

**AMENDED
FINDING OF NO SIGNIFICANT IMPACT**

CONVEYANCE OF 40 ACRES OF FEE PROPERTY TO FEDERAL TRUST

**TULE RIVER TRIBE
TULARE COUNTY, CALIFORNIA**

LEAD AGENCY: Bureau of Indian Affairs

ACTIONS: Finding of No Significant Impact - Amended

SUMMARY:

The Bureau of Indian Affairs is reissuing an amended FONSI for the Tule River Rancheria's proposed 40-acre fee-to-trust acquisition in order to address comments made by the Office of the Governor in a letter dated July 26, 2010, which were inadvertently omitted from the initial FONSI dated September 2, 2010 and are incorporated herein. It should be noted that comments addressed in the Amended FONSI reflect only those comments submitted during the initial EA comment period beginning on June 24, 2010 and ending July 26, 2010, and does not include any comments received thereafter.

The Tule River Tribe submitted a request to the Bureau of Indian Affairs (BIA) to approve the acquisition in trust of fee land totaling 40± acres. Seventeen properties are involved in this project. The 40-acre parcel is located in a portion of Southwest ¼ Quarter of the Northeast ¼ Quarter of Section 8, Township 22 South, and Range 27 East, of the Mt. Diablo Base and Meridian, Tulare County, California. The parcel is comprised of 40± acres and is located within the city limits of Porterville, California, adjacent to the Porterville Municipal Airport. The parcel is known as the Tule River Airpark and lies within the city's Enterprise Zone, which is zoned for recreational-oriented uses. The City of Porterville's General Plan designated the site for Light Industrial Uses and the site is within the M-1(AS) (Light Industrial -- Airport Safety Overlay) Zone. The Assessor's Parcel Numbers for these 17 properties are 302-400-001 through 302-400-017.

The properties are owned by the Tule River Indian Tribe and managed by the Tule River Economic Development Corporation (TRDEC). TREDC is an instrumentality of the Tribe that manages economic activities including the Tule River Aero Industries and serves as the property manager of the Tule River Air Park. Other tenants at the Airpark include Indian Health Services, which leases office space in one of the buildings on the site and the Central California Interagency Communications Center (CCICC) which coordinates fire protection and firefighting activities among a variety of federal, state and tribal agencies.

The original 40 acre parcel was also divided into 17 lots for industrial development through a parcel map approved by the City of Porterville in 1995. Since that time, industrial development has been gradual but ongoing on the subject site. To date, two large buildings have been constructed on two parcels out of the 17 total parcels at the Porterville Airpark.

BACKGROUND, REGULATORY AND STATUTORY CONSTRAINTS:

Approval of the fee to trust application allows the Tribe to explore expanded job creation efforts consistent with the City of Porterville's growth strategy. The realization of the project would increase the standard of living and provide employment opportunities for both Tribal members and citizens of the City of Porterville. Profits from the project will be allocated by the Tule River Tribal Council for community development, land purchases, business development, support for law enforcement and the judicial system, Tribal services, and contributions to the Tribal fund.

The trust acquisition process described in 25 CFR 151 allows the Tule River Tribe to acquire land in trust status; exercise tribal sovereign powers over the land, facilitating self-determination, diversify economic development, and provide much needed tribal housing. The single greatest practical effect of the proposed trust acquisition is removal of the subject properties from local civil jurisdiction and taxation effectively preventing unwarranted discriminatory actions toward the Tribe.

DESCRIPTION OF THE PROPOSED PROJECT:

The proposed action is a fee to-to-trust action with no change in land use. In 1986, the Bureau of Indian Affairs informed the Tribe that it had over \$150,000 plus interest in its Indian Monies Proceeds of Labor (IMPL) Account. The Tribe chose to invest the IMPL funds in economic development projects and ultimately acquired two (2) forty (40) acre parcels of real property off the reservation in 1989. One 40 acre parcel was located just west of the Porterville Airport and was later subdivided by the Tribe into a 17 lot industrial park (the "Porterville Airpark").

The Tribe and the City of Porterville entered into a purchase agreement dated May 9, 1989 which closed with a Corporation Grant Deed dated September 27, 1990 and recorded October 29, 1990.

To begin the industrial park, in 1992, the Tribe and the City of Porterville were joint applicants for a grant from the Economic Development Administration of the U.S. Department of Commerce to fund infrastructure development for an industrial park on the subject site. The EDA awarded \$600,000 in support of a \$750,000 construction program under the Economic Development Assistance Programs—under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*), and the Trade Act of 1974, as amended (19 U.S.C. §§ 2341-2391). In 1994, this grant was amended to be an \$800,000 grant in support of a one million dollar construction project.

In 1993, designs for sewer, water, storm drainage facilities, and road improvements including paving, curb, gutter and sidewalk, with connection to City of Porterville existing systems were started. These improvements were constructed and the Porterville Airpark has full access to municipal water and sewer services.

