

CHAPTER 5.0

MITIGATION MEASURES

CHAPTER 5.0 MITIGATION MEASURES

The Council on Environmental Quality (CEQ) 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). These principles have been applied to guide design and siting criteria for the project alternatives.

As described more fully in **Chapter 2.0**, alternatives integrate regulatory requirements, conditions of Municipal Service Agreements (MSA), and Best Management Practices (BMPs) into the overall project design in an effort to minimize the potentially adverse environmental effects identified in **Chapter 4.0**, including indirect and cumulatively adverse effects. When appropriate, mitigation measures have been recommended. Relevant regulatory requirements, conditions of the MSA, BMPs, and recommended mitigation measures are summarized below. All mitigation is enforceable because it is 1) inherent to the project design, 2) under terms of the MSA (**Appendix D of the Draft EIS/TEIR**), and/or 3) required through provisions of federal or state statute, where applicable.

5.1 LAND RESOURCES

BARSTOW SITE

In accordance with Section 2 of the Tribe’s MSA with the City of Barstow (City), the Tribe has agreed to enact laws applicable to the trust lands and shall require that all tribal development projects on the trust lands shall be used and developed in a manner that is consistent with the Barstow Municipal Code in effect at the time of any project development. The Tribe has also agreed to adopt building standards and codes no less stringent than those adopted by the City and prior to the use of any structure provide the City, at the Tribe’s expense, written certification from the project’s architect of record that said structures have been constructed in accordance with said standards and code provisions. Further, the Tribe has agreed to ensure compliance with the City’s adopted codes including those pertaining to building standards and to contract with the City to provide planning, building and safety, fire prevention, and public works personnel to review any and all construction plans and inspect construction of all improvements on or off the trust lands. With the incorporation of the MSA provisions identified above, development of Alternatives A and B would result in minimal direct, indirect, and cumulatively considerable adverse effects to land resources.

LOS COYOTES SITE

With the incorporation of the mitigation measures identified in **Section 5.2** below, development of Alternatives A and B would result in minimal direct, indirect, and cumulatively considerable adverse effects to land resources.

5.2 WATER RESOURCES

The following regulatory requirements and BMPs recommended for Alternatives A through D would avoid, minimize, or mitigate adverse effects to water resources:

REGULATORY REQUIREMENTS

In accordance with Section 402 of the Clean Water Act, the Tribe will file with the United States Environmental Protection Agency (USEPA) a Notice of Intent for coverage under the Phase II NPDES General Permit for Stormwater Discharges Associated with Construction Activities (General Permit). Accordingly, a Storm Water Pollution Prevention Plan (SWPPP) will be developed prior to any ground disturbance at the project site and shall include practices to reduce potential surface water contamination during storm events. The SWPPP will outline site-specific BMPs designed to comply with the water quality and soil erosion provisions of the General Permit.

SWPPP BMPs

The purpose of the following BMPs is to minimize or eliminate pollution of storm water from construction-related sources; some BMPs apply to several pollution sources. The BMPs included within the site-specific SWPPP shall include, but are not limited to, the following:

1. Major grading activities will be scheduled during the dry season.
2. Erosion control blankets or jute netting will be placed in rough graded ditches and then hydro-seeded.
3. Fiber rolls and straw wattles will be installed through the construction site around the down-slope perimeter of the construction site.
4. Hay or straw mulch and tackifier will be used as temporary measure for stabilizing disturbed areas.
5. Landscaping will be managed to minimize erosion and sedimentation according to the following practices:
 - Rock filter berms will be placed across roadways.
 - Sediment basins will be installed throughout the project site and will be removed during the final phase of construction.
 - Silt fencing will be placed down-slope of exposed soil areas and around temporary soil stockpiles.
 - Sacked rock filters will be placed around new curbs and drainage inlets around the project site until the soils are stabilized with permanent landscaping.
6. Catch basins, junction boxes, culverts, and outfall structures/energy dissipaters will be used throughout the grading plan.
7. Detention basins will be constructed to provide for sediment settling.
8. Ingress/egress points to the project site will be stabilized and graded.
9. A wash station will be erected at the egress point of the project site if dirt and mud tracking from the site is anticipated.
10. Cleaning, fueling, maintenance, and repair of construction vehicles and equipment will be performed off-site whenever possible.

11. The Contractor shall be responsible for all maintenance, inspection, and repair to all erosion and sediment control measures throughout the construction period, and will ensure that all other protective devices are maintained and repaired in good and effective condition.

