine reasons, including renegotiation by the State and tribe.

9-10 (Cont.)

More significantly, the DEIS entirely fails to consider the possibility that the Tribe could open a Class II casino, which is almost entirely outside the scope of the IGA (only the hotel room fee and problem gaming payment would apply if a Class III gaming facility is not implemented). BIA cannot predetermine the outcome of the two-part determination, nor can BIA assume that the the State and Tribe will enter into a gaming compact. Class II gaming, however, can occur on trust land without a tribal-state compact. The DEIS must therefore evaluate the reasonably foreseeable development of a Class II facility, almost all of whose impacts would not be mitigated by the IGA.

More fundamentally, the entire DEIS is premised on the enforceability of the different alternatives considered, yet there is no explanation of how that is true. It is irrelevant that certain mitigation measures are "inherent in the project design" if the project design is itself unenforceable, i.e., if there is no mechanism to force the Tribe to adhere to the project design for the alternative chosen. The DEIS portrays Alternatives A1 and A2 as distinct actions, yet the federal actions involved for each are the same: a two-part determination that tribal gaming on the proposed site would be in the best interests of the Tribe and not detrimental to the surrounding community; acquisition of the proposed site in trust for the benefit of the Tribe; and approval of a gaming management contract. The only difference in the alternatives is what the Tribe does afterwards -- build a large casino or a smaller one -- which is not a federal action at all. The DEIS does not explain how the Tribe would, or even could, be required by BIA to build the alternative chosen in the ROD. In other words, the DEIS does not explain how if Alternative A2, the reduced gaming alternative, is chosen, the Tribe would be precluded from actually building Alternative A1 or an even larger casino. Without such an explanation, it is entirely uncertain what the actual effects

of the proposed federal actions will be, and there is no way to comment on the adequacy or effectiveness of any proposed enforcement mechanism.

Moreover, it is far from clear that such an enforcement mechanism even exists. No two-part determination has ever been qualified by specific project design parameters, nor is it apparent from the statutory language that the legal authority exists to so qualify a two-part determination, much less to bring an enforcement action for any violation of such a qualification. Similarly, it is not clear that trust acquisitions can impose title restrictions regarding the size of gaming facilities or otherwise limit gaming development on the land acquired to a specific project design. Indeed, any attempt to do so by BIA would raise significant concerns under the Federal trust responsibility to Indian tribes. Finally, approvals of gaming management contracts by the NIGC are governed by specific statutory standards, none of which include the imposition of mitigation measures or otherwise make a particular project design alternative enforceable. In fact, NIGC has disclaimed having any role in ensuring that mitigation measures are enforced.

The DEIS must therefore evaluate the impacts that would result if the mitigation measures are not implemented. Without enforceable mechanisms to ensure compliance, this possibility is reasonably foreseeable. Recent examples of trust land decisions confirm that BIA should not rely on the presumption that mitigation measures that are not incorporated into an enforceable agreement will be implemented or that mitigation agreements with local governments will be reached after the fact and will fully mitigate all associated impacts. For example, the Cowlitz Indian Tribe is currently disposing of wastewater from its casino project by underground injection well above a sole source aquifer that is the water supply for over 300,000 local residents in violation of its agreement to comply with state and county standards. In 2008, BIA prepared an EIS for that Tribe's proposed trust acquisition and reservation proclamation. The basis of BIA's determination in the EIS that impacts to water resources from the Tribe's casino would be mitigated was the Tribe's agreement in its Environmental, Public Health, and Safety Ordinance to comply with the state and county standards. That agreement, however, was unenforceable, and the Tribe continues to dispose of its wastewater in violation of its agreement.

9-10 (Cont.)

In another case, the Department issued a two-part determination in 2015 to allow gaming on the Spokane Tribe of Indians' trust land in Airway Heights, Washington. The record of decision in that case provided that impacts on Spokane County would be mitigated because an intergovernmental agreement would be reached after the decision. No such agreement has materialized. Spokane County does not have a mitigation agreement with the Tribe that addresses the impacts of that development, nor is there any realistic prospect of such an agreement.

There are other examples of where BIA has relied on the prospect of mitigation for purposes of concluding in an EIS that significant adverse impacts would be mitigated to insignificant levels where no such mitigation has occurred, including the Enterprise Rancheria. It is therefore unreasonable for BIA to assume that impacts will be mitigated to insignificant levels in the absence of a legally enforceable mechanisms. Unenforceable assurances do not provide a reasonable basis to conclude that significant impacts will be mitigated. A determination that a proposed project is will not be detrimental to the surrounding community should be limited to only those cases in which there is an enforceable mitigation agreement in place.

While BIA may ultimately determine that unenforceable mitigation is nonetheless likely to be voluntarily implemented by the Tribe, that determination must be fully informed and must consider all important aspects of the enforceability issue. For each mitigation measure or project design parameter (and for each alternative), BIA must therefore disclose whether the mitigation measure or design parameter is enforceable, identify the enforcement mechanism (federal or state law, IGA, etc.), and evaluate the likely effectiveness of that enforcement mechanism. For each mitigation measure or project parameter that is not enforceable, BIA must evaluate the likelihood that it will be voluntarily implemented, in whole or in part, and why. Does BIA have a record of the tribe complying with voluntary mitigation measures? There are many past instances in which tribes have failed to implement such measures and commitments, including the current, wide-spread refusal of tribal casinos in California to comply with public health orders issued in response to the COVID-19 pandemic. It is reasonably foreseeable that this Tribe, like many others, could potentially fail to fully implement all or some unenforceable mitigation commitments. Thus, BIA should address other questions, such as whether the mitigation measures are burdensome or expensive, thus making voluntary compliance less likely? Do the mitigation measures require additional permits or approvals such that there is no guarantee that the mitigation will occur? It is not enough for BIA to assume that mitigation will be implemented when its assumptions have proved wrong in so many cases. Thus, in the absence of enforceable mitigation measures, BIA must therefore evaluate the impacts to the surrounding community if such measures were not to be implemented.

9-10 (Cont.)

B. Specific Defects in the DEIS

1. Formatting/Accessibility

The presentation of all EIS figures in Appendix E of the EIS is counter to the fundamental policies of the CEQ Regulations for Implementing NEPA, including that an EIS be "concise, clear, and to the point" (40 CFR §1500.2(b)) and that agencies "encourage and facilitate public involvement" (40 CFR §1500.2(d)). This format substantially increases the amount of time needed to review the document. It also makes comparisons of the text and figures difficult in both paper and electronic formats. The EIS should be revised to place figures immediately following the associated references in the main body of the document, which is the traditional method the BIA has used for EISs.

9-11

The PDFs provided by the BIA at https://www.tejoneis.com/ do not meet the standards of Section 508 of the Rehabilitation Act of 1973, which mandates that web content maintained by the federal government be made accessible to people with disabilities. An Accessibility Checker was used to review the PDFs and found numerous errors; the error reports are attached. These errors inhibit screen readers from transmitting meaningful information for blind or visually impaired persons. For example, figures in the appendices have no associated description of their content for screen readers or have only incorrect descriptions such as page numbers or file links.

9-12

In addition, the project website was frequently unavailable during the public comment period, instead displaying an error message of: "Bandwidth Limit Exceeded. The server is temporarily unable to service your request due to the site owner reaching his/her bandwidth limit. Please try again later." The public cannot be expected to comment on the DEIS when one of the primary methods of availability is unavailable, especially when in-person access is infeasible because of

9-13

the COVID pandemic. The comment period should therefore be re-opened and extended to allow the public a full opportunity to comment. 9-13 (Cont.)

2. Executive Summary

The Executive Summary refers to Alternative A3 (pg. ES-2) as a "mixed-use development." As this alternative includes only organic farming, the reference to mixed-use should be corrected. 9-14

3. Project Description

Section 2.2.2.1 describes the height of the proposed hotel under Alternative A1. The height of the other proposed components is missing from the discussion. No height information is given for the hotel or other project components under Alternative A2 in Section 2.2.3.1. No height information is given in Section 2.3.2 for Alternative B, although it is assumed that heights would be the same as Alternative A1. The project description needs to be revised to discuss the heights of the project components. 9-15

The description of the alternatives in Section 2.0 lacks a discussion of the type of foundation that would be utilized in construction. As discussed under the *Geology and Soils* heading below, the Mettler and Maricopa Highway Sites are located within several hundred feet of a fault system responsible for a major historic earthquake. A preliminary geotechnical report should be included within the EIS substantiating that the selected foundation type is feasible to ensure the safety of persons at the proposed facilities. 9-16

Section 2.2.2.2 discusses four site access improvements proposed for Alternatives A1 and A2. The discussion references Figure 18-1 in Appendix F as a figure showing the access layout. The referenced figure fails to show all of the proposed site access improvements. For example, Figure 18-1 does not show the extension of S. Sabodan Street to Valpredo Avenue. Additionally, the figure does not provide the reader with a clear picture of what the improvements would look like or where the improvements would be located with respect to the project site boundary. There may be potential off-site impacts associated with the site access improvements, which have not been evaluated within the EIS. A new figure should be added to the EIS that addresses these deficiencies. The full extent of any traffic improvements should be shown on an aerial photograph. The project site boundary should be clearly shown on this figure so that any potential off-site impacts can be evaluated. 9-17

The Water Supply discussions for Alternatives A1 (Section 2.2.2.4) and A2 (Section 2.2.3.2) and Alternative B (2.3.2.2) include average daily water demands which do not match the referenced Water and Sewer System Planning report in Appendix G. For example, the EIS states that "The estimated average daily water demand for Alternative A1 is approximately 178,000 gallons per day (gpd) (Appendix G)" while Table 2-1 of Appendix G provides an average demand of 154,872 gpd. Similar inconsistencies occur for Alternative A2 and Alternative B. The EIS should explain the differences or correct the reports for consistency. 9-18

The Grading and Drainage discussions for Alternative A1 and A2 (Sections 2.2.2.6 and 2.2.3.3) do not disclose where large amounts of needed fill would be obtained. The discussions state that a portion of this fill "could" be obtained from the site. If this is uncertain, the EIS should assume 9-19

all fill would be coming from off-site for the purposes of calculating construction impacts related to traffic, air quality and noise. If the proposed detention basins provide for fill, an additional 405,000 cubic yards of fill for Alternative A1 and 283,000 cubic yards of fill for A2 would still be needed and should be accounted for in the construction impacts related to traffic, air quality and noise.

9-19 (Cont.)

3. Geology and Soils

The Mettler area has a very high probability for seismic hazards, yet the EIS does not address this basic safety issue.[15] Figure 3.2.2 shows two unnamed fault lines just south of the Mettler and Maricopa Highway Sites as well as unnamed faults north of the two alternatives. These are part of the White Wolf Fault and should be labeled as such. The White Wolf Fault was the cause of the 7.7 magnitude 1952 Bakersfield Earthquake, which caused major structural damage throughout the area. The Bakersfield Earthquake resulted in elevation change of up to 4 feet and caused severe damage as far away as Las Vegas. Twelve lives were lost, and there was at least $50 million in property damage. In addition, there were at least 20 aftershocks 5th magnitude or greater associated with the initial 7.5 magnitude shock, including a 5.8 magnitude quake that hit nearly a month later the first earthquake.

The Mettler area is a geologically complex area where multiple major fault systems intersect and present significant risks. In fact, the strongest earthquake on record in California is a 7.9 near Fort Tejon in 1857, according to the State's Department of Conservation. That earthquake occurred on the San Andreas fault only 15 miles south from Mettler. In addition, the Garlock fault intersects with the San Andreas just south of Mettler. In 2019, there was a 7.1 earthquake in Ridgecrest, which scientists believe has strained the Garlock fault. In fact, in July 2020, geophysicists from the California Institute of Technology and NASA's Jet Propulsion Laboratory issued a study suggesting that the 2019 Ridgecrest earthquake increased the probability of a major earthquake on the San Andreas.[16]

9-20

Despite the proximity to multiple active fault systems and the potential for very powerful earthquakes in that region, the EIS does not provide adequate analysis of the risks these systems pose, the potential associated structural damage caused by such earthquakes and aftershocks. The EIS does not include a preliminary geotechnical feasibility report or explain how California Building Codes would ensure the safety of individuals within an 11-story hotel. A preliminary geotechnical report should be included in the EIS to demonstrate that construction of a multi-story hotel is feasible at the Metter and Maricopa Highway Sites.

The geotechnical report should include up to date information regarding recent seismicity in the Bakersfield area and review current research regarding seismic risk in southern California.

4. Water Resources

The EIS does not analyze the 500-year flood and associated floodplain in the flood impact analysis and this omission may be unresponsive to requirements in Executive Order (EO) 11988. The

9-21

[15] https://www.conservation.ca.gov/cgs/Pages/PSHA/PSHA-map-index/Bakersfield.aspx
[16] https://sanfrancisco.cbslocal.com/2019/10/17/ridgecrest-earthquakes-strained-garlock-fault/

Mettler Site is described as "being in a floodplain as defined by EO 11988" (pg. 3-11) and all references to the floodplain in the EIS refer to the 100-year floodplain. However, EO 11988 states that "the minimum floodplain of concern for critical actions is the 500-year floodplain, with a "Critical Action" defined as an action for which even a slight chance of flooding is too great. A critical action includes "structures or facilities which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials" and facilities "which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events."[17]

9-21 (Cont.)

The EIS states that "Diesel fuel storage tanks would be needed for emergency generators at the casino resort" (pg. 3-97) and "...all aboveground fuel storage tanks would be built to National Fire Protection Association standards and be above the floodplain in order to prevent accident release" (pg. 3-15). No details are provided in the EIS for how the tanks would be protected from flooding and the quantity of diesel fuel is not mentioned in the EIS, but if "even a slight chance of flooding" could create a hazard to life and property, then the 500-year flood should be analyzed. Furthermore, the Mettler Site Alternatives A1 and A2 would include a hotel with 400 or 300 rooms, respectively (Table 2-2, pg. 2-2). While the exact demographic of hotel guests is unknown, it can reasonably be assumed that some portion of the guests at any given time may be elderly and may not be sufficiently mobile during a flood event, further supporting the analysis of the 500-year floodplain as the minimum floodplain of concern. The proposed future development of 92 residences may also include elderly Tribal members, which should be considered for the floodplain analysis.

9-22

9-23

EO 11988 requires the identification and evaluation of "practicable alternatives to locating [a] proposed action in a floodplain or wetland" and "if a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site."[18] It is not clear why the Mettler Site should remain a practicable alternative when the Maricopa Highway Site is located outside of the FEMA floodplain.

9-24

The EIS fails to analyze additional flooding characteristics that are appropriate for the floodplain setting per EO 11988,[19] including:

1. Velocity of floodwater – The EIS fails to address flood flow velocities. The EIS describes the flood analysis modeling that "allows for a more realistic prediction of velocities over the project site" (Appendix H, pgs. 20-21/110) and provides model output showing the depths of flooding (Appendix H, pgs. 22-23/110), but does not address the velocity of floodwaters. The Mettler Site would be located on land with an "average natural slope of

9-25

[17] Federal Register, 2019. Code of Federal Regulations, 44 - Emergency Management and Assistance, PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS, § 9.4 Definitions. October 1. https://www.govinfo.gov/content/pkg/CFR-2019-title44-vol1/xml/CFR-2019-title44-vol1-part9.xml.

[18] Federal Register, 2019. Code of Federal Regulations, 44 - Emergency Management and Assistance, PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS, § 9.6 Decision-making process. October 1. https://www.govinfo.gov/content/pkg/CFR-2019-title44-vol1/xml/CFR-2019-title44-vol1-part9.xml.

[19] Federal Register, 2019. Code of Federal Regulations, 44 - Emergency Management and Assistance, PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS, § 9.7 (b) Determination of proposed action's location. October 1. https://www.govinfo.gov/content/pkg/CFR-2019-title44-vol1/xml/CFR-2019-title44-vol1-part9.xml

1.4%" (Appendix H, pg. 4/110). Average velocities for shallow concentrated flow on unpaved and paved surfaces at this slope may be 1.9 and 2.4 feet per second, respectively.[20] For the greater depths of flow shown in the EIS (Appendix H, pgs. 22-23/110) floodwater velocities may be much greater.

2. Rate of rise of floodwater and available warning and evacuation time and routes – The EIS describes the peak flow of the 100-year flood event, but does not discuss how quickly the peak flow may be reached and, correspondingly, how much time residents, hotel and casino guests may have to evacuate beyond the flood hazard. Given the location of this site approximately 4 miles from "the foothills below the Los Padres National Forest" (Appendix H, pg. 4/110), there may be the potential for flash flooding. Construction on the Mettler Site would result in a 102-acre residential area, health center and a casino development within a floodplain, where large gatherings of people may occur including casino and hotel guests and employees. The EIS should include an assessment of the potential for flash flooding and the associated risk to life and property, with an emphasis on the rate of rise of floodwaters and any implications on the ability to evacuate elderly guests.

3. Erosion – The EIS fails to address erosion associated with flooding. Flood flow velocities are not presented, but may be significant, and the associated impacts of erosion, and associated sediment transport should be addressed.

4. Subsidence – The EIS fails to address the rate or extent of subsidence at the proposed sites since 1970 and the effect of ongoing or future subsidence on flooding. The EIS states that "where the Mettler and Maricopa Highway Sites are located, overdraft [extraction of petroleum], led to subsidence of up to 8 feet between 1926 and 1970" (pg. 3-13). Subsidence may increase the depth and/or spatial extent of flooding and invalidate assumptions and findings made in the EIS flood analysis.

9-25 (Cont.)

Furthermore, the Kern County Floodplain Management Code calls for "restricting or prohibiting uses which…result in damaging increases in erosion or in flood heights or velocities"[21] and the floodplain administrator shall consider the "velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site".[22] Therefore, the above flood characteristics need to be adequately disclosed and analyzed to allow Kern County to assess the potential impacts of the project.

9-26

The Mettler Site is located in an area designated as approximate Zone A, where Base Flood Elevations (BFEs) have not been provided by FEMA. Property owners are required to develop BFE data to demonstrate that new construction meets the standards described in the NFIP regulations.[23] The EIS appears to have followed FEMA guidance for using a Detailed Method (FLO-

9-27

[20] NRCS, 1986, Technical Release 55, Urban Hydrology for Small Watersheds, 210-VI-TR-55, Second Ed., June. Figure 3-1 Average velocities for estimating travel time for shallow concentrated flow https://www.hydrocad.net/pdf/TR-55%20Chapter%203.pdf

[21] Kern County Floodplain Management Code, 17.48.050.A Methods of reducing flood losses. https://kernpublicworks.com/building-and-development/floodplain-management/

[22] Kern County Floodplain Management Code, 17.48.390.A.9 Grounds for granting variance. https://kernpublicworks.com/building-and-development/floodplain-management/

[23] 44 CFR § 60.3 (b)(4) Flood plain management criteria for flood-prone areas.

2D hydraulic model) to estimate BFEs[24]; however, no data on BFEs are presented in the EIS. The EIS states the Maricopa Highway Site is not within a floodplain" (pg. 3-11); however, the Existing Site Maximum Flood Depths mapping (Appendix H, pg. 21/110) shows the eastern portion of the Maricopa Highway Site is within the floodplain as delineated by the modeling used for the flood impact analysis. As discussed previously, the EIS does not evaluate the 500-year floodplain for either site.

9-27 (Cont.)

The EIS fails to consider the contribution to flooding from direct rainfall; i.e., pluvial flooding. The EIS uses the numerical model FLO-2D in the flood impact analysis. FLO-2D is a combined hydrologic and hydraulic model and can perform combined rainfall/runoff and flood routing.[25] The FLO-2D modeling should be expanded to analyze pluvial flooding because the true risks from flooding may not currently be shown. For example, the First Street Foundation Flood Model, a new public data source, considers a location's risk of flooding from overflowing rivers and streams, and high intensity rainfall.[26] The 100-year floodplain shown by the First Street Foundation Flood Model is different than the effective FEMA floodplain. This can be expected when using different methods and models, but it is significant to note that while the First Street Foundation 100-year floodplain extends across the Mettler Site, similar to the FEMA approximate Zone A floodplain, it also extends onto the Maricopa Highway Site.[27]

9-28

The Water Resources section of the EIS should include a regional watershed map showing the drainage areas contributing drainage directly to the Mettler and Maricopa Highway Sites so that the associated flood potential at each site can be better understood. The EIS identifies and uses watersheds associated with the Easterly Watershed Discharge point (Tecuya Creek) and a Westerly Watershed as input to the hydraulic model; however, both of these watersheds terminate at the bottom of the foothills, approximately 4 miles southeast of the Mettler and Maricopa Highway sites. The USGS StreamStats map-based web application was used in the EIS to estimate 100-year peak flows at the above-mentioned discharge points as input to the hydraulic model; however, the stream networks passing across the Mettler and Maricopa Highway Sites, as shown in StreamStats, appear different than those assumed in the EIS. For example, the stream network passing across the northeast corner of the Mettler site drains from an area east of Highway 99; it is not mentioned in the EIS if there are, or are not, culvert crossings under Highway 99 that may contribute drainage to the Mettler Site.

9-29

The accuracy of the elevation data used for the preliminary grading and drainage plans is not described in the EIS and the validity of the pre-construction and post-construction contours cannot be confirmed. The Preliminary Grading and Drainage Plans rely on USGS Quad Map contours supplemented with Google LIDAR contours were used for the existing elevations" (Appendix H, pg. 5/110). The most recent USGS Quad Map show 10-foot contours across both sites[28]; on a map with a contour interval of 10 feet, the map is accurate to within 5 feet (1.5 meters) of the

9-30

[24] FEMA, 1995. Managing Floodplain Development in Approximate Zone A Areas, A Guide for Obtaining and Developing Base (100-Year) Flood Elevations, FEMA 265, July. https://www.fema.gov/media-library/assets/documents/7273

[25] FLO-2D, 2020. https://www.flo-2d.com/flo-2d-basic/

[26] First Street Foundation, 2020. Flood Model 2020 Methodology Overview, June 29. https://firststreet.org/flood-lab/research/flood-model-methodology_overview/

[27] FloodFactor, 2020. Flood Risk Explorer, Mettler CA. https://floodfactor.com/city/mettler-california/647164_fsid

[28] USGS, 1992. Mettler CA, 7.5-minute quadrangle topographic map quadrangle map, 24:000.

actual elevation.[29] The Google LIDAR contours may be more accurate, but that information is not provided for comparison. 9-30 (Cont.)

The Mettler Site is located in a FEMA Zone A Special Flood Hazard Area subject to the 100-year flood. FEMA and Kern County require that "proposed building sites will be reasonably safe from flooding".[30,31] The EIS fails to address how the proposed development will be reasonably safe from flooding for the following reasons:

1. The EIS does not describe how utilities and facilities, such as sewer, electrical, and water systems will be located and constructed to minimize or eliminate flood damage. The water treatment/storage and sewer treatment/disposal locations and groundwater well sites 1 and 2 for the Mettler Site Alternatives A1 and A2 are shown west where no earthwork (cut/fill) is proposed (Appendix H, pgs. 91 and 96/110); therefore, these utilities and facilities would be exposed to flooding. The EIS does state "All treatment plant components and processes will be protected from the floodplain by means of a flood control levee. Initial findings on potential flood threats in the project vicinity would merit a levee between 2 to 4 feet high to protect from the anticipated 100-year flood water levels (Appendix G, pg. 43/45); however, no information is provided in the EIS to adequately assess the potential impacts of flooding on this facility. A higher levee may be required to account for a 500-year flood. A description of the needed levee should be added to the project description discussion in Section 2.0. 9-31

2. The EIS does not indicate if adequate drainage is provided to reduce exposure to flood hazards.

3. The EIS does not describe how the water supply systems would be designed to minimize or eliminate infiltration of flood waters into the systems.

4. The EIS does not describe how the sanitary sewage systems would be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

5. The EIS does not discuss how onsite waste disposal systems would be located to avoid impairment to them or contamination from them during flooding.

The EIS states that "Potential flooding impacts associated with Alternatives A1 and A2 would be less than significant (pg. 3-15). However, the EIS also states, "Alternatives A1 and A2 would be raised approximately 2.5 feet above the existing ground level (1 foot above the base flood elevation)" (pg. 3-15). The EIS does not adequately describe the impact of importing up to 404,235 cubic yards of fill material (for Alternative A1) into the floodplain (Appendix H, pg. 5/110) to 9-32

[29] USGS, 1999. Map Accuracy Standards. Fact Sheet 171-99, November. https://pubs.usgs.gov/fs/1999/0171/report.pdf

[30] FEMA, 2001. Ensuring That Structures Built on Fill In or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding, FIA-TB-10, May. https://www.fema.gov/media-library-data/20130726-1511-20490-3169/tb1001.pdf

[31] Kern County Floodplain Management Code, 17.48.180.C Permit review.https://kernpublicworks.com/building-and-development/floodplain-management/

demonstrate flooding impacts would be less than significant. This volume of fill material would be a significant obstruction to flood flow and due to the inadequate modeling output provided it is not possible to assess changes in flood patterns or velocities; such as whether flooding would be increased across Highway 99 to the east or Valpredo Avenue to the north and west. The Preliminary Grading section of Appendix H states, "retaining walls around the Casino would also help to isolate the building, keeping it above the base flood elevations…" (Appendix H, pg. 5/110). However, the EIS fails to provide plan and elevation views showing the relationship of the proposed building and retaining walls to maximum flood elevations.

9-32 (Cont.)

The EIS (pg. 3-15) states, "To avoid potential flood impacts, Alternatives A1 and A2 would feature a stormwater drainage basin that is sized to retain potential flood waters displaced by the proposed development." However, since the basin would be located in the floodplain, just northwest of the casino (Appendix H, pg. 4/110), it would remain an obstruction to flood flows impacting the carrying capacity of the floodplain and, consequently would be a flood impact. FEMA and Kern County require within A zones designated on FIRM, that the "flood carrying capacity within the altered or relocated portion of any watercourse is maintained".[32,33] The EIS does not provide any analysis to demonstrate that the basin would not have an impact on the carrying capacity of the floodplain.

9-33

The EIS flood analysis states that "The model reflects that access routes from the fire & sheriff's station to the resort remain above the base flood elevation for safety purposes during emergency situation" (Appendix H, pg. 20/110); however emergency ingress and egress beyond the flood hazard area is not addressed.

9-34

The hydraulic modeling information presented in the EIS is not adequate to assess impacts for the following reasons:

1. Grid cell size - The methods and assumptions used to establish the grid cell size in the FLO-2D model are not explained in the EIS. The EIS states that "implementation of either alternative would not cause a substantial increase in flood elevations in the surrounding environment. Onsite, the highest elevation increase was 2.6 feet, which occurred on the south side of the casino building and resulted in a flood water depth of 3.3 feet in total" (pg. 3-15 and Appendix H, pg. 7/110). The hydraulic modeling output of post-project maximum flow depths (Appendix H, pgs. 22-23/110) shows one grid cell at a 3.3-foot depth. This implies the casino may be represented by one grid cell in the model. By comparing grid cells discernable along the floodplain boundary of the FLO-2D flood depth mapping to the underlying agricultural field dimensions measured from Google Earth, it appears the grid cells are approximately 200-meters (656-feet) on a side, which is approximately the length of the south side of the casino building. Within special flood hazard areas, the Kern County Floodplain Management Code requires adequate drainage paths around structures on slopes to guide flood waters around and away from proposed struc-

9-35

[32] 44CFR § 60.3 (b)(7) Flood plain management criteria for flood-prone areas.
[33] Kern County Floodplain Management Code, 2020, 17.48.200.A.2 Notification of Other Agencies. https://kernpublicworks.com/building-and-development/floodplain-management/

tures.[34] It is not possible to determine if drainage paths are adequate at the extremely coarse scale of the model grid.

2. Hydraulic roughness - The EIS does not describe the methods and assumptions used to incorporate hydraulic roughness in the FLO-2D model.

3. Floodplain width changes - The EIS states "the FLO-2D model outputs mimicked the FEMA Flood Zone" (Appendix, pg. 20/110); however, no information is provided showing the FLO-2D floodplain compared to the effective FEMA floodplain to verify this statement. The pre- and post-project floodplains shown in Appendix H (pgs. 21-23) vary in width. For example, at the I-5 and Highway 166 interchange, the existing conditions floodplain covers the eastern half of the interchange, the Alternative A1 floodplain completely covers the interchange, and the Alternative A2 floodplain covers less of the interchange than the existing conditions floodplain. These floodplain width changes should be explained.

4. Floodplain depth changes – The pre- and post-project floodplain depth changes shown in Appendix H (pgs. 21-23) are not explained in the EIS. For example, all three maps show a linear feature having an approximate depth of 1.8-feet (the green shading) that appears to parallel Highway 99; however, it is not clear why this is showing if the terrain is essentially flat. Also, the Alternative A1 and A2 maximum flood depth maps show a new linear feature having an approximate depth of 1.8-feet (the green shading) extending from the casino in a northwesterly direction; again, there is no explanation in the EIS regarding the cause of these increased flood depths. The EIS states "During final design it is recommended that the increased flows between the road and the casino be routed back into Tecuya Creek or towards the freeway to lower the flood depths and additional floodplain storage." (Appendix H, pg. 20/110). The EIS does not present enough information to assess impacts from this proposed design change.

5. Tie-ins to effective FEMA mapping - The EIS states "The greatest increase in [Base Flood] elevation was seen approximately 3,000 feet north (downstream) of the Mettler Site with a rise in flood water depth of 0.41 feet for the Site Alternative A1 and 0.36 feet for the Site Alternative A2" (Appendix H, pg. 20/110). These flood elevation increases occur beyond the Mettler Site boundaries and the justification for increasing flood elevations on other properties is not explained in the EIS. FEMA guidance states "When performing new analyses and developing revised flooding information, appellants must tie the new BFEs, base flood depths, Special Flood Hazard Area (SFHA) boundaries, SFHA zone designations, and/or regulatory floodway boundaries into those shown on the FIRM."[35] This requirement should be addressed in the EIS.

9-35 (Cont.)

[34] Kern County Floodplain Management Code. 2020. 17.48.260.A Construction materials and methods. https://kernpublicworks.com/building-and-development/floodplain-management/

[35] FEMA. 2016. Guidance for Flood Risk Analysis and Mapping: Contiguous Community Matching. May. https://www.fema.gov/media-library-data/1469794100970-b275b6c85f29ab5e6e81e04f2a470d18/Contiguous_Community_Matching_Guidance_May_2016.pdf

6. Maximum flow depth mapping – The maximum flow depth maps of the model output (Appendix H, pgs. 19-21) do not adequately show a zero flow depth condition; it is difficult to discern elevations above the BFE because, according to the legend, even depths "<=0.0" are colored blue, similar to depths of up to 0.4-foot. The mapping should be redone to exclude map colors at the zero flood depth condition such that the underlying orthoimagery is visible and would indicate the floodplain boundary.

7. Base Flood Elevations – The EIS does not provide any data on BFEs. The objective of the flood modeling was to estimate BFEs because the effective FEMA Zone A mapping does not include BFEs (Appendix H, pg. 7/110); it is not clear why BFEs are not provided in the EIS for pre-and post-project conditions and the lack of these data inhibits the ability to assess flooding impacts.

8. Flood flow velocities – The EIS states that the "[modeling] methodology allows for a more realistic prediction of flood water depths and velocities over the project site" (Appendix H, pg. 17); however, the EIS does not present any information on pre- or post-project flood flow velocities. The EIS states "Changes in flood water depths were observed directly on the south side of the casino building, which was modeled as an obstruction to calculate an approximation flood water elevation needed to determine the finished floor elevation. Flood water depths increased 2.6 feet for the Site Alternative A1 and 2.6 feet for Site Alternative A2, resulting in a flood water depth of 3.3 feet for Site Alternative A1 and for Site Alternative A2." (Appendix, pg. 18). If the building is assumed to be a compete obstruction to flow, the 2.6-feet rise in the water level may be caused by flood flows having a significant velocity. The EIS should address flood flow velocities with regard to erosion and damage potential and impacts to the ability to evacuate people and vehicles in flowing water.

9. Pre-and post-construction hydraulic model results – Pre-and post-construction hydraulic model results are presented as maximum flow depths (Appendix H, pgs. 21-23). It is difficult to discern the flood depths and changes on the Mettler Site; the Mettler Site boundary should be delineated on all mapping. Since the focus is on the change in flood depths from pre-to post-project conditions, it would be helpful if the difference in flood depths between the pre-project condition and the two post-project conditions was also mapped; i.e., a similar color ramp would indicate the magnitude of flood depth changes, but areas with no change in flood depth would not be colored and the extent of these areas would be more evident.

9-35 (Cont.)

The EIS is focused on construction impacts from storm events on local runoff (pg. 3-16), but does not address the potential impact of flooding on construction activities. The proposed timing of construction activities should be described with respect to the seasonal potential for regional flooding.

9-36

The EIS states that the implementation of the Mettler Site Alternatives A1 or A2 "would not result in significant cumulative effects to surface water and flooding" (pg. 3-19). We interpret "surface water" to mean stormwater runoff from the development that is proposed to be retained onsite. The EIS does not provide enough information to support the statement that the alternatives

9-37

would not result in significant cumulative effects to flooding; i.e., the EIS provides inadequate information on the data, methods, and results in the flood impact analysis. 9-37 (Cont.)

The EIS states that the implementation of the Maricopa Highway Site under Alternative B "would not result in significant cumulative effects to flooding..." (pg. 3-22). While the effective FEMA floodplain mapping does not show a 100-year floodplain on this site, the First Street Foundation Flood Model shows the 100-year floodplain, and 500-year floodplain, extending onto the Maricopa Highway Site. This may be due to the incorporation of pluvial flooding in the First Street Foundation Flood Model. The EIS should address these findings for the Maricopa Highway Site. 9-38

The average daily water demand numbers provided in Section 3.3 for Alternatives A1, A2 and B (pgs. 3-16, 3-17 and 3-21), do not match the average daily water demand numbers in the referenced Appendix G. The EIS should be revised to make water demand numbers consistent between Section 3.3 and Appendix G. 9-39

Both sites currently have surface water contracts for their agricultural water needs. Once the non-agricultural project is developed, the project would have to procure all water via groundwater. The nearest municipal groundwater production wells are at least 3,000 feet away and more than 700 feet deep. The water consultant anticipates that the impact would be insignificant; however, aquifer testing was not conducted to support this conclusion. The EIS should provide further substantiation that the alternatives under consideration would not affect off-site groundwater wells (either private or municipal). 9-40

For Alternatives A1, A2 and B, the EIS relies on the use of mitigation to offset groundwater extraction in a critically overdrafted groundwater basin. The EIS concludes that mitigation would reduce impacts to a less-than-significant level. This is problematic as the EIS does not substantiate that implementation of one or more of the measures would address the impacts of increased groundwater use. Mitigation measures H1 and H3 rely on agreements with water districts and/or municipalities, which have not been executed. The feasibility of implementing these agreements is unknown. Additionally, pumping groundwater without an agreement may conflict with the objectives of the Sustainable Groundwater Management Act, the purpose of which is to prevent adverse effects to groundwater supplies and sustainably manage groundwater supplies within the basin. Mitigation measure H2 involves implementation of a groundwater recharge project, such as constructing a basin to recharge water; however, the recharge project is not fully described or evaluated within the EIS. 9-41

5. Biological Resources

The Biological Resources Section fails to provide adequate analysis of potential impacts to support conclusions, and in some cases fails to identify known resources that may be impacted. Unsubstantiated and erroneous information includes: 9-42

- Unsupported Conclusions for Impacts to Waters of the U.S.: The EIS asserts that no impacts to jurisdictional waters of the U.S. would occur, yet fails to provide evidence as to

why. No formal or informal delineation data is provided, and conclusions are made without any evidence to the support them. Therefore, the conclusions made for impacts to waters of the U.S. is unsubstantiated and is arbitrary.

9-42 (Cont.)

- Unsupported Conclusions for Impacts to San Joaquin Kit Fox and Wildlife Movement: The EIS and Biological Assessment assert that the sites do not have value for wildlife movement. However, San Joaquin kit fox are known to occur in the area and are a wide-ranging species that require large swaths of lands for foraging and dispersal. Therefore, the conclusions made for impacts to San Joaquin kit fox and wildlife movement appear to be erroneous.

9-43

- Conflicting Conclusions on impacts to Special Status Species: The EIS indicates (pg. 3-36) that site development could result in the incidental take of three federally-listed species: San Joaquin kit fox, blunt-nosed leopard lizard, and Tipton kangaroo rat. The BA also states (pg. 22, Conclusions and Determinations) that "These species are likely to occur within the project…" However, the BA goes on to conclude that the proposed project "may effect, but is not likely to adversely affect these potentially occurring federally listed animal species", a determination which does not support the incidental take for these species under the Endangered Species Act. Furthermore, the blunt-nosed leopard lizard is a fully protected species under State Fish and Game Code (meaning take cannot be authorized for it), a protection which would be lost if the land were placed into federal trust. Nowhere is this acknowledged. Therefore, the conclusions made for impacts to special-status species appear to be erroneous.

9-44

In Section 3.5.2.1, "Mettler Site," under "Terrestrial Habitats," and in Section 3.5.2.1, "Maricopa Highway Site," under "Terrestrial Habitats," identical language is used to describe the habitat value of each site: "highly disturbed and offer low-quality habitat to native plants or wildlife." This identical characterization is inaccurate. The Mettler Site provides higher value habitat to a wider variety of wildlife, including all of the federally listed species discussed in the EIS, and several of the State-listed and other special-status species identified in the Biological Assessment (Appendix L). Row and field crops have been cultivated at the Mettler Site, and at the time of the site assessment for the EIS, it was fallow or idle, which provides higher habitat value than the vineyard at the Maricopa Highway site. The California Department of Fish and Wildlife's Wildlife Habitat Relationships System recognizes these differences in habitat quality. The text should be revised to acknowledge this difference in habitat quality between the sites and the corresponding difference in level of impact, particularly for the federally listed species and burrowing owl.

9-45

In Section 3.5.2.1, "Mettler Site," under "Potential Waters of the U.S.," the text states that the site was "informally assessed" for wetlands and waterways, and that the identified aquatic habitats were three agricultural ponds and drainage ditch. It also states that the drainage ditch "did not meet waters of the U.S. jurisdictional criteria." However, the text did not state which criteria was not met, or if the U.S. Army Corps of Engineers (USACE) has concurred with this conclusion. No statement regarding jurisdiction is made for the agricultural ponds, and a delineation report is not provided. Therefore, insufficient supporting information has been provided for conclusions regarding the jurisdictional status of these aquatic features. The following information is needed to support these statements:

9-46

- A description of the "informal" assessment method. What specifically was done to identify aquatic features? Were they visually inspected onsite? Were the three parameters of the USACE Wetland Delineation Manual and its regional supplement evaluated? Were field data sheets completed?
- An explanation as to why the agricultural ditch did not meet waters of the U.S. jurisdictional criteria (i.e., which criteria were not met and why).
- A statement regarding if the USACE agrees with this conclusion with citation and reference for the communication with USACE.
- A conclusion regarding the jurisdictional status of the agricultural ponds, the basis for that conclusion, and evidence of USACE concurrence.

9-46 (Cont.)

In Section 3.5.2.2, "Maricopa Highway Site," under "Potential Waters of the U.S.," the text states that the site was "informally assessed" for wetlands and waterways, and that one aquatic habitat was identified: "a man-made agricultural roadside drainage ditch" along the sites, west, north, and east perimeter. It also states that this drainage ditch "lacks features required to be subject to USACE jurisdiction under CWA Section 404". Similar statements are made in Section 3.5.3, "Impacts." However, the text did not state what required features were lacking, or if the USACE has concurred with this conclusion. Therefore, insufficient supporting information has been provided for conclusions regarding the jurisdictional status of this aquatic feature.

The following information is needed to support the conclusion regarding jurisdictional status:

- A description of the "informal" assessment method. What specifically was done to identify aquatic features? Were they visually inspected onsite? Were the three parameters of the USACE Wetland Delineation Manual and its regional supplement evaluated? Were field data sheets completed?
- A description of what is meant by a "required feature" and an explanation as to why the agricultural ditch did not meet the jurisdictional criteria for a water of the U.S. (i.e., which criteria were not met and why).
- A statement regarding if the USACE agrees with this conclusion with citation and reference for the communication with USACE.

9-47

Section 3.5.3 states "Consideration is also given to wildlife corridors, nursery sites, and conservation plans." However, Section 3.5.3, includes no other mention of wildlife corridors or wildlife movement in general. This is inconsistent with the conclusion that the site has the potential to be occupied by San Joaquin kit fox. San Joaquin kit fox is a wide-ranging, mobile species that has been severely impacted from cumulative effects on movement. An evaluation of potential effects on wildlife movement/wildlife movement corridors should be added to Section 3.5.3.

9-48

Section 3.5.3 states "A project would have a significant adverse impact if the development or operation would result in the loss of sensitive or critical habitat or in the take of sensitive plant or wildlife species." The section includes no discussion of take resulting from habitat loss resulting

9-49

from the action. This is inconsistent with the conclusion that the site has the potential to be occupied by blunt-nosed leopard lizard or Tipton kangaroo rat, and with statements in the Biological Assessment. Habitat loss can cause "harm" to a federally listed species, which is a form of take. This is described in the Biological Assessment. On June 29, 1995, the U.S. Supreme Court ruled that harm may include habitat modification "where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering" (U.S. No. 94-859; [1995])." If blunt-nosed leopard lizards or Tipton kangaroo rats are using the site, because of the small home ranges of these species, the loss of habitat caused by constructing the project would "significantly impair" breeding, feeding, and sheltering ("essential behavioral patterns") and thus take would occur through harm. Therefore, because these species may be present, and may be encountered during the surveys included as mitigation measures, Section 3.5.3 should be revised to include discussion of the effects of habitat loss on federally listed species, and mitigation for this potential effect should be considered.

9-49 (Cont.)

The analysis of cumulative effects on biological resources reaches a "less than significant" conclusion for each impact. "Less than significant" is not an appropriate conclusion for a cumulative impact. Any impact, no matter how small can, in combination with other past, present, and reasonably foreseeable impacts, be part of a cumulative impact. Furthermore, with regard to federally listed species, the cumulative impacts discussion states that:

> "Federally listed wildlife species have minimal potential to occur on the Mettler Site. Mitigation Measures 4-A through 4-N in Section 4.0 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. Therefore, adverse cumulative effects to federally listed species would be less then significant with mitigation."

9-50

Besides the use of the term "less than significant," this text contains two incorrect statements. First, compliance with the Endangered Species Act requires minimization of impacts, not elimination of impacts to listed species. Therefore, the residual impact after mitigation is potentially a cumulative impact. Second, not all impacts contributing to a cumulative impact are the result of projects requiring compliance with the Endangered Species Act. Changes in agricultural practices and other technological changes, and changes in human populations and levels of human activities that cause human-wildlife conflicts are examples of impacts that can have a cumulative effect and that are not directly regulated by the Endangered Species Act. This text, which describes why cumulative effects would not occur, should be replaced with a discussion of the cumulative effects that have, are, and will likely occur.

The Biological Assessment in Appendix L contains no assessment of potential effects on the movement of federally listed animals, in particular San Joaquin kit fox. This is inconsistent with the conclusion that the site has the potential to be occupied by San Joaquin kit fox. San Joaquin kit fox is a wide-ranging, mobile species that has been severely impacted from cumulative effects on movement. An evaluation of potential effects on wildlife movement/wildlife movement corridors should be added to the Biological Assessment.

9-51

The Biological Assessment acknowledges the potential for blunt-nosed leopard lizard, Tipton kangaroo rat, and San Joaquin kit fox. It also contains mitigation measures that would minimize

9-52

the potential for take resulting from injury or mortality. However, no mitigation is proposed for the harm resulting from loss of habitat. If the blunt-nosed leopard lizard or Tipton kangaroo rat are encountered on site during the surveys proposed as mitigation, then the loss of occupied habitat caused by the construction project would "significantly impair" breeding, feeding, and sheltering ("essential behavioral patterns") and thus take would occur through harm. This also conflicts with the finding under cumulative effects, where there would be a cumulative loss of occupied habitat.

9-52 (Cont.)

In Section 5.0 of the Biological Assessment, California Natural Diversity Data Base (CNDDB) records of "occurrences" (documented observations) are presented as evidence of the potential for species to be present in the action area. In the evaluations of effects on blunt-nosed leopard lizard and Tipton kangaroo rat, occurrences within 5 miles of the project site are considered, but the evaluation of effects on San Joaquin kit fox does not mention CNDDB occurrences.

The lack of recent occurrences of a species in the vicinity of the project site is used as evidence that the blunt-nosed leopard lizard and Tipton kangaroo rat are unlikely to be present. This is a misapplication of the CNDDB occurrence data. The CNDDB contains only submitted observations; not all observations are submitted, and it does not contain negative survey results. In landscapes that are primarily in private ownership, such as the landscapes surrounding the Mettler and Maricopa Highway Sites, most land has not been surveyed for most species. Therefore, while CNDDB occurrence records in the vicinity of a site is a strong indication that the species may be present; the lack of records in the CNDDB generally does not indicate the absence of the species. The text of the Biological Assessment should be revised to not use the lack of recent CNDDB records nearby to indicate that a species is not present, particularly given that for the blunt-nosed leopard lizard and Tipton kangaroo rat, the site is within the species' range and some of its land cover is potentially suitable as habitat.

9-53

Biological Assessment Attachment L, "Preliminary Research Data" includes a RareFind search of CNDDB records for the U.S. Geological Survey Mettler and Coal Oil Canyon 7.5 Minute Quadrangles. Appendix O, "Biological Technical Memorandum," does not provide or describe additional use of RareFind for the Maricopa Highway Site. Therefore, the RareFind search results attached to the Biological Assessment appear to be the basis for statements in the EIS Biological Resources section, the Biological Assessment, and the Biological Technical Memorandum regarding records of special-status species in the vicinity of the project site. This narrow search area, which did not include all eight quadrangles surrounding the site, limited the species considered potentially present, and excluded at least one special-status species (Swainson's hawk) for which the habitat value of the two sites differs and for which the proposed mitigation measures may not minimize effects. This State-listed, migratory raptor has been recently documented within 10 miles of the site and is known to travel ten miles or more when foraging. For example the 1994 Staff Report for Mitigation for Impacts to Swainson's Hawks [Buteo swainsonii] in the Central Valley of California, which is still used by the California Department of Fish and Wildlife, recommends mitigation for foraging habitat up to ten miles from nests. Furthermore, the Mettler Site provides moderate to high value foraging habitat for this species. Therefore, the RareFind and CNDDB records searches should be expanded to include all eight quadrangles surrounding these sites, and potential impacts to Swainson's hawks should be considered. Also, Mitigation Measure 4-O should have the survey distance extended to 0.25 miles,

9-54

or more, to identify and address potential effects to any nesting Swainson's hawks or other nesting raptors. 9-54 (Cont.)

Except for the entries in the "Regionally Occurring Special-Status Species" table in Attachment A, a paragraph in Section 4.5, Federally-Listed Species," contains the only analysis of federally listed plant species in the Biological Assessment, or Biological Resources section of the EIS:

> "Lists of federally-listed special-status plants known to occur in Kern County or with known occurrences in the Mettler and Coal Oil Canyon USGS quads are included in Attachment A. Further analysis for the federally listed plant species included in the database queries are further analyzed in Attachment B. Regionally-occurring special-status plant species that were determined to have no potential to occur within the project site are not further discussed within this document."

For all special-status plant species, this table contains the conclusion that there was no potential to occur on site. However, for three species the basis of this conclusion is not apparent: Bakersfield smallscale, heartscale, and Kern mallow (which is federally listed). The project site is in the elevation range for each of these species, each has been documented growing nearby, and these three species are associated with alkaline soils, which are present on site (in particular, Excelsior soils seem characteristic of habitat for these species). Although the source of the habitat descriptions in Table 2 is not identified, it seems to be the CNDDB. The generalized descriptions provided in the CNDDB are not inclusive of all habitats a plant species grows in, and generally include highly disturbed vegetation. These descriptions do not clearly exclude the vegetation at this site. Furthermore, one of the two native species observed on site, allscale saltbrush, is associated with habitats similar to those occupied by Bakersfield smallscale, heartscale, and Kern mallow. Therefore, the text of the Biological Assessment and of the Biological Technical Memorandum should be revised to provide the rationale for concluding that these three plants species have no potential to be present on the Mettler and Maricopa Highway Sites. 9-55

In Attachment B to the Biological Assessment, the table entry for Tipton kangaroo rat's "Potential to Occur" is: "No, Suitable habitat for this species is not present on site." This conclusion is inconsistent with the rest of the Biological Assessment, which identifies a potential to affect Tipton kangaroo rat and proposes mitigation to minimize that effect. 9-56

The Biological Technical Memorandum (Appendix O, pg. 21) describes the classification of habitats as:

> "Terrestrial habitat types were classified using the A Manual of California Vegetation (MCV) (Sawyer et al., 2009), Preliminary Descriptions of the Terrestrial Communities of California (Holland, 1986), and A Guide to Wildlife Habitats of California (Mayer and Laudenslayer, Jr., 1988). Aquatic habitat types were classified using the Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al., 1979). Habitat types were further modified based on survey results."

However, the classification of the terrestrial and aquatic habitats on site is not consistent with any of these classifications; rather they represent combinations or portions of categories in these systems. 9-57

6. Cultural and Paleontological Resources

Section 3.6 of the EIS, *Cultural and Paleontological Resources*, lacks supporting detail for both the environmental setting and impact discussion. Appendix Q of the EIS contains the cultural resources technical report prepared in support of the project; however, this report is not accessible to the public due to confidentiality issues. The cultural resources technical report is not available from the Southern San Joaquin Valley Information Center (SSJVIC) of the California Historical Resources Information System (CHRIS), which houses cultural reports for Kern County. Because the cultural resources technical report utilized the SSJVIC, the report must be submitted to the CHRIS pursuant to the CHRIS Information Access and Use Agreement.[36] Additionally, the EIS should be revised to include additional non-confidential detail and/or a redacted version of Appendix Q to address the issues discussed in the following paragraphs. 9-58

Section 3.6.2 lacks a discussion of the geologic context (for paleontological resources), and prehistoric, historic, and ethnographic contexts (for cultural resources) of the project site and alternative site. These background contexts are standard in an EIS, since they provide a framework within which to assess potential impacts to known resources and to assess the sensitivity for unknown (e.g., buried) resources. 9-59

The *Native American Program Contact* subsection of Section 3.6.2.1, outlines Native American outreach steps that were taken by the consultant, which included contacting the California Native American Heritage Commission (NAHC, a state agency) and sending outreach letters to Native American individuals identified by the NAHC, but it does not discuss formal consultation between the lead federal agency and tribes. This consultation is required by Section 106 of the National Historic Preservation Act. Additionally, the reference to Appendix I should be corrected to Appendix P in this subsection. 9-60

The *Paleontological Resources* subsection of Section 3.6.2.1, indicates a review was conducted of the University of California Museum of Paleontology (UCMP) database for the County. This database does not provide specific location information for fossil localities. It is unknown whether there are known fossil localities within or adjacent to the project site, which would be confirmed by a record search with the San Bernardino Natural History museum, which holds all of the fossil locality records for the County. A record search with the San Bernardino Natural History museum should be conducted for the Mettler and Maricopa Highway Sites and the results should be summarized within the EIS. 9-61

In regards to the built resources on the project site, the discussion states that "none of the structures appears to contain values that would make them eligible for listing on the [National Register of Historic Places (NRHP)]. Neither of the structures are old enough to be associated with patent holders Elizabeth Harmon or Elmer Nickell." (pg. 3-41). Minimal information is provided to assess whether these resources are indeed ineligible for listing in the NRHP. The EIS should include a discussion of specific NRHP eligibility criteria and a statement as to why the resources do not meet them, as well as a statement of resource integrity. 9-62

The EIS lacks detail on the potential for buried resources and simply states: 9-63

[36] http://ohp.parks.ca.gov/pages/1068/files/CHRIS_Access_and_Use_Agreement_7-29-2016.pdf

> "There is low potential for previously unknown archaeological resources that could be encountered during ground-disturbing activities associated with Alternative A. There are no water sources onsite or adjacent to either property that would have increased the presence of significant subsistence resources (e.g., plants or wildlife) on either property." (pg. 3-41).

It is unclear how the EIS reached the conclusion for the Mettler and Maricopa Highway Sites that there is a low potential for buried resources, as Table 3.6-2 indicates that both the Kern Valley Indian Community and Kitanemuk & Yowlumne Tejon Indians have concerns regarding the sensitivity of the area and the Kern Valley Indian Community recommended construction monitoring. More detail should be provided as to how the EIS determined the sensitivity of the site. A higher potential for buried resources would warrant archaeological and Native American monitoring.

9-63 (Cont.)

The section would also benefit from a discussion of the land use history of the project site, as a means to assess potential for buried resources. This would minimally include a review of historic aerial photographs and topographic maps. A review of geologic mapping conducted as part of this peer review indicates that the project site and alternative site are both mapped as younger Quaternary alluvial fan deposits (Holocene age). These deposits are young enough to contain buried archaeological resources.

9-64

Section 3.6.4.1 indicates "no paleontological resources were observed during any of the field surveys". Previous sections mention that archaeological field surveys were conducted, but do not specify whether paleontological field surveys were conducted. Paleontological surveys would be conducted by qualified paleontologists trained to recognize fossils, and understand the deposition and sensitivity of formations for fossil resources. The section lacks a discussion of the geologic unit(s) of the project site, which is crucial for assessing paleontological resources sensitivity and determining whether paleontological resources could occur within the Mettler and Maricopa Highway Sites.

