

BEFORE THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF APPROVE AN)
 AGREEMENT WITH TULE RIVER INDIAN) Resolution No. 2020-1099
 TRIBE) Agreement No. 29538
)
)

UPON MOTION OF SUPERVISOR TOWNSEND, SECONDED BY SUPERVISOR SHUKLIAN, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD JANUARY 7, 2020, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS CROCKER, VANDER POEL, SHUKLIAN, VALERO AND TOWNSEND
 NOES: NONE
 ABSTAIN: NONE
 ABSENT: NONE



ATTEST: JASON T. BRITT
 COUNTY ADMINISTRATIVE OFFICER/
 CLERK, BOARD OF SUPERVISORS

BY: *Mercedes James*
 Deputy Clerk

1. Approved a Memorandum of Understanding and Intergovernmental Agreement ("MOU") with the Tule River Indian Tribe and Tule River Tribe Gaming Authority for the relocation and expansion of the Eagle Mountain Casino to Porterville;
2. Authorized the Chairman to sign the Agreement;
3. Found that approval of the MOU does not constitute the approval of a "project" for California Environmental Quality Act purposes under Title 14 of the California Code of Regulations, Section 15378, because it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in in a potentially significant physical impact on the environment;
4. Directed the Clerk of the Board to provide copies of the executed MOU to Tule River Indian Tribe and Tribe Gaming Authority, the Governor's Office, U.S. Department of the Interior, and state and federal legislators;
5. Authorized the County Administrative Officer and designees to take such actions as may be necessary to implement the terms of the MOU.



**County Administrative
Office
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One
PETE VANDER POEL
District Two
AMY SHUKLIAN
District Three
EDDIE VALERO
District Four
DENNIS TOWNSEND
District Five

AGENDA DATE: January 7, 2020

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>

CONTACT PERSON: Marta Rodriguez PHONE: 636-5005

SUBJECT: Approve an Agreement with Tule River Indian Tribe

REQUEST(S):

That the Board of Supervisors:

1. Approve a Memorandum of Understanding and Intergovernmental Agreement (“MOU”) with the Tule River Indian Tribe and Tule River Tribe Gaming Authority for the relocation and expansion of the Eagle Mountain Casino to Porterville;
2. Authorize the Chairman to sign the Agreement;
3. Find that approval of the MOU does not constitute the approval of a “project” for California Environmental Quality Act purposes under Title 14 of the California Code of Regulations, Section 15378, because it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment;
4. Direct the Clerk of the Board to provide copies of the executed MOU to the Tule River Indian Tribe and Tribe Gaming Authority, the Governor’s Office, U.S. Department of the Interior, and state and federal legislators; and
5. Authorize the County Administrative Officer and designees to take such actions as may be necessary to implement the terms of the MOU.

SUMMARY:

The Tule River Indian Tribe and Tule River Tribe Gaming Authority (collectively, the “Tribal Parties”) have proposed to relocate and expand their Eagle Mountain Casino from its present site on the Tribe’s reservation to a Tribe-owned site in the City of Porterville near the Porterville airport (the “Project”). A description of the Project features is shown on Attachment 1 to this report. The Project requires approval from the U.S. Department of the Interior/Bureau of Indian Affairs (“BIA”) and from the State

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of California (Governor and Legislature). As a part of the approval process, the BIA commissioned the preparation of a joint Environmental Impact Statement and Tribal Environmental Impact Report (“EIS/TEIR”) under the National Environmental Quality Act (“NEPA”) and the California Environmental Quality Act (“CEQA”), designed to identify potential benefits of and adverse offsite environmental impacts of the Project. The County participated in the review of the EIS/TEIR, provided comments to the BIA on impacts, and proposed mitigation measures to reduce those impacts to less-than-significant levels.

Concurrently, Tribal officials and consultants and County staff worked to negotiate the terms of a Memorandum of Understanding and Intergovernmental Agreement (“MOU”) that would provide financial and programmatic mitigation for the offsite impacts of the Project. Such an MOU has typically been required by the Governor’s Office and the Legislature before giving the State of California’s approval for similar projects. The Tribal Parties and County staff have reached agreement on the terms of an MOU that meets both entities’ needs and that MOU is now presented to the Board for consideration. The Sheriff, Fire Chief, and RMA Director concur with the CAO’s recommendation for approval.

