



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 08 2024

The Honorable Tim Walz
Governor of Minnesota
St. Paul, Minnesota 55155

Dear Governor Walz:

On October 11, 2023, the Prairie Island Indian Community (Tribe) submitted an application to the Bureau of Indian Affairs (BIA), requesting the Department of the Interior (Department) transfer into trust approximately 397.77 acres¹ of land in Olmsted County, MN (Elk Run Site) for gaming and other purposes. The Tribe also requested that the Secretary of the Interior (Secretary) determine whether the Elk Run Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act's Secretarial Determination exception.

The Tribe plans to use the Elk Run Site as an emergency interim gaming facility in the event that a catastrophic flood or nuclear disaster from the Prairie Island Nuclear Generating Plant (PINGP) renders the Tribe's main casino inoperable. Should the need arise after a catastrophic event, the Tribe plans to make the necessary improvements to the site to convert the barn structure and outbuildings into a gaming facility.

Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., generally prohibits Indian gaming on lands acquired in trust 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 after October 17, 1988, where the Secretary of the Interior (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 newly acquired lands would be in the best interest of the Indian Tribe and its members; and
- (2) Gaming on the newly acquired 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 Secretary's "Two-Part Determination" before the applicant Tribe may operate gaming on the proposed site.

I have completed my review of the Tribe's application and have reviewed submissions by State and local officials, officials of nearby Indian Tribes, and all other documents in the record. I

¹ The Tribe's application describes the property as approximately 419.8 acres, which was the acreage used in the EA, however review of a legal description and ALTA Survey by a BLM Indian Lands Surveyor resulted in an approximately 22.06-acre reduction of actual acreage to approximately 397.77 acres.

have determined that the proposed gaming establishment would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community. I have based my decision on the analysis set forth in the enclosed Secretarial Determination and hereby request your concurrence in this Determination pursuant to 25 U.S.C. § 2719(b)(1)(A). The Department will make a final determination on the Tribe's request to acquire the Elk Run Site in federal trust following your final action on the Secretarial Determination.

Much of the information relied on in the Secretarial Determination 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 confidentiality. The Department will withhold this information from the public in its entirety because it is confidential within the meaning of Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et sec.*, and Departmental regulations at 43 C.F.R. §§ 2.23 and 2.24. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019). I request that this information be similarly withheld by the State.

I request your concurrence in this Secretarial Determination, pursuant to 25 U.S.C. § 2719(b)(1)(A), within one year of the date of this letter. After one year, this Secretarial Determination will no longer be valid in accordance with the Department's regulations at 25 C.F.R. § 292.23(c). If you need additional time, or at the request of the Tribe, the Department's regulations at 25 C.F.R. § 292.23 permit me to grant an extension of 180 days. I thank you for your time and attention to this matter and look forward to your response.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosure

**Secretarial Determination for the Prairie Island Indian Community
Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(A)**

DECISION

On October 11, 2023, the Prairie Island Indian Community (Tribe) submitted an application to the Bureau of Indian Affairs (BIA), requesting the Department of the Interior (Department) transfer into trust approximately 397.77 acres² of land in Olmsted County, MN (Elk Run Site) for gaming and other purposes. The Tribe also requested that the Secretary of the Interior (Secretary) determine whether the Elk Run Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act’s Secretarial Determination exception.

The Tribe plans to use the Elk Run Site as an emergency interim gaming facility in the event that a catastrophic flood or nuclear disaster from the Prairie Island Nuclear Generating Plant (PINGP) renders the Tribe’s main casino inoperable. Should the need arise after a catastrophic event, the Tribe plans to make the necessary improvements to the site to convert the barn structure and outbuildings into a gaming facility.

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted “to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming.”³ 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, 1988.⁴ Congress, however, expressly provided several exceptions to the general prohibition.⁵ One such exception, known as the “Secretarial Determination” or “Two-Part Determination”, permits a Tribe to conduct gaming on lands acquired in trust for an Indian Tribe 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 newly acquired lands would be in the best interest of the tribe and its members; and
2. Gaming on the newly acquired lands would not be detrimental to the surrounding community.⁶

² The Tribe’s application describes the property as approximately 419.8 acres, which was the acreage used in the EA, however review of a legal description and ALTA Survey by a BLM Indian Lands Surveyor resulted in an approximately 22.06-acre reduction of actual acreage to approximately 397.77 acres.