A review of geologic mapping conducted as part of this peer review indicates that the Mettler and Maricopa Highway Sites are both mapped as younger Quaternary alluvial fan deposits (Holocene age). This geologic unit typically has a low paleontological sensitivity. However, Younger Quaternary alluvium typically transitions to older Quaternary alluvium (Pleistocene age) at greater depths below surface, and older Quaternary alluvium can have a higher sensitivity for paleontological resources. This is particularly relevant since the project site is located within relatively close proximity (5-10 miles) from Pleistocene-age pluvial lakes (especially Buena Vista Lake to the northwest) that have produced significant fossil remains. In addition, Pleistocene older Quaternary terrace deposits and Pliocene-age non-marine sedimentary rocks occur in the hills less than three miles south of the project. These likely are sensitive for paleontological resources, as indicated by the fossil database check summarized in the section (pg. 3-40). Similar geologic deposits could occur at certain depths within the project site. Depending on the depth of proposed excavation, paleontologically sensitive geologic formations could be encountered during project construction, which could warrant paleontological resources monitoring. Regardless, additional detail (including maximum depth of project excavation) is needed in the section to support the impact finding for paleontological resources.

9-65

Cultural and Paleontological Resources Mitigation Measure A (pg. 4-5) requires pre-construction surveys of the off-site impact areas. These off-site impact areas are not discussed in Section 3.6, Cultural and Paleontological Resources. If there are indeed off-site areas that have not been subject to a cultural resources study, then there cannot be a full assessment of impacts in the EIS. In addition, these off-site areas likely would be considered part of the Area of Potential Effects (APE) under Section 106 of the National Historic Preservation Act. A Section 106 finding of effect for the undertaking is not possible without this information. 9-66

7. Transportation and Circulation

The following comments identify technical issues with the Transportation Impact Analysis (TIA), which is Appendix F of the EIS and the source of the transportation analysis presented in Section 3.8, the Transportation/Circulation section of the EIS. 9-67

Table 3-1 (pg. 11 of the TIA) is missing the footnote corresponding to the letter 'c' in the first column of the table. 9-68

The TIA states on pg. 15, "Since this is casino Project, substantial traffic is generated by the casino on Saturdays. Hence, in addition to weekday AM (7:00 AM to 9:00 AM) and PM (4:00 PM to 6:00 PM) peak hours, this study includes analysis of the Saturday PM (4:00 PM to 6:00 PM) peak hour." There TIA should explain how it was determined that the peak hour would be between 4:00 p.m. and 6:00 p.m. Does this time period reflect the highest hourly volumes of background traffic on study area roadways/freeways, as reflected in the count data collected for the traffic study? If the analyzed Saturday peak hour reflects the peak of casino traffic and not the peak of traffic on study area roadways/freeways, then the traffic analysis likely misrepresents the potential for significant impacts when off-site roadways would be at their peak, which is a fundamental flaw in the EIS. 9-69

The TIA states on pg. 20, "Ramp merge/diverge ramp operations were analyzed under AM and PM peak hour conditions" and "The ramp merge / diverge analyses are included in this report for informational purposes only." The TIA should explain why ramp merge/diverge operations were not evaluated for Saturday peak hour conditions, similar to the other transportation facilities evaluated in the TIA. The TIA should explain why it is the case that the ramp analysis is included for informational purposes, and why it is not relevant/required as part of the impact analysis. 9-70

Table 5-1 (pg. 21 of the TIA) includes a column with significance thresholds for ramp metering, but no discussion in the preceding text. This should be discussed in the text. By omitting discussion of ramp metering significance thresholds in the text and providing a source of such significance thresholds, the determination of significance in the EIS is not supported. 9-71

Tables 6-4 and 6-5 (pgs. 27 and 28 of the TIA) shows bold text in the speed, density, and LOS columns at two locations, however there is no indication in the table footnotes for what bold text means. Nothing in the preceding text (Section 5.0 Significance Criteria) discusses what is considered acceptable or unacceptable for ramp merge/diverge operations, except for how a project impact is determined. There should be text explaining this and/or a footnote in the tables. 9-72

The TIA states on pg. 29 that "The following Transportation projects are identified within the influence area of the Tejon Project." Neither this statement nor any other text in the TIA reveals what is meant by "influence area". The geographic reach (i.e., radius in miles) of cumulative projects considered in the analysis should be clearly stated. Without defining the geographic reach of projects considered in the cumulative analysis and providing justification for selecting geographic boundaries, it cannot be determined whether the analysis of potential cumulative traffic impacts in the EIS is adequate. 9-73

The TIA states on pg. 32, "In addition to the cumulative projects listed above, a growth factor was applied to the existing traffic to account for any future development projects not yet known at this time. A growth of 2% per year for five (5) years from 2018 to 2023, was applied." A source (e.g., previous studies, academic research, etc.) of the 2% per year annual background growth rate assumption for 2018-2023 is not provided. Without providing the source of this assumption and a justification for its use in the analysis of future traffic conditions, it cannot be determined whether the analysis of future traffic conditions in the EIS is adequate. 9-74

Beginning on pg. 35, the TIA documents assumptions used to establish trip generation rates for the project land uses. Many of the adjustments/assumptions used to establish site-specific trip generation for each of the project land uses are not substantiated, and appear to be somewhat random. Additional justification/documentation needs to be provided to determine whether the trip generation rates established for the project provide a full and accurate accounting of project impacts. Specific comments are below. 9-75

- The TIA states on pg. 42:

  "Weekday trip rates for Land Use 416 Campground / Recreational Vehicle Park, from the 10th Edition of the Trip Generation Manual, Institute of Transportation Engineers (ITE) is used. Daily trip rates are not available. Hence, the daily [trips] were estimated based on the assumption that peak hour volumes are 10% of the daily trips. Thus, the daily trips were calculated using the average of the AM and PM peak hour volumes. Saturday trip rates are not available for RV park. The weekday PM peak hour rates were used for the Saturday peak hour. Saturday daily volume was calculated based on the assumption that peak hour volumes are 10% of the daily trips."

  What is the source (e.g., previous studies, academic research, etc.) of the 10% peak hour volume-to-daily volume ratio assumption for RV parking? What is the basis of the assumption that Saturday peak hour trip generation for RV parking would be the same/similar to weekday PM peak hour? 9-76

- The TIA states on pg. 42 that "Saturday trip rates are not available for Organic Farm. The weekday daily rate is used for Saturday. For the peak hour, 5% is used for the Saturday." What is the source of the Organic Farm assumptions for Saturday daily and peak hour use? What documentation is there to substantiate the use of the weekday rate for Saturdays, the use of 5% of the daily rate to represent Saturday peak hour, and the use of 10% of the daily rate to represent weekday AM and PM peak hours? 9-77

- The TIA states on pg. 43 that "The weekday and Saturday trip rates for Community Park, Land Use 411, Trip Generation Manual, 10th Edition, ITE is used for Community Park. The rates in the Trip Generation Manual are considered too low and based on engineering judgement, the rate was adjusted." The TIA should elaborate on what methodology was used to adjust the rates upwards. 9-78

- The TIA states on pgs. 43 and 44 the following:

  "The community center is meant for the use of tribal members and members of the general public will not use generally this center. Hence, the rates in the Trip Generation Manual are considered high. Therefore, 50% of the rate is used."

  "The Health Center is meant for the use of tribal members and members of the general public will not generally use this center. Hence, the rates in the Trip Generation Manual are considered high. Therefore, 50% of the rate is used."

  "The Tribal Administration office is meant for the use of tribal members and members of the general public will not generally use this center. The tribal membership is small, approximately 900 members, which would be an equivalent of approximately 300 families. It may be noted that most members (families) would not visit the Tribal Administration office every day. Hence, the rates in the Trip Generation Manual are considered high. Therefore, 50% of the rate is used." 9-79

  The TIA does not provide a justification for why selecting a 50% reduction in the ITE rates for the community center, health center, and tribal administration building was the appropriate reduction.

- The TIA states on pg. 44 that "Trip rates for a sheriff station is not available. ITE provides only a weekday PM peak hour trip rate for a fire station. However, no daily rates are provided." The TIA is missing detail of how trip generation was calculated for this land use. Also, actual trips generated by this land use do not appear to be accounted for in project analysis. While this land use would probably not generate a large number of trips, the absence of it from the analysis means that the analysis does not fully reflect the potential impact of all vehicle trips that would be generated by the project. As such, the traffic analysis misrepresents the potential for significant impacts which is a fundamental flaw in the EIS. 9-80

Table 9-1 (pg. 48 of the TIA) includes a Diverted Link reduction of 10%. It is not clear in the text introducing the table or in the Table 9-1 footnote what exactly a diverted link trip is, and how it was determined that 10% is an appropriate reduction. The EIS should include the definition and a discussion of the methodology used to arrive at 10% that is included on pg. 3-61 of EIS. 9-81

Beginning on pg. 74 of the TIA, Year 2040 traffic conditions for Alternative A1 are analyzed. This section is missing the entire discussion/analysis/tables/figures representing the Saturday peak hour. By not including an analysis of Saturday peak hour traffic conditions, the traffic analysis misrepresents the potential for significant impacts which is a fundamental flaw in the EIS. 9-82

Beginning on pg. 108 of the TIA, Year 2040 traffic conditions for Alternative A2 are analyzed. This section is missing the entire discussion/analysis/tables/figures representing the Saturday peak hour. By not including an analysis of Saturday peak hour traffic conditions, the traffic analysis misrepresents the potential for significant impacts which is a fundamental flaw in the EIS.

9-82 (Cont.)

The TIA states on pg. 130 that "The Project has no significant impacts on these freeway and roadway segments in Alternative B." This statement is not consistent with the results shown in Tables 16-2 and 16-3, which show several impacts.

9-83

Beginning on pg. 140 of the TIA, Year 2040 traffic conditions for Alternative B are analyzed. This section is missing the entire discussion/analysis/tables/figures representing the Saturday peak hour. By not including an analysis of Saturday peak hour traffic conditions, the traffic analysis misrepresents the potential for significant impacts which is a fundamental flaw in the EIS.

9-84

Page 140 of the TIA states: "The Project has no significant impact on this segment in Alternative B." This statement is not consistent with the results shown in Table 17-2, which shows an impact.

9-85

Page 151 of the TIA states:

> "Intersection Control Evaluation (ICE) studies will be conducted prior to the Project construction time to determine the appropriate intersection control for the intersections within Caltrans jurisdiction. ICE refers to the "evolved" decision-making process and framework that a growing number of transportation agencies are adopting to provide a more balanced or holistic approach to the consideration and selection of access strategies and concepts during transportation planning, project identification and initiation processes that contemplate the addition, expansion or "full control" of intersections.
>
> In advance of conducting the ICE studies, the following improvements are recommended to mitigate the direct and cumulative impacts. Section 18.3 includes the fair share calculations for each of the impacts for which a fair share is recommended."

9-86

Conceptual drawings should be prepared to illustrate the proposed mitigation measures. Conceptual drawings would provide evidence about the preliminary feasibility of implementing the proposed mitigation measures, and would highlight any secondary adverse effects to the environment that might occur as a result of implementation. Future ICE studies could build upon conceptual drawings developed for the EIS. By not including a preliminary analysis the feasibility of the proposed mitigation measures, the EIS does not provide adequate support for the proposed mitigation measures and does not fully disclose potential secondary impacts that could result from their implementation, which is a fundamental flaw in the EIS.

Tables 3.8-3 (pg. 3-60 of the DEIS), 3.8-4 (pg. 3-62 of the DEIS), and Table 3.8-6 (pg. 3-64 of the DEIS) provide level of service results for the traffic analysis scenarios. No analysis is presented for Saturday peak hour conditions on any of the study facilities in Year 2040, and there is no explanation as to why this analysis was not completed as part of the EIS. By not providing this information, the EIS does fully disclose potential project impacts.

9-87

Page 3-62 of the DEIS states that "During construction, there would be an estimated maximum of 1,824 trips (1,298 one-way worker trips and 526 one-way material haul trips) to and from the Mettler and Maricopa Highway Sites (Appendix F)." The discussion of Construction Traffic references Appendix F, but no analysis of construction traffic is provided in Appendix F or its appendices. The source of the numbers/analysis should be given. 9-88

Page 3-63 of the DEIS states that "Implementation of the BMPs described in Section 2.2.2 would minimize any remaining potential impacts of project construction to transportation/circulation." This discussion references BMPs but does not indicate how the BMPs would address specific potential impacts of project construction. In order to conclude that impacts would be minimized, it is necessary to provide justification and/or evidence to support such conclusions. 9-89

Table 4-1 (pg. 4-6 of DEIS) states "Mitigation measures are illustrated in Figure 4-1." Figure 4-1 provides a general location of improvements but does not provide a meaningful illustration of the full extent and configuration of the proposed measures. 9-90

8. Noise

Under Construction Noise for Alternative 1 and Alternative 2 at the Mettler Site (pg. 3-89), construction noise level was estimated to reach 77.5 dBA Leq at the nearest residence 850 feet away, exceeding the 72 dBA Leq threshold recommended by the FHWA and would exceed the ambient noise levels measured at this residence by more than the 5 dBA allowance. The EIS then states that

> "BMPs provided in Section 2.0 would reduce the potential for stationary construction noise effects. Additionally, construction would be temporary and intermittent in nature. Therefore, with implementation of BMPs, construction noise associated with Alternatives A1 and A2 would not result in significant adverse effects associated with the ambient noise environment." 9-91

It should be noted that, BMPs presented in Section 2.0 do not provide any quantified reduction in construction noise levels that would be experienced by this residence with the implementation of these BMPs, and there is no proof that these BMPs would reduce the projected construction noise level from 77.5 dBA Leq to 72 dBA Leq or lower. The EIS should provide substantiation that Alternatives A1 and A2 would not result in significant adverse effects associated with the ambient noise environment.

Under Construction Traffic for Alternative 1 and Alternative 2 at the Mettler Site (pg. 3-89), the EIS stated that

> "The existing ambient noise level in the vicinity of sensitive noise receptors is approximately 51 dBA Leq at the Mettler Site (Table 3.11-2). 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 along construction roads at the Mettler Site. The ambient noise level due to the increase in vehicles on area roadways during construction would be approximately 64 dBA Leq, which is less than the FHWA noise 9-92

> thresholds for residential of 72 dBA Leq. Therefore, noise resulting from increased construction traffic for Alternatives A1 and A2 would not result in a significant adverse effect."

There was no calculation included that demonstrates the 1,188 vehicles during the AM peak hour would result in an increase in the ambient noise level at residential receptors of approximately 0.10 dBA Leq along construction roads at the Mettler Site. It is also not clear how this 0.10 dBA Leq increase in the ambient noise level would result in the ambient noise level increase from 51 dBA Leq to 64 dBA Leq. Even though the 64 dBA Leq is still below the FHWA recommended 72 dBA Leq threshold, the increase of 13 dBA is a substantial increase in the ambient noise levels which may be a significant impact. 9-92 (Cont.)

Under operational impacts (pg. 3-90), the EIS states:

> "S. Sabodan Street: The Mettler Site is located between SR-99 and SR-166, which accommodate between 49,000 and 4,300 vehicles per day, respectively, (Appendix F) and create an ambient noise level of 48.4 dBA (Table 3.11-2, Site 2). South Sabodan Street would add approximately 13,700 trips to the area. Due to the lower traffic volume compared to SR-99, the ambient noise would be negligible compared to SR-99. Therefore, Alternatives A1 and A2 would result in a less-than-significant impact to ambient noise." 9-93

The above stated that South Sabodan Street would add approximately 13,700 trips to the area. Considering that SR-166 carries only 4,300 vehicles per day, adding 13,700 vehicles a day to this road represents adding three times the vehicle trips to this road, would add more than 5 dBA to land uses along this road that are exposed to traffic along SR-166. This traffic noise level increase should be evaluated as a potentially significant impact and not dismissed due to higher traffic volumes on SR-99.

9. Hazardous Materials

The EIS does not address potential health impacts associated with pesticide use and other chemical applications on adjacent agricultural properties. The amount of pesticide use per square mile for the census tract containing the Mettler site is estimated to be higher than 91% of other census tracts in California.[37] The amount of pesticide use per square mile for the census tract containing the Maricopa site is estimated to be higher than 85% of other census tracts in California.[38] Exposure to high levels of some pesticides can cause illness or conditions such as birth defects or cancer later in life. The EIS should evaluate the potential exposure to persons at the Mettler and Maricopa Highway Sites, particularly for employees who would be frequently exposed over longer periods. 9-94

10. Public Health and Safety

[37] California Office of Environmental Health Hazard Assessment. 2020. Data for Census Tract 6029003304. https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30

[38] California Office of Environmental Health Hazard Assessment. 2020. Data for Census Tract 6029003306. https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30

A COVID-19 health and safety plan should be prepared for the proposed gaming alternatives, which summarizes the protocols that will be in place to reduce the transmission of COVID-19 or similar pandemics. The plan should be included in the EIS appendices for review. The project description should discuss the impact of safety measures on operations, including reduced occupancy/capacity and temporary closures of special events and live entertainment. The EIS should discuss how the health and safety plan would be enforced, as Tribal casinos in California have taken the position that they are not subject to State health requirements. 9-95

11. Socioeconomics/Environmental Justice

It is likely that the socioeconomic benefits of the gaming alternatives are overstated in light of the economic effects of COVID-19, which has affected the operations of gaming establishments throughout the U.S. The EIS should quantify the estimated reduction of economic benefits due to COVID-19. This analysis should factor in the reduced number of gaming positions, reduced number of employees, and other operational changes that would be required for public health and safety. Additionally, the employment and income setting discussions should be updated to address the reduced employment and income in the greater Bakersfield area due to COVID-19. 9-96

There are fundamental flaws with the environmental justice analysis presented in the EIS. As disclosed in Table 3.7-2, minority ethnicities were defined as: American Indian or Alaskan Native, Asian or Pacific Islander, Black (not of Hispanic origin), Hispanic. In addition, the Census classifications of "two or more races" and "other" were assumed as minority populations for the purposes of the analysis. The analysis miscalculated the percent of minorities within each jurisdiction/census tract by not accounting for Hispanic/Latino populations. For all of the Census Tracts in Table 3.7-1, the Hispanic or Latino population column is higher than the total minority population column, meaning Hispanic/Latino populations were not factored into the EIS calculations of minority population. The Mettler Site for example is within Census Tract 33.04. The American Community Survey 5-year estimates for 2018 (Table DP05) show that the percentage of White alone (Not Hispanic or Latino) persons is 48.7% of the tract population; thus, 51.3% of persons within the tract would be considered part of minority populations.39 The EIS baseline analysis is incorrect and must be corrected to accurately report the environmental justice populations. 9-97

Table 3.7-1 provides a distinction between census tracts in the Mettler Site Vicinity and Maricopa Highway Site Vicinity. It is unclear why some census tracts are associated with being in the vicinity of one site and not the other as the alternative sites are less than one mile from each other. Most neighboring census tracts should be considered for both sites. 9-98

Figure 3.7-1 shows only 4 labeled census tracts of the 15 considered and shows Census Tract 32.04, which was not considered in the analysis. The figure should be revised or additional figures should be added to show all of the census tracts considered and Census Tract 32.04.

Census Tract 32.04 is adjacent to the Census Tract containing the Mettler Site (Tract 33.04) and is just over a mile north of the Mettler and Maricopa Highway Sites. It is closer than many of the other census tracts considered and no explanation is given for its exclusion from the analysis. The American Community Survey 5-year estimates for 2018 (Table DP05) show that the percentage of White alone (Not His- 9-99

[39] U.S. Census Bureau, 2019. 2014-2018 American Community Survey 5-year Estimates. Table DP-05 Demographic and Housing Estimates. https://data.census.gov/cedsci/

panic or Latino) persons is 42.3% of the tract population; thus, 57.7% of persons within the tract would be considered part of minority populations.

The presence of environmental justice populations amplifies the significant effects identified in the EIS, particularly those associated with air pollution and traffic. For air pollution impacts, the EIS relies on credit purchase to reduce significant effects. While credit purchase may provide future benefits to the air basin as a whole, it will not prevent the increased pollutant emissions for minority populations in the vicinity of the Mettler or Maricopa Highway Site. 9-99 (Cont.)

12. Public Services

The analysis of impacts to law enforcement services and fire protection services is inadequate. The analysis improperly defers to the Intergovernmental Agreement (IGA) as resolving any impacts on increased law enforcement and fire protection services. The EIS should include a comparison of law enforcement and fire protection demands from existing Tribal gaming facilities or other similar entertainment facilities to substantiate that the amounts proposed in the IGA offer adequate compensation. Further, the IGA does not address compensation to the California Highway Patrol (CHP), which has jurisdiction on the multiple State highway facilities within proximity of the Mettler and Maricopa Highway Sites. The EIS claims that the contributions to State government from tax revenue would offset the impacts to CHP. The EIS should quantify the potential impacts to CHP and provide mitigation to ensure that funds are appropriately allocated to CHP. 9-100

13. Aesthetics

The EIS assumes both Alternatives A1 and A2 are approximately 134 feet above ground level and both would be represented by the architectural rendering included as Figure 2-6 of the EIS. The hotel for Alternative A2 has 100 less rooms and 48,500 less square feet than Alternative A1 and thus is likely to have the same massing as Alternative A1. As such, the EIS does not provide an equal level of detail and analysis for the height of structures, particularly the hotel, under Alternative A2. 9-101

14. Other NEPA Requirements

The EIS should include a summary of how the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved should the alternatives be implemented, as required by 40 CFR §1502.16. 9-102

15. Air Quality

As noted for the comments on Transportation and Circulation, the EIS is missing substantiation for trip generation assumptions. Underestimated traffic impacts, such as for the police and fire stations, would also mean that air quality impacts and noise impacts associated with traffic were underestimated. If trip generation numbers are modified, remodeling of potential emissions would be required, as well as updates to the draft General Conformity determination. 9-103

The EIS fails to properly address and analyze Tribal New Source Review (NSR). The applicability of Tribal NSR in accordance with 40 CFR 49.153(a)(1)(i)(A) is made on a source's potential to emit (PTE) 9-104

and not the actual emissions estimated. According to an EPA white paper, 500 hours per year should be assumed as an appropriate assumption of "worst case" estimate of annual operating hours for emergency diesel generators on a PTE basis. Table 3.4-3 portrays stationary source emissions from an assumed 30 hours per year operation and should be recalculated and reviewed against the Tribal NSR thresholds in 40 CFR 49.153, especially because the applicable PM2.5 threshold is only 0.6 tons per year (tpy). 9-104 (Cont.)

Additionally, the document fails to list expected equipment at a casino and hotel project that contribute to PTE and would not be exempt from Tribal NSR. For example, the total boiler ratings appear low (total of 2 MMBtu/hr) relative to facility demand. Boilers with a total heat input of 2 MMBtu/hr or less in severe nonattainment areas are exempt from permitting under 40 CFR 49.153(c)(11)(ii). This appears to be a convenient rating when compared to similar projects that have considerably higher boiler ratings. 9-105

The document is missing any discussion or analysis on pool heaters, fire pumps and water heaters, all of which are common emission sources at hotels and casinos. It is important that the document analyzes the most realistic project design for significance determinations and not potentially circumvent Tribal NSR requirements. It should be noted that similar tribal projects in EPA Region 9 that have casinos and hotels require minor NSR air permits from the EPA, like Morongo Casino, Red Hawk Casino, San Manuel Casino, and Cache Creek Casino Resort. Based on the presumed missing information, an assertion of no significant impact with regards to Tribal NSR is not supported. 9-106

The daily trips generation rates in Table 3 of Appendix M (pg. 10) should specify what factor was used (e.g. trips per thousand square feet or per hotel room). The values in the table appear to be inconsistent with Table 9-1 of Appendix F (p. 48). 9-107

Table 4.2 of the CalEEMod output files for Alternative A1 (pg. 271 of the 1,411, Draft EIS Volume 2 Appendices I-U PDF) has much higher trip values than those in Table 3 (pg. 209 of the 1,411, Draft EIS Volume 2 Appendices I-U PDF). The trip numbers presented here also appear to be inconsistent with Table 9-1 of Appendix F (p. 48). The discrepancy between the trip numbers throughout the appendices is concerning with regards to accuracy and impacts calculated. 9-108

This mitigation fails to provide adequate details related to the Voluntary Emission Reduction Agreement and its intended purpose and scope (pg. 4-3). 9-109

The mitigation measures listed in Appendix M (pg. 13) do not match the Best Management Practices (BMPs) or mitigation in the EIS. For example, Appendix M includes mitigation that "The Tribe shall restrict vehicle speeds on the construction site to 15 miles per hour" (Appendix M, pg. 13), while the EIS BMPs include that "Traffic speeds on unpaved roads will be limited to a maximum of 25 mph" (pg. 2-6). 9-110

The air quality discussions for off-site improvements under Alternatives 1A, 2A and B do not quantify construction emissions or compare them to applicable air district thresholds (pgs. 3-106 and 3-109). 9-111

16. Cumulative Effects

The cumulative effects provides very little discussion of the effects of the project when considered with the Grapevine Specific and Community Plan, and no specific discussion of Centennial at Tejon Ranch, which are both included in the cumulative projects list (Appendix J, pg. 2, Table 1). For example, the EIS does not assess the cumulative effects to loss/conversion of agricultural land in Kern County or the re- 9-112

gion. The EIS should discuss the cumulative impacts of the project in combination with past loss/conversion of agricultural land and proposed development in the region which would displace agricultural land.

9-112 (Cont.)

The cumulative discussion of groundwater supply (3-19) is inadequate. There is no discussion of the cumulative impacts to increased water demands for the alternatives under consideration when combined with those of the Grapevine Specific and Community Plan. The EIS defers to state and local groundwater management activities that may allow for State intervention if water is not managed well by the local agency. This would not prevent future projects from further drawing down the critically overdrafted basin.

9-113

17. Land Use

The EIS states that the project "is generally compatible with the surrounding land uses along the I-5 corridor. Thus, the inconsistency of Alternatives A1 and A2 with existing zoning would not result in significant adverse land use effects" (pg. 3-70). This conclusion fails to consider the incompatibility issues with agricultural land on the I-5 corridor, including odors, noise, and the application of pesticides and other chemicals for agricultural purposes. The EIS relies on the Right to Farm Kern County Ordinance Code 8.56 which allows agricultural activities to continue; however, allowing an activity does not make it compatible with adjacent development.

9-114

The EIS states "Alternatives A1 and A2 would be implemented in a manner consistent with most of the policies of the County General Plan, excluding the previous discussed land use and zoning" (pg. 3.71) with no analysis or substantiation. The project does not appear to be consistent with the following General Plan Goal and Policy40:

Section 1.9, Resource Goal 5. Conserve prime agriculture lands from premature conversion.

Section 1.9, Resource Policy 7. Areas designated for agricultural use, which include Class I and II and other enhanced agricultural soils with surface delivery water systems, should be protected from incompatible residential, commercial, and industrial subdivision and development activities.

The EIS should include a table of all applicable General Plan goals and policies and assess the project's consistency with these goals and policies.

9-115

Sincerely,

Respectfully submitted,

Cheryl Schmit
Director, Stand Up for California!

[40] Kern County, 2004. Kern County Land Use, Open Space, and Conservation Element. https://pcbweb.co.kern.ca.us/planning/pdfs/kcgp/KCGPChp11andUse.pdf

Attachment

Accessibility Report

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Rule Name	Status	Description
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Field descriptions	Passed	All form fields have description

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Rule Name	Status	Description
Figures alternate text	Passed	Figures require alternate text
Nested alternate text	Passed	Alternate text that will never be read
Associated with content	Passed	Alternate text must be associated with some content

Hides annotation	Passed	Alternate text should not hide annotation
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Tables

Rule Name	Status	Description
Rows	Passed	TR must be a child of Table, THead, TBody, or TFoot
TH and TD	Passed	TH and TD must be children of TR
Headers	Passed	Tables should have headers
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Summary	Passed	Tables must have a summary

Lists

Rule Name	Status	Description
List items	Passed	LI must be a child of L
Lbl and LBody	Passed	Lbl and LBody must be children of LI

Headings

Rule Name	Status	Description
Appropriate nesting	Passed	Appropriate nesting

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Primary language	Passed	Text language is specified
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Regularity	Passed	Tables must contain the same number of columns in each row and rows in each column
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Lbl and LBody	Passed	Lbl and LBody must be children of LI

Headings

Rule Name	Status	Description
Appropriate nesting	Passed	Appropriate nesting

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Tagged annotations	Failed	All annotations are tagged
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Character encoding	Failed	Reliable character encoding is provided
Tagged multimedia	Passed	All multimedia objects are tagged
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Timed responses	Needs manual check	Page does not require timed responses
Navigation links	Passed	Navigation links are not repetitive

Forms

Rule Name	Status	Description
Tagged form fields	Failed	All form fields are tagged
Field descriptions	Passed	All form fields have description

Alternate Text

Rule Name	Status	Description
Figures alternate text	Failed	Figures require alternate text

Nested alternate text	Passed	Alternate text that will never be read
Associated with content	Passed	Alternate text must be associated with some content
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Summary	Failed	Tables must have a summary

Lists

Rule Name	Status	Description
List items	Passed	LI must be a child of L
Lbl and LBody	Passed	Lbl and LBody must be children of LI

Headings

Rule Name	Status	Description
Appropriate nesting	Passed	Appropriate nesting

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Comment Letter 10

Name: Dennis Fox

Comment Identification Number: 10

Date: June 12, 2020

Hi, this is Dennis Fox.

This is the first of my comments, and the first one is air...ah....the eco-evangelist is pretty severe on burning...whether you....uh...magafires are not counted in if you do a control burn. 10-01

For ambient air, you may want to think about having the parking etc. away and use shuttle buses. I don't recommend it. Cabela's does it. 10-02

Second is the mountain lion. Tejon Ranch got in trouble for that. It's an eco-scam that was a buy-in-initiative. The whole ranch got in trouble for trying to manage them. I suggest you might want to think about because you're on the edge. Mountain lions eat off middle management, therefore you end up with a lot of rodents and then the rodents have ended up with plague and Hantavirus. You may want to keep all the management rights to the Tribe, and take a look at what the State suggests cause you're on the edge for that. They suggest up-caps and stuff. People take one of them in their garbies. 10-03

Third, water. We hope you get it from the aqueduct, and purify it. Do not pump the local lands, it's sinking, and it damages buildings. On subsidence. 10-04

The sewage, you may want to put in the aqueduct and maybe treat it a little primary. And, uh, either give it to the local fallowed lands, regular lands or put it in the water table. Okay, that's it for now. Bye. 10-05

Comment Letter 11

From: Jim Adams <jameseadamsii@gmail.com>
Sent: Thursday, June 18, 2020 8:31 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

In order to offset air quality issues, I would recommend that the draft EIS include the requirement that the site will include a sufficient number of electric vehicle chargers of no less than 25, or more, if deemed necessary. 11-01

Thank-you
James E Adams
12617 Parkerhill Dr, Bakersfield, CA 93311

Tutudal – good evening/hello: **July 8, 2020**

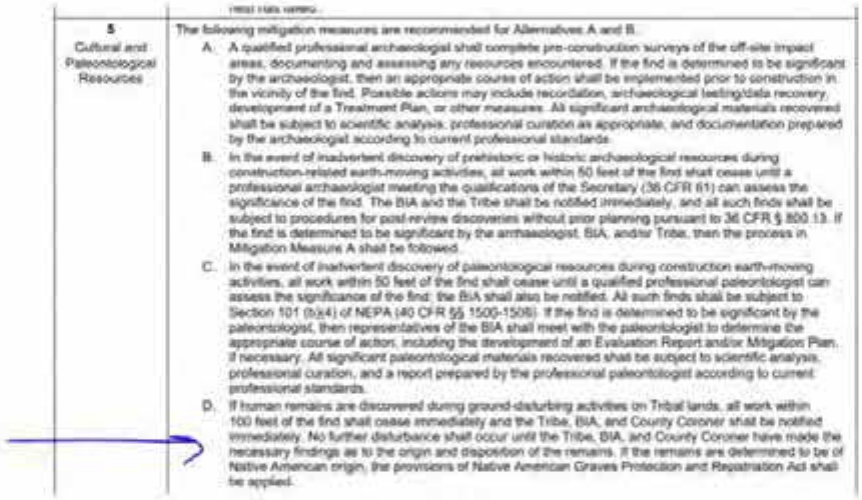
Dr. Donna Miranda-Begay, 3125 Reservation Road, Weldon, CA
916-548-5949 - donnabegay@yahoo.com

I am Tubatulabal Tribal Cultural Practitioner and Researcher:

Overall, our Tubatulabal Tribe located in the greater Kern Valley area – just 70 miles north east of this proposed economic development site of the Tejon Tribal Nation. We share similar history, culture and ancestor experiences. We support Draft EIS Alternative A 1 - Proposed Project. 12-01

I have four recommendations for this draft EIS:

1) In the main EIS draft document, Mitigation Measures – 5 – Cultural and Paleonlological Resources, item D, page 4-5. .."If human remains are discovered..." - I did not see California Native American Heritage Commission nor Tejon Tribal or assigned Native American monitor included in the notification process. **Recommend to include**: CA NAHC and Tejon Tribal or assigned Native American monitor to this notification process.



5 Cultural and Paleontological Resources	The following mitigation measures are recommended for Alternatives A and B. 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 CFR 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 CFR § 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 CFR §§ 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.

12-02

2) **Recommendation:** If CA NAHC is included in the notification of previous recommendation, add their commission's name to section 5.3 – "State and Local Agencies and Utilities".

5.3 STATE AND LOCAL AGENCIES AND UTILITIES

CALIFORNIA DEPARTMENT OF TRANSPORTATION
Sharri Bender Ehlert, Director, District 6

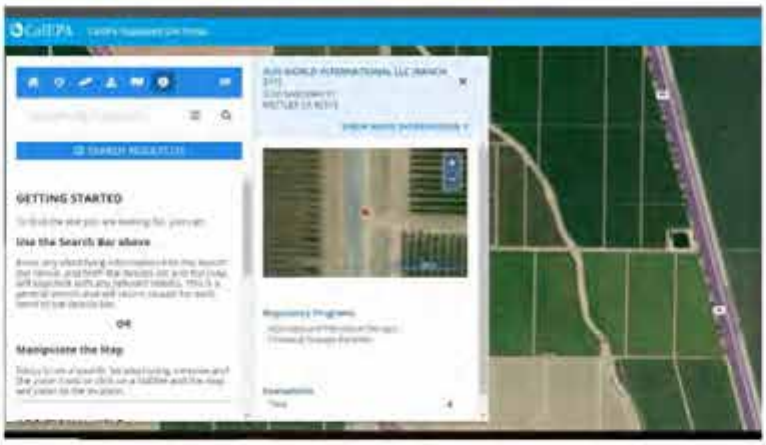
CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE CONTROL
Charles Ridenour, Branch Chief of the Cleanup Program

ARVIN-EDISON WATER STORAGE DISTRICT
Mark Dawson, Engineer
Mary Hough, Land Clerk

WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT
Sheridan Nicholas, Engineer-Manager

KERN SANITATION AUTHORITY DISTRICT
Regina Houchin

3) Working for State Agency – CalEPA State Water Resources Control Board, but not representing this agency. Recommend: Use CalEPA Regulated Site Portal to see potential surrounding toxic and chemical that are currently being regulated and monitored. This can also assist with long-term risk management of the proposed economic development properties and public safety. URL: https://siteportal.calepa.ca.gov/nsite/map/help



12-03

4) Per the Draft EIS main document's listed appendices (Volume II), I did could not locate Volume II – Appendix P Tribal Consultation and Q Cultural Resources Survey for the web links located under the Draft EIS web link: https://www.tejoneis.com/draft-eis/ **Recommend:** Update this web site with proper links to appendices.

APPENDICES (Volume II)

Appendix A	Executive Summary Table
Appendix B	Alternatives Eliminated from Consideration
Appendix C	Off-Reservation Environmental Impact Analysis Checklist
Appendix D	Intergovernmental Agreement
Appendix E	Figures
Appendix F	Transportation Impact Analysis
Appendix G	Water and Sewer System Planning
Appendix H	Preliminary Grading, Drainage and Flood Impact Analysis
Appendix I	Economic and Community Impact Analysis
Appendix J	Cumulative Projects
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Appendix L	Biological Assessment
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Appendix O	Biological Technical Memorandum
Appendix P	Tribal Consultation
Appendix Q	Cultural Resources Surveys
Appendix R	U.S. Census Data Tables
Appendix S	Farmland Conversion Impact Rating Form
Appendix T	Noise Measurement Reports
Appendix U	EDR Reports

12-04

Comment Letter 13

Name: Retired Educator

Comment Identification Number: 13

Date: July 11, 2020

Hello, I'm a retired educator from Kern County. I've been working here for over forty years—I still work part-time—but I'm calling to thank you for the opportunity to give my input on the casino. 13-01

My environmental concern would be number one water. Obviously, water needs to be considered, and also water needs to be conserved. I'm sure that you would do the most you can to make sure water is recycled when possible. 13-02

Also, lighting, my concern is light pollution. I'm a part astronomer. There are ways to shape the light, and that would preserve the integrity of the area. 13-03

The third thing would be for the land to preserve the open space. 13-04

The last thing is not directly for the environment, however it could tie in. That would be to, when the casino is planned, that they would do an emphasis on the history of the indegenious people there, who have their own tribe now, and, if possible, tours for children and/or adults. Excursions up the hill to observe flora and fauna. 13-05

Thank you very much, and good luck with the project. My number is 661-303-1073 if you wish to contact me.

From: Rey Ramirez <kernoffroad@gmail.com>
Sent: Saturday, July 18, 2020 10:28 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Kern Co. Hard Rock casino

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi as a resident of Kern County I am pleased to hear of your plans to build in Kern. I think you have a great location picked out. 14-01

My only concern is the plan for fire protection. Speaking with friends in the fire service reveals that the local fire department plans to move Firefighters from another station to staff your coverage. While initially it appears fine as I speak with friends there appears to be a few issues with this plan.

1. If you are paying money for coverage why would the Fire Department be taking them from some other area? Wouldn't that cause a shortage from wherever they come from?
2. If your Firefighters are coming from somewhere else, are they still available for those other areas?
3. If those repurposed Firefighters are still available to go to other areas, doesn't that leave your casino uncovered for fire and medical issues?
4. A few examples of incidents in the area are:
    a. Wildland fire on the Grapevine. Some of these can last days.
    b. Big Rig fire at the base of the Grapevine. Due to the amount of traffic on Interstate -5, there can be many of these a day, taking many hours each.
5. Why would there be extra Firefighters available to be moved to your facility? Is it just that the fire department puts extra personnel all over the place? No, that would not be very cort effective. The answer would be that companies and businesses in the area have paid for these services.
6. If others are paying for these services, why are they being moved?
7. If someone else is already paying for the firefighters why are you being billed for them? Is that double dipping? Having multiple groups paying for the same guys again and again.
8. If your business is having a large event and is near capacity, can you afford to lose your fire and medical personnel? Even for an hour?
9. It sounds like the fire department is cheating on those other businesses by removing their protection. If they (the fire Dept.) will cheat for you, they will cheat on you.

14-02

In conclusion, I am in favor of your business coming to Kern County but I think you should really look into firming up some strict contract requirements of the fire department. 14-03

Comment Letter 15

7-26-20

Bureau of Indian Affairs, Pacific Region
Attn: Chad Broussard, Environmental Protection Specialist
2800 Cottage Way
Sacramento, California 95825

RE: Draft EIS Comments for Tejon Indian Tribe Trust Acquisition and Casino Project (2020)

Dear Mr. Broussard:

I am submitting citizen comments to the referenced document for the proposed Tejon Indian Tribe Trust Acquisition and Casino Project. 15-01

Based on the site parameters and the proposed multi-use and multi-phased development of approximately 306 acres near the intersection of Hwy 99 and Interstate 5, I feel your air quality section is remiss by neglecting to assess and review potential outdoor pesticide exposure to casino project users, particularly those future inhabitants of your residential and RV developments.

Attached is a Kern County crop map that depicts the adjacent agricultural parcels to the proposed project site and the amount of pesticides applied to these adjacent parcels in 2019. Your DEIS does state that the proposed casino site is surrounded by production agricultural acreage. In 2019, about 6,367 gallons of pesticides were applied to the adjacent industrial agricultural sites, and about 99% of these agrochemicals (6,326 gallons) were considered highly toxic that necessitated fumigation for application (see crop map - southern and western adjacent crop parcels to the Mettler project site). 15-02

As you probably already know, the California DPR asserts that most pesticide VOCs emissions are from fumigants and inert ingredients in emulsifiable concentrates. Peer research studies show that volatilization of pesticides from agricultural fields composes a large source of potential human exposure with some pesticides having up to a 90% volatilization rate. Volatile pesticides have the potential of moving long distances off-site onto adjacent properties, and there is also a potential for pesticides with high chemical persistence to result in exposures since they can take weeks or months to degrade in the environment.

I believe the project EIS should include mitigation measures that address these concerns such as:

1. Establishing on-site air monitoring instrumentation, sensors and warning devices for detecting atmospheric VOCs from pesticide applications; and
2. Architecturally redesigning the location of your proposed residential and RV developments away from the western and southern adjacent agricultural parcels.

15-02 (Cont.)

Thank you for your support and the opportunity to comment on BIA federal environmental review documents for California based projects. If you have any questions or concerns regarding my letter please feel free to contact me at your earliest convenience.

15-03

Sincerely,

Vince Zaragoza

Vince Zaragoza (Bakersfield resident)

cc: Ca. Dept. of Pesticide Regulation (CDPR)

Vince Zaragoza ● PO BOX 60100 ● Bakersfield, Ca 93386 ● 661/871-4770 (H) ● communitycivics@outlook.com

Comment Letter 16

Name: Margarita Martinez

Comment Identification Number: 16

Date: July 27, 2020

Yes, good afternoon, my name is Margarita Martinez. I am a community member of the Mettler Community and this is regarding the Tejon Indian Tribe Casino Project. I am calling as a community member and as a board member of the water district board. 16-01

My concern in viewing your environmental impact statement is you speak about the groundwater use and the different proposals and plans. My concern is that you are saying you work with and are going to compensate the county or local water district for the use program, and you also talk about requiring ag to reduce their groundwater pumping for at least the same amount that they use as far as the surface. I'm concerned that the water use will impact our groundwater recharge as far as in the Mettler Community. We are not part of Arvin-Edison; we have our own wells. My concern is that we were never contacted as a district. We were never informed of your plans as far as water use and how it may affect our neighborhood as well as our own wells. In your environmental statement, you state that it could impact neighboring groundwater wells. Well, we are neighbors, we will be neighbors, and I want to know what will happen to our water once your project begins as it's being constructed and once it is all developed. It will affect our community, and that is a concern, and we have not been contacted regarding water usage. 16-02

That's my concern is our water—is our water—within our community and how it will affect our community as well as many other issues that I have that I am concerned for in our community as far as crime, as far as traffic. There are so many other things we have to deal with right now, and that is another concern of mine within the community. 16-03

I thank you for your time, thank you.

Comment Letter 17

Name: Brenda Mann

Comment Identification Number: 17

Date: July 27, 2020

Hello, my name is Brenda Mann. I'm a resident of Mettler. I'm calling in concern for the environmental control. 17-01

My first concern is with water, which the fluctuation of water and the amount of water that this area would be taking. We are a very small community, and have had progress in being able to get the funding to help us get new wells. However, at this time, I do not believe in would be in our best interest for someone with that size of an environment to move in and use our water aqueducts from us. 17-02

Also, the traffic. We have it bad enough right now, and it's hard to get and off the freeways that come through our community, trying to cut through. I believe there would an even more excess with a casino. 17-03

And just absolutely crime, crime would go up. We're far enough away from law enforcement and any medical help already and to increase it would just be agitation to the community and not help at all for anyone living here. Thank you. 17-04

Comment Letter 18

Name: Franciso Martinez

Comment Identification Number: 18

Date: July 27, 2020

Good afternoon, my name is Franciso Martinez. I've sent a concurrence statement to Char Broussard's e-mail at bia.gov. A stipulation found in the Appendix A of the "Executive Summary Table" on page "ES-Table 3" of "Summary of Impacts and Mitigation Measures" found under "Groundwater" is not being met because the Mettler County Water Board has not been formally contacted. The statement says, section c:

"c. Work with and compensate the County or local water district to implement a water conservation program and/or a conjunctive water use program."

The Community of Mettler needs to be contacted because obviously when it comes to water table issues, the Mettler Water District can be affected.

18-01

Also, we have future plans of expanding, of going from, basically implementing a sewage water treatment plant. So, that's in the future. Right now, we basically don't have that. This is something we would like the casino tribe to consider if we can work together on a water treatment/sewage plant so it doesn't adversely affect the water table. Right now, we're in need of a sewage treatment water plant.

Again, my name is Franciso Martinez, and I'm the president of the Mettler County Water Board.

18-02

Comment Letter 19

From: Grace Walden <waldeng1234@gmail.com>
Sent: Monday, July 27, 2020 3:57 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Sent from my iPhone Hello... my name is Grace Walden! I left a voice message, but not sure if it went through! I've lived here in Mettler for a very long time, and like I asked at the first meeting , I wanted to know about a wall, to keep foot traffic and cars out of our community! We have no crime here, worried that we will have after you open. What about all the bright lights, traffic noise, how about water usage? What about good neighbor law? Most importantly what about the noise of building and the dust we will endure! What about Valley Fever, from the dust!

19-01

commentator. We do have a technical support line that you can call. It is on the website, tejoneis.com.

We would encourage you to call that number and try to figure out why we can't hear you on our end and then go ahead and raise your hand again.

So we are going to move to the next commenter, Dr. Donna Miranda-Begay.

Ms. Miranda-Begay, please unmute your microphone, restate your name for the record. You'll have three minutes.

DR. MIRANDA-BEGAY: My name is Dr. Donna Miranda-Begay. I am a resident in Wilton, California. I am a member of the Tubatulabal Tribe. I am the Tubatulabal Tribal cultural practitioner and researcher over all our Tubatulabal Tribe located in the Greater Kern Valley area, just 70 miles northeast of this proposed economic development site of the Tejon Tribal Nation.

We share similar history and culture and ancestral features. We support the draft EIS Alternative A1 proposed project.

I was looking over the Environmental Impact Study report. I am very familiar with CEQA

and NEPA, being a former member of CalEPA's Tribal Advisory Board and State Water Resources' Tribal Advisory Council, so I am coming from that perspective.

Looking at the draft EIS, I will make four recommendations here. In the EIS draft documentation, under Mitigation Measure 5, cultural and paleontology resources, I notice that I did not see, when it referenced discovery of human remains, that's Item D on Page 4-5, I did not see California Native American Heritage Commission nor Tejon Tribal or assigned Native American monitor included in the notification process.

So I believe that's required. So I recommend that you include the Native American Heritage Commission and Tejon Tribal or assigned Native American monitor to be in the notification process.

20-01

Recommendation 2, if you do include the Native American Heritage Commission, you might want to add them on Section 5.3, State and local agencies and utilities listings. I see a few State agencies there.

I don't know if you're working with the State Department of Water Resource Control Board.

20-02

But they have a lot to do with the groundwater and water rights and that, too. So that's a consideration.

Item No. 3, working for the State, CalEPA State Water Resource Control Board, which I am not representing them here, I recommend that the folks that drafted the EIS and maybe the Tribe take a look at the CalEPA Regulated Site Portal. I notice that nearby you have a few toxic and chemical areas that are being monitored. These can be long-term hazard issues. So take a look at that.

And also my documentation here, I have drafted it and sent it off to Chad already.

And then last item, per draft EIS main documents, the appendices, Volume II, there's supposed to be an Appendix B and Q for tribal consultation and cultural resource surveys. I don't know if that's completed or not, but I didn't see those two appendixes in the Volume II links.

So I clicked on all the links to try to locate that. I was pretty interested in that tribal consultation and, of course, cultural resource survey. I recommend that the website be updated to include those appendices.

Other than that, very good job. I really

20-02 (Cont.)

20-03

20-04

want to say congratulations to the Tejon Tribal Nation. And a friend of mine, Kathy Morgan, did a great job way back when. I don't know if she's still on council. But the Tubatulabal Tribe wishes everybody the best of luck here and appreciates the efforts of the Bureau of Indian Affairs. Thank you, toodleloo.

MR. BROUSSARD: Thank you for your comments. Before I call the next commenter, I just wanted to give out the technical support line. As I mentioned, that line is on the website at the same page that you went to to register.

But just in case folks don't have the website in front of them, the technical support line is (949) 861-5954, and we actually have a second line set up as well, which is (949) 861-5955. So if you're having technical difficulties, please call one of those numbers and we can try to help you out with that.

Okay. So with that, the next commenter will be Dave Noerr.

Mr. Noerr, please restate your name for the record and unmute your microphone. You will have three minutes.

MR. NOERR: This is Mayor Dave Noerr with

From: Horse Robinson <horse.robinson@gmail.com>
Sent: Friday, July 24, 2020 5:02 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Cc: horse. robinson <horse.robinson@gmail.com>
Subject: [EXTERNAL] "DEIS Comments, Tejon Indian Tribe Casino Project"

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

To Chad Broussard

July 21, 2020

To: Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, CA 95824, amy.dutschke@bia.gov and Assistant Secretary Tara Sweeney, as-ia@bia.gov exsec@ios.doi.gov ; Also: chad.broussard@bia.gov , john.rydzik@bia.gov , Dennis McNamara mcnamarad@kerncounty.com , planning@co.kern.ca.us , Lee.Fleming@bia.gov

From: Kawaiisu Tribe of Tejon, David Laughing Horse Robinson, Chairman, PO Box 1547, Kernville, CA 93238

Subject:"DEIS Comments, Tejon Indian Tribe Casino Project"

The Kawaiisu Tribe of Tejon oppose this DEIS and DCD on behalf of the Tejon Indian Tribe and request you take alternative (5) No Action Alternative.

Our oppositions stated in this letter are directed to the Department of Interior (DOI), Bureau of Indian Affairs (BIA), Kern County, NIGC, EPA, Hard Rock Café Corp. and Tejon Ranch Corp.'s.

We oppose this application for acquisition in trust and transfer into trust status of acreage for Indian gaming, casino-resort, hotel, convention center and other purposes west of Mettler, CA.

21-01

Your actions equal a taking of our rights, within our Ratified Treaty Territory and Indian Country, and violate Federal, State and International Civil and Criminal Law. These lands in Kern County, CA are in legal dispute.

Kawaiisu Tribe of Tejon are the Treatied, signatories to Ratified Treaty No. 256, Treaty with the Utahs, December 30, 1849 (9 Stat. 984) with 70, 160 acre allotments (11,200 acres) in Kern County, CA and 20 million Indian Country acres surveyed and published in Schedule of

Indian Land Cessions maps #285 and #286, Eighteenth Annual Report of the Bureau of American Ethnology, 1896-1897, 56th CONG, 1ST SESS. HOUSE DOCUMENT 736 at 782-783 (1899). Furthermore, The Kawaiisu Tribe of Tejon are the only Tribe in California with a Ratified Treaty, a Treaty that has not been abrogated.

U.S. District Court, Eastern District of California, ruled that the Kawaiisu Tribe of Tejon have vested treaty rights. (Case 1:09-cv-01977-BAM, Document 240: ORDER on Page 19, Footnotes lines 13-20)

In this same case, Case 1:09-cv-01977-BAM, Document 223-1, Filed 04/30/12, footnotes pg. 18 and 21, DOI Ken Salazar said he would not take the action necessary to protect our Ancestors mass graves on the property, under NAGPRA, because it was not federal trust land. Now, this current trust request shows that DOI lied in that legal proceeding when they failed to acknowledge it is trust land but only now makes the acknowledgement because they can make money working with an investment group and an illegal tribe.

The Tejon Indian Tribe group cannot prove their geneology or certify an adequate percentage of California Indigenous blood quotum, as required by law for trust land acquisition in California, and this group was recognized under an illegal process in violation of 25 C.F.R. § 83, as outlined in the Office of Inspector General Report dated January 9, 2013: Investigative Report of the Tejon Indian Tribe. The Office of Inspector General Report found it was arbitrary, capricious, an abuse of discretion, and not in accordance with law under 5 U.S.C. 706 (2)(A).

We stated our opposition to the record of this effort in letters dated 9/11/2015 and 3/28/2019. Again, the Agencies involved should take NO ACTION

Thank you,

Chairman, David Laughing Horse Robinson

21-01
(Cont.)

Comment Letter 22

State of California—Transportation Agency GAVIN NEWSOM, Governor

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
29449 Stockdale Highway
Bakersfield, CA 93314
(661) 764-5580
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)

PACIFIC REGIONAL OFFICE
BUREAU OF INDIAN AFFAIRS
2020 JUL 15 PM 2:43

June 19, 2020

File No.: 426.13507.SCH#2015084002

Chad Broussard
United State Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Chad Broussard:

I received your "Notice of Completion" report (SCH # 2015084002) regarding the construction of a gaming casino in Kern County off State Route 166 between State Route 99 and Interstate 5. I have reviewed the project description to determine the potential impact to local Area operations and public safety.

There is the potential increase of vehicle traffic from western Kern County to the casino location on State Route 166 requiring additional calls for service. The additional calls for service would include California Vehicle Code violations including driving under-the-influence of alcohol and drugs. There is also a potential for an increase in vehicle crashes. 22-01

Although the location of the casino will not be within the geographical area of the California Highway Patrol, Buttonwillow Area, there is a potential impact to Area operations and public safety.