Attachment 1 to this agenda item includes a description of the Project and a summary of the proposed MOU, including mitigation measures and mitigation payments to be made by the Tribal Parties to the County for law enforcement services, fire and emergency medical services, general mitigation/payments-in-lieu-of-taxes, and improvements to County roads in the vicinity of the new casino site. Attachment 2 is the recommended MOU. The Tribal Parties entered into a similar MOU with the City of Porterville, which was approved by the Porterville City Council on July 23, 2019.

Approval of the MOU does not constitute approval of the Project for CEQA or NEPA purposes because such Project approval lies with the BIA and is outside of the County’s purview. Under CEQA, approval of the MOU is not a “project” because the MOU involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. If and when such projects are considered for County approval, then appropriate CEQA analysis and actions will be undertaken and recommended.

FISCAL IMPACT/FINANCING:

Under the proposed MOU, the Tribal Parties will provide a predictable, stable funding source to mitigate impacts to the County and the surrounding community resulting from the operation of the Eagle Mountain Casino at the Porterville site.

Under the terms of the MOU, the Tribal Parties will pay the County:

1. Lump-sum payments for law enforcement services through the Sheriff’s Department, and fire and emergency medical services through the County Fire Department. One-time lump-sum payments will include \$3.5 million (payable in a \$1 million down-payment within 30 days of the Casino opening (anticipated

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for mid-2021), and the \$2.5 million balance in 12 equal quarterly payments beginning in the third year of the Agreement) for law enforcement services, \$196,000 toward the purchase of a Type 1 Fire Engine to be housed at Station 19 in Porterville.

2. Annual payments of \$550,000 for general mitigation/Payments-In-Lieu-of-Taxes ("PILT").

On mitigation of traffic impacts to County roads in the vicinity of the new casino site, the MOU provides that the County will design and construct certain improvements to (1) Teapot Dome Avenue between West Street and ¼ mile east of West, and from Road 224 to approximately 550 feet west of Newcomb Street; (2) the Avenue 256/Spruce Road intersection; (3) West Street between Teapot Dome Avenue and the City limits, and the Tribal Parties will contribute their pro-rata fair shares of the improvements costs. The Tribal Parties will overlay Westwood Street between the Avenue 140 alignment and State Route 190 at their cost. The County's proposed contributions will come from the Road Fund and other non-General Fund sources.

These payments are further outlined in Attachment 1 and detailed in the MOU. There is no net County cost to the General Fund for the recommended actions.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Approval of the MOU supports the Strategic Business Plan's Strategic Initiative 2: Economic Well-Being – Promote economic development opportunities, effective growth management and a quality standard of living, and attainment of the goals for the Initiative.

ADMINISTRATIVE SIGN-OFF:



Jason T. Britt
County Administrative Officer

Cc: County Administrative Office
Sheriff's Department
Fire Department
Resource Management Agency

Attachments:

1. Project Description and Summary of MOU;
2. Memorandum of Understanding and Intergovernmental Agreement with Tule River Indian Tribe and Tule River Tribe Gaming Authority for Relocation and Expansion of its Eagle Mountain Casino to Porterville;

Attachment 1

Eagle Mountain Casino Relocation and Expansion Project

1. Project Description

The Project is to be located on a 40-acre site on the east side of West Avenue, approximately 720 feet south of Scranton Avenue and the Porterville Sports Complex, all within the Porterville City limits, just west of the Porterville Airport. The Project includes development of an approximately 100,000-square foot ("sf") casino with approximately 1,750 electronic slot machines and other gaming devices, 20 table games, service bars and lounges; a 175-room multi-story hotel (which may include a fitness center); 30,000 sf of food and beverage facilities with 450 total seats; administrative space, a 25,000 sf multipurpose events center with an entertainment venue; and associated surface parking and infrastructure, including a fire station.

As part of the Project, the Tribe would connect to City of Porterville water and wastewater systems, and build a water reclamation facility ("WRF"). This proposed WRF would treat secondary effluent produced from the City's waste water treatment facility and provide recycled water to the Project and for irrigation of the Porterville Sports Complex, which is currently irrigated with potable, well-drawn City water. The Project would also include the construction of a 200 acre-foot (AF) regional stormwater retention basin in the vicinity of the Project site.

Following the opening of the new Casino, which is projected for 2021, the Tribe proposes to close the existing Casino on the Tribe's Reservation and convert it into tribal administrative offices and service uses.

