Secretarial Determination for the Little River Band of Ottawa Indians Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(A)[1]

Decision

In 2015, the Little River Band of Ottawa Indians (Tribe) submitted an application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) acquire in trust approximately 60 acres of land (Proposed Site) within the 86.5-acre Muskegon Property in Fruitport Township, Muskegon County, Michigan, for gaming and other purposes.[2] The Tribe also requested that the Secretary of the Interior (Secretary) determine whether the Proposed Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719 (b)(1)(A). The Tribe proposes to construct a casino resort, including a hotel, multi-use facility, retail space, parking, restaurants, and supporting facilities (Proposed Project).

Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988, subject to several exceptions. One exception, known as the "Secretarial Determination" or "Two-Part Determination" permits a tribe to conduct gaming on lands acquired in trust after October 17, 1988, where the Secretary, after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that:

1. A gaming establishment on the trust lands would be in the best interest of the tribe and its members; and
2. The Secretary also determines that gaming on the trust lands would not be detrimental to the surrounding community.

Under this exception, the governor of the state in which the gaming activity is to be conducted must concur in the Secretarial Determination before the applicant tribe may operate a gaming establishment on the proposed site.

We have completed our review of the Tribe's application and determined that the proposed gaming establishment at the Site would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community.

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[1] *See* Table of Contents in Attachment 1. Much of the information relied on in the Secretarial Determination is confidential commercial and/or financial information of the Tribe that is customarily and actually treated as private by the Tribe and provided to the Department under an assurance of privacy, therefore, it is confidential and should be withheld from the public under Exemption 4 of the Freedom of Information Act regulations at 43 C.F.R. §§ 2.23 and 2.24.

[2] *See* Little River Band of Ottawa Indians, Consolidated Fee-to-Trust Application and Request for a Two-Part Determination for 60 Acres in Fruitport Township, Muskegon County, Michigan (Feb. 20, 2015) (hereafter Tribe's Application); Memorandum to Director, Office of Indian Gaming, from Acting Regional Director, Midwest Region, Bureau of Indian Affairs, Findings of Midwest Region Pursuant to 25 C.F.R. § 292 - Little River Band of Ottawa Indians, Fruitport Casino Project (Feb. 7, 2020) (hereafter Regional Director's Findings of Fact).

Proposed Project

The Tribe owns the approximately 86.5-acre Muskegon Property in fee simple. Within the 86.5 acres, the Tribe seeks to construct a casino, hotel, multi-use facility, parking and other supporting facilities on the approximately 60-acre Proposed Site. The approximately 400,000-square foot (sf) Proposed Project will include a 149,069-sf gaming floor with approximately 1,700 gaming machines and 35 table games. The Proposed Project will also include restaurants, retail space, 1,910 parking spaces, and a 220-room hotel with a multi-use facility. *See* Attachment 2 for a location map.

The Little River Band of Ottawa Indians

The Little River Band of Ottawa Indians are descendants of a confederation of bands (Ottawa) that once centered on the Grand River, including the Muskegon River Valley, in southwestern Michigan, from 1700 forward.[3] Beginning in the 1820s, the Ottawa ceded much of their lands to the federal government which, in turn, sold the lands to settlers.[4] Ultimately, the Ottawa ceded 15 million acres.[5]

In 1836, the Treaty of Washington created a 70,000-acre reservation on the Manistee River approximately 100 miles north of the Grand River.[6] *See* Attachment 2 for maps. The Treaty also reserved the Ottawa's access to lands and waters of the Muskegon River drainage, near Grand River for their continued use.[7] While the Manistee reservation was intended to provide a permanent home to the Ottawa, Congress altered the Treaty before ratification leaving only a five-year occupancy on the Manistee reservation.

The 1855 Treaty of Detroit addressed the shortened term and added lands in Mason, Muskegon, and Oceana Counties to the Grand River Ottawa reservation.[8] Before ratification of the Treaty, however, the United States General Land Office patented lands within the reservation boundaries to non-Indians for timber harvesting. In addition, squatters occupied reservation lands without consequence. Because of this, the majority of the Muskegon Ottawa were forced to migrate northward to the Manistee reservation to avoid conflicts over land.[9] Some members of the Tribe, however, remained and continued to live on the Muskegon reservation despite continued attempts to take their lands. The Tribe has continued to maintain a presence in the Muskegon area, where today most members of the Tribe live.[10]

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[3] Regional Director's Findings of Fact at 2; James M. McClurken, Ph.D., Cambridge Research Consultants, *Little River Ottawa Use and Occupancy of Land in Muskegon County, Michigan* at 2 (Nov. 18, 2014) (hereafter Tribal History Report), in Tribe's Application, Exhibit 27-1.
[4] Tribal History Report at 1.
[5] *Id.* at 16.
[6] Treaty with the Ottawa, 1836, 7 Stat., 49; Regional Director's Findings of Fact at 2.
[7] Tribal History Report at 15-16.
[8] Treaty with the Ottawa and Chippewa, 1855, 11 Stat., 621; Tribal History Report at 28.
[9] Tribal History Report at 28-34.
[10] Regional Director's Findings of Fact at 3.

In 1994, Congress reaffirmed federal recognition of the Little River Band in the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act.[11] Relying on the 1836 Treaty of Washington and the 1855 Treaty of Detroit, the Act directed the Secretary to acquire land for the Tribe in Manistee and Mason Counties for a reservation.[12] The Tribe's 540-acre reservation is located in Manistee, Michigan.

Tribal Need

The Tribe needs a stable revenue source to fund economic development and essential governmental services for its members. The Proposed Project will allow the Tribe to continue to provide services to members living on its reservation and expand services for members living in the Muskegon area.[13]

Socioeconomics Conditions of the Tribe

The Tribe has a current population of 4,845 members.[14] While there are 2,715 members dispersed throughout Michigan, 1,136 members (42%) live in the Muskegon area. Muskegon County is the largest population center for the Tribe. Although the Tribe's government headquarters is in Manistee County, approximately 92 miles from the Proposed Site, more tribal members live in Muskegon County than in Manistee County.[15]

The distance from the Tribal headquarters creates a significant challenge in ensuring that tribal members in Muskegon County receive services such as adequate employment, child daycare, and health and housing assistance. In addition, the population is aging into "elder" status, which will require the Tribe to address affordable housing, medical care, and long-term health care services for these members.[16] Although the Tribe maintains a satellite office in Muskegon, many of the services offered are limited or non-existent because of budget constraints.[17]

In 2006, the Tribe conducted a Community Wellbeing and Support Survey of tribal members. At that time, nearly 5 percent of tribal members were homeless, compared to 1 percent nationally; 12 percent of tribal members were unemployed, compared to the Michigan State unemployment rate of 6.9 percent; and the mean household income for tribal members was less

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[11] Pub. L. No. 103-324, 108 Stat., 2156 (1994), formerly codified as 25 U.S.C. §§1300k-1300k-7.
[12] *Id* at § 6(b). The Act also stated that the Secretary may accept and designate as a reservation lands in Manistee, Mason, Wexford and Lake Counties. *Id* at § 6(c), (d).
[13] Tribe's Application at 4.
[14] Regional Director's Findings of Fact at 5.
[15] *Id.*
[16] The Innovation Group, *Tribal Business Plan and Unmet Needs Report in Support of Fee-to-Trust Application for 60 Acres in Fruitport Township, Muskegon County, Michigan* at 4-5 (February 2015) (hereafter Tribal Business Plan), Exhibit 5 in the Tribe's Application. The Tribal Business Plan contains the Tribe's commercial and/or financial information which is customarily and actually treated as private by the Tribe, and was submitted to the Department under an assurance of privacy. The Department will withhold the Tribal Business Plan in its entirety from the public because it is confidential within the meaning of Exemption 4 of the Freedom of Information Act, 43 C.F.R. §§ 2.23 and 2.24. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).
[17] Regional Director's Findings of Fact at 5.

than half the mean household income for the State of Michigan.[18] Additionally, over one-third of all tribal members had accessed one or more tribal assistance programs, and less than 40 percent of the Tribe had received education beyond high school.[19]

Tribal Government and Administration

In 1999, the Tribe opened its Little River Casino on its reservation in Manistee. The casino provides funding for services for tribal members and employment for those living on or near the reservation. However, from 2010 to 2014, revenue from the Tribe's casino declined by 14 percent, which resulted in decreased distributions to the Tribe by 35 percent.[20] At the same time, reductions in federal support led to net reductions in tribal programs in 2014 of approximately $4 million.[21]

The reduction in overall revenue and support has harmed the Tribe and its ability to provide essential services to its members, particularly in the Muskegon area, and to enjoy long-term economic stability. The revenue shortfall has negatively impacted not only the Tribe's ability to provide current services and programs at a sufficient level to its members, but also its ability to expand services and programs both substantively and geographically. The result of these shortfalls has been increasing unmet need for the Tribe.[22]

The Tribe reports that cuts in tribal funding have reduced the tribal government's ability to maintain communication with tribal members, thereby reducing member participation in the Tribe's governance activities. For example, the Tribe's Public Affairs Office, which is the primary informational and media contact with tribal members, had its financial support reduced by 33 percent.[23] In response, the Office eliminated the paper publication of regular descriptions of governmental activities and public notices of events and meetings. As a result, the Tribe saw a reduction in member participation in the Tribe's bi-annual meeting and a lack of quorum to address member initiatives. The absence of paper publication also reduced voter participation, with less than 30 percent of the total registered voting population participating in the most recent general elections for government offices. Although the Public Affairs Office produces an online weekly newsletter, many of the Tribe's members either have no access to the Internet or lack the computer skills necessary to access such documents.