³ *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002). See also 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments”).

⁴ 25 U.S.C. § 2719.

⁵ *Id.*

⁶ 25 U.S.C. § 2719 (b)(1)(A).

Even if the Secretary provides a positive Two-Part Determination, the governor of the state in which the gaming activity is to be conducted must affirmatively concur with the Secretary's Determination before the applicant Tribe is eligible to game on the proposed site.⁷

I. Background

The Prairie Island Indian Community is a modern body politic of the Mdewakanton Dakota people who have had a government-to-government relationship with the United States of America for over two hundred years. The Tribe is a successor in interest to the Mdewakanton Band of Dakota, who were signatories to eight treaties with the United States between 1805 and 1858. In 1851, the Tribe ceded the remainder of its lands in Minnesota and Iowa, comprising more than 24 million acres, to the United States. At that time, the Tribe urged the United States to place their Reservation in the vicinity of modern-day Pine Island, a territory that would have included the Elk Run Site and would have allowed the Tribe to continue its traditional means of subsistence since time immemorial. By 1884, and against the Tribe's urgings and best efforts, the United States placed the Tribe on its current Reservation. Presently, the Tribe's reservation occupies an area of approximately 3,100 acres.

In 1937, the Secretary of War, with the Secretary of the Interior's endorsement, approved the construction of Lock and Dam No. 3. The construction of Lock and Dam No. 3 flooded much of the Tribe's remaining land. The operation of Lock and Dam No. 3 results in the continuous erosion of natural levees and inundation and degradation of the Tribe's remaining island. The Tribe has experienced several catastrophic floods because of changing hydrological conditions stemming from the U.S. Army Corps of Engineers' construction and operation of Lock and Dam No. 3.

Much of the Tribe's current trust land lies within a 100-Year Flood Plain as designated by the Federal Emergency Management Agency (FEMA), and the Tribe regularly experiences catastrophic flooding that results in the widespread destruction of property, inundation of agricultural activities, the displacement of families, and oftentimes the inundation of sacred burial sites.⁸ The Tribe believes that, due to the continual erosion of barrier islands and inundation of their current trust land at Prairie Island, catastrophic floods will occur with increasing frequency and intensity. Further, it is the Tribe's belief that a catastrophic flood which renders the Tribe's main Treasure Island Casino (Casino) inoperable for an indeterminate amount of time is inevitable.⁹ The combined threat of flooding and loss of governmental

⁷ *Id.* The Department of the Interior's regulations allow a governor one year from the date of the Secretary's request in which to concur. The Secretary may grant an extension of up to 180 days upon request of the applicant Tribe or the governor. *See* 25 C.F.R. § 292.23. If the governor does not affirmatively concur within that time period, or if the governor provides a written non-concurrence, the Secretarial Determination is no longer valid, and the land may not be acquired in trust for gaming purposes. *Id.*

⁸ Tribe's Application at 19.

⁹ *Id.* At 18.

revenue poses an extreme threat to the Tribe's continued existence as a functioning government, requiring the creation of a contingency plan.¹⁰

The Tribe's current gaming facility is located approximately 700 yards from PINGP, one of the oldest nuclear powerplants still in operation in the United States. There have been containment failures at PINGP and other nearby nuclear powerplants resulting in the release of nuclear contaminants into the local ecosystem.¹¹ Nuclear waste created from PINGP is stored on-site, and the waste storage facility is directly visible from Tribal members' homes. There are currently no plans to relocate the nuclear waste to a safer storage facility away from the Tribe. Due to the operation of the PINGP and the continual storage of nuclear waste dangerously close to the Prairie Island Indian Community, the Tribe and its members are extremely concerned about a potential catastrophe that could render the Reservation and Casino uninhabitable and inoperable for potentially hundreds of years, if not longer.¹²

The Tribe acquired the Elk Run Site (Site) as the first step in implementing a contingency plan in the event of that a catastrophic flood or other catastrophic event cripples the Tribe's economy. The Elk Run Site is located outside of flood risks from the Mississippi River, as well as the FEMA designated nuclear incident impact zone and 10-mile radius emergency planning zone (EPZ) for PINGP. The Elk Run Site is in Olmsted County, Minnesota, near the city of Pine Island, and the Olmsted County - Goodhue County line. The Elk Run Site is also located within the Tribe's ceded lands and within the area the Tribe requested be set aside as its Reservation in 1851.