2. Summary of Memorandum of Understanding ("MOU")

A. General:

- a. Term of MOU coincides with term of Tribe's new Gaming Compact with State of California, which are typically 25 year agreements;
- b. MOU is subject to renegotiation, beginning 4 years after Opening Day, if there is (1) a significant change in circumstances that directly or indirectly relates to a Party's expectations under this Agreement; (2) that change materially impacts that Party; and (3) that change could not have been reasonably anticipated at the time of entering into this Agreement. Such changes may include, but are not limited to, a change in State or federal law that extends gaming to non-Indians or non-Indian lands, a change in the financial obligations of the Tribe to the State under the New Compact, a reduction in the scope of gaming on Indian lands mandated by federal or State law, or a change in State law or in the State manner of doing business that increases the County's responsibility regarding (a) law enforcement services related to the Relocation Project and/or Project Land; (b) fire or emergency medical services related to the Relocation Project and/or Project Land; or (c) general governmental services and/or public safety, including, for example, public safety equipment and maintenance costs, road maintenance, traffic control costs, mental health services and justice services such as the district attorney, public defender and probation departments, related to the Relocation Project and/or Project Land.
- c. County agrees to support Project in return for Tribe's compliance with MOU;

- d. Any disputes arising under the MOU are to be resolved through a process that includes informal negotiations, followed by non-binding mediation, binding arbitration, and ultimately Federal or State Court enforcement of any arbitration award. Each Party will bear its own attorneys' fees and costs but the Arbitrator may direct which Party will pay for the costs of the Arbitrator. If the County or Tribe reasonably believes a dispute presents an imminent and significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified for the resolution of disputes under the MOU, then the complaining Party may proceed with judicial litigation in Federal or State Court without first having to go through the mediation and arbitration processes.
- e. Tribe waives its sovereign immunity to allow County to enforce the MOU in Federal or State Court.

B. Payments and Mitigation Measures:

a. Law Enforcement:

- i. Tribe will make a lump-sum payment of \$3.5 million for Sheriff's law enforcement services. Payments will consist of a \$1 million down-payment payable within 30 days of Opening Day, and the \$2.5 million balance in 12 equal quarterly payments beginning in the 3rd year of the MOU.
- ii. Tribal security officers and/or tribal law enforcement officers shall work in conjunction with the Sheriff's Office and the City's Police Department to ensure effective, professional and safe administration of law enforcement.

b. Fire & Emergency Medical Services:

- i. The Tribe intends to establish an on-site fire department and fire station which will have trained personnel and the necessary equipment to provide fire suppression and emergency medical aid for the new Casino site.
- ii. The Tribe and County will simultaneously enter into a mutual aid/automatic aid, and dispatching agreement regarding the provision of fire suppression and emergency medical aid for both the new casino site and the reservation. This mutual aid and dispatching agreement will be consistent with those entered into between fire departments, fire agencies and fire protection districts located in the County.
- iii. Upon commencement of construction of the Project, the Tribe will make a one-time payment to the County of \$196,000 to cover approximately 41.5% of the cost of new Type 1 fire engine and related equipment to be housed at Station 19 in Porterville. In exchange, the County Fire Department will provide regular fire safety inspections of the construction site, and emergency medical aid and fire suppression during the construction phase. In addition if requested by the Tribe, the County Fire Department will perform inspections of fire safety systems for the Relocation Project before opening.
- iv. If the Tribe does not construct and operate the planned on-site fire department and station within two years of Opening Day, then the Tribe must make Annual Payments of \$48,667 to County as reimbursement for added costs of fire and emergency medical services until it constructs and operates the on-site fire station and fire department.

c. General Mitigation/Payments-in-lieu-of-Taxes (“PILT”):

- i. Beginning one year after the new Casino opens, the Tribe annually will pay the County \$550,000 for general mitigation and as payments-in-lieu-of-taxes;
- ii. This payment is to be spent on public safety equipment and maintenance costs, road maintenance, traffic control costs, mental health services and justice services such as the District Attorney, Public Defender and Probation Departments, and other projects or purposes that benefit the new casino site or surrounding community;
- iii. The new Joint Committee will consist of 2 members appointed by the County Board of Supervisors, 2 members appointed by the Tribal Council, and 1 neutral member appointed by the other 4 members;
- iv. The Joint Committee will hold regularly scheduled meetings on Tribe/County concerns. These meetings will occur no less than quarterly and will be held in a place accessible to the public. All Brown Act requirements for public meetings will apply to these meetings;
- v. The purpose of the Joint Committee, which is advisory only, and its meetings is to serve as a mechanism for discussions on matters of common interest and importance to both governments, to review and provide advice on the County’s use of the PILT payments, and the status of the Parties’ respective obligations under the MOU. Staff and advisors for each respective government may be invited to attend as deemed appropriate.

d. Road Improvements:

- i. The Parties will design and construct improvements to County road segments and will fund and pay their pro rata “fair share” contributions for each improvement, all as identified on the following chart;
- ii. The Tribe and County will coordinate their efforts with the City of Porterville and CalTrans as necessary to implement the identified improvement projects.