In addition to serving as the primary information source for Tribal members, the Tribe's Public Affairs Office also assists with the coordination of emergency response activities and is the primary conduit for up-to-date information on response and incident management information.[24] The reduction in the Tribe's Public Affairs Office's funding has adversely impacted the Tribe's

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[18] Final Environmental Impact Statement, Little River Band of Ottawa Indians, Michigan Trust Acquisition and Casino Project, Vol. II at § 3.7.1 (Oct. 2020) (hereafter FEIS).
[19] *Id.*
[20] Tribal Business Plan at 7.
[21] *Id.* at 8.
[22] *Id.*
[23] *Id.* at 9-10.
[24] *Id.* at 11.

ability to provide adequate emergency services. This is especially critical for members not living on the Tribe's reservation. For example, the Public Affairs office does not have funding for an employee in the Muskegon area and cannot efficiently apprise tribal members of emergencies in the Muskegon area, including weather-related or other emergencies.[25] Increased revenue would allow the Tribe to increase public safety services to its members and ensure that all of its members are informed of not only tribal matters but emergency alerts as well.

Law Enforcement and Emergency Management Services

The Tribe reports that the reduction of revenue has negatively impacted the Tribe's law enforcement and emergency management services, including community policing, law enforcement, and natural resource enforcement activity.[26] Policing services have seen a significant reduction in staffing levels resulting from financial resource reductions. A 33 percent budget cut reduced the number of public safety officers from 27 officers to 12.[27] This leaves the Tribe's members at risk and prevents the Tribe from working with local municipalities on matters where there is concurrent jurisdiction.

Housing and Related Services

The Tribe reports that it needs additional funding for housing services. The Tribe's Housing Office provides services to members and families seeking home ownership, rental residences, and placement assistance in affordable housing. Eligibility varies based on income, household size, and available resources. At any given time, 36 tribal members are on the Tribe's housing waiting list.[28]

The Tribe provides down payment and closing assistance programs, which are either tribally funded or federally funded through grants. A lack of funding limits the Tribe's ability to purchase housing to provide affordable housing and rental units. This is especially true in tribal population areas outside of Manistee County, such as Muskegon County.[29] The Tribe provided rental and mortgage assistance to members, but the program was entirely eliminated in 2015 due to budget constraints, resulting in lost opportunity for tribal members to transition from rental housing to home ownership.[30]

The Tribe provides low income energy assistance to tribal members living at federal poverty levels. This program prevents shut-off of electricity, heat, and water.[31] This program has been negatively impacted by reductions in federal and tribal funding. The Tribe now primarily operates the program from tribal program funds. This is a critical program for tribal members

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[25] *Id.* at 11-12.
[26] *Id.* at 11.
[27] *Id.*
[28] *Id.* at 12.
[29] *Id.* at 13.
[30] *Id.* at 15.
[31] *Id.* at 13.

living in Michigan and dealing with rising costs of heating their homes. The 18 percent reduction in revenue in 2014 impacted over 50 households.

The Tribe also eliminated a Home Repair Program due to budget limitations.[32] The program assisted tribal members with home repairs to roofs, electrical, plumbing, and weatherization. As a result, tribal members continue to live in substandard housing. In addition, houses do not retain marketable value and become a cost burden to the individual member and their families.

Health Services

The Tribal Health Service provides direct clinical care services, medical case management, medical cost assistance, behavioral health/substance abuse services, wellness/health promotion/disease prevention, and community health outreach to tribal members. The services are primarily available at the Tribe's government operations center in Manistee, with outreach available in a satellite office in Muskegon.[33] Because all health-related services are based at the direct care site in Manistee County, it creates a travel burden for members living outside the Manistee area when they need to see a physician, receive behavioral health services, and use wellness facilities. Staffing levels available at the clinic are less than adequate. The Indian Health Service estimates some 56 positions are required to meet member needs.[34]

Social Services

The Tribe's food assistance program assists households experiencing a food crisis related to nutritional needs, medical conditions, and lack of resources. Eligible members may receive up to $300 to purchase food. Because of lack of funding, resources were reduced by 18 percent in 2014. The Tribe was required to place additional limits on assistance available to tribal members, resulting in the reduction in the number of available awards to member households.[35]

The Tribe also provides direct services to tribal members whose needs include homelessness, self-sufficiency, elder needs, benefit coordination, and advocacy.[36] The Tribe's self-sufficiency program, "Zoongaadiziwin," helps youth, families, and adults move toward economic self-sufficiency through a comprehensive system of care.[37] Because of declining funding, the program was forced to reduce the number of case-managers available to work with clients.

Indian Child Welfare Act Services

The Tribe has been forced to cut funding for staff assigned to oversee and implement Indian Child Welfare Act services.[38] Rather than providing intervention, prevention, and monitoring

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[32] *Id.* at15.
[33] *Id.* at 17.
[34] *Id.* at 18.
[35] *Id.*
[36] *Id.* at 19.
[37] *Id.*
[38] *Id.* at 20.

services, the Tribe must remand children to state and county systems. The Tribe's role is reduced to monitoring rather than advocacy, making it more challenging to ensure that children receive competent cultural grounding while in protective care. The Tribe has also been required to cut funding for juvenile justice services altogether. The Tribe provides domestic violence advocacy and prevention services but only for tribal members living in or near Manistee County.[39] This puts the Tribe's children at significant risk for repeat disciplinary and multiple placement occurrences. Further, the Tribe has inadequate staff to address prevention services outside of the immediate population of Manistee County.[40]

Elder Services

The Tribe currently provides elder meals at its community center in Manistee. The Tribe needs a senior center with more space to provide additional services to its elders.[41] Because of decreased funding, the Tribe has reduced elder services including chore assistance to prevent unsafe living conditions and supplemental Medicare Part F insurance. In 2014, while the Tribe paid the monthly premium for 200 elders, 100 elders could not participate due to the financial burden of purchasing the coverage.[42]

Education/Career Training

The Tribe provides educational assistance programs to its members including a Higher Education Scholarship, College Book Stipend, Student Services, Educational Advancement Fund, Vocational Assistance, and Adult Education. Funding for each of these programs has been reduced because of budgetary constraints. Reductions in available financial resources continue leaving direct services at the public schools unmet.[43]

In addition to these programs, the Tribe needs additional funding for economic development, natural resource protection, and cultural preservation. The increase in revenue from the Proposed Project will provide financial resources to refund tribal programs and provide resources to its Muskegon County members.

Review of the Tribe's Application Pursuant to IGRA and Part 292, Subpart C

The Department's regulations at 25 C.F.R. Part 292 set forth the procedures for implementing Section 20 of IGRA. Subpart C of Part 292 governs Secretarial Determinations.

Sections 292.13 through 292.15 identify the conditions under which a tribe may conduct gaming.

Sections 292.16 through 292.18 identify the information that must be included in a tribe's request for a Secretarial Determination.

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[39] *Id.* at 21-22.
[40] *Id.* at 20.
[41] *Id.* at 24.
[42] *Id.* at 24-25.
[43] *Id.* at 27-28.

Section 292.17 pertains to an evaluation of whether the gaming establishment would be in the best interest of the tribe and its members.

Section 292.18 pertains to an evaluation of whether there is detriment to the surrounding community.

Application Contents

Section 292.16 provides that a tribe's application requesting a Secretarial Determination under section 292.13 must include the following information:

(a) The full name, address, and telephone number of the tribe submitting the application.

The Little River Band of Ottawa Indians
2608 Government Center Drive
Manistee, MI 49660
(888) 723-8288 or (231) 723-8288

(b) A description of the location of the land, including a legal description supported by a survey or other document.

The Proposed Site is located at 4800 Harvey Street, Fruitport Township, Muskegon County, Michigan. The Proposed Site is near the intersection of Harvey Street and East Ellis Road, south of Interstate 96 and U.S. Highway 31 interchange. The Proposed Site includes three parcels totaling approximately 60 acres, which are identified as Muskegon County Assessor Tax Parcel ID Nos. 61-15-115-0022-10, 61-15-115-300-0026-00, and 61-15-115-300-0028-00.[44] The legal description of the Proposed Site is included as Attachment 3.

(c) Proof of identity of present ownership and title status of the land.

The Tribe purchased the Proposed Site on July 16, 2008, and owns it in fee simple.[45] The Tribe submitted to the BIA a Warranty Deed of Conveyance for the Proposed Site (Document No. 5287347) recorded at the Muskegon County Register of Deeds on July 21, 2008.[46] The Tribe also submitted to the BIA a title insurance policy, identified as First American Title Commitment for Title Insurance No. 14-65992 (Effective date May 15, 2015) [47]

[44] Regional Director's Findings of Fact at 17.
[45] Tribe's Application at 3.
[46] Regional Director's Findings of Fact at 17.
[47] *Id.*

(d) Distance of the land from the Tribe's reservation or trust lands, if any, and tribal government headquarters.

The Proposed Site is located approximately 70 linear miles and 92 driving miles from the Tribe's Reservation in Manistee, the site of the Tribe's government headquarters.[48] The Tribe also has a satellite governmental office approximately five miles from the Proposed Site.

(e) Information required by section 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members.

As discussed more fully below under Section 292.17, the Tribe has submitted the required information.

(f) Information required by section 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community.