II. 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.

Subpart C—Secretarial Determination

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.

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

¹⁰ See *Prairie Island Indian Community Unmet Needs Report and Community Resilience Plan (May 21, 2024)* (Unmet Needs Report) at 20.

¹¹ Unmet Needs Report at 13.

¹² *Id.* at 14.

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:

The full name, address, and telephone number of the Tribe submitting the application.

Prairie Island Indian Community
Tribal Administration Offices
5636 Surgeon Lake Road
Welch, MN 55089

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

The Site consists of approximately 397.77 acres¹³ located in Olmsted County, Minnesota. The Site is owned in fee simple by the Tribe. And includes the following tax parcels:

Tax Parcel ID No. 850131079584, 850143079564, 850134079589, 850132079567, 851221079590, 851212038600, 851214079569, 850144078534, 850144078533, 850144079565, 850144079566, 840633079595, 840634079597, 840634078541, 840633078539, 851211079570, 840721039660, 840724039662, 851214079571, 840723079573.

The full legal description of the Site is included as **Attachment 1**.

Proof of identity of present ownership and title status of the land.

The Tribe owns the Site in fee simple, evidence of which is found in the warranty deed to the Site.¹⁴

¹³ The Tribe's application describes the property as approximately 419.8 acres, which was the acreage used in the EA, however review of a legal description and ALTA Survey by a BLM Indian Lands Surveyor resulted in an approximately 22.06-acre reduction of actual acreage to approximately 397.77 acres.

¹⁴ Appendix 26 to the Tribe's Application.

Distance of the land from the Tribe’s Reservation or trust lands, if any, and Tribal government headquarters.

The Elk Run Site is approximately 47.5 driving miles away from the location of the Tribe’s governmental headquarters on its Reservation.¹⁵

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.

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.

The authorizing resolution from the Tribe submitting the application.

Resolution No. 23-9-28-175 authorizes a request for filing of a Fee-to-Trust application for gaming and Two-Part Determination pursuant to 25 C.F.R. § 151 and 25 C.F.R. § 292, respectively. On September 28, 2023, the Tribe’s legislature approved Tribal Resolution 23-9-28-175.¹⁶

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 Tribe’s Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on January 21, 1994. Amendments to the Tribe’s Gaming Ordinance were executed on May 23, 1994, October 08, 1996, June 12, 1996, December 17, 2002, January 4, 2005, and November 11, 2010.

The Tribe’s organic documents, if any.

On April 23, 1936, pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984), the Tribe approved the adoption of a constitution by a vote of 35 for and 4 against. The Secretary approved the Constitution of Minnesota Mdewakanton Sioux on the Prairie Island Reservation on June 20, 1936. The Constitution was last amended on February 22, 2017.¹⁷

¹⁵ Tribe’s Application at 32.

¹⁶ Appendix 1 to the Tribe’s Application.

¹⁷ Appendix 2 to the Tribe’s Application,

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's Compact for Class III Video Games of Chance was approved in 1989 (amended in 2015), and the Tribe's Compact for Blackjack was approved in September of 1991. The Tribe's compacts recognize the Tribe's sovereign authority to conduct gaming on its Reservation and any other "Indian Lands", as defined by IGRA, over which the Tribe exercises governmental authority.

A copy of the existing or proposed management contract required to be approved by the NIGC under 25 U.S.C. § 271, if any.

The Tribe's proposed emergency facility, if it is open and operated, will not involve a management contract.

III. 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. An income statement is considered the best tool to determine the profitability of a proposed gaming project.

We also review the balance sheet which lists assets, liabilities, and capital. From the balance sheet, we can identify various ratios to determine if a proposed gaming project will grow and whether it 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 what ongoing investments will be made, what debt 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 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.