The buildings on the land currently house the Tule River Economic Development Corporation (TREDC) and a U.S. Department of Agriculture (USDA) warehouse for distributing food to low-

income families. TREC is an instrumentality of the Tribe that manages other economic development programs including Tule River Aero Industries, an FAA repair station that specializes in general aircraft aviation that serves the adjacent Porterville Municipal Airport. Other tenants on the site include Indian Health Services, which leases office space in one of the buildings on the site and the Sequoia National Forest Emergency Command Center, a Central California Interagency Communications Center (CCICC) which coordinates fire protection and firefighting activities among a variety of federal, state and tribal agencies. The Eagle Mountain Casino Warehouse Facility which stores non-gaming supplies for operation of the Tribe's casino round off the existing tenants at the facility. The Assessor's Parcel Numbers for properties are 302-400-001 through 302-400-017.

To continue this pattern of economic cooperation, the Tribe and the City have entered into the Cooperation Agreement effective April 1, 2010 (Attachment C). In that Agreement, the Tribe agrees to follow the City of Porterville General Plan and zoning in effect for the Porterville Airport and to obtain the written approval of the City before initiating any future development project at the Porterville Airpark.

ENVIRONMENTAL IMPACTS:

An Environmental Assessment (EA) dated June 2010 has been prepared to determine the environmental impacts that may result as a consequence of the Bureau of Indian Affairs proposal to accept land into trust for the benefit of the Tule River Tribe. The EA was distributed for public review and comment for the period beginning June 24, 2010 and ending July 26, 2010.

It is our decision, in cooperation with the Tule River Tribe, to select the Proposed Action Alternative. Other alternatives considered were the No Action Alternative. Based upon the analysis in the Environmental Assessment for the proposed action, we have determined that this action will not significantly affect the quality of the human environment. Therefore an Environmental Impact Statement is not required.

The following is based on the following factors:

- A. The direct effects of the proposed action (trust conveyance) will not have an impact to topography, soil types & characteristics, geologic setting and mineral resources. See EA Section 4.1.
- B. No adverse effects to water resources or wetlands will result from the proposed project. See EA Section 4.2.
- C. The direct effects of the proposed action (trust conveyance) will not impact air quality thresholds. See EA Section 4.3.
- D. No adverse impacts to living resources would result from the implementation of the proposed project. See EA, Section 4.4.
- E. There will be no Historic Properties Affected as a result of this proposed project. Should any subsurface materials be encountered during any future construction activities, work in the vicinity shall be halted and procedures implemented to ensure significant resources are not adversely affected. See EA, Section 4.5.
- F. Since no construction or development is proposed as part of an administrative land conveyance action, no significant impacts on infrastructure would occur as a result of direct effect. See EA Section 4.6.

- G. There will be no significant impact to the transportation network. See EA, Section 4.7.
- H. Since no construction or development is proposed as part of this direct effects action, there would be no construction-level, or post-operational noise associated with the proposed conveyance, nor would any new or existing sensitive receptors be created or impacted. See EA Section 4.8.
- I. Since no construction or development is proposed as part of this direct effects action prominent visual features on the project site would remain the same, and would not be impacted. See EA Section 4.9.
- J. Since no construction or development is proposed as part of this direct effects action, there would be no measurable impacts upon the attitudes, expectations, and cultural values of local community members as a result of the proposed project. See EA Section 4.10.
- K. The trust conveyance of the property will result in the loss of property taxes to the City of Porterville and Tulare County would be equal to 0.0012047% of the total assessments collected for Tulare County. See EA Section 4.11.
- L. There is no indication that either the construction or operation of future industrial or commercial development would impact a higher minority population component or low-income population component than the general population of the surrounding area impacting Environmental Justice. See EA Section 4.12.
- M. Cumulative impacts are considered to be insignificant. See EA, Section 4.13.

COMMENTS RECEIVED:

The Vice Mayor of the City of Porterville sent a letter dated July 20, 2010 to the BIA expressing the City's support of the proposed trust conveyance (Attachment A).

Kay McGuire, Board Chair of the Porterville Chamber of Commerce, remitted a letter dated July 22, 2010 supporting the proposed trust conveyance of the Porterville Airpark on behalf of the Tule River Tribe (Attachment B).

RESPONSE TO EA COMMENTS

Caltrans Division of Aeronautics and Caltrans District 6 provided comment letter's to the State Clearing House, July 23 & 27, 2010 relating to airport-related noise, safety and regional land use planning issues. Pursuant to the agreement with the City of Porterville, the Tribe agrees to comply with all airport zoning requirements and overlays.

Andrea Lynn Hoch, Legal Affairs Secretary of the Office of the Governor in a letter dated July 26, 2010 expressed concerns regarding the need to acquire land.