5.3 AIR QUALITY

The following BMPs recommended for construction of Alternatives A through D would avoid, minimize, or mitigate adverse effects to air quality:

1. Water all active construction areas at least twice daily.
2. Cover all trucks hauling soil and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
3. Pave, apply water two times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
4. Sweep all paved access roads daily (with water sweepers), parking areas, and staging areas at construction sites.
5. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
6. Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour.
7. Restrict traffic on site to reduce soil disturbance and the transport of material onto roadways.
8. Cover dirt, gravel, and debris piles as needed to reduce dust and wind-blown debris.
9. The Tribe shall control emissions of volatile organic compounds (VOC), nitrogen oxides (NO_x), sulfur oxides (SO_x), and carbon monoxide (CO) whenever reasonable and practicable by requiring all diesel-powered equipment be properly maintained and minimizing idling time to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation.
10. The Tribe shall use diesel particulate filters, and low sulfur diesel fuel on all diesel equipment.
11. Prohibit engine tampering to increase horsepower, except when meeting manufacturer's specifications.
12. Locate diesel engines, motors, and equipment staging areas as far as possible from sensitive receptors.
13. Reduce construction-related trips of workers and equipment and material delivery by encouraging worker car pools and flex scheduling. The construction contractor should develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.

14. Utilize USEPA tier II or III equipment (2004 or newer model), using a minimum of 75 percent of the equipment's total horsepower. Implementation would reduce construction-related emissions by using equipment, which emits fewer pollutants.
15. Buildings shall be oriented to take advantage of solar heating and natural cooling, and use passive solar designs (residential, commercial, and industrial).
16. Use architectural coatings with low VOC content.
17. Solar, low-emission, central, or tank-less water heaters (residential and commercial), and increase wall and attic insulation that meets or exceeds Title 24 requirements (commercial).
18. Use light-colored roofing materials in construction to deflect heat away from buildings.
19. Use double-paned windows to reduce thermal loss in buildings.
20. Install automatic lighting on/off controls and energy-efficient lighting.
21. Use only natural gas or propane fired "fireplace" appliances.

The following BMPs recommended for the operation of Alternatives A through B would avoid, minimize, or mitigate adverse effects to air quality:

22. The Tribe shall provide on-site pedestrian facility enhancements such as walkways, benches, proper lighting, and building access, which are physically separated from parking lot traffic.
23. The Tribe shall provide adequate ingress and egress at entrances to the facilities to minimize vehicle idling and traffic congestion.
24. Design the project site to maximize bicycle access and provide secure bicycle parking/lockers in public parking facilities. Provide locker room/showers to employees who bicycle.
25. Use bicycles and/or low-emission vehicles for security patrols and other facility vehicle needs.
26. Buses shall comply with the California Air Resource Board's Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling (California Code of Regulations, Title 13, Division 3, Article 1, Chapter 10, Section 2485) which requires that the driver of any diesel bus shall not idle for more than 5 minutes at any location, except in the case of passenger boarding where a ten minute limit is imposed, or when passengers are onboard. Furthermore the Tribe shall provide a "Drivers Lounge" for bus and truck drivers to discourage idling.
27. Implement a carpool/vanpool program e.g., carpool ride matching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.
28. Electric landscaping equipment shall be used for commercial and educational facilities.
29. The Tribe shall purchase emission credits prior to the beginning of construction of the Proposed Project in the amount of 43 tons per year of nitrogen oxide and 28 tons per year of reactive organic gas emissions credits, for Alternatives A and 32 ton per year of nitrogen oxide emissions credits for Alternative B. Purchase of emission credits would offset estimated operational emissions such that no net increase in NOx or Rog would occur. This would result in the Proposed Project being in conformity with the applicable State Implementation Plan and therefore, result in a minimal adverse effect on regional air quality.

CLIMATE CHANGE

Mitigation Measures

Table 5-1 demonstrates compliance with the State’s reduction goals. Implementation of the mitigation measures below and outlined in **Table 5-1** would minimize adverse cumulative effects due to GHG emissions for all alternatives.

TABLE 5-1
COMPLIANCE WITH STATE EMISSIONS REDUCTION STRATEGIES

Exec Order S-3-05 / AB 32 Strategy	Project Design / Mitigation Measure Compliance
Diesel Anti-Idling: In July 2004, the CARB adopted a measure to limit diesel-fueled commercial motor vehicle idling.	Project would be in compliance after implementation of Mitigation Measure 30 .
Achieve 50 percent statewide Recycling Goal: Achieving the State's 50 percent waste diversion mandate as established by the Integrated Waste Management Act of 1989, (AB 939, Chapter 1095, Statutes of 1989), will reduce climate change emissions associated with energy intensive material extraction and production as well as methane emission from landfills. A diversion rate of 48 percent has been achieved on a statewide basis. Therefore, a 2 percent additional reduction is needed.	Project would be in compliance after implementation of Mitigation Measure 31 .
Water Use Efficiency: Approximately 19 percent of all electricity, 30 percent of all natural gas, and 88 million gallons of diesel are used to convey, treat, distribute and use water and wastewater. Increasing the efficiency of water transport and reducing water use would reduce greenhouse gas emissions.	Project would be in compliance after implementation of Mitigation Measure 32 .
Source: State of California, Environmental Protection Agency, and Climate Action Team, 2006	