Traffic Impacts Mitigation

	Location	Improvements	Completion Date	Preliminary Estimates*	Tribe Fair Share	County Fair Share
1.	Teapot Dome Avenue , from Westwood Street to @ 550 feet west of Newcomb Street, outside City limits.	County to reconstruct roadway within the existing 50-foot right of way	Opening Day	\$2,830,100 (including #2 below)	59.5%	60.5%
2.	Teapot Dome Avenue , from West Street to @ ¼ east of West Street, outside City limits.	County to reconstruct roadway within the existing 50-foot right of way	Opening Day	\$--- (included in # 1 above)	0%	100%
3.	West Street , from Teapot Dome Avenue to @ 1300 feet north of Teapot Dome Avenue	County to cold plane and overlay existing pavement, within the existing right of way	Opening Day	\$326,000	0%	100%
4.	Westwood Street , from the Avenue 140 alignment to State Route 190	Tribe to install 0.20-foot hot asphalt mix overlay on the existing pavement, widen the existing shoulders, and install edgeline rumble strips, all within the existing right of way	Opening Day	\$790,000	100%	0%
5.	Scranton/West Intersection.	City and Tribe to install traffic signal and widen the northbound approach to accommodate a left-turn lane	Opening Day	\$1,952,000	85.6%	4.8%
6.	Avenue 256/Spruce Road Intersection	County to install traffic signal or roundabout	By 2040	\$3,850,000	7%	93%
7.	Traffic Mitigation Measures Required by Record of Decision ("ROD")	Except as otherwise provided above, the Tribe will either construct, or pay	Opening Day or by 2040	--	See attached	See attached

	Location	Improvements	Completion Date	Preliminary Estimates*	Tribe Fair Share	County Fair Share
		its pro rata fair share of the total costs of, the traffic mitigation measures required by the ROD. A list of the measures is attached for convenience.				

* Figures based on 2019 dollars and rounded for convenience

**Traffic Mitigation Measures Required by Record of Decision (“ROD”)
(from pages 34-37 of ROD)**

6.7 TRANSPORTATION

Where transportation infrastructure is shown as having an unacceptable level of service (LOS) with the addition of traffic from the Preferred Alternative (and caused at least in part from project traffic), the Tribe shall pay for a fair share of costs for the recommended mitigation (including right-of-way and any other environmental mitigation). In such cases, the Tribe shall be responsible for the incremental impact that the added project trips generate, calculated as a percentage of the costs involved for construction of the mitigation measure (referred to as the pro rata share). The pro rata share is calculated using the methodology presented in the California Department of Transportation (Caltrans) Guide for the Preparation of Traffic Impact Studies (Appendix I of the Final EIS). Weekday PM peak hour was chosen for pro rata share calculations because it generally represents the worst-case scenario; calculations are included in the traffic impact study (TIS; Appendix I of the Final EIS).

In accordance with the Memorandum of Understanding, the anticipated requirements of the Compact, and to prevent violation of federal, state and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the following traffic mitigation measures shall be implemented as identified within the TIS.

6.7.1 Construction

The following mitigation measure is required under the Preferred Alternative to minimize transportation impacts associated with construction:

A. A traffic management plan shall be prepared in accordance with standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (FHWA, 2003). The traffic management plan shall be submitted to each affected local jurisdiction and/or agency. Also, prior to construction, the contractor shall coordinate with emergency service providers to avoid obstructing emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the details of the construction schedule, location of construction activities, duration of the construction period, and any access restrictions that could impact emergency response services. Traffic management plans shall include details regarding emergency service coordination. Copies of the traffic management plans shall be provided to all affected emergency service providers.

6.7.2 Operation (Opening Year 2021)

The Tribe shall make fair share contributions to the traffic mitigation measures identified below prior to initiation of project construction. Funds shall either be paid directly to the jurisdictional agency, or be placed in an escrow account for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design (funding shall be for design standards consistent with those required for similar facilities in the region, unless a deviation is approved by the entity with jurisdiction), obtain approvals/permits for, and construct the recommended road improvement. While the timing for the off-site roadway improvements is not within the Tribe's jurisdiction or ability to control, the Tribe shall make good faith efforts to assist the County and City with implementation of the improvements prior to opening day.