In response, Article I of the Constitution and Bylaws of the Tule River Indian Tribe of California provides as follows: "The jurisdiction of the Tule River Indian Tribe shall extend to the territory within the confines of the Tule River Indian Reservation, situated in Tulare County, State of California, as established by Executive orders of January 9 and October 3, 1873, and of August 3, 1878, to all lands claimed by the tribe and to which title in the tribe may hereafter be established; and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law." The Tribes Constitution was approved by the Assistant Secretary of Interior on July 12, 1940 and has the full affect of law and approval by

the United States. The Porterville Airpark is in an area of great historical importance to the Tribe as part of its aboriginal heritage and the Tribal Council is required by the Tribal Constitution and Bylaws to reclaim such lands and assert Tribal self-determination and jurisdiction by taking such lands into trust.

The Governor's Office also commented on the need to convey the property for economic development purposes claiming that the Airpark can function successfully without trust status. In response, the Tribe pointed out several programs and tax advantages that will be applied to the property once trust status is achieved including:

Employment Tax Credits. The Indian employment credit provides non-Indian businesses with an incentive to hire Indians who live on or near the reservation. A \$20,000 tax credit is available to such businesses each tax year, for every "qualified employee" that is paid "qualified wages." A qualified employee must: (1) be an enrolled member of an Indian tribe or the spouse of a tribal member; (2) perform substantially all of his or her services for the business on the reservation; and, (3) reside on or near the reservation. Qualified wages are any wages the business pays or incurs for services performed by a qualified employee, including health insurance costs. Thus, a non-tribal company that situates a business facility on the reservation could be eligible for sizeable employment tax savings annually.

Accelerated Depreciation. Non-Indian manufacturers with facilities in Indian Country can use shorter recovery periods when calculating depreciation deductions for its production equipment. "Qualified Indian reservation property" must be used predominately in the active conduct of a trade or business on the Reservation and, must be 3-, 5-, 7-, 10-, 15-, or 20-year property or non-residential real property. "Qualified infrastructure property" that is located off-reservation, but connected to qualified infrastructure within the reservation, is also eligible for shorter recovery periods. Power lines, water systems and telecommunication facilities are examples of qualified infrastructure property. Because the shorter recovery periods for qualified Indian and infrastructure property are in addition to the normal expense deduction of up to \$100,000 for such assets, the depreciation tax savings to non-Indian manufacturers could also be significant.

Tax-Exempt Financing. For Indian country, ARRA created a species of tax-exempt bonds, known as Tribal Economic Development Bonds (TEDB), which allows tribes to issue tax-exempt bonds under substantially the same rules that apply to other governmental entities. ARRA authorized tribal governments, for the first time, to issue tax exempt bonds for private development activities in the same manner as state and local governments. Prior to the passage of ARRA, tax exempt bonds issued by tribal governments could only be used (with limited exceptions) for essential government purposes. ARRA lifted this restriction on a temporary, limited basis, allowing TEDBs to be issued up to a total volume cap of \$2 billion dollars. ARRA also required the Department of Treasury to report to Congress on the effect of ARRA's liberalization of the use of tribal tax exempt bonds within one year of passage of the Act. To the extent the TEDBs are extended, they will be able to finance economic development at the Porterville Airpark after it is taken into trust.

The Governor's Office also questions possible future zoning changes that are allowed in the Cooperation Agreement with the City of Porterville, specifically the speculation of a casino or for a casino-related purpose.

In response, the Office of the Governor is aware, any use of off reservation trust land for gaming would require the consent of the Governor of the State where the land is located (25 U.S.C. 2719). Therefore, the Office of the Governor would have the power to veto any proposed gaming. The BIA and the IBIA have consistently decided that “mere speculation by a third party that a tribe might, at some future time, attempt to use trust land for gaming purposes does not require BIA to consider gaming as a use of the property in deciding whether to acquire the property in trust.” *Town of Charleston, R.I. v. E. Area Dir., BIA*, 35 IBIA 93, 103 (2000), *aff’d sub nom. Carcieri v. Norton*, 290 F. Supp. 2d 167 (D.R.I. 2003), *aff’d sub nom. Carcieri v. Kempthorne*, 497 F.3d 15 (1st Cir. 2007) (*en banc*), *rev’d on other grounds sub nom. Carcieri v. Salazar*, 129 S. Ct. 1058 (2009).

The Tribe also attempted to create an unprecedented relationship with Tulare County and the City of Porterville as an exercise of our strong belief that we should have a strong government-to-government foundation. Governor Schwarzenegger vetoed AB 1884 (Maze, 2008) on September 28, 2010. In his veto message the Governor stated “Sovereign tribes can work cooperatively with their local governments through agreements and memorandums of understanding as contemplated by the tribal-state compact my administration has executed. I encourage the proponents of this measure to pursue their objectives in this manner.”

The City of Porterville and the Tule River Tribe have followed the message of the Governor and have crafted an agreement that continues our government-to-government relationship with the City of Porterville and yet meets the spirit of the Governor’s veto message of September 28, 2008.