30. Implementation of **Mitigation Measures 9** and **26** would reduce diesel engine idling.
31. A Solid Waste Management Plan (SWMP) shall be adopted by the Tribe that addresses recycling and solid waste reduction on-site. The plan shall have at least a 50 percent diversion goal, which includes reduction, recycling, and reuse measures.
32. The Tribe shall use low-flow appliances where feasible and utilize both potable and non-potable water to the extent practicable. The project proponent shall use drought resistant landscaping where practicable and provide “Save Water” signs near water faucets throughout the development.

The following mitigation measures, when implemented in combination with the components of the Alternatives A, B, C, and D as described in **Chapter 2.0**, would further reduce project related GHGs emissions. These measures also demonstrate consistency with the Attorney General’s Proposed Global Warming Mitigation Measures (2007) (Office of the California Attorney General, 2007).

33. The Tribe shall plant trees and other carbon-sequestering vegetation on-site. The addition of photosynthesizing plants would reduce atmospheric carbon dioxide (CO₂) because plants use CO₂ for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the buildings, reducing heat absorption and the need for air conditioning.
34. The Tribe shall use environmentally preferable materials to the extent practical for construction of facilities.

35. The Tribe shall require the use of energy efficient lighting, which would reduce indirect GHG emissions. Using energy efficient lighting would reduce the project's energy usage, thus, reducing the project's indirect GHG emissions.
36. The Tribe shall provide recycling bins in accessible areas on the project site. Recycling reduces GHG emissions from indirect energy use, landfills, and manufacturing of raw materials.
37. The Tribe shall make use of on-site renewable energy and co-generation, where appropriate. Generation of renewable energy and co-generation would reduce indirect GHG emissions.
38. The Tribe shall incorporate advanced lighting design and include daylighting, where appropriate. Advanced lighting design and day lighting would reduce project related GHG emissions by reducing electrical energy usage.
39. The Tribe shall use solar hot water heaters where appropriate. The use of solar hot water heaters would reduce project related GHG emissions by reducing electrical energy usage.
40. The Tribe shall implement **Mitigation Measures 9, 11, 13 through 15, and 17 through 28** to further reduce GHG emission from project related sources.

The following mitigation measure shall be implemented for Alternative A to reduce project related GHGs emissions below 25,000 MT:

41. The Tribe shall purchase 11,021 MTs of AB 32 compliant GHG emission credits.

The following mitigation measure shall be implemented for Alternative B to reduce project related GHGs emissions below 25,000 MT:

42. The Tribe shall purchase 1,693 MTs of AB 32 compliant GHG emission credits.

5.4 BIOLOGICAL RESOURCES

The following mitigation measures are recommended for Alternatives A through D to avoid or minimize impacts to special-status and/or nesting migratory birds from construction activities associated with the project alternatives:

1. If any construction activities are scheduled to occur during the nesting season (approximately March through September), pre-construction bird surveys shall be conducted. Pre-construction surveys for nesting migratory bird species shall be conducted by a biologist throughout all areas of suitable habitat that are within 500 feet of any proposed construction activity. The surveys shall occur no more than 14 days prior to the scheduled onset of construction activities. If construction is delayed or halted for more than 14 days, another pre-construction survey for nesting bird species shall be conducted. If no nesting birds are detected during the pre-construction surveys no additional surveys or mitigation measures are required.
2. If special-status nesting bird species (e.g., burrowing owl, Le Conte's thrasher) are observed within 500 feet of the construction area during the surveys, USFWS and/or CDFG

shall be contacted. Through consultation with USFWS and/or CDFG, an appropriate course of action, acceptable setbacks, and a suitable monitoring plan shall be determined. Avoidance setbacks shall be established around all active nest locations via stakes and high visibility fencing. The nesting bird setbacks shall be completely avoided during the duration of construction activities and the fencing must remain intact. The fencing may be removed when a qualified biologist confirms that the nest(s) is no longer occupied and all young have fledged.