Sincerely,

S. C. CROSSWHITE, Lieutenant
Commander
Buttonwillow Area

Cc: Central Division
Special Projects Section

SECTION 3.0

Response to Comments

SECTION 3.0
RESPONSE TO COMMENTS

This section contains responses to comments that were received during the public comment period on the Draft Environmental Impact Statement (EIS) and included in **Section 2.0**. Based on the comments received on the Draft EIS, revisions have been made in the Final EIS to improve language, enhance data, and provide clarification. The changes made to the Draft EIS are consistent with the President's Council on Environmental Quality (CEQ) Regulation 40 (Code of Federal Regulations) CFR § 1503.4 and the Bureau of Indian Affairs (BIA) National Environmental Policy Act (NEPA) Guidebook (59 Indian Affairs Manual [IAM] 3-H), § 8.5.3.

3.1 RESPONSES TO SUBSTANTIVE COMMENTS

COMMENT LETTER 1: DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Response to Comment 1-01

Comment noted. The commenter's summary of the Tejon Indian Tribe's (Tribe) Trust Acquisition and Casino Project (Proposed Project; Alternative A1) is consistent with what was analyzed in the Draft EIS.

Response to Comment 1-02

Section 3.12 of the Draft EIS documented the results of a hazardous material database search and an evaluation of hazardous material spills within a mile of the Mettler and Maricopa Highway Sites. A Phase I Environmental Site Assessment prepared for the Mettler Site (included in Appendix U of the Final EIS) concluded that no Recognized Environmental Conditions, Controlled Recognized Environmental Conditions, or Historical Recognized Environmental Condition have been identified within the Mettler Site and that surrounding properties listed in the EDR radius map report do not pose a threat to the environmental integrity of the Mettler Site.

Section 3.12.3 of the Draft EIS assessed the potential for hazardous materials to be released during construction and operations for each alternative. This analysis considered possible sources of hazardous materials and release mechanisms. Implementation of best management practices (BMPs) associated with Hazardous Materials, Health, and Safety described in Section 2.2.2.9 of the Final EIS would reduce the potential for accidental releases and minimize possible hazards during construction associated with potential onsite contamination. As described in Section 3.12.3 of the Draft EIS, the use of hazardous materials during operation of the Proposed Project would be consistent with typical commercial facilities and wastewater treatment plants and all hazardous materials and waste would be stored, handled, and disposed of according to federal and manufacturer's guidelines. Therefore, it was determined that the Proposed Project would not result in significant adverse effects associated with hazardous materials.

A description of some of the federal regulations regarding hazardous materials that would be applicable to the Proposed Project is provided in Table 3.12-1 and Appendix K of the Draft EIS. The primary agency responsible for overseeing and/or enforcing these regulations is the U.S. Environmental Protection Agency (USEPA).

Response to Comment 1-03

Lead contamination in roadside soils sometimes occurs immediately adjacent to heavily traveled roadways. The highest lead concentrations are usually found within 10 feet of the edge of the pavement and within the top 6 inches of the soil. In

some cases, lead is as deep as 2 to 3 feet below the surface and can extend 20 feet or more from the edge of pavement.[1] Areas that are over 20 feet from the edge of a paved road are not likely to have aerially deposited lead (ADL)-contaminated soil in concentrations greater than considered appropriate for unrestricted use by the California Department of Toxic Substances Control (DTSC).

As shown on Figure 2-4 of the Draft EIS, Alternatives A1 and A2 would be located in the southern portion of the Mettler Site that is bound by unpaved roads used infrequently to access the surrounding agricultural fields and, therefore, are not likely to have significant concentrations of ADL-contaminated soil. State Route (SR) 99, located over 1,000 feet east of the Proposed Project; SR-166, located over 1,000 feet to the south; and Valpredo Avenue, located approximately 2,500 feet to the north, are too far to cause lead-contamination concerns. Therefore, no soil testing is warranted.

As shown on Figure 2-12 of the Draft EIS, the Maricopa Highway Site is bound by Interstate 5 (I-5) to the east, SR-166 to the north, and Wheeler Ridge Access Road to the west. Therefore, there is a potential for significant ADL-contaminated soils. A BMP has been added to Section 2.3.2.6 of the Final EIS to address the potential for ADL-contaminated soils near existing roadways adjacent to the Maricopa Highway Site. With the implementation of this BMP, Alternative B would not result in significant adverse effects regarding ADL-contaminated soil.

Response to Comment 1-04

As noted in Section 3.12.2 of the Draft EIS, no on-site or off-site contamination within 1.0 mile of the project site was identified, which includes mining related activities. Please refer to Section 3.12 of the Draft EIS for additional information. Furthermore, as stated in **Response to Comment 6-01**, there are no current or abandoned oil or gas wells on or within the vicinity of the Mettler Site.

Response to Comment 1-05

BMP K5 in Section 2.2.2.9 of the Draft EIS describes practices to identify and mitigate possible lead-based paint and BMP K6 addresses asbestos. BMP K6 in Section 2.2.2.9 has been revised in the Final EIS to include similar testing and handling procedures for mercury and polychlorinated biphenyl caulk. Furthermore, Section 3.12 of the Final EIS has been revised to include information and analysis about potential mercury and polychlorinated diphenyl caulk onsite for the Mettler Site. It should be noted that if the Mettler Site is taken into federal trust, it would only be subject to federal regulations; therefore, compliance with *DTSC's 2006 Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers* is not required.

Response to Comment 1-06

Section 2.2.2.6 of the Draft EIS states that "[a]ny 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." This language regarding Alternative A1 has been clarified to note that screening would include testing for hazardous materials contamination. Similar clarifications have been made to Section 2.2.3.3 and 2.3.2.4 regarding Alternatives A2 and B, respectively.

[1] Source: Department of Toxic Substances Control. *State of California Environmental Protection Agency Department of Toxic Substances Control*. June, 2016. Available online at: https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/11/DTSC-Caltrans-ADL-Agreement-Signed-w-Exhibits-Final-6.30.16.pdf. Accessed September 8, 2020.

Response to Comment 1-07

As described in Section 3.12.2.2 of the Draft EIS, "[t]he Mettler and Maricopa Highway Sites were historically and are currently developed with agricultural fields, and the majority of the surrounding areas are also agricultural." While it is unknown whether organochlorinated pesticides were used on either site, there is a potential for their presence given the two sites' long history of being used for agriculture. Revisions have been made to include an analysis of organochlorinated pesticides in Section 3.12 of the Final EIS. Additionally, BMP K8 in Section 2.2.2.9 of the Final EIS has been added to include investigation of organochlorinated pesticides in soil. Furthermore, it should be noted that groundwater testing would be conducted prior to the final design of the wastewater and water treatment facilities to ensure these facilities are properly equipped to address water quality. This groundwater testing would constitute another opportunity to detect on-site contamination. With implementation of BMP K8, the selected alternative would not result in significant adverse effects regarding organochlorinated pesticides.

Response to Comment 1-08

Comment noted. The BIA or its consultants will communicate with DTSC as warranted.

COMMENT LETTER 2: KERN COUNTY PLANNING DEPARTMENT

Response to Comment 2-01

Comment noted. Please refer to **Response to Comment 2-2** for a response to the comments by Ryan Alsop, County Administrative Officer.

Response to Comment 2-02

The positive socioeconomic effects described by the commenter are noted. Please refer to Section 3.7 of the Draft EIS for socioeconomic impacts, such as the creation of jobs, economic output, and fiscal effects on local governments.

COMMENT LETTER 3: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Response to Comment 3-01

Comment noted. The commenter's summary of the Proposed Project (Alternative A1) is consistent with what was analyzed in the Draft EIS.

Response to Comment 3-02

Comment noted. Please refer to **Responses to Comments 9-21** and **9-24** regarding development within a floodplain.

Response to Comment 3-03

As noted in the CalEEMod Input Tables (Appendix M of the Draft EIS), construction of Alternative A1 (Proposed Project) would require fill to raise the site 2.5 feet above the existing ground level. CalEEMod default data was used to estimate the number of construction-related trips for all alternatives. Appendix M of the Draft EIS identifies the number of haul trips associated with construction of Alternative A1. The length of these haul trips would generally be short because earth from on-site areas, including the large water detention and reclamation basin shown in Figure 2-4 of the Draft EIS would be the source of some of the required fill material. As described in Section 3.4.4 of the Draft EIS, emissions associated with soil hauling are included in the construction emissions estimates. Although hauling fill material under Alternative A1 would generate air emissions, Table 3.4-3 of the Draft EIS shows that both Alternatives A1 and B (Casino Resort at Maricopa Highway Site) would not exceed applicable *de minimis* levels for any criteria pollutants as discussed in Section 3.4.4.2 of the Draft EIS. Therefore, while construction of Alternative B would result in less nitrogen oxide (NOx) emissions than Alternative A1 (see Table 3.4-3 of the Draft EIS), neither the construction of Alternatives A1 or B would result in

significant adverse effects associated with the regional air quality environment (refer to Sections 3.4.4.2 and 3.4.4.3 of the Draft EIS).

Response to Comment 3-04

As stated in Appendix G of the Draft EIS: "all treatment plant components and processes will be protected from the floodplain by means of a flood control levee. Initial findings on potential flood threats in the project vicinity would merit a levee between 2 to 4 feet high to protect from the anticipated 100-year flood water levels." This includes the proposed percolation ponds. The proposed percolation ponds are depicted in Figures 2-2 and 2-3 of Appendix G of the Draft EIS. These site locations are large enough to accommodate the proposed percolation ponds and would integrate properly with the water treatment/storage facilities and other infrastructure on the site, including the proposed casino resort.

Response to Comment 3-05

Comment noted. Full utilization of recycled water is planned as a component of the Proposed Project.

Response to Comment 3-06

Comment noted. The attachment to which the commenter refers to is addressed in the **Responses to Comments 3-8** through **3-14**.

Response to Comment 3-07

Comment noted.

Response to Comment 3-08

Comment noted. Impacts associated with development of the Proposed Project within a floodplain are addressed in Section 3.3.3.1 of the Draft EIS.

Response to Comment 3-09

Although the potential future location of the Mettler Site wastewater treatment plant and potable water system are currently located in a floodplain, these improvements would be raised above the floodplain with approximately 2.5 feet of fill under Alternatives A1 and A2. Consequently, they would no longer be in the floodplain. The water detention/wastewater reclamation pond that would store and percolate both stormwater and treated effluent would similarly be surrounded by a containment berm that would be at least 2.5 feet above the floodplain. As stated in Section 3.3.3.1 of the Draft EIS:

> *The on-site water treatment plant and [wastewater treatment plant] WWTP and associated facilities would be raised a minimum of 2.5 feet above ground level, be enclosed by a 2 to 4-foot flood control levee, and 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.*

The water and wastewater treatment area would be adequately drained to convey stormwater away from all process equipment. Treated drinking water storage would be located above the 100-year flood level. The detention/water reclamation pond has been sized to accommodate inflow and precipitation from storm events.

The commenter's statement regarding Executive Order (EO) 11988 is acknowledged. Please refer to the **Responses to Comments 9-21** and **9-24** below regarding EO 11988.

Response to Comment 3-10

Both treated effluent and stormwater would be percolated into underlying soils and ultimately the groundwater basin via the 13-acre pond shown in Figure 2-4 of the Draft EIS. As noted by the commenter, the Draft EIS states that percolation testing will be conducted at the ultimately selected project site to confirm the final required percolation pond size for treated effluent and stormwater, this would include taking into account stormwater flows during rain events.

Response to Comment 3-11

Please refer to the **Response to Comment 3-4** regarding the design features of the WWTP. The design features included in the Draft EIS are for purposes of analyzing environmental impacts. Prior to construction, a more detailed designed study would be conducted in order to produce construction drawings; the study would include detailed design elements and specifications. The proposed percolation pond elements would be conservatively designed to accommodate both stormwater and treated effluent during a peak rainfall event.

Response to Comment 3-12

Since the publication of the Draft EIS, the Tribe and the Arvin-Edison Water Storage District (District) executed an agreement (Water Agreement; included as Appendix W of the Final EIS), the purpose of which is to (1) to effectively and responsibly manage the District's water resources, and (2) to assist Tribe in maintaining the "neutral to positive" groundwater levels in the vicinity of the Mettler Site. As described further in the **Response to Comment 8-15**, the implementation of the Water Agreement would ensure that impacts to the groundwater basin from Alternatives A1 and A2 are less than significant; therefore, Mitigation Measure 2-H is no longer warranted for Alternatives A1 and A2. Sections 2.2.2.8 and 3.3.3.1, as well as Table 4-1 of the Final EIS, have been revised to reflect this update.

As described in Section 2.3.2.5 of the Final EIS, the Water Agreement does not apply to Alternative B, because the Maricopa Highway Site is not within the District; therefore, Mitigation Measure 2-H continues to be recommended to reduce impacts to the groundwater basin from Alternative B to a less-than-significant level.

Response to Comment 3-13

Comment noted. Mitigation measures described in the Draft EIS have been retained in the Final EIS.

Response to Comment 3-14

The commenter's summary of the estimated haul trips and NOx emissions are correct, however, as stated above in the **Response to Comment 3-3**, many of these trips would be very short in length and duration because on-site fill would be largely utilized for this purpose, and scrapers, as opposed to trucks, would likely be utilized to haul much of the fill material. Therefore, the estimate of emissions from hauling fill are on the high (conservative) side, and actual emissions may be substantially less. Regardless, as shown in Table 3.4-3 of the Draft EIS, emissions of individual criteria pollutants from the construction of Alternative A1 would not exceed applicable *de minimis* levels; therefore, a conformity determination is not required.

Implementing regulations for NEPA, 40 CFR § 1502.9(c) provide guidance on circumstances under which a lead agency should prepare a supplement to a Draft EIS. These regulations provide that a supplement to a Draft EIS should be prepared if the "agency makes substantial changes in the proposed action that are relevant to environmental concerns" or "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." Therefore, any changes to Proposed Project that would increase the total emissions to or above the applicable *de minimis* levels would constitute substantial changes in the Proposed Action that are relevant to environmental concerns and would require preparation of a supplemental EIS and conformity determination before approval.

While the Final EIS has been revised in response to comments received on the Draft EIS, the new information presented has not resulted in substantial changes in the EIS's conclusions regarding the environmental impacts of the Proposed Action. Additionally, no changes to Proposed Project that would increase the total emissions to or above the applicable *de minimis* levels have been made.

A Final Conformity Determination is included as **Appendix Z** of the Final EIS. The Final Conformity Determination includes detailed information on the Tribe's commitment to purchase emission reduction credits (ERC) or enter into a Voluntary Emission Reduction Agreement (VERA).

COMMENT LETTER 4: METTLER COUNTY WATER DISTRICT

Response to Comment 4-01

Comment noted.

Response to Comment 4-02

As described in Section 2.2.2.5 of the Draft EIS, the proposed WWTP under Alternatives A1, A2, and B would produce effluent meeting the criteria for the highest level of recycled water under California Title 22 Water Recycling Criteria, referred to as "Disinfected Tertiary Recycled Water." Disinfected tertiary recycled water can be used for irrigation of park landscaping, residential landscaping, golf courses, and food crops. The recycled water would primarily be used onsite for landscape irrigation and other non-potable uses. Excess recycled water would be percolated into the ground, thereby recharging the groundwater basin. The percolation pond would be similar to other percolation basins in the area used by the Arvin-Edison Water Storage District. Due to the depth of the groundwater and the high level of treatment of the recycled water, there would be no adverse effects to water quality in the groundwater basin.

Response to Comment 4-03

Comment noted. Please refer to Section 3.8 of the Draft EIS for the potential impacts to transportation due to increased traffic. As specified in this section, impacts related to increases in traffic would be less than significant with mitigation. Please also refer to the **Responses to Comments 7-02** through **7-11** and **9-68** through **9-90** below for additional responses related to traffic.

Response to Comment 4-04

Impacts from the Proposed Project related to noise are discussed in Section 3.11 of the Draft EIS. As described in Section 3.11.3 of the Draft EIS, noise from construction and operation of the Proposed Project, including noise from increased traffic, would not result in significant adverse effects associated with the off-site ambient noise environment.

Response to Comment 4-05

Comment noted. Please refer to Section 3.13.3 of the Draft EIS for the potential lighting impacts due to the alternatives. As specified in that section, lighting would not have adverse effects on the environment, such as the night skies, due to the design features of the alternatives and BMP L included in Section 2.2.2.9 of the Draft EIS, which includes measures consistent with International Dark-Sky Association Model Lighting Ordinance and County zoning ordinance Chapter 19.81 Outdoor Lighting – Dark Skies.

Response to Comment 4-06

Effects of the project alternatives relating to crime were discussed in Section 3.7 of the Draft EIS and the Social and Community Impact Analysis section of Appendix I of the Draft EIS. As discussed in Section 3.7.4.1 of the Draft EIS, police calls for service in the County for Alternatives A1 and A2 would increase by an estimated 0.46 percent and

0.42 percent, respectively (Table 41 in Appendix I of the Draft EIS). Such increases constitute a less-than-significant effect on law enforcement services and crime. As described in Section 2.2.2.1 of the Draft EIS, an on-site joint fire and sheriff station would be constructed on the Mettler Site that would be staffed and operated by the County per the IGA. This facility would significantly reduce response times to Mettler, and provide a higher level of public safety services to the Mettler community than what currently exists.

Response to Comment 4-07

Comment noted. The Tribe has been in contact with the Mettler Water District, and the commenter has been added to the mailing list for communications regarding the NEPA process.

COMMENT LETTER 5: ARVIN-EDISON WATER STORAGE DISTRICT

Response to Comment 5-01

The agreement specified within the comment letter has been included as Appendix W in the Final EIS and relevant discussion has been added to Sections 2.2.2.8 and 3.3.3 of the Final EIS.

COMMENT LETTER 6: CALIFORNIA DEPARTMENT OF CONSERVATION

Response to Comment 6-01

Comment noted. As stated in the comment letter, the California Department of Conservation has confirmed that there are no current or abandoned oil or gas wells on or within the vicinity of the Mettler Site.

COMMENT LETTER 7: CALIFORNIA DEPARTMENT OF TRANSPORTATION

Response to Comment 7-01

Comment noted. The commenter's summary of the alternatives is consistent with the analysis in the Draft EIS.

Response to Comment 7-02

The commenter's summary of the access for project traffic under each alternative is consistent with what is described in the Draft EIS.

Response to Comment 7-03

The commenter's summary of the trip generation rates is consistent with what is described in Traffic Impact Analysis (TIA), included as Appendix F of the Draft EIS, and Section 3.8 of the Draft EIS. The TIA assumes that hotel guests would be comprised primarily of casino patrons. Specifically, a reduction in the hotel trip rate of a stand-alone hotel recognizes that guests of casino-hotels are primarily attracted by the casino, and that the hotel is a secondary amenity. As described in Section 8.2 of the TIA, the hotel component of the alternatives were assumed to generate three trips per occupied room consistent with the *Traffic Needs Assessment of Tribal Development Projects in the San Diego Region*, March 2003 update, published by the San Diego Association of Governments (SANDAG).

Response to Comment 7-04

Table 8-1 of the TIA included as Appendix F of the Draft EIS summarizes the components of all three casinos used to estimate the trip generation for the Proposed Project. The table illustrates that each casino in the study included between four and seven restaurants.

Response to Comment 7-05

Comment noted. The mitigation measures described in the Draft EIS would occur after the preparation of an Intersection Control Evaluation (ICE) analysis prior to construction of the Proposed Project. A detailed ICE analysis would be conducted per California Department of Transportation (Caltrans) guidelines prior to finalizing the design of road improvements. The ICE analysis would assess several geometry and traffic control options and recommend the optimal control strategy, based on ICE guidelines. The mitigation measures recommended in the EIS would mitigate traffic impacts to less-than-significant levels.

Response to Comment 7-06

The updated TIA included as Appendix F of the Final EIS recommends the installation of a traffic signal or a roundabout contingent on the recommendations of an ICE study at both the SR-166/I-5 northbound Ramp and SR-166/1-5 southbound Ramp intersections. The updated TIA contains post mitigation analyses that demonstrate that these measures would fully mitigate project impacts. Exclusive left-tum lanes as suggested by the commenter would presumably be recommended if the ICE analysis indicates they are necessary.

As described in Table 1-1 of the Draft EIS, encroachment permits would be obtained for any work within, under, or over the State highway rights-of-way. Section 3.14.1 of the Draft EIS includes analysis of indirect effects from off-site mitigation improvements, including off-site traffic mitigation. Note that design elements of the proposed mitigation improvements are at a preliminary stage, and that elements of the improvements may be refined prior to their implementation. Each of the proposed traffic improvements would be designed and constructed to comply with applicable federal, State, and local regulations. Because the Tribe does not have jurisdiction over any of the off-site proposed mitigation, it could not unilaterally implement the traffic improvements. Rather, implementation of traffic mitigation would be under the purview of the applicable jurisdictional agency. As stated in Section 4.0 of the Draft EIS, some mitigation measures require “fair share contributions” that would be applied towards implementation of traffic improvements that address impacts identified in the cumulative year (2040). The level of detail of these future improvements described in the TIA and the Draft EIS is appropriate for this stage of the planning and evaluation process. It is possible that one or more of the traffic improvements described in the TIA could ultimately be determined to be infeasible, in which case equivalent traffic improvements may be implemented provided that the jurisdictional agencies and Tribe agree regarding the efficacy of such alternative improvements. A detailed ICE analysis would be conducted per Caltrans guidelines prior to the construction of the actual roadway improvements within State jurisdiction. The analysis would assess several options and recommend the optimal configuration, based on ICE guidelines.

Response to Comment 7-07

Portions of the Alternative B site plan are conceptual. The commenter is correct that, as currently depicted in the Draft EIS, the main Alternative B driveway and the driveway to the Chevron station to the north would be slightly out of alignment by approximately 25 feet. In the event that Alternative B becomes the selected alternative, the site plan for Alternative B may be modified slightly to align the project driveway with the Chevron driveway, ensuring that there would be no conflicting turning movements to and from the Chevron and project driveways. Alteration of the Alternative B driveway would be a minor change and would not affect the traffic impacts or other environmental impacts. Therefore, it is anticipated that there would be no conflicting turning movements to and from the Chevron and Project Driveways.

Response to Comment 7-08

As noted in Section 3.8.3.2 of the Draft EIS, “development of Alternative B would not conflict with future configuration plans for the Maricopa Highway after implementation of Mitigation Measure 7-I.” Mitigation Measure 7-I requires the

Tribe to make an offer of dedication to Caltrans for 23 feet of right-of-way needed to accommodate the ultimate configuration of SR-166, as described in the May 2016 Transportation Concept Report for SR-166.

Response to Comment 7-09

Comment Noted. Reduction in vehicle miles traveled is generally associated with reducing emissions generated from vehicle trips. BMP C included within Section 2.2.2.9 of the Draft EIS includes the following measures related to reducing mobile emissions:

1. The Tribe will use clean fuel vehicles in its vehicle fleet where practicable, including vehicles that meet the Low Carbon Fuel Standard rule set by the California Air Resources Board (CARB).
2. The Tribe will provide preferential parking for vanpools and carpools.

Response to Comment 7-10

As described in Section 3.4.4.2 of the Draft EIS, the Proposed Project would comply with applicable greenhouse gas (GHG) emission reduction strategies of the State, and BMPs were provided in Section 2.0 of the Draft EIS to reduce project-related GHG emissions. Additionally, as described in Section 2.2.2.1 of the Draft EIS, the Proposed Project would be constructed according to the 2019 intergovernmental agreement (IGA) between the Tribe and the County, which requires compliance with the California Building Code (CBC; California Code of Regulations [CCR], Title 24). As mandated by the 2019 CBC, the Proposed Project would be required to implement various GHG-reducing features including electric vehicle (EV) parking spaces. Please see **Response to Comment 8-7** for more information on this issue.

Response to Comment 7-11

As described in Table 1-1 of the Draft EIS, encroachment permits would be obtained for any work within, under, or over the State highway rights-of-way. Terms of encroachment permits would be consistent with the specifications described by the commenter.

COMMENT LETTER 8: SIERRA CLUB

Response to Comment 8-01

The commenter's summary of the Proposed Project and support of the Tribe's cause is noted.

Response to Comment 8-02

Comment noted. The commenter provides background information on climate change consistent with the information provided in Section 3.4.3 of the Draft EIS and Appendix K of the Draft EIS.

Response to Comment 8-03

Comment noted. The commenter provides background information on the NEPA process consistent with the information provided in Sections 1.4 and 2.1 of the Draft EIS.

Response to Comment 8-04

The Draft EIS provides a "hard look" at potential climate change impacts. Section 3.4.3 of the Draft EIS provides a brief summary of the environmental setting related to climate change. Appendix K of the Draft EIS provides a comprehensive regulatory context for climate change and also includes a detailed summary of the potential effects from climate change that could occur in the region.

As described in Section 2.1 of the Draft EIS, a reasonable range of alternatives was selected based on consideration of the purpose and need of the Proposed Action and opportunities for potentially reducing environmental effects. The range of alternatives includes three alternatives on the Mettler Site (Alternatives A1, A2, and A3), one alternative on the Maricopa Highway Site (Alternative B), and the no action alternative (Alternative C). Alternatives that were considered but are not fully evaluated in this EIS are described in Appendix B of the Draft EIS. Additionally, potential impacts of GHG emissions from the alternatives were discussed in Section 3.4.4 of the Draft EIS and are quantified in Table 3.4-5 of the Draft EIS pursuant to the CEQ guidance on the evaluation of GHG impacts in NEPA documents.

As described in Section 3.4.4.1 of the Draft EIS, the evaluation of impacts from the Proposed Project on climate change and GHG emissions was prepared in accordance with the CEQ-published guidance on how NEPA analysis and documentation should address GHG emissions. As described in Section 3.4.4.1 and Appendix K of the Draft EIS, the CEQ guidance directs agencies to attempt to quantify a proposed action's projected direct and reasonably foreseeable indirect GHG emissions when the amount of those emissions is substantial enough to warrant quantification, and when it is practicable to quantify them using available data and GHG quantification tools. Accordingly, Section 3.4.4.2 of the Draft EIS provided quantification of the GHG emissions that would result from implementation of Alternatives A1, A2, and B, and all inputs and outputs for the modeling of GHG emissions were provided in Appendix M of the Draft EIS. Additionally, the CEQ guidance notes that, while NEPA does not require agencies to adopt mitigation measures, comparing alternatives based on potential effects due to GHG emissions can help agencies differentiate among alternatives. Therefore, while no mitigation measures are required to address GHG emissions, the Proposed Project includes several GHG-reducing features as BMPs, provided in Section 2.2.2.9 of the Draft EIS.

Response to Comment 8-05

Although not required by NEPA, this EIS also considers the impacts of the project alternatives in relation to the GHG reduction targets established by the State. As described in Section 3.4.4.2 of the Draft EIS, Assembly Bill (AB) 32 required that the State adopt a Climate Change Scoping Plan identifying GHG reduction targets and the types of measures that will be used to reach them. As described above, Appendix K of the Draft EIS provides a comprehensive regulatory context for climate change including a discussion of key State laws and policies including EO S-3-05, AB 32, EO B-30-15, and Senate Bill (SB) 32. Appendix K has been revised in the Final EIS to include discussion of SB 350, which codifies the GHG targets set by EO B-30-15 and raises the Renewables Portfolio Standards to 50 percent renewable generation by 2030.

As described in Appendix K of the Draft EIS, California's 2017 Climate Change Scoping Plan builds on the State's climate action plan, while further integrating efforts to reduce both GHGs and air pollution. The key programs that the 2017 Scoping Plan Update builds on include the Cap-and-Trade Regulation, the Low Carbon Fuel Standard, increasing the use of renewable energy in the State, and reduction of methane emissions from agricultural and other wastes[2]. While the State GHG reduction targets have been extended beyond that of AB 32, additional State-wide GHG reduction policies focus on planning-level and industry-specific measures that are not directly applicable to the Proposed Project. Therefore, as described in Section 3.4.4.2 of the Draft EIS, the Proposed Project would comply with applicable emission reduction strategies of the State. BMPs were provided in Section 2.0 of the Draft EIS to reduce project-related GHG emissions, such as reduction of the idling of heavy equipment, the installation of energy efficient lighting, heating and cooling systems, low-flow appliances, drought resistant landscaping, and recycling receptacles, and by requiring adequate ingress and egress to minimize vehicle idling and preferential parking for vanpools and carpools to reduce project-related trips. Additionally, as described in Section 2.2.2.1 of the Draft EIS, the Proposed Project would be constructed according to the 2019 IGA

[2] Source: California Air Resources Board. California Greenhouse Gas Emission Inventory. Available online at: https://www.arb.ca.gov/cc/inventory/data/data.htm. Accessed September 2020.

between the Tribe and the County, which requires compliance with the CBC (CCR, Title 24). As mandated by the 2019 CBC, the Proposed Project would be required to implement various GHG-reducing features including EV parking spaces. Please see **Response to Comment 8-7** for more information on this issue.

As described in Section 2.2.2.9 of the Draft EIS, BMPs were incorporated into the project design to avoid or minimize potential adverse effects resulting from the development of Proposed Project. As shown in Appendix M of the Final EIS, the same BMPs found in Section 2.2.2.9 of the Draft EIS have been incorporated into the emissions estimates provided in Table 3.4-5 of the Final EIS. As described in Section 3.4.4.1 of the Draft EIS, no specific quantitative thresholds have been established by the County, CARB, USEPA, or any other State or federal agency for climate change and GHG emissions. Therefore, the quantification of GHG reductions associated with each individual proposed BMP is not required. With implementation of BMPs, the Proposed Project would be consistent with the applicable emission reduction strategies of the State; therefore, the Proposed Project would not result in a significant adverse cumulative impact associated with climate change.

Response to Comment 8-06

As described above, the evaluation of impacts from the Proposed Project on climate change and GHG emissions was prepared in accordance with the latest CEQ NEPA guidance that requires agencies to attempt to quantify a proposed action's projected GHG emissions. Accordingly, Section 3.4.4.2 of the Draft EIS provided quantification of the GHG emissions that would result from implementation of Alternatives A1, A2, and B. In the absence of quantitative thresholds for climate change and GHG emissions, the Draft EIS also considered the impacts of the project alternatives in relation to the GHG reduction targets established by the State. As described in Section 3.4.4.2 of the Draft EIS, the Proposed Project would comply with applicable emission reduction strategies of the State. Therefore, with the implementation of BMPs, implementation of the Proposed Project would not result in a significant adverse cumulative impact associated with climate change.

Response to Comment 8-07

As described above, the Draft EIS concluded that the Proposed Project would not result in a significant adverse cumulative impact associated with climate change. Therefore, no additional mitigation measures are required. Additionally, as described in Section 2.2.2.1 of the Draft EIS, the Proposed Project would be constructed according to the 2019 IGA between the Tribe and the County, which requires compliance with the CBC (CCR, Title 24). As mandated by the 2019 CBC, the Proposed Project would be required to implement various GHG-reducing features including EV parking spaces. Other measures suggested by the commenter have been considered by the Tribe and will be implemented to varying degrees based on effectiveness and available funding, although these measures are not required to mitigate specific project impacts. These measures include the following: 1) solar photovoltaic cells will be incorporated into the project design, 2) the non-gaming elements of the project will be designed with the intent to meet Leadership in Energy and Environmental Design (LEED) Silver or higher standards, 3) the Tribe will work with the local transit authority to provide subsidized transit service to the casino, 4) local employees will be hired when possible to reduce commutes and associated air emissions, 5) building materials and construction contractors will be locally sources when possible also to reduce transportation-related energy use and emissions. Note that the Tribe committed to substantial annual payments to the County General fund as part of the IGA that may be applied by the County to its priorities, which may include improving air quality, supporting public transportation, and reducing energy use within the County.

Response to Comment 8-08

The commenter's summary of air quality impacts from the Proposed Project is generally consistent with Section 3.4.4.1 of the Draft EIS. It should be noted that air quality emissions from the Proposed Project are compared to federal conformity

thresholds in the Draft EIS, and the Proposed Project is not subject to the requirements of the California Environmental Quality Act (CEQA).

Response to Comment 8-09

As described in Table 4-1 of the Draft EIS, Mitigation Measures 3-A and 3-B require the purchase of credits to fully offset reactive organic gas (ROG) and NOx emissions or the Tribe must enter into a VERA with the San Joaquin Valley Air Pollution Control District (SJVAPCD) to fund air quality projects that quantifiably and permanently offset project operational emissions. As described in Section 4.1 of the Draft EIS, all mitigation is enforceable because it is (1) inherent to the project design; and/or (2) required through provisions of the IGA, or federal or State statute, where applicable. Additional details were provided in the Draft General Conformity Determination included in Appendix N of the Draft EIS. A Final Conformity Determination is included as **Appendix Z** of the Final EIS. The Final Conformity Determination includes detailed information on the Tribe's commitment to purchase ERCs or enter into a VERA agreement.

While it is true that SJVAPCD's ERC program was recently reviewed by CARB, the findings of the review, contained in the San Joaquin Valley Emission Reduction Credit Review Final Report[3], in no way invalidate the ERC program. Conversely, the report identifies potential improvements in SJVAPCD's ERC program and establishes recommendations to promote transparency that will help to ensure that the program continues to protect public health and support economic growth and development in the region.

The option to enter into a VERA is at the discretion of SJVAPCD and would ultimately rely on their determination of feasibility for the Tribe to fund air quality projects that quantifiably and permanently offset project operational emissions. Additionally, if the VERA option is chosen, the selection and prioritization of offset projects would be at the sole discretion of SJVAPCD, as implementation of such projects is not within the authority of the Tribe or BIA.

Response to Comment 8-10

The potential for the Proposed Project to contribute towards significant cumulative impacts to air quality was addressed in Section 3.4.4.2 of the Draft EIS. As described therein, if individual emissions from a project contribute toward exceedance of the National Ambient Air Quality Standards, 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. As shown in Table 3.4-3 of the Draft EIS, emissions of particulate matter 2.5 microns in size or smaller ($PM_{2.5}$) would not exceed federal *de minimis* thresholds under Alternatives A1, A2, or B. Therefore, $PM_{2.5}$ emissions from Alternatives A1, A2, or B would not to contribute towards significant cumulative impacts to air quality. Additionally, implementation of the BMPs found in Section 2.2.2.9 of the Draft EIS would further control the production of fugitive dust (particulate matter 10 microns in size or smaller and $PM_{2.5}$) during construction.

Response to Comment 8-11

As described in Section 2.2.2.9 of the Draft EIS, the Proposed Project includes several operational BMPs that would reduce emissions of criteria air pollutants. For example, the Tribe would use clean fuel vehicles in its vehicle fleet where practicable, including vehicles that meet the Low Carbon Fuel Standard rule set by CARB. Additionally, the Tribe would provide preferential parking for vanpools and carpools. As described in Section 3.4.4.2 of the Draft EIS, emissions of

[3] CARB, 2020. San Joaquin Valley Emission Reduction Credit Review Final Report, June 2020. Available online at: https://ww2.arb.ca.gov/sites/default/files/2020-06/SJV_ERC_FINAL_20200604.pdf.

individual criteria pollutants from the operation of Proposed Project would not exceed applicable *de minimis* levels after mitigation. Therefore, no additional mitigation measures are warranted.

Response to Comment 8-12

As described in Appendix K of the Draft EIS (refer to page 9), Title 1, Part C of the Clean Air Act (CAA) was established in part to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value. The CAA designates these areas as "Class I areas." The CAA prevents significant deterioration of air quality in Class I areas under the Prevention of Significant Deterioration (PSD) Program. The PSD Program protects Class I areas by allowing only a small increment of air quality deterioration in these areas by requiring assessment of potential impacts on air quality related values of Class I areas. Any major source of emissions within 100 kilometers from a federal Class I area is required to conduct a pre-construction review of air quality impacts on the area(s). A "major source" for the PSD Program is defined as a facility that will emit (from direct stationary sources) 250 tons per year (tpy) of regulated pollutant. Mobile sources (e.g., vehicle emissions) are by definition not stationary sources and are therefore not subject to the PSD Program.

As described in Section 3.4.4.1 of the Draft EIS, there are two federal Class I Areas, the San Rafael and Domeland wildernesses are within 62.13 miles (100 kilometers of the Mettler and Maricopa Highway Sites; therefore, if any alternative exceeds the PSD threshold of 250 tpy of any criteria air pollutant from stationary sources, a best available control technology analysis would be conducted. As shown in Table 3.4-4 of the Draft EIS, none of the proposed alternatives would result in the stationary source emissions in excess of federal Class I Areas source thresholds; therefore, no further analysis is needed. Sequoia-Kings Canyon National Parks, while considered federal Class I Areas, are located more than 62.13 miles (100 kilometers) from the Mettler and Maricopa Highway Sites. Additionally, Sequoia National Forest is not designated as a federal Class I area; therefore, no further analysis is needed.

Response to Comment 8-13

As described in Section 3.9.3.1 of the Draft EIS, "Alternatives A1 and A2 would result in approximately 306 acres of land being transferred from fee to federal trust, thereby removing the property from County land use jurisdiction. County land use regulations would not apply to the Mettler Site once the land is taken into trust. The only applicable land use regulations would be federal and tribal as the Mettler Site would be converted to reservation land." Therefore, the assessment criteria regarding "conflict with regional zoning or ordinances" does not refer to the current zoning or land use designation of the site itself, but rather the surrounding properties. Given that there is no County land use designation or zoning specifically for tribal gaming facilities, it would be impossible to select a site within the County or even neighboring counties such that the Proposed Project is in strict compliance with locally designated land uses. The criteria in Section 3.9.3 of the Final EIS has been clarified to better express this.

Although it is correct that most land uses in the vicinity of the Mettler Site are agricultural, land uses contemplated under Alternatives A1 and A2 would be consistent with many of the land uses along the highly trafficked I-5 and SR-99 corridors. Although much of I-5 and SR-99 are bordered by undeveloped farmland, there are numerous commercial centers located along these highways to serve motorists, as well as industrial uses that are related to the agriculture industry. For example, as described in Section 3.9.2.1 of the Draft EIS, the Grapevine Specific and Community Plan is designated for mixed-use commercial uses on approximately 8,010 acres. This site is situated along I-5 and southeast of the Mettler and Maricopa Highway Sites. For these reasons, as explained in the Draft EIS, the alternatives comprised of gaming and commercial development would be compatible with surrounding land uses.

In regards to the assessment criteria regarding conversion of a "significant amount of prime farmland," the farmland converted by Alternatives A1 and A2 would decrease the County's agricultural land by 0.004 percent. This represents a

negligible conversion of farmland, and would be a less-than-significant impact. It should also be noted that the Draft EIS did not state that Alternatives A1 and A2 should be justified on the grounds that they would result in net conservation of water. Rather, it was stated that by some estimates, 10 percent of the farmland in the San Joaquin Valley would need to be converted to non-agricultural uses, so as to achieve water conservation. This was intended to provide context regarding the 0.004 percent loss in farmland that would occur as a result of Alternatives A1 and A2. The 10 percent loss figure also provides some context as to the relative frequency by which conversion of agricultural land to other uses is expected to occur.

As explained by the County in its letter in Final EIS Appendix AB, the Mettler Site is zoned "Limited Agriculture (A-1)" and is not qualified to be included in an Agricultural Preserve. Other nearby agricultural parcels, including the Maricopa Highway Site, are zoned "Exclusive Agriculture (A)" and are intended for "long term agricultural use."

Regarding the comment concerning the 189 Farmland Conversion Impact Rating (FCIR) rating of the Mettler Site, the commenter appears to misinterpret the analysis in the Draft EIS. As stated in Section 3.9.3.1 of the Draft EIS, "per [Farmland Protection Policy Act] FPPA guidelines, if a site receives an FCIR combined score of 160 or more, alternative sites should be considered to examine if an alternative site would serve the proposed purpose and have a lower combined score or convert fewer acres of farmland." The Draft EIS meets the requirements of FPPA by evaluating the Maricopa Highway Site as an alternative to the Mettler Site. As stated in Section 3.9.3.2 of the Draft EIS, the Maricopa Highway Site received a combined land evaluation and site assessment score of 196, which is higher than the 189 FCIR rating of the Mettler Site. Please also refer to the **Responses to Comments 9-7** and **9-8** that describe the limited number of suitable sites.

Response to Comment 8-14

As described in Section 1.0 of the Draft EIS, Alternatives A and B involve the transfer of either the Mettler or Maricopa Highway Sites into federal trust. Construction on the Mettler and Maricopa Highway Sites would not occur until after the transfer of lands into federal trust. Lands that are held in trust by the federal government are not subject to state and local regulations. The EIS does analyze potential off-reservation impacts to lands not in trust and are therefore subject to local, State, and federal regulations. The No Action Alternative (Alternative C), would not result in impacts to biological resources as no construction would occur.

Swainson's hawk is listed under the California Endangered Species Act as Threatened. This species is not a federally protected special-status species and therefore does not require mitigation, including purchase of conservation easements, for impacts restricted to federal trust lands. However, this species is afforded protection under the Migratory Bird Treaty Act as described in Appendix K of the Draft EIS. Appendix O of the Draft EIS provided an analysis on impacts to State-listed species with the potential to occur on the Mettler and Maricopa Highway Sites, and provided mitigation that would reduce impacts to both State-listed and federally listed special-status species. A search of the California Natural Diversity Database (CNDDB) did not reveal historical observations of Swainson's hawk in the vicinity of the Mettler or Maricopa Highway Sites. The nearest observation is over 7 miles from either site (CNDDB occurrence 2791). A search of the available Swainson's hawk monitoring and observations databases within the California Department of Fish & Wildlife's (CDFW) Biogeographic Information and Observation System did not reveal closer observations.[4]

The commenter raises concerns over a potential nest location within 18 miles of the Mettler and Maricopa Highway Sites, as well as a proposed Swainson's hawk foraging habitat easement 6.8 miles from the Mettler and Maricopa Highway Sites.

[4] Source: CDFW. CNDDB. Available online at: https://wildlife.ca.gov/data/BIOS. Accessed August 2020.

The development alternatives do not have the potential to generate impacts in excess of 6 miles from the Mettler and Maricopa Highway Sites. Sections 3.5.2.1 and 3.5.2.2 of the Draft EIS acknowledge that migratory birds and birds of prey may nest on either site. As required under Mitigation Measures 4-O and 4-P, pre-construction nesting bird surveys would occur on and within 500 feet of ground disturbance that commences during the nesting season. Buffers installed by a qualified biologist would be required around active nests to prevent impacts. While there are no known occurrences of Swainson's hawk on either project site, mitigation required by the EIS would be protective of this species should a Swainson's hawk establish a nest in the vicinity of an impact area.

The commenter suggests the planting of native vegetation and drought-tolerant plants. As noted by the commenter, agricultural activities on both the Mettler and Maricopa Highway Sites have largely excluded native plants from both sites. Therefore, the environmental baseline at the time of analysis did not include significant native vegetation that may provide habitat for wildlife. Because the development alternatives would not result in the removal of native vegetation that may provide wildlife habitat, no mitigation is necessary. Please note that Section 2.2.2.3 of the Draft EIS described the proposed landscaping component of Alternatives A1, A2, and B and stated, "The architectural design of the project would be enhanced by landscaping using drought tolerant plants native to the region." Additionally, BMP C3 stated, "The Tribe will also use drought-tolerant landscaping." Use of drought-tolerant, native vegetation in landscaping is therefore already a component of the project design under Alternatives A1, A2, and B. Alternative A3 would result in ongoing agricultural use of the Mettler Site, and Alternative C would result in no action.

The EIS states that the San Joaquin kit fox has a low probability of occurring on either the Mettler or Maricopa Highway Sites. While the agricultural fields do not generally provide habitat for San Joaquin kit fox, this species may incidentally forage in these areas for rodents and other small mammals. Additionally, the Maricopa Highway Site has small mammal burrows that may be utilized by San Joaquin kit foxes for refuge, should one pass through the site. Please note that there have been no observations of the San Joaquin kit fox reported to the CNDDB within several miles of the Mettler or Maricopa Highway Sites in over 40 years, as stated in Section 4.5 of the Biological Assessment (BA; Appendix L of the Draft EIS). As stated in the reference provided by the commenter, "Cities with kit foxes typically are adjacent to natural habitat. Kit foxes have not been observed in towns completely surrounded by agricultural lands." Both the Mettler and Maricopa Highway Sites are surrounded by agricultural production. The nearest undeveloped lands are over a mile away across a concrete-lined irrigation channel, several arterial roadways, and at least one freeway. The development alternatives would therefore not significantly impact San Joaquin kit fox habitat, but may impact individuals should a San Joaquin kit fox occur within the development footprint at the time of construction. Mitigation Measures 4-A through 4-E are therefore designed to avoid impacts to transient individuals that may cross through the area during construction. Section 7 consultation was completed with the U.S. Fish & Wildlife Service (USFWS) under the federal Endangered Species Act in April of 2019. The USFWS concurred with the finding that the proposed development alternatives may affect, but are not likely to adversely affect, San Joaquin kit fox. Please refer to Appendix X of the Final EIS for Section 7 consultation.

The commenter referred to an "EIR" in several instances. It is assumed that this was a typographical error, and that the commenter intended to refer to the Draft EIS.

Response to Comment 8-15

The availability of water for the Proposed Project is thoroughly discussed in Sections 2.2.2.4, 3.3, and 3.10.3.1; and Appendix G of the Draft EIS. Section 2.2.2.4 of the Draft EIS states that the water supply for the Proposed Project would be provided by the two proposed on-site groundwater wells. The analysis of potential impacts on groundwater supply included in Section 3.3.3.1 of the Draft EIS concluded that implementation of Mitigation Measure 2-H would reduce the impact to the groundwater basin to less than significant. As shown in Table 4-1 of the Draft EIS, Mitigation Measure 2-H

requires the Tribe to fully offset groundwater extraction associated with the Proposed Project through the implementation of one or more measures including the following:

> *Amend the existing surface water contract for agricultural irrigation water with the appropriate water district (Wheeler Ridge-Maricopa Water Storage District for the Maricopa Highway Site) to allow the transfer of surface water to other agricultural lands within the Kern County Subbasin that currently uses groundwater for irrigation. As a condition of the agreement, the agricultural land receiving the surface water would be required to reduce groundwater pumping by at least the same amount as the surface water they are receiving.*

As described in Section 2.2.2.8 of the Final EIS, since the publication of the Draft EIS, the Tribe has entered into a Water Agreement with the District. The purpose of the Water Agreement, included as Appendix W of the Final EIS, is to (1) to effectively and responsibly manage the District's water resources, and (2) to assist the Tribe in maintaining "neutral to positive" groundwater levels in the vicinity of the Mettler Site. The Water Agreement acknowledges that the Mettler Site is situated entirely within the boundaries of the District and what the District's Rules and Regulations for Distribution of Water define as the District's "Surface Water Service Area," and is subject to the Contract for Agricultural Water Service recorded in the Official Records of Kern County as Document No. 0201051529 (the CAWS). Additionally, the Water Agreement notes, consistent with the Draft EIS, that Alternatives A1 and A2 would rely solely on groundwater rather than surface water made available to the Mettler Site under the CAWS.

Pursuant to the Water Agreement, surface water available to the Mettler Site for agriculture use under CAWS (up to the amount of 734 acre-feet per year [AFY]) would be assigned to other landowners within the District that are eligible to receive surface water service from the District. Eligibility would be based on such factors as the District 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 (i.e., maintain "neutral to positive" groundwater levels in the vicinity of the Mettler Site). For the purposes of determining the net groundwater use of the selected alternative (Alternatives A1 or A2), 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. For example, if Alternative A1 uses the estimated average groundwater demand of approximately 174 AFY (approximately 155,000 gallons per day) and after using reclaimed water for landscape irrigation approximately 150 AFY of treated effluent is discharged to the on-site percolation ponds, approximately 142.5 AFY (95 percent of metered discharge to the percolation ponds) would be assumed to infiltrate back into the groundwater basin. Therefore, the net groundwater use of Alternative A1 would be 31.5 AFY. Pursuant to the Water Agreement, the District would assign a minimum of 31.5 AFY of surface water available to the Mettler Site to another landowner within the vicinity of the Mettler Site who uses groundwater for agriculture irrigation. The selected landowner would irrigate using the 31.5 AFY of surface water in lieu of groundwater; thereby, reducing the net groundwater use of Alternative A1 to at least zero.

As described above, implementation of the Water Agreement would ensure that impacts to the groundwater basin from Alternatives A1 and A2 are neutral to positive; therefore, Mitigation Measure 2-H is no longer warranted for Alternatives A1 and A2. Sections 2.2.2.8 and 3.3.3.1 as well as Table 4-1 of the Final EIS have been revised to reflect this update.

Contrary to the commenter's statement, Appendix G of the Draft EIS specifically included an analysis of impacts to groundwater, including local wells. Figure 2-1 in the water and sewer report (Appendix G of the Draft EIS) graphically represents the proximity of existing groundwater production wells in the project area. Historic yields from existing wells in the project vicinity have averaged 1,191 gallons per minute. The Proposed Project would only need to utilize approximately 11 percent of that historic yield to meet its average annual water demand. The 3,000-foot distance and

11 percent assumed utilization is not expected to result in a detrimental effect to existing wells. To further ensure that no adverse impacts would occur to neighboring groundwater wells, Mitigation Measure 2-F requires the following:

> *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 1-mile radius of the Mettler or Maricopa Highway Sites while optimizing groundwater usage onsite, such as avoiding the percolation pond's cone of influence. A groundwater study shall be conducted in order to achieve this objective.*

Response to Comment 8-16

As stated in the **Response to Comment 8-15**, the Water and Sewer System Report (Appendix G of the Draft EIS) found that the proposed on-site wells would not impact existing neighboring wells. Mitigation Measure 2-F was included in the Draft EIS to further ensure that no impacts would occur and does not contradict the conclusions of the analysis.

In regards to Mitigation Measure 2-H, since the publication of the Draft EIS, the Tribe and the Arvin-Edison Water Storage District executed a Water Agreement (Appendix W of the Final EIS), the purpose of which is to (1) to effectively and responsibly manage the District's water resources, and (2) to assist Tribe in maintaining the "neutral to positive" groundwater levels in the vicinity of the Mettler Site. As described further in the **Response to Comment 8-15**, the implementation of the Water Agreement would ensure that impacts to the groundwater basin from Alternatives A1 and A2 are less than significant; therefore, Mitigation Measure 2-H is no longer warranted for Alternatives A1 and A2. Sections 2.2.2.8 and 3.3.3.1, and Table 4-1 of the Final EIS have been revised to reflect this update.

As described in Section 2.3.2.5 of the Final EIS, the Water Agreement does not apply to Alternative B, because the Maricopa Highway Site is not within the District; therefore, Mitigation Measure 2-H continues to be recommended to reduce impacts to the groundwater basin from Alternative B to a less-than-significant level. Each of the optional measures in Mitigation Measure 2-H are feasible and could, either individually or in combination, fully offset groundwater extraction associated with Alternative B. The fact that an agreement was reached for the Mettler Site speaks to the feasibility Mitigation Measure 2-H(1) to amend the existing surface water contract with the Wheeler Ridge-Maricopa Water Storage District for the Maricopa Highway Site. Mitigation Measure 2-H(2) is feasible as the groundwater recharge basin could be developed on the Maricopa Highway Site to recharge water from the existing surface water contract for the Maricopa Highway Site. Mitigation Measure 2-H(3) is considered feasible as the County and local water districts are actively seeking ways to offset groundwater extraction and implement other water conservation methods. The performance standard to determine whether the Mitigation Measure 2-H is effective, is that the measure fully offset the selected alternative's groundwater extractions. Please refer to **Response to Comment 9-10** regarding the enforceability of mitigation measures.

Response to Comment 8-17

The Preliminary Grading, Drainage, and Flood Impact Analysis (Appendix H of the Draft EIS) evaluates potential flooding effects of the project alternatives. Analysis of the peak flows for the 100-year storm event were estimated using StreamStats, a U.S. Geological Survey (USGS) web-based Geographic Information System with water-resources analytical tools, and the development of a Unit Hydrograph Analysis using the most recent rainfall data from the National Oceanic and Atmospheric Administration's (NOAA) Atlas 14. Based on these methods, the flow from the 100-year storm event was found to be 6,270 cubic feet per second at the Mettler Site (Appendix H of the Draft EIS, pg. 42). As described in Section 3.3.3.1 of the Draft EIS, under Alternatives A1 and A2, flood water depths would increase at maximum 0.41 feet and 0.36 feet, respectively. Neither of the alternatives caused an increase of 1.0 foot when compared to the existing conditions on neighboring properties. Based on this, it was determined that raising the WWTP by 2.5 feet above the floodplain would ensure that flood waters would not enter into or impair the treatment capabilities of the WWTP.

The Preliminary Grading, Drainage, and Flood Impact Analysis (Appendix H of the Draft EIS) was revised to include a table of flood water velocities, and also includes a new figure to more clearly show the different flood depths that could occur on the Mettler Site (pg. 22 of Appendix H of the Final EIS). The revised report is now titled Revised Preliminary Grading, Drainage, and Flood Impact Analysis, and is included as Appendix H of the Final EIS.

The use of the 100-year storm event for hydrologic analysis is standard practice in civil engineering and is noted as the Capital Storm Design Discharge (CSDD) in the Kern County Standards for Drainage. The mitigation measures for the protection of life and property, and the maintenance of emergency vehicle access are based on the CSDD for the area per Section 401-1.03 of the Kern County Standards of Drainage. Additionally, "Flood Flow" is considered to be the CSDD per Kern County Standards of Drainage Section 402-1.15.