Tulare County Counsel Kathleen Bales-Lange in a letter dated July 26, 2010 presented five Exhibits including those from Tulare County Resource Management Agency, a law firm that represents the County of Tulare (Nielsen, Merksamer, Pirandello, Mueller and Naylor), letters from concerned citizens, a newspaper article from the Porterville Recorder newspaper, and the Tulare County Airport Land Use Commission. The County and the supporting exhibits are expressing concerns regarding the potential for intense commercial use (Attachment D).

County of Tulare Resource Management Agency (RMA) – RMA expressed concerns that the EA did not adequately address the Need for the Proposed Action. In response, Section 1.0 and 1.3 of the EA does adequately address the need for the project which identifies the purpose of this action is to continue to expand the Tule River Tribe’s land base to satisfy Tribal needs in the areas of Tribal self-determination, housing, economic self-sufficiency and alleviation of poverty.

RMA also was concerned that the EA failed to consider alternatives. Two alternatives are presented in the EA; the Proposed Action and the No Action Alternative. These are the only options available to the BIA and therefore the EA did indeed consider alternatives.

RMA is concerned that the EA did not adequately address air quality including traffic-related emissions. In response, the EA presented two alternatives; the Proposed Action (trust conveyance) and the No Action Alternative (no change in status) in which air quality would not be impacted as there is no change in land use.

RMA commented that the impact of greenhouse gas (GHG) emissions was not evaluated in the cumulative impact section of the EA. In response, the GHG emissions effects of the Proposed

Action (trust conveyance) and the No Action Alternative (no change in status) will not impact climate change as no GHG emissions will occur.

RMA is concerned that the EA was inadequate due in part to the proximity of the project site to the Porterville Municipal Airport, building and fire standards, health and social problems, food-handling standards, seismic considerations, and fire safety. In response, both the Proposed Action (trust conveyance) and the No Action Alternative (no change in status) included duly permitted buildings and facilities that are provided with emergency services (See Pages 24 and 25 of the DEA), gaming and gaming-related social problems will not occur with either of the alternatives presented, food-handling standards are not applicable, seismic hazards are addressed on Pages 13 to 14 of the EA, fire protection is described on Page 24 of the EA, and airport safety is addressed on Page 27 of the EA and within the Cooperative Agreement between the Tribe and the City of Porterville.

RMA is concerned that the EA did not adequately address the noise impacts of the proposed project. In response, noise is discussed on Pages 27-28 of the DEA.

RMA is concerned that the project would have possible adverse affects on local government. The EA on Page 23 includes a discussion of property taxes. Page 24 of the EA also lists the 2009 Tulare County Indian Gaming Local Community Benefit Committee grant funding to the County of Tulare and the City of Porterville by the Tule River Tribe.

RMA expressed concern that the EA did not analyze water supply impacts. In response both the Proposed Action (trust conveyance) and the No Action Alternative (no change in status) will not affect groundwater supply as municipal water is provided by the City of Porterville. Both the Project and No Action Alternative will not increase the demand for municipal water and groundwater is not exploited for either of the Alternatives.

RMA expresses concern that the EA's discussion of wastewater disposal is minimal. In response, two alternatives are proposed in the EA; the Proposed Action and the No Action Alternative. In sum, either the property is conveyed to federal trust status or it remains in fee status. Either alternative will not affect the City's capacity to serve the site.

RMA suggests the need for a traffic study to be prepared in support of the EA. In response, both the Proposed Action (trust conveyance) and the No Action Alternative (no change in status) do not have the potential to increase and thereby impact traffic and circulation and therefore a traffic study is not warranted.

RMA expressed the desire for an Environmental Impact Statement instead of an EA. In response, the Proposed Alternative is not considered a major federal action that will have a significant effect on the environment. Simply stated, the Proposed Alternative is an administrative action that will convey the property from fee simple status to land that will be held in trust by the federal government on behalf of the Tule River Tribe.

The letter from Nielsen, Merksamer, Pirandello, Mueller and Naylor, attorneys representing Tulare County provide concerns that a casino/resort, gas station/truck stop, large commercial center or other intense commercial use could be built at the undeveloped portion of the Airpark property. In response, Tulare County Counsel completely fails to mention that the City of

Porterville will be required to approve any development at the Porterville Airpark property, which such MOU also requires the Tribe to follow all applicable City of Porterville planning requirements.

A letter from concerned citizen Dennis Townsend received July 26, 2010 expressed concerns that once the land is conveyed to federal trust that an auto mall, outlet mall, or gas station were to be developed it would require a business plan. As with the response above, the City of Porterville will be required to approve any development at the Porterville Airpark property pursuant to the Tule River Tribe/City of Porterville MOU.