3. If migratory nesting bird species (i.e., non-special-status birds) are observed within 500 feet of the construction area during the surveys, appropriate avoidance setbacks shall be established by a qualified biologist. The size and scale of nesting bird avoidance setbacks is dependent upon the species of nesting bird observed and the habitat that the nest occurs in. Avoidance setbacks shall be established around all active nest locations via stakes and high visibility fencing. The nesting bird setbacks shall be completely avoided during the duration of construction activities and the fencing must remain intact. The qualified biologist shall also determine an appropriate monitoring plan and will decide if construction monitoring is necessary during the duration of construction activities. Again, monitoring requirements are dependent upon the species of nesting bird observed, the habitat the nests are contained in, and the number of nests observed. The setback fencing may be removed when a qualified biologist confirms that the nest(s) is no longer occupied and all fledglings have left.
4. If impacts (i.e., take) to special-status or migratory nesting bird species are unavoidable, consultation with USFWS and/or CDFG shall be initiated. Through consultation, an appropriate and acceptable course of action shall be established.

The following mitigation measures recommended for Alternatives A and B only should be implemented to avoid or minimize project-related adverse effects to the desert tortoise (*Gopherus agassizii*):

5. The Tribe shall designate a “biological representative” (BR) for the proposed project. ~~The individual BR~~ will administer and manage the Tribe’s compliance with the conservation measures and any other required terms and/or conditions resulting from Section 7 consultation with USFWS regarding desert tortoise. The Tribe shall provide USFWS with the name(s) and qualifications of the chosen BR(s) for review/approval.
6. Within one day prior to the anticipated date of installation of an exclusion fence (USFWS 2005; Appendix T of the Final EIS/TEIR), a USFWS-approved biological monitor shall conduct a preconstruction survey to ensure no Mojave desert tortoise or their sign are detected. Any potential burrow sites that are confirmed to be unoccupied and are within the construction footprint shall be collapsed or otherwise blocked to prevent occupancy where the Mojave desert tortoise would be at risk. Should Mojave desert tortoise be detected, the USFWS-approved biological monitor shall halt the anticipated installation of the exclusion fencing in that area until the tortoise exits the project site on its own accord. The USFWS-approved biological monitor will notify the BR immediately. The BR will contact the USFWS within 24 hours to report the findings and request guidance in the event that the Mojave desert tortoise does not exit the project site.

- ~~5.7.~~ If no Mojave desert tortoise or its sign is detected during the preconstruction survey, Prior to the onset of construction activities, USFWS-approved desert tortoise exclusionary fencing (USFWS 2005; Appendix TM of the Final EIS/TEIR) shall be installed around the perimeter of the entire project site prior to the onset of construction activities. The BR or another USFWS-authorized desert tortoise biological monitor shall supervise installation of the exclusionary fencing in order to ensure proper installation and adequacy. The exclusionary fencing must remain intact and must surround the entire project site until all construction activities are completed.
- ~~6.8.~~ After installation of the exclusionary fence and prior to the onset of construction activities, the USFWS-approved biological monitor a qualified biologist shall conduct a preconstruction desert tortoise clearance survey within the project site. This survey shall be conducted in accordance with the 2010-1992 USFWS protocol (Appendix T), in order to ensure that there are no Mojave desert tortoise and/or occupied burrows within the project site. which updates previously accepted versions of the survey protocol (such as the 1992 USFWS protocol, included for reference purposes in Appendix M) in order to locate any desert tortoise and/or occupied burrows within the project site. Any required excavation of desert tortoise burrows shall be done with hand tools, either by or under the direction of the BR or another USFWS authorized biologist. Any potential desert tortoise burrow sites that are confirmed unoccupied that are within the project site shall be collapsed or otherwise blocked following the 2010 USFWS protocol to prevent future occupancy. Any and all activities that directly involve desert tortoise (i.e., handling of desert tortoise and/or its eggs and excavation of burrows) shall be conducted by the BR or another USFWS authorized biologist in accordance with the recommended protocol (Desert Tortoise Council 1999; Appendix M). Any desert tortoise or desert tortoise eggs observed within the project site during the pre-construction survey shall be relocated by the BR or another USFWS authorized biologist to BLM property, which is immediately adjacent to the project site. The BLM has agreed to receive a small number of tortoises, if necessary for relocation purposes.
- ~~9.~~ The BR or another USFWS authorized biological monitor shall be present at least once a week to ensure the integrity of the exclusionary fencing is maintained. maintain the desert tortoise exclusionary fence and to provide all construction personnel with a desert tortoise awareness briefing. Educational printed materials that summarize the desert tortoise awareness information shall be provided to all personnel and shall be present on site during all construction activities. The desert tortoise awareness briefing shall include, but is not be limited to the following:
- ~~10.~~ The BR or the USFWS-approved biological monitor shall remain on-call throughout construction in the event that a Mojave desert tortoise wanders into the construction site. In the unlikely event that any Mojave desert tortoises are encountered on-site during construction activities, the occurrence(s) shall be reported to the construction supervisor and the BR and construction activities shall cease immediately. The BR will contact the USFWS within 24 hours of the sighting. Construction activities will not commence until authorized by the USFWS or until the Mojave desert tortoise exits the project site on its own accord.

