

# ***CHAPTER 1.0***

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***INTRODUCTION***

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## 1.1 SUMMARY OF THE PROPOSED ACTION AND EIS PROCESS

Pursuant to the National Environmental Policy Act (NEPA), this Environmental Impact Statement/Tribal Environmental Impact Report (EIS/TEIR) has been prepared by the Bureau of Indian Affairs (BIA) to assess the environmental impacts of proposed Federal actions intended to improve the long-term economic vitality and self-governance of the Los Coyotes Band of Cahuilla and Cupeño Indians (Tribe) by taking approximately 23.1± acres in the City Barstow, California, into Federal trust status for the Tribe for the development of a Class III gaming facility and hotel (Proposed Action). Approval of the Tribe's gaming management contract by the National Indian Gaming Commission (NIGC), a federal agency, may also be required under the Proposed Action.

Pursuant to 25 CFR Part 151, the BIA, as an agency under the authority of the Secretary of the Interior, is charged with reviewing and approving tribal applications to take land into Federal trust status. Since the Tribe is seeking to acquire off-reservation land in trust for gaming purposes, compliance with Section 20 of the Indian Gaming Regulatory Act (IGRA) is being considered along with the BIA Part 151 fee-to trust application. In this case, acquisition of approximately 23.1 acres in trust for gaming would require that the Secretary of the Interior make a “two-part determination,” under Section 20(b)(1)(A), that gaming on the newly acquired lands would be in the best interest of the Tribe and not detrimental to the surrounding community (25 U.S.C. § 2719(b)(1)(A)). A Secretarial two-part determination may only be made after consultation with the Tribe and appropriate state and local officials, including officials of other nearby tribes. In addition, California's Governor must concur in the determination before gaming could occur on the Barstow property.

The NIGC is charged with regulating gaming on “Indian lands” as mandated by IGRA. As part of its regulatory authority under IGRA, the NIGC reviews and approves all gaming development and management contracts between Native American tribal governments and outside management companies.

For the purpose of this EIS/TEIR, the BIA serves as the Lead Agency for compliance with NEPA, with the NIGC serving as a Cooperating Agency. The BIA also invited several federal, state, and local agencies to act as cooperating agencies for purposes of NEPA. These agencies included the United States Environmental Protection Agency (USEPA) Region 9, the California Department of Transportation (Caltrans), the County of San Bernardino, and the City of Barstow (See **Appendix A** of the Draft EIS/TEIR). The BIA also has asked the Tribe, as the applicant, to participate as a cooperating agency, because the Tribe has special expertise and will have jurisdiction with respect to a number of environmental impacts, and because the environmental impacts would affect the Tribe and/or its reservation, pursuant to 40 CFR 1508.5. Cooperating agencies for the EIS are the Tribe, the USEPA, the NIGC, and the City of Barstow. San Bernardino County and Caltrans declined the offer to be cooperating agencies.

This EIS/TEIR has been completed in accordance with the applicable requirements of NEPA and its implementing regulations and guidance. NEPA requires the BIA and NIGC to review and analyze the environmental impacts associated with the Proposed Action. This document provides a detailed description of the development alternatives and an analysis of the potential consequences associated with the developments that may result from the Proposed Action. The No Action alternative is also addressed as required under NEPA. This document includes a discussion of alternatives, avoidance of effects, and mitigation measures.

### **1.1.1 TEIR PROCESS**

The Tribe expects to negotiate a Class III gaming compact with the State of California. The gaming compact will specify the location at which the Tribe may operate a Class III gaming facility and will set forth an off-reservation environmental review process. Based on the requirements of other California tribal gaming compacts, it is expected that Section 11 of the Tribal/State Compact will require the Tribe to prepare a TEIR assessing the off-reservation environmental impacts of the proposed hotel and casino complex. To reduce paperwork and eliminate redundancy, the EIS and the TEIR have been prepared in coordination, resulting in a joint EIS/TEIR. The Tribe serves as the Lead Agency for compliance with TEIR requirements.