Three letters were received by BIA voicing similar concerns regarding the EA; Randall Carroll, owner of Carroll's Tire Warehouse, Greg Forrester, owner of Sierra Minit Mart and Neil Smith, Smith's Enterprise, expressed concerns that the Tribe would be granted free rein to develop businesses tax free. As with the other two preceding comments, Page 23 of the EA, includes a discussion of property taxes showing only a nominal amount in lost tax revenue would be incurred. Page 24 of the EA also lists the 2009 Tulare County Indian Gaming Local Community Benefit Committee grant funding to the County of Tulare and the City of Porterville by the Tule River Tribe. It was also pointed out in Greg Forrester's letter that concerns with the off reservation procedures (25 CFR 151) remain unanswered. His concerns were specific to the application process of this proposal and will thereby be addressed at that stage of the fee-to-trust process.

Finally, a letter was received from Jason LoBue, Planner III; Tulare County Airport Land Use Commission dated July 23, 2010 and concerns were expressed regarding changes in land use.

In response, the City of Porterville fulfilled the requirements of the land use law through adoption of the Porterville Municipal Airport Master Plan as the controlling General Plan element for land use in the vicinity of the airport and the related adoption of the AS (Airport Safety) and AD (Airport Development) Zones as components of the Porterville Zoning Ordinance. Under the terms of the Cooperation Agreement referenced above, the Tribe has committed to conform future development to the Airport Master Plan and Zoning Ordinance.

SUMMARY OF MITIGATION MEASURES

The Best Management Practices (BMPs) and mitigation measures described in the EA are considered project elements and will be implemented as conditions of approval to assure that environmental effects are insignificant. The following mitigation measures listed below are either:

- (1) Elements of project design/operation, or
- (2) BMPs, which have been incorporated in project planning and design, or
- (3) Conditions of federally required permits and approvals, such as the enrollment under the general storm water discharge permit for construction activities (Clean Water Act).

As with the mitigation measures described in the EA, the following mitigation measure will be implemented as conditions of approval:

- To continue the long-term pattern of economic cooperation, the Tribe and the City have entered into the attached Cooperation Agreement effective April 1, 2010 (Attachment E). In that Agreement, the Tribe agrees to follow the City of Porterville General Plan and zoning in effect for the Porterville Airport and to obtain the written approval of the City before initiating any development project at the Porterville Airpark.

ADDITIONAL MITIGATION MEASURES

No additional mitigation measures were identified.

ALTERNATIVES CONSIDERED:

Land Trust Action and Secretarial Determination

The proposed action includes the conveyance of property that is composed of approximately 40-acres of land within the limits of the City of Porterville west of the Porterville Municipal Airport off of West Street, Tulare County, California from fee simple to federal trust status.

Although there are no new or future changes in land use for the project parcels contemplated for the reasons outlined above, the City/Tribal Agreement which was adopted by both parties on April 1, 2010 creates a legally binding process in which future actions will be subject to the City's general plan and land use regulations and policies.

No Action Alternative

The "No Action" alternative would maintain the status quo of the site as "fee land". It would not be conveyed to Federal trust.

If the no action alternative were selected, the project area would still be available for development. It will remain under the jurisdiction of the City of Porterville. Accordingly, none of the potential impacts to environmental resources as discussed in Section 5.0 would occur. However, the no action alternative would have adverse impacts of its own. Primarily, the proposed project's contribution to the economy of the Tribe and the City of Porterville may not be sustained unless an infusion of cash is obtained through trust status designation, both in terms of short-term and long-term benefits.

The No Action Alternative is considered unacceptable by the Tribe since it fails to meet the goal of self-sufficiency of the Tule River Indian Reservation and is inconsistent with several articles in the Constitution and Bylaws of the Tule River Tribe.

DETERMINATION:

After review and independent evaluation, the BIA has determined that the proposed federal action, to approve the Tule River Tribe's request to take the proposed 40-acre site into trust for the purpose of operating the Porterville Airpark, does not constitute a major federal action that

would significantly affect the quality of the human environment within the meaning of NEPA. This conclusion is based on the analysis contained in the EA, consideration of public comments received, the response to those comments, and the mitigation imposed. Therefore, an Environmental Impact Statement is not required and the BIA is issuing this FONSI.

This FONSI will be distributed to all persons and agencies known to be interested in the proposed action as indicated by their comments on the EA. Additionally, copies of the EA and FONSI are available for review at the Porterville Public Library, 41 W. Thurman Ave, Porterville, CA. Copies are also available for public review at the Tule River Tribal Office located at 340 North Reservation Road, Porterville, California 93258 or online at <http://www.tulerivertribe-nsn.gov/>.

For Further information, contact Pat O'Mallan, Environmental Protection Specialist, Pacific Region Office, 2800 Cottage Way, Sacramento, CA 95825, or at (916) 978-6044.

"This FONSI is a finding on environmental effects, not a decision to proceed with an action, and therefore cannot be appealed. 25 CFR Part 2.7 requires a 30-day appeal period after the decision to proceed with the action is made before the action may be implemented. Appeal information will be made publically available when the decision to proceed is made."