- 7-11. A Raven Management Plan shall be prepared to minimize attracting common ravens during construction activities, in accordance with Boarman's (2002) *Reducing Predation by Common Ravens on Desert Tortoises in the Mojave and Colorado Deserts*. The BR shall be responsible for implementing the management practices identified within the Raven Management Plan. The Raven Management Plan shall include, at minimum:
- a. A Mojave desert tortoise awareness training shall be presented to all construction personnel prior to commencement of construction activities. The USFWS-approved biological monitor shall present the Mojave desert tortoise awareness training and provide educational pamphlets to the crew members. The Mojave desert tortoise awareness briefing shall include, but is not be limited to, the following information:
 - Construction personnel shall be informed about the federally threatened status of the Mojave desert tortoise, shall be shown what this species and its eggs look like, and shall be educated about the protection measures designed to reduce potential project-related effects on this species. Construction personnel shall be provided with instruction regarding what to do if they encounter a Mojave desert tortoise and/or its eggs within the project site during construction activities.
 - Construction personnel shall be advised that handling, harming, or harassing a Mojave desert tortoise is illegal and is a violation of the FESA. Construction personnel shall be advised that penalties of up to \$25,000 and six months imprisonment are the consequences for unauthorized handling of a listed species. Construction personnel shall sign a document, which indicates that they have received the Mojave desert tortoise briefing and that they understand its contents.
 - Measures to minimize attracting ravens shall be discussed to crew members to be followed during all construction activities associated with the project site.
 - b. Trash bins and cans shall be covered so that trash within the containers shall not be accessible to ravens. Trash shall be picked up and removed daily from the construction site.
12. Post-construction reporting shall be provided to the USFWS within 90 days of completion of construction
- ~~8. Any desert tortoises encountered on site during construction activities shall be reported to the construction supervisor and the BR immediately.~~
- ~~9. The Tribe or the BR shall contact the USFWS immediately if it becomes aware that a desert tortoise has been killed or injured by project activities. At that time, the USFWS and the Tribe shall review the circumstances surrounding the incident to determine whether additional protective measures are required. Project activities may continue pending the outcome of the review, provided that the Tribe's proposed protective measures and any appropriate terms and/or conditions of a Biological Opinion issued by the USFWS have been and continue to be fully implemented.~~
- ~~10. Trash bins and cans shall be covered so that trash within the containers shall not be accessible to ravens. Trash shall be picked up and removed daily from parking lots and other outdoor areas. Outdoor ponds and/or fountains shall be monitored on a weekly basis for a period of not less than three months to determine whether these features attract ravens.~~

~~If monitoring concludes that the ponds and/or fountains attract ravens, USFWS shall be consulted to develop a plan for controlling raven use of these features.~~

The following mitigation measures recommended for Alternatives C and D only shall be implemented to avoid or minimize project-related impacts to potentially jurisdictional wetlands, other waters of the U.S., or the arroyo toad and its aquatic habitats:

~~11.13.~~ The project design shall be reconfigured in order to completely avoid any potentially jurisdictional wetland or other waters of the U.S.

~~12.14.~~ If potentially jurisdictional wetlands or other waters of the U.S. cannot be avoided, the following mitigation measures shall be implemented:

- A formal wetland delineation shall be conducted within the project site and submitted to the USACE for verification of jurisdictional wetlands and/or other waters of the U.S.
- Prior to the onset of construction activities, the Tribe shall obtain the following permits:
 - The appropriate Section 404 CWA Nationwide Permit from the USACE, which permits activities that involve the discharge of dredged and/or fill materials into jurisdictional wetlands and/or other waters of the U.S. Typical 404-permit mitigation occurs at a ratio of 1:1 acres created versus impacted and 2:1 acres restored versus impacted, though individual permit conditions may vary; and
 - Section 401 CWA water quality certification through the Regional Water Quality Control Board.
- If permits are required, a detailed mitigation and monitoring plan shall be designed for the proposed project that includes all the necessary details regarding the size, location, and whether or not aquatic features shall be created or restored. The mitigation and monitoring plan shall include specific information regarding on-site aquatic feature preservation, monitoring stipulations, reporting requirements, responsibilities of the Applicant, and performance success criteria. The mitigation and monitoring plan shall meet the specified requirements of and be written in accordance with the 401, 404, and 1600 permits, if applicable.

The following mitigation measure shall be implemented for Alternatives C and D to minimize project-related adverse effects to Stephen's kangaroo rat (*Dipodomys stephensi*), should it occur on-site:

~~15.14.~~ Prior to the onset of construction activities, the Tribe shall complete Section ~~40-7~~ Consultation with the USFWS regarding the Stephen's kangaroo rat. If the USFWS determines that the Stephen's kangaroo rat may occur on-site, determinant-level surveys shall be conducted and appropriate mitigation and avoidance measures recommended by the USFWS shall be implemented prior to and during construction and operation activities.