As discussed more fully below under Section 292.18, the Tribe has submitted the required information.

(g) The authorizing resolution from the tribe submitting the application.

On February 20, 2015, the Tribal Council approved Resolution No. 15-0220-039, authorizing the preparation and submission of a fee-to-trust application and requesting a Secretarial Determination pursuant to Section 20 of IGRA and the Department's implementing regulations at 25 C.F.R. Part 292 for the Proposed Site.[49]

(h) The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C § 2710, if any.

The National Indian Gaming Commission approved the Tribe's Gaming Ordinance on January 28, 1997.[50] Amendments to the Tribe's Gaming Ordinance were executed on June, 22, 1999, August 12, 1999, March 1, 2001, January 15, 2002, August 12, 2002, July 5, 2005, January 5, 2011, November 20, 2012, December 5, 2014 and April 3, 2018.

(i) The tribe's organic documents, if any.

On January 2, 1998, the Tribe submitted the Constitution of the Little River Band of Ottawa to qualified voters.[51] On May 27, 1998, the Tribe voted to adopt the Constitution. On July 10, 1998, the Deputy Commissioner Indian Affairs approved the Constitution. On May 13, 2004, the Regional Director, Midwest Region, approved three amendments to the Constitution.

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[48] *Id.* at 18.
[49] *Id.*
[50] Regional Director's Findings of Fact at 19. *See also* https://www.nigc.gov/general-counsel/gaming-ordinances.
[51] *Id.* at 19.

(j) The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated.

The Tribe and the State have a class III gaming compact that is in effect.[52] The Tribe anticipates that it will negotiate with the State of Michigan to amend that existing gaming compact to include the Proposed Site as a specifically authorized location for gaming.

(k) If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment.

See above.

(l) A copy of the existing or proposed management contract required to be approved by the NIGC under 25 U.S.C. § 2711 and 25 CFR Part 533, if any.

The Tribe will manage the Proposed Project directly, therefore, this section does not apply.[53]

Analysis of Best Interest of the Tribe and Its Members

Section 292.17 provides that an application must contain:

(a) Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe.

When considering whether a proposed gaming project is in the best interest of the tribe and its members, we examine the income statement, which projects the income and expenses in accordance with generally accepted accounting principles. We use the income data to determine the likely profitability of a proposed gaming project. We also review the balance sheet, which lists assets, liabilities, and capital. From the balance sheet, we identify ratios to determine if a proposed gaming project will grow, and whether the tribe will have the resources to pay its obligations in the short term and long term. It also allows us to review the ownership composition of the proposed gaming project.

Cash flow statements project the distribution to the various stakeholders, such as debt holders and owners. They project ongoing investments the tribe will make, debt that will be incurred or repaid, and the projected utilization of non-cash expenses, such as depreciation and amortization. We review cash flow statements to determine the amounts that will go to the manager/developer, the debt holders, the state and its political subdivisions, and the tribe. From cash flow

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[52] *See* Compact between the Little River Band of Ottawa Indians and the State of Michigan Providing for the Conduct of Tribal Class III Gaming by the Little River Band of Ottawa Indians (Dec. 3, 1998) (Tribal-State Compact), *available at* https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/oig/pdf/idc1-025946.pdf.

[53] Tribe's Application at 18.

statements, we can generally determine whether the tribe will be the primary beneficiary of the proposed gaming project.

Because the financial documents are based on projections rather than actual performance, we examine the financial information to determine whether they are reasonable. This assists us in reaching conclusions that the proposed gaming project will likely perform according to the projections.

Tribal Business Plan

Included as Exhibit 5 to its application, the Tribe submitted the 2014 *Tribal Business Plan and Unmet Needs Report in Support of Fee-to-Trust Application for 60 Acres in Fruitport Township, Muskegon County, Michigan* (Tribal Business Plan).[54] The Tribal Business Plan included supporting reports and studies as addenda that contain projections of the Tribe's gaming income, including a Proforma for Gaming and Hotel Development;[55] a Gaming and Hotel Market Assessment;[56] a letter regarding the Proposed Casino Resort Financing at Great Lakes Downs from Innovation Capital;[57] a loan Amortization Schedule;[58] Cash Flow Analysis;[59] and an Economic and Community Impact Analysis.[60]

Gross gaming revenue is expected to reach $189 million annually by year five.[61] Adding revenue from hotel, food and beverage operations, entertainment, and retail operations, gross revenue is expected by be $220 million by year five.[62] After deducting out promotional allowances, net revenue is anticipated to be $206 million by year five.[63]

The balance sheet, which lists assets, liabilities, and capital, allows us to determine if a proposed gaming project will grow. The Cash Flow Analysis projects a five-year revenue forecast that includes four percent growth from opening to year two, and a growth rate of 2.5 percent annually thereafter.[64]

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[54] *See above, n. 16.*
[55] Proforma for Gaming and Hotel Development: Fruitport (February 2014) (Proforma), in Tribal Business Plan, Addendum D.
[56] Gaming and Hotel Market Assessment (February 2014) (Market Assessment), in Tribal Business Plan, Addendum F.
[57] Capital, Highly Confident Letter – Proposed Casino Resort Financing at Great Lakes Downs (November 7, 2014), in Tribal Business Plan, Addendum G.
[58] Little River Casino Resort Management and Little River Band of Ottawa Indians, Loan Amortization Schedule (December 2014), in Tribal Business Plan, Addendum H.
[59] Little River Casino Resort Management and Little River Band of Ottawa Indians, Cash Flow Analysis (Cash Flow Analysis), in Tribal Business Plan, Addendum I.
[60] Innovation Group, Economic and Community Impact Analysis (Economic Impact Analysis), Little River Casino Resort at Fruitport: Fruitport, Michigan (December 2014) in Tribal Business Plan, Addendum J (analyzes the economic impact of the proposed casino resort in Fruitport, Michigan, and its impact on communities in Muskegon County and the State of Michigan).
[61] Tribal Business Plan at 34; Cash Flow Analysis.
[62] Tribal Business Plan at 34.
[63] *Id.*
[64] Cash Flow Analysis.

We review cash flow statements to determine the amounts that will go to the manager/developer, the debt holders, the state and its political subdivisions, and the tribe. From cash flow statements, we can generally determine whether the tribe will be the primary beneficiary of the proposed gaming project. The Cash Flow Analysis shows that after deducting required operating expenses and other costs, the Proposed Project will distribute approximately $53 million to the Tribe in the first year, and approximately $59 million to the Tribe in the fifth year of operation.[65]

Cash flow statements project the distribution to the various stakeholders, such as debt holders and owners. In this case, the cash flow statement shows the Proposed Project will produce sufficient revenue to meet its expenses, including debt service.[66] Because the Tribe will manage the gaming facility through its gaming business, the Tribe will not share revenue with an outside management company, and will, thus, be the primary beneficiary of the gaming facility.[67]

The Innovation Group prepared the *Economic and Community Impact Analysis, Little River Casino Resort at Fruitport* (Economic Impact Analysis), an analysis of the economic impact of the Proposed Project to the economy of Muskegon County and the State of Michigan from construction of the Proposed Project and its subsequent operation.[68] The Economic Impact Analysis is based, in part, on the Innovation Group's *Gaming and Hotel Market Assessment: Fruitport, MI* from 2014.[69]

The Tribal Business Plan and the Economic Impact Analysis used certain assumptions derived from the Market Assessment. The new casino resort will be a high-quality facility comparable to other casino resorts in the market. The casino would have 1,700 gaming machines and 35 table games.[70] The 220-room hotel and other amenities would be among the highest quality along the I-96/U.S. Route 31 corridors.[71]

In developing the Market Assessment, the Innovation Group used the following assumptions: the first full year of operations for the proposed casino resort will be 2018; active marketing programs will be employed against the target markets and begin six months prior to the facility's completion; the facilities will contain all of the planned amenities as described in the Market Assessment; the facilities will be managed and operated by experienced personnel; no other major competitors will enter the marketplace that have not been accounted for in the report; and there will be no major unanticipated economic downturns in the region during the timeframe of

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[65] Tribal Business Plan at 36; Cash Flow Analysis.
[66] *Id.*
[67] Tribe's Application at 19 (the Tribe does not have an existing or proposed management contract; it manages its existing gaming facility and will also manage the proposed facility).
[68] *See above* n. 60, Economic Impact Analysis.
[69] *The Innovation Group, Gaming and Hotel Market Assessment: Fruitport, MI* (2014) (Market Assessment) in Tribal Business Plan, Addendum F.
[70] Proforma at 1.
[71] Market Assessment at 46.

this report.[72] As a conclusion to the Market Assessment, the document provides sizing recommendations for the casino[73] and the hotel[74], along with financial projections showing operating expenses and the EBITDA margin for the proposed casino resort.[75] The Innovation Group used its internal operating model and supplemental information based on actual performance results at the current Manistee casino.[76]

The Proforma financial statements rely on expected visitation rates and the win-per-visit identified in the Economic Impact Analysis. The Market Assessment assumed that the hotel would be of a three-star quality providing among the highest quality concentrated along the I-96/U.S. Route 31 corridors. Relative to more immediate and direct competitors, the hotel is expected to be comparable to the existing and proposed casino hotel supply in central and southern Michigan.[77]

The hotel is an important component of the development because it increases the earnings of the Proposed Project by increasing the length of stay for visitors and by increasing the propensity of visitors and the length of stay for those who come to the facility. Both of which increase the earnings derived from each visitor. The hotel also produces its own revenue from room rental. Similar to the hotel, the restaurants and other amenities at the gaming facility increase the attractiveness of the facility and increase the propensity and frequency of visits.