(BIA National Environmental Policy Act Handbook, 59 IAM 3)

SEP 17 2010



Acting Regional Director, Pacific Region

Date

NOTICE OF AVAILABILTY

AMENDED FINDING OF NO SIGNIFICANT IMPACT

PROPOSED TULE RIVER TRIBE 40 ± ACRE FEE-TO-TRUST TRANSFER

TULARE COUNTY, CALIFORNIA

Notice is hereby given that the Bureau of Indian Affairs, Pacific Regional Office, is reissuing an amended FONSI for the Tule River Rancheria's proposed 40-acre fee-to-trust acquisition in order to address comments made by the Office of the Governor in a letter dated July 26, 2010, which were inadvertently omitted from the initial FONSI dated September 2, 2010 and are incorporated herein. It should be noted that comments addressed in the Amended FONSI reflect only those comments submitted during the initial EA comment period beginning on June 24, 2010 and ending July 26, 2010, and does not include any comments received thereafter.

It has determined that the proposed acquisition of 17 parcels, encompassing a total of 40± acres, in trust by the United States for the Tule River Tribe (Tribe), is not a major federal action significantly affecting the quality of the human environment. The Bureau's determination was based upon review and consideration of the comments received during the Environmental Assessment public comment period, beginning June 24, 2010 and ending July 26, 2010.

The 40-acre parcel is located in a portion of Southwest ¼ Quarter of the Northeast ¼ Quarter of Section 8, Township 22 South, and Range 27 East, of the Mt. Diablo Base and Meridian, Tulare County, California. The parcel is comprised of 40± acres and is located within the city limits of Porterville, California, adjacent to the Porterville Municipal Airport. The parcel is known as the Tule River Airpark and lies within the city's Enterprise Zone, which is zoned for recreational-oriented uses. The City of Porterville's General Plan designated the site for Light Industrial Uses and the site is within the M-1(AS) (Light Industrial – Airport Safety Overlay) Zone. The Assessor's Parcel Numbers for these 17 properties are 302-400-001 through 302-400-017.

The proposed action is a fee to-to-trust action with no change in land use. The Tribe is seeking to increase and diversify their revenue base to ensure future stability for the Tribe and its members.

For information or to obtain a copy of the Finding of No Significant Impact (FONSI), please contact: Patrick O'Mallan, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825 or at (916) 978-6044.

Additionally, copies of the EA and FONSI are available for review at the Porterville Public Library, 41 W. Thurman Ave, Porterville, CA. Copies are also available for public review at the Tule River Tribal Office located at 340 North Reservation Road, Porterville, California 93258 or online at <http://www.tulerivertribe-nsn.gov/>.

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FINDING OF NO SIGNIFICANT IMPACT
CONVEYANCE OF 40 ACRES OF FEE PROPERTY TO FEDERAL TRUST
TULE RIVER TRIBE
TULARE COUNTY, CALIFORNIA**

Attachment A – Letter from City of Porterville



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PACIFIC REGIONAL OFFICE

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DECLINES NO

July 20, 2010

Dale Risling, Acting Regional Director
United States Department of Interior
Bureau of Indian Affairs, Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

RE: Environmental Assessment (EA)
Proposed Trust Conveyance, Porterville Airpark
APN 300-400-001 through APN 300-400-017
Porterville, Tulare County, California

Dear Mr. Risling:

The City of Porterville (City) supports the Proposed Trust Conveyance of the Porterville Airpark on behalf of the Tule River Tribe (Tribe).

Such Proposed Trust Conveyance will not result in any significant unmitigated impacts to the environment pursuant to the National Environmental Policy Act (NEPA) as the Tribe has agreed pursuant to that Cooperation Agreement with the City of Porterville dated April 1, 2010, that:

1. The Tribe will not engage in any new development, construction, or new operation of any land use unless a written agreement is executed by the parties that assures consistency with the City's General Plan, regulations, and policies in effect at the time of the proposed development; and
2. That in any such agreement, any and all appropriate monetary and community contributions shall be committed to the City to account for the City's share of lost revenues related to taxes, licenses, and development fees, etc.; and
3. That in the event that the proposed development is not consistent with the City's applicable regulations, development will not proceed unless and until a written agreement between the parties is executed addressing any additional impacts.

In essence, as the Tribe has agreed after such Proposed Trust Conveyance to follow existing City land use restrictions in effect at the time of such Proposed Trust Conveyance, there will be no change in use of such property other than a change in legal ownership.

Please contact us if we can further assist the Tribe in completing such Proposed Trust Conveyance.

Sincerely,

Cameron J. Hamilton
Cameron J. Hamilton, Vice Mayor
City of Porterville

received
RES 8-4-10

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CONVEYANCE OF 40 ACRES OF FEE PROPERTY TO FEDERAL TRUST
TULE RIVER TRIBE
TULARE COUNTY, CALIFORNIA**

Attachment B – Porterville Chamber of Commerce



Porterville Chamber of Commerce
93 N. Main Street, Suite A • Porterville, California 93257
(559) 784-7502 • Fax (559) 784-0770

"People Promoting Business for the Benefit of the Community"

July 22, 2010

Dale Risling, Acting Regional Director,
United States Department of Interior
Bureau of Indian Affairs, Pacific Region Office
2800 Cottage Way
Sacramento, CA 95825

RE: Environmental Assessment (EA)
Proposed Trust Conveyance, Porterville Airpark
APN 300-400-001 through APN 300-400-017
Porterville, Tulare County, California

Dear Mr. Risling:

The Porterville Chamber of Commerce Board of Directors supports the Proposed Trust Conveyance of the Porterville Airpark on behalf of the Tule River Tribe based on the Cooperation Agreement with the City of Porterville.