The 100-year flood is also noted as the "Base Flood" by the Kern County Standards for Floodplain Management in Section 17.48.050.8 and is used consistently across the required standards of design. In the event that the 500-year storm analysis is determined to be warranted, the 500-year storm would be included in the calculations in the final design phase. Please refer to the **Response to Comment 9-21** that describes the different circumstances that warrant an analysis of a 100-year storm event versus a 500-year storm event. Additionally, if an update to NOAA's point precipitation frequency data supports the increase of the frequency and intensity of the 100-year storm event as a result of climate change, the increase in storm frequency and intensity could be considered in the calculations during the final design phase. While the effects of climate change may impact the frequency and size of storms that the area may experience in the future, data regarding increased storm frequency has not been reflected in the NOAA storm data available.

Response to Comment 8-18

Comment noted. As requested, the Sierra Club has been added to the mailing list communications regarding the NEPA process.

COMMENT LETTER 9: STAND UP FOR CALIFORNIA

Response to Comment 9-01

Comment noted. The commenter's summary of the Proposed Project (Alternative A1) is consistent with the analysis in the Draft EIS.

Response to Comment 9-02

The commenter states that the Draft EIS is "atypical" but does not elaborate. As discussed in **Response to Comment 9-11**, the number of pages of the EIS is limited based on federal directives and guidance. To provide interested parties with adequate information and analysis on the Proposed Project while adhering to the 150-page limit, the BIA opted to include supplemental information in appendices. All appendices were clearly labeled and bookmarked for ease of navigation and accessibility by reviewing agencies and the public.

Regarding the "hard look," implementing regulations for NEPA, 40 CFR § 1502.9(c) provides guidance on circumstances under which a lead agency should prepare a Supplemental Draft EIS. These regulations provide that the agency should prepare a supplement to the Draft EIS if the "agency makes substantial changes in the proposed action that are relevant to environmental concerns" or "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." The agency "may also prepare supplements when the agency determines that the purposes of the Act [NEPA] will be furthered by doing so."

Substantial changes relevant to environmental concerns related to the Proposed Action have not been made, nor has a new alternative been introduced as the Proposed Action. Similarly, there are no significant new circumstances or information

relevant to environmental concerns and bearing on the Proposed Action or its impacts. In response to comments received on the Draft EIS, text and analyses contained in the EIS have been supplemented, modified, and improved; and factual corrections have been made. While new information has been presented, the information has not resulted in substantial changes in the EIS's conclusions regarding the environmental impacts of the Proposed Action. The level of analysis presented in the EIS constitutes the 'hard look' required by NEPA, as described in the *Robertson* v. *Methow Valley Citizens Council* ruling.[5] For these reasons, a supplemental EIS is not warranted.

Response to Comment 9-03

The commenter is correct that the Draft EIS did not directly address COVID-19 and its possible health and economic consequences. The Draft EIS was published in June 2020, which was after the COVID-19 pandemic had commenced, but before the intermediate and long-term effects of the pandemic were understood. At this time, the intermediate and longer-term effects of the COVID-19 pandemic are still not precisely predictable. However, it is generally acknowledged that a safe and effective vaccine is one of the primary goals of combating COVID-19. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, previously estimated that a safe and effective vaccine will be deployed in approximately the spring of 2021.[6] Others predict that a vaccine may be available by the end of 2020.

As described in Draft EIS Section 2.2.2.1, construction of Alternatives A1 and A2 are anticipated to begin in 2022 with a 12-month construction schedule. The facilities are expected to open in approximately 2023. Timing for other alternatives is similar; although, as described in **Response to Comment 9-24** below, Alternative B might take longer. Despite the uncertainty of the COVID-19 timeline, it is likely that the pandemic will be over prior to the commencement of construction and operations. Even if the pandemic were not completely over, it would be more economical to operate the facilities with the configuration described in the Draft EIS rather than to build and operate a larger but less dense facility, as suggested by the commenter. A larger and less dense reconfiguration recommended by the commenter would be very costly and would reduce the operational cash flow.

Regarding the efficiency of operating a gaming venue under COVID-19 safety procedures, it should be noted that as of this writing, most tribally owned casinos in California have successfully reopened with policies and procedures in place to mitigate the risks of COVID-19. This notwithstanding the fact that the California Gaming Association has opposed these re-openings.[7] The California Gaming Association is an industry trade group that represents the California cardroom industry,[8] which competes with tribal casinos. As described above, it is more likely than not that the opening of the gaming alternatives described in Draft EIS Section 2.2.2.1 would occur after the COVID-19 pandemic has effectively ended. However, in the event that the COVID-19 pandemic still exists, then the Tribe would implement policies and procedures similar to those introduced by existing tribal casinos that have reopened.

Similar to health-related impacts, it is likely that the actual economic results and operational cash flows of the alternatives described in the Draft EIS would be consistent with the forecasts included in the Draft EIS, and specifically described in Section 3.7 and Appendix I of the Draft EIS. This is because the casino would most likely only become operational once

[5] Source: FindLaw website, available online at: https://caselaw.findlaw.com/us-supreme-court/490/332.html. Accessed September 4, 2020.

[6] Source: Kaiser Health News ("KHN") article dated July 16, 2020, available online at https://khn.org/news/a-coronavirus-vaccine-where-does-it-stand/. Accessed August 11, 2020.

[7] Source: Casino.org news article dated July 14, 2020, available online at https://www.casino.org/news/california-gaming-association-tells-gov-newsom-to-close-tribal-casinos/. Accessed August 11, 2020.

[8] Source: California Gaming Association website, available online at https://californiagamingassociation.org/about-cga/. Accessed August 11, 2020.

the COVID-19 pandemic had completely or substantially subsided. Consequently, it would be speculative to adjust the revenue forecasts included in Appendix I of the Draft EIS.

It should also be noted that the socioeconomic benefits of the project alternatives, including job creation, wage income earned by local employees, and State and local tax revenues, may be more impactful than originally estimated in the Draft EIS due to the current economic situation. Please refer to the revised text in Section 3.7 of the Final EIS.

Response to Comment 9-04

The commenter is correct that the Notice of Intent (NOI) was published August 13, 2015 and that the Scoping Report was dated February 2019. In response to the NOI and the related scoping hearing that occurred in September 2015, comments were received from agencies and concerned parties regarding the Proposed Project and potential environmental effects. Concerns regarding potential impacts to groundwater were voiced during the scoping hearing and were well known at that time. Regarding actual development that occurred on the I-5 corridor between the publication of the NOI and the issuance of the Scoping Report, these cumulative projects are listed in Table 1 of Appendix J of the Draft EIS. Most of these projects had already been publicly announced prior to the publication of the 2015 NOI. For example, the Grapevine Specific and Community Plan and Centennial at Tejon Ranch, two of the larger projects listed in Table 1, had already been proposed no later than 2006[9] and 2013[10], respectively. For this reason, updating the Scoping Report is not warranted.

Response to Comment 9-05

The Draft EIS was prepared under the direction of the BIA in accordance with NEPA and presents an unbiased assessment of the environmental impacts of the Proposed Action and alternatives.

The BIA followed procedures consistent with 40 CFR § 1506.5(c) when it engaged a qualified consulting firm to assist it in the preparation of the EIS and supporting documents. The BIA engages a wide range of consulting firms for a variety of purposes. Analytical Environmental Services (AES) is one of many firms periodically used by BIA. All work on the EIS was performed under BIA direction as required by 40 CFR § 1506.5(c), and as required by the Three-Party Agreement executed between the BIA, AES, and the Tribe. The agreement provides that AES is to work under the BIA's direction and the BIA will direct and control all work on the scoping report, EIS, technical studies, and other NEPA-related documents. The agreement also confirms that AES has no financial interest in the outcome of the environmental analysis or the BIA's decision regarding the approvals for the Proposed Project. This arrangement is consistent with the BIA's practice of engaging consultants to assist with document preparation.

General comments regarding unsubstantiated and of disproved allegations of bias or quality by others on other projects are not relevant to the current EIS. Documents for which the BIA is the lead agency are determined by the NEPA statute and guidance from regulatory agencies, including the BIA NEPA Guidebook. EIS documents have been formulated over time to share a similar structure and address many of the same environmental issues. Consequently, there will inevitably be some similarities between EIS documents prepared for different projects. However, the content and specific analyses of each EIS are unique and are driven by the alternatives and specific environmental setting, environmental consequences, mitigation, and other factors.

[9] Source: Tejon Ranch news release dated May 23, 2007, available online at: http://tejonranch.com/tejon-ranch-company-dmb-associates-finalize-partnership/. Accessed online August 18, 2020.

[10] Source: Tejon Ranch news release dated November 6, 2013, available online at: http://tejonranch.com/tejon-ranch-proposes-12000-unit-project-at-foot-of-grapevine/. Accessed online August 18, 2020.

The commenter's statement that AES has never concluded that a project will have detrimental effects is inaccurate in numerous respects. First, AES is a contractor to the BIA. The BIA is the decision maker, not AES. Second, a NEPA EIS is not the document that the BIA issues for publishing decisions. As described in the BIA NEPA Guidebook:

> *The NEPA process is intended to facilitate public participation and disclosure in the Federal planning process, and also help Federal government officials "make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment" (40 CFR 1500.1(c)).*

Thus, an EIS does not render an opinion regarding whether a particular project should or should not be approved. Third, the Tejon EIS does in fact identify detrimental environmental effects. Extensive mitigation is proposed in Section 4.0 of the Draft EIS to address these effects.

AES does communicate with cooperating agencies, other regulatory agencies, the applicant, the public, and interested parties on an as needed basis in the course of preparing the EIS. For the Draft EIS, the Tribe is both a NEPA cooperating agency and the applicant. AES is engaged by the BIA for purposes of performing environmental consulting services, and these services include obtaining information from all relevant sources, including the Tribe. The BIA need not participate in all of these communications due to resource and time constraints. For these reasons, the BIA utilizes the services of qualified consultants, and the consultants at times communicate with knowledgeable individuals, agencies, and experts, including the Tribe, during the normal course of EIS document preparation.

Response to Comment 9-06

The commenter's statement that the Purpose and Need (Section 1.2 of the Draft EIS) "skews BIA's entire analysis…" is incorrect. As stated in 40 CFR § 1502.13 regarding Purpose and Need:

> *The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.*

Thus, contrary to the commenter's statement, a Purpose and Need typically does not directly address potential environmental impacts. Environmental impacts have been thoroughly assessed in the Draft EIS based on applicable federal regulations and identified assessment criteria.

The EIS will provide the Secretary of the Interior with information on the potential physical environmental effects of the proposed federal actions which must be considered under the Department of the Interior's trust land acquisition regulations at 25 CFR Part 151, and its two-part determination regulations at 25 CFR Part 292, Subsection C. Consideration of the Secretary's analysis of the regulatory requirements of 25 CFR Parts 151 and 292 are outside the scope of this EIS.

Response to Comment 9-07

As described in Section 1.2 of the Final EIS:

> *The purpose of the Proposed Actions is to facilitate tribal self-sufficiency, self-determination, and economic development. This purpose satisfies the Department of the Interior's (Department) land acquisition policy as articulated in Department's trust land acquisition regulations at 25 CFR Part 151, and is the principle goal of IGRA as articulated in 25 USC § 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 CFR §§ 151.10(h) and 151.12, the Department's Two-Part regulations at § 292.18(a), and the NIGC's regulations for review of management contracts at 25 CFR Part 533.*

The Tribe, as the applicant, has proposed a project that it has determined is the most appropriate means of providing an adequate revenue source to support the tribal government and provide services to its members. The BIA must rigorously explore and objectively evaluate all reasonable alternatives (40 CFR § 1502.4). "Reasonable alternatives" include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant (CEQ 40 FAQs, see below).

The BIA has selected alternatives in a manner that promotes informed public participation and informed decision making. Several critical factors were considered in determining which alternatives should be subjected to detailed analysis and review. First, alternatives that clearly did not accomplish the purpose of an action were found to be by definition, not reasonable and not studied in detail. Secondly, alternatives that would not significantly differ in impacts from other alternatives, or that would not avoid or minimize the adverse environmental impacts of the Proposed Action, were not considered in depth.

A reasonable range of alternatives was evaluated and analyzed in the Draft EIS. These alternatives are summarized in Section 2.0 of the Draft EIS, and are:

1. Alternative A1 – Proposed Project
2. Alternative A2 – Reduced Casino Resort Alternative
3. Alternative A3 – Organic Farming Alternative
4. Alternative B – Casino Resort on the Maricopa Highway Site
5. Alternative C – No Action Alternative

Pursuant to 40 CFR § 1502.14(c), Section 2.5 of the Draft EIS and Appendix B of the Draft EIS provide a discussion of alternatives that were considered but eliminated from further study and the reasons for them having been eliminated. Four such alternatives were eliminated from consideration.

As noted within Question 1. of *NEPA's Forty Most Asked Questions*, contained in Appendix 17 of the BIA NEPA Guidebook:

> *When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS.*
>
> *What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.*
>
> *Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.*

The commenter is correct that the EIS *could* [emphasis added] have included alternatives located outside of the County. However, for several reasons, the commenter's statement that the EIS must evaluate options outside of the County is not correct. Specifically, the range of alternatives analyzed in the Draft EIS conforms to the criteria of what is "reasonable." It is not clear that alternative sites outside of the County would be "practical or feasible from the technical and economic standpoint" or result in new information that would inform the NEPA process. Furthermore, Kern County is quite large. Specifically, the northernmost boundary of the County is approximately 55 miles north of the Mettler Site (via SR-99) and approximately 70 miles north of the Mettler Site when traveling on I-5. The commenter provides no reason why it would be necessary or even desirable to include sites outside of the County. In addition, the number of potential sites that would

satisfy the Purpose and Need are limited. For example, in order to be economically viable, tribal gaming venues should have access to heavily trafficked roadways. Much of the land to the south of the project sites is comprised of the Tejon Ranch, which consists of approximately 270,000 acres of privately owned land. The vast majority of lands within Tejon Ranch are subject to permanent conservation easements, and the large majority of lands in the southeast part of the 1851 Tejon Treaty Area are encompassed within the 66,000-acre Wind Wolves Preserve.[11] Lands further to the south and across the Los Angeles County border are mostly set aside for wilderness and recreation. Also, to accommodate a casino-resort development, sites generally must be sufficiently large (typically 25 acres or larger) and relatively flat. Individual sites must either be owned by an applicant or available for purchase. These criteria substantially reduce the number of available sites suitable for commercial development.

In addition, analyzing alternatives outside of the County is inconsistent with the Tribe's efforts to obtain land in relative proximity to the area reserved in the unratified 1851 Treaty, as described in Section 1.3 of the Draft EIS. The Tribe's preference in this regard, although not a criterion for a fee-to-trust application filed pursuant to 25 CFR § 151.11, is nevertheless consistent with the factors described in the preceding paragraph.

While the potential income from the non-gaming development, Alternative A3, would be less likely to fully meet the purpose and need, the BIA determined that a non-gaming alternative would be a reasonable alternative (see definition above) and that presentation of that alternative significantly expanded the range of alternatives considered.

The commenter is also incorrect that Alternative A1 (gaming) and Alternative A2 (reduced intensity gaming) are different scenarios of the same alternative. In fact, they are separate alternatives. It is true that these two alternatives share some level of similarity, the most obvious being that they occupy the same physical site and that the commercial use would be the same. However, the differences between Alternatives A1 and A2 are substantial. Because of differences in building footprint and other characteristics, the environmental impacts for these alternatives are different in most areas of environmental study, including impacts to geology and soils (refer to Section 3.2 of the Draft EIS), water resources, air quality, biological resources, transportation, public services, noise, aesthetics, and indirect and growth-inducing effects. In the same paragraph, the commenter makes a separate point regarding post-action restrictions on land use. Please refer to the **Response to Comment 9-10** regarding mitigation and other post-action restrictions.

Finally, the range of alternatives analyzed in the Draft EIS does not warrant preparation of a Supplemental EIS. As described above, the range of alternatives analyzed in the Draft EIS is reasonable and wholly consistent with NEPA. The criteria for selecting alternatives is codified in NEPA and need not be reiterated in an EIS. However, for purposes of responding to the comment, the following text of 40 CFR § 1505.14 is presented in full:

> ***§ 1502.14 Alternatives including the proposed action.***
>
> *This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:*

[11] Source: *Tejon Indian Tribe's Supplemental Fee-to-Trust Application* dated October 2018.

> ***(a)*** *Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.*
>
> ***(b)*** *Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.*
>
> ***(c)*** *Include reasonable alternatives not within the jurisdiction of the lead agency.*
>
> ***(d)*** *Include the alternative of no action.*
>
> ***(e)*** *Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.*
>
> ***(f)*** *Include appropriate mitigation measures not already included in the proposed action or alternatives.*

A review of this regulation and of Question 1. of *NEPA's Forty Most Asked Questions* and 40 CFR § 1505.14 does not reveal a specific list of criteria. Rather, as stated above in Question 1. of *NEPA's Forty Most Asked Questions:*

> *What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.*
>
> *Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.*

For this reason, the presentation of a specific list of screening criteria in the EIS is not warranted. This notwithstanding, some of the criteria used to select project alternatives (e.g., economics, suitability of terrain, proximity to major transportation roadways, etc.) are described above in this response.

Response to Comment 9-08

The commenter is correct that the 1851 Treaty is not directly mentioned in Section 1.2 (Purpose and Need) of the Draft EIS, although it is mentioned in Section 1.3 (Background) of the Draft EIS. The 1851 Treaty is a relevant consideration to the applicant, in this case the Tribe, and thus it is appropriate to mention the treaty in Section 1.3 of the Draft EIS. The commenter is also correct that Section 2.5.4 of the 2019 Scoping Report states that the Taft Highway Site was eliminated from further consideration because the site is not located within the Tribe's Historic 1851 Tejon Treaty Area. Section 2.5 of the Scoping Report also states that 2) feasibility, and 4) the ability to contribute to a reasonable range of alternatives were used as criteria to screen *alternatives considered but eliminated from further consideration*. As clarified in Appendix B of the Draft EIS, the Taft Highway Site was eliminated from further consideration not only because is not located within the Tribe's Historic 1851 Treaty Area, but also because of financial viability considerations. It should also be noted that, as described in the **Response to Comment 9-7**, the Draft EIS included a reasonable range of alternatives even before consideration of the Taft Highway Site. Thus including the Taft Highway Site as an EIS alternative was and is not warranted.

The commenter makes a number of suggestions and requests that are beyond the scope of NEPA. Federal agencies must follow the requirements in the CEQ NEPA Regulations, 40 CFR § 1500, when responding to comments. The CEQ Regulations generally recommend that comments be addressed if they are:

> *1) Substantive and relate to inadequacies or inaccuracies in the analysis or methodologies used;*
> *2) Identify new impacts or recommend reasonable new alternatives or mitigation measures;*
> *3) Involve substantive disagreements on interpretations of significance and scientific or technical conclusions.*

According to 40 CFR §§ 1500.1 and 1500.4, the goal of NEPA is to improve decision making by providing decision makers and the public with pertinent and accessible information on potential project impacts on the environment. Comments received that further NEPA's purposes are included in the Final EIS. Responses are not required for comments that do not raise a substantive environmental issue. Accordingly, no detailed responses are required for comments related to compliance with the provisions of IGRA because they are outside the scope of the EIS. The EIS will provide the Secretary of the Interior with information on the potential physical environmental effects of the proposed federal actions which must be considered under the Department of the Interior's trust land acquisition regulations at 25 CFR Part 151, and its two-part determination regulations at 25 CFR Part 292, Subsection C. Consideration of the Secretary's analysis of the regulatory requirements of 25 CFR Parts 151 and 292 are outside the scope of this EIS.

The commenter's request that the BIA describe in greater length the context of the Tribe's connection to the 1851 Tejon Treaty Area is not warranted as that topic is addressed in Tribe's fee-to-trust application filed pursuant to 25 CFR § 151, and thus is beyond the scope of NEPA. Rather, the Tribe's connection to the 1851 Tejon Treaty Area, as described in Section 1.3 of the Draft EIS, is appropriate for purposes of NEPA because it explains the relationship between the range of alternatives analyzed in the Draft EIS in the context of the Tribe's history.

The commenter states that the Tribe is not "landless" and that alternatives should include development on or near the Tule River Reservation. The Tule River Tribe is a separate federally recognized Indian tribe with trust land in Tulare County, approximately 100 miles north of the Mettler Site. In support of its assertion, the commenter references an 1873 Presidential EO and correspondence between the law firm of Perkins Coie and the BIA. The commenter did not attach these items of correspondence, so it is very difficult to substantively address the commenter's statements. It should also be noted that these comments are beyond the scope of NEPA.

Furthermore, the commenter's statement that the Tribe's aboriginal territory was outside of and to the southeast of the "Historic 1851 Tejon Treaty Area" is difficult to interpret. The commenter references Comment Letter P-22 in the Scoping Report. It is not known what section of Comment Letter P-22 that the commenter is referring to, or why the commenter believes that the information in Comment Letter P-22 is likely to be reliable or relevant. Also, please refer to **Response to Comment 9-7** for information about why the EIS alternatives are located in the County.

Response to Comment 9-09

Consistent with NEPA, the Draft EIS and Final EIS present and analyze a range of alternatives. As described in the Draft EIS, Alternative A1 at the Mettler Site is the Proposed Project. The commenter is correct that in the case of the Wilton Rancheria EIS, the proposed project described in the draft EIS was designated as Alternative A. In that case, Alternative F, which was also fully described and evaluated in the draft EIS, was described in the Record of Decision dated January 2017 as follows:

> *…The Proposed Project described under Preferred Alternative F would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term,*

> *sustainable revenue stream for its tribal government and to fund necessary mitigation for development of economic ventures….*[12]

It is completely proper and appropriate for a federal agency to select any alternative or combination of alternatives analyzed in a NEPA document, based the results of the NEPA process and other considerations. Conversely, it would be inappropriate for a federal agency to predetermine the selected alternative at the initiation of the NEPA process, prior to the impact analysis being conducted and receipt of comments from the public, agencies, and other interested parties.

The commenter is correct that, pursuant to 25 CFR § 151.3(a)(2), the Tribe must own an interest in the land prior to its acquisition in trust. It is not understood exactly what the commenter means by "the BIA must disclose the nature of any legal interest the Tribe may have in each site." Describing the Tribe's detailed circumstances regarding its ownership interests in each site is not warranted in the EIS. However, the confirmation of the Tribe's ownership interest is performed as part of the fee-to-trust application process conducted under 25 CFR § 151. The transactional aspects of the fee-to-trust process is beyond the scope of NEPA.

Response to Comment 9-10

As stated in Section 4.0 of the Draft EIS, mitigation measures were developed in accordance with CEQ NEPA regulations. NEPA regulations require mitigation measures to be developed for all of a proposed action's effects on the environment where feasible (40 CFR §§ 1502.14(f) and 1502.16(h); CEQ 40 Most Asked Questions, 19a). The NEPA regulations define mitigation as:

> *…avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; compensating for the impact by replacing or providing substitute resources or environments.* (40 CFR § 1508.20). (Section 4.1 of the Draft EIS)

The EIS is not the document that commits the agency to mitigation; it is the Record of Decision (ROD) that does so. Pursuant to a future ROD, should it be issued, the Tribe would be committed to implementing all mitigation measures contained within the ROD. As required by 40 CFR § 1505, the BIA or other appropriate consenting agency shall be responsible for ensuring that mitigation adopted within the ROD is implemented. 40 CFR § 1505.2 [c] states, where applicable, a Mitigation Monitoring and Enforcement Plan (MMEP) shall be adopted and summarized within the ROD. Mitigation enforceable by parties other than the BIA (e.g., permits [e.g., the National Pollutant Discharge Elimination System permit] or enforceable agreements [e.g., the IGA]), may not require an MMEP. Although the EIS may set forth potential measures for consideration, it does not adopt them. As stated in Section 4.0 of the Draft EIS, all mitigation listed within that section is enforceable because it is 1) inherent to the project design, and/or 2) through provisions of the IGA, or federal or State statute, where applicable. Off-Site mitigation measures may need to be coordinated with the applicable local or State governmental agencies.

Appendix D of the Draft EIS contains a copy of the July 23, 2019, IGA between the Tribe and the County. Within the IGA, several mitigation measures are enforceable through the terms specified in this agreement. The IGA contains terms regarding dispute resolution, including but not limited to, mediation and arbitration. This enforcement mechanism ensures

[12] Source: Record of Decision dated January 2017, page 57, available online at: https://www.wiltoneis.com/wp-content/uploads/2017/01/record-of-decision.pdf. Accessed August 18, 2020.

that any and all terms within the agreements, including mitigation measures associated with the project and annual payments by the Tribe, are legally binding and, therefore, enforceable.

In regards to the ability of the respective parties to renegotiate the terms of the IGA, this does not weaken the agreements as an enforcement mechanism as all of the respective parties must agree to any amendments. This thus ensures that any one party cannot unfairly alter the agreement in its favor. Furthermore, as discussed above, the ability to renegotiate the terms of the agreement allows the parties to account for unforeseen circumstances in which more or less mitigation/public services/compensation is appropriate.

With regard to assessing the potential environmental impacts without implementation of mitigation measures, the Draft EIS has already performed this analysis. The Draft EIS identified potential impacts that would occur in the absence of mitigation. Therefore, no revisions in the Final EIS concerning this matter are warranted.

Response to Comment 9-11

The length of the Draft EIS is limited due to directives in 40 CFR § 1502.7, EO 13807, Secretary's Order 3355, and guidance from the Secretary of the Interior regarding "Additional Direction for Implementing Secretary's Order 3355" dated April 27, 2018. These regulations and guidance documents are intended to reduce extraneous material in NEPA documents and streamline the NEPA process. The text of an EIS (defined in 40 CFR § 1502.7 as sections regarding the purpose and need, alternatives, affected environment, and environmental consequences) are limited to 150 pages.

To provide interested parties with adequate information and analysis on the Proposed Project while keeping to the 150-page limit, the BIA opted to include supplemental information, including the 31 figures referenced in the text of the EIS, in appendices. All appendices were clearly labeled and bookmarked for ease of navigation. Due to the page limit constraints discussed above, figures and other supporting information are presented in the same manner in the Final EIS.

Response to Comment 9-12

The EIS substantially complies with the standards of Section 508 of the Rehabilitation Act of 1973, which is intended to make documents more accessible to people with disabilities. Compliance with Section 508 is determined at the time a file is saved and is based on the Accessibility Report that is attached to the file. Three of the four files that were posted on the project website included passing Accessibility Reports. Of the 32 parameters evaluated, the file containing appendices A-G included two parameters that were "skipped" and one parameter that "failed," as described below.

- "Character encoding" is one parameter that was skipped. The character encoding parameter that was skipped generated one error. According to the support offered within the Adobe Acrobat Pro software, "some character-encoding issues are not repairable within Acrobat." This single error was located within the excerpt of the Kern Council of Governments *2014 Regional Transportation Plan/Sustainable Communities Strategy* included in Appendix A of Appendix F of the Draft EIS.
- "Other elements alternate text" is the second parameter that was skipped. This parameter generated two errors for items also located within the excerpt of the Kern Council of Governments *2014 Regional Transportation Plan/Sustainable Communities Strategy* in Appendix A of Appendix F of the Draft EIS.
- "Tagged content" is the one parameter that failed. This parameter is associated with the same two items that were discussed in the paragraph above.

In regards to whether these parameters need to be corrected prior to publication, E202.6.1 *Basis for a Determination of Undue Burden* within Chapter 2 of Appendix A to Part 1194 of Section 508 of the Rehabilitation Act: Application and Scoping Requirements that states the following:

> *In determining whether conformance to requirements in the Revised 508 Standards would impose an undue burden on the agency, the agency shall consider the extent to which conformance would impose significant difficulty or expense considering the agency resources available to the program or component for which the ICT* [Information and Communication Technology] *is to be procured, developed, maintained, or used.*

The errors listed above are not repairable because the Kern Council of Governments *2014 Regional Transportation Plan/Sustainable Communities Strategy* document would need to be repaired at the native file level. This document was prepared in June 2014, and neither the BIA nor the contractor preparing the traffic analysis have access to the native files. Obtaining these native files and correcting these errors would be considered an undue burden to the BIA. It should be noted that the errors in a reference document attached to the TIA does not inhibit the public's accessibility to the analysis of traffic impacts contained in Appendix F of the Draft EIS. As with the Draft EIS, an effort will be made to meet as many accessibility parameters as possible for the Final EIS.

Response to Comment 9-13

The project website (www.tejoneis.com) experienced technical difficulties on three occasions early within the 45-day comment period. This issue, which was caused by simultaneous downloads of large EIS files, caused brief exceedances of available bandwidth. The first two server outages lasted less than one hour, and the last outage lasted less than eight hours. During these incidents, no complaints were received. Given these incidents were temporary and of short durations (affecting less than 1 percent of the comment period), an extension or re-opening of the public comment period is not warranted.

Response to Comment 9-14

Section ES-2 in the Final EIS has been revised to reflect the accurate title of Alternative A3 - Organic Farming Alternative.

Response to Comment 9-15

As described in Section 2.2.2.1 of the Draft EIS, the hotel tower for Alternatives A1 and B would be approximately 11 stories or 134 feet high. As can be seen from Figure 2-6 included in Appendix E of the Draft EIS, the hotel tower is the tallest project component. The approximate relative sizes of the other project components are depicted in these renderings. Depending on the precise room configuration, the height of the hotel tower in Alternative A2 may be slightly less than 134 feet because the Alternative A2 hotel tower would be comprised of 300 rooms, versus the 400 rooms of Alternatives A1 and B (Table 2-2 of the Draft EIS). To be conservative, it was assumed that the height of the hotel under Alternative A2 would be similar to Alternative A1. The analysis of effects associated with aesthetics for both Alternatives A1 and A2 is included in Section 3.13.3.1 of the Draft EIS. A more detailed list of building heights by project component is not warranted in the EIS.

Response to Comment 9-16

The type of foundation that would be utilized in construction is a design level feature that is not required for the evaluation of impacts under NEPA. Pursuant to the IGA, the selected alternative would be constructed to meet the California Building Code as amended; therefore the type of foundation will depend on the ultimate detailed design of the facilities and the requirements applicable at the time of design, including the structural/seismic requirements of the applicable building codes. Please refer to the **Response to Comment 9-20** regarding seismic risks.

Response to Comment 9-17

The commenter is correct that Figure 18-1 in Appendix F of the Draft EIS indicates all of the proposed site access improvements for Alternatives A1 and A2 in the immediate vicinity of the Mettler Site with the exception of the extension of S. Sabodan Street north of SR-166 to Valpredo Avenue. While this improvement is not shown in Figure 18-1, it is appropriately described in Appendix F and the Draft EIS. Similarly, the suggestion to demarcate the Mettler Site boundary in relation to the proposed access site improvements is described. However, to enhance the content of Figure 18-1 concerning the improvements, the figure has been revised to include all proposed access improvements in addition to the project boundary. Furthermore, Figure 18-2 in Appendix F of the Final EIS has been revised to include the project boundary.

Please refer to Section 3.14.1 of the Draft EIS for the impacts related to off-site improvements. As referenced therein, "Figure 4-1 in Appendix E [of the Draft EIS] shows where road improvements would be needed in relation to the sites." The exact location, design, and extent of these improvements would be determined during detailed project design in coordination with applicable agencies (e.g., Caltrans). Further, it should be noted that improvements in areas not held in federal trust would be subject to CEQA.

Response to Comment 9-18

The water demand quantities reported in Sections 2.2.2.4, 2.2.3.2, and 2.3.2.2 of the Draft EIS include not only the average water demands reported in Tables 2-1, 2-2, and 2-3 in Appendix G but also the estimated irrigation water quantity demands reported in Chapter 2, under the section "Projected and Existing Water Demands" in Appendix G. When these water demand quantities are combined and then appropriately rounded, they represent the approximate total water demand of each of the alternatives. However, some of the calculations in Appendix G relate to potential future uses (beyond the casino resort) at the alternative sites. These Appendix G calculations show a net decrease in water use for these future uses. The calculations included in Draft EIS Section 3.3.3.1 did not include this level of detail, and such detail is not warranted as there would be a net reduction in water use under these potential future uses. Please also refer to **Response to Comment 8-15** regarding water usage.

Response to Comment 9-19

Sections 2.2.2.6, 2.2.3.3, and 2.3.2.4 of the Final EIS have been revised to clarify that the excavated cut soil would be available to be used as fill material, and that excess fill not available onsite would be imported. Consequently, the maximum estimated amount of imported fill needed to complete the alternatives was assumed in the analysis of potential impacts associated with traffic, air quality, and noise. Therefore, the potential impacts related to importing fill materials has been adequately addressed in the Draft EIS and no other revisions are warranted.

Response to Comment 9-20

The Draft EIS adequately examined the existing seismic conditions and the potential for seismic risk in Section 3.2. While Figure 3.2-2 of the Draft EIS does not label every fault, it does accurately display their locations in relation to the Mettler and Maricopa Highway Sites for analysis purposes. Figure 3.2.2 of the Final EIS has been revised to include the labeling of the "White Wolf fault" for clarification. Section 3.2.2.2 of the Draft EIS already described this fault as "quaternary and active within the last 1.6 million years (California Geological Survey [CGS], 2018a), indicating a potentially active fault."

As specified in Section 3.2.3 of the Draft EIS, buildings would be built to standards at or better than the CBC. Appendix K of the Draft EIS specifies that "[t]he CBC establishes minimum building requirements to protect public health, safety, and general welfare ensures safety standards." These minimum building requirements would include features to protect against the adverse effects of seismic activity. Additional language or analysis is not warranted in the EIS to specify exactly how these building features would reduce seismic risk because these are State-approved standards for protecting public safety.

Additionally, this level of specificity is typically conducted in connection with the preparation of final design and construction drawings and plans. Finally, as specified in Sections 3.2.2.2 and 3.2.2.3 and Figure 3.2.2 of the Draft EIS, neither the Mettler and Maricopa Highways Sites are located within an Earthquake Fault Zone and the Seismic Hazards Mapping Act only requires a geotechnical report to be prepared if the project is located within an earthquake fault zone. Please refer to the **Response to Comment 9-16** regarding potential seismic issues.

Response to Comment 9-21

The commenter is correct that the Mettler Site is within the designated 100-year floodplain (see Section 3.3 of the Draft EIS and Figure 3.3-1 in Appendix E of the Draft EIS). On average, the Mettler Site could theoretically be inundated with water approximately 1.5 feet deep for a limited duration in a 100-year flood. Therefore, as described in Section 3.3.1.1 of the Draft EIS:

> *In order to minimize potential harm to or within the floodplain in compliance with EO 11988 Floodplain Management, Alternatives A1 and A2 would be raised approximately 2.5 feet above the existing ground level (1 foot above the base flood elevation).*

In other words, the Proposed Project would no longer be within either the 100-year or 500-year floodplain once the elevation of the site is increased by 2.5 feet.

As described in Section 6.(c) of EO 11988:[13]

> *The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.*

The concept of a one percent or greater chance of flooding in any year is typically considered synonymous with a 100-year floodplain. The federal record regarding proposed changes to EO 11988 is complex. In January of 2015, changes were proposed to EO 11988, and these were codified in EO 13690. Section 2.(i)(1)(iii) changed the definition of a floodplain to "the area subject to flooding by the 0.2 percent annual change flood.[14]" This is typically considered synonymous with a 500-year floodplain. However, in August of 2017, the President issued EO 13807, thereby revoking EO 13690.[15] In March of 2018, the Federal Emergency Management Agency (FEMA) formally withdrew a notice of proposed rulemaking that had been published in August of 2016 that consisted of proposed changes to FEMA's "Floodplain Management and Protection of Wetlands" regulations to implement EO 13690.[16]

[13] Source: EO 11988 dated May 24, 1977, available online at https://www.archives.gov/federal-register/codification/executive-order/11988.html. Accessed online August 12, 2020.

[14] Source: Federal Register Notice published February 4, 2015 (FR Doc. 2015-02379), available online at https://www.federalregister.gov/documents/2015/02/04/2015-02379/establishing-a-federal-flood-risk-management-standard-and-a-process-for-further-soliciting-and. Accessed August 12, 2020.

[15] Source: Federal Register Notice published August 24, 2017 (FR Doc. 2017-18134), available online at https://www.federalregister.gov/documents/2017/08/24/2017-18134/establishing-discipline-and-accountability-in-the-environmental-review-and-permitting-process-for. Accessed August 12, 2020.

[16] Source: Federal Register Notice published March 6, 2018 (FR Doc. 2018-04495), available online at https://www.federalregister.gov/documents/2018/03/06/2018-04495/updates-to-floodplain-management-and-protection-of-wetlands-regulations-to-implement-executive-order. Accessed August 12, 2020.

In numerous instances, the commenter cites CFR Title 44, Chapter I, Subchapter A, Part 9.[17] This CFR incorporates elements of both EO 11988 and EO 11900, which concern the protection of wetlands.

Both the text of the original 1977 EO 11988 and the text of EO 13807 would identify the Mettler Site as a "floodplain." Regarding the definition of "Critical Action" in CFR Title 44, Chapter I, Subchapter A, Part 9, it is possible that the Proposed Action may be defined as a "Critical Action." As defined in the CFR, a "Critical Action" includes structures and facilities "Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials." The Proposed Project would store such products on a very limited scale. The on-site water and wastewater facilities would be protected from a 100-year flood by placing the facilities on raised building pads or by surrounding them with raised berms. Consequently, the definitional elements of "Critical Action," with their emphasis on water quality as opposed to floodplain management may not be applicable.

However, the most important distinction is that CFR Title 44, Chapter I, Subchapter A, Part 9 is applicable only to those actions undertaken by FEMA. As stated in Section 9.2(a) of the CFR:

> *FEMA shall take no action unless and until the requirements of this regulation are complied with.*[18]

In this case, FEMA is not the agency that will undertake an action. Rather, the BIA is the lead agency with respect to the Proposed Action. As further clarified in EO 11988:

> ***Section 1.*** *Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities…*

For these reason, CFR Title 44, Chapter I, Subchapter A, Part 9 does not directly apply to the Proposed Action.

Response to Comment 9-22

As described in Section 2.2.2.9 if the Draft EIS, BMPs would reduce the risk of accidental fuel spill. BMP K4 states: "Potentially hazardous materials, including fuels, will be stored away from drainages and secondary containment will be provided for all hazardous materials stored during construction and operation." Information regarding the specific design features of diesel fuel storage tanks and other material containment information will be determined in the final design phase that would occur prior to construction and would comply with applicable federal regulations.

Response to Comment 9-23

Appendix H of the Draft EIS analyzes potential flooding effects of the project alternatives. The use of the 100-year storm event for hydrologic analysis is standard practice in civil engineering and is noted as the CSDD in the Kern County Standards for Drainage. The mitigation measures for the protection of life and property, and the maintenance of emergency vehicle access are based on the CSDD for the area per Section 401-1.03 of the Kern County Standards of Drainage. In the Mettler Site alternatives, the project site would be within the FEMA designated floodplain, but the proposed buildings

[17] Source: CFR 44,I,A,9, available online at https://ecfr.federalregister.gov/current/title-44/chapter-I/subchapter-A/part-9 and dated November 15, 2019. Accessed August 12, 2020.

[18] Source: Source: CFR 44,I,A,9, available online at https://ecfr.federalregister.gov/current/title-44/chapter-I/subchapter-A/part-9 and dated November 15, 2019. Accessed August 12, 2020.

would be above the base flood elevation (BFE) after raising the elevation of the building area with fill material by approximately 2.5 feet. Additionally, "Flood Flow" is considered to be the CSDD per Section 402-1.15.

Response to Comment 9-24

The commenter is correct that EO 11988 requires the identification and evaluation of "practicable alternatives" and the commenter is also correct that the Maricopa Highway Site is a possible alternative. However, after full evaluation in the EIS, the Maricopa Highway Site was found to not meet the "practicable" standard. EO 11988 does not specifically define "practicable" in the context of the EO. CFR Title 44, Chapter I, Subchapter A, Part 9 does provide a definition of "practicable," but as described in the **Response to Comment 9-21**, that CFR is applicable only to actions initiated by FEMA. As mentioned in the **Response to Comment 9-21**, EO 13690 was published in January of 2015 but subsequently revoked. However, prior to revocation, FEMA proposed a set of guidelines to implement EO 13690. Although presumably not applicable due to the revocation of EO 13690, this document does provide some useful information. It defines "practicable" as:

> *capable of being done within existing constraints. What is practicable will be context specific and include consideration of the pertinent factors, such as environment, statutory authority, legality, cost, technology, and engineering. A "practicable" alternative in the context of E.O. 11988 varies and, depending on each action, could include carrying out the proposed action outside of the floodplain, accomplishing the same objective using other means, or taking no action at all. If there are no practicable sites outside the floodplain, there can be alternative sites within the floodplain that may need to be evaluated.*[19]

In 1982, FEMA provided *Further Advice on Executive Order 11988 Floodplain Management*; this guidance has not been revoked. This document provides guidance regarding what alternatives are practicable and which are not. The guide states:

> *The Executive Order and the Floodplain Management Guidelines direct a Federal agency to examine all practicable alternatives even in cases where Federal involvement is somewhat limited. Practicable alternatives must be examined in the context of what is practicable to both the Federal agency and the applicant. The impacts of each of the alternatives must be balanced against the utility and advantages and disadvantages of choosing that alternative. It would not be practicable, for instance, for an agency to deny a permit or disapprove a project or activity if locations outside of the floodplain are demonstrably inferior, if the project can be adequately protected against flood damages, and if the adverse impacts on the floodplain are minor or can be minimized. On the other hand, it would not be practicable to grant a permit for an action that would adversely impact the floodplain or pose a threat to lives or property in the community solely to reduce construction costs or to benefit one property owner or interest. Clearly, permits and approvals also should not be granted if the applicants themselves have alternative ways to develop their property so as to avoid adverse impacts on the floodplain and these alternatives are practicable. There appear, however, to be no clear cutoffs that can be established for this balancing process government-wide because of the almost infinite variety of actions and circumstances that are encountered. A balancing will have to be undertaken by Federal agencies*

[19] Source: *Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*, dated October 8, 2015, available online at: https://www.fema.gov/media-library-data/1444319451483-f7096df2da6db2adfb37a1595a9a5d36/FINAL-Implementing-Guidelines-for-EO11988-13690_08Oct15_508.pdf. Accessed August 12, 2020.

> *when applying the Executive Order to actions that are privately financed; and the decisions arrived at are likely to be [sic] regarded as unsatisfactory by at least some interested parties.*[20]

The text indicates that discretion is appropriate for purposes of determining what is "practicable" and what is not. The Maricopa Highway Site is not a practicable alternative due to the following factors:

Suitability for Tribal Homeland 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 Alternative A1 simply because the Maricopa Highway Site is not large enough to accommodate the Alternative A1 improvements.

In the longer-term, the 306-acre Mettler Site is far superior to the 118-acre Maricopa Highway Site for purposes of meeting Tribal needs. As stated in Section 1.2 of the Draft EIS, "The purpose of the Proposed Actions is to facilitate tribal self-sufficiency, self-determination, and economic development…" The Proposed Project, including the casino resort, is intended to address the economic element of this purpose and need. However, as described in Section 2.2.2.1 of the Draft EIS, there is a complementary longer-term plan for the Mettler Site: "The remainder of the Mettler Site would remain in agricultural production in the near term, however 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…." 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 homeland.

Water. Second, the impacts to groundwater under Alternative B would be greater than those for the Mettler Site project alternatives. Consequently, Alternative B would be markedly inferior to the Mettler Site project alternatives when analyzed in terms of net impacts to groundwater. As described in Section 3.3 of the Final EIS and the **Responses to Comments 8-15** and **8-16**, the Tribe has entered into the Water Agreement with the District. 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. As described in the **Response to Comment 8-16**, it is anticipated that the Proposed Project (i.e., Alternative A1) may result in a net 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, as described in Section 2.0 of the Draft EIS, the Mettler Site and Maricopa Highway Sites are approximately 306 acres and 118 acres, respectively.

County Opposition. Communications with the County, included at Appendix AB of the Final EIS, state that the County is opposed to Alternative B. The County cites two primary reasons for its opposition. First, as described in Section 2.2 of the Draft EIS, 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, as described in Sections 2.2.2.1 and 2.2.2.7 of the Draft EIS, the Mettler Site alternatives include the development of a new fire and sheriff joint station. This facility would be centrally located for purposes of providing service in an area

[20] Source: *Further Advice on Executive Order 11988 Floodplain Management,* dated 1982, available online at https://www.gsa.gov/cdnstatic/Advice_EO11988.pdf. Accessed August 12, 2020.

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 Alternative A1 nor A2 is pursued, the Tribe and its development partner believe that the Tribe 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 Draft 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 Alternative A1/A2 opening. This is because of the following factors: the Tribe's ownership of the Mettler Site is more advanced than it is for the Maricopa Highway Site, the existence of the Water Agreement (see **Response to Comment 8-15**), and 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 Proposed Action would cause an additional financial burden to the Tribe.

Response to Comment 9-25

Please refer to **Response to Comment 9-21** regarding why the CFR cited by the commenter (CFR Title 44, Chapter I, Subchapter A, Part 9) does not apply to the Proposed Action. Nevertheless, the following responses are provided to the floodplain characteristics noted by the commenter:

1. The velocities calculated from the FLO-2D program including potential scour effects would be included in the final design phase of the project. The calculated velocities are included in the Updated Preliminary Grading, Drainage, and Flood Impact Analysis, included as Appendix H of the Final EIS. The velocities around the project boundaries would not exhibit any significant increases, as stated in an amended page 18 of Appendix H of the Final EIS.

2. The Time of Concentration is the time required for a drop of water to travel from the most hydrologically remote point in a catchment to the point of collection. Lag time is the time taken between peak rainfall and peak discharge. The modeling in Appendix H of the Final EIS notes the Time of Concentration as 3.083 hours and the Catchment Lag Time as 1.757 hours. This means that the peak flow would be reached approximately 4.84 hours after the storm event begins. As described in Section 2.2.2.6 of the Draft EIS, "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." Therefore, evacuation from the site by all visitors and employees would be feasible even during a 100-year flood event.

3. As stated in Item 1 above, the velocities around the project boundaries would not exhibit any significant increases as a result of the Proposed Project. Therefore, erosion from flood waters would not increase as a result of the Proposed Project.

4. As stated in Section 3.3.1 of the Draft EIS, FEMA is the federal agency responsible for determining base flood elevations and publishing Flood Insurance Rate Maps. FEMA Flood Insurance Rate Map (FIRM) and Letters of Map Revisions (LOMR) are the standard flood modeling database for the majority of engineering tasks. The areas that FEMA designated as areas of special flood hazard, areas of flood-related erosion hazards, and areas of mudslide hazard are included in the basis for establishing the areas of special flood hazard in Kern County. It would be speculative to adjust these maps for potential ground subsidence.

Response to Comment 9-26

Appendix H of the Final EIS estimates that the depth and velocity of floodwater at the project boundaries would not significantly change as a result of the Proposed Project. Please refer to Appendix H of the Final EIS, page 5 regarding flood water depths and **Response to Comment 9-25** regarding flood water velocities.

Response to Comment 9-27

The BFE was not provided in Alternative H of the Draft EIS because the establishment of a BFE certificate is beyond the scope of the preliminary design phase and not required for completion of the analysis under NEPA. If the development of a BFE certificate is needed for the final design, it will be conducted at that time. This elevation was calculated using the FLO-2D models developed for the Mettler Site. The preliminary BFE was calculated to be 521.2 feet for the Mettler Site and is included in an amended page 18 of Appendix H of the Final EIS.

Response to Comment 9-28

Please refer to the **Response to Comment 9-25** regarding why Appendix H of the Draft EIS is based upon FEMA FIRMs and LOMRs. Pluvial flooding occurs when the ground cannot absorb rainwater and creates a flood event independent of an overflowing water body. FLO-2D is a flood routing model that combines hydrology and hydraulics and simulates movement of a flood volume around the defined grid. FLO-2D is effective for analyzing river overbank flows, but it can also be used to analyze alluvial fan topography and roughness, split channel slows, mud flows, and urban flooding, and is able to model the effects of pluvial flood. The First Street Foundation Flood Model proposed by the commenter is not used as a standard convention in floodplain analysis and was therefore not included in the preliminary grading, drainage, and flood analysis (Appendix H of the Draft EIS).

Response to Comment 9-29

The watersheds that were modeled in StreamStat were selected upstream of the alternative sites, because those constitute the streams that may cause flooding at the relevant alternative site. These watersheds could be different than those described in the Draft EIS; they are also larger. The watersheds analyzed in the Appendix H of the Draft EIS (pages 22–27) provide a comprehensive analysis of the runoff through the area and a conservative estimate for the flowrate that the site would experience.

Initial investigation did not conclude that the Metter Site received any runoff from east of SR-99. Additionally, a previous Meyer flood study for Tecuya Creek that was approved by Kern County in 2009 did not show any evidence of the Mettler Site receiving any runoff from areas east of SR-99.

Response to Comment 9-30

Prior to construction, a complete topographic survey would be completed in conjunction with the design of the final grading and drainage of the project site. Such a survey would include more detailed elevation data than is included in Refined Appendix H of the Final EIS, which was prepared in order to analyze environmental impacts. The level of detail of the elevation data included in Refined Appendix H is appropriate for a preliminary grading, drainage, and flood analysis.

Existing elevations in Appendix H of the Draft EIS were obtained from Google Earth (via the Plex.Earth web application) and were supplemented with USGS Quad Map contours. The accuracy of Google Earth data varies, depending on whether it uses LIDAR data or USGS data. It is assumed that the Google Earth elevation data in Appendix H were sourced from USGS data and not LIDAR. The text of Refined Appendix H has been updated so that LIDAR is no longer cited as a source.

Response to Comment 9-31

Please refer to the **Response to Comment 3-4** regarding the levee details, and **Response to Comment 3-9** regarding the location of the WWTP and associated improvements. Pursuant to the IGA, the selected alternative would be constructed to meet the California Building Code as amended; therefore the design of the water supply and sanitary sewer systems would depend on the ultimate detailed design of the facilities and the requirements applicable at the time of design, including, but not limited to, codes for building, electrical, energy, and plumbing.

Response to Comment 9-32

The import of fill as described in Alternatives A1 and A2 provides a viable option to allow the proposed structures to meet the requirement of being 1.0 foot above the BFE. A figure is not warranted to show that the casino resort would be constructed above the BFE because this is described within the text of the EIS. Contrary to the assertions by the commenter, consideration of the potential impacts of the use of imported fill material are shown in the FLO-2D maps provided in the Appendix H of the Draft EIS, pages 19–20. As described in Appendix H and Section 3.3.3.1 of the Draft EIS, "the raising of the casino resort and access aisles would serve to slow down the flood flow on the south side of the structures and road; this slightly increases the floodplain storage at the Mettler Site. Alternative A1 shows an increase of 1.58 [acre feet] AF, whereas Alternative A2 shows an increase of 1.29 AF."

Response to Comment 9-33

The proposed stormwater basins would not have a significant adverse impact on the carrying capacity of the floodplain. The drainage basins are required to maintain the current drainage patterns and discharge levels. The basins were sized to Kern County Drainage Standards. The FLO-2D model was conducted by modeling the drainage basin as completely full. This is meant to provide a conservative model. In actuality, the basin would serve as storage for floodwaters, and therefore the heights and velocities of actual floodwaters would be equal to or less than those included in the calculations of Appendix H of the Draft EIS.

Response to Comment 9-34

Emergency access to the Mettler Site would be ensured through the incorporation of development standards as specified by local agencies, including the County. The access road to the project site, along with the building pads, would be raised with fill above 100-year flood elevations to ensure emergency access in the event of a flood.

Response to Comment 9-35

1. The grid size used in the FLO-2D analysis included in the report is 300 feet, which is typical for a site of this size and is sufficient for a preliminary report. Grid sizes of 100 feet and 500 feet were tested during initial investigations and it was determined that the desirable level of detail was achievable with a grid size of 300 feet. The topographic information available for the site did not include the level of detail for a more precise analysis. A finer grid size may be used to support final project design if more accurate topographic information is available.

2. Consideration of the hydraulic roughness was included in the calculations as Manning's N values of 0.04, which is typical of clean, winding channels with some pools and shoals. This value was chosen based on a preliminary analysis and may be refined based on site selection in the final design phase.

3. The pre- and post-project floodplains described in Appendix H of the Draft EIS mimic the shape of the FEMA flood zone, which provides verification that the peak flow hydrographs were placed in the FLO-2D model appropriately. While it is possible that the pre- and post-models used by FEMA do not mimic the same shape as the FEMA designated flood zone, which would occur if hydrographs were placed in inadequate locations in the FLO-2D model, it would be speculative to make assumptions about the accuracy of the topographic data used in

the FEMA model because the model is not available for review. Duplicating the FEMA floodplain boundaries is not a reasonable objective. The results shown from the FLO-2D model reflects the topographic information from preliminary studies and may be different than that used to generate the FEMA FIRM. The varying in widths in the floodplain are a result of the differences in the grading and drainage of Alternative A1 and Alternative A2. The location of certain drainage features can also impact the distribution of the flow, as demonstrated in the width of the floodplains. Additionally, the project site is located in an area designated as Zone A, which means that FEMA has not performed a detailed study in the area and the accuracy of the FEMA floodplain boundaries may not be precise.