We find these to be reasonable by industry standards and market research.

Analysis

The Economic Impact Analysis and the Proforma financial statement estimate that the Proposed Project will cost $179 to $180 million to construct.[78] The Proforma anticipates that the Tribe will obtain a loan of $190 million to finance construction of the Proposed Project.[79] The Pro Forma shows the anticipated financial performance of the Proposed Project for a five-year period. The Proforma anticipates a loan term of 10 years with an interest rate of 9.5 percent.[80]

The Proposed Project is expected to capture approximately 2.36 million gaming visits in year one increasing to 2.42 million in year five.[81] The Proforma estimates the net revenue from the

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[72] *Id.* at 1. We note the adverse economic impact of the global pandemic. We also note that construction of the Proposed Project will take approximately 24 months to complete, during which time economic recovery will likely proceed. *See* Letter to Paula Hart, Director, Office of Indian Gaming, from Larry Romanelli, Ogema, Little River Band of Ottawa Indians (Dec. 1, 2020). The Proposed Project will be an important source of revenue and jobs while the Tribe recovers from the economic impacts from the pandemic.
[73] Market Assessment at 43.
[74] *Id.* at 55.
[75] *Id.* at 60.
[76] *Id.* at 1.
[77] *Id.* at 45.
[78] *Id.* at 61; Economic Impact Analysis at 1.
[79] Proforma at 1.
[80] *Id* at 1.
[81] Economic Impact Analysis at 31; Proforma at 8.

casino resort to be $183.82 million in the first year of operation, increasing to $206.04 million in year five.[82]

We find the financial projections reasonable, based on the underlying reports, and conclude that the Proposed Project would provide much needed revenue for the Tribe.

(b) Projected tribal employment, job training, and career development

The Proposed Project will create employment opportunities that will benefit tribal members and non-tribal residents of Muskegon County. The Proposed Project will create approximately 1,763 direct construction jobs, with 552 construction-related indirect and induced jobs at companies that supply construction materials and companies that provide supplies to those companies.[83] Operation of the Proposed Project will also create approximately 1,201 direct operational jobs, with 423 indirect and induced operation-related jobs in the County.[84] Employment opportunities will include entry-level, midlevel, and management positions.

The total wages for construction and construction-related jobs will be approximately $74.7 million.[85] The total wages for operational and operation-related jobs will be $67.5 million.[86] Wage totals include hourly and salary payments as well as benefits including health and life insurance and retirement payments.

The Tribe will provide job training and development programs for its members. There are 767 Tribal members aged 18 and older residing in the Muskegon area, which includes Muskegon County and the adjacent counties of Kent, Oceana, Ottawa, and Newaygo.[87] Given that there are more employment-age tribal members living in the Muskegon area than in the Manistee area, the Tribe believes that it could employ a larger portion of its membership at the Proposed Project than it is employs at its existing Little River Casino Resort in Manistee (15%).[88] A 2007 survey of tribal members found that 21 percent of the Tribe's members living in Muskegon County indicated an interest in working at the Proposed Project.[89]

The Tribe has extensive job training and career development programs for its members at its Little River Casino Resort, which would be used for similar training programs at the Proposed Project.[90] These programs include:

- Developing Individuals for Career Enhancement Program.
- Educational Leave of up to eight hours per week to attend accredited college courses.
- Tribal Workforce Development Program that provides career development services.

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[82] Proforma at 4.
[83] FEIS § 4.7.2.2.
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] Tribe's Application at 20.
[88] *Id.*
[89] *Id.*
[90] *Id.* at 20-21.

- Vocational Rehabilitation Program (cooperative relationship between Michigan Rehabilitation Services and the Tribe) that delivers appropriate vocational services.
- Dealer Schools that provide training to become employed as dealers at the Tribe's existing Little River Casino Resort.
- Michigan Works! programs (operated and funded by the State of Michigan through the Workforce Assistance Act) provide career development services to individuals including tribal members. The Tribe has entered into several Memoranda of Understanding and other agreements with local Michigan Works! programs, and has had an agreement with the Muskegon-Oceana system in place since 2008.
- Michigan Indian Employment & Training Services (MIETS) is a statewide non-profit organization that provides career development services similar to Michigan Works, but specifically designed for Native Americans. The MIETS has a field office in Muskegon and is well positioned to provide career development/employment services to the Tribe's members. All MIETS programs are funded through the Workforce Assistance Act.

We find that the Proposed Project will create meaningful employment opportunities and increased opportunities for job training and career development for tribal members.

(c) Projected benefits to the tribe and its members from tourism

Tourism in the Muskegon area will benefit the Tribe and its members. Tourism in the Muskegon County area is largely dominated by seasonal lake and beach activities.[91] There are numerous beaches along the lake, including a state park in Grand Haven. Other popular activities in the region include golfing, ATV riding, biking, and snowmobiling. Muskegon also offers Michigan's Adventure, one of the largest amusement and waterpark in the state, with 60 rides. As a lakefront vacation region, the area has a broad mix of accommodations, including hotels, motels, bed and breakfasts, cottages and campgrounds.

The Muskegon region hosts numerous events annually that are popular with tourists, the most popular being the Summer Celebration, which attracts 600,000 visitors.[92] Sporting events, festivals, and concerts in total attracted approximately 1.55 million attendees in 2008, the most recent year for which data is available.[93]

The Proposed Project will be located at the junction of Interstate 96 and U.S. Highway 31. Interstate 96 is a direct corridor through Grand Rapids and Lansing into greater Metropolitan Detroit, which will provide easy access to the Proposed Project. The Tribe will co-market the Proposed Project with its existing Little River Casino Resort to further increase tourism to its northern Michigan location.[94]

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[91] Market Assessment at 17.
[92] *Id.*
[93] *Id.*
[94] Tribe's Application at 21. The Tribe signed a multi-year agreement in 2013 to provide funding and cultural support to a project called "Hilts' Landing." This project, located just to the north of Muskegon on the US 31 corridor, is a historical village that will have various venues depicting life in the area from Native villages up through the various historical periods. *Id.* at 22.

(d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income

The Proposed Project would increase available revenue to operate the Tribe's governmental programs and services, and reduce reliance on federal grants. Some key uses for increased revenue include:

Establishment of Tribal Government Muskegon Office ($5,000,000): Currently, the Tribe operates a small satellite office in Muskegon County primarily to connect members to services located at the Tribe's headquarters approximately 92 miles north in Manistee. Revenue from the Proposed Project would double of the Tribe's ability to provide direct services to members living in Muskegon County.

Executive/Legislative Enhanced Outreach and Self-Governance ($590,000): With additional revenue, the Tribe would establish a tribal census bureau to develop an annual census. Staffing would include the Primary Surveyor's Office at an annual cost of $82,500, with $64,500 budgeted for operations. The Tribe would also enhance public information services using with $95,000 for outreach through published, electronic, town halls, and social media. Further, the Tribe will create a legislative affairs office to enhance self-governance and government-to-government relationship with federal, state and local governments with staffing at $175,000 annually, and $173,000 for the establishment of a compliance office that would annually review the effectiveness of government services.

Courts and Jurisdiction ($350,000): The current tribal court system has a Family Court, Juvenile Justice and Probation Division, and Civil and Criminal Division, but often relies on outside agencies for specific services. With additional revenue, the Tribe would use $350,000 to create a Friend of the Court Office to work with state and county courts, families, and service agencies to protect the interests of the Tribe's families and children.

Community Policing and Enforcement Services ($1,600,000): With additional revenue, the Tribe would double the existing force to 20 police officers and 10 conservation enforcement personnel. This would include adding $480,318 annually to the Inland Enforcement/Great Lakes Enforcement Patrol, $919,442 annually the Safety and Community Policing Office, and $200,240 for detention and victim advocacy services.

Housing and Housing Infrastructure ($2,000,000): With additional revenue, the Tribe will use $2,000,000 to address the growing housing and infrastructure shortages, focusing on identifying construction and purchase of affordable housing in Fruitport Township to address the anticipated growing tribal member workforce. By using $1,250,000 for new construction and $500,000 for down payment and loan assistance, the Tribe estimates that safe housing needs will reduce by five percent per year for five years. Expanded housing services offices would require an Additional $250,000 annually for a placement specialist, office manager, and four additional maintenance personnel.

Elders Services & Seven Generation Planning ($250,000): With additional funding, the Tribe will use $250,000 to create a seven generation planning initiative for advocacy ($85,000), and elder housing and wellness needs ($165,000).

Natural Resources and Rights Protections ($1,548,450). With additional funding, the Tribe will use $1,500,000 annually to create a fisheries and wildlife management division.

Tribal Historic Preservation Office (THPO) and Cultural Education Services ($950,000). With additional funding, the Tribe will add resources for historic preservation and NEPA compliance. The Tribe will also add resources for language preservation, increased student participation, additional teachers. In addition to providing instruction throughout the year, language instruction would target the Muskegon and southern tier areas, which currently do not have ready access to classroom instruction.