Reports

The Tribe has submitted a full Socioeconomic Analysis of the Elk Run Site's construction and operation.¹⁸

Analysis

The Elk Run Site will be operational in the event of a catastrophic nuclear or flooding disaster forcing the closure of the main Casino. The Tribe will, therefore, be the primary beneficiary of the operation of the Elk Run Site, as the Tribe plans to use funds generated by the emergency gaming operation to continue its critical governmental functions and maintain its services to tribal members.

The Tribe expects that the operation of the Elk Run Site will have an annual gross revenue of approximately \$86.1 million, with a value added to the surrounding communities of \$76.9 million annually. Our internal analysis of the Innovation Group's Socioeconomic Analysis indicates that the Tribe's emergency gaming will be profitable.

Projected Tribal employment, job training, and career development

The proposed project is estimated to employ 342 people, the majority of which are planned to be sourced from employees of the Tribe's main casino, who will be transferred to the emergency interim gaming facility at the Elk Run Site after a catastrophic event causes the closure of the Casino. Although the Tribe cannot estimate the specific number of jobs that could be held by members at the proposed project, it expects to employ Tribal members who already work at their Casino. The Tribe also expects to source extra employees from the surrounding community near the Elk Run Site.

Revenues from the proposed project will enable the Tribe to continue to provide its critical services to Tribal members, and the funds generated by the emergency interim gaming facility will allow the Tribe to continue its critical governmental functions in the event of a closure of its main casino as a result of a natural or nuclear disaster. The Elk Run Site will become the Tribe's lifeline in such an event and will serve as a means of recovery for the Tribe should such an event occur.

Projected benefits to the Tribe and its members from tourism

The Tribe plans to use the Elk Run Site as an emergency interim gaming facility in the event that a catastrophic flood or nuclear disaster from PINGP renders the Tribe's main casino inoperable.

¹⁸ See *Prairie Island Indian Community Emergency Casino Socioeconomic Analysis (The Innovation Group, October 2023)* (Socioeconomic Analysis), Appendix B1 to the Tribe's Application. This document contains the Tribe's commercial and/or financial information which is customarily and treated as private by the Tribe and was submitted to the Department under an assurance of privacy. The Department will withhold these documents in their entirety from the public because it is confidential within the meaning of Exemption 4 of the Freedom of Information act (FOIA), 43 C.F.R. §§ 2.23 and 2.24. See *Foor Mktg. Inst. v. Argus Leader Media*, 139 S. Ct 2356 (2019).

Should the need arise after a catastrophic event, the Tribe plans to make the necessary improvements to the site to convert the barn structure and outbuildings into a gaming facility. Therefore, the Tribe has no concrete plans at this time to use the Site to further develop the Tribe's tourism industry.

Projected benefits to the Tribe and its members from the proposed uses of the increased Tribal income

The Tribe plans to use the revenue generated by the emergency interim gaming facility to continue its critical governmental services and to continue to provide essential services to tribal members.

Projected benefits to the relationship between the Tribe and non-Indian communities

The Tribe has entered into an enforceable Intergovernmental Agreement (IGA) with the City of Pine Island. The IGA addresses law enforcement needs for the Tribe, emergency response, and water and sewer infrastructure. The agreement also contains a forbearance provision, wherein the Tribe has agreed to forbear from conducting gaming on the Elk Run Site for six years after it is placed into trust status. After the 6-Year Forbearance Period, the Tribe may conduct gaming on the Site if it determines that it would be beneficial to the Tribe and its members. If a catastrophic event were to take place before the Forbearance Period expires, the Tribe will be able to conduct gaming on the Elk Run Site.¹⁹

The Tribe has also entered into a cooperative agreement with Goodhue County regarding law enforcement for the existing Prairie Island Reservation. The agreement recognizes the Tribe's Police Department as the primary provider of law enforcement to the Prairie Island Indian Reservation. It does not currently apply to the Elk Run Site. The Tribe, however, anticipates that it will be able to modify this agreement to include the Site, which is just outside of the Goodhue County line. The Tribe has also entered into a prosecution agreement with the Goodhue County Attorney's Office, wherein the Tribe provides annual payments in exchange for prosecutorial services for State citations issued by Tribal police officers. The Tribe believes that this agreement may be modified to include the Site as well.²⁰ Additionally, Olmsted County expressed interest in entering into a cooperative agreement with the Tribe to provide services, including policing and other public safety services, at the Elk Run Property once acquired in federal trust.²¹

¹⁹ Intergovernmental Agreement between the Prairie Island Indian Community and the City of Pine Island (November 23, 2023).