## **1.2 PURPOSE AND NEED**

The purpose of the Proposed Action is to help provide for the economic development of the Tribe and stability and self-sufficiency of the Tribal government, resulting in economic, social, and other benefits for the Tribe. Implementation of the Proposed Action would assist the Tribe in meeting the following objectives:

- Improve the socioeconomic status of the Tribe by providing a reliable, significant revenue source that would be used to: strengthen the Tribal government; fund a variety of social, housing, governmental, administrative, educational, health and welfare services to improve the quality of life of Tribal members; and provide capital for other economic development and investment opportunities.
- Provide employment opportunities for the Tribal and non-tribal community, including the creation of on-reservation job opportunities.
- Make donations to charitable organizations and governmental operations, including local educational institutions.
- Fund local governmental agencies, programs, and services.
- Establish economic self-sufficiency and achieve Tribal self-determination.

Economic development opportunities for the Tribe have been limited due to a lack of funds for project development and operation, as well as the fact that the Tribe's existing reservation lands are remote, composed almost entirely of steep, rugged terrain, environmentally sensitive, and difficult to access, being surrounded by various state and federal forest, park and public domain lands. As a consequence,

the reservation has limited infrastructure and opportunities for economic development. Currently, the Tribe has no reliable, significant sustained revenue stream that is sufficient to fund programs and provide assistance to Tribal members. Section 5 of the Indian Reorganization Act (IRA) contains the BIA's general authority to acquire land in trust for Indians. Case law and the IRA's legislative history make clear that Congress intended the IRA to provide BIA with a vehicle to promote tribal economic development and self-sufficiency, in response to the destructive effects of the federal government's prior Indian allotment policy. Congress believed that additional land was essential for the economic advancement and self-support of Indian communities. The overlapping purposes of the IRA and the IGRA confirm that Congress intended the BIA to foster tribal self-government and self-determination, through acquisition of land in trust for gaming.

The Tribe's need for an economic base represents one of the primary purposes behind IGRA. IGRA states that Congress finds "a principal goal of Federal Indian policy is to promote tribal economic development, tribal self sufficiency, and strong tribal government" (25 U.S.C. § 2701). IGRA also states that one of the purposes of the act is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments" (25 U.S.C. § 2702).

To ensure that revenues raised from gaming are used to "promote tribal economic development, tribal self sufficiency, and strong tribal government," IGRA (25 U.S.C. § 2710[b][2][A]) limits the use of net gaming revenues to the following:

- Funding tribal government operations or programs.
- Providing for the general welfare of the Indian tribe and its members.
- Promoting tribal economic development.
- Making donations to charitable organizations.
- Funding operations of local government agencies.

The Proposed Action would provide the Tribe with a long-term, viable, and sustainable revenue base. Revenues from the operation of the casino and hotel would be used (at a minimum) for the following purposes:

- Funding governmental programs and services, including housing, education and career training, infrastructure expansion and improvement, environmental, cultural, health and welfare, and safety programs and services.
- Hiring additional tribal government staff, upgrading equipment and facilities, and generally improving tribal governmental operations.
- Decreasing the Tribe's and Tribal member's dependence on federal and state grants and assistance programs.
- Making donations to charitable organizations and governmental operations, including local educational institutions.
- Funding local governmental agencies, programs, and services.

- Providing revenue sharing and trust fund payments.
- Providing capital for other economic development and investment opportunities and allowing the Tribe to diversify its holdings over time, so that it is no longer dependent upon the federal or state government or even upon gaming to survive and prosper.

Each of these purposes is consistent with the allowable uses for gaming revenues set out in IGRA. The hotel and casino complex would also provide employment opportunities for Tribal members, a large number of whom live within commuting distance of Barstow, as well as local non-tribal residents. Operation of the casino, hotel, and related facilities would require the purchase of goods and services, increasing opportunities for local businesses and stimulating the local economy.

## 1.3 OVERVIEW OF THE ENVIRONMENTAL REVIEW PROCESS

As mentioned in **Section 1.1**, above, this document has been prepared to meet NEPA, Tribal, and state compact environmental review requirements. A brief overview of both processes is provided below.