The Regional Director found, and we concur, that the Nation will use the increased income from the Proposed Project to address pressing tribal needs.[95]

(e) Projected benefits to the relationship between the tribe and non-Indian communities

The Proposed Project will enhance the relationship between the Tribe and the local communities. In 2014, Fruitport Township and Muskegon County enacted resolutions of support for the Tribe and Proposed Project.[96] In addition, the communities of Whitehall Township, City of Northern Shores, Muskegon Township, City of North Muskegon, Egelston Township, and Moorland Township also enacted resolutions of support.[97]

The Tribe entered into a number of agreements with Fruitport Township and Muskegon County, including a Municipal Services Agreement (MSA).[98] The MSA includes agreements for law enforcement services, fire protection, emergency response, public works, and other municipal services. The MSA also describes the payments, both non-recurring and recurring, to be made by the Tribe to the Township and County related to the provision of municipal services and improvements, and other potential costs relating to the mitigation of any impacts that the project may have on the Township and County. By clarifying the parties' rights and obligations, the MSA will minimize conflict and promote cooperation.

The benefits to relations between the Tribe and non-Indian communities include revenue sharing opportunities, employment and job training opportunities, and tourism dollars that will be spent

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[95] *See* Regional Director's Findings of Fact at 25-32.

[96] *See* Resolution No. 69 in Support of Little River Band Ottawa Indians Casino Project (June 23, 2014) by Fruitport Township; Resolution No. 2014-25 in Support of a Class III Casino Operation to the Little River Band Ottawa Indians Within the County of Muskegon (June 24, 2014), in Tribe's Application, Exhibit 10.

[97] *See* Tribe's Application, Exhibit 10.

[98] *See* FEIS, Appendix B; Tribe's Application at 7-8; *Cooperative Law Enforcement Agreement Among the Little River Band of Ottawa Indians and Fruitport Charter Township and Muskegon County*, in Tribe's Application, Exhibit 9.

in the local communities.[99] The anticipated investment in tribal member services will also provide a financial stimulant to the local communities. The Tribe has committed to investing in programs for its members that include health care, education, housing, legal assistance, commodities and other programs and services. The Tribe will utilize the services of local providers, which will support the local economy.[100]

The Regional Director found, and we concur, that the Proposed Project will enhance the Tribe's relationship with the local non-Indian communities.[101]

(f) Possible adverse impacts on the tribe and its members and plans for addressing those impacts

The Tribe has not identified any adverse impact to itself or its members from the Proposed Project.[102] Though the Tribe has not experienced adverse impacts from gambling, the Tribe implemented the American Gaming Association Code of Conduct for Responsible Gaming at its Little River Resort and Casino. The Proposed Project will meet or exceed these standards as well.[103]

(g) Distance of the land from the location where the tribe maintains core governmental functions

The Proposed Site is located south of the City of Muskegon in the northwestern area of Lower Michigan. It is approximately 92 miles from the Tribe's headquarters in Manistee, Michigan.[104] The Tribe has a satellite governmental office in Muskegon that is approximately six miles from the Proposed Site.

(h) Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States.

The Tribe submitted proof that it owns the Proposed Site in fee simple. The Tribe purchased the Proposed Site from the MI Racing Inc., a Delaware Corporation, and recorded the deed at the Muskegon County Register of Deeds on July 21, 2008.[105]

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[99] Tribe's Application at 25.
[100] Regional Director's Findings of Fact at 31-32.
[101] *Id.* at 32.
[102] *Id.*
[103] These standards include educating gaming enterprise employees about responsible gaming procedures and making information about resources for problem gaming easily accessible. The Tribe will offer information to patrons about problem gambling and advertise responsibly. The Tribe will offer the same Self-Restriction Program at the Proposed Project that it offers at its current gaming enterprise. Under this program, patrons can voluntarily sever their privileges with the gaming enterprise. The gaming enterprise will also train its employees to encourage responsible gaming among its guests by monitoring the sale and consumption of alcoholic beverages to prevent clearly intoxicated guests from continuing to gamble or drink alcohol. Tribe's Application at 26-27.
[104] Tribe's Application at 27.
[105] *Id.* Exhibit 4 of the Tribe's Application is a warranty Deed verifying the Tribe's ownership of the approximately 86.5 acres within which the Site is wholly encompassed.

(i) Evidence of significant historical connections, if any, to the land.

The Department's regulations require the Secretary to weigh the existence of a historical connection, if any, between an applicant tribe and its proposed site as a factor in determining whether gaming on the proposed site would be in the best interest of the Tribe and its members.[106]

The Little River Band of Ottawa Indians are descendants of a confederation of bands (Ottawa) that once centered on the Grand River in southwestern Michigan, including modem day Muskegon County, since as early as the 1700s.[107] Historians have documented the social conditions of the Tribe's predecessors in the Muskegon area throughout the century preceding the Treaty of Washington in 1836 and the Treaty of Detroit in 1855.

Although these Treaties reserved lands for the Ottawa, the United States General Land Office patented lands within the reservation boundaries to non-Indians for timber harvesting.[108] In addition, squatters occupied reservation lands without consequence. Because of this, the majority of the Muskegon Ottawa were forced to migrate to north to the reservation to avoid conflicts over land.[109] Non-Indian inhabitants continued to displace the bands as the United States sold or opened up for settlement to non-Indians thousands of acres of reserved lands. Settlers cut back much of the forest in the area and settled the river banks, which made hunting and fishing impossible for the Ottawa.[110] With their primary means of sustaining themselves eliminated, most of the Ottawa left the area.

Although the majority of the Ottawa removed to lands outside the Muskegon area, a portion of the Tribe remained and continued to inhabit the area. In 1866, federal agents estimated that a small band of 30 people continued to live on the Muskegon Reservation.[111] In 1871 a Michigan Indian Agent reported that the by deed and other expedients, non-Indians possessed more than 6000 acres of Grand River Reservation lands.[112] Michigan Indian Agent George Lee reported that Ottawa continued to live in Muskegon in 1878.[113] Census records in 1890 show 32 Indians remained in Muskegon County.[114] Many families that were moved north simply moved back to Muskegon to take jobs as day labor and wage employees when economic opportunities became limited in the northern village sites because of the end of the lumbering industry and, later, the Great Depression.[115] Some families never left the Muskegon area despite the treaties and pressure to do so. As a result, many Ottawa families moved to and continue to reside in these

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[106] 25 C.F.R. § 292.17(i) does not require an applicant tribe to demonstrate an aboriginal, cultural, or historical connection to the land in order to receive a positive Secretarial Determination.
[107] Tribal History Report at 33. *See above* n. 3.
[108] *Id.* at 29.
[109] *Id.* at 34.
[110] *Id.* at 37-40.
[111] *Id.* at 36-37.
[112] *Id.*at 38.
[113] *Id.* at 44.
[114] *Id* at 44-45.
[115] Tribe's Application at 30.

areas.[116] By 1930, that number had grown to 120.[117] The Tribe has thus maintained a continual presence in the Muskegon area, and indeed, it is where the largest community of tribal members currently resides.

(j) Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any: (1) Consulting agreements relating to the proposed gaming establishment; (2) Financial and loan agreements relating to the proposed gaming establishment; and (3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.

As discussed above, the Tribe owns the Proposed Site in fee simple and intends to manage and operate the Proposed Project. The Tribe has no agreements that are not otherwise provided in its application.

Conclusion: Best Interest of Tribe and its Members

The record demonstrates the Proposed Project will be in the best interest of the Tribe and its members. It will increase the available revenue to the Tribe, strengthen the tribal government, and create jobs. Tribal members living on or near the reservation in Manistee will benefit from the increased on-reservation services, and members living near the Proposed Project will have employment opportunities that did not previously exist. The Tribe also intends to use increased revenue from the Proposed Project to expand governmental services for its members. Tribal members living near the Proposed Project will have access to jobs related to construction and operation of the Proposed Project. Increased revenue will fund tribal governmental operations and programs, and enhance the general welfare of the Tribe and its members.

We have determined that a gaming establishment on the Proposed Site would be in the best interest of the Tribe and its members.

Analysis of Detriment to the Surrounding Community

Section 292.18 provides that to satisfy the requirements of Section 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:

(a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA).

The Department prepared an environmental impact statement (EIS) to evaluate the potential impacts of gaming at the Proposed Site pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq*. Based on the facts and available evidence, the environmental

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[116] *Id.* at 30.

[117] Tribal History Report at 45.

impact statement concluded that gaming at the Proposed Site would not result in significant impacts to geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions, transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, indirect growth-inducing effects and cumulative effects. The EIS is available at www.littlerivereis.com.

Purpose and Need

The Proposed Actions consist of the following components: (1) issuance of a Secretarial Determination by the Secretary pursuant to Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(A), and (2) acquisition of the Proposed Site in trust pursuant to section 5 of the Indian Reorganization Act, 25 U.SC. § 5108.

The purpose of the Proposed Actions is to facilitate tribal self-sufficiency, self-determination, and economic development, thus, satisfying both the Department's land acquisition policy as articulated in the Department's trust land regulations at 25 C.F.R. Part 151, and the principal goal ofdGRA as articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's trust land acquisition regulations at 25 C.F.R. §§ 151.10(h) and 151.12, and the Department's Secretarial Determination regulations at 25 C.F.R. §§ 292.18(a) and 292.21.