4. The maximum changes in flood water depths were included in the Appendix H of the Draft EIS because they are critical design factors. The green shading shown in the figure represents an increase in flood water depth as a result of the obstruction of the site grading, which is typical of structures located in a path of flow. In the final design phase, additional modeling and calculations may be performed to assess the impact of routing flows between the road and the final design of the casino to Tecuya Creek (Alternatives A1 or A2) or towards the freeway (Alternative B), and adjustments to the final drainage design may be made, if warranted.

5. The requirement regarding tying the new flood information to that shown on the existing FIRM is typically satisfied in the final design phase. The model will be replicated using more comprehensive data after the final site has been selected and the final design of the casino-resort is underway.

6. The mapping shows the varying depths of stormwater as various shades of blue for small depths. Updated maps with an adjusted scale are included in amended pages 20 and 21 of Appendix H of the Final EIS.

7. Please refer to the **Response to Comment 9-27** regarding BFEs.

8. Please refer to the **Response to Comment 9-25** regarding flood flow velocities.

9. The mapping suggested by the commenter is not typical of a FLO-2D output. There were only two grid cells that exhibited changes in water depths greater than 1.0 foot from the existing to the developed conditions in both Alternatives A1 and A2 at the Mettler Site. The table below provides the depths for cells 2514 and 2579. These cells are directly adjacent to the proposed building and occur within the boundaries of the Mettler Site. The Proposed Project would not have significant effects on the floodwater depths outside of the project's boundaries. The red rectangle shown in the figure on page 22 of Appendix H of the Final EIS corresponds to the entire grid that was studied to explore the effects of the Proposed Project on the surrounding area.

Cell	Existing Condition Depth	Site A1 Depth
2514	0.5898 ft	3.2951 ft
2579	0.6002 ft	1.6816 ft
Source: Appendix H of the Final EIS		

Response to Comment 9-36

As described in Section 2.2.2.1 of the Draft EIS, construction is anticipated to begin in 2022 with a 12-month construction schedule for the purposes of the analysis within the EIS. However, the actual timing of the construction of the selected alternative would depend on BIA and other agency approvals, economic conditions, and timing for final design. Further, it would be speculative to try to determine whether regional flooding would occur during construction. The Draft EIS does anticipate that rain events could occur during the construction period. As described in Section 3.2.3.1 of the Draft EIS and the Mitigation Measure 1-A described in Section 4.0 of the Draft EIS, a stormwater pollution prevention plan (SWPPP)

would be prepared, implemented, and maintained throughout the construction phase of the development and would include BMPs to reduce impacts to soil erosion and water quality during rain events that may occur during construction.

Response to Comment 9-37

The text that the commenter refers to relates to potential cumulative effects from flooding. Section 3.3 and Appendices G and H of the Draft EIS include substantial analyses that were conducted that result in the conclusions that flooding impacts, both direct and cumulative, would be less than significant. Please refer to the above responses to comments that lend further support to the conclusions rendered in the Draft EIS.

Response to Comment 9-38

The First Street Foundation Flood Model is not the standard for design and was therefore not used in Appendix H of the Draft EIS. The resources provided by FEMA are used as the standard for design and would also be used in the final design phase.

Response to Comment 9-39

Please refer to the **Response to Comment 9-18** regarding water demand estimated for the Proposed Project alternatives.

Response to Comment 9-40

Please refer to the **Response to Comment 8-15** regarding effects to groundwater and local wells.

Response to Comment 9-41

Please refer to the **Response to Comment 8-15** regarding the recent Water Agreement between the Tribe and the District.

Response to Comment 9-42

Biological site assessments were completed on both the Mettler and Maricopa Highway Sites in October of 2018. The BAs, as stated in Sections 3.5.2.1 and 3.5.2.2 of the Draft EIS, included identification of potential waters of the U.S. The results of biological surveys were included as Appendix L (the BA) and Appendix O of the Draft EIS. Biological surveys on the Mettler and Maricopa Highway Sites identified the following aquatic habitats:

- Three agricultural ponds totaling 0.23 acres in the northwest corner of the Metter Site that is shown in Figure 3.5-1 of Appendix E of the Draft EIS.
- An agricultural drainage ditch spanning approximately three quarters of the western edge of the Mettler Site that is shown in Figure 3.5-1 of Appendix E of the Draft EIS.

An agricultural drainage ditch along the western, northern, and eastern edges of the Maricopa Highway Site shown in Figure 3.5-3 of Appendix E of the Draft EIS.

Aquatic habitats present on the Mettler Site are described in Section 3.5.2.1 of the Draft EIS. The agricultural ponds on the Mettler Site were evaluated for the potential to be considered a water of the U.S. These ponds are manmade and isolated. They are not hydrologically connected to waters that have the potential to be considered waters of the U.S. The ponds are within a parcel that has been laser-leveled flat for agricultural production and is within an area that is similarly flat such that standing water within the ponds generally percolates into the ground rather than flowing into other areas. Additionally, these features were devoid of hydric vegetation as they lack sufficient water to support wetland plants. Because the agricultural ponds are manmade, lack hydric vegetation, lack a connection with potential waters of the U.S., and are outside of the proposed development area, a formal jurisdictional delineation with the U.S. Army Corps of Engineers (USACE) is unnecessary.

The agricultural drainage ditch along the western edge of the Mettler Site was evaluated for the potential to be considered a water of the U.S. This drainage is approximately 0.5 miles long and begins at the southwest corner of an agricultural field and terminates at the field to the north at the agricultural ponds near Valpredo Avenue. The drainage is not hydrologically connected to waters that have the potential to be considered waters of the U.S. The drainage is within a parcel that has been laser-leveled flat for agricultural production and is within an area that is similarly flat such that standing water within the drainage generally percolates into the ground rather than flowing into other areas. Additionally, this feature was devoid of hydric vegetation as it lacks sufficient water to support wetland plants. Because the drainage ditch is manmade, lacks hydric vegetation, lacks a connection with potential waters of the U.S., and is not proposed for excavation or fill, a formal jurisdictional delineation with USACE is not necessary.

As stated in Section 3.5.3.1 of the Draft EIS regarding the Mettler Site, "On-Site aquatic drainage ditches and agricultural ponds do not meet standards of Waters of the U.S."

Development on the Mettler Site would occur under Alternatives A1 through A3. Alternative A3 would retain agricultural use of the Mettler Site and would not result in earth-moving activities. Figures 2-4 and 2-8 within Appendix E of the Draft EIS detail the proposed site plans for Alternatives A1 and A2. As shown within these site plans, the drainage is near the area for the proposed bioretention basin, but is not within an area of direct impacts. However, the drainage receives runoff from the Mettler Site may require installation of stormwater pollutant management throughout construction, such as straw wattles along the top of the drainage. These measures are described in Section 3.3 of the Draft EIS and would not result in conversion of habitat or modification of the drainage ditch. Additionally, the agricultural ponds are within an area that is not proposed for development at this time. Should the land be taken into trust, it is noted that this area may be proposed for development in the future.

Aquatic habitats present on the Maricopa Highway Site are described in Section 3.5.2.2 of the Draft EIS. Aquatic habitat on the Maricopa Highway Site consists of a channelized agricultural roadside drainage. The agricultural drainage ditch along the western, northern, and eastern edges of the Maricopa Highway Site was evaluated for the potential to be considered a water of the U.S. This drainage starts at the far southwest corner of the Maricopa Highway Site and flows north to Maricopa Highway. The drainage terminates offsite to the east along a neighboring property between Wheeler Ridge Access Road and a dirt access road along a neighboring agricultural field. The drainage follows Maricopa Highway to the east and terminates along I-5 south of the property. It is not connected to other aquatic features. The majority of the drainage is largely barren and supports several small mammal burrows. The drainage ditch only receives water during periods of intense rainfall or rare occasions where irrigation produces runoff.

Development on the Maricopa Highway Site would occur under Alternative B. The proposed development under Alternative B is illustrated in Figure 2-13 of Appendix E of the Draft EIS. As seen in this figure, a small portion of the drainage ditch would be impacted in order to create site access off the Maricopa Highway. The impacted stretch of the drainage would be modified to allow vehicles to cross without impeding drainage. This would likely be accomplished with a culvert. Because the drainage ditch is manmade, largely devoid of vegetation, and isolated, a formal jurisdictional delineation with USACE is unnecessary.

As stated in Section 3.5.3.2 of the Draft EIS regarding the Maricopa Highway Site, "On-Site drainage ditches do not meet the definition of Waters of the U.S."

Alternative C, as the no action alternative, would result in no development on the Mettler or Maricopa Highway Sites and would therefore not impact potential waters of the U.S.

For the reasons described above, formal wetland delineations are not warranted for the Mettler or Maricopa Highway Sites. Because a BA of the habitat and analysis of the potential development alternatives determined that neither site included waters of the U.S., the Draft EIS determined that impacts to waters of the U.S. would not occur.

Response to Comment 9-43

Please refer to the **Response to Comment 8-14** regarding San Joaquin kit fox movement and habitat. Neither the Mettler nor the Maricopa Highway Sites contain existing wildlife movement corridors as both surrounded by dispersal barriers, are subject to regular disturbance, and lack reasonable routes connecting areas of significant habitat. At the most narrow route crossing the Mettler and Maricopa Highway Sites, dispersing individuals from the nearest undeveloped habitat would have to cross a minimum of 10 linear miles across multiple highways, arterial roadways, irrigation channels, fencing, and agricultural development intermixed with residential and industrial activities. Suitable wildlife movement pathways occur surrounding the agricultural portions of the San Joaquin Valley. Dispersing individuals would therefore utilize the largely undeveloped suitable habitat surrounding the valley rather than descending into sub-optimal habitat and traversing miles of development. While incidental transients could on rare occasion forage in the vicinity of the Mettler or Maricopa Highway Sites, these sites are not within suitable dispersal routes. Detail on dispersal barriers for each site is provided below.

As stated in Section 3.5.3.1 of the Draft EIS, "The Mettler Site does not provide habitat connectivity, corridors, or nursery habitat due to nearby main roadways and high levels of disturbance on site and in the surrounding area." I-5 runs north to south approximately 1 mile west of the Mettler Site. At this point, I-5 consists of two northbound lanes and two southbound lanes separated by a grass median, with a posted speed limit of 70 miles per hour. Barbed wire fencing lines both sides of the roadway. Maricopa Highway runs east to west approximately 0.2 miles south of the Mettler Site. At this point, Maricopa Highway consists of a single eastbound and westbound lane with a posted speed limit of 55 miles per hour. SR-99 runs north to south approximately 0.2 miles from the Mettler Site. At this point, SR-99 consists of three northbound lanes and three southbound lanes with a posted speed limit of 70 miles per hour. Traffic is separated by dense vegetation and a metal guardrail. Fencing and a frontage road occurs along the sides of the highway. Aside from these highways and other surrounding roadways, the area surrounding the Mettler Site is entirely developed with agricultural uses and minimal commercial and industrial uses.

While transient dispersing kit foxes may incidentally cross through developed agricultural areas, development of lands into agricultural production constitute loss of viable habitat, as identified as a primary cause of population decline for this species (USFWS, 1998; Recovery Plan for Upland Species of the San Joaquin Valley as referenced in Appendix L of the Draft EIS). The nearest undeveloped land from the Mettler Site is over 2.5 miles away across multiple freeways and arterial roadways, a concrete-lined irrigation canal, dense agricultural development, and associated fencing. Therefore, the Mettler Site does not represent significant corridor habitat for dispersing San Joaquin kit foxes.

As stated in Section 3.5.3.2 of the Draft EIS, "The Maricopa Highway Site does not provide habitat connectivity, corridors, or nursery habitat due to nearby main roadways and the high levels of disturbance onsite and in the surrounding area." I-5 runs north to south along the eastern extent of the Maricopa Highway Site. At this point, I-5 consists of two northbound lanes and two southbound lanes separated by a grass median, with a posted speed limit of 70 miles per hour. Maricopa Highway runs east to west along the northern extent of the Maricopa Highway Site. At this point, Maricopa Highway consists of a single eastbound and westbound lane with a posted speed limit of 55 miles per hour. Barbed wire fencing lines the north and eastern perimeters of the Maricopa Highway Site. Aside from these highways and other surrounding roadways, the area surrounding the Maricopa Highway Site is entirely developed with agricultural uses with minimal commercial and industrial uses. While transient dispersing kit foxes may incidentally cross through developed agricultural areas, development of lands into agricultural production constitute loss of viable habitat, as identified as a primary cause of

population decline for this species.[21] The nearest undeveloped land from the Maricopa Highway Site is over 1.7 miles away across multiple arterial roadways, a concrete-lined irrigation canal, dense agricultural development, and associated fencing. Therefore, the Maricopa Highway Site does not represent significant corridor habitat for dispersing San Joaquin kit foxes.

Additionally, please refer to the **Response to Comment 8-13** regarding the quantity of agricultural and farmland that would be developed under Alternative A1. While the habitat on the Mettler and Maricopa Highway Sites does not represent significant, sensitive, or critical habitat for special-status species, it does comprise an insignificant proportion of similar habitat throughout the County.

Please note that incidental passage of individual animals through an area does not qualify an area as a wildlife corridor. Wildlife corridors are significant passageways that facilitate movement of species between areas of suitable habitat. The Mettler and Maricopa Highway Sites are both entirely cultivated and surrounded by complete development in all directions for over a mile. This development impedes dispersal rather than facilitating it. There are no wildlife corridors on or adjacent to either site. Because there are no wildlife corridors present, the development alternatives would not impact wildlife corridors.

Response to Comment 9-44

Please note that the BA (Appendix L of the Draft EIS) pertains to the Mettler Site and relates only to Alternatives A1 through A3. The commenter states that the BA does not support the determination that the proposed alternatives may affect but are not likely to affect special-status species because the BA states that for special-status species with the potential to occur on the Mettler Site "These species are likely to occur within the project site." However, the entirety of this sentence reads that, "These species are likely to occur within the project site due to high levels of disturbance and low-quality habitat." This is a typo as the BA clearly states that high levels of disturbance and low-quality habitat decrease the likelihood that special-status species would be present. The following information describes the potential for each special-status species to occur onsite:

- "Due to the tilled conditions and laser-leveling of the project site and ongoing agricultural activities on the site, special-status plants and animals are not likely to occur." (BA at page 15)
- "…it is unlikely that the blunt-nosed leopard lizard occurs on the project site." (BA at page 17)
- "…it is unlikely that the Tipton kangaroo rat occurs on the project site." (BA at page 18)
- "The San Joaquin kit fox has the potential to occur in the agricultural fields on the project site due to the suitability of the site for supporting small mammals the kit fox relies on for prey. However, the site does not provide suitable habitat for subsurface dens…" (BA at page 19)
- The description of each habitat described within Section 4.2 of the BA concludes that the Mettler Site "represents poor-quality habitat to plants and wildlife."

Please note that this typo occurred in the text of the BA (Appendix L of the Draft EIS), and not within the text of the Draft EIS. The BA has been revised to state that, "These species are not likely to occur within the project site due to high levels of disturbance and low-quality habitat."

[21] Source: Recovery Plan for Upland Species of the San Joaquin Valley as referenced in the BA. Please see "USFWS, 1998" reference in Appendix L of the Draft EIS.

Response to Comment 9-45

It is correct that the Draft EIS describes both the Mettler and the Maricopa Highway Sites as being highly disturbed and offering low-quality habitat to native plants and wildlife. The Draft EIS does not claim that the sites are identical. The differences between the two sites are discussed throughout the Draft EIS, including Section 3.5. Section 3.5 of the Draft EIS includes a discussion of the habitats present on each site, photographs of the site conditions at the time of surveys, characteristics that indicate potential presence of special-status species, and ongoing activities on and around each site. One of the differences between the sites, as the commenter notes, is that burrows were observed on the Maricopa Highway Site, which indicates a potential for the occurrence of burrowing owls. Habitat available to burrowing owls at the Maricopa Highway Site is of low quality. Despite the differences between the two sites, both are subject to high levels of surrounding traffic, noise, agricultural activities, vegetation management, and are wholly developed within an area that lacks surrounding undeveloped habitat. Therefore, the Draft EIS describes the characteristics of both the Mettler and Maricopa Highway Sites and concludes that both are subject to high levels of disturbance and that both sites offer only low-quality habitat to plant and wildlife species.

The CDFW's Wildlife Habitat Relationships System does not provide a hierarchal evaluation of habitat quality of agricultural lands, and developed lands are generally considered to be of low quality to native plants and wildlife. A generalized statement comparing the habitat quality of the Mettler Site to the Maricopa Highway Site is not necessary given the overall low quality of habitat of both sites and the determination that development on either site for the alternatives analyzed may affect, but is unlikely to adversely affect, special-status species. It should be noted that, at the time of survey, the Mettler Site's agricultural fields were entirely barren and therefore offered no vegetative forage or cover. This stage of agricultural production does not provide suitable habitat for any of the regionally occurring special-status species that may occur during times of crop production. Additionally, the Mettler Site lacks burrows that may be utilized by burrowing owls or denning San Joaquin kit foxes. Because the Maricopa Highway Site contains burrows that may support burrowing owls and San Joaquin kit fox dens, and provided more vegetative cover than the Mettler Site at the time of surveys, it is possible that the Mettler Site consists of poorer quality habitat. However, it is again noted that this is merely a comparison of two low-quality habitats with respect to a single characteristic, and that the overall quality of a site varies depending on the species of concern, seasonal levels of disturbance, and other factors.

Response to Comment 9-46

Please refer to the **Response to Comment 9-42** regarding why a formal wetland delineation is not warranted for the Mettler or Maricopa Highway Sites. The methods for assessing biological resources on the Mettler Site are included in Section 3.0 of Appendix L of the Draft EIS. The methods for assessing biological resources on the Maricopa Highway Site are the same as those presented for the Mettler Site and are summarized in Section 2.0 of Appendix O of the Draft EIS.

Response to Comment 9-47

Please refer to the **Response to Comment 9-42** regarding the evaluation of potential waters of the U.S. in support of the Draft EIS.

Response to Comment 9-48

Please refer to the **Responses to Comments 8-14** and **9-43** regarding habitat and movement of San Joaquin kit fox.

Response to Comment 9-49

It is correct that the Proposed Project would have a significant impact if the development alternatives had the potential to impact sensitive habitats or critical habitats. However, there are no sensitive habitats or Critical Habitat on the Mettler or

Maricopa Highway Sites. Please refer to the **Responses to Comments 8-14**, **9-43**, **9-44**, and **9-45** regarding potential impacts to wildlife habitat.

Response to Comment 9-50

The commenter is incorrect in stating that, effectively, no project can have a less-than-significant cumulative impact because a cumulative impact considers all past, present, and reasonably foreseeable projects. The use of "significance" within NEPA documents is guided by 40 CFR § 1508.27, and must consider context and intensity of an impact. The following summarizes impacts to biological resources that were identified in the EIS:

- Indirect effects that may degrade water quality should construction activities produce impaired runoff on either site. Mitigation and BMPs are included within the Draft EIS such that water quality thresholds would not be exceeded.
- Direct effects should construction activities result in mortality of individual special-status species. Mitigation and BMPs are included within the Draft EIS such that take of special-status species would not occur.
- Direct effects of the removal of potential habitat. As discussed in the BA, this habitat is poor in quality and would only support transient individuals, and is located in an area of similar quality habitat. The lack of nearby observations of special-status species in recent decades further supports this analysis. Based on the context and intensity of potential impacts, habitat loss is not considered significant under the potential development alternatives, and no mitigation is required.
- Disturbance to nesting birds from construction activities. Mitigation is included within the Draft EIS to provide appropriate nest buffers such that the development alternatives would not result in failure or loss of active nests.

The cumulative analysis considered the cumulative context and whether the impacts above, which were determined to be less than significant when considering only the development alternatives, were cumulatively considerable. Stormwater runoff produced throughout construction and operation of the development alternatives would be treated onsite and would not result in discharge of impaired waters into nearby waterbodies that may be impacted by cumulative projects. Because impacts would be less than significant and contained to the Mettler or Maricopa Highway Sites, the cumulative impact would be less than significant.

Because mitigation and BMPs would prevent take of special-status species and would prevent loss or failure of active bird nests, the development alternatives would not contribute to cumulatively considerable projects that would result in take of special-status species or destruction of nests. It is noted that the federal Endangered Species Act (ESA) and prohibition against take of special-status species would apply to cumulatively considered projects. Therefore, this impact would be less than significant when cumulatively considered.

Some of the commenter statements in the last paragraph of Comment 9-50 are not easily understood. The text quoted by the commenter in the second to last paragraph does not say that impacts would be eliminated. Rather, the text states that mitigation measures would cause impacts to be avoided or minimized to less-than-significant levels. The commenter also states that residual impacts after mitigation have the potential to nonetheless be significant. This is a correct statement. However, the Draft EIS specifically analyzed this possibility and determined that "cumulative effects to federally listed species would be less than significant with mitigation."

Historically, the regions around and including the Mettler and Maricopa Highway Sites have been converted from natural habitat to agricultural development. The County maintains historical crop reports from the year 1930 to 2018. A review of these annual crop reports for Kern County show that agricultural production acres have generally increased in the County

over time.[22] Conversion of agricultural acreage to other development uses has the potential to remove habitat that, while generally low in quality, may provide some benefits to wildlife, as noted in the Draft EIS. However, the cumulative environment is such that agricultural production acreage is increasing, and the potential agricultural acreage impacted is a negligible proportion of agricultural acreage present within the County, as described in the **Response to Comment 8-13**. This impact would therefore not be cumulatively considerable based on the intensity (removal of low-quality habitat) and the context (overall trend of increasing agricultural production acres in the County).

Response to Comment 9-51

Please refer to the **Response to Comment 9-43** regarding movement of the San Joaquin kit fox. Please refer to the **Response to Comment 9-48** regarding the potential for the development alternatives to impact wildlife movement.

Response to Comment 9-52

Please refer to the **Responses to Comments 8-14**, **9-43**, **9-44**, and **9-45** regarding potential impacts to wildlife habitat. Please refer to the **Response to Comment 9-50** regarding the determinations made in the cumulative analysis on impacts to biological resources. Please note that there are no records of these Tipton kangaroo rat and blunt-nosed leopard lizard ever occurring on either site, and biological surveys did not result in observations of special-status species. Blunt-nosed leopard lizard has not been observed within 5 miles of the Mettler or Maricopa Highway Sites in over 50 years (Appendix L and Appendix O of the Draft EIS). Tipton kangaroo rat has not been observed within miles of the Mettler or Maricopa Highway Sites in over 40 years (Appendices L and O of the Draft EIS). The nearest natural habitat for these species is over a mile from each site and across solid development, including freeways and arterial roadways. Habitat on either site would therefore have the potential to support only individuals or transients, but would not support populations of Tipton kangaroo rat or blunt-nosed leopard lizard.

Impacts are therefore restricted to individual Tipton kangaroo rats and blunt-nosed leopard lizards rather than populations as a whole, or significant habitat. Agricultural production lands are not considered sensitive habitats and provide only extremely marginal habitat for these special status species. The analysis on biological impacts acknowledges that individual members of these species may occur on either site, and provides mitigation to avoid impacts to individuals as noted by the commenter. Additionally, as noted in the **Response to Comment 9-49**, the development alternatives would impact a negligible percentage of similar habitat found throughout the County and surrounding both sites for over a mile in all directions.

Section 7 consultation with the USFWS under the federal ESA was completed in April of 2019. The USFWS concurred with the finding that the proposed development alternatives may affect, but are not likely to adversely affect, Tipton kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox. Please refer to Appendix X of the Final EIS for the Section 7 consultation.

Response to Comment 9-53

The commenter is incorrect in suggesting that the BA improperly utilizes occurrence data from CDFW's CNDDB. Analysis on the potential for a special-status species to occur on the Mettler or Maricopa Highway Sites was based on a range of data as described in Section 3.0 of the BA (Appendix L of the Draft EIS). This included, in addition to review of CNDDB, the following resources:

[22] Source: Kern County. 2018 Kern County Agricultural Crop Report. Available online at: http://www.kernag.com/caap/crop-reports/crop-reports.asp. Accessed August 2020.

- USFWS official species list of federal special-status species with the potential to occur on the Mettler or Maricopa Highway Sites
- California Native Plant Society (CNPS) list of State and federal special-status plant species with the potential to occur on the Mettler or Maricopa Highway Sites
- Critical habitat map for threatened and endangered species
- USFWS National Wetlands Inventory maps
- On-Site biological surveys

Therefore, use of CNDDB is a single component of the analysis and provides information in support of multiple other data sources. Lack of recent observations of special-status species in the vicinity of the Mettler and Maricopa Highway Sites is consistent with additional database searches, review of surrounding land uses, and a thorough on-site evaluation of the quality and types of habitat present. A lack of recent observations in CNDDB does not determine the absolute probability of a species to occur in a given area. Because of this, the Draft EIS acknowledges that Tipton kangaroo rat, San Joaquin kit fox, and blunt nose leopard lizard may occur on either site despite the lack of evidence of recent occurrence in CNDDB.

It is not possible for the BA to provide information on observations that are not submitted to CNDDB, nor is it possible to provide information on unpublished surveys that resulted in no observations. Negative survey results would support the conclusion that a species is unlikely to occur in an area. It should be noted that observations can be submitted to CNDDB by private parties. Observations in the vicinity of the Mettler and Maricopa Highway Sites in CNDDB include observations from 1891 through 2018 and were submitted by a variety of entities including government agencies, private parties, and conservation groups.

The commenter is incorrect in stating that the BA does not include a discussion on San Joaquin kit fox occurrences in CNDDB (Appendix L to the Draft EIS). As stated in Section 4.5 of Appendix L of the Draft EIS, "The nearest recorded occurrence of the San Joaquin kit fox in relation to the project site (CNDDB Occurrence Numbers: 735, 736, and 738) were originally recorded in July, 1975, approximately 5 miles northwest, 3 miles west, and 5 miles southwest of the project site."

A discussion on the quality and suitability of habitat is provided throughout the Draft EIS, and Appendices L and O of the Draft EIS. Please refer to the **Responses to Comment 9-43**, **9-44**, and **9-45** for additional discussion on potential impacts to habitat impacted by the development alternatives. While there is a low probability that Tipton kangaroo rat may occur on either site, loss of natural habitat to agricultural development is considered a primary threat to this species,[23] and precise distributions of current populations is not known due to the scattered occurrence of this species.[24] [25] Similar to Tipton

[23] Source: USFWS. Species Account: Tipton Kangaroo Rat *Dipodomys nitratoides nitratoides*. Available online at: https://www.fws.gov/sacramento/es_species/Accounts/Mammals/Documents/tipton_kangaroo_rat.pdf. Accessed August 2020.

[24] Source: CSU Stanislaus. Endangered Species Recovery Program: Tipton Kangaroo Rat Dipodomys nitratoides nitratoides and Bakersfiesl smallscale *Atriplex tularensis*. Available online at: https://esrp.csustan.edu/speciesprofiles/profile.php?sp=dinin and https://esrp.csustan.edu/speciesprofiles/profile.php?sp=attu. Accessed August 2020.

[25] Source: USFWS. Species Account: Tipton Kangaroo Rat *Dipodomys nitratoides nitratoides*. Available online at: https://www.fws.gov/sacramento/es_species/Accounts/Mammals/Documents/tipton_kangaroo_rat.pdf. 2010. Accessed August 2020.

kangaroo rat, loss of natural habitat to agricultural production is considered a primary threat to blunt-nosed leopard lizard[26] as well as San Joaquin kit fox.[27]

Response to Comment 9-54

Please refer to the **Response to Comment 8-14** regarding impacts to Swainson's hawk, and the **Response to Comment 9-53** regarding the use of CNDDB and other data collection methodologies. The commenter claims that the Mettler Site provides moderate to high value foraging habitat for Swainson's hawk, but provides no basis for this reasoning. While Swainson's hawks do forage over agricultural fields, the Mettler Site was idle at the time of surveys and it is not known if crops will be planted on the Mettler Site before the determination on the development alternatives. Barren agricultural lands offer minimal foraging habitat for Swainson's hawk as the small mammals that this species preys upon generally do not cross large, open areas that are devoid of vegetative cover.

Response to Comment 9-55

As stated within Section 1.0 of the BA, "The purpose of this BA is to review the Proposed Project in sufficient detail to determine the extent to which the project may affect federally-listed or candidate special-status species, and designated or proposed critical habitat. For the purposes of this BA, federally listed species include plant and animal species that are listed as endangered or threatened under the federal ESA of 1973, species that are formally proposed for listing, and species that are listed as candidate species and species of concern by USFWS and NMFS." Bakersfield smallscale and heartscale are not federally listed or candidate species and are therefore not discussed within the BA beyond Attachment B. Additional information is provided on these species below:

- Bakersfield smallscale: The development alternatives involve acquisition of land into trust prior to development. Lands held in trust are not subject to local and state regulations. Therefore, Bakersfield smallscale, which is listed only under the California ESA, would not be afforded protection on trust lands. In addition, the commenter claims that this species has been documented growing nearby but fails to provide such documentation. A review of both CNDDB and the Calflora observation database search reveal two locations in the vicinity of the Mettler and Maricopa Highway Sites in the last 20 years.[28] However, both sites are over 4 miles away. One occurs within an area of natural habitat outside of agricultural production land. The second is a secondary source point observation in the middle of the San Joaquin Fertilizer LLC factory and cannot be verified. As stated in the BA, habitat on the Mettler and Maricopa Highway Sites is not suitable for this species.
- Heartscale: The development alternatives involve acquisition of land into trust prior to development. Lands held in trust are not subject to local and state regulations. Therefore, heartscale, which is not listed under the State or federal ESA, would not be afforded protection on trust lands. In addition, the commenter claims that this species has been documented growing nearby, but fails to provide such documentation. A review of both CNDDB and the

[26] Source: USFWS. Species Information: Blunt-nosed Leopard Lizard *Gambelia sila*. 2017. Available online at: https://www.fws.gov/sacramento/es_species/Accounts/Amphibians-Reptiles/blunt_nosed_leopad_lizard/. Accessed August 2020.

[27] Source: USFWS. Kids' Species Information: San Joaquin Kit Fox: *Vulpes macrotis mutica*. 2017. Available online at: https://www.fws.gov/sacramento/es_kids/San-Joaquin-Kit-Fox/. Accessed August 2020.

[28] Source: Calflora. Calflora Search for Plants. Available online at: https://www.calflora.org/. Accessed August 2020.

Calflora observation database search reveal no historical observations of this species in over 7 miles.[29] [30] As stated in the BA, habitat on the Mettler and Maricopa Highway Sites is not suitable for this species.

- Kern mallow: The commenter claims that this species has been documented growing nearby, but fails to provide such documentation. A review of both CNDDB and the Calflora observation database search reveal one nearby observation in the last 50 years.[31] [32] However, this observation is over 4 miles away and is a secondary source point observation in the middle of the San Joaquin Fertilizer LLC Factory and cannot be verified. As stated in the BA, habitat on the Mettler and Maricopa Highway Sites is not suitable for this species.

Assuming that the above species may occur on either site based on the presence of allscale saltbrush on one site fails to take into account the species-specific needs of each plant. Allscale saltbrush is a shrub that is prevalent within western North America and has over 12,000 observations within Calflora.[33] Habitats for this species include creosote bush scrub, shadscale scrub, sagebrush scrub, alkali sink, and this species is additionally known to occur in agricultural areas associated with irrigation and drainage systems.[34] [35] Additionally, allscale saltbrush is also utilized in some agricultural production areas for forage production for livestock, which would increase the probability of this plant occurring within nearby agricultural lands. In contrast, Bakersfield smallscale is known to occur in shadescale scrub, wetlands and riparian habitat, but is not associated with agricultural habitat, and development of agricultural lands is considered a threat to this species.[36] Similarly, agricultural production lands are not identified as suitable habitat for heartscale.[37] [38] Population declines for Kern mallow are contributed to development and operation of agricultural production lands. Furthermore, the commenter claims that suitable habitat for these species generally includes areas of highly disturbed vegetation, but provides no citation to validate this claim. As discussed above, these plants are not associated with highly disturbed areas, rather they are in decline due to agricultural production and ongoing development as these areas do not provide suitable habitat and such development may convert habitat that is suitable for these species.

Response to Comment 9-56

The commenter identifies a typo in the BA (Appendix L of the Draft EIS). This typo has been corrected in this Final EIS.

Response to Comment 9-57

As noted in the quote provided by the commenter, a variety of sources were used to evaluate habitat present on the Mettler and Maricopa Highway Sites. Developed lands that do not have significant cover of native vegetation may not fall exactly

[29] Source: Calflora. Calflora Search for Plants. Available online at: https://www.calflora.org/. Accessed August 2020.

[30] Source: CDFW. CNDDB. Available online at: https://wildlife.ca.gov/data/BIOS. Accessed August 2020.

[31] Source: Calflora. Calflora Search for Plants. Available online at: https://www.calflora.org/. Accessed August 2020.

[32] Source: CDFW. CNDDB. Available online at: https://wildlife.ca.gov/data/BIOS. Accessed August 2020.

[33] Source: Calflora. Calflora Search for Plants. Available online at: https://www.calflora.org/. Accessed August 2020.

[34] Source: Arizonesis. Allscale Saltbush *Atriplex polycarpa*. Available online at: http://www.arizonensis.org/sonoran/fieldguide/plantae/atriplex_polycarpa.html. Accessed August 2020.

[35] Source: Calflora. Calflora Search for Plants. Available online at: https://www.calflora.org/. Accessed August 2020.

[36] Source: CSU Stanislaus. Endangered Species Recovery Program: Tipton Kangaroo Rat Dipodomys nitratoides nitratoides and Bakersfiesl smallscale Atriplex tularensis. Available online at: https://esrp.csustan.edu/speciesprofiles/profile.php?sp=dinin and https://esrp.csustan.edu/speciesprofiles/profile.php?sp=attu. Accessed August 2020.

[37] Source: Calflora. Calflora Search for Plants. Available online at: https://www.calflora.org/. Accessed August 2020

[38] Source: CNPS. Inventory of Rare and Endagered Plants: Heartscale. Available online at: http://www.rareplants.cnps.org/detail/348.html. Accessed August 2020.

within defined habitat types. Therefore, as noted in the quote identified by the commenter, habitat classifications were modified based on survey results. The entirety of both sites are in agricultural production, therefore identification of habitat as "agricultural" is appropriate. Classification of drainage channels and vegetated manmade ponds as agricultural drainage and agricultural ponds is also appropriate. These classification best represent site conditions observed.

Response to Comment 9-58

Potential impacts to cultural resources were evaluated in Section 3.6 of the Draft EIS. Section 8.4.7 of the BIA NEPA Guidebook (59 IAM 3-8)[39] states the following regarding the discussion of affected environment in the EIS:

> This is a *brief description* of the environment likely to be affected by the proposed action or alternatives (40 CFR 1502.15). The basic environmental components are identified in Figure 3. The information in an EIS should be more detailed than that in an EA, but *no more than necessary to understand the impacts to be analyzed in the Environmental Consequences section.* Only those components of the environment that will actually be affected require detailed description. *(emphasis added*)

Further, as discussed in **Response to Comment 9-11**, the number of pages of the EIS is limited based on federal directives and guidance. As such, Section 3.6 of the Draft EIS appropriately included a brief description of the findings of the records searches and field surveys conducted to provide context for the analysis of potential impacts on cultural and paleontological resources. Please refer to the **Responses to Comments 9-59** through **9-66** regarding the additional detail requested by the commenter.

As noted by the commenter, Appendix Q of the Draft EIS consists of the Cultural Resources Surveys for both the Mettler and Maricopa Highway Sites; however, these reports were not released to the public to protect potentially sensitive information about the location and nature of cultural resources, consistent with BIA practice. These reports, including all background information were reviewed by the BIA Regional Archaeologist. Further, the Cultural Resources Survey for the Mettler Site was submitted to the State Historic Preservation Officer (SHPO) for review. SHPO concurrence with the definition of the Area of Potential Effect, background research, field investigation, and resource evaluations was received on July 17, 2020, and is included as Appendix Y of the Final EIS. The reports will be filed with the Southern San Joaquin Valley Information Center once the Final EIS is published.

Response to Comment 9-59

Please refer to the **Response to Comment 9-58** for an explanation of the depth of background information presented in the Draft EIS with regards to cultural resources. The confidential Cultural Resource Surveys reviewed by the BIA in preparation of the Draft EIS contained detailed discussion of the geologic, pre-historic, historic, and ethnographic contexts of the respective sites. Please note that Section 3.2.2.1 of the Draft EIS contains the geologic context for paleontological resources; a cross-reference to Section 3.2.2.1 in Section 3.6.2 has been added to the Final EIS for easier reference.

Response to Comment 9-60

A Native American consultation pursuant to Section 106 of the National Historic Preservation Act was conducted as part of the EIS preparation process. The list of contacted Native American Tribes in additional to their responses is included in Appendix P of the Draft EIS. A summary of these results is provided in Table 3.6.2 of the Draft EIS. Section 3.6.2.1 of the

[39] https://www.bia.gov/sites/bia.gov/files/assets/public/raca/handbook/pdf/59_IAM_3-H_v1.1_508_OIMT.pdf

Final EIS has been clarified to indicate this consultation process, and Section 3.6.4.1 of the Final EIS has been revised to indicate that the Section 106 process has been concluded.

The reference to Appendix I, Economic and Community Impact Analysis, has been corrected to Appendix P, Tribal Consultation, within Section 3.6.2.1 of the Final EIS.

Response to Comment 9-61

The publically accessible portion of the University of California Museum of Paleontology database used in Section 3.6.2.1 of the Draft EIS does include general site location information. Data collection and fossil site identification is often associated with construction projects, and no construction has occurred at either the Mettler or Maricopa Highway Sites. Therefore, the probability of any reported paleontological resources at either location is minimal.

Response to Comment 9-62

The detailed analysis of National Register of Historic Places eligibility is included in the cultural report (contained in confidential Appendix Q of the Draft EIS). The analysis and conclusions determined in Appendix Q and Section 3.6.4 of the Draft EIS received BIA and SHPO concurrence, and Section 3.6.4 of the Final EIS has been updated to reflect this. Specifically, the SHPO concurrence letter included in Appendix Y of the Final EIS states that the SHPO "concur[s] that the three properties do not meet the criteria for the National Register pursuant to 36 CFR Part 60.4."

Response to Comment 9-63

Section 3.6.4.1 of the Final EIS has been clarified to note that the potential for previously unknown archaeological resources being encountered during ground-disturbing activities was based on the results of the records search and field surveys conducted and described in Sections 3.6.2 and 3.6.3 of the Draft EIS. As noted in Section 3.6.2, the Mettler Site record search indicated that archaeologists have completed nine cultural resource studies within the records search radius, including one linear study from 1996 that crossed the Mettler Site; however, no record of any prehistoric or historic period cultural resources was found on the Mettler Site or within a 0.5-mile radius of it. Further, no archaeological features or artifacts were identified during the archaeological pedestrian survey of the Mettler Site.

Response to Comment 9-64

As described in Section 3.12.2.2 of the Draft EIS, the Mettler and Maricopa Highway Sites were historically and are currently developed with agricultural fields, and the majority of the surrounding areas are also agricultural. Historical photographs and topography examined as part of the Mettler Site Phase I Environmental Site Assessment and the Maricopa Highway Site EDR Report Results, both included as part of Appendix U of the Final EIS, further verifies this claim. Furthermore, Section 3.2.2.1 of the Draft EIS acknowledges that the Mettler and Maricopa Highway Site are underlain by "a relatively flat alluvial plain and thick sequences of sedimentary deposits of Tertiary and Quaternary age."

Response to Comment 9-65

Paleontological resources surveys were conducted by qualified archaeologists and environmental professionals. Archaeologists are trained observers of ground conditions that study the ground during the course of field surveys, and are in a position and qualified to recognize possible fossils if they are in the area. If a potential, but unconfirmed, fossil is spotted during a survey, it would be documented and subject to further assessment by specialists if warranted. Both the Mettler and Maricopa Highway Sites have been ripped and plowed for agriculture, creating disturbance within the upper 1 to 3 feet of soil; the Mettler Site in particular was notable for the almost complete lack of any sort of rock, stone, or potential fossil material during the survey. The Maricopa Highway Site did exhibit small surface rock, but ground preparation for the vineyard would have included deep soil ripping, removing any fossils on the ground surface from their

geologic context. No potential fossil material was identified on either the Mettler or Maricopa Highway Sites, and therefore the need to bring in higher level paleontological specials did not occur.

Older Quaternary alluvium (Pleistocene age) can have a higher sensitivity for paleontological resources, however the Pleistocene-age pluvial lakes that would have attracted Pleistocene fauna are 5 to10 miles north of the Mettler and Maricopa Highway Sites. This is not to say that Pleistocene fauna did not travel. However, the presence of water would have attracted animals and created a concentration of future fossil remains. The potential for paleontological resources associated with Pleistocene pluvial lakes must be considered to diminish with distance from the former lakeshore.

The publicly accessible portion of the University of California Museum of Paleontology database used in Section 3.6.2.1 of the Draft EIS does include general site location information, which is how it was determined that fossils have been identified in the hills 5 miles south of the project site in an entirely different geological formation than that which occurs on the Mettler and Maricopa Highway Sites. However, the Draft EIS acknowledges the potential for fossil finds made during construction. Mitigation Measure 5-C addresses fossil finds made during construction.

Response to Comment 9-66

Indirect impacts from off-site improvements are discussed in Section 3.14.1 of the Draft EIS. As described therein, off-site improvements would include the off-site traffic mitigation and other minor off-site improvements that may be required for electrical power, natural gas, and other utilities. The exact location, design, and extent of these improvements would be determined during detailed project design in coordination with applicable agencies (e.g., Caltrans) and service providers (e.g. Pacific Gas and Electric Company). Section 3.14.1 of the Draft EIS notes that there are no cultural resources and few paleontological resources that have been identified in the immediate vicinity of the Mettler Site; however, there is a possibility that previously unknown cultural resources and paleontological resources could be encountered during ground-disturbing activities within off-site improvement locations. Therefore, these impacts were determined to be potentially significant. The purpose of the mitigation measure is to ensure that potential impact areas, once they are precisely determined, are appropriately investigated and documented. Further, it should be noted that improvements in areas not held in federal trust would be subject to CEQA in addition to the conditions of Mitigation Measure 4-A.

Response to Comment 9-67

Comment noted. Please refer to the **Responses to Comments 9-68** through **9-90** regarding comments on the TIA.

Response to Comment 9-68

The letter "c" in the first column is a typographical error and thus there is no missing footnote. This has no bearing on the analysis presented in Table 3-1 of the TIA. This typographical error has been corrected in the Updated TIA included in Appendix F of the Final EIS.

Response to Comment 9-69

Trip rate periods can either be defined as the peak of the roadway (i.e., when traffic is highest on nearby roadways) or peak of the generator (i.e., when the traffic generation of the Proposed Project occurs).[40] Saturday traffic on I-5, Maricopa Highway, and SR-166 is generally highest during the afternoon into the early evening of weekdays. Casinos generally generate the most traffic on weekends in the late afternoon. Based on counts conducted at other California casinos, the

[40] Source: Institute of Transportation Engineers. *Trip Generation Manual, 10th Edition, Volume 1: Desk Reference*. September 2017. Available online at: https://www.ite.org/technical-resources/topics/trip-and-parking-generation/trip-generation-10th-edition-formats/. Accessed September 8, 2020.

highest traffic levels on adjacent streets and intersections is on Saturday between 4:00 P.M. and 6:00 P.M. This peak traffic period was used in the TIA included as Appendix F of the Draft EIS and the updated TIA included as Appendix F of the Final EIS to calculate Saturday peak traffic for the project alternatives. The rationale for assuming peak hours during this time period is also summarized in Section 4.1 of the TIA.

Response to Comment 9-70

Caltrans specifically requested an analysis of ramp merge/diverge operations prior to preparation of the Draft EIS. There are no established significance criteria or thresholds for ramp merge/diverge analysis because merge/diverge analysis is typically performed for transportation infrastructure projects and not land use traffic studies. The ramp merge/diverge analyses included in the TIA for informational purposes.

Response to Comment 9-71

As described in Section 5.0 of the TIA included as Appendix F of the Draft EIS, Table 5-1 is a standard table which describes significance thresholds for cases where pre-project level of service (LOS) was LOS E or F for all types of facilities. None of the analyzed on-ramps are currently metered and none are planned to be metered in the foreseeable future. Hence, ramp meter thresholds in Table 5-1 are not relevant to the analysis of the Proposed Project alternatives.

Response to Comment 9-72

The text shown in bold indicates roadways that operate at LOS F for freeways and highways and LOS E and LOS F on all surface streets and intersections. These definitions of significant are clarified in the Updated TIA included as Appendix F of the Final EIS. The Updated TIA also includes text that describes the meaning of figures in bold. Specifically, the footnote in Updated TIA Tables 6-4, 6-5, 10-4 through 10-9, 11-3, 11-4, 13-4 through 13-7, 14-3, 16-4 through 16-7, and 17-3, which summarize the results of the ramp merge/diverge analysis, describes the meaning of boldface text.

Response to Comment 9-73

A list of cumulative projects that would add traffic to the study area was provided by the City of Bakersfield and Kern County Staff. The 24 cumulative projects in the list consist of 13 transportation projects and 11 development projects as described in Section 7.1 of the TIA included as Appendix F of the Draft EIS. As described on page 29 of the TIA, based on a review of the 13 transportation projects, it was determined that they would not generate additional traffic, and hence would not add traffic to any of the study area intersections.

The “influence area” for cumulative projects was chosen by the City of Bakersfield, the County, and the EIS traffic consulting engineer. It would be incorrect to use a “radius” as that approach could result in significant cumulative projects being omitted from the analysis. Projects that would add a significant amount of cumulative traffic were included in addition to a general growth factor of 2 percent per year. Traffic generated by cumulative projects located farther away from the Proposed Project would primarily use I-5 and SR-99 for access and not local surface roads. Therefore, as described in Section 7.2 of the TIA, in addition to the 24 cumulative projects, a background growth of 2 percent per year for 5 years was applied to the existing traffic to account for cumulative projects, which are predominately located some distance from the project alternatives.

Response to Comment 9-74

Forecast models for future growth in traffic are not available in the Proposed Project study area. Hence, an annual growth of 2 percent was assumed based on historical growth in traffic on the adjacent freeways and the traffic consultant’s experience and professional judgement.

Response to Comment 9-75

This is an introductory comment. Please refer to the **Responses to Comments 9-75** through **9-80**.

Response to Comment 9-76

As described in Section 8.3 of the TIA (page 42), Appendix F of the Draft EIS (page 42), potential trip generation data sources, including Institute of Transportation Engineers (ITE) and SANDAG, were reviewed to determine the percentages referred to in the comments. The standard industry practice utilized assumes the peak hour of the day represents 10 percent of the total daily volume. The 10 percent assumption is based on thousands of roadway counts throughout California. It is reasonable to assume the recreational vehicle (RV) parking peak hour percentage (the amount of traffic entering or leaving between 4:00 P.M. and 6:00 P.M.) would be similar (weekday versus Saturday). The total RV parking trips was assumed to be 25 percent higher on a Saturday as compared to a weekday. It should be noted that the RV parking trip generation represents less than 2 percent of the total trips. Consequently, adjusting the assumption regarding the level of peak RV trips would have a negligible effect on the overall traffic impacts estimated in the TIA.

Response to Comment 9-77

As described in the Section 8.4 of the TIA (page 42), included as Appendix F of the Draft EIS (page 42), there are no specific local trip generation studies available for organic farms. Therefore, the trip estimate was based on the number of employee and vendor trips that would be expected to visit the organic farm and the time of day the trips would occur. The farm represents less than 1 percent of the total project trip generation. Consequently, adjusting the assumption regarding the level of organic farm trips would have a negligible effect on the overall traffic impacts estimated in the TIA.

Response to Comment 9-78

The trip generation for the community park was adjusted upward from ITE-levels and therefore provides a conservative (i.e., higher) trip generation estimate. It should be noted that public park trip generation is expressed in trips per acre, which is based on actual traffic counts at existing public parks published by SANDAG. For these reasons, a rate of 10 times the ITE Trip Generation for a public park was used. This is described in footnote G in Table 9-1 and Table 9-2 of the TIA.

Response to Comment 9-79

There are no readily available trip rates for a “Tribal Community Center” or “Tribal Health Center” in academic transportation literature. Based on discussions with the Tribe, the fact that non-tribal members cannot use these facilities in conjunction with the low number of tribal members who will use the facilities, the amount of trips generated by these uses is expected to be only 10 percent of a typical suburban community center or health center. Therefore, the use of five (5) times, this amount, or 50 percent, is considered to be extremely conservative.

Response to Comment 9-80

As stated in Table 9-1 of the TIA, included as Appendix F of the Draft EIS, the Proposed Project is calculated to generate approximately 12,855 trips per day. The police and fire joint station would generate a maximum of 20 trips per day based on the expected number of employees. This equals an increase of only 0.15 percent of the total traffic. Given this very small number of additional trips combined with the conservative assumptions employed in the derivation of other traffic flow estimates (refer to the **Responses to Comments 9-76** through **9-79** above), its inclusion would not change the results of the TIA.

Response to Comment 9-81

A definition for “diverted link trips” is included on page 3-62 of the Draft EIS, as follows:

> *Diverted link trips represent those trips made by a driver to any existing location not along the path to the ultimate destination. Diverted link trips require a diversion from the destination route. The location of a project influences the amount of pass-by and diverted link trips that drivers experience when accessing the site.*

In this case, diverted link trips are trips that are already on I-5/SR-99 and would stop at the casino and resume their journey on the freeways. These are not new trips to the freeway system but rather are trips captured from traffic already on the freeway. There is no empirical data available to establish specific diverted link trip rates. Based on the 33,600 average daily trips (ADT) using I-5 and 42,920 ADT using SR-99 adjacent to the Proposed Project, it is reasonable to assume that 10 percent is a conservative (i.e., low) amount.

Response to Comment 9-82

Peak commute periods generally occur on weekdays between 7 A.M. and 9 A.M., and between 4 P.M. and 6 P.M. For the Draft EIS, an additional weekend analysis was conducted in TIA Sections 6, 10, 13, and 16 even though this analysis is not required per County and Caltrans standards. Local jurisdictions typically do not require weekend (Saturday) analysis. Also, during its consultative discussions with the County and Caltrans, these governmental agencies did not request that a long-term (Year 2040) analysis be conducted based on Saturday 4 P.M. to 6 P.M. traffic flows. Such an analysis would be highly speculative. Furthermore, long-term traffic projections are typically obtained from regional traffic models and only for weekday traffic flows. For these reasons, a Year 2040 Saturday 4 P.M. to 6 P.M. analysis was not conducted and is not warranted.

Response to Comment 9-83

Please refer to the **Response to Comment 9-72** that clarifies those impacts defined as significant in the Updated TIA included as Appendix F of the Final EIS. Where appropriate, the Updated TIA text has been modified such that those impacts defined as significant reconcile to the significant definition.

Furthermore, as mentioned in Section 5, Significance Criteria, of the TIA included as Appendix F of the Draft EIS, the 2014 Regional Transportation Plan/Sustainable Communities Strategy, Kern County Council of Governments states that "Level of service E has been established as the minimum system-wide LOS traffic standard in the Kern COG Congestion Management Plan."

This is because those roads currently experiencing worse traffic congestion have been accepted at their existing traffic level of LOS F.

Figure 5-10 of the 2014 Regional Transportation Plan/Sustainable Communities Strategy titled "Kern County Congestion Management Program Corridors" (refer to Appendix A of the TIA). The map shows that I-5, SR-99, and the Maricopa Highway are corridors where LOS E operations are acceptable. Therefore, the statement on Page 130 of the TIA is consistent with the impact conclusions.

Response to Comment 9-84

Please refer to the **Response to Comment 9-82** regarding a Year 2040 Saturday analysis.

Response to Comment 9-85

Please refer to the **Response to Comment 9-83** regarding impact determinations.

Response to Comment 9-86

The mitigation measures are adequately described in the TIA included as Appendix F of the Draft EIS and within the Draft EIS itself. It was determined that the recommended mitigation measures are likely to be feasible. Additionally, the TIA includes extensive illustrations of existing traffic flows and impacts. Appendix N of the Updated TIA (Appendix F of the Final EIS) includes a technical analysis of each proposed mitigation measure. However, drawings of the recommended improvements are not warranted as part of an EIS and are not customary at the initial planning stage of a proposed project. Section 3.14.1 of the Draft EIS includes analysis of indirect effects from off-site mitigation improvements, including off-site traffic mitigation.

Response to Comment 9-87

Please refer to the **Response to Comment 9-82** regarding a Year 2040 Saturday analysis.

Response to Comment 9-88

This is a typographical error. The Draft EIS reference to Appendix F has been revised in Section 3.8.3 of the Final EIS to refer to Appendix M of the EIS, Air Quality Tables.

Response to Comment 9-89

For purposes of this EIS, BMPs and mitigation measures are not synonymous. Mitigation measures are measures implemented to reduce an impact. BMPs are measures that have been incorporated into the project design/operation that reduce the environmental impacts of activities. In other words, while BMPs reduce potential impacts, they are measures which are inherently part of the Proposed Action and are not added to the Proposed Project as a result of identified impacts for the Proposed Action. The language on page 3-65 has been revised for clarity as follows: “Implementation of the BMPs described in Section 2.2.2 would further reduce potential effects of project construction to transportation/circulation.”

Response to Comment 9-90

Please refer to the **Response to Comment 9-86** regarding why detailed drawings for proposed traffic mitigation measures were not included in the TIA or Draft EIS.