### 1.3.1 NATIONAL ENVIRONMENTAL POLICY ACT

NEPA generally requires that an EIS be prepared for major federal actions that may significantly affect the quality of the human environment (42 U.S.C. § 4332). This document has been completed in accordance with the requirements set forth in NEPA (42 U.S.C. § 4321 *et seq.*); the Department of the Interior's Regulations for Implementing NEPA (43 CFR Part 46), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508); and the BIA NEPA Handbook (59 IAM 3).

This EIS/TEIR has been prepared to analyze and document the environmental consequences associated with the approval of the fee-to-trust acquisition and resulting development of a hotel and casino complex. Additionally, the EIS/TEIR analyzes a reasonable range of alternatives, including four development alternatives and a no-action alternative. This document also includes a discussion of avoidance and mitigation measures to reduce potential environmental effects.

### Notice of Intent and Scoping

The first formal step in the preparation of an EIS is publication of a Notice of Intent (NOI) to prepare an EIS. The purpose of an NOI is to inform the public that the lead agency intends to prepare and consider an EIS for a proposed action. The NOI also includes a description of the proposed action and possible alternatives, a description of the proposed scoping process, including whether, when, and where any scoping meeting will be held, and the name and address of the lead agency contact for the public (40 C.F.R. § 1508.22).

The CEQ regulations for implementing NEPA require a process, referred to as "scoping," for determining the range of issues to be addressed during the environmental review of a proposed action (40 C.F.R. § 1501.7). The scoping process entails a determination of issues by soliciting comments from agencies, organizations, and individuals.

The BIA published the original NOI in the *Federal Register* (71 FR 20126) on April 19, 2006, with the initial public scoping comment period beginning on April 19, 2006 and ending on May 19, 2006 (**Appendix B** of the Draft EIS/TEIR). The NOI was published in the *Barstow Desert Dispatch* on April 20, 2006, and in the *Victorville Daily Press* on April 23, 2006.

The April 19, 2006, NOI served to announce the public scoping meeting, which was held by the BIA on May 4, 2006, at the Barstow Community College Gymnasium, 2700 Barstow Road, Barstow, California. The scoping meeting provided a forum for the public to personally address representatives of the BIA regarding the scope of the EIS and to identify issues of concern.

In September 2006, the BIA published a Scoping Report, which summarized the comments received during the scoping period and outlined the expected scope of the EIS. To the extent required by NEPA, this EIS/TEIR has incorporated the issues and concerns identified within the Scoping Report. The BIA did not approve the original fee-to-trust application, and on May 19, 2008, (73 CFR 28841) published a Notice of Cancellation of work. Subsequently, on June 6, 2008, the BIA published a notice advising the public that the BIA, as lead agency, with the National Indian Gaming Commission (NIGC), City of Barstow and the Tribe as cooperating agencies, intended to gather information to prepare an EIS for the Tribe's renewed application for a proposed fee-to-trust transfer and casino and hotel project in Barstow, California. (73 CFR 32354) After the Tribe resubmitted its application, the June 6, 2008, notice for the renewed application effectively resumed BIA's work on the EIS, such that public scoping for the issues and alternatives to be analyzed in the EIS had already been done. Therefore, no further public scoping meetings were necessary.

A Notice of Correction (NOC) was published in the *Federal Register* on March 27, 2009 to correct several errors in the BIA's June 6, 2008, NOI. The revised notice provided the public an additional 30-day comment period to submit comments on the scope of the EIS and to identify issues of concern. A republication and correction of the NOC was published in the *Federal Register* on April 10, 2009 to correct an error regarding the date when the comment period ended. The revised notice provided the public with the correct date on which the 30-day comment period ended.

## **Draft EIS**

The Draft EIS (DEIS) was distributed to the public as well as federal, tribal, state, and local agencies and other interested parties for a 75-day review and comment period. The BIA published a Notice of Availability (NOA) on July 1, 2011 that provided the time and location of public hearing(s) on the DEIS. Responses are provided for all substantive comments received during the comment period, including those submitted or recorded at public hearing(s) in Volume I of this Final EIS.

## **Final EIS**

This Final Environmental Impact Statement (Final EIS) responds to all relevant issues and concerns identified during the Draft EIS public comment period. The BIA and the USEPA will publish an NOA for the Final EIS; the NOA initiates a 30-day waiting period, during which the BIA must consider impacts analyzed in the Final EIS and any further comments prior to making a decision on the Proposed Action.