Procedural Background

The BIA published a Notice of Intent to prepare an EIS in the *Federal Register* on September 21, 2015, announcing its intent to prepare an EIS.[118] The BIA held a scoping meeting at the Fruitport Middle School Auditorium on October 15, 2015. The BIA published the Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on November 21, 2018, initiating a 45-day public review period.[119] The BIA also published the NOA in the *Muskegon Chronicle*, which circulated in Muskegon County and surrounding areas on November 23, 2018. The BIA held a public hearing at the Fruitport Middle School Auditorium in Fruitport, Michigan, on December 12, 2018. The comment period on the Draft EIS initially ran through January 7, 2019. The public comment period for the Draft EIS was reopened on March 18, 2019, for an additional 30 days.[120]

The BIA considered the comments received during the Draft EIS comment period, including those submitted or recorded at the public hearing, in preparing the Final EIS (FEIS). The BIA published an NOA for the FEIS in the *Federal Register* on October 23, 2020,[121] and the USEPA published its NOA on October 30, 2020.[122] The BIA also published the NOA in the *Muskegon Chronicle* on October 23, 2020. The Assistant Secretary – Indian Affairs concluded the NEPA

[118] 80 Fed. Reg. 57014 (Sept. 21, 2015).
[119] 83 Fed. Reg. 58783 (Nov. 21, 2018).
[120] 84 Fed. Reg. 9807 (March 18, 2019).
[121] 67 Fed. Reg. 67562 (Oct. 23, 2020).
[122] 85 Fed. Reg. 68871 (Oct. 30, 2020).

process by signing a Record of Decision (ROD) for the Secretarial Determination. The ROD is included as Attachment 4.

The FEIS analyzed four alternatives:

Alternative A – Proposed Project (FEIS § 2.3)

Under Alternative A, the Department will transfer the approximately 60-acre Proposed Site into trust for construction and development of a casino resort. The approximately 400,000-square foot (sf) Proposed Project will include a 149,069-sf gaming floor with approximately 1,700 gaming machines and 35 table games. The Proposed Project will also include restaurants, retail space, 1,910 parking spaces, and a 220-room hotel with a multi-use facility.

Alternative B – Reduced Intensity Alternative (FEIS § 2.4)

Under Alternative B, the Department will transfer the Proposed Site into trust. This Alternative includes the same development components as Alternative A, but on a smaller scale. Alternative B consist of an approximately 121,000-sf facility with a 99,558-sf gaming floor with approximately 1,122 gaming machines and 23 table games. Alternative B will include restaurants, retail space, and 1,300 parking spaces. No hotel would be constructed.

Alternative C – Non-Gaming Alternative (FEIS § 2.5)

Under Alternative C, the Department will transfer the Proposed Site into trust, but only a retail complex would be constructed, consisting of approximately 175,000 sf with 955 parking spaces.

Alternative D – Custer Site Alternative (FEIS § 2.6)

Under Alternative D, the Tribe would develop a casino, supporting facilities, and parking on approximately 45 acres of land in Mason County, Michigan. The Custer Site is located within an approximately 1,087-acre property currently held in trust for the Tribe. Under Alternative D, the Department would have to determine whether the Tribe is eligible to conduct gaming on the site under Section 20 of IGRA, 25 U.S.C § 2719.

Alternative E – No Action Alternative (FEIS § 2.7)

Under the No Action Alternative, the Department will not transfer the Proposed Site into trust and none of the four development alternatives (Alternatives A, B, C, or D) would be implemented. The No Action Alternative assumes that the existing uses on the Muskegon Property and Custer Site would not change in the near term.

Selection of the Alternative A

As discussed in more detail in the FEIS and ROD, we determine that Alternative A, the Proposed Project, is the Preferred Alternative because it best meets the purpose and need for the Proposed Actions. Alternative A will promote the self-sufficiency, self-determination, and self-governance of the Tribe.

The casino resort described under Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the tribal government. Under such conditions, the tribal government would be stable and better prepared to establish, fund, and maintain governmental programs to meet the Tribe's needs, including providing services and economic opportunities for its members in and around Muskegon County. The development of Alternative A would meet the purpose and need for the Proposed Actions better than the other development alternatives due to the reduced revenues that would be expected from the operation of Alternatives B, C, and D (described in Section 2.10 of the FEIS). While Alternative A would have greater environmental impacts than the No Action Alternative, the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in the ROD.

The project design of the Proposed Project (Alternative A) incorporates Best Management Practices (BMPs) listed in § 2.3.1.8, which eliminate or substantially reduce environmental consequences to less-than-significant levels. The FEIS describes additional mitigation measures in Section 5.0 that the Tribe will implement to further mitigate potential environmental impacts. The FEIS concludes that development of the Propose Project with BMPs and mitigation measures would ensure environmental impacts would be less-than-significant.

(b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.

Impacts on Social Structure

Crime (FEIS §§ 4.7.2.4; 4.10.2.4): The Proposed Project would result in an increased number of patrons and employees traveling/commuting into the area on a daily basis. As a result, criminal incidents could increase in the vicinity of the Proposed Site, as would be expected with a large development of any type. The Tribe entered into a Municipal Services Agreement (MSA) with the Township and County for law enforcement, fire protection, emergency response, public works and other municipal services. The MSA describes both reoccurring and non-reoccurring expenses the Tribe will reimburse for these services at the Proposed Site. Through the implementation of this agreement, the on-site security measures, and the mitigation described in the FEIS, impacts would be addressed and the Proposed Project would result in a less-than-significant effect on law enforcement services and crime.

Environmental Justice for Minority and Low Income Populations (FEIS § 4.7.1.2): No low-income communities were identified in the vicinity of the Muskegon Property. The Census Tract Muskegon 4.02, approximately three miles from the Muskegon Property, was identified as a minority community. The Tribe is considered a minority community affected by Alternative A. Increased economic development and opportunities for employment would positively affect the minority community in the vicinity of the Muskegon Property. Therefore, impacts to minority or low-income communities under Alternative A would be less than significant. Other effects to minority and low-income persons, such as traffic, air quality, noise, etc., would be less-than-significant, after the implementation of the specific mitigation measures related to these environmental effects.

Impacts on infrastructure

Water Resources (Supply and Wastewater) (FEIS § 4.10.2): The Proposed Project includes two options for water supply. Under Option 1, the Proposed Project will obtain water from the Township's municipal public water system. Under Option 2, the Proposed Project will obtain water from on-site water facilities including two underground wells, a treatment system, three booster pumps, and internal distribution system, and either a backup generator or a storage tank. Option 1 is preferred, but if unforeseen circumstances occur, the Tribe has the ability to utilize Option 2. The regional water system has available capacity to service the increased demands from the Proposed Project, and the Township states that it is willing and able to supply water to the Proposed Site.

The Proposed Project includes two options for wastewater treatment and disposal. Under Option 1, the Township would provide wastewater services. Under Option 2, the Tribe will construct a package treatment plant and an approximately 100,000 sf leach field on the Proposed Site. Option 1 is preferred, but if unforeseen circumstances occur, the Tribe has the ability to utilize Option 2. The existing wastewater treatment facility has adequate capacity to serve the Proposed Project. Upon connection to the Township sewer system, the Tribe would pay the current capital connection charges and monthly service fees, as well as fund the upgrade of the Township municipal system. With implementation of BMPs listed in § 2.3.1.8 and mitigation measures as described in § 5.3, the Proposed Project would not result in significant impacts to water resources.

Transportation Infrastructure and Traffic Volume (FEIS § 4.8.3): The Proposed Project would result in temporary impacts resulting from construction activities. This minimal addition of construction traffic would not result in significant traffic impacts. Mitigation included in FEIS § 5.8 of the Final EIS would further reduce any impacts from construction traffic. Operation of the Proposed Project, would result in increased traffic flow, congestion, and decreased levels of service. With incorporation of BMPs listed in § 2.3.1.8 and the mitigation measures in § 5.8, impacts from traffic volumes would be less than significant.

Air Quality (FEIS § 4.4.3): The Proposed Site is located in a region of attainment for all criteria air pollutants. Under the regulations of the federal Clean Air Act, 40 C.F.R. § 93, if a region is in attainment for all criteria pollutants, then the region meets the National Ambient Air Quality Standards. The Proposed Project would generate air pollutants through construction but would not exceed regulatory emissions threshold levels. Operation of the Proposed Project would result in the generation of mobile emissions from patron, employee, and delivery vehicles, as well as area and energy criteria pollutant emissions. Also, stationary source emissions from combustion of natural gas in boilers, stoves, heating units, and other equipment on the project sites would result from the Proposed Project. With incorporation of BMPs listed in § 2.3.1.8 and the mitigation measures in § 5.8, impacts from construction and operation of the Proposed Project would not result in significant impact to air quality.

Solid Waste Service (FEIS § 4.10.2.3): Solid waste that cannot be recycled from both construction and operation of the Proposed Project would be disposed of at either the Muskegon County Landfill or the Ottawa County Landfill, both of which have the capacity to accept the

additional waste materials. The Proposed Site is located within several solid waste companies' service areas. Neither construction nor operation of the Proposed Project would significantly impact solid waste services.

Energy & Natural Gas (FEIS § 4.10.2.5): Electricity and natural gas would be provided by Consumers Energy and DTE Energy, both of which have provided willing to serve letters to the Proposed Site. Both have sufficient capacity to serve the Proposed Site. The Proposed Project would not significantly impact energy or natural gas services.

Impacts on services

Library Services, Schools, and Recreation (FEIS § 4.7.2.5): The Proposed Project would not result in a substantial increase in population or housing in the community surrounding the Proposed Site. Therefore, the demand for library services, additional schools, and recreational facilities would not substantially increase. Development of the Proposed Project would result in less-than-significant impacts to library services, schools, and recreation.