Response to Comment 9-91

The discussion of construction noise impacts from Alternatives A1 and A2 has been revised in Section 3.11.3.1 of the Final EIS to reflect a correction to the noise attenuation calculation. As described in Section 3.11.1.1 of the Draft EIS, stationary points of noise attenuate (lessen) at a rate of 6-9 A-weighted decibels (dBA) per doubling of distance from the source, depending on environmental conditions. Due to sparse trees and manmade and geographical barriers, an attenuation factor of 6 dBA average (Leq) per doubling of distance was used in the analysis. According to the inverse square law, it can be shown that for each doubling of distance from a point source, the sound pressure level decreases by approximately 6 dBA.

As described in Section 3.11.3.1 of the Draft EIS, the maximum noise level during construction is approximately 89 dBA Leq at 100 feet. Considering the nearest sensitive receptors are located approximately 850 feet east of the Mettler Site, the maximum noise from construction equipment would attenuate to approximately 70.4 dBA Leq when using the inverse square law and an attenuation factor of 6 dBA. Therefore, the noise level at the nearest sensitive noise receptors would be less that the Federal Highway Administration construction threshold of 72 dBA Leq, and construction noise associated with Alternatives A1 and A2 would not result in significant adverse effects associated with the ambient noise environment.

Response to Comment 9-92

As described in Section 3.11.1.1 of the Draft EIS, two sources of equal noise added together would result in an increase of 3 dBA (Caltrans, 2013). Therefore, if a project doubles the traffic volume there would be an audible increase in the ambient noise level of 3 dBA. As described in Section 3.11.3.1 of the Draft EIS, construction-related material haul trips and worker trips have the potential to raise ambient noise levels along local routes. Project-Related construction trips would increase traffic volumes on roads near sensitive receptors by approximately 1,188 vehicles during the AM peak hour, and this increased traffic would result in an increase in the ambient noise level by approximately 0.10 dBA Leq. This was calculated using the 3 dBA increase per doubling of traffic rule, described above, and the existing traffic volumes, found in Appendix F of the Draft EIS.

The Draft EIS incorrectly states that the increase 0.10 dBA Leq would result in an ambient noise level of 64 dBA Leq. As stated earlier in the Draft EIS, the existing ambient noise level in the vicinity of sensitive noise receptors is approximately 51.4 dBA Leq at the Mettler Site. Therefore, an increase in the ambient noise environment of 0.10 dBA Leq due to construction traffic would result in an ambient noise level of 51.5 dBA Leq. Section 3.11.3.1 of the Final EIS has been revised to reflect this correction.

Response to Comment 9-93

As described in Section 3.11.3.1 of the Draft EIS, the ambient noise level in the vicinity of the Mettler Site is dominated by SR-99, which experiences significantly higher exiting traffic volumes than all other surrounding roadways. Therefore, due to the lower traffic volumes compared to SR-99, the ambient noise increase along South Sabodan Street and the Maricopa Highway would be negligible compared to SR-99.

As described in Section 3.11.3.1 of the Draft EIS, Alternative A1 would add 13,700 daily vehicle trips to South Sabodan Street. Considering that the Maricopa Highway carries 4,300 vehicles per day, adding 13,700 vehicles a day to this road would result in a 6.2 dBA Leq increase in the ambient noise level. With implementation of Alternative A1, the ambient noise level would increase from 51.4 dBA Leq (Table 3.11-2 of the Draft EIS) to a maximum of 57.6 dBA Leq, an increase that is less than the federal Noise Abatement Criteria of 67 dBA Leq for residential sensitive receptors. Therefore, the Draft EIS correctly identified that Alternative A1 would result in a less-than-significant impact on ambient noise levels.

Response to Comment 9-94

The pesticide levels indicated in the comment are typical for agricultural areas such as the San Joaquin Valley. Both State and federal regulations and laws govern pesticide application to ensure public safety, such as the California's Toxic Air Contaminant Act that creates a statutory framework for the control of chemicals as toxic air contaminants (e.g., pesticides).[41] The California Department of Pesticide Regulation regularly monitors and evaluates pesticide use within the State as required under federal and California law, such as the Federal Insecticide, Fungicide, and Rodenticide Act.[42] Another example is Food and Agriculture Code § 12824 that mandates the continuous evaluation of currently registered pesticides by the California Department of Pesticide Regulation. The California Department of Pesticides Regulation is also responsible for overseeing the certifications and licenses of pesticide applicators. All applicators, such as an agricultural pesticide applicator, must undergo an exam and demonstrate a wide variety of knowledge concerning

[41] Source: California Department of Pesticide Regulation website. Toxic Air Contaminant Program. Available online at: https://www.cdpr.ca.gov/docs/emon/pubs/tacmenu.htm#:~:text=California's%20Toxic%20Air%20Contaminant%20Act,health%20risk%20from%20those%20exposures. Accessed September 1, 2020.

[42] Source. California Department of Pesticide Regulation. *A Guide to Pesticide Regulation in California, Updated 2017*. 2017. Available online at: https://www.cdpr.ca.gov/docs/pressrls/dprguide/dprguide.pdf. Accessed September 1, 2020.

pesticides, such as the protection of human health and environmental exposure and the safe application of pesticides. Furthermore, these applicators after obtaining their pesticide applicator certification or license must adhere to federal and State laws pertaining to pesticide application. For instance, aerial application of pesticides must comply with Title 3 CCR § 6614, Protection of Persons, Animals, and Property. This requires that "an applicator prior to and while applying a pesticide shall evaluate the equipment to be used, meteorological conditions, the property to be treated, and surrounding properties to determine the likelihood of harm or damage" and prohibits the application of pesticides when there is a reasonable possibility of damage to non-target crops, animals, or other public or private property.

If and when the Mettler or Maricopa Highway Sites are taken into federal trust, the portion of the project site that is developed with project improvements would cease to be cultivated for agriculture. Furthermore, BMPs K2 and K8 of the Final EIS would ensure that pesticide levels on the improved portion of the project site are at safe levels. Those employees working in the portions of the project site that would continue agricultural uses would follow standard practices to avoid unsafe use of pesticides. For these reasons, the risk of pesticide exposure would be minimal. Section 3.12.3.1 of the Final EIS, specifically under the header "Operations," has been revised to clarify this potential environmental issue. It is possible that employees and patrons could experience exposure to pesticides from the surrounding landscape and onsite, but it would be minimal due to existing State and federal regulations.

Response to Comment 9-95

Please refer to the **Response to Comment 9-3** regarding potential health and safety impacts of COVID-19. Please refer to the **Response to Comment 9-10** regarding enforcement of mitigation measures.

Response to Comment 9-96

Please refer to the **Response to Comment 9-3** regarding potential economic impacts of COVID-19.

Response to Comment 9-97

Table 3.7-2 of the Final EIS has been revised to clarify the text of EO 12898. The commenter is correct that the minority population calculations included in Table 3.7-1 in Appendix R of the Draft EIS do not include Hispanic or Latino. This is because the U.S. Census Bureau defines that any race can identify their origin as Hispanic, Latino, or Spanish.[43] For example, people who identify themselves as "White" for a race can also identify themselves as "Hispanic or Latino" in origin. However, it should be noted that, based on EO 12898, it is at the discretion of each federal agency to determine the definition of a minority population. For example, the USEPA's definition of a minority population includes Hispanics.[44] It is also the case that some previous EISs prepared by the BIA include Hispanics in the definition of minority persons. For these reasons, Table 3.7-1 in Appendix R of the Final EIS has been updated to include "Hispanic or Latino" in the "Total Minority Population" column. The table has also been updated with more recent census data.

Response to Comment 9-98

Table 3.7-1and Table 3.7-2 in Appendix R of the Final EIS have been revised to clarify that the census tracts are within the vicinity of both the Mettler and Maricopa Highway Sites instead of one alternative site. Additionally, Figure 3.7-1 of the

[43] Source: U.S. Census Bureau Website. About Race. Available online at: https://www.census.gov/topics/population/race/about.html. Accessed on August 18, 2020.

[44] Source: U.S. EPA Website. Environmental Justice 2020 Glossary. Available online at: https://www.epa.gov/environmentaljustice/ej-2020-glossary. Accessed September 4, 2020.

Final EIS has been revised to include all census tracts analyzed in the Final EIS rather than just showing those census tracks in the immediate vicinity of the Mettler and Maricopa Highway Sites.

Response to Comment 9-99

Census Tract 32.04 has been added to Table 3.7-1 and Table 3.7-2 in Appendix R of the Final EIS. Furthermore, the data used in Table 3.7-2 has been updated with more current data. The minority population calculated for Census Tract 32.04 is 58 percent, which includes the "Latino or Hispanic" population in this census tract. For an explanation of the minority population calculation regarding the inclusion of Latino or Hispanic, please refer to the **Response to Comment 9-97**. At 58 percent, Census Tract 32.04 is considered minority dominated. In addition, due to the changes in the total minority population calculations, Census Tracts 32.04, 33.04, 34, 37, 45, 62.02, and 18 (Santa Barbara County) are also considered minority dominated. Sections 3.7.3 and 3.7.4 of the Final EIS has been modified to reflect this. Despite the increase in minority dominated census tracts, Alternatives A1, A2, A3, and B have the same final findings as in the Draft EIS. Alternatives A1, A2, and B would have positive economic effect on nearby minority populations while Alternative A3 would be neutral in its effects. Furthermore, Alternatives A1, A2, A3, and B would all have a positive economic effect on the Tribe, which is considered a minority population.

As shown in Table 3.4-4 of the Draft EIS, the majority of emissions associated with the project alternatives would be from mobile emissions from visitors to the Mettler and Maricopa Highway Sites. These emissions would not be concentrated at the site, but would be distributed along travel routes, including the heavily traveled I-5 and SR-99 corridors. Therefore, the purchase of credits or reductions associated with a VERA with the San Joaquin Valley Air Basin Control District would reduce the net emissions associated with the selected alternative for minority populations in the vicinity of the Mettler and Maricopa Highway Sites.

Response to Comment 9-100

Please refer to the **Response to Comment 4-6** regarding the Draft EIS analysis of impact to public services. Contrary to the commenter's statement, the Draft EIS does not defer to the terms of the IGA. Rather, as stated in Appendix I of the Draft EIS and Sections 3.7 and 3.10 of the Draft EIS, the EIS includes specific analysis of impacts to public services. These analyses were made independent of the IGA. Estimated impacts were then compared to the payments and other measures included in the IGA, including the joint police and fire substation that would be constructed onsite as part of the project.

Impacts to the California Highway Patrol (CHP) are addressed in Section 3.10.3.1 of the Draft EIS. As stated therein, ongoing operation of Alternatives A1 and A2 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 State revenues. Potential effects to CHP would be offset by increased State tax revenues resulting from operation of Alternatives A1 and A2. Therefore, a less-than-significant impact would occur and no mitigation would be required.

Response to Comment 9-101

Please refer to the **Response to Comment 9-15** regarding the heights of the hotels associated with the alternatives and the level of detail required in the EIS.

Response to Comment 9-102

The Draft EIS examined the potential impacts to the environment in the foreseeable future, including irreversible or irretrievable commitments of resources in Section 3.0 of the Draft EIS. For example, Section 3.3 examined the effects to water resources. Therefore, no revisions are warranted.

Response to Comment 9-103

Please refer to the **Responses to Comment 9-75** through **9-81** regarding trip generation assumptions. As described therein, no changes to the trip generation assumptions are warranted, and no changes to the mobile emission estimates have been made in the Final EIS or Final Conformity Determination.

Response to Comment 9-104

Consistent with USEPA guidance,[45] Table 3.4-4 of the Final EIS has been revised to include emissions from 500 annual operating hours for emergency diesel generators. Additionally, revised CalEEMod output files are included as Appendix M of the Final EIS. As described in Section 3.4.4 of the Final EIS, emissions of individual criteria pollutants from stationary sources would exceed the Tribal new source review (NSR) threshold of 2 tpy for ROG and 5 tpy for NOx under Alternatives A1, A2, and B. A Tribal NSR permit would be required; therefore, the Tribe is required to apply for and obtain a Tribal NSR permit in accordance with the USEPA guidelines and Tribal NSR regulations.

As described in Section 3.4.4 of the Final EIS, emissions of ROG and NOx from the operation of Alternatives A1, A2, and B would remain above applicable *de minimis* levels. This would remain a significant adverse impact. Mitigation Measures 3-A and 3-B in Section 4.0 of the Final EIS require the purchase of credits to fully offset ROG and NOx emissions. A Final Conformity Determination is included as Appendix Z of the Final EIS. After mitigation, impacts to the regional air quality environment resulting from Alternatives A1, A2, and B would be reduced to less-than-significant levels.

Response to Comment 9-105

As described in Appendix M of the Draft EIS, the boiler rating used for the Proposed Project was based on the estimated demand of similar facilities. No revisions to the boiler ratings for the Proposed Project are warranted.

Response to Comment 9-106

In accordance with the CalEEMod User's Guide,[46] emissions from pool heaters, fire pumps, and water heaters are included in the energy-use emissions from non-Title 24 natural gas uses. No additional stationary sources are assumed for the Proposed Project other than those included in Appendix M of the Draft EIS. As described in Section 3.4.4 of the Final EIS and listed in Table 1-1 of the Final EIS, a Tribal NSR permit would be required for the Proposed Project. The Tribe would apply for and obtain a Tribal NSR permit covering all stationary sources in accordance with the USEPA guidelines and Tribal NSR regulations.

Response to Comment 9-107

The trip generation rates presented in Table 3 of Appendix M of the Draft EIS are shown in the units of trips per size metric. The size metric used for each of the various land uses are shown in Table 1 of Appendix M of the Draft EIS. All trip generation rates presented in Table 3 of Appendix M of the Draft EIS are consistent with the trip generation rates found in Table 9-1 of Appendix F of the Draft EIS. As described in the footnotes of Table 3, the casino trip generation rate was adjusted to account for the 10 percent diverted link reduction described in Appendix F of the Draft EIS.

[45]USEPA, 1995. Calculating Potential to Emit (PTE) for Emergency Generators. September 6, 1995. Available online at: https://www.epa.gov/sites/production/files/2015-08/documents/emgen.pdf

[46] California Emission Estimator Model (CalEEMod), Version 2016.3.2 User's Guide. California Air Pollution Control Officers Association (CAPCOA). November 2017. http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4

Response to Comment 9-108

The values shown in Table 4.2 of the CalEEMod output files (Appendix M of the Draft EIS) are daily trip volumes for each land use, as calculated by CalEEMod using the trip generation rates shown in Table 3 of the CalEEMod inputs (Appendix M of the Draft EIS) and the land use units amounts shown in Table 1 of the CalEEMod inputs (Appendix M of the Draft EIS). Therefore, the calculated daily trip volumes shown in Table 4.2 are not comparable to the trip rates shown in Table 3. Additionally, the daily trip volumes shown in Table 4.2 are consistent with the trip volumes presented in Table 9-1 of Appendix F of the Draft EIS.

Response to Comment 9-109

As described in Table 4-1 of the Draft EIS, ERCs will be purchased prior to the opening day of the facility. 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. Additional details were provided in the Draft General Conformity Determination included in Appendix N of the Draft EIS. A Final General Conformity Determination is included as Appendix Z of the Final EIS. The Final General Conformity Determination includes detailed information on the Tribe's commitment to purchase ERCs or enter into a VERA.

Response to Comment 9-110

BMP A in Section 2.2.2.9 of the Final EIS has been revised to indicate that traffic speeds on unpaved roads would be limited to a maximum of 15 miles per hour, consistent with the mitigation measures listed in Appendix M of the Draft EIS. All other mitigation measures listed in Appendix M of the Draft EIS are consistent with the BMPs found in Section 2.2.2.9 of the Draft EIS.

Response to Comment 9-111

As described in Section 3.14.1 of the Draft EIS, due to the small size of the off-site improvements compared to the project alternatives, construction-related emissions would be substantially less than those associated with the construction of the casino resort and supporting facilities. Additionally, as shown in Section 3.4.4 of the Draft EIS, construction-related emissions from each of the project alternatives would be below all applicable air district thresholds. Therefore, it is reasonable to conclude that construction-related emissions from the off-site improvements would also be below all applicable air district thresholds.

Response to Comment 9-112

Future planned development projects within the County and the City of Bakersfield would be consistent with the County and City General Plans and other planning documents and policies, thus preventing disorderly growth or incompatible land uses (refer to Section 3.9.3.1 of the Draft EIS). Furthermore, other projects that may occur in the County would be subject to environmental review on a project-by-project basis. For example, environmental impact reports (EIR) and related planning documents have been prepared for both the Grapevine Specific and Community Plan and the Centennial at Tejon Ranch project, which were cited in Comment 9-112. These EIRs include mitigation for agricultural land loss and other measures to preserve open space. Thus, these projects, as currently contemplated, include measures to address the preservation of agricultural land and open space. These projects are also much larger than the Proposed Project. Given the fact that these projects already incorporate mitigation and similar preservation measures, the large relative sizes of these and other projects in comparison to the alternatives analyzed in the Draft EIS, and the very small 0.004 percent effect of Alternatives A1 and A2 on County farmland, the Draft EIS is correct that cumulative effects on agricultural land and land use are less than significant.

Response to Comment 9-113

Please refer to the **Response to Comment 8-15** regarding effects to groundwater. As described therein, the Proposed Project would have a neutral to positive effect on groundwater supply; therefore, as discussed in Section 3.3.3.1 of the Draft EIS, cumulative impacts to groundwater would not be substantial.

Response to Comment 9-114

Potential risks associated with farming in close proximity to a gaming venue (e.g., pesticides, noise, dust, etc.; refer to Comment 9-114) are addressed in Section 3.9.3.1 of the Draft EIS. As described therein, farming activities represent a potentially minor annoyance for on-site customers, and vice versa. These effects are not significant. The construction and operation of the Proposed Project would not prevent the continued agricultural use of adjacent properties. Please refer to the **Response to Comment 8-13** regarding consistency with surrounding land uses and County code.

Response to Comment 9-115

Regarding consistency of project alternatives with the County General Plan, please refer to Sections 3.9.3.1, 3.9.3.2, and 3.9.3.3 of the Draft EIS; and **Response to Comment 8-13**. Due to length of text, each land use goal and policy was not listed in the Draft EIS. The *Land Use, Open Space, and Conservation Element* of the County General Plan is approximately 77 pages long. However, in response to Comment 9-115, the following goals are listed in Section 1.9 of the *Land Use, Open Space, and Conservation Element* of the County General Plan:

1. To contain new development within an area large enough to meet generous projections of foreseeable need, but in locations which will not impair the economic strength derived from the petroleum, agriculture, rangeland, or mineral resources, or diminish the other amenities which exist in the County.
2. Protect areas of important mineral, petroleum, and agricultural resource potential for future use.
3. Ensure the development of resource areas minimize effects on neighboring resource lands.
4. Encourage safe and orderly energy development within the County, including research and demonstration projects, and to become actively involved in the decision and actions of other agencies as they affect energy development in Kern County.
5. Conserve prime agriculture lands from premature conversion.
6. Encourage alternative sources of energy, such as solar and wind energy, while protecting the environment.

Please refer to the **Response to Comment 8-13** regarding consistency between the project alternatives and the County General Plan, and how effects to land use, including conservation of agricultural lands, is less than significant. Please also see Comment Letter 2 from the Kern County Planning and Natural Resources Department. As stated therein:

> *The Kern County Board of Supervisors supports the approval and construction of Alternative A1-Casino and Mixed-Use Development Alternative.*

There are 25 policies listed in Section 1.9 of the *Land Use, Open Space, and Conservation Element* of the County General Plan. Those that are applicable to the project alternatives are:

7. Areas designated for agricultural use, which include Class I and II and other enhanced agricultural soils with surface delivery water systems, should be protected from incompatible residential, commercial, and industrial subdivision and development activities.

9. When evaluating General Plan Amendment proposals to change a Map Code 8.1 (Intensive Agriculture) designation to accommodate residential, commercial, or industrial development, the County shall consider the following factors:

    a. Approval of the proposal will not unreasonably interfere with agricultural operations on surrounding lands.

    b. Necessary public services (fire, sheriff, etc.) and infrastructure are available to adequately serve the project.

    c. There is a demonstrated need for the proposed project location based upon population projections, market studies and other indicators.

    d. The requested change in land use designation is accompanied by a zone change and other implementing land use applications for a specific development proposal.

    e. The site is contiguous to properties that are developed or characterized by nonagricultural land uses.

    f. Past agricultural use of the site has led to soil infertility or other soil conditions which render the property unsuitable for long-term agricultural use.

    g. Approval of the proposed project outweighs the need to retain the land for long-term agricultural use.

    h. Where adjacent or within proximity (1/2 mile) to existing urban areas, the County shall discourage agricultural conversion that is discontinuous with urban development.

10. To encourage effective groundwater resource management for the long-term economic benefit of the County the following shall be considered:

    a. Promote groundwater recharge activities in various zone districts.

    b. Support for the development of Urban Water Management Plans and promote Department of Water Resources grant funding for all water providers.

    c. Support the development of groundwater management plans.

    d. Support the development of future sources of additional surface water and groundwater, including conjunctive use, recycled water, conservation, additional storage of surface water and groundwater and desalination.

11. Minimize the alteration of natural drainage areas. Require development plans to include necessary mitigation to stabilize runoff and silt deposition through utilization of grading and flood protection ordinances.

Please refer to the **Response to Comment 8-13** regarding Policies 7 and 9. Please refer to Section 3.3 of the Draft EIS and **Responses to Comments 8-15** and **8-16** regarding Policy 10 that addresses groundwater resources. Please also refer to Section 3.3 of the Draft EIS and the **Responses to Comments 8-17, 9-21**, and **9-23** regarding Policy 11 that addresses grading, drainage, and flooding. Also, as described in Section 3.2.3.1 of the Draft EIS and the mitigation measures described in Section 4.0 of the Draft EIS, a SWPPP would be prepared, implemented, and maintained throughout the construction phase of the development and include BMPs to reduce impacts to soil erosion and water quality. The SWPPP would specify measures to prevent erosion and water quality impacts during high-precipitation events (storms).

COMMENT LETTER 10: DENNIS FOX

Response to Comment 10-01

Comment noted. Section 3.4 of the Draft EIS assesses the environmental consequences of the alternatives as they relate to air quality.

Response to Comment 10-02

As described in Section 2.2.2.9 of the Draft EIS, the Proposed Project includes several operational BMPs that would reduce emissions of criteria air pollutants, including the use of clean fuel vehicles where practicable and providing preferential parking for vanpools and carpools.

Response to Comment 10-03

In 1990, California passed the California Wildlife Protection Act, which designated mountain lions as "specially protected species." This designation is not related to the designation of "special-status" as defined in the Draft EIS, as the mountain lion is not listed under the state or federal ESA, and evidence suggests that population trends are stable.[47] However, passage of the Wildlife Protection Act made it illegal to hunt mountain lions in the state of California. In 2012, Tejon Ranch agreed to pay fines and restitutions for the illegal killing of mountain lions on the Tejon Ranch property between 2004 and 2010.[48]

Both the Mettler and Maricopa Highway Sites are within an area that is not suitable habitat for mountain lions. While it is possible that a transient individual may inadvertently wander in the vicinity of the Mettler or Maricopa Highway Sites, this species does not actively forage on either site and does not impact the relative abundance of species that occur on either site. Alternatives A and B would not result in the loss of mountain lion habitat, and would not result in impacts to mountain lions. Hunting of mountain lions is not proposed in the various development alternatives. Alternatives A and B propose acquisition of land into trust prior to development. Land held in trust would be managed by the Tribe and would not be subject to local or State regulations.

A portion of the comment was not audible and may have referred to the proposed RV park. However, it was not possible to determine the nature of the comment regarding the RV park.

Response to Comment 10-04

Please refer to the **Response to Comment 8-15** regarding potential impacts to the groundwater basin. As described therein, water would be sourced from groundwater. Potable water would not be sourced from the aqueduct.

Response to Comment 10-05

As described in Section 2.2.2.5 of the Draft EIS, all wastewater would be treated to a high (tertiary) level and utilized as recycled water for landscape irrigation, toilet flushing, or groundwater recharge. Wastewater would not be discharged to the aqueduct.

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[47] Source: CDFW. Commonly Asked Questions About Mountain Lions. Available online at: https://wildlife.ca.gov/conservation/mammals/mountain-lion/faq#359951240-are-mountains-lions-listed-as-a-threatened-or-endangered-species. Accessed August 2020.

[48] Source: L.A. Times. Tejon Ranch to pay fine for killing mountain lions. Available online at: https://www.latimes.com/local/la-xpm-2012-feb-11-la-me-0211-tejon-lions-20120211-story.html. 2012. Accessed August 2020.

COMMENT LETTER 11: JAMES E. ADAMS

Response to Comment 11-01

As described in Section 2.2.2.1 of the Draft EIS, the Proposed Project would be constructed according to the 2019 IGA between the Tribe and the County, which requires compliance with the CBC (CCR, Title 24). As mandated by the 2019 CBC, the Proposed Project would be required to implement various GHG-reducing features including EV parking spaces. Please see **Response to Comment 8-7** for more information on this issue.

COMMENT LETTER 12: DR. DONNA MIRANDA-BEGAY

Response to Comment 12-01

Comment noted. Commenter supports the Proposed Project.

Response to Comment 12-02

Cultural Mitigation Measure D specifically requires notification of the BIA, Tejon Tribe, and County Coroner. Under California Health and Safety Code § 7050.5, the County Coroner is required to contact the Native American Heritage Commission (NAHC) if the Coroner determines that the remains are Native American. The NAHC then identifies a Most Likely Descendant. This process cannot be initiated prior to the discovery of remains.

Response to Comment 12-03

Please refer to Section 3.12 of the Draft EIS for the environmental setting and analysis of hazardous materials in the vicinity of the Mettler and Maricopa Highway Sites. A thorough environmental database search was conducted as part of this analysis that included numerous State and federal databases and records. A complete list of the databases and records searched and the results obtained is attached as Appendix U of the Draft EIS. A few examples of databases that were accessed include RCRAInfo (USEPA's comprehensive information system), ENVIROSTOR (DTSC's Site Mitigation and Brownfields Reuse Program database), and SWF/LF (Department of Resources Recycling and Recovery's database of active, closed, and inactive landfills).

Response to Comment 12-04

Appendix P and Appendix Q were included on www.tejoneis.com at the link labeled "Volume II – Appendices (I-U)." Appendices were grouped together in order to allow more efficient downloading. Please note that due to the confidential nature of the Cultural Resources Surveys, these were withheld from the version of Appendix Q available online.

COMMENT LETTER 13: RETIRED EDUCATOR

Response to Comment 13-01

Comment noted.

Response to Comment 13-02

BMP C3 (Section 2.2.2.9 of the Draft EIS) would ensure that low-water usage appliances are utilized onsite and drought tolerant landscaping is used in addition to signage promoting water conservation. Please refer to **Response to Comment 8-15** regarding potential impacts to the groundwater basin. As described in Section 2.2.2.5 of the Draft EIS, all wastewater would be treated to a high (tertiary) level and utilized as recycled water for landscape irrigation, toilet flushing, or groundwater recharge.

Response to Comment 13-03

Please refer to Section 3.13.3 of the Draft EIS for the potential lighting impacts due to the alternatives. As specified in that section, lighting would not have adverse effects on the environment, such as the night skies, due to the design features of the alternatives and BMP L included in Section 2.2.2.9 of the Draft EIS, which includes measures consistent with International Dark-Sky Association Model Lighting Ordinance and County zoning ordinance Chapter 19.81 Outdoor Lighting – Dark Skies.

Response to Comment 13-04

Please refer to the **Responses to Comment 8-13** and **9-112** regarding preservation of farmland and open space.

Response to Comment 13-05

Comment noted.

COMMENT LETTER 14: REY REMIREZ

Response to Comment 14-01

Comment noted.

Response to Comment 14-02

As stated in Sections 3.7 and 3.10 of the Draft EIS, the Tribe has committed to providing funding to address increased fire department service needs through the IGA (see Table 3.7-3 as well as Appendix D of the Draft EIS). It is the responsibility of the Kern County Fire Department (KCFD) to properly allocate its resources. It would not be appropriate for the Tribe or the BIA to dictate to the KCFD how to allocate is resources. It would also be difficult and likely impractical for the Tribe or the BIA to monitor the actual implementation of such an allocation and enforce any instances of misallocation for the entire service area of the KCFD.

Response to Comment 14-03

Comment noted.

COMMENT LETTER 15: VINCENT ZARAGOZA

Response to Comment 15-01

Comment noted.

Response to Comment 15-02

Please refer to the **Response to Comment 9-94** with regards to pesticide usage in the agricultural areas surrounding the Mettler and Maricopa Highway Sites. Section 3.12.2 of the Draft EIS discusses the existing agricultural uses onsite and in the surrounding areas, and their associated pesticide use. While some pesticides are volatile, pesticides are typically applied during certain times of the year and are therefore not typically a persistent year-round air-bound risk. The San Joaquin Valley is currently undergoing a volatile organic compound (VOC) emission reduction program for pesticides that is being overseen by the California Department of Pesticide Regulation.[49] This program includes fumigant pesticides, and the California Department of Pesticide Regulation determined that the majority of VOCs originate from non-fumigant

[49] Source: California Department of Pesticides. *Annual Report Volatile Organic Compound Emissions from Pesticides: Emissions for 1990-2018*. July 2020. Available online at: https://www.cdpr.ca.gov/docs/emon/vocs/vocproj/2018_voc_annual_report.pdf. Accessed August 13, 2020.

pesticides. In 2018, the VOC emissions were found to have decreased since the 1990 base year in the San Joaquin Valley.[50] Therefore, additional mitigation measures are not warranted, including the first mitigation measure presented as an example.

With regards to the second recommended mitigation measure presented in Comment 15-2, the referred to residential development is a potential future development that may or may not occur. Furthermore, as described in Section 3.12.2 of the Draft EIS, the Mettler Site is surrounded by agricultural land uses in all directions. Therefore, the commenter's recommendation to relocate the proposed RV park and potential residential development would not change the potential for exposure.

Response to Comment 15-03

Comment noted.

COMMENT LETTER 16: MARGARITA MARTINEZ

Response to Comment 16-01

Comment noted.

Response to Comment 16-02

Please refer to the **Responses to Comments 8-15** and **8-16** where effects to groundwater and wells are addressed.

Response to Comment 16-03

Please refer to **Responses to Comments 8-15** and **8-16** regarding water resources. For traffic, please refer to **Responses to Comments 7-2** through **7-11** and **9-68** through **9-90**. Refer to **Responses to Comments 4-6** and **9-100** regarding crime.

COMMENT LETTER 17: BRENDA MANN

Response to Comment 17-01

Comment noted.

Response to Comment 17-02

Please refer to **Response to Comment 8-15** regarding effects to groundwater and local wells.

Response to Comment 17-03

Please refer to Section 3.8 of the Draft EIS for an analysis of the potential impacts to transportation due to the increased traffic. As documented in this section, impacts related to increases in traffic would be less than significant with mitigation. Please also refer to **Responses to Comments 7-2** through **7-11** and **9-68** through **9-90** for additional traffic-related responses.

Response to Comment 17-04

Please refer to the **Responses to Comments 4-6** and **9-100** regarding crime. Impacts to emergency medical services were addressed in Section 3.10.3 of the Draft EIS. As discussed therein, impacts would be less than significant.

---

[50] Source: California Department of Pesticides. *Annual Report Volatile Organic Compound Emissions from Pesticides: Emissions for 1990-2018*. July 2020. Available online at: https://www.cdpr.ca.gov/docs/emon/vocs/vocproj/2018_voc_annual_report.pdf. Accessed August 13, 2020.

COMMENT LETTER 18: FRANCISO MARTINEZ

Response to Comment 18-01

Comment noted. Please refer to the **Response to Comment 4-7** regarding communications with the Mettler Water District.

Response to Comment 18-02

As described in Sections 2.0 and 3.3 of the Draft EIS, the project incorporates a full WWTP and corresponding recycled water system that would be constructed on the project site. Consequently, the Proposed Project would have no effects on the treatment capacity of existing water treatment facilities.

COMMENT LETTER 19: GRACE WALDEN

Response to Comment 19-01

Please refer to Section 3.8 of the Draft EIS for the potential impacts to transportation due to the increased traffic. As documented in this section, impacts related to increases in traffic would be less than significant with mitigation. Please also refer to the **Response to Comments 7-2** through **7-11** and **9-68** through **9-90** for additional traffic-related responses.

Please refer to Section 3.7.4 of the Draft EIS for the potential impacts regarding crime as well as the **Responses to Comments 4-6** and **9-100** regarding crime.

Please refer to Section 3.11.3 of the Draft EIS for the potential impacts regarding noise as well as **Response to Comment 4-4** regarding noise impacts.

Regarding Valley Fever, Section 3.7 of the Draft EIS analyzed the potential effects of this disease with regards to the alternatives. Valley Fever was determined to have a less-than-significant effect with incorporation of Mitigation Measures 11-A and 11-B in Section 4.0 of the Draft EIS. Furthermore, BMP A in Section 2.2.2.9 of the Draft EIS would also reduce the potential adverse effects of Valley Fever.

COMMENT LETTER 20: DR. DONNA MIRANDA-BEGAY

Response to Comment 20-01

Please refer to the **Response to Comment 12-2** with regards to consultation during the inadvertently discovery of human remains.

Response to Comment 20-02

Comment noted. The BIA did not include the State Water Resources Control Board in the agency consultation but did include the Arvin-Edison Water Storage District, which is the local water agency that the Mettler Site is within.

Response to Comment 20-03

Please refer to the **Response to Comment 12-3** regarding hazardous material database search.

Response to Comment 20-04

Please refer to the **Response to Comment 12-4** concerning the availability of Appendix P and Appendix Q of the EIS.

COMMENT LETTER 21: KAWAIISU TRIBE OF TEJON

Response to Comment 21-01

The commenter's opposition to the Tribe's fee-to-trust application is beyond the scope of NEPA. Nevertheless, upon a preliminary review, the commenter appears to make a number of incorrect and unsupported statements. The commenter states that the fee-to-trust application would constitute an illegal taking of land of the Kawaiisu Tribe of Tejon, and references a legal action (Robinson V. Salazar, Case No. 09-cv-01977-BAM). As described in the court's ruling described in Document 205 of this court action:

> *This claim suffers from the same factual deficiency as plaintiffs' other land claims. As discussed above, plaintiffs have not adequately alleged its claims to the Reservation or treaty rights. "The NAGPRA* [Native American Graves Repatriation Act] *establishes rights of tribes and lineal descendants to obtain repatriation of human remains and cultural items from federal agencies and museums, and protects human remains and cultural items found in federal public lands and tribal lands." Castro Romero v. Becken, 256 F.3d 349, 354 (5th Cir.2001). Accordingly, this claim is dismissed with leave to amend along the same terms and the land-based claim.*

A portion of the court's ruling in the Conclusion section addresses NAGPRA:

> *(2) The Court GRANTS the motion to dismiss without leave to amend as to the Second Claim for Relief for Violation of NAGPRA.*[51]

Furthermore, the Court later affirmed its ruling in Document 240, where it "Granted without leave to amend and with prejudice" to dismiss the action initiated by the Kawaiisu Tribe of Tejon.[52]

The commenter's statement that the Court ruled that the Kawaiisu Tribe of Tejon has vested treaty rights references this footnote (Case No. 09-cv-01977-BAM, Document 240, lines 13 through 20). But the referenced footnote does not state that the Kawaiisu Tribe of Tejon was granted treaty rights. Rather, towards the end of the footnote is a reference to a treaty between the Kawaiisu Tribe of Tejon and "the Utah." The relevance of this treaty is unclear in the context of NEPA or the Tribe's fee-to-trust application. The text of this footnote states:[53]

> *10 A tribe may also have treaty rights which are independent of formal government recognition, as the Kawaiisu claim in the TAC. In United States v. Washington, 520 F.2d 676 (9th Cir.1975), cert. denied, 423 U.S. 1086, 96 S.Ct. 877, 47 L.Ed.2d 97 (1976), the Ninth Circuit held that a tribe's recognition or lack of recognition by the Secretary of the Interior does not determine whether the tribe has vested treaty rights:*
>
> *Nonrecognition of the tribe by the federal government and the failure of the Secretary of the Interior to approve a tribe's enrollment may result in loss of statutory benefits, but can have no*

[51] Source: Case No. 09-cv-01977-BAM, Document 205, available online at https://casetext.com/case/robinson-v-salazar-2. Accessed online September 7, 2020.

[52] Source: Case No. 09-cv-01977-BAM, Document 240, CONCLUSION, available online at https://turtletalk.files.wordpress.com/2012/08/dct-order-dismissing-robinson-clams.pdf. Accessed online September 7, 2020.

[53] Source: Case No. 09-cv-01977-BAM, Document 240, page 19, available online at https://turtletalk.files.wordpress.com/2012/08/dct-order-dismissing-robinson-clams.pdf. Accessed online September 7, 2020.

> *impact on vested treaty rights. Whether a group of citizens of Indian ancestry is descended from a treaty signatory and has maintained an organized tribal structure is a factual question which a district court is competent to determine.*
>
> *Id. at 692–93. Once a tribe is determined to be a party to a treaty, its rights under such a treaty may be lost only by unequivocal action of Congress. Id. at 693; See Greene v. Babbitt, 64 F.3d 1266 (9 Cir. 1995). The Court accepts the well plead factual TAC allegation as true that the Kawaiisu were parties to the Treaty with the Utah. The Court does not accept as true, as stated above, the legal conclusion that the Treaty granted the land rights claimed by the Kawaiisu.*

The commenter's statement regarding Document 223 of Case No. 09-cv-01977-BAM is not understood. The commenter states that "…it is trust land but only now makes the acknowledgement because…." It is unclear what land the commenter is referring to. If the commenter is referring to the Mettler and Maricopa Highway Sites, then such a statement would be incorrect. A fee-to-trust application has been filed regarding the Mettler Site, but the Mettler Site is not currently trust land.

Finally, the commenter makes a number of statements regarding the Tribe's genealogy, allegations of an illegal process, and an Office of Inspector General Report dated January 9, 2013. The commenter provided no support or evidence for any of these statements. Specifically, no references or citations were provided, nor were any document attachments provided by the commenter. Consequently, it is not possible to respond to these statements.

COMMENT LETTER 22: CALIFORNIA HIGHWAY PATROL

Response to Comment 22-01

Comment noted. The possible increase in crimes was examined in Section 3.7.4 of the Draft EIS. The anticipated increase in crime due to the operation of a casino resort and associated facilities is less than 0.5 percent (Appendix I of the Draft EIS), and the casino resort is not anticipated to increase crime more than other large-scale developments.

Impacts to the CHP are addressed in Section 3.10.3.1 of the Draft EIS. As stated therein, ongoing operation of Alternatives A1 and A2 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 State revenues. Potential effects to CHP would be offset by increased State tax revenues resulting from the operation of Alternatives A1 and A2. Therefore, a less-than-significant impact would occur and no mitigation would be required.

Furthermore, the Tribe would compensate the County for the cost of providing law enforcement, fire protection, and emergency according to the terms of the IGA, including building an on-site fire and police station. Because of these factors, the Draft EIS determined that the potential increase in crime and therefore increase in required police services would be reduced to less-than-significant levels.

ATTACHMENTS

ATTACHMENT A

Non-Substantive Comments and Late Comments

Name: Alexandria Diostato

Comment Identification Number: I11

Date: July 8, 2020

My name is Alexandria Diostato. I work and reside in Kern County, and I fully support the Tribe's Casino Project, and I ask that the BIA move along the process expediently. Thank you, and have a wonderful day.

Name: Amanda Frank

Comment Identification Number: I49

Date: July 27, 2020

Hi, this is Amanda Frank, A-m-a-n-d-a F-r-a-n-k. I'm a resident of Kern County, and an active community member.

I just wanted to echo my support and enthusiasm for the Tejon Hard Rock Project. I think that this is going to bring tremendous benefit to our community, including increased economic activity, a new industry and employment opportunities for our county, which is always looking for new opportunities to diversify. And, most excitingly, is the new entertainment options for an area that is seriously lacking in high-quality entertainment, especially concerts.

And we're just as an elected community really thrilled for all the exciting opportunities that will come as a result of this venue. So, I definitely want to voice my support and appreciation for the continuation of the project. Thank you, and have a good day.

Name: Amy Edwards

Comment Identification Number: I10

Date: July 8, 2020

My name is Amy Edwards. I work and reside in Kern County, and I fully support the Tribe's Casino Project, and I ask that the BIA to move along the process expediently.

From: Brittany* <brittou11@aol.com>
Sent: Saturday, July 18, 2020 8:33 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Hard rock casino project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

I am in full support of the casino coming to Bakersfield CA. It will help with the economy in Kern county and it will open many job opportunities.
Thank you,
Brittany Williams

Name: Charlotte Viaz

Comment Identification Number: I40

Date: July 27, 2020

Hello, my name is Charlotte Viaz, and I would like to start with what historians tell me, for instance Dr. John Anderson. In 1851, Tejon Treaty protected 1.2 million acres. The government sent an Indian Chiefs Commission to California to negotiate treaties with native leaders to allocate specific tracts of land where they would be secure from white intrusion. On June 10th, 1851, a treaty was signed by eleven tribes from the southern San Joaquin Valley region in exchange for 763,000 acres to be reserved for Indian occupancy between Tejon pass and the Kern River. Due to embezzlement and corruption, and when the military base closed, the 1.2 million acres was reduced to 763,000 acres, 50,000 acres, 25,000 acres, and so on. And Dr. John Anderson states," The heart of this reduced homeland was Tejon Canyon where the Tejon Indians maintained their adobe homes surrounded by gardens and grazing land for their livestock. And thereafter, for generations this dwindling fragment of the original Tejon land was continually reduced until all of the Indian land title was absorbed by corporations, and the Tejon Indians were scattered."

So, I would like to say, there's no need for a meeting. Without discussion, without delay, sign the land into trust. I support the Tejon project, make history right, be on the right side of history.

From: renee nelson <rdnelson12@gmail.com>
Sent: Tuesday, June 16, 2020 4:19 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Cc: Dutschke, Amy <Amy.Dutschke@bia.gov>; renee nelson <rdnelson12@gmail.com>
Subject: [EXTERNAL] DEIS TEJON TRIBE extension of time

Hi Chad! I wanted to follow up on our ph conversation today regarding two things;
1) I'm requesting an extension of time due to the Covid19 circumstances. I have lost about a week at this point.
2) I will be waiting for the flash drive to review the document.

Thank you for your help and courtesy. It is truly appreciated.
All the best,

Renee Donato Nelson
Clean Water and Air Matter
12430 Backdrop Ct
Bakersfield, California 93306

Find your Light & Love
Sent from my iPhone

From: Deanne G <deandia.garcia@gmail.com>
Sent: Thursday, July 16, 2020 8:00 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Date: Thursday July 16, 2020

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

To Whom this may concern:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Thank you,
Deandia Garcia

From: I_Am_That_Girl <deandia.guerrero@gmail.com>
Sent: Wednesday, July 15, 2020 11:44 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Date: Wednesday July 15, 2020

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

To Whom this may concern:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Thank you,
Deandia Guerrero

From: Debra Gomez <debgomez47@gmail.com>
Sent: Wednesday, July 15, 2020 5:57 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

I am in full support if this project. I believe, it will help boost our economy here in Bakersfield and at the same time provide much needed entertainment close to home. Thank you

Debra j gomez

Date: 07 July 2020

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

Dear Ms. Dutschke:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

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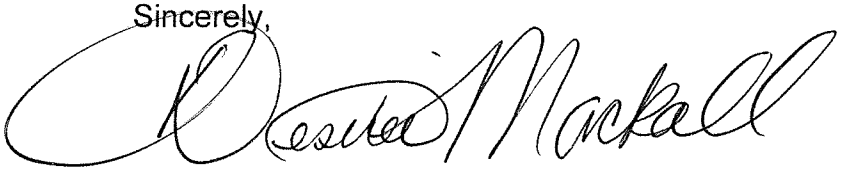
translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,



Desiree Mackall

Name: Dianne Sokha

Comment Identification Number: I42

Date: July 27, 2020

This is Dianne Sokha, and I'm calling because I support the Tejon project and think that the land trust should be signed without delay to move forward on building in Kern County. Thank you. Have a nice day.

From: Donna Yoon <hyunbyoon@gmail.com>
Sent: Wednesday, July 22, 2020 5:21 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Trust Acquisition and Casino Project Draft (EIS)

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Mr. Chad Broussard :

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long,and the BIA,s approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe, By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs,job training services,education and much more.

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely ,
Donna Yoon

Tutudal – good evening/hello: **July 8, 2020**

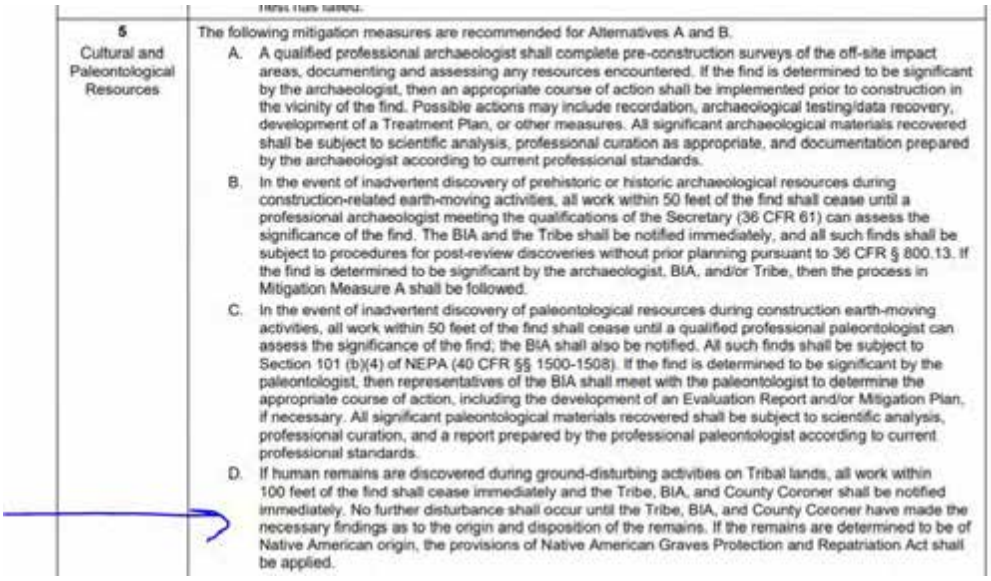
I am Tubatulabal Tribal Cultural Practitioner and Researcher:

Dr. Donna Miranda-Begay, 3125 Reservation Road, Weldon, CA
916-548-5949 - donnabegay@yahoo.com

Overall, our Tubatulabal Tribe located in the greater Kern Valley area – just 70 miles north east of this proposed economic development site of the Tejon Tribal Nation. We share similar history, culture and ancestor experiences.

I have four recommendations for this draft EIS:

1) In the main EIS draft document, Mitigation Measures – 5 – Cultural and Paleonlological Resources, item D, page 4-5. .."If human remains are discovered…" - I did not see California Native American Heritage Commission nor Tejon Tribal or assigned Native American monitor included in the notification process. **Recommend to include**: CA NAHC and Tejon Tribal or assigned Native American monitor to this notification process.



5 Cultural and Paleontological Resources	The following mitigation measures are recommended for Alternatives A and B. 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 CFR 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 CFR § 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 CFR §§ 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.

2) **Recommendation:** If CA NAHC is included in the notification of previous recommendation, add their commission's name to section 5.3 – "State and Local Agencies and Utilities".

5.3 STATE AND LOCAL AGENCIES AND UTILITIES

CALIFORNIA DEPARTMENT OF TRANSPORTATION
Sharri Bender Ehlert, Director, District 6

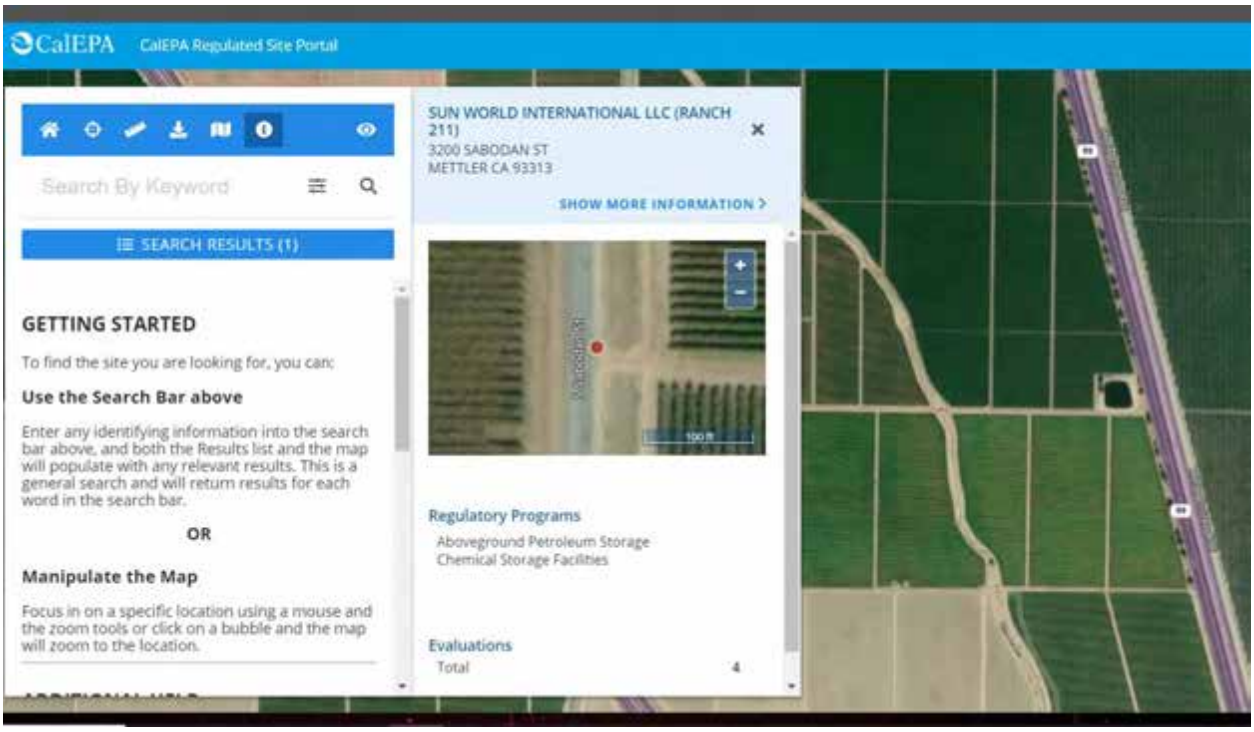
CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE CONTROL
Charles Ridenour, Branch Chief of the Cleanup Program

ARVIN-EDISON WATER STORAGE DISTRICT
Mark Dawson, Engineer
Mary Hough, Land Clerk

WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT
Sheridan Nicholas, Engineer-Manager

KERN SANITATION AUTHORITY DISTRICT
Regina Houchin

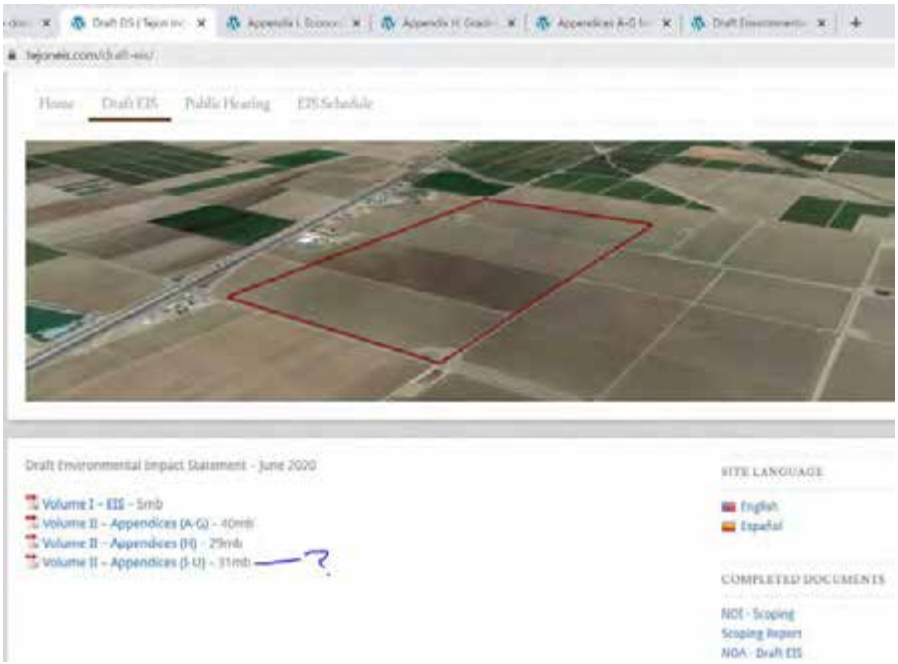
3) Working for State Agency – CalEPA State Water Resources Control Board, but not representing this agency. Recommend: Use CalEPA Regulated Site Portal to see potential surrounding toxic and chemical that are currently being regulated and monitored. This can also assist with long-term risk management of the proposed economic development properties and public safety. URL: https://siteportal.calepa.ca.gov/nsite/map/help



4) Per the Draft EIS main document's listed appendices (Volume II), I did could not locate Volume II – Appendix P Tribal Consultation and Q Cultural Resources Survey for the web links located under the Draft EIS web link: https://www.tejoneis.com/draft-eis/ **Recommend:** Update this web site with proper links to appendices.