²⁰ Tribe's Application, Appendix 17.

²¹ Letter from Sheila Kiscaden, Chair, Olmsted County Board of Supervisors to Thomas Wilkins, Realty Specialist, BIA, Midwest Regional Office, dated September 9, 2024.

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.²²

Distance of the land from the location where the Tribe maintains core governmental functions

The Site is approximately 47.5 driving miles away from the location of the Tribe’s core governmental functions on its existing reservation.²³

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 owns the Site in fee.²⁴

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

Section 292.17(i) does not require an applicant Tribe to demonstrate a significant historical connection to the land in order to receive a positive Secretarial Determination. Nevertheless, the Department’s regulations require the Secretary to weigh the existence of a historical connection between an applicant Tribe and its proposed gaming site as a factor in determining whether gaming on the proposed site would be in the best interest of the Tribe and its members. The Department defines significant historical connection as “the land is located within the boundaries of the [T]ribe’s last reservation under a ratified or unratified treaty, or a [T]ribe can demonstrate by historical documentation the existence of the [T]ribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.”²⁵

The Elk Run Site is located within territory that the Tribe ceded in its 1851 Treaty with the United States of America. During the Treaty negotiations, the Tribe urged the United States to place their Reservation in the region wherein the Site is located. Ultimately, the Tribe’s Reservation territory was located on their present-day trust lands. The Site is located in the Tribe’s historical ceded territory, where the Tribe used to practice its sustenance traditions. The Tribe has significant cultural and historical ties to the region in which the Site is located, and the Treaty evidence supports this.²⁶

²² Tribe’s Application at 32.

²³ Tribe’s Application at 32.

²⁴ Appendix 6 to the Tribe’s Application (Deed) and Appendix 19 to the Tribe’s Application (Title Insurance).

²⁵ 25 C.F.R. § 292.2

²⁶ Tribe’s Application at 2-9.

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.

The Tribe does not intend to enter into any consulting agreements and at this time has not sought financing or other loan agreements for the proposed emergency interim gaming facility.

A gaming establishment on the Elk Run Site would be in the best interest of the Tribe and its members

The Tribe has submitted the documents required by Section 292.17. Based on this information, a gaming establishment on the Elk Run Site after it is acquired in trust would be beneficial for the Tribe and its members. The proposed project would assist in the Tribe's achievement of its goals for self-governance, self-determination, and self-sufficiency.

IV. Analysis of Detriment to the Surrounding Community

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

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).

An environmental assessment (EA) was prepared pursuant to the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the Council for Environmental Guidelines for implementing NEPA, 40 C.F.R. Parts 1500-1508, and the BIA NEPA Handbook (59 I.A.M. 3-H) to evaluate the potential impacts of gaming at the Site.²⁷

The EA provides extensive information on the existing environment and potential impacts. Based on the facts and available evidence, the EA concludes that gaming at the proposed Site would not result in significant impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic resources and environmental justice, transportation and circulation, land use, public services and utilities, visual resources, or noise. A Mitigated Finding of No Significant Impact (FONSI) for the Prairie Island Indian Community Emergency

²⁷ The BIA released the EA dated June 2024 for public comment on July 15, 2024. The EA is available online at <http://www.PIICcasinoEA.com>.

Gaming facility and Fee-to-Trust Project was issued on November 8, 2024 and is attached as **Attachment 2**.