Law Enforcement (FEIS 4.7.2.4; 4.10.2.4): The Proposed Project has the potential to increase demand for law enforcement, fire protection, and emergency medical services. The MSA with Tribe, Township, and County includes provisions for law enforcement, fire protection, emergency response, public works and other municipal services. The MSA describes both reoccurring and non-reoccurring expenses the Tribe will reimburse for these services at the Proposed Site. As a provision of the MSA, the Tribe also entered into a Cooperative Law Enforcement Agreement (CLEA) with the Township and County. The Fruitport Township Police Department is approximately 2.25 miles from the Proposed Site. Operation of the Proposed Project is expected to generate approximately 70 incidents per year, but with implementation of the MSA, CLEA, and mitigation measures described in§ 5.10, the Proposed Project would not result in significant impacts to law enforcement services.

Fire Protection & Emergency Medical Services (FEIS § 4.10.2.4): Fire protection and emergency medical services will be provided to the Proposed Site by the Township and County as outlined in the MSA. The MSA describes both reoccurring and non-reoccurring expenses the Tribe will reimburse for these services at the Proposed Site. The Fruitport Fire Department is approximately 2.25 miles from the Proposed Site. Operation of the Proposed Project is expected to generate approximately 70 incidents per year, but with implementation of the MSA and mitigation measures as described in § 5.10, the Proposed Project would not cause a significant adverse impact to fire protection or emergency medical services.

Impacts on housing

Housing (FEIS § 4.7.2.3): An estimated that approximately 185 new workers will relocate for jobs at the Proposed Project. This relocation is projected increase housing demand in the County by 168 units, or 0.2 percent of the housing that would be available, according to 2019 estimates. Approximately 11.6 percent of the housing stock in the County was vacant in 2014. Therefore, the Proposed Project is not expected to stimulate regional housing development. The Proposed Project would not result in a significant impact to the housing market.

Impacts on community character and land use

Visual Resources (FEIS § 4.13.2): The Proposed Project would change the existing views from an unused space to a more urban appearance, but would not be visually incompatible with land uses around the Proposed Site. A proposed landscaping barrier will partially block views on the west and landscaped trees will block views from the north. BMPs listed in§ 2.3.1.8 would further reduce the potential for aesthetic impacts from implementation of the Proposed Project. There are no designated scenic resources in the vicinity of the Proposed Site. The Proposed Project would not result in significant impacts to visual resources.

Noise (FEIS §§ 4.11.2): Grading and construction activities associated with the Proposed Project would be intermittent and temporary in nature. The closest sensitive receptors that would be exposed to potential noise impacts during construction are private residences located along Harvey Street approximately 100 feet west of the Muskegon Property. The assessment of the Proposed Project's noise-related effects is based on Federal Noise Abatement Criteria (NAC) standards used by the Federal Highway Administration. Construction of the Proposed Project would fall below the NAC standards for ambient noise and construction vibration.

None of the roadways that would experience the most increase in project-related traffic would exceed Michigan Department of Transportation (MDOT) thresholds. Commercial uses on the Muskegon Property, such as operation of roof-mounted air handling units and idling vehicles would generate noise; however, given the distance to the nearest sensitive noise receptor, noise from roof-mounted heating, ventilation, and air conditioning equipment would not be audible and loading dock noise and idling vehicle noise would be below MDOT thresholds. With implementation of BMPs listed in § 2.3.1.8, the Proposed Project would not result in significant impacts to noise.

Land Use (FEIS § 4.9.2): The Proposed Site is zoned as Shopping Center and surrounding land uses are zoned as General Business, Service Business, and Planned Unit Development (PUD). The Proposed Project would develop a casino resort on a former horse race track and would result in the approximately 60 acres being transferred from fee to federal trust, thereby removing the Proposed Site from the County's land use jurisdiction. The remaining approximately 26.5 acres would be left in fee and subject to applicable State and local land use regulations.

The Proposed Project would be consistent with adjacent land uses and with the Muskegon County Comprehensive Plan, which seeks to increase economic development within the County. For these reasons, Alternative A would not impede local and regional planning efforts. There are several homes within the PUD, however, with implementation of the BMPs listed in§ 2.3.1.8 and mitigation measures in§ 5.9, impacts to land use would be less than significant.

Biological Resources (FEIS § 4.5.2): There are no sensitive habitats within the Proposed Site. There are likely no jurisdictional or other Waters of the U.S. within the Proposed Site. Three federally-listed species have the potential to occur within the Proposed Site, but none were observed during biological assessments in 2013 or 2015. No state-listed species have the potential to occur within the Proposed Site. Migratory birds have potential to nest on or within vicinity of the Proposed Site, but with implementation of mitigation measures as listed in§ 5.5, including pre-construction surveys, impacts to biological resources will be less than significant.

Cultural Resources (FEIS § 4.6.2): No known historic properties or paleontological resources were discovered within the Proposed Site. The Proposed Project ground disturbing construction activities could potentially unearth previously unknown archaeological or paleontological resources. With implementation of mitigation measures as listed in § 5.5, impacts to cultural resources will be less than significant.

Agriculture (FEIS § 4.9.2.3): The Proposed Site is not zoned for agricultural uses and no agricultural activities occur. The Proposed site received a combined land evaluation and site assessment Farmland Conversion Impact Rating score of 11, which is under the 160-point threshold for evaluation of alternative sites. The Proposed Project would not result in significant impacts to agriculture.

Hazardous Materials (FEIS § 4.12.2): The Proposed Project ground disturbing construction activities could potentially unearth undiscovered materials, but implementation of BMPs listed in § 2.3.1.8 will reduce adverse impacts of hazardous materials to less-than-significant levels. During operation, any chemicals or other hazardous materials will be stored, used, and handled by qualified personnel, therefore, there will be no significant adverse effects from hazardous materials. The BIA conducted a Phase I Environmental Site Assessment (ESA) of the Proposed Site was completed on February 4, 2015, and no recognized environmental conditions were identified. An updated ESA will be completed prior to transfer the Proposed Site into trust. With implementation of BMPs listed in § 2.3.1.8, impacts from hazardous materials will be less than significant.

Conclusion

The Tribe submitted the required information regarding anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community. As discussed above, the record reflects that the Tribe is working with the local governments to ensure that Proposed Project would result in less-than-significant impacts to these resources.

(c) Anticipated impacts on the economic development, income, and employment of the surrounding community.

The Proposed Project would result in a variety of beneficial impacts to the regional economy, including increases in overall economic output, employment opportunities, and tax revenue. Construction and operation of the Proposed Project would generate both temporary and permanent employment opportunities.

Construction Economic Impact (FEIS §§ 4.7.2.1; 4.7.2.2)

The construction of the Proposed Project will result in economic output to the County in the form of jobs, purchases of goods and services, and beneficial fiscal effects. The Proposed Project would cost approximately $179.6 million to construct, and is expected to generate a one-time output of approximately $209.8 million in the County. Direct output is estimated to total approximately $148.3 million, while indirect and induced outputs were estimated at $25.8 million and $35.7 million, respectively. Indirect and induced output would be dispersed and

distributed among a variety of different industries and businesses throughout Muskegon County. Output received by area businesses would in turn increase their spending and labor demand, which would further stimulate the local economy. Construction of the Proposed Project would generate approximately 1,763 direct construction jobs, with 552 construction-related indirect and induced jobs totaling $74.74 million in wages in the County.

Operational Economic Impact (FEIS §§ 4.7.2.1; 4.7.2.2)

Once operational, the Proposed Project is expected to generate a net annual total of approximately $136.7 million in the County. Direct output is estimated to total approximately $86.3 million, while indirect and induced outputs were estimated to total $18.0 million and $32.4 million, respectively. Indirect and induced output would be dispersed and distributed among a variety of different industries and businesses throughout Muskegon County. Output received by the County businesses would in turn increase their spending, and labor demand, which would further stimulate the local economy. The Proposed Project would generate approximately 1,201 new direct jobs with 423 operation-related indirect and induced jobs totaling $67.5 million in wages in the County.

Substitution Effects (FEIS § 4.7.2.d)

The Proposed Project is projected to cause a decline in revenue at competing gaming establishments within an approximate 2-hour drive of the Proposed Site. Nine competing gaming facilities are expected to experience a substitution effect and decrease in revenue by the following percentages: Gun Lake 21%, Hartford 14%, Four Winds 7%, Dowagiac 6%, Soaring Eagle 8%, Fire Keepers 8%, Eagles Landing 2%, Turtle Creek 1%, and Blue Chip 1%.

Only two existing gaming facilities, Gun Lake and Hartford, are expected to experience a substitution effect that could be greater than 10 percent of their projected gaming revenue in 2018 that is derived from the greater Muskegon market area (*i.e.*, patrons who reside within 120-minute drive time of the Muskegon Site). The Gun Lake facility would retain its location advantage as the closest casino to Grand Rapids, which is the second largest population base in Michigan. Although the competing facilities are projected to experience a decrease in revenues, typically properly managed facilities should have the ability to absorb the impacts and remain operational. Estimated substitution effects are anticipated to diminish after the first year of operation of the Proposed Project because local residents will have experienced the casino and will gradually return to more typical and more diverse spending patterns. We note that IGRA does not guarantee that tribes operating existing facilities will conduct gaming free from tribal and non-tribal competition.[123] Nor is competition in and of itself sufficient to conclude a detrimental impact on a tribe.[124]

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[123] *See Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 947 (7th Cir. 2000).