5.5 CULTURAL AND PALEONTOLOGICAL RESOURCES

The following regulatory requirements and recommended BMPs and mitigation measures are applicable to Alternatives A through D and would avoid, minimize, or mitigate adverse effects to cultural and paleontological resources:

REGULATORY REQUIREMENTS

Any inadvertent discovery of archaeological resources shall be subject to Section 106 of the National Historic Preservation Act as amended (36 CFR 800), the Native American Graves Protection and Repatriation Act (NAGPRA)(25 USC 3001 *et seq.*), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm). Specifically, procedures for post review discoveries without prior planning pursuant to 36 CFR 800.13 shall be followed.

MITIGATION MEASURES

Alternatives A, B, C, and D

The purpose of the following mitigation measures is to minimize the potential adverse effect of construction activities to previously unknown archaeological resources in the case of inadvertent discovery:

1. All work within 50 feet of the potential archaeological find shall be halted until the BIA archaeologist or other a-professional archaeologist, or paleontologist if the find is of a paleontological nature, who meets Secretary of the Interior's qualifications, can assess the significance of the find.
2. If any archaeological find is determined to be significant by the archaeologist, or paleontologist as appropriate, then representatives of the Tribe shall meet with SHPO~~the archaeologist, or paleontologist,~~ to determine the appropriate course of action, including the development of a Treatment Plan, if necessary.
3. All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards.
4. If human remains are discovered during ground-disturbing activities on Tribal lands, pursuant to NAGPRA, the Tribal Official and BIA representative shall be contacted immediately. No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the tribal BIA~~BIA~~ representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.

5.6 SOCIOECONOMIC CONDITIONS AND ENVIRONMENTAL JUSTICE

The following provisions of the MSA are applicable to Alternatives A and B, and would avoid, minimize, or mitigate adverse socioeconomic effects:

1. In accordance with Section 5(A) of MSA, the Tribe agrees to pay the City amounts equal to the service, development, and impact fees which, if the parcels were not in trust status, would be charged by the City and other local agencies at the time of any and all project development(s) on trust lands (including payments to the City and the Barstow Fire Protection District). The Tribe shall also make payments to the Barstow Unified School District equal to the service, development, and impact fees which the District would receive if the parcels were not taken into trust.
2. In accordance with Section 10 of the MSA, subject to tribal employment preferences, the Tribe shall work in good faith with the City to employ qualified City residents at the Tribe's resort facilities to the extent permitted by applicable law. The Tribe shall offer training programs to assist City residents in becoming qualified for positions at the Resort to the extent permitted by applicable law.
3. In accordance with Section 12 of the MSA, the Tribe shall, upon the City's approval of the Tribe's construction plans and the City's completion of all building plan checks, make a one-time payment to the City of \$40,000 for the establishment of a Problem Gambling Fund. Thereafter, the Tribe shall make annual contributions to the City in the amount of \$40,000 to help fund local problem gaming diversion/assistance/counseling programs.
4. In accordance with Section 13 of MSA, the Tribe shall compensate the City by making gaming revenue payments of 4.3 percent of "Net Win" on Class II and Class III games of chance, as identified in IGRA.

5.7 TRANSPORTATION/CIRCULATION

The following provisions are identified in the Tribe's MSA with the City and are applicable to the development of Alternatives A and B.

- In accordance with Section 6 of the MSA, the Tribe has agreed to pay all required traffic mitigation fees consistent with the City's fee programs and ordinances and pay for all road improvements that are reasonable and necessary.
- The Tribe has also agreed that if an increase in traffic is caused by the Tribe's undertaking of other development projects on Trust Lands and additional road improvements or expansions are required, the Tribe shall grant suitable rights-of-way to the City in order to accommodate the necessary road improvements or expansions and make the necessary improvements.

MITIGATION MEASURES

The following mitigation measures are recommended for Alternatives A and B and should be implemented in the opening year to reduce potential adverse effects to the area transportation and circulation network:

Lenwood Road/Project Access Intersection:

Signalize intersection when signal warrants are met. Signal timing at the driveway shall be developed to minimize southbound left-turn queuing into the site.

- Reconfigure lane geometry as follows:
 1. Northbound: one dedicated right-turn lane, and one thru-land.
 2. Southbound: two dedicated left-turn lanes, one thru-lane. Southbound left-turn pockets shall be sized appropriately to accommodate peak demand to the site.
 3. Westbound: one dedicated left-turn lane, and two dedicated right-turn lanes.