It is our understanding that as the Tribe has agreed to follow existing City land use restrictions in effect at the time of the Proposed Trust Conveyance, there will be no change in use of property other than a change in legal ownership.

The Tribe is a contributing partner in efforts of economic and community development in the greater Porterville area; therefore, we are pleased to provide this support. Feel free to contact either myself or our President/CEO Donnette Silva Carter if we can provide additional assistance to the Tribe in completing the Proposed Trust Conveyance.

Sincerely,

Kay McGuire
Board Chair

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TULE RIVER TRIBE
TULARE COUNTY, CALIFORNIA**

Attachment C – Cooperation Agreement

CITY COUNCIL AGENDA: APRIL 20, 2010

TITLE: REPORT – COOPERATION AGREEMENT BETWEEN THE CITY OF PORTERVILLE AND THE TULE RIVER INDIAN TRIBE

SOURCE: CITY ATTORNEY

COMMENT: Attached is the Cooperation Agreement approved by the City Council during its Closed Session on March 16, 2010, and approved by the Tule River Indian Tribal Council at its meeting on April 1, 2010.

The Tribe has submitted an application to the United States Department of the Interior requesting that the United States take title to approximately 40 acres of Tribe-owned land within the City limits so that it will be held in trust for the benefit of the Tribe, to be utilized for non-gaming purposes. In order to address any City concerns regarding the effects said application will have on the City, the Tribe expressed its willingness to enter into an agreement that would set forth a framework for dealing with new land uses on the trust property. Consequently, the City and Tribe have approved the attached agreement.

The Agreement provides 1) that the Tribe will not engage in any new development, construction or new operation of any land use unless a written agreement is executed by the parties that assures consistency with the City's General Plan, regulations and policies in effect at the time of the proposed development, 2) that in any such agreement any and all appropriate monetary and community contributions shall be committed to the City to account for the City's share of lost revenues related to taxes, licenses, and development fees, etc., 3) that in the event the proposed development is not consistent with the City's applicable regulations, development will not proceed unless and until a written agreement between the parties is executed addressing any additional impacts, and 4) that the City will agree that it will not oppose the fee to trust application.

The Cooperation Agreement goes into effect after the Federal Government takes title to the Property in trust for the Tribe.

RECOMMENDATION: Report Only (no action).

ATTACHMENTS: Executed Cooperation Agreement Between the City of Porterville and the Tule River Indian Tribe

**COOPERATION AGREEMENT BETWEEN THE CITY OF PORTERVILLE
AND THE TULE RIVER INDIAN TRIBE**

WHEREAS, the Tule River Indian Tribe ("Tribe") inhabits a reservation that includes over 55,000 acres of rugged foothill lands of the Sierra Nevada Mountains; and

WHEREAS, the Tribe owns approximately 40 acres of land in the City of Porterville ("City") and adjacent to the Porterville Municipal Airport, commonly referred to as Tulare County Assessor Parcel Numbers (APN): 302-400-001 through 017 ("Tribal Property"); and

WHEREAS, the Tribe has submitted an application to the United States Department of the Interior requesting that the United States take title to the Tribal Property ("Fee to Trust Application") so that it will be held in trust for the benefit of the Tule River Indian Tribe of the Tule River Reservation; and

WHEREAS, the Tribe and the City intend to establish a cooperative and mutually respectful government-to-government relationship between each other with respect to development of the Tribal Property consistent with the City's general plan and land use regulations and policies, and assuring mitigation of any potential impacts that may be associated with any future development of the Tribal Property; and

WHEREAS, the Tribe wishes the City to support the Tribe's Fee to Trust Application; and

WHEREAS, the parties are committed to entering into a voluntary contractual arrangement with each other to provide for development consistent with the City's land use framework, and to assure mitigation of any impacts that may be associated with any proposed development of the Tribal Property; and

WHEREAS, the parties believe that the terms and obligations contained in the Memorandum of Understanding Between The City of Porterville and The Tule Indian Tribe To Advance Further Negotiations and The Performance of Governmental Processes ("MOU") are superseded by this Agreement; and

WHEREAS, the purpose of this Cooperation Agreement is to set forth the understandings of the Tribe and the City on the topics expressly set forth in this Cooperation Agreement;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Agreement Required for Development of Tribal Property

After the Federal Government takes title to the Tribal Property in trust for the Tribe, the Tribe agrees that it will not engage in any new development, construction or new operation of any land use on the Tribal Property prior to execution of a written agreement between the Tribe and the City which agreement shall assure that: 1) any intended land use of the Tribal Property shall be consistent with the City's General Plan, and all applicable City regulations and policies, including its zoning ordinance and site development standards for the Tribal Property, in effect at the time of the proposed development, construction or commencement of operation, and 2) any and all appropriate monetary and community contributions shall be committed to the City to account for the City's share of lost revenues in the form

of taxes, licenses, development impact fees and to mitigate various impacts that may arise in connection with any proposed development provided such fees would be imposed on other similarly situated developments in the City which are consistent with the City's land use regulations.