APPENDICES (Volume II)

Appendix A	Executive Summary Table
Appendix B	Alternatives Eliminated from Consideration
Appendix C	Off-Reservation Environmental Impact Analysis Checklist
Appendix D	Intergovernmental Agreement
Appendix E	Figures
Appendix F	Transportation Impact Analysis
Appendix G	Water and Sewer System Planning
Appendix H	Preliminary Grading, Drainage and Flood Impact Analysis
Appendix I	Economic and Community Impact Analysis
Appendix J	Cumulative Projects
Appendix K	Expanded Regulatory Setting
Appendix L	Biological Assessment
Appendix M	Air Quality Modeling Files and Calculation Tables
Appendix N	Draft General Conformity Determination
Appendix O	Biological Technical Memorandum
Appendix P	Tribal Consultation
Appendix Q	Cultural Resources Surveys
Appendix R	U.S. Census Data Tables
Appendix S	Farmland Conversion Impact Rating Form
Appendix T	Noise Measurement Reports
Appendix U	EDR Reports



From: E Lozano <emlozano@tejontribe.net>
Sent: Sunday, July 26, 2020 10:24 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Trust Acquisition and Casino Project Draft Environmental Impact Statement (EIS)

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Mr. Broussard,

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Evelyn M. Lozano
Tejon Indian Tribe
714-394-7155

From: Cisco Jav <franciscojavier303@gmail.com>
Sent: Monday, July 27, 2020 4:04 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Cc: Regina Houchin <rhouchin@agcenteraccounting.com>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Acquisition and Casino Project

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This stipulation found in the Appendix A of the "Executive Summary Table" on page "ES-Table 3" of "Summary of Impacts and Mitigation Measures" found under "Groundwater" is not being met because the Mettler County Water Board has not been formally contacted:

"c. Work with and compensate the County or local water district to implement a water conservation program and/or a conjunctive water use program. The program shall (1) assess existing and potential sources of reclaimed wastewater within Kern County Subbasin, and determine potential points of use for the reclaimed wastewater, and/or (2) supplement the County's or local water district's existing water conservation programs to identify and implement additional conservation measures within Kern County Subbasin."

Franciso Martinez
President
Mettler County Water District
1822 Stevens Drive
Mettler, Ca. 93313

Sent from my iPad

From: george jones <geo62669@outlook.com>
Sent: Wednesday, July 15, 2020 12:49 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

From: george jones <geo62669@outlook.com>
Sent: Wednesday, July 15, 2020 12:19 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely, George Jones

From: Gloria Morgan <gloten8@icloud.com>
Sent: Wednesday, July 8, 2020 6:24 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

I'm a registered member of the Tejon Indian Tribe and I fully support this project.

Thank you!

Gloria A Morgan

Sent from my iPhone

Name: Grace Walden

Comment Identification Number: I44

Date: July 27, 2020

Hi, my name is Grace Walden, and I've been living in Mettler for many, many years. My concern would be with this casino would be the increase in [indistinguishable]; there is none here. And the traffic, the noise there's going to be, all the bright lights. Are they going to put up a wall? I was told in the community meeting that there were going to be doing anything for us. But there is a good neighbor law, I believe, that under the good neighbor of faith that you would help us. We're just little people here, and we would like for you to come up with a plan so maybe we can figure this out. Thank you.

From: Gregory Matherly <sales@dissotech.com>
Sent: Saturday, July 18, 2020 12:46 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Trust

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Dear Ms. Dutschke:

Indian Tribes across America have been decimated by poverty, Disease, Alcoholism and domestic abuse, Tribal lands have been taken from Native Americans and are given only promises of help, it is imperative the Department of Interior issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come and help the Tejon Tribe to be self sufficient and prosper in the modern world we live in today.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler.

I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

You may use my Name, Message and support in any way to help the Tejon Tribal Nation.

Sincerely

Gregory D. Matherly
27147 Langside Ave.
Canyon Country, Ca. 91351
(661) 373-5461

From: Lupe Smith <lupe_smith@hotmail.com>
Sent: Wednesday, July 15, 2020 12:22 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Date: 07/15/2020

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

Dear Ms. Dutschke:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

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venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Guadalupe Smith
9014 Bridget Leigh Way
Bakersfield, Ca 93312

LiUNA!
LOCAL 220
2201 "H" Street
Bakersfield, CA 93301
Phone (661) 322-3460 • Fax (661) 281-1333

HERTZ RAMIREZ
Business Manager

DANNY ZARAGOZA
Secretary Treasurer

MARIO SALINAS
President

ANDY GARCIA
Vice President

FRED WALTHER
Recording Secretary

NOE AGUIRRE
Executive Board

JAMES SIMONEAU
Executive Board

RICKY WILLIFORD
Sergeant at Arms

www.local220.us

July 8th, 2020

ATTN: Amy Dutschke
Regional Manager
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

To whom it may concern:

LiUNA! Local 220 has a history of a strong partnerships and support in Kern County as we represent around 1,800 working men and women in the construction and maintenance industries. The Tejon Tribe supports our local and the labor movement, in general, in a number of various ways including a commitment to build the Tejon Hard Rock Hotel and Casino with skilled tradespeople from Kern County. The project will generate thousands of temporary and permanent jobs and will help the local economy in an unmeasurable way. On behalf of our members, contractors and organization I hereby write this letter to support the EIS and ask that the Department of Interior do the right thing and grant the Tejon Tribes the land trust and approve it for gaming and other purposes.

Respectfully,

Hertz Ramirez
Business Manager
LiUNA! Local 220
hramirez@local220.us

Name: Ian Hoose

Comment Identification Number: I7

Date: July 8, 2020

My name is Ian Hoose. I work and reside in Kern County, and I fully support the Tribe's Casino Project, and I ask that the BIA move along the process expediently.

From: Janet Maldonado <itsjanetxo@icloud.com>
Sent: Wednesday, July 15, 2020 12:01 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

I'm so excited for this project! Thank you for thinking of our community

Sent from my iPhone

From: Janet Maldonado <itsjanetxo@icloud.com>
Sent: Wednesday, July 15, 2020 12:02 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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To whom it may concern:

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Janet Vandenk

Sent from my iPhone

From: Jeremy Subriar <subriarj@yahoo.com>
Sent: Thursday, July 9, 2020 2:07 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Good Day Mr. Broussard,

I wanted to send this message and submit my enthusiastic support for the Tejon Indian Tribe and this draft E.I.S. Being a relatively new and a very proud tribal member, I am very much in support of this project. Not only does this project mean great things for the region, the local economy, and the tribe, it also means a future for the younger tribal members. I have worked for a water utility here in So Cal for 5 years now and I was very excited to hear of the possibility of a couple of wells, a water treatment facility and a waste water treatment facility. For the young men and women of the tribe, this means not only possible jobs, but possible careers! The younger Tejon women and men have a wonderful opportunity to land a great job and career in water here. These are skills that are also in demand everywhere in the country. Of course, this project provides many other opportunities for jobs and careers in hospitality, management, finance, operations and the list goes on. A good path for our younger tribal members is what most excites me. Of course, I cannot over state the impact that this will have on our elders. How many years have they lived as Tribal Members without a homeland? This will provide them a new sense of pride that they have never known in all their years! And rightfully so!

Again, I fully support the draft E.I.S. for the Tejon Indian Tribe Trust Acquisition and Casino Project.

Sincerely,

Jeremy Subriar
3537 Bryce Way
Riverside, CA 92506

From: Juana Delgado <jdlgado49@gmail.com>
Sent: Thursday, July 16, 2020 7:13 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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I will like to have this casino here in town ..that way we don't need to go far to have fun. and gamble...

From: JUDY RICE <jrice5722@aol.com>
Sent: Wednesday, July 15, 2020 5:51 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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I am in full support of the casino I believe it will provide many employment opportunities. It will also bring many people to the area so it will help the economy. It will give people a place to seek entertainment without having to drive a long way. It will add a sheriff's station and a fire department out in the Mettler area. There's so many things it will provide to the residents and the travelers that are passing thru. Please make a decision quickly and please pass it thank you. Judy Rice

Sent from my iPhone

From: kathy_may5 <kathy_may5@aol.com>
Date: July 8, 2020 at 8:05:25 AM PDT
To: "Broussard, Chad N" <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project I see this endeavor as a positive for the community for the tribe absolutely for the state I am absolutely looking forward to what casino and helping out the community

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Sent from my Verizon, Samsung Galaxy smartphone

From: kdevine64@gmail.com <kdevine64@gmail.com>
Sent: Wednesday, July 15, 2020 11:27 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

Dear Ms. Dutschke:

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Kathy Streich
30335 Hwy 33, Maricopa, CA 93252
PO Box 46, Taft, CA 93268

From: keith kraemer <keithkraemer@att.net>
Sent: Wednesday, July 15, 2020 4:05 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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I am excited for a casino in the Bakersfield area, I drive to eagle mountain and to Tachi often and it would be awesome to have a nice casino closer to home. Plus with entertainment it would be really nice, please go ahead with the project. Also it would bring a lot of needed jobs to the area.

Sent from AT&T Yahoo Mail for iPhone

Name: Kelly Albright

Comment Identification Number: I4

Date: July 8, 2020

Yes, my name is Kelly Albright, and I support the Tejon Tribe and the project for the casino. Thank you so much. Bye.

Lorelei H. Oviatt, AICP, Director
2700 "M" Street, Suite 250
Bakersfield, CA 93301-2323
Phone: (661) 862-5050
Fax: (661) 862-5052 **TTY Relay 1-800-735-2929**
Email: kerncd@kerncounty.com
Web Address: http://kernplanning.com

PLANNING AND NATURAL RESOURCES DEPARTMENT

Planning
Community Development
Administrative Operations

August 21, 2020

US Department of Interior
Bureau of Indian Affairs
Pacific Regional Office
Amy Dutschke Regional Director
Attn: Chad Broussard
2800 Cottage Way Room W- 2820
Sacramento, California 93825

RE; Kern County Position – DEIS – Tejon Indian Tribe Casino Resort
Alternative B – Casino Resort on Maricopa Highway Site

Dear Ms. Dutschke,

On August 18, 2020 the Kern County Board of Supervisors, on the regular agenda, affirmed the boundaries of all the Agricultural Preserves in the unincorporated areas of Kern County. The purpose of the Agricultural Preserve Program is to identify areas with land zoned A (Exclusive Agriculture) with water for irrigation and surrounding agricultural resources that are intended for long term agricultural use. Alternative B- Maricopa Highway Site (APN 238-203-14 and 238-203-22) are actively farmed in vineyards for grapes, have an allocated agricultural water supply, is zoned A (Exclusive Agriculture) and was included, by resolution, within the boundaries of Agricultural Preserve No. 12.

Alternative A – Mettler Site, although zoned for Limited Agriculture (A-1) and farmed in the past, is not qualified to be included in an Agricultural Preserve.

Kern County is opposed to Alternative B – Maricopa Site as the selected site as it would take productive irrigated farmland permanently out of production. The county is faced with the loss of significant farmland beginning in 2020, that produces both jobs and tax revenue, through the implementation of the Sustainable Groundwater Management Act which cuts allocations for specific parcels of land. If they are fallow now, it is unlikely they would be allocated water in the future for farming. The Maricopa site is currently planted, is zoned for Exclusive Agricultural uses and is within an established Agricultural Preserve and is important to the county for long term preservation of Agricultural uses.

Further the location of the regional Fire and Law enforcement facility, that will be constructed and operated in support of this project, on the Mettler site (Alternative A) is centrally located to provide service for the entire area of residential, commercial and industrial uses in the Grapevine from both I-5 and Highway 99.

Kern County continues to support approval of the Mettler Site location (Alternative A) and opposes the Maricopa Highway Site location (Alternative B) as interfering with the county's long-term program to conserve agricultural uses.

Sincerely,

Lorelei H. Oviatt

LORELEI H. OVIATT, AICP, Director
Kern County Planning and Natural Resources Department

LHO

Cc: County Administrative Officer
County Counsel

Name: Kim Person

Comment Identification Number: I5

Date: July 8, 2020

Hi, my name is Kim Person— p-e-r-s-o-n —and I would like to support the Tejon Tribe Indian Casino Project and all that comes with it. Thank you.

From: Lily Alvarez <lilya725@yahoo.com>
Sent: Monday, July 20, 2020 12:54 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

I am proud to add my name to the list of folks supporting the Tejon tribes' federal recognition, their claim to land ceded unfairly and their current endeavor to establish an economic base for their members. As residents of Kern County we can see the benefits to the quality of life that a future casino will bring to this area including employment, infrastructure and public safety. Please consider my comments in support.
Sincerely Lily Alvarez.
Sent from my iPhone

APPLIED TECHNOLOGY GROUP, INC.
SPECIALIZED COMMUNICATIONS SERVICES
4440 Easton Drive • Bakersfield, CA 93309 • 661-322-8650

July 15, 2020

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

Dear Ms. Dutschke:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Lori B. Barnes

Lori B. Barnes
President

From: Lori Barnes <lbarnes@atginternet.com>
Sent: Wednesday, July 8, 2020 7:18 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello Mr. Broussard:

I am a long-term resident of Kern County. I support the Tejon Indian Tribe and the proposed locations of land for the Hard Rock Hotel & Casino project. Kern County will benefit exponentially from this project, not only economically, but also by adding much needed permanent jobs to our community and a new social venue we have never witnessed in Kern County. With the planned development of a sheriff and fire substation near the property, this will be a safer community. The project is self-sufficient and will not affect the existing County facilities. This project will enhance our county and bring new awareness and interest from other potential developers. I'm also excited about the opportunity to have world class entertainment, convention facilities, health spa and additional restaurants in our community. I encourage the BIA to approve the Environmental Impact Study and allow the Tejon Tribe to bring this amazing project to Kern County.

Thank you!

Lori Barnes
President
Applied Technology Group, Inc.
4440 Easton Drive
Bakersfield, CA 93309
661-322-8650 Ofc
661-322-4060 Fax

lbarnes@atginternet.com
atginternet.com

APPLIED TECHNOLOGY
SPECIALIZED COMMUNICATIONS SERVICES

From: Maarten Verhoeven <maartenverhoeven1968@gmail.com>
Sent: Wednesday, July 15, 2020 11:31 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Date: 07/15/2020

Dear Ms. Dutschke:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully

support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,
Maarten Verhoeven

Sent from my iPhone

From: Marsha Harwardt <mharwardt@gmail.com>
Sent: Wednesday, July 15, 2020 1:01 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Trust Acquisition and Casino Project Draft Environmental Impact Statement (EIS)

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

Dear Ms. Dutschke:

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The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Marsha Harwardt

From: Michael Budak <dbudak@att.net>
Sent: Sunday, July 19, 2020 2:12 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Chad,

I respectfully request a final Environmental Impact Statement (EIS) and approval of the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and much more.

I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals

necessary for the Tribe to open the Hard Rock facility.

Sincerely,
Michael D Budak

Name: Mountain Enterprises

Comment Identification Number: O1

Date: June 17, 2020

Please send a flash drive to the Mountain Enterprises of the DEIS. The address is PO 610, Frazier Park, CA 93222. That is the Mountain Enterprises, attention editor. Thank you. The telephone number is 661-221-8328, ask for Patric Hedlund. Thank you.

Kern County
Black Chamber
of Commerce

Hard rock

MY name is Nick Hill III, President/C.E.O. Of the Kern County Black Chamber of Commerce

We commend the Hard Rock Casino for their efforts to bring a new and exciting venue to our county of Kern. Their effort will not only bring 2 fold gainful employment, 1st in construction opportunities, 2nd long term employment, in so many different ways across the county, it is especially gratifying to communicate with a company that will work with our community of color. They have openly expressed a willingness to work African American small business, and that would insure the strengthening of our local economy, creating long tern increased tax revenues, construct a sheriff and fire station on location that would also increase the services in the general area. To close, it's gratifying to know that such a large corporation would recognize our chamber and all of our members that we represent, and to reach with meaningful dialog, that would have us all extremely excited to have this type of venue in our area.

Name: Noah Rodriguez

Comment Identification Number: I9

Date: July 8, 2020

Hi, my name is Noah Rodriguez. I work and reside in Kern County, and I fully support the Tribe's Casino Project, and I ask the BIA to move along the process expediently.

From: Pat's Gmail <2pat.rangel@gmail.com>
Sent: Wednesday, July 15, 2020 8:35 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello Sir,

I just wanted to voice my opinion in congratulating you. On A Job Well Done!!

My entire family can't wait for the Tejon Hard Rock Casino to open it's doors!!!!

Thank You For A Job Well Done!

Patricia Rangel,
Diegueno Tribe Member
Bakersfield, CA 93313

Sent from my iPhone

From: Pete Leveroni <pleveroni@brighthouse.com>
Sent: Wednesday, July 15, 2020 1:54 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Hard Rock Hotel & Casino Tejon Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

The impact of Interior's approval will be overwhelmingly positive for the Tribe. By providing a permanent homeland from which they may conduct gaming, the tribe will be able to generate critical governmental revenue to provide quality housing, food and nutritional assistance, medical care, cultural programs, job training services, education and much more.

I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

From: Rebecca Gonzalez <rebeccagonzalez2016@yahoo.com>
Sent: Wednesday, July 8, 2020 8:54 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello, my name is Rebecca Gonzalez and I am a Tejon tribal member. I Whole heartedly support the Hardrock Tejon Casino project and I am asking the BIA to move forward with the EIS and finish the process as soon as possible.

Thank you

Name: Richard Lougo

Comment Identification Number: I24

Date: July 15, 2020

Hi, this is Richard Lougo with SBS of Bakersfield calling in to let our support be known that SBS of Bakersfield fully supports the Tribe, Tejon Tribe, and placing land into trust for a casino in the Kern County area. We here at SBS fully support this move by the Tribe for it will bring more jobs to Kern County, and increase security at the southern end of Kern County as well as economic benefits for both the Tribe and the county. So, please, full support for SBS of Bakersfield and the Tejon Tribe. Thank you.

From: ATT Online <rsubriar@att.net>
Sent: Tuesday, July 21, 2020 6:58 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

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Good morning. My name is Richard Subriar and I am a member of the Tejon Indian Tribe. I enjoyed seeing the support received for the casino project during the virtual meeting recently. I wanted to also provide my support for the project and hope the BIA will complete the process as soon as possible. Thank you.

From: Ridingredhorse <ridingredhorse@aol.com>
Sent: Sunday, July 26, 2020 7:22 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Indian Tribe Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Date: July 26th, 2020

ma' - Hello

From:
Samantha C. Riding-Red-Horse
PO Box 1402
3190 Reservation Road
Weldon, California 93283
C: (760) 417-3673
E: ridingredhorse@aol.com

Re:
DEIS Comments, Tejon Indian Tribe Casino Project.

My name is Samantha "Sam" Riding-Red-Horse, enrolled with the Kern River Valley Tübatulabal Tribe, Lake Isabella, Kern County, California

I live (yütiyamup - at miranda rancheria) eleven full time residents and six part time residents (PD Indian Allotment Ind 14, 160 acres, Weldon, CA.)

Tübatulabal tribal territory, our traditional name for this old village is yütiyam.

The Kern River Valley Tübatulabal Tribe has 504 Tribal Members. A Non-Federally Recognized California Historic Treaty Tribe in the United State of America, in Kern and Tulare counties, California.

I support the Tejon Indian Tribe Casino Project, one hundred percent.

To my relatives of the Tejon Indian Tribe please don't forget your relatives from the Kern River Valley Tübatulabal Tribe when the casino opens some of my tribal clan from kern river valley need jobs please keep me informed.

Blessings on your land, water, animal people and all the Tejon (inyaana - indian) people.

tüwü - Thank you,
Samantha C. Riding-Red-Horse
Kern River Valley Tübatulabal Tribal Member, Tribal Family Researcher.

From: Shane Layman <laymanshane@gmail.com>
Sent: Wednesday, July 15, 2020 3:18 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

To those who I'm speaking to this is a perfect location for Indian casino in the heart of California I am a Cherokee Indian I fully support this location as a native American and a union 155 Ironworkers this brings work to our community and help support our community I live on the Central coast and I visit the casinos often it is a much-needed resource for community and I fully support it. sincerely Shane layman if you have any questions you can call me at 805-610-9978 or email me at laymanshane@gmail.com

From: cheryl schmit <caschmit@hughes.net>
Sent: Friday, June 19, 2020 5:04 PM
To: amy.Dutsechke@bia.gov <amy.Dutsechke@bia.gov>; Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] TEJON DEIS - REQUEST FOR EXTENSION

June 19, 2020

Dear Regional Director Dutschke and Mr. Broussard:

On behalf of Stand Up For California, I write to request a 30-day extension of time to submit comments on the Draft Environment Impact Statement (DEIS) for the Tejon Indian Tribe's Proposed Fee-to-Trust Acquisition and Casino Resort Project in Kern County, California. Currently the date for submission is July 27, 2020.

As you know, two-part determinations are extremely controversial in California. There are citizens in the community that are concerned about the environmental and community impacts of the project. In light of the ongoing COVID-19 pandemic and the additional difficulties in outreach to the local community and in procuring the assistance of technical consultants, Stand Up For California would sincerely appreciate an additional 30 days in order to make appropriate comments.

I look forward to your timely response.

Sincerely,

Cheryl Schmit, Director
Stand Up For California
(916) 663-3207
caschmit@hughes.net
standupforcalifornia@hughes.net

From: Teresa Mejia <amamamejia@gmail.com>
Sent: Wednesday, July 15, 2020 4:28 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello!

I just wanted to participate and offer my support for the Taejon Indian Tribe in their efforts to acquire land and to build the casino. I definitely believe this is a win for everyone involved! My city , my county and most of all, my neighbors, the Tejon Indians, and in this day and age right now who would not want to support them. I have seen the success for the tribes at Eagle Mountain in Porterville and the Tachi in Lemoore. It's a good thing and I would like to encourage you approve their request.

Sincerely
Teresa Mejia
5823 Pine Canyon Dr
Bakersfield, CA 93313

Sent from my iPad

From: Tim George <dairyfixer@hotmail.com>
Sent: Thursday, July 9, 2020 7:32 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Tejon Hard Rock Hotel Casino

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello Sir:
As a person who currently works in the hospitality industry in Bakersfield, I wanted to voice my total support for the proposed project for the Tejon/Hard Rock Casino/hotel. I firmly believe that it will be a welcome and needed addition to the market in the Bakersfield area. I have aspirations of getting a job there once the project gets off the ground. I would welcome any response or update that you may have as to the status of the project.
Thank you and best of luck!
Sincerely,

Tim George
126 Washington Ave Apt A
Bakersfield CA 93308
661-332-6018
dairyfixer@hotmail.com

Sent from Outlook

From: Tim George <dairyfixer@hotmail.com>
Sent: Thursday, July 16, 2020 7:38 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Mr. Broussard:

As a resident of Bakersfield for over 20 years, I wanted to voice my support for the potential project for the Tejon Indian Hotel and Casino. The benefits of such a project would be a wonderful opportunity not only for the Tejon Indian Tribe, but for the entire area.
I also work in the hospitality industry in Bakersfield, and have hopes of gaining an advancement of my career with this project. I strongly encourage you and those connected to this process to proceed advancing this project to its ultimate and highly anticipated conclusion.
Thank you for your time and consideration.

Yours very truly,

Tim George
126 Washington Ave Apt A
Bakersfield CA 93308
661-332-6018
dairyfixer@hotmail.com

Sent from Outlook

From: Tulao Visesio <visesio3478@gmail.com>
Sent: Wednesday, July 8, 2020 7:44 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello Chad,

My name is Tulao Visesio, I am a Tejon Tribal Member and I would like the BIA to know that I fully support the project.

Thank you,
Tulao Visesio

From: Mena, Valerie J <Valerie.Mena@charter.com>
Sent: Wednesday, July 15, 2020 3:55 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

July 15, 2020

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

Dear Ms. Dutschke:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

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I am also pleased to hear of the Tribe's partnership with Hard Rock International, one of the most recognized entertainment brands in the world. The proposed Hard Rock Hotel & Casino Tejon project will be a multi-million dollar entertainment venue that will bolster Kern County's local economy by providing nearly 3,000 jobs (construction and permanent), increase tourism, privately funded infrastructure improvements at no cost to the taxpayers, additional police, fire and emergency services for the County, and family-friendly entertainment. The approval of this EIS translates into benefits for the Tribe as well as the surrounding communities of Arvin, Lamont, Frazier Park, Bakersfield, and Mettler. I fully support the Tribe's efforts to place the land into trust for gaming and other purposes. It will result in overwhelmingly positive impacts to the surrounding community.

For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Valerie J. Mena
537 West Avenue J13
Lancaster Ca 93534
661-886-5097

The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

Name: William Hoose

Comment Identification Number: I8

Date: July 8, 2020

Hi, this is William Hoose. I'm a resident of Bakersfield, and I just wanted to say that I fully support the Indian Casino that is being proposed south of Bakersfield, off of I-5. Thank you very much.

From: xavier lopez <xavierlopez1989@outlook.com>
Sent: Friday, July 17, 2020 2:45 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] Draft EIS Comments, Tejon Indian Tribe Trust Acquisition and Casino Project

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Date:7/17/2020

Bureau of Indian Affairs, Pacific Region
Attn: Amy Dutschke, Regional Director
2800 Cottage Way
Sacramento, CA 95825

Re: Tejon Indian Tribe Trust Acquisition and Casino Project
Draft Environmental Impact Statement (EIS)

Dear Ms. Dutschke:

I respectfully request the Department of the Interior to issue a final Environmental Impact Statement (EIS) and approve the applications of the Tejon Indian Tribe. The Tejon Indian Tribe has been landless for too long, and the BIA's approval will establish land in trust for the Tribe and generations to come.

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For these reasons I urge you to issue without delay a final EIS and all approvals necessary for the Tribe to open the Hard Rock facility.

Sincerely,

Xavier Lopez
5513 canaveral dr
Bakerafield Ca 93307

Sent from my T-Mobile 4G LTE Device

Name: Zoe Gonzales

Comment Identification Number: I6

Date: July 8, 2020

Hello, my name is Zoe Gonzales, and I am an enrolled member of the Tejon Indian Tribe. I work and reside in Kern county, and I fully support the Tribe's Casino Project and I ask the BIA to move along the process expeditiously. Thank you.

ATTACHMENT B

Public Hearing Transcript

BUREAU OF INDIAN AFFAIRS

PUBLIC HEARING FOR THE PROPOSED

TEJON INDIAN TRIBE TRUST ACQUISITION AND CASINO

PROJECT ENVIRONMENTAL IMPACT STATEMENT

---o0o---

JULY 8, 2020

---o0o---

BALINDA DUNLAP, CSR NO. 10710, RMR, CRR
464873

BUREAU OF INDIAN AFFAIRS

PUBLIC HEARING FOR THE PROPOSED

TEJON INDIAN TRIBE TRUST ACQUISITION AND CASINO

PROJECT ENVIRONMENTAL IMPACT STATEMENT

---o0o---

JULY 8, 2020

---o0o---

REPORTER: BALINDA DUNLAP, CSR NO. 10710, RMR, CRR

MR. BROUSSARD: Good evening. The Bureau of Indian Affairs welcomes you to this public hearing for the proposed Tejon Indian Tribe Trust Acquisition and Casino Project Environmental Impact Statement, or EIS for short.

Due to limitations on large gatherings and in the interest of public safety, this hearing is being held remotely using the Zoom platform.

My name is Chad Broussard, and I will be your facilitator at this evening's public hearing. I am an environmental protection specialist for the Pacific Region of the Bureau of Indian Affairs, or BIA for short.

The BIA is a bureau within the United States Department of Interior. The BIA is also the primary federal agency charged with carrying out the United States' trust responsibility to American Indian and Alaska Native peoples and also maintaining the federal-government-to-government relationship with federally-recognized tribes.

Here with me tonight is Analytical Environmental Services, the BIA's EIS consultants.

The hearing is being interpreted in Spanish. In order to hear everything in Spanish, please click the interpreter icon at the bottom of

your screen and click "Spanish."

This hearing is also being presented with closed captioning for the hearing impaired. To activate this feature, please click on the closed captioning icon at the bottom of your screen.

The purpose of tonight's hearing is to facilitate public review and comments on the draft Environmental Impact Statement, or EIS, for the proposed fee-to-trust land acquisition in unincorporated Kern County, south of the City of Bakersfield, and also the subsequent proposed development of a casino for the federally-recognized Tejon Indian Tribe.

If the BIA approves the fee-to-trust acquisition, it will hold the property in trust for the Tribe, allowing for the development of a gaming facility on site.

However, the National Environmental Policy Act, also known as NEPA, requires that the BIA conduct an environmental review before deciding whether to accept the land into trust.

A draft EIS has been prepared as this first step in the environmental review process. We published the draft EIS on June 12, 2020.

The purpose of tonight's hearing is to

facilitate public review and comments on the draft EIS.

We will consider all comments received during the public comment period, which ends on July 27, 2020, and then we will publish a final EIS, which will include responses to all substantive comments.

If you would like to make a spoken comment at the hearing tonight, please use the Zoom "Raise Hand" feature. To raise your hand, click the hand symbol at the bottom of your screen or enter *9 if you're joining by phone. This will place you in line to speak.

We will take speakers in the order of their hands raised. When it is your turn to speak, I will call your name and unmute your connection so that you can give your comment. Everyone will be given three minutes to make their remarks to ensure that everyone has the opportunity to speak.

A public hearing is not the best forum for lengthy comments due to the constraints of time. If you have a lengthy comment, we encourage you to submit a written letter. All comments will receive equal weight, whether they are spoken or written.

We have a stenographer here that will

record your spoken comments word for word so that they can be considered fully as comments on the record.

With that said, please restate your name for the record before giving your comment and please speak as clearly as possible so that the stenographer can understand and accurately document your words.

Please understand that the purpose of tonight's hearing is not to have a question-and-answer session or a debate of any kind. We will not respond to questions or engage in debate. Instead we are here to listen and document your comments.

We will then carefully consider your spoken and written comments received by the close of the comment period, which, again is July 27, 2020, and we will respond to all substantive comments in the final EIS, which will also be made available to the public for review.

Now we have asked our EIS consultants to provide you with a brief presentation on the proposed action, its purpose and need, the alternatives analyzed in the EIS and the EIS process.

MS. ALVAREZ: Thank you and good evening. The purpose of the hearing tonight is to obtain public comments and feedback on the draft environmental impact statement, also known as a draft EIS, prepared for the Tejon Indian Tribe Trust Acquisition and Casino Project, which will be referred to as "the proposed project" from here on out.

This presentation provides a basic overview of the NEPA process and a summary of the proposed project.

NEPA requires federal agencies to take into account the environmental impact of federal actions and projects throughout their implementation.

Environmental impact statements, known as EISes, are required for major federal actions that can significantly impact the quality of the environment.

There are three proposed actions that are part of the proposed project. The first one is the Tejon Indian Tribe proposes that the Department of the Interior takes approximately 306 acres that is located in Kern County into federal trust for the benefit of the Tribe.

Second, the Secretary of the Interior issues a two-part determination that could make the site eligible for gaming in accordance with the Indian Gaming Regulatory Act, known as IGRA.

And third, the Tribe requests approval of a management contract by the chairperson of the National Indian Gaming Commission, known as NIGC.

The Tribe subsequently proposes to develop the site with a casino resort, RV park, fire and sheriff station, water infrastructure, water and wastewater treatment facilities, and other supporting facilities.

Federal purpose and need for the proposed action is to facilitate tribal self-sufficiency, self-determination and economic development, satisfying both the BIA's land-acquisition policy and the principal goals of IGRA. The need for the Department to act on the Tribe's application is established by the Department's regulation and NIGC's regulation for review of management contracts.

At the request of the Tribe, this EIS has been prepared to comply with the expected requirements of a tribal environmental ordinance in addition to NEPA. The tribal environmental

ordinance may require a tribal environmental impact report, also known as a TEIR.

To reduce paperwork and eliminate redundancy, the EIS and the TEIR have been prepared in coordination, resulting in a joint EIS/TEIR.

This slide illustrates the key parts in the NEPA and compact environmental review process. Scoping is the first step in the process and is considered the "information-gathering stage," where input that is related to the project, alternatives and analysis is obtained from the public and agencies. The preliminary step in the scoping process is the release of a Notice of Intent, or NOI.

A draft EIS is prepared based on the information obtained during the scoping process and is then released for public review and comment.

Comments obtained during this review period are considered and responded to in the final EIS. This final EIS is released to the public during a 30-day waiting period prior to the release and decision on the project, which is summarized in a Record of Decision, or a ROD.

The scoping process for the draft EIS commenced with the release of an NOI on August 13,

2015. The scoping period lasted from August 13 to September 14, 2015. During this period, a scoping comment public hearing was held on September 1st, 2015. A scoping report that summarized the comments received during the scoping comment period and the project alternatives was published on February 22, 2019.

The draft EIS has been released on June 12, 2020, with a comment period closing for this document on July 27, 2020.

The final EIS will be available for viewing during the minimum waiting period of 30 days, and then at least 30 days after publication of the final EIS, the BIA will issue a record of decision.

The key components of the draft EIS are organized into the four chapters shown on the slide.

The following slides will be giving an overview of the proposed project and the alternatives to the proposed project.

This figure shows the 306-acre proposed trust property that is known as the Mettler site, which is approximately 14 miles south of the City of Bakersfield, and just west of State Route 99.

This figure shows the alternative proposed trust property, the Maricopa Highway site, which is west of the Mettler site and is approximately 118 acres in size. To start off, the Mettler site shall be discussed first in this presentation and then the Maricopa Highway site.

Here we can see the proposed trust property and the surrounding land uses. The Mettler site consists of four parcels located in an unincorporated portion of Kern County, and the property is zoned by the County as "limited agriculture."

The property is currently developed with agricultural fields, a single residence, and agricultural storage buildings.

Land uses surrounding the site include the town of Mettler to the east, agriculture lands, and various commercial development, such as gas stations.

Next I shall discuss the alternatives proposed for the Mettler site, and then I will discuss the alternatives proposed for the Maricopa Highway site.

Alternative A1, the proposed project, would be developing the Mettler site with an

approximately 715,000-square-foot casino resort that includes a 400-room hotel and RV park and an approximately 10,000-square-foot fire and sheriff station and associated facilities, such as water and wastewater facilities, that would include a potable water supply that would be provided to the project site. We have two proposed groundwater wells that are treated by an on-site water treatment plant.

Furthermore, to ensure that the project would not result in a net increase in water demands for Kern County, the proposed project will include the construction of an on-site packaged wastewater treatment plant that would treat the wastewater generated on site to a tertiary level that is suitable for recycled water use.

The recycled water produced at the plant would be utilized to irrigate landscaping at the proposed project and for toilet flushing. Any treated water not recycled on site would be discharged to on-site ponds to percolate back into the groundwater table.

Additionally, the casino resort would employ approximately 4,000 construction employees and approximately 3,500 operational employees.

This shows a site plan of the proposed facilities under Alternative A1, the proposed project.

Alternative A2 is similar to Alternative A1, but with a 23 percent reduction in square footage compared to Alternative A1.

Alternative A2 would develop the Mettler site with an approximately 552,000-square-foot casino resort with a 300-room hotel, no RV park, the same size on-site fire and sheriff station and associated facilities, including water and wastewater facilities, and employ approximately 20 percent less construction and operational employees compared to Alternative A1.

This shows a site plan of the proposed facilities under Alternative A2, the reduced casino resort alternative. As shown, the site plan is similar to Alternative A1, but simply it has reduced square footage in several of the resort facilities.

Alternative A3, the organic farming alternative, would maintain the current uses of the Mettler site and involve the conversion of current farming practices from conventional to organic methods. No casino resort or associated facilities

would be developed.

Alternative A3 concludes the alternatives for the Mettler site. Now we will discuss the alternative proposed for the Maricopa Highway site.

The Maricopa Highway site is smaller than the Mettler site and consists of two parcels. It is located in an unincorporated portion of Kern County, less than one mile west from the Mettler site.

It is zoned exclusively for agriculture and is currently developed with agriculture.

The surrounding land uses are similar to the Mettler site. There is agriculture land surrounding the site and commercial development is located directly north.

Alternative B would consist of the same proposed casino resort and similar associated facilities as Alternative A1, but it would be developed on the Maricopa Highway site instead of the Mettler site.

The primary component of Alternative B that would differ from Alternative A1 is the RV park. Alternative B would have 50 spaces instead of 220 spaces, as proposed in the Alternative A1.

As can be seen, the site plan for

Alternative B is similar to Alternative A1.

This shows an architectural rendering of the proposed casino resort under Alternatives A1, A2 and B.

This is the last alternative in the draft EIS, and under this alternative, Alternative C, the BIA would not acquire land to be held in trust for the Tribe. Furthermore, no development would occur and existing onsite uses, primarily agriculture, would continue on the Mettler and Maricopa Highway sites.

Now we shall review the environmental topics analyzed within the draft EIS.

The draft EIS provides a description of both the affected environment and the environmental consequences associated with the issue areas shown on the slide.

The draft EIS identifies a number of mitigation measures to avoid or reduce the potential adverse environmental affects resulting from the project alternatives.

For the sake of brevity, we will only review mitigation measures identified for Alternative A1.

To prevent impacts from soil erosion, the

Tribe would comply with the National Pollutant Discharge Elimination System general construction permit requirements that includes the preparation of a Stormwater Pollution Prevention Plan, which is known as a SWPPP. The SWPPP would require best management practices to be implemented during construction to prevent siltation and contamination of runoff.

For water resources, Alternative A1 would increase groundwater consumption and could cause adverse affects to water quality. To prevent potential adverse affects to water quality and supply, the Tribe will do the following:

Treat water and wastewater to regulatory standards set forth in the Clean Water Act and the Safe Drinking Water Act. Furthermore, potable water and treated wastewater will be tested and monitored regularly to ensure it meets the standards that apply to those laws.

Engage in groundwater conservation and monitoring to reduce the potential impacts to the underlying aquifer.

And water infrastructure will be positioned as to have the least impact on existing nearby wells. Furthermore, water infrastructure

will also be positioned to prevent possible contamination from the on-site wastewater facilities.

For air quality, Alternative A1 would cause air quality pollution thresholds to be exceeded for certain federally-recognized air pollutants, such as a nitrogen oxide compound. To reduce the adverse impacts from the increased air pollution that would be caused, emission reduction credits would be purchased as needed to reduce the adverse affects of the air pollutants.

For biological resources, the project site is heavily disturbed, but it does provide very low-quality foraging habitat for certain species that have the potential to occur in the region, such as the burrowing owl.

To reduce potentially adverse affects to special-status species and protected groups, such as migratory birds, preconstruction surveys would be conducted prior to construction, and if those species were found, then avoidance measures would be implemented to reduce adverse affects.

For cultural and paleontological resources, no significant cultural or archeological source were discovered on site. However, to reduce

potential impacts to undiscovered cultural or paleontological resources during construction, construction crews would be required to halt work if such a discovery was made and contact the appropriate agency and tribe. This would also be the procedure if human remains were uncovered.

Furthermore, before off-site infrastructure construction can start, a survey would be conducted to assess the potential archeological and paleontological resources in those areas.

For transportation, Alternative A1 will lead to an increase in traffic volume in the opening year of 2023 and the commemorative year of 2040. To reduce the adverse impacts from this, the Tribe would make a fair share of payments to improve the impacted intersections and road segments. The impacted roads would include Interstate 5 and Maricopa Highway.

For public services, the implementation of Alternative A1 would have less than significant impacts on fire and police services, but it would require additional infrastructure to gain access to electricity and gas.

Therefore, the Tribe will pay a fair share

of payments to SoCalGas and PG&E in order to mitigate the adverse affects of these required infrastructures.

For hazardous materials, Alternative A1 is located within the range of a soil-dwelling fungus that causes valley fever, and the construction could increase the risk of valley fever infection due to the dust that would be generated and possibly inhaled.

Mitigation measures would be implemented during construction to lessen the risk to construction workers and nearby residents from the soil-dwelling fungus that could be in the construction-induced dust.

This will include training construction workers on the locations and symptoms of valley fever and methods to minimize the exposure to dust.

Furthermore, a valley fever dust mitigation plan will be developed that will encompass a program to assess the possible exposure to the soil-dwelling fungus that causes valley fever and to outline appropriate safety precautions that would be implemented to reduce the risk of exposure to this fungus.

This concludes the brief overview for the

risks in Alternative A1.

The draft EIS is available for review at the following places by appointment: The Bureau of Indian Affairs Pacific Regional Office and the Kern County Planning and Natural Resources Department.

In order to view the draft EIS at these places, please call the listed number to make an appointment.

An electronic version of the EIS is available for viewing and download at www.tejoneis.com.

All comments are due to the BIA by July 27, 2020.

After the public review/comment period on the draft EIS is closed, the BIA will prepare a final EIS that will include responses to the comments received and revisions to the draft EIS.

The final EIS will be made available to the public for review in a similar manner as the draft EIS.

At least 30 days after publication of the final EIS, the BIA will issue a ROD that includes the decision on whether or not to approve the proposed action.

Furthermore, it will mark the end of the

NEPA process.

Until the close of the comment period, comments can be submitted on the draft EIS in various ways. You can email or manually hand in written comments to the Bureau of Indian Affairs Pacific Regional Office, or you can submit email comments to Chad Broussard at chad.broussard@bia.gov.

When doing this, please include in the email subject: "Draft EIS comments, Tejon Indian Tribe Trust Acquisition and Casino Project."

If you'd like to submit oral comments outside of this virtual hearing, you can call (916) 755-0181 and follow the prompts given.

For further information on anything mentioned in the presentation today and more, you can contact Mr. Broussard with the BIA Pacific Regional Office via phone or email.

This slide concludes the AES presentation. Thank you for your time tonight. The hearing will now be returned to Mr. Broussard.

MR. BROUSSARD: Now we will proceed with public comments. Remember that all comments will be limited to three minutes. Please remember to state your name before speaking and speak as

clearly as possible.

Also, to best participate in this formal hearing process, I offer the following ground rules and suggestions.

First, summarize your main points within your three-minute public speaking period. Be as specific as you can. Only substantive comments will be responded to in the final EIS.

In other words, if you tell me that you do not like the analysis in the draft EIS but give no specific rationale, there will be very little to which we can review and respond.

Also, second, avoid personal attacks. We understand that there may be strong feelings, pro and con, regarding the proposed project. However, the best opportunity to state your views specifically is through a brief factual presentation.

Third, this hearing is not a referendum. We are not here to count the number of people for or against the project.

The purpose of the hearing is to collect comments on the adequacy or scope of the EIS only, and all comments will be considered equally, no matter how many times they are made.

Thus, please limit the substance of your comments accordingly. If someone ahead of you has already made your point, there's no need to repeat it.

Fourth, we may ask you to adjust your system if audio feedback is heard. Typically these noises can be avoided by muting the speakers on your computer.

Finally, offensive language or behavior will not be tolerated and will result in your immediate removal from the hearing and also possible referring out to the appropriate authorities.

Okay. Note that everyone is muted right now. When I call your name, you will get a notification to unmute and then you must unmute your microphone using the audio function at the bottom of your screen. Thanks again, everyone, for your participation.

With that introduction, our first speaker is Tejon Chairman Octavio Escobedo.

CHAIRMAN: Hello. I am Octavio Escobedo, the third chairman for the Tejon Indian Tribe. I would like to thank the Department of Interior for scheduling a public hearing on the draft EIS.

Today is important because it is a step toward reestablishing a tribal homeland for the Tejon Indian Tribe. With over 1,000 citizens, we are one of the largest tribes in California. Our tribe has been landless for generations.

In 1851 the Tejon Tribe and other tribes signed a treaty with the United States to reserve a portion of our aboriginal lands. Our ancestors thought our lands were secure, only to learn later that the Senate never ratified the treaty. The lands evaluated in this DEIS are squarely within that treaty-reserved area.

In the decades that followed, the United States took action on our behalf to secure small portions of the area reserved in the treaty, but ultimately was unsuccessful in reestablishing a permanent homeland. Placing our 306-acre in a trust for all homeland purposes will help to correct this history.

I want to recognize the strong government-to-government relationship we have with Kern County. They have unanimously supported our efforts to reestablish a permanent homeland.

I appreciate Board of Supervisors Chair Leticia Perez and Ryan Alsop for attending this

hearing today to express the County's views. I also appreciate the work of Lorelei Oviatt, Sheriff Youngblood, Fire Chief Witt and their staff for outstanding work to further the government-to-government relationship between the Tribe and the County.

We are excited about teaming with Hard Rock and the Seminole Tribe of Florida to bring a Hard Rock entertainment facility to Kern County and building a private feature for the Tejon Tribe and the people of Kern County. We will please thousands of individuals, provide an entertainment venue that reflects the roots of the county and complements the positive nearby development at Tejon Ranch.

Kern County is our home. We support law enforcement, firefighters and the public professionals that make this community safe and strong. Tejon families have been a part of that fabric.

We know that the area south of Bakersfield to the Grapevine is currently in need of law enforcement, fire and other public services. We have agreed to pay for an entire sheriff and fire substation on site. Such services benefit the

Tribe and surrounding community.

The draft environmental impact statement sets forth a number of positive impacts of the proposed action: Increased employment, increased revenue, increased government services and uses that complement the surrounding area. We agree with the many positive impacts.

Further, Interior notes that any potential negative impacts will be mitigated to a less-than-significant level.

As a supporting agency to the EIS, we have committed and are again committing on the record here to implement any final mitigation measures that Interior sets forth in the final EIS.

The overwhelming positive impacts are reflected in the strong local support for the Hard Rock Tejon project. Over 18,000 individuals and nine organizations that represent over 6,000 people strongly support placing this land into trust for gaming and homeland purposes.

They are excited about our plans, excited for the quality of a Hard Rock entertainment facility in Kern County, and they are excited about an opportunity this will bring in terms of direct and indirect jobs. They see the positive impacts

of Indian gaming in California.

This is truly a step forward. We envision a world-class entertainment facility. We envision a community park with recreation to be used by the broader community, a healthcare center that can serve both tribal and nontribal members. We envision having our family and tribal administration facilities to provide services to our citizens.

This is our vision for a homeland, and we truly appreciate the surrounding community support to achieve our dream. Thank you.

MR. BROUSSARD: Thank you, Chairman. Our next commenter will be Nick Ortiz.

Mr. Ortiz, please unmute your microphone and please remember to restate your name for the record. You have three minutes.

MR. ORTIZ: This is Nick Ortiz with the Greater Bakersfield Chamber of Commerce. We represent over 1,100 businesses which collectively employ over 70,000 Californians, and we'd like to tonight express our strong support for the Hard Rock Hotel and Casino, Tejon project and the Tejon Indian Tribe.

The Bakersfield business community will

directly benefit from this important development. Not only will these businesses that will be developed at the site create jobs and generate tax dollars and purchasing power in the community, but they will also increase land values and increase services to a very rural area of Kern County.

This type of project, including gaming at the proposed site, is clearly in the best interest of the community and the Tribe. And the resources that will be developed for tribal members on site, including housing, healthcare and government offices, will be a benefit.

The Tribe has an excellent track record of being stewards of the environment in Southern Kern County. As you heard from Chairman Escobedo, they have a great relationship with our local governments and the local stakeholders, and they want to ensure that this is the best possible project.

We think this project is a necessity for the economic future of our region. We have continued instability in some of our traditional economic sectors as well as the economic impact we are all facing from the COVID-19 pandemic, so we think we need projects like this to ensure that

local and regional economy is prepared to fully recover and thrive into the future.

We think this will provide needed jobs, not only in Kern County, but our economy in general.

We appreciate the Department and the Bureau's work on this project, and we fully support moving forward with the project identified and the proposed action in the EIS. Thank you very much.

MR. BROUSSARD: Thank you for your comment.

The next speaker will be Dick Taylor. Mr. Taylor, you will have three minutes for the record. Please state your name for the record and state your comments.

MR. TAYLOR: My name is Dick Taylor, and I am happy to speak in favor of the proposed development. And I don't want to repeat the things, but I can tell you Chairman Escobedo pretty much covered all my points. He used a word of "excitement." I am very excited that this project is potentially going to occur right here in our community.

I am a business owner for many, many decades in our community. We ran our dealership

for years and years and years, and if somebody would have told me 20 years ago that a Hard Rock Casino and Hotel would have been built here, I would have told them they had rocks in their head.

It is exciting to see that this is potentially going to be a reality.

I will just give you a couple of quick points that will suffice for my comments, and that is that all these restaurants and world-class entertainment venues and the Hard Rock Casino and Hotel has a phenomenal track record nationally and internationally, providing just world-class entertainment and facilities.

Finally, in concluding, I would ask that the Bureau of Indian Affairs approve the Environmental Impact Statement.

And I thank you for your time, and I thank you for the hard work, not only of all those who are working on the project, Chairman Escobedo and your entire Tribe, and we look forward to this phenomenal and innovative project in the future.

MR. BROUSSARD: Thank you very much for your comment.

Our next commenter will be Jim Elrod. Mr. Elrod, please unmute your microphone and please

state your name for the record.

MR. ELROD: My name is Jim Elrod, J-i-m, E-l-r-o-d. I am the business manager and financial secretary of the International Brotherhood of Electrical Workers, Local 428. Our jurisdiction is Kern County. I represent 800 men and women that perform electrical work in Kern County through all Kern County residents.

We are definitely partners in this. The Tribe has approached us to help build their facility, which we were very happy and eager to do that.

In 2012 was when the Tejon Tribe received their reaffirmation, so until then they were basically a tribe with no land or no notoriety. Now in 2012, they achieved that they are a recognized tribe, but they don't have a land of their own or home of their own.

So by approving this EIS, it will give them the opportunity to have actual something of their own and then they could start generating jobs, income to help support their members of their tribe. We want to be a part of that and help build that.

So what we have in Kern County, we have an

indentured apprenticeship program and this would give opportunities for all the tribal young men and women to be able to get into one of our apprenticeship programs and earn an actual skill and develop a career. And hopefully they can maintain their residence in Kern County and help their tribe and earn a really good living with a pension and a healthcare plan that help support their people.

On behalf of the 800 members of the IBEW, we ask that you, the Bureau of Indian Affairs, approve the EIS and give them the land that they so well deserve. Thank you.

MR. BROUSSARD: Our next commenter will be Richard Chapman. Please unmute your microphone and restate your name for the record. You will have three minutes. Richard Chapman, are you available to give your comment?

MR. CHAPMAN: My name is Richard Chapman, president and CEO of the Kern Economic Development Corporation. Kern EDC represents a coalition of business and government leaders dedicated to ensuring a diverse and strong economic climate for Kern County, and I am here to express our organization's wholehearted support for the casino

project.

This is really a much-needed economic stimulus for our region, and our unemployment is actually at 18 percent now. So it is really timely and very much appreciated.

In terms of both quantitative and qualitative aspects, this is really a game changer. We have all heard about the $600 million impact of the project, but that does not count the future new money coming into our economy, especially from a $1 trillion economy south, which is the LA Basin.

This is going to create, in our opinion, a much-needed economic parity. We have a $40 billion economy, not a $1 trillion economy. We are really excited about the economic opportunity that this project will -- for new money, which is really a critical component.

If you look at the qualitative aspects, we all talk about town attraction retention and this is critical for development. And amenities are essential for bringing in town and keeping talent. This is something that is really going to be a much-talked-about project, that's going to make national news and really help put Kern County on the map and bring in this new money, as I alluded

to earlier.

Again, Chairman Escobedo and Hard Rock are -- talk about a quality partnership, an iconic brand like Hard Rock, $6 billion organization. They are the U.S. best employer and U.S. best employer for women, and they were awarded top land-based operator.

In Kern County we talk about what this project brings to the table. Our litmus test is really about capital investment, jobs, wage income as well as public revenue, and this more than hits it out of the park.

Frankly, as we say, we really think we have drawn a winning hand, and we are excited to support this project 100 percent.

Thank you again for your time and consideration for this evening.

MR. BROUSSARD: Our next speaker will be Ronda Newport. Ms. Newport, please unmute your microphone and state your name.

MS. NEWPORT: I am the president of the Bakersfield Association of Realtors. The Realtors would like you to know we fully support the Tribe for placing the land in trust for gaming purposes. The Bakersfield Association represents over 2,200

members in the Greater Bakersfield area.

We strongly believe in further economic policies at the local level that will help our economy thrive, transferring homeownership in our community. This will create 3,000 new employment opportunities in the Southern San Joaquin Valley, thus creating new homeowners.

In addition, the Hard Rock will bring new opportunities and a wonderful concert venue. We support the draft EIS. The Tribe has agreed to implement all implementation measures identified in the EIS, minimizing affects.

Realtors are dedicated to building stronger communities. We believe this project will result in safer communities and higher level of safety by adding a new sheriff and fire substation located just adjacent to the property.

On behalf of the association and members, we urge the Bureau to approve the EIS. Thank you.

MR. BROUSSARD: Thank you for your comment.

At this moment we are going to take just a very short break to give the court reporter and the interpreter a short break. So we will restart the hearing at 7:05 on the dot. And when we do, the

commenter will be Ryan Alsop. 7:05, about a five-minute break. Thank you.

(Whereupon a recess was taken.)

MR. BROUSSARD: Okay. We are going to go ahead and restart the hearing now. Our next speaker will be Ryan Alsop.

Mr. Alsop, please unmute your line and restate your name for the record. You'll have three minutes.

MR. ALSOP: Good evening. Can you hear me?

MR. BROUSSARD: Yes, I can hear you.

MR. ALSOP: My name is Ryan Alsop. I am the chief administrative officer for Kern County.

Our county future is tied to partners like the Tribe that bring new opportunity to our region to bolster standard of living and quality of life through investments, job growth and increased economic diversification for members of the Tribe and our county residents.