Implementation of the above mitigation measure would result in an acceptable level of service at Lenwood Road/Project Access intersection. The above mitigation would require the approval of an encroachment permit by the City.

The above mitigation measure is recommended for Alternatives A and B in the cumulative year 2035 to reduce potential adverse effects to the area transportation and circulation network.

The Tribe would provide a fair share contribution to the implementation the following mitigation measures, which are recommended for Alternatives A and B in the cumulative year 2035 to reduce potential adverse effects to queuing on the I-15 southbound/northbound ramps at Lenwood Road and I-15 southbound/northbound ramps at Outlet Center Drive:

- Require all casino/hotel employees driving northbound on I-15 to utilize the Outlet Center Drive interchange.
- Require that casino/hotel literature list the Outlet Center Drive interchange as the main access to the casino/hotel.
- Require the traffic control personnel direct the majority of traffic to the Outlet Center Drive interchange for special events.
- Provide signs on NB I-15 south of the Outlet Center Drive interchange directing casino/hotel traffic to use the Outlet Center Drive interchange.
- Signalize the two ramps at the Outlet Center Drive interchange. This will improve interchange operation.
- The Tribe would provide a fair share contribution to future improvements to the I-15 NB off-ramp at Lenwood Road.

5.8 LAND USE

With the incorporation of the provisions outlined within the project description, implementation of Alternatives A, B, C, and D would result in minimal direct, indirect, and cumulatively considerable adverse effects. No mitigation is warranted.

5.9 PUBLIC SERVICES

The following measures are conditions of the MSA between the Tribe and the City and are applicable to Alternatives A and B.

1. In accordance with Section 8 of MSA, the Tribe would obtain their potable supply from Golden State Water Company.
2. In accordance with Section 7 of the MSA, the Tribe shall connect to the City's existing sewer collection system. The Tribe shall pay sewer connection fees and monthly sewer service charges, obtain required easements for sewer infrastructure if needed, construct to City sewer infrastructure standards, and pay all costs of constructing sewer infrastructure (even if located outside of the Trust Lands until sewer service is completed and inspected).
3. In accordance with Section 9 of the MSA, the Tribe shall utilize the City's contracted solid waste disposal company for all solid waste and recycled materials generated and pay all associated fees for these services.
4. In accordance with Section 5(B) of the MSA, if the City determines that it is necessary to contract outside of the City for approvals or inspections related to the proposed development, the Tribe would be required to pay the City on a monthly basis for the actual costs of the subcontracted services. These payments are not to be a condition of the commencement of the work and shall be made within 30 days of billing.
5. In accordance with Section 4 of the MSA, the City agrees to provide police services including but not limited to 24-hour patrol, response to emergency 911 calls, and general investigation for major crimes. The police department would have the authority to enforce all non-gaming State criminal laws on the proposed trust lands pursuant to Public Law 280 and Section 4 of the MSA. Additionally, the Tribe would employ security personnel and provide surveillance throughout the proposed facilities. Security personnel would work cooperatively with the City Police Department.
6. In accordance with Section 4(A) of the MSA, the Tribe shall utilize its best efforts to reach a contract directly with San Bernardino County for prosecutorial and defense services (i.e., District Attorney/Public Defender), and costs for such services shall be paid by the Tribe directly to the County. If the Tribe is unable to reach terms with the County for prosecution and defense services, then the Parties shall conduct further negotiations regarding the provision of such services to the Tribe.
7. In accordance with Section 4(B)(1) of the MSA, the Tribe would compensate the City for the purchase of a fully equipped Emergency Medical Services Response Vehicle which shall be housed at Station 363 located at 2600 West Main Street, Barstow, CA for the first two years of resort operations.
8. In accordance with Section 4(B)(2) of the MSA, to respond more effectively to high-rise emergencies at any structure on trust lands between one and four stories, the Barstow Fire Protection District has agreed to relocate its ladder fire truck from Station 361 located at 861 Barstow Road, Barstow, CA to Station 363 located at 2600 West Main Street, Barstow, CA for the first two years of resort operation.

9. As stated in Section 4(B)(3) of the MSA, the Barstow Fire Protection District and the City have advised that a ladder truck is not typically used to fight fires on buildings more than four stories in height and that buildings over four stories in height require entry by Fire Department personnel and personal action at the burning site. If a structure exceeding four stories in height is constructed by the Tribe on trust lands, the Tribe shall pay one half of the actual costs of training fire personnel.
10. In Section 4(C) of the MSA, within the first two years of resort operation the Tribe when requested by the City, shall dedicate or arrange for the dedication of two-acres of non-federal land near the project site owned or controlled by the Tribe or Barwest, LLC for fire or police station use. This dedicated land will be used by the City to construct new fire and police stations when, and if, deemed necessary by the City in its sole discretion.