The following mitigation measures are required under the Preferred Alternative:

- B. The Tribe shall notify the City of Porterville of special events scheduled at the events center, and the Tribe shall meet with local agencies charged with traffic enforcement (including but not limited to the CHP, City of Porterville, and Tulare County) to obtain necessary permits and identify any necessary traffic control measures to be implemented. If determined to be necessary, a Traffic Management Plan (TMP) shall be prepared.
- C. SR-190/Rockford Road (Road 208). Conduct an Intersection Control Evaluation (ICE), and install a traffic signal or roundabout, pending the outcome of the ICE. Pro-rata share: 28.2 percent.
- D. Scranton Avenue/West Street. Install a traffic signal and widen northbound approach to accommodate left-turn lane or install a roundabout. Pro rata share: 85.6 percent.
- E. Scranton Avenue/Westwood Street. Install a traffic signal or a roundabout. Pro-rata share: 55.8 percent.
- F. The Tribe shall offer to enter into an agreement with the appropriate jurisdiction(s) regarding financial responsibility for improving the current conditions of West Street between Scranton Avenue and Yowlumne Avenue, Teapot Dome Avenue between Westwood Street (Road 224) and Newcomb Street, and Westwood Street between Scranton Avenue and approximately one half mile north of Scranton Avenue. The Tribe's one-time fair share towards these improvements would take into consideration other regional projects that contribute to traffic on these roadways, including the County's jail project. Based on the pro-rata fair share calculations provided in the TIS (Appendix I of the Final EIS) for Alternative A, the Tribe would be responsible for: 1) 100 percent of the cost of 1/3 mile of road pavement overlay on West Street between Scranton Avenue and Yowlumne Avenue, 2) 59.5 percent of the cost of one mile of road reconstruction on Teapot Dome Avenue between Westwood Street (Road 224) and Newcomb Street, and 3) 65.2 percent of the cost of 1/2 mile of road reconstruction immediately north of Scranton Avenue on Westwood Street.

6.7.3 Operation (Cumulative Year 2040)

The Tribe shall make fair share contributions available for mitigation recommended for cumulative impacts prior to construction of the improvement. The timing for construction of each improvement will be at the discretion of the applicable jurisdictional agency. Funds shall be placed in an escrow account for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design (funding shall be for design standards consistent with those required for similar facilities in the region, unless a deviation is approved by the entity with jurisdiction), obtain approvals/permits for, and construct the recommended road improvement. While the timing for the off-site roadway improvements is not within the Tribe's jurisdiction or ability to control, the Tribe shall make good faith efforts to assist the County and City with implementation of improvements prior to 2040.

The following mitigation measures are required under the Preferred Alternative in the cumulative year 2040:

- G. SR-65 from Pioneer Avenue to SR-190: Upgrade facility to include auxiliary lanes between interchanges per Caltrans standards. Pro-rata share: 15.9 percent.
- H. SR-137/SR-63. Conduct an ICE if necessary. Widen northbound approach to accommodate an additional dedicated left turn lane, an additional dedicated thru lane and a dedicated right turn lane. Widen southbound approach to accommodate an additional thru lane. Widen eastbound

approach to accommodate an additional dedicated left turn lane. Widen westbound approach to accommodate an additional dedicated thru lane and a dedicated right turn lane. Pro-rata share: 8.6 percent.

- I. SR-137/SR-65. Conduct an ICE if necessary, and widen eastbound approach to accommodate a dedicated thru lane with a shared thru/right turn lane. Pro rata share: 4.7 percent.
- J. SR-137/Road 204 (Spruce). Conduct an ICE if necessary, and widen westbound approach to accommodate two thru lanes and one free right turn-lane; widen southbound approach to accommodate dual-left turn lanes and shared thru-right lane; widen eastbound approach to provide a thru and thru-right lane. Pro rata share: 4.6 percent.
- K. SR-190/Road 192. Conduct an ICE if necessary, and install a traffic signal or roundabout. Pro rata share: 31.0 percent.
- L. SR-190/Road 216. Conduct an ICE if necessary, and install a traffic signal or roundabout. Pro rata share: 14.7 percent.
- M. SR-198/Spruce Road (Road 204). Conduct an ICE if necessary. Traffic signal modifications to accommodate dual northbound left turn lanes and a shared thru/right lane. Eastbound approach, widen to accommodate dedicated right/thru/left lanes. Eastbound approach channelize right turn lane. Pro-rata share: 4.7 percent.
- N. Avenue 256/Spruce Road (Road 204). Install traffic signal or a roundabout. Pro-rata share: 7.0 percent.