We are, in fact, a region in need of additional economic investment and job creation. Historically, the health of our region's economy has been predominantly tied directly to two principal industries, oil and agriculture. While

these industries will continue to play a vital, although diminishing role in our local economy going forward, the need to diversify and attract new industry is essential.

This project is estimated to create thousands of construction jobs and thousands of permanent jobs once completed.

Aside from the on-site jobs, this project could generate an additional 1,200 jobs in the local economy, which could yield an additional $85.3 million in indirect and induced compensation and an estimated $275 million in indirect and induced sales on an annual basis. The estimated value of the one-time and recurring payments to the County of Kern --

MR. BROUSSARD: I think we lost that last commenter. Please feel free and sign back in if you'll like to continue your comment.

Mr. Tamsi, please unmute your line and restate your name for the record. You'll have three minutes.

MR. TAMSI: Hi, can you hear me?

MR. BROUSSARD: Yes, I can hear you.

MR. TAMSI: Hi, good evening. Thank you for the honor to speak today. I am Jay Tamsi, the

president and CEO of Kern County Hispanic Chamber of Commerce, which consists of over 1,200 members and represents over 410,000 Hispanics in Kern County.

We are in full support of the Tribe placing land into trust for gaming and other purposes. This will provide a thousand construction jobs and 2,000 permanent jobs, which will make an everlasting and positive impact on our economy.

It is to be commended. A safer community and a higher level of service will result due to the new sheriff and fire substation located adjacent to this land.

World-class entertainment and amenities will enhance our community through its much-needed concert venue, restaurants, retail shopping and much more.

We can all agree this is the right thing to do for the Tribe, the historic area in Kern County, and they are an excellent and kind neighbor.

The Kern County Hispanic Chamber of Commerce respectfully asks the BIA to approve the Environmental Impact Statement. Thank you so much

for allowing me to speak tonight.

MR. BROUSSARD: Thank you for your comment.

The next commenter will be Kevin Burton. Mr. Burton, please restate your name for the record. You'll have three minutes.

MR. BURTON: Hi, this is Kevin Burton. Can you hear me?

MR. BROUSSARD: Yes, I can.

MR. BURTON: Kevin Burton, K-e-v-i-n, B-u-r-t-o-n. I am a community member here in Bakersfield, Kern County.

I just want to say, very excited for this future project. We look forward to the increase of revenue that will bring in construction workers, several thousand to this project and also then several thousand employees that will be employed for the Hard Rock Casino.

Also, what this brings is outlying construction and future projects around this surrounding area, which will obviously then bring in more construction workers and also more employees.

This will draw a lot of our neighbors from the south, from Los Angeles, to come up here and

enjoy the festivities. This will bring world-renowned music and an artist to come into Kern County that draws people from all over the counties surrounding Kern County.

We are very looking forward to this. We hope -- and I want to thank the Bureau of Indian Affairs for their hard work and diligence on this to move forward. And we hope that they will approve this EIS as we move forward on this.

And I want to thank the Tribe, the County of Kern, especially the County supervisors from Kern County, Ryan Alsop and his team, and also would like to say thank you to Jimmy Yee for his work on this as well and moving it forward and getting it to where it is today with the amazing help.

We look forward to this, and we look forward to seeing what the Bureau of Indian Affairs does on this and hopefully approves it. Thank you so much.

MR. BROUSSARD: Thank you for your comment.

The next speaker will be Berry Zoeller.

Mr. Zoeller, please unmute your microphone and please restate your name for the record. You

will have three minutes.

MR. ZOELLER: Thank you, Mr. Broussard. I am senior vice president of corporate communications and investigations at Tejon Ranch Company, a publicly-traded corporation on the New York Stock Exchange.

The company is the largest and most significant landowner in the area, owning approximately 270,000 acres in close proximity to the proposed location, with one of our major developments just about a five-minute drive to the south.

As a company, we engage in real estate development, currently commercial and industrial real estate, soon transitioning to residential real estate as well. We have significant farming and ranching operations on our property as well as oil and gas and other minerals.

Needless to say, we have been keenly interested in the Tribe's plans and have been following the progress closely. Tonight I'd like to express our company's full support of the Tribe and its plans and would urge the Department and the Bureau of Indian Affairs to approve the draft EIS and take the land into trust for gaming and other

purposes and do so in the most expeditious manner possible so that the Tribe and its partners can move forward with the development of what promises to be a world-class entertainment venue for Southern Kern County.

While the location is just a couple of miles away from Tejon Ranch land, we are confident that the Tribe will be a good neighbor, as it has always been, and that a resort casino in this location is consistent with and complements the economic-development and job-creation activities currently underway at the Tejon Ranch Commerce Center, where 60,000 people exit I-5 on any given day to avail themselves of our retail offerings.

We support the analysis and findings in the draft EIS and believe that the mitigation measures are appropriate and robust enough to adequately minimize any potential adverse impacts and understand the Tribe has agreed to implement all the mitigation measures proposed or that would be proposed in the final EIS.

This is quite a day for the Tejon Indian Tribe and its members. They have obviously had to overcome many challenges to get here.

Tejon Ranch Company and the Tribe share a

common heritage. We also share a common desire to see the members of the Tribe have a homeland and opportunity for a prosperous and productive future.

This is also an important day for Kern County and its residents, as it represents a tremendous economic-development opportunity, the chance to further diversify our economic base and create thousands of sorely-needed construction and permanent jobs.

Again, we urge the Department and the Bureau to approve the EIS and take the land into trust.

MR. BROUSSARD: Thank you.

The next speaker will be Nick Hill. Mr. Hill, please unmute your microphone and restate your name for the record. You will have three minutes.

Mr. Hill, are you available to speak? Please unmute your microphone.

Mr. Hill, we can't hear you on our end. It looks like you are attempting to unmute. Please try again.

Mr. Hill, we can't hear you. It might be an audio problem on your end.

We are going to move to the next

commentator. We do have a technical support line that you can call. It is on the website, tejoneis.com.

We would encourage you to call that number and try to figure out why we can't hear you on our end and then go ahead and raise your hand again.

So we are going to move to the next commenter, Dr. Donna Miranda-Begay.

Ms. Miranda-Begay, please unmute your microphone, restate your name for the record. You'll have three minutes.

DR. MIRANDA-BEGAY: My name is Dr. Donna Miranda-Begay. I am a resident in Wilton, California. I am a member of the Tubatulabal Tribe. I am the Tubatulabal Tribal cultural practitioner and researcher over all our Tubatulabal Tribe located in the Greater Kern Valley area, just 70 miles northeast of this proposed economic development site of the Tejon Tribal Nation.

We share similar history and culture and ancestral features. We support the draft EIS Alternative A1 proposed project.

I was looking over the Environmental Impact Study report. I am very familiar with CEQA

and NEPA, being a former member of CalEPA's Tribal Advisory Board and State Water Resources' Tribal Advisory Council, so I am coming from that perspective.

Looking at the draft EIS, I will make four recommendations here. In the EIS draft documentation, under Mitigation Measure 5, cultural and paleontology resources, I notice that I did not see, when it referenced discovery of human remains, that's Item D on Page 4-5, I did not see California Native American Heritage Commission nor Tejon Tribal or assigned Native American monitor included in the notification process.

So I believe that's required. So I recommend that you include the Native American Heritage Commission and Tejon Tribal or assigned Native American monitor to be in the notification process.

Recommendation 2, if you do include the Native American Heritage Commission, you might want to add them on Section 5.3, State and local agencies and utilities listings. I see a few State agencies there.

I don't know if you're working with the State Department of Water Resource Control Board.

But they have a lot to do with the groundwater and water rights and that, too. So that's a consideration.

Item No. 3, working for the State, CalEPA State Water Resource Control Board, which I am not representing them here, I recommend that the folks that drafted the EIS and maybe the Tribe take a look at the CalEPA Regulated Site Portal. I notice that nearby you have a few toxic and chemical areas that are being monitored. These can be long-term hazard issues. So take a look at that.

And also my documentation here, I have drafted it and sent it off to Chad already.

And then last item, per draft EIS main documents, the appendices, Volume II, there's supposed to be an Appendix B and Q for tribal consultation and cultural resource surveys. I don't know if that's completed or not, but I didn't see those two appendixes in the Volume II links.

So I clicked on all the links to try to locate that. I was pretty interested in that tribal consultation and, of course, cultural resource survey. I recommend that the website be updated to include those appendices.

Other than that, very good job. I really

want to say congratulations to the Tejon Tribal Nation. And a friend of mine, Kathy Morgan, did a great job way back when. I don't know if she's still on council. But the Tubatulabal Tribe wishes everybody the best of luck here and appreciates the efforts of the Bureau of Indian Affairs. Thank you, toodleloo.

MR. BROUSSARD: Thank you for your comments. Before I call the next commenter, I just wanted to give out the technical support line. As I mentioned, that line is on the website at the same page that you went to to register.

But just in case folks don't have the website in front of them, the technical support line is (949) 861-5954, and we actually have a second line set up as well, which is (949) 861-5955. So if you're having technical difficulties, please call one of those numbers and we can try to help you out with that.

Okay. So with that, the next commenter will be Dave Noerr.

Mr. Noerr, please restate your name for the record and unmute your microphone. You will have three minutes.

MR. NOERR: This is Mayor Dave Noerr with

the City of Taft. Can you hear me all right?

MR. BROUSSARD: Yes, I can.

MR. NOERR: Thank you very much for giving me the opportunity to address this evening. City of Taft and myself as the mayor of the City of Taft, we are in favor of this proposed project. We have watched as this developed, and we have met with the Tribe when they first started talking about developing this process.

You have heard many people speak of the benefits of the diversification, economies and the jobs that will be created.

I wanted to briefly touch on just exactly how good the site is that you proposed when one considers the existing infrastructure and accessibility to the two most critical and arterial roadways that run north and south through California and the fact that those off-ramps for them already exist.

The elimination of the engineering and the environmental impact review for the building of that infrastructure will save billions of dollars and many years for going through that process.

On top of that, I know as part of the mitigation we are going to have to deal with

endangered species, whether they be mammals or they be plant life. Here in the City of Taft we are smack dab in the middle of endangered species, and our oil and gas industry has been successfully working in concert with both the mammals and the plant life on the endangered species list for a very long time. We have been doing this for a hundred years.

If there's any one area in the state of California that has a great many experts regarding the need, the capability and the ability to deal with those things, it is in the San Joaquin Valley, as well as the considerations for the valley fever dust mitigation.

Here again, whether you are in the oil and gas industry or agricultural industry, you deal with that here in the San Joaquin Valley day in and out every day. And we know that that can be dealt with successfully and safely.

So it is my pleasure to let everybody out there know, let the Tribe know and let the BIA know that we are in full support of this project and we actually plan on being a part of not just construction, but full-time employment.

We are looking into carbon-free

transportation methods to get people from the west side to and from the Hard Rock Cafe when it is completed.

I thank you for your time and look forward to seeing this great project come to fruition.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next commenter will be Nick Hill. Please unmute your microphone and restate your name for the record. You'll have three minutes.

Go ahead, Mr. Hill. Unfortunately, Mr. Hill, we can't hear you on our end. Maybe try one more time unmuting.

Go ahead, Mr. Hill.

Unfortunately we can't hear you on our end. I encourage you to call that help line, which, again, is (949) 861-5954, and it is also possible to call and leave a comment. We have an answering service where you can call and leave a comment at (916) 755-0181, and you can also send me an email or send us a letter, and all of those will work to get your comment onto the record.

So we are going to move on to the next commenter, Jaime Briceno. Please restate your name for the record and unmute your microphone. You

will have three minutes.

MR. BRICENO: Good afternoon, Mr. Broussard. I am Jaime Briceno. And on behalf of the building trades and representing the Cement Masons Union, we are so excited about this project.

As you know, being part of the building trades, we have been part of many, many of these environmental impact review reports, and as you know, the county is going through incredible growth, the high-speed train coming through, the Lake Isabella Dam project, the freeway work going on downtown, and the Westside Parkway, which will eventually connect to the 5 freeway.

We are fully behind this project. Obviously, as Jim Elrod earlier said, a lot of work for our members, but also for the surrounding residents.

We fully support the Tribe and the land in the trust. We also ask that the Bureau of Indian Affairs approve the EIS. We are looking forward to the project. We are excited. We can't wait to help you out.

Thank you very much.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next commenter will be Josh Bathe. Mr. Bathe, please restate your name for the record and unmute your microphone. You will have three minutes.

MR. BATHE: I'm Joshua Bathe, and I represent Domino Plastics. We are a manufacturer in Kern County for nearly 35 years.

I have looked over the draft EIS, and I see nothing but positives. The Mettler one definitely makes more sense than the Maricopa one just as far as location, but I see nothing but good and a chance to do the right thing here. So we ask that you approve the EIS. Thank you.

MR. BROUSSARD: Looks like we lost that commenter momentarily. Feel free to come back and raise your hand if you'd like to finish your thought.

So we are going to move on to the next commenter, Kathryn Morgan. Please restate your name for the record and unmute your line. You'll have three minutes.

MS. MORGAN: My name is Kathryn Montes Morgan. I am the Tribal Chairwoman with the Tribe and presently the honorary chief with the Tribe.

I support the Tejon's acquisition of the

casino and the development of the casino and having future homes for tribal members. I just want everybody to remember above all, this is a huge step for the tribal members, who have made mountainous strides through no fault of their own.

The future development of the property, we want to make sure the tribal members prosper by being able to obtain a better standard of life, such as education, homeownership, healthcare. It will allow us to take care of our own children who are being removed from their homes through no fault of their own.

I want to thank you, Kern County officials, the Seminole Tribe of Florida and everybody who has worked with the Tribe in order for us to get to where we are for this very important and historical day for our Tribe. Thank you.

MR. BROUSSARD: Okay. Thank you for your comments.

Our next commenter will be Julian Najera. Please unmute your microphone and restate your name for the record. You'll have three minutes.

MR. NAJERA: Good evening. My name is Julian Najera, N-a-j-e-r-a. I am a representative

from Painters and Allied Trades, District Council 36, Painters' Local 52, Bakersfield.

I am speaking tonight in support of the Hard Rock Cafe. The resort would bring many jobs to the Kern County area. A thousand construction jobs would be an added asset to the community.

Our members work both in new construction and in maintenance and remodel projects. This project could possibly get more of our members back to work during this time when oil field industrial work is at a standstill due to the fall of local oil prices.

The additional 2,000 permanent jobs would also have a positive impact on our economy and help provide a steady opportunity to keep our community working. That allows many families a secure future.

The tax revenue that will be created could be allocated for many infrastructure projects that would again put people back to work.

The Tribe's proposed uses are consistent with the surrounding community, keeping entertainment dollars in Kern County instead of the money traveling to other communities or states. That keeps our money here.

We support the analysis and findings of the draft EIS, and we ask the Bureau of Indian Affairs to approve the EIS. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next commenter will be Max Goossen. Mr. Goossen, please unmute your microphone and restate your name for the record. You'll have three minutes.

MR. GOOSSEN: Can you hear me?

MR. BROUSSARD: Yes, I can.

MR. GOOSSEN: My name is Max Goossen. I am the vice president of Westside Waste Management, and they are the garbage hauler in Taft, Maricopa and other communities on the west side of the county.

I am also a member of the Board of the Taft Chamber of Commerce.

My granddad, Bob Hampton, died about two months ago, and that is about the only thing that would have kept him from speaking tonight in full support of this project. Improving the lives of those in our community was always very important to him, and this project just so happened to include one of his favorite activities, gambling.

It was an easy decision for us to support the Tejon Tribe in placing land into trust for gaming and other purposes. I believe that giving this Tribe a homeland, a place to put down roots is the right thing to do. We ask that the BIA approve this EIS. Thank you for your time and your consideration.

MR. BROUSSARD: Thank you for your comments.

Our next commenter will be Josh Taylor. Mr. Taylor, please unmute your microphone, restate your name for the record. You will have three minutes.

MR. TAYLOR: Good evening. My name is Josh Taylor, lifelong resident of Kern County and representative of Southwest Carpenters Local 661, home of more than 4,500 skilled and trained craft professionals in the construction industry.

This project will have significant positive impacts within our local community, economy and for the Tejon Tribe if approved. If approved, this project can be built in a couple of ways. It can be built by contractors inexperienced with a project of this magnitude whose direction may result in catastrophic failures, not unlike we

have seen in other parts of the country.

Or, in contrast, it can be built under a general contractor's direction who employs a skilled and trained workforce, has a pedigree of these types of projects and hires from within the local community.

Union carpenters stand in support if the proposed project, Alternative A1, is built by skilled and trained craftsmen and a general contractor signatory to the Southwest Carpenters, because the Tejon Tribe deserves the very best state-of-the-art facility on the West Coast.

Thank you to all those that have put in the hard work that it has taken to get to this point.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Sylvia Coronado. Ms. Coronado, please unmute your microphone, restate your name for the record. You'll have three minutes.

MR. WITT: Good evening. This is Dave Witt. It won't be Sylvia, it will be David Witt, Kern County fire chief.

MR. BROUSSARD: Go ahead, Mr. Witt.

MR. WITT: Safety is always top of the list when reviewing development proposals. This project, the Tejon Tribe Hard Rock Hotel and Casino, had unique challenges for the location at the entrance of our county from Los Angeles on heavy-traveled Interstate 5.

The area required a regional solution with a facility, funded equipment and staffing at a level that could provide protection for everything from a high-rise hotel to a wildfire. The results of this executed intergovernmental agreement, reviewed and designed with my expert fire prevention staff, provides the needed funding and infrastructure for a state-of-the-art joint facility with the sheriff and emergency services that will serve the entire area as well as the neighboring city of Maricopa.

During these difficult financial times, this project will provide an exceptional level of funded fire protection. I support this project and ask that you approve it in 2020 so that we can have this fire facility and staffing open and operating for the community of Kern County. Thank you.

MR. BROUSSARD: Okay. Thank you for your comments.

Our next commenter will be Leticia Perez. Ms. Perez, please unmute your microphone, restate your name for the record. You'll have three minutes.

MS. PEREZ: Thank you and good evening. I am Supervisor Leticia Perez, the chair of the Kern County Board of Supervisors.

Thank you for the opportunity to voice our complete and enthusiastic support for the Tejon Tribe Trust Acquisition and Hard Rock Hotel and Casino Project. The Tejon Tribal leadership has been a gracious and glorious partner with the Board on many community projects over the years, but this is the first under their well-deserved recognition as a federally-designated Tribe. Congrats again, my friends.

The intergovernmental agreement approved by the entire Board unanimously shows the thoughtful and community-minded spirit of the Tribe, and we are so satisfied that all potential impacts on public services have been thoroughly and fully addressed.

Both Sheriff Youngblood and our fire chief, as you have heard, support this project and are providing important protections for both the

Tribal properties as well as the community at large.

Kern County needs jobs. With this extraordinary vision of the Tribe to partner with the Seminole Tribe as owners of the Hard Rock Hotel, this project will bring thousands of jobs and tourist revenue to help all of our communities. It is in the right location and this is the right time.

The Kern County Board of Supervisors asks the Bureau of Indian Affairs and the Secretary of the Interior to move this project forward through the NEPA process and to approval in 2020. We, as well as the Tejon Tribe, need hope for the future of our county. With your help we forge that pathway together as one community.

Thank you so much. Good evening.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Joseph Burnett. Mr. Burnett, please unmute your microphone, restate your name for the record. You'll have three minutes.

MR. BURNETT: Yes, can you hear me?

MR. BROUSSARD: Yes, I can.

MR. BURNETT: My name is Joseph Burnett, B-u-r-n-e-t-t. I represent the Ironworkers Local 155 as their business agent. Local 155 covers the area of the proposed Hard Rock Casino Tejon.

Local 155 was established in Fresno in 1914. In addition to the Fresno Union hall, we have a subhall in Bakersfield. I am a 37-year resident of Bakersfield and have proudly helped this area grow through my trade. We are the ones that build structures that won't fall during an earthquake.

As a union, we fully support the construction of this project, as its completion will be a much-needed industry, providing job security and income for our community, especially our tribal neighbors, who will honor the final EIS and greatly benefit from this project.

We fully support the land being placed in trust for the Tribe. We support the new law enforcement and fire station adjacent to the casino, resulting in a safer community and higher service, and we support the EIS draft.

This project will be an immense asset to our area, and strongly urge the Bureau of Indian Affairs to approve this proposal. Thank you for

your consideration.

MR. BROUSSARD: Okay. Thank you for your comments.

Our next speaker will be Susie Aspeitia. I think I may have butchered your name. I apologize for that. Please restate it for the record and unmute your microphone.

MS. ASPEITIA: This is Susie Aspeitia. Can you hear me?

MR. BROUSSARD: Yes.

MS. ASPEITIA: I am born and raised in Bakersfield. My family has a long history in Bakersfield. We have been in the community over 100 years. My grandparents moved to Bakersfield in 1918. So I have a heart for Bakersfield and Kern County.

Myself as well as my family have wanted nothing but the best for Kern County. That is why I fully support Tejon Indian Tribe in placing the land into trust for gaming and other purposes.

Again, there are many positive reasons we have all heard so far for the reasons to move forward. Again, I just want to reiterate it is great for our community, the amount of permanent jobs and construction jobs in the thousands. It is

amazing for our county.

The economy is going to benefit. So many of our residents will benefit, as well as the local businesses will benefit. It's great for our housing market in Kern County. It's definitely a positive there.

Also, I want to bring up just the Tejon Indian Tribe partnering with the Hard Rock Hotel and Casino is amazing for our community. We have heard the recommendations from Forbes magazine. Hard Rock was honored as one of America's best large employers.

Not to mention that Hard Rock destinations are located in the world's greatest international cities, and we are getting the opportunity, thanks to the Tejon Indian Tribe partnering with the Hard Rock Hotel and Casino. To have that opportunity here in Kern County is amazing for us. It really is just a benefit for us.

Me and my family, I know we support this 100 percent and we feel that this is just an honor to be able to have this presented to us.

Lastly and most importantly out of everything, I think it is the right thing to do. The Tribe is landless, and with the Tejon Indian

Tribe being here as our neighbors, it's so important for us to come together, especially in this time of everything that's happening. We need to support one another and be there for our neighbors, the Tejon Indian Tribe.

I ask the BIA to approve the EIS. Thank you to the Tejon Indian Tribe and the Hard Rock Hotel and Casino for giving Kern County an opportunity to be put on the map. Thank you so much for your time.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Thomas Gonzalez. Mr. Gonzalez, please unmute your microphone and restate your name for the record. You'll have three minutes.

MR. GONZALEZ: My name is Thomas Gonzalez. I am an enrolled member for the Tejon Indian Tribe.

I work and reside in Kern County. I cannot express how important it is for this project to move forward, especially for our elders. As a resident of Kern County, I support the Tejon Indian Tribe's project, and I respectfully ask the BIA to expedite the process.

And I want to say thank you to Kern County

for your guys' continuous support. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Joe Ashley. Mr. Ashley, please unmute your microphone, restate your name for the record. You'll have three minutes.

MR. ASHLEY: Good evening, Mr. Broussard and the BIA staff. My name is Joe Ashley. I work as a director of regulatory affairs for an oil company based here in California. I serve on several local nonprofit boards and am incoming chair for the Kern County Economic Development Corporation. I also represent District 2 of the Kern County Planning Commission.

But I am here this evening as a proud resident and give my wholehearted support for the proposed project and the whole tribe overall.

My esteemed colleagues have and will speak about the economic benefits and the jobs that this project will bring to Kern County.

Today I will mention my personal experience. I have had the benefit of working with Kathryn Montes Morgan and her sister Gloria on projects in the past.

Approval of this project will solidify the Tribe members, will permanently reestablish a homeland, and will provide facilities and cultural resources for the generations to come.

I believe the analyses in the draft EIS adequately address the potential environmental impacts and the BIA has proposed mitigation minimizing the impacts. I respectfully ask that you approve the draft EIS. Thank you for your time.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be David Womack. Mr. Womack, please unmute your microphone, restate your name for the record. You have three minutes.

MR. WOMACK: Good evening and thank you for this opportunity to speak. My name is David Womack, W-o-m-a-c-k. I'm a senior vice president for Kaiser Permanente with a primary responsibility to serve Kern County.

As the nation's largest not-for-profit integrated healthcare system, Kaiser Permanente's mission is to improve the health of the communities we serve.

When we see a project like this, two

things immediately catch our attention. One is the jobs that it will create. The data is very clear that the wealthier a community is, the healthier the community is, and that's true for individuals as well.

Many people have spoken tonight about the great economic impact and the numbers of jobs this will create, but what's equally significant here is the quality of the jobs that this will create. All of these jobs have benefits, including the entry-level jobs, that is so important to ensure the health and raise the health of our community, especially our communities of color, where the health disparities are well-documented and well-known and very evident right here in Kern County.

You can see it right now with the COVID-19 pandemic, where two-thirds of the cases in Kern County are people of Hispanic origin.

The other thing that really captures our attention beyond jobs is the environment. What sort of impact will this have on the environment? Will it be good or bad?

We believe that the draft EIS clearly mitigates all the negative impacts and, therefore,

we put our full support behind this project, and we urge approval of the EIS. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Christina Appodaca. Ms. Appodaca, please unmute your microphone and restate your name for the record. You have three minutes.

MS. APPODACA: My name is Christina Appodaca, A-p-p-o-d-a-c-a, and I am a member of the Tejon Indian Tribe and I live in Kern County.

I want to voice my support of the draft EIS and Alternative A1. I want to thank the business owners, community and leaders for their support. I want to thank the Seminole Tribe of Florida.

What this project means to me as a tribal member is having land, is having a place to call home, to come together as a nation, just being able to be together. Having our homes close together once we get this land into trust, having our elders close to our children to teach them the proper ways of life is priceless.

What this project means to me as a resident of Kern County is I am excited to see this

project come to fruition, to have somewhere for our community to go to spend time as a family, not just the gambling, but the entertainment, the restaurants, to be able to come and spend time and relax and enjoy, also the jobs it is going to bring for our county. It is just going to help our community together as a whole.

I'd like to say that I hope the BIA will move this project along, approve the draft EIS and get this project going for us. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next commenter will be Keith Saltvick. Mr. Saltvick, please unmute your microphone, restate your name for the record. You'll have three minutes.

MR. SALTVICK: Thank you. Can you hear me?

MR. BROUSSARD: Yes, I can.

MR. SALTVICK: Thank you, Mr. Broussard. I wish to thank the Tejon Indian Tribe for my time to speak here. I first contacted Tejon Indian Tribe better than eight years ago, talking about what they might do up there, because my business is bingo.

The first game that I started here in Bakersfield is still currently running. We raised over a half a million dollars that we have given to 50 to 60 nonprofit organizations around the City of Bakersfield and the County of Kern.

This would greatly help the Tejon Indian Nation as far as the benefits that come from bingo. Not only will it prevent money from leaving Kern County, like running over to Las Vegas or Stateline or one of the other places over there, it will bring in more revenue from at least a 200-mile circle around here.

I am with a company called AV Bingo. We are the largest West Coast distributor of bingo supplies and we are tied with Video King International, who is the major bingo supply corporation in the entire world.

We currently handle three other Indian Nation casinos in the Southern California area, one Golden Acorn, one on Pala Reservation, and I apologize for this other name, I think it is Sycuan. We have dealt with them for several decades now.

And I fully support this EIS as far as the benefits it will bring, not only to the Tejon

Indian Nation, the County of Kern and the City of Bakersfield.

I was born here in 1952, and my family has been here for almost 120 years, first got here in the late 1890s. Thank you again. I appreciate you, Mr. Broussard, and the BIA and all the hard work that you have done.

MR. BROUSSARD: Okay. Thank you for your comments.

Our next speaker will be Michael Turnipseed. Mr. Turnipseed, please unmute your microphone and unmute your microphone. You will have three minutes.

MR. TURNIPSEED: I am Michael Turnipseed, the executive director of the Kern County taxpayers association. Kern Tax has been advocates for taxpayers since 1930 in Kern County.

Kern Tax fully support placing this land into trust for the Tribe for the purposes they want. The impact of Interior approving the Tribe's applications will be overwhelmingly positive for the entire Southern San Joaquin County.

As it has already been said, it is about jobs. It is about public safety infrastructure. It is about world-class entertainment coming to the

Southern San Joaquin Valley.

And the final thing is it is just the right thing to do for the Tribe. This is their historic area in Kern County. The Tribe's proposed uses are consistent with the surrounding community.

Kern Tax supports the analysis and findings in the draft EIS regarding environmental impacts. We request that the BIA approve the EIS. And, again, thank you for the time and good evening.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be June Nachor. Please restate your name for the record and unmute your microphone. You will have three minutes.

June Nachor, are you available to speak? I can see that you are trying to speak, but it is not coming through on our end. Maybe try unmuting your microphone.

If you happen to be calling in on a phone, hit *6 to unmute if you're calling in on a phone.

We'll give you a second to try to resolve the audio issues on your end.

Unfortunately we can't hear you, so I recommend that you call our support line, which,

again, is (949) 861-5954, and hopefully you can get the audio issue worked out. If not, we definitely would ask that you submit a comment, either by phone at (916) 755-0181, or email or mail us a comment.

Our next commenter will be Jose Santos. Mr. Santos, please unmute your microphone and restate your name for the record. You have three minutes.

MR. SANTOS: Jose Santos, S-a-n-t-o-s. I am a Kern County resident, raised in Bakersfield. Pretty much my entire family is here in Bakersfield.

I am an educator and work with the Kern High School District as well as a broadcaster and broadcasting consultant. This is extremely exciting to watch what is going on here as an educator. And the reason I state that is that, as you are well aware, the Kern High School District has a regional occupational center, ROC, as we call it.

And there's nothing better for me as an educator, to tell my students that they have the opportunity now to not only learn a trade and study something that you love, but actually be a part of

something.

And the construction of the Hard Rock Tejon entertainment complex is just a wonderful thing not only for those students that are studying construction, but electrical, law enforcement, technology. They are going to want to stay in this community to practice their trade and become part of something that's bigger than they can possibly imagine.

On the other end, as I look at the entertainment side of this, there's nothing bigger than to have the Hard Rock label attached to an event that may occur in Kern County that will not only draw tourists from Southern California, from the Los Angeles area, but also draw folks from Northern California and those folks that are driving on Interstate 5 or on California 99.

The financial impact of local dollars is incredible because local dollars will be spent and then be used in our local economy besides those tourist dollars that may come in from folks who may want to come to the complex, whether it's for a show, whether it is to get away.

And the view from that area once this hotel is built, they'll be able to see the beauty

of Kern County. The local dollars that will be spent will not only help our schools, but healthcare and also give the Tejon Tribe an opportunity to have land and say this is theirs.

So I encourage that the Bureau of Indian Affairs be part of a positive history, because this history will be taught. As a history teacher myself and as a local historian, I strongly encourage the BIA approve this EIS and support the Tejon Tribe. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be June Nachor. Try this again. Unmute your microphone and state your name for the record. You have three minutes.

MS. NACHOR: Can you hear me now?

MR. BROUSSARD: Yes, I can.

MS. NACHOR: My name is June Nachor. I am the great-great-granddaughter for the last chief on record for Tejon Indian Tribe. I currently serve as tribal treasurer and a member of the Tejon Indian Tribe.

I fully support putting the land back into trust or giving our land back to us and the projects that we will build on there.

This will right the wrong that was done in 1851 and again in the late 1970s, when we were left off of the list of federally-recognized tribes due to clerical error.

I would ask that the BIA to expedite this process so that my grandmother, who is the eldest living elder of the Tejon Indian Tribe, can see lands being put back into trust for us so she can have a place to call home. Thank you.

MR. BROUSSARD: Thank you for your comment.

Our next speaker will be Colin Rambo. Mr. Rambo, please unmute your microphone and restate your name for the record. You have three minutes.

MR. RAMBO: Hello, can you hear me clearly?

MR. BROUSSARD: Yes, I can.

MR. RAMBO: My name is Colin Rambo. I am a resident of Kern County, and I am one of the few nontribal employees of the Tejon Indian Tribe.

Tonight I am submitting a comment of general support for the proposed project of the Tejon Indian Tribe and the draft EIS.

Firstly, as a local Kern County resident,

I am generally excited about the project's potential to stimulate and diversify the local economy, especially Alternative A1, which I personally believe is the greatest overall good for the environment when coupled with the mitigation measures proposed in the draft EIS.

Therefore, I urge the BIA to approve the EIS and Alternative A1.

Secondly, as one of the few nontribal employees of the Tejon Indian Tribe, I can offer a unique perspective about the Tejon Indian Tribe for the benefit of the public record.

I have been the Tribe's cultural-resource manager for the last six and a half years, and I can say without hesitation that they are the best employer I have ever had the pleasure of serving.

They are genuine, compassionate and honorable people. They genuinely care about these lands and its resources and the general well-being of all the people who live here and visit here. As their employee and their environmental specialist, I can attest to their compassion regarding their duty to steward these lands and that they have always honored their commitments.

So when the public hears Chairman Escobedo

commit to implement the EIS and its mitigation measures to the letter, I know firsthand that he and his people will honor that commitment.

So, again, I urge the BIA to approve the EIS and Alternative A1. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Lisa Bradley. Ms. Bradley, please unmute your microphone, restate your name for the record, and you'll have three minutes.

MS. BRADLEY: Good evening. My name is Lisa Bradley, and I am a member of the Tejon Indian Tribe. I also serve on our executive council.

I fully support the Tejon casino project and look forward to the many benefits it will bring to our people and community. Chairman Escobedo covered everything, so I now ask respectfully that the BIA finish the approval process as soon as possible. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Ken Keller. Mr. Keller, please unmute your microphone and restate your name for the record. You'll have

three minutes.

Please try again, Mr. Keller. I think we can hear you. You just need to unmute your microphone and go ahead and give your comments.

I show that you are unmuted, so go ahead and give your comment now. We'll give you a second, Mr. Keller, if you want to try one more time if you want to work on the audio issues on your end. We can't hear you right now.

MS. SCOTT: Mr. Broussard?

MR. BROUSSARD: Yes.

MS. SCOTT: This is Robin Mangarin Scott. I am with Dignity Health with marketing communications, but for some reason I have access to the floor right now. I am more than willing to make a comment while Mr. Keller gets his audio issues figured out.

MR. BROUSSARD: What was your name?

MS. SCOTT: Robin Mangarin Scott.

MR. BROUSSARD: Are you on Mr. Keller's line?

MS. SCOTT: I am not, but for some reason I had the unmute button set to me.

MR. BROUSSARD: Give me your name one more time.

MS. SCOTT: My name is Robin Mangarin Scott.

MR. BROUSSARD: Did you use the "Raise Hand" feature?

MS. SCOTT: I did.

MR. BROUSSARD: Go ahead and give your comments. You have three minutes.

MS. SCOTT: Okay. We value our ongoing partnership with the Tejon Tribe, and we see this project as an opportunity to further meet the social determinants of health needs that are within the Tribe and our most vulnerable communities across the Southern San Joaquin Valley.

Our Central California division is one of the hardest hit in the nation right now when it comes to the COVID pandemic. When it broke back in March, it was the Tejon Tribe that immediately stepped up to support our healthcare workers in the area with the much-needed PPE.

We look forward to further developing social impact programs with the Tejon Indian Tribe to meet the needs of the Tribe and our most vulnerable residents. We need to pivot to meet the community needs. And establishing a homeland for this Tribe and the support of this project, the

support in this mission is integral to the success.

Hospitals are anchors in the communities, and we have the opportunity to be more intentional in meeting the needs of our patients and the residents who live here, and through this economic power and human capital, we can do that. We look forward to our continued partnership and urge the support of the draft EIS and the project.

MR. BROUSSARD: Okay. Thank you for your comment.

If Ken Keller is still available and would like to speak, please raise your hand, and we'll try to get to you.

I am not sure what happened there, but right now we will go to our next speaker, which is Stephanie Holcroft. Please unmute your microphone and restate your name for the record, and you'll have three minutes.

MS. HOLCROFT: Hi, there. Can you hear me?

MR. BROUSSARD: Yes, I can.

MS. HOLCROFT: My name is Stephanie Holcroft. In fact, my grandma was one of the last people to live on the Tejon Indian Tribe area, where the Tejon thing is now. You know what I'm

talking about.

My grandma's name is Juana Higino Encinas. She was born in 1878, and she died in 1934. And all my life I have been passionate about knowing her and honoring her and getting some righteous things happening for her.

Right now I am standing with a picture of my beautiful grandma, and I am standing here with a book from the Smithsonian that has her picture in it.

And I am so grateful and glad for Kern County being who you are. I am so proud of you guys. I love you guys, and I thank you for that, for seeing what our Tribe needs, for seeing what our people need.

I am 100 percent for this. I think it is very honoring to my grandma and to her memory -- and to my great-grandma and her memory and also to my grandma, who grew up in the Indian schools.

I am 100 percent for this, and I am honored to be able to speak before you today. It brings me great peace and happiness just to be able to address you people, and I just want to thank you for that.

MR. BROUSSARD: Okay. Thank you for your

comment.

Our next commenter is listed as Galaxy A10. There's no name attached to it. So if you signed in as Galaxy A10, please unmute your microphone and please restate your name clearly for the record. You'll have three minutes.

MS. KINEONES: Janie Kineones. I am a tribal member.

I am in full support of the Hard Rock Casino that would bring employment, and it would be good for our community. I know that people travel for hours just to go and have fun and enjoy themselves at casinos. Our casino would be local, so they wouldn't have to travel so far, and it would be nice to live on our own land and see our tribe advance.

So please, respectfully, approve the EIS. Thank you.

MR. BROUSSARD: Thank you for your comment. That concludes our list of individuals who have raised their hand to share their comments, and I want to thank everyone for their comments -- oh, looks like we have one more individual that has just raised their hand -- a couple more.

So the next speaker will be Sandra

Hernandez. Ms. Hernandez, please unmute your microphone and restate your name for the record. You'll have three minutes.

MS. HERNANDEZ: Sandra Hernandez, H-e-r-n-a-n-d-e-z. Can you hear me?

MR. BROUSSARD: Yes, I can.

MS. HERNANDEZ: Great. Hello, everybody, good evening. My name is Sandra Hernandez. I am the Tribe's secretary currently serving.

I'd just like to thank everybody for being here. It's been a long call and, I have enjoyed listening to the comments. It is nice to know the community is in support of the Tribe in the same way.

Our Tribe is in support of our community. Our beloved ancestors signed a treaty with the United States in 1851. It is 2020. Our Tribe has been landless now for 169 years.

Our people respectfully ask the Bureau of Indian Affairs and Secretary of the Interior to please expeditiously continue to move this project forward, achieving approval by 2020's end.

Going into 2021, it would be 170 years that our Tribe has been landless. It is time to rectify the things that have happened in the past

to move forward to a more positive stance.

As I stated before, our community has wholeheartedly been involved in the progress of seeing this project successfully move forward. We are excited to share the opportunities that our tribal members will have in the same manner that our community members will have. We are excited for the opportunity to keep moving forward with our project in our community with all of our community members and our tribal members.

We look forward to the programs and the opportunities we can bring here to Kern County and Bakersfield. Thank you very much.

MR. BROUSSARD: Okay. Thank you for your comments.

Our next speaker will be Joey Lozano Junior. Mr. Lozano Junior, please restate your name for the record and unmute your microphone. You will have three minutes.

MR. LOZANO: Can you hear me?

MR. BROUSSARD: Yes, we can.

MR. LOZANO: I am Joey Lozano Junior. I am a tribal member. I would like to say thank you, Kern County, for supporting our tribe and this project. That's it. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment. That concludes our list -- we just had another hand raised.

Mr. John Spaulding, please unmute your microphone and restate your name for the record. You have three minutes.

John Spaulding, are you available to speak? Please go ahead and unmute your microphone. That works, Mr. Spaulding, but it looks like you muted it again. Unmute it and go ahead and give your comment.

Mr. Spaulding, we did hear you for a second there. So please unmute your microphone and just leave it unmuted and then just go ahead and give your comment. We will give you a second to work it out.

Mr. Spaulding, are you still there? Did he drop off?

Okay. Mr. Spaulding, we'll give you a little time to try to work out your microphone.

In the meantime, if there's anyone else that would like to speak, please use the "Raise Hand" feature. Looks like we have a few more speakers, so we are going to go ahead and move on to the next speaker.

Mr. Spaulding, we are happy to try to hear your comment. We'll come back to you after we go through some of these other commenters.

So our next speaker will be Tom Castleman. Mr. Castleman, please unmute your microphone and restate your name for the record. You have three minutes.

MR. CASTLEMAN: My name is Tom Castleman. I am the business manager of Plasterers' Local Union No. 200 and the delegate to the Kern County Building & Construction Trades Council.

Our local represents members in the Kern County as well as 11 other counties in Southern California. We have partnered with various other Native American tribes both currently and over the last 20 years.

We would like to announce our enthusiastic endorsement for the Hard Rock Hotel and Casino to all projects.

Today I would like to demonstrate from my personal experience the economic impact in valuable projects such as this one being presented today. As a worker who came from the field, I was fortunate enough to participate in three similar hotel projects in Southern California, which

collectively provided me with at least two solid years of employment. With that employment, I was able to provide my family with decent healthcare and save for our future.

Our members in the Kern area look forward to the same opportunities.

One thing I will never forget as I commuted to and from the hotel and casino project is the economic evolution of the surrounding tribal lands. Now, the Tejon dynamics are a little different because they have no homeland. I think these comments will give you kind of the same message.

Old and delipidated housing structures were slowly replaced by modern homes that clearly provided a better quality of life for the tribal community and gave them a much better grip on economic independence. I witnessed the communities that worked with the tribe, and it improved the entire region.

I witnessed annual contributions of tribal funds to surrounding nontribal high school sports and music programs. I witnessed an inspirational transition of tribal communities that may have had a difficult history to a people that have become

prosperous, outgoing, self-sufficient, unselfish group of proud American citizens.

I am extremely confident that this project can achieve all or more of these special achievements between the local communities and the Tribe. As a bonus, this development's location makes for a great place for me to have a pit stop in my travels in and around the community. Thank you very much.

MR. BROUSSARD: Okay. Thank you for your comments.

So now we'll go to Vivian Lozano. Please unmute your microphone and restate your name for the record. You'll have three minutes.

MS. LOZANO: Can you hear me?

MR. BROUSSARD: Yes.

MS. LOZANO: My name is Vivian Lozano, and I fully support. I'd like to say thank you, and that's it.

MR. BROUSSARD: Thank you for your comment.

We will go back to John Spaulding now. Mr. Spaulding, please unmute your microphone and restate your name for the record, and then you'll have three minutes.

Mr. Spaulding, are you available to speak? It seems like we might be having some audio issues on your end. Mr. Spaulding, we encourage you to call our support line, which is (949) 861-5954, and try to work those out.

But for now we will go to our next commenter, which is Eric Lualemana. Please restate your name for the record and unmute your microphone. You will have three minutes.

MR. LUALEMANA: Can you hear me?

MR. BROUSSARD: Yes, I can.

MR. LUALEMANA: I am Eric Lualemana. I am a Tejon Indian Tribe member. I am in Monterey, California. I work in education with our school district. And my grandmother is an elder of the Tejon Indian Tribe, and I heard earlier one of my cousins say that she was the oldest of the elders.

So my comment today is that I hope that we can approve this and expedite it in a fashion that she will see it within her time. Really, that's all I would like to see.

Bakersfield, that whole Kern County could benefit from it and what I try and tell our children of our district is growth is good, forward moving, and that's all I want to see for our Tribe.

Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Robert Nadal. Mr. Nadal, please unmute your microphone, restate your name for the record. You'll have three minutes.

MR. NADAL: Hello, can you hear me?

MR. BROUSSARD: Yes, I can.

MR. NADAL: First, thank you for this time. On behalf of the family, of the Nadal family and all the Tribe members of the Tejon Indian Tribe, I approve of this project, also the EIS.

Foremost, I would love to take this time to thank all of our elders before us and all the hard work that was done just to get us where we are at right now.

I want to thank BIA for taking the time, listening to our comments and taking consideration that everybody, as far as from the leaders from Kern County and doing what's right for us Tribe members from the BIA and approving this project, not only this project, but to give us our land. It is something that we look forward to and been wanting for so long. I thank you and God bless.

MR. BROUSSARD: Okay. Thank you for your comments.

Our next speaker will be John Spaulding. Mr. Spaulding, please unmute your microphone and restate your name for the record. You have three minutes.

MR. SPAULDING: Good evening, Mr. Broussard. Thank you for your patience and allowing us to speak tonight.

MR. BROUSSARD: Of course. Thank you for your comments.

MR. SPAULDING: I am the executive secretary of the Kern County Building & Construction Trades Council. I want to thank the Bureau of Indian Affairs for posting the draft EIR impact study for the Hard Rock Hotel and Casino project here in Kern County.

Building & Trades represents over 6,000 building tradesmen and women, veterans, minorities and offers opportunities for construction careers to everyone, including the Tribe's men and women of the Tejon Tribe.

This hearing is a long-awaited step in the advancement of this project and the future of the Tejon Tribe in general. This can be a bright spot

in Kern County, providing economic growth.

Our Building & Trades Council has been working with the Tejon Tribe since 2014. They have been steadfast in their commitment to the building trades, local hire, apprenticeship, training, Helmets to Hardhats for our veterans.

In meeting with Hard Rock International last year, they were equally committed to the building trades in support of the Tejon Tribe.

We have been impressed by the Tribe's goals of not only building a casino, but for building a hotel, restaurants, healthcare facility and housing, all of which will benefit the members of the Tejon Tribe.

They have continually worked with the Kern County Planning and Natural Resource Department to achieve the most positive outcome possible for the Tejon Tribe and Kern County.

Thousands of construction and operational jobs will have the most positive impact on the future of Kern County and the Tejon Tribe.

Please approve the Tribe's trust acquisition and casino project A1. We are in full support. Again, thank you for your patience.

MR. BROUSSARD: Okay. Thank you for your

comment.

Our next speaker is identified as Samsung with no name. Please unmute your phone and state your name, and you have three minutes.

MS. QUEZADA: My name is Leilani Quezada, and I am a tribal member from the Tejon Tribe. I am the oldest granddaughter of Frances Garcia, who is one of the elders still here with us, and I hope we get approved so my grandmother will see this in life. Thank you. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next speaker will be Delilah Calderon-Buck. Ms. Calderon-Buck, please unmute your microphone and state your name. You will have three minutes.

MS. CALDERON-BUCK: Hello, my name is Delilah Calderon-Buck. I am a tribal member, and I want to say my support for this project, because this has been going on for decades, and I believe this is time to give us an opportunity to show what we can do for our community and this planet.

And I am a displaced tribal member living out of the state because I had no other choice, but now if this project progresses, I believe me and my

family have a place to come back to and call home. Home is where the heart is. Home is where we commute -- have community life with each other, and we have missed this for many, many years.

I just wanted to show my support for this evening and thank you for giving us this chance.

MR. BROUSSARD: Okay. Thank you for your comment. I don't think we have anyone else signed up to speak right now. So if there's anyone else that would like to make a comment, please raise your hand, use the "Raise Hand" icon, and we'll call your name.

Okay. It looks like we have someone -- no, we did have someone that raised her hand. It looks like it was lowered. So if you'd like to speak, you just need to hit the "Raise Hand" icon. Okay.

There we have someone. Anthony McElrath, please unmute your microphone and restate your name for the record. You'll have three minutes.

MR. McELRATH: Thank you, sir. Can you hear me?

MR. BROUSSARD: Yes.

MR. McELRATH: My name is Anthony McElrath. I am a former resident of Kern County,

and my son and I are new Tejon Tribal members. My beautiful cousin, Ashley Holcroft, reached out to us and informed us of the Tejon Tribe being federally recognized once again.

I want to voice my support and tremendous pride for what this project means to so many tribal members, family members and to the people and businesses of beautiful Kern County.

The tribal council and local supporters have all done an incomparable job in restoring the Tejon Indian Tribe to its proud glory.

My family and I extend our greatest appreciation and support, along with my son, my parents, my brothers and sisters, nieces, nephews, my cousins, all my big, beautiful family. I look forward to seeing this excellent project come to fruition, meeting all the beautiful tribal members coming back to the community, and just this whole project adding to the beautiful Kern County communities.

Thank you very much for your time and for what you're all aiming to do.

MR. BROUSSARD: Okay. Thank you for your comment.

Let's see, do we have -- we have no one

else with their hands raised right now. If you would like to make a comment on the record, please hit the hand icon and that will raise your hand.

If you're calling in -- looks like we have two call-in listeners, if you would like to make a comment on the record, you hit *9 to raise your hand.

We will wait about -- about a minute to see if anyone chimes in and raises their hand to speak before we conclude the hearing.

Again, if you would like to speak or make a comment, raise your hand either by using the "Raise Hand" icon or if you're calling in and hitting *9.

Look like we have Jennifer McElrath. Please unmute your microphone and restate your name for the record. You'll have three minutes.

MS. McELRATH: My name is Jennifer McElrath Hea. That was my brother who just spoke. Can you hear me?

MR. BROUSSARD: Yes, I can hear you.

MS. McELRATH: Okay. I am just going to follow up behind him, although not as wonderful and eloquently as he spoke.

I just want to reiterate that we are

fairly new. I had actually just left the area right before you guys down there started the process of being recognized. Just I wish I had stayed in the area. It was -- I would have loved to have been part of that.

It just reminds me of everything my father had told us about, like, his parents, grandparents and the area and the history. So proud. So proud to be part of the Tribe. I am looking forward to coming and meeting the rest of the family and have such honor for the other family that we have already met since.

We are looking forward to it and am in very much support of this project. The area we are living in now does have a Native American casino. I have had the fortune to work there and be called part of its family.

And let me tell you, the community that it provides and the closeness, it is like working with family, and the benefits that we hold -- will be able to hold is so important, especially in today's world for our community. Very proud of that.

Looking forward to everyone being able to benefit from that, and it will provide such a resource for the community in Kern County.

So once again, I am so honored to be a part of this and thank you for letting me speak.

MR. BROUSSARD: Okay. Thank you for your comments.

Again, if there is anyone who would like to make a comment, please use the "Raise Hand" feature. Just hit the hand icon. We'll give it about a minute to see if anyone would like to sign up to make a comment before we close out the hearing.

If you'd like to make a comment, use the "Raise Hand" feature or if you're calling in, you can hit *9 and that will raise your hand.

Looks like we have someone who has raised their hand and would like to make a comment. Our next speaker would be Dina Nachor. Please unmute your microphone and restate your name for the record. You'll have three minutes.

Dina Nachor, are you available to speak? Please unmute your microphone so you can give your comments.

So it looks like we might be having some technical difficulties with Ms. Nachor. We can't hear you. If you want to call our help line, we will stick around for a couple minutes to see if

you can work out the audio issue. The number is (949) 861-5954.

In the meantime, we have someone else that has signed up to speak, Stephanie Holcroft. Ms. Holcroft, please unmute your microphone.

You'll have three minutes.

MS. HOLCROFT: My name is Ashley Holcroft, and I am actually the daughter of Stephanie. Can you hear me?

MR. BROUSSARD: Yes, I can.

MS. HOLCROFT: Wonderful, Chad. I would just like to say that just how important this is. I am 34 years old, and I have been raised in the culture of not knowing who I am and not knowing who we are as a culture, and this whole -- this whole -- this whole -- having land and having -- having a home is so important to us.

And this is so legitimizing. It is not legitimizing because we always know who we are, but we all know that we have a centuries-old American propaganda of just negating everything that the Native Americans stand for, and it is not their property and they didn't know who they were.

Anyway, this is so important to us to have an area that we can call our own. We were

originally from just the most beautiful parts of California and then we were all -- our area was truncated to certain parts. So this is just a legitimizing and such a wonderful, wonderful way to heal the wounds.

So we very much appreciate everything the EIS committee is doing and everything that Kern County is doing. We are daughters of Kern County, and we very much appreciate this and we very -- are very proud to be Kern County daughters and just citizens.

So we very much appreciate everything you guys are doing, and we just would like to absolutely, you know, forward our absolute strong commitment to this project. This is wonderful and thank you very much.

MR. BROUSSARD: Okay. Thank you for your comment.

Our next commenter will be Dina Nachor. Please unmute your microphone and restate your name for the record. You have three minutes.

MS. NACHOR: Hi. Can you hear me?

MR. BROUSSARD: Yes, I can.

MS. NACHOR: I am -- my name is Dina Nachor, a tribal member of Tejon. I am sitting

here with my mother, who is the oldest elder of our Tribe, and she wanted me to get on here and thank everybody for their support as well as ours.

We fully support this project. We look forward to not being a landless tribe going forward with this project. And she just wanted to express her feelings and say thank you to everybody who is supporting this and looking forward to this project, right, Mom? Say thank you. That's it. Thank you.

MR. BROUSSARD: Okay. Thank you for your comment, once again.

Looks like we do not have anyone who has their hands raised to speak. So if you would like to speak before we close the hearing, please use the "Raise Hand" function at the bottom of your window, and -- or if you're calling in, you can hit *9 and that will raise your hand.

So we will wait a minute or so to see if anyone raises their hand before we close out the hearing.

Okay. If there are no more comments, this concludes the BIA's public draft EIS hearing for the Tejon Tribe's fee-to-trust and casino project. I want to thank everyone for their participation

and good night.

(Whereupon the proceedings were concluded at 8:41 p.m.)

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COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

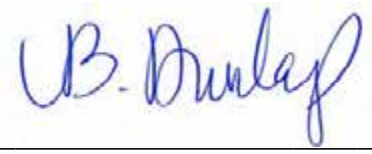
I, Balinda Dunlap, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 10710 issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

Dated: July 30, 2020



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