The following measures apply to Alternatives C and D:

11. The Tribe shall either develop its own deputized Tribal Police Department, contract with a nearby professional police department for services, or enter into an agreement with San Diego County that will specify fair and appropriate compensation for the provision of law enforcement services to serve the proposed developments relative to the anticipated increase in demand for such services.

~~— The Tribe shall negotiate appropriate compensation to California Department of Forestry and Fire Protection (CDF) for services provided to the casino developments.~~

12. Prior to operation of Alternatives C and D, a technical report including a critical incident tasking/staffing analysis shall be conducted by a qualified fire expert or fire consultant organization mutually acceptable to the Tribe and San Diego County. The report shall evaluate building construction, occupant load, access, water supply, defensible space, built in fire protection, exiting, emergency medical needs including service and impacts, fire suppression, apparatus, personnel, training, travel time, aid agreements, and outside contracts. The Tribe shall make a good faith effort to enter into an agreement with San Diego County that will specify fair and appropriate compensation for the provision of fire protection services. Recommendations of the technical report shall be incorporated into the project design and used as the basis for negotiating the appropriate level of compensation to County.

BMPs

The following BMPs apply to Alternatives A through D to minimize the potential for fire hazards during construction activities.

1. Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation and other materials that could serve as fuel for combustion. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.

2. Any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order.

5.10 NOISE

BMPs

The following BMPs are recommend for Alternatives A through D to minimize adverse noise effects from construction activities and operation of the project alternatives:

1. Engine-powered construction equipment shall be fitted with adequate mufflers and enclosures as supplied by the manufacturer, maintained in good condition.
2. Potential noise impacts from loading dock operations will be mitigated by requiring that loading dock use be limited to daytime hours (7 AM to 7 PM).
3. All powered equipment will comply with applicable local, State, and Federal regulations, and all such equipment shall be fitted with adequate mufflers according to the manufacturer's specifications to minimize construction noise effects.
4. HVAC equipment shall be shielded to reduce noise.
5. To the extent feasible, pile driving and other construction activities that have the potential to substantially increase ambient nighttime noise levels over existing conditions, shall not occur prior to 9:00 AM or after 5:00 PM.

5.11 HAZARDOUS MATERIALS

REGULATORY REQUIREMENTS

As discussed under **Section 5.2**, a SWPPP would be developed for the selected alternative, in accordance with the NPDES permitting process under the CWA. BMPs reducing potential adverse effects from the use of hazardous materials would also be incorporated into the SWPPP developed for the selected alternative.

SWPPP BMPs

The following BMPs are recommended for Alternatives A through D to minimize or eliminate potential contamination to environmental resources (such as soil, surface waters, and groundwater) from the use and storage of hazardous materials during construction activities. The BMPs to be included within the site-specific SWPPP shall include, but not be limited to, the following:

1. To reduce the potential for accidental release, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment and shall not be stored on site.
2. Catch-pans shall be placed under equipment to catch potential spills during servicing.
3. Refueling shall be conducted only with approved pumps, hoses, and nozzles.
4. All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
5. Vehicle engines shall be shut down during refueling.

6. No smoking, open flames, or welding shall be allowed in refueling or service areas.
7. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
8. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
9. Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, state, and federal regulations.
10. All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure. All maintenance, refueling, and storage areas shall be inspected monthly.
11. Results of inspections shall be recorded in a logbook that shall be maintained on site.
12. The amount of hazardous materials used in project construction and operation shall be kept at the lowest volumes needed.
13. The least toxic material capable of achieving the intended result shall be used to the extent practicable.

MITIGATION MEASURES

The following mitigation measures are recommended for Alternatives A through D and should be implemented to reduce potential adverse effects from hazardous waste management activities:

14. In the event that contaminated soil and/or groundwater are encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, representatives of the Tribe shall consult with the U.S. Environmental Protection Agency to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary.
15. A hazardous materials and hazardous waste minimization program shall be developed, implemented, and reviewed annually by the Tribe to determine if additional opportunities for hazardous materials and hazardous waste minimization are feasible, for both project construction and operation.
16. Use of pesticides and toxic chemicals shall be minimized to the greatest extent feasible in landscaping; or less toxic alternatives shall be used.

5.12 AESTHETICS

BMPs

The following BMPs are recommended for Alternatives A through D and will reduce the impact of facility lighting on the surrounding environment to a minimal level:

1. Placement of floodlights on buildings shall be designed so as not to cast light or glare offsite.
2. Shielding, such as with a horizontal shroud, shall be used for all outdoor lighting so as to ensure it is downcast.

3. Timers shall be utilized so as to limit lighting to necessary times.