## Record of Decision

The BIA and the NIGC will consider any comments received within the 30-day waiting period before issuing their respective Record of Decisions (RODs) on the Final EIS.

### 1.3.2 TRIBAL ENVIRONMENTAL IMPACT REPORT

This Final TEIR was prepared pursuant to the Tribe's Environmental Ordinance and anticipated requirements of the Tribal-State Gaming Compact to be negotiated between the Tribe and the State of California. The evaluation of environmental impacts checklist used in this TEIR is included as **Appendix C** of the Draft EIS/TEIR.

## Notice of Preparation

A Notice of Preparation (NOP) of a TEIR was submitted to the State Clearinghouse on April 25, 2006, initiating a comment period that ended May 25, 2006 (**Appendix B** of the Draft EIS/TEIR). The NOP was circulated to local, state, and federal agencies, and to other interested parties to solicit comments on the Proposed Project and suggestions for issues to be evaluated in the TEIR. Concerns raised in response to the NOP, which were summarized in a Scoping Report, were considered during preparation of the Draft TEIR.

## Draft TEIR

The Draft TEIR was sent to local, state, and federal agencies and to interested organizations and individuals who might have wished to review and comment on the report. Publication of the Draft TEIR marked the beginning of the 60-day public review period.

## Final TEIR

This Final TEIR will be reviewed to determine if the environmental review process has been carried out consistent with the requirements of the Tribal-State Gaming Compact. The Tribe will be responsible for certifying the Final TEIR in accordance with its Environmental Ordinance.

## 1.4 REGULATORY PERMITS AND APPROVALS THAT MAY BE REQUIRED

It is anticipated that implementation of the Proposed Action would require Tribal, federal, and state permits and approvals. **Table 1-1** identifies each responsible agency and the potential permit or approval required.

**TABLE 1-1**  
**POTENTIAL PERMITS AND APPROVALS REQUIRED**

<b>Agency</b>	<b>Permit or Approval</b>	<b>Alternative</b>	<b>Applicant</b>
Los Coyotes Band of Cahuilla and Cupeño Indians	Compliance with Tribal/State Compact and Tribal Environmental Ordinance.	A, B, C	N/A
National Indian Gaming Commission	Approval of tribal gaming ordinances	A, B, C	Los Coyotes Band of Cahuilla and Cupeño Indians
National Indian Gaming Commission	Approval of management contract and related collateral agreements	A, B, C	Los Coyotes Band of Cahuilla and Cupeño Indians
National Indian Gaming Commission	Indian lands determination	A, B	Los Coyotes Band of Cahuilla and Cupeño Indians
Secretary of the Interior – Bureau of Indian Affairs	Fee-to-trust transfer	A, B	Los Coyotes Band of Cahuilla and Cupeño Indians
Secretary of the Interior	Two part determination to allow gaming on tribal lands, acquired after 1988.	A, B	Los Coyotes Band of Cahuilla and Cupeño Indians
U.S. Army Corps of Engineers	Approval of permit(s) for the filling of jurisdictional wetlands/waters (if applicable), as required by the Clean Water Act	C, D	Los Coyotes Band of Cahuilla and Cupeño Indians
U.S. Environmental Protection Agency	Water quality certification (or waiver) as required by the Clean Water Act	C, D	Los Coyotes Band of Cahuilla and Cupeño Indians
U.S. Environmental Protection Agency	Issuance of National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from construction activities as required by the Clean Water Act	A, B, C, D	Los Coyotes Band of Cahuilla and Cupeño Indians
U.S. Fish and Wildlife Service	Section 7 Consultation under the Federal Endangered Species Act if endangered species may be affected	A, B, C, D	Bureau of Indian Affairs
California State Historic Preservation Office	Consultation under Section 106 of the National Historic Preservation Act	A, B, C, D	Bureau of Indian Affairs
City of Barstow	Approval of encroachment permit for project access on Lenwood Road.	A, B	Los Coyotes Band of Cahuilla and Cupeño Indians
Source: AES, 2010.			