2. **Consideration of Land Uses Inconsistent with Applicable Regulations**

After the Federal Government takes title to the Tribal Property in Trust for the Tribe, in the event the Tribe intends to propose any development of the Tribal Property that is inconsistent with the City's applicable land use regulations, the parties hereby agree that development will not proceed unless and until a written agreement is executed between the parties, addressing additional monetary or community contributions, in addition to those set forth in paragraph 1, above to mitigate impacts associated with the development.

3. **City Non-Opposition**

In consideration of the covenants of the Tribe as set forth in this Agreement, the City agrees to not oppose any efforts by the Tribe to cause the Secretary to accept trust title to the Property for the benefit of the Tribe.

4. **Non-Applicability of CEQA**

The approval of this Agreement is not subject to the California Environmental Quality Act ("CEQA") as it does not constitute a project under CEQA.

5. **Severability**

If any provision of this Cooperation Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable. This Cooperation Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Cooperation Agreement, and the remaining provisions of this Cooperation Agreement shall remain in full force and effect.

6. **Scope**

This Cooperation Agreement is intended to apply and shall be construed to apply solely to the Tribal Property, and shall not be construed to apply to any other property owned by the Tribe.

7. **Dispute Resolution Provisions**

In an effort to foster good government-to-government relationships, the Parties agree to the dispute resolution procedures set forth in this Section.

(a) Meeting: The Parties shall make their best efforts to resolve claims of breach of this Cooperation Agreement by good faith negotiations whenever possible. Any such disputes between the Parties shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation in the efficiency in the administration of the terms, provisions and conditions of this Cooperation Agreement as follows:

(i) A Party shall give the other Party, as soon as possible after the event giving rise to the dispute, written notice setting forth, with specificity, the claims of breach of this Cooperation Agreement.

(ii) The Parties shall meet and confer in a good faith attempt to resolve such dispute through negotiation not later than 10 days after receipt of the notice, unless the Parties agree in writing to an extension of time.

(b) Litigation

If such dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then the Parties may seek to have the dispute resolved in the federal district court for the Eastern District of California, or to the extent it declines jurisdiction, in the Courts of the State of California. The parties expressly agree, however that any lawsuit in the Courts of the State of California will be initiated in the Superior Court for Tulare County.

(c) Other Dispute Resolutions

This Section may not be construed to waive, limit, or restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution including, but not limited to, arbitration, mediation or utilization of a technical advisor to the Parties; provided, however, that no Party is under an obligation to agree to such alternative method of dispute resolution.

8. **Limited Waiver of Sovereign Immunity**

(a) Waiver

Subject to the provisions of this Section, each of the Parties expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the other Party as to any civil action relating to claims of breach of this Cooperation Agreement (including but not limited to, claims for injunctive, specific performance or declaratory relief), and not as to any other actions, matters or disputes. Both parties agree that any dispute that is brought as a result of this Agreement shall not include any claim for monetary awards or damages.

(b) Limitations on Tribe's Waiver

The Tribe's waiver of sovereign immunity is limited solely to disputes arising under this Cooperation Agreement that do not involve monetary awards or damages. The Tribe does not waive its sovereign immunity to permit any monetary award or damages against, and the courts will have no authority or jurisdiction to issue any monetary award or damages or order the execution or enforcement of any monetary award or damages against, any assets or revenues of the Tribe. The Tribe's waiver of sovereign immunity shall extend only to the City and shall not inure to the benefit of any third party beneficiaries or others.

9. **Termination of Prior MOU**


The parties agree that the MOU entered into in and around March 2008 by and between the City and the Tule River Indian Tribe is of no further force or effect and no provisions or obligations contained in the MOU shall be binding upon or inure to the benefit of either party.

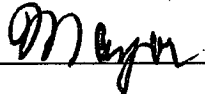
10. **Termination of this Agreement**

To the extent the Tribe withdraws its fee to trust application for the Tribal Property and so notifies the City of such withdrawal then either the Tribe or City may terminate this Agreement upon the giving of ninety (90) days advance written notice to the other.

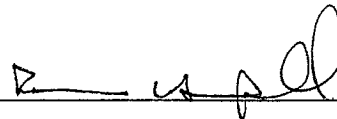
Effective this 1st day of April, 2010.

City of Porterville

By: 

Its: 

Tule River Tribal Council

By: 

Its: CHAIRMAN