[124] *See Citizens for a Better Way v. U.S. Dep't of the Interior*, No. 2:12-cv-3021-TLN-AC, 2015 WL 5648925, at *21-22 (E.D. Ca. Sep. 24, 2015), *aff'd sub. nom., Cachil Dehe Band of Wintun Indians v. Zinke*, 889 F.3d 584 (9th Cir. 2018).

Conclusion

We determine that the Tribe has submitted the required information regarding impacts to economic development, income, and employment of the surrounding community. The record reflects the Proposed Project will generate increases in economic activity directly and indirectly, and will create employment opportunities for the surrounding community.

(c) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.

Property Taxes: The Proposed Project includes the transfer of the Proposed Site into trust, resulting in the loss of local property taxes. In 2014, the taxes due on the three properties making up the Proposed Trust Site within the Muskegon Property was $ $136,708.19.[125] Because property held in trust is not subject to local taxes, these property taxes would be lost to state and local governments. This loss would be more than offset by tax revenues generated for state and local governments from economic activity associated with the construction and operation of the Proposed Project.

Mitigation of Economic Impacts on Local Governmental Services: The Proposed Project would result in increased costs to local governments as well as losses in property tax revenue. However, under the provisions in the Municipal Services Agreement (MSA), the Tribe will pay both recurring and non-recurring costs to the Township and County for additional services to the Proposed Site. In year two of operations, the General Community Benefits Fund is scheduled to receive payments (payments consist of 1 percent of net slot revenue in Years Two and Three and 2 percent beginning in Year Four). These payments are to be allocated 25 percent to Fruitport Township, 25 percent to Muskegon County, and 50 percent to an entity or fund established by the Muskegon County Community Foundation. These revenue sharing payments attributed to the Proposed Project are estimated to be approximately $10.8 million in year two. Local revenue sharing payments, per Section 3.2(a) of the MSA, are 2 percent of net wins on slot revenue, which is anticipated to be approximately $3.2 million. The County portion of the accommodations tax (5%) would apply to hotel room revenue paid by patrons, and these funds would accrue to the County Convention and Visitors Bureau for tourism promotion.

Law Enforcement, Fire Protection & Emergency Medical Services (FEIS §§ 4.7.2.4, 4.10.2.4,): Operation of the Proposed Project is expected to generate approximately 70 incidents per year and increase the need for law enforcement, fire protection and emergency medical services. Pursuant to Section 2.1 of the MSA, the Tribe will contribute both recurring and non-reoccurring expenses to provide for the additional services.

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[125] Exhibit 7 to the Tribe's Application. The taxes due in 2014 for the three properties that comprise the Muskegon trust parcel are as follows: property # 61-15-115-300-0011-10, tax due of $80,502.20 ($19,043.31 for Summer and $61,458.89 for Winter); Property # 61-15-115-300-0026-00, total tax due of $30,894.70 ($20,533.55 for Summer and $10,361.15 for Winter); Property # 61-15-115-300-0028-00, total tax of $25,311.29 ($16,097.04 for Summer and $9,214.25 for Winter).

(e) Anticipated cost if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.

The Tribe intends to implement multiple resources to mitigate problem gaming. The BMPs listed in Section 2.3.1.8, include provisions requiring the Tribe to maintain programs and policies similar to those currently in effect at its casino in Manistee. The Section 3.2(b)(ii) of the MSA requires the Tribe to fund an annual grant in the amount of $25,000.00 to the Muskegon County Community Mental Health Department for training purposes. This training will include any certification necessary, as well as in-service training necessary for the department's psychologists and social workers, in order to obtain the necessary expertise to respond to problems that may arise as a result of gambling addictions.

(f) If a nearby Indian Tribe has a significant historical connection to the land then the impact on that tribe's traditional cultural connection to the land.

There are no Indian Tribes within 25 miles of the Proposed Site, as defined at 25 C.F.R. 292.2, and no consultation is required.

(g) Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and intergovernmental agreements with affected local governments.

As discussed below in Section 292.19, the Proposed Project has the strong support of local officials and jurisdictions.

Conclusion: Detriment to Surrounding Community

The FEIS considered reasonable alternatives and analyzed the potential impacts. The FEIS found that the issuance of a Secretarial Determination and the development of the Proposed Project would not significantly affect the quality of the human environment within the meaning of NEPA. The Proposed Project would have beneficial impacts to the surrounding community including stimulating economic development and employment. The Proposed Project incorporates BMPs and mitigation measures, which limit potential negative impacts to less-than-significant. The Tribe entered into a Municipal Services Agreement with the Township and County to facilitate the development of the Proposed Project and ongoing cooperation between all parties. The MSA articulates the services that the Township and County will provide to the Proposed Project and the compensation the Tribe will provide for those services. Based on the Tribe's application and supporting documents, the FEIS and associated studies, the consultation process, submissions by citizens and local governmental representatives, and the entire record before us, we conclude that gaming at the Proposed Site would not be detrimental to the surrounding community.

Consultation

Section 292.19 provides that in conducting the consultation process:

(a) The Regional Director will send a letter that meets the requirements in Section 292.20 and that solicits comments within a 60-day period from: (1) Appropriate State and local officials; and (2) Officials of nearby Indian Tribes.

On April 16, 2019, the Regional Director sent Consultation Notices to 78 governing entities within a 25-mile radius of the Proposed Site.[126] The list of those who received copies included the Michigan Governor, the Muskegon County Administrator, and the Fruitport Township Supervisor.

The Consultation Notice included a request to examine six areas as defined in 25 CFR § 292.19: (1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts; (2) anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community; (3) anticipated impact on the economic development, income, and employment of the surrounding community; (4) anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them; (5) anticipated costs, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment; and (6) any other information that may assist the Secretary in determining whether the proposed gaming establishment would or would not be detrimental to the surrounding community.

The BIA received responsive comment letters from the following:

- Muskegon County Board[127]
- Fruitport Township[128]
- Muskegon County Drain Commission[129]
- Fruitport Community Schools[130]

Muskegon County Board

The Muskegon County Board expressed its full support for the Proposed Project. The Board noted the environmental studies and had no concerns. The Board also noted the 1,200 new jobs,

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[126] Regional Director's Findings of Fact at 35.
[127] Letter to Russell Baker, Bureau of Indian Affairs, Midwest Regional Office, from Susie Hughes, Chair, and Mark Eisenbarth, County Administrator, Muskegon County (June 6, 2019).
[128] Letter to the Bureau of India Affairs, from Heidi Tice, Supervisor, Fruitport Charter Township (rec'd June 17, 2019).
[129] Letter to Russell Baker, Bureau of Indian Affairs, from Brenda M. Moore, Drain Commissioner, Muskegon County (June 13, 2019).
[130] Letter to Russell Baker, Bureau of Indian Affairs, Midwest Regional Office, from Bob Szymoniak, Superintendent of Schools (April 26, 2019).

the positive economic impact, mutual aid agreements with the Tribe, and other benefits of the Proposed Project.

Fruitport Township

Fruitport Township expressed support for the Proposed Project. The Township Supervisor acknowledged that infrastructure exists on the Site, and stated that the Proposed Project will have a positive impact on community employment and income.

Muskegon County Drain Commission

The Muskegon County Drain Commission expressed concern with possible improper storm water management on the Proposed Site because the Tribe is exempt from state and local regulations regarding water standards.

In response, we note that in the MSA, the Tribe agreed that it will adhere to state standards for storm water drainage:

> Section 2.8 Storm Water Drainage. The Parties agree that the Tribe will provide for storm water drainage through on-site facilities to be constructed as part of the Project. The Tribe agrees that it will construct or cause to be constructed appropriate storm water infrastructure for the Project at the Tribe's own expense. The Tribe further agrees that all such storm drainage infrastructure shall be constructed pursuant to and in accordance with the standards of the State of Michigan Drain Code, as updated and as enforced by the Muskegon County Drain Commissioner, for the construction of storm water drainage infrastructure in force at the time such facilities are constructed.

Fruitport Community Schools

The Fruitport Community Schools Superintendent expressed his support for the Proposed Project. He stated his support for the increase in jobs, noting that such an increase will have a positive impacts on schools in the community.

Conclusion

We have completed our review and analysis of the Tribe's application under 25 U.S.C. § 2719 (b)(1)(A), including submissions by state and local officials, citizens, and citizens' groups. For the reasons discussed above, we have determined that gaming on the Proposed Site in Fruitport Township, Muskegon County, Michigan, would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community.

The Department respectfully requests that you concur in this determination, pursuant to 25 U.S.C § 2719(b)(1)(A). Under the Department's regulations at 25 C.F.R. § 292.23, you have one year from the date of this letter to concur in this determination. You may request an extension of this

period for up to 180 days. The Tribe may also request an extension of this period for up to 180 days.

If you concur in this determination, the Tribe may use the Proposed Site for gaming purposes after it has complied with all other requirements in IGRA and its implementing regulations, and upon its acquisition in trust. If you do not concur in this determination, the Tribe may not use the Proposed Site for gaming purposes.

This letter and its attachments contain commercial and financial information that is protected from release under Exemption 4 of the Freedom of Information Act (FOIA). Due to the sensitive nature of this information, it is the Department's practice to withhold it from the public under FOIA, and to contact the Tribe any time a member of the public requests it. We respectfully request that the State of Michigan take appropriate steps to similarly protect the commercial interests of the Tribe.

Thank you for your consideration of this important matter. My staff has included copies of the record for your review and consideration.

Sincerely,

Tara Sweeney
Assistant Secretary–Indian Affairs