Based on the EA and FONSI, Alternative A was selected for implementation. Alternative A consists of: (1) transfer of the Elk Run Site into federal trust status, with accompanying reservation proclamation, for the benefit of the Tribe and gaming purposes (Proposed Action), (2) issuance of a Two-Part Determination by the Secretary of the Interior (Secretary) under Section 20 of the Indian Gaming Regulatory Act (IGRA) (25 U.S.C. § 2719(b)(1)(A)) (Proposed Action), and (3) subsequent site improvements and renovations by the Tribe to the existing barn structure on the Elk Run Site into an emergency interim gaming facility that would be operated in the event that a catastrophic flood or nuclear accident causes the closure of the existing Casino (Proposed Action). Additionally, should the Tribe determine that additional Tribal economic income and employment opportunities are needed, the Tribe would have the ability to utilize the Elk Run Site for permanent operation of a future gaming facility, secondary to the existing Casino, after the 6-year Forbearance Period. Ongoing agricultural activities in the remaining areas of the site would continue under existing conditions.

The EA describes the Best Management Practices (BMPs) which have been incorporated into the project design to eliminate or substantially reduce any environmental consequences to less than significant. In addition, the EA and FONSI describes additional mitigation measures in Section 5.0 which will be implemented to further mitigate potential environmental impacts.

Potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic resources and environmental justice, transportation and circulation, land use, public services and utilities, visual resources, noise, and hazardous materials are each evaluated in the EA. The EA concludes the project design and implementation of BMPs would ensure impacts to these resources would either be beneficial or less than significant.

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

Impacts on Social Structure

As discussed in detail in the EA, the proposed emergency interim gaming facility would have less than significant impacts on social structure. *See* EA § 3.7.3. Further, there are no minority or low-income populations within the vicinity of the Site, except for the Tribe itself. The development of the emergency gaming facility would not result in the displacement of any populations in or around the Elk Run Site. Therefore, there would not be any significant impact on minority or low-income populations. *See* EA § 3.7.3.

Law enforcement services would primarily be provided by the Tribe's Prairie Island Police Department (PIPD), and the Tribe has established an IGA regarding law enforcement services with the City of Pine Island, which contracts with the Goodhue County Sheriff's Department.²⁸

²⁸ EA §§ 1.5 and 2.1.

Further, Olmsted County has expressed interest in entering into similar agreements with the Tribe.

Impacts on Infrastructure

As discussed in detail in the EA, the proposed emergency interim gaming facility would have less than significant impacts infrastructure. Development and operation of the proposed emergency interim gaming facility would require the Tribe to install a southbound left-turn lane on White Pine Road SE at the approach to the driveway access to the Elk Run Site. With this improvement, the development and operation of the emergency interim gaming facility would have less than significant impacts to traffic and road infrastructure. *See* EA § 3.8. Similar infrastructure improvements would be required for electricity. The Tribe will work with local electrical service providers and pay the Tribe's share of infrastructure improvement costs, resulting in less than significant impacts. *See* EA § 3.10.3. The Tribe would contract with service providers for solid waste disposal services, resulting in less than significant impacts. The Tribe intends to utilize ground water for the emergency interim gaming facility water needs and properly dispose of any wastewater utilizing a wastewater treatment facility. Development and operation of the proposed emergency interim gaming facility would require the installation of a diesel generator, and the Tribe will consult with the United States Environmental Protection Agency (USEPA) to determine whether New Source Review (NSR) permits may be needed based on regulatory procedures for hypothetical usage and associated emissions resulting in less than significant impacts to air quality. *See* EA § 3.4.

Impacts on Services

As discussed in detail in the EA and FONSI, the proposed emergency interim gaming facility would have less than significant impacts on public services in the surrounding community. The Tribe has entered into an enforceable IGA with the City of Pine Island. The IGA addresses law enforcement needs for the Tribe, emergency response, and water and sewer infrastructure. Law enforcement services would primarily be provided by the Tribe's PIPD, and the Tribe has established an IGA regarding law enforcement services with the City of Pine Island, which contracts with the Goodhue County Sheriff's Department.²⁹ The Tribe has proposed a similar agreement with the Pine Island Fire Department for fire protection and emergency medical services. Further, Olmsted County has expressed interest in entering into similar agreements with the Tribe. These agreements reduce potential impacts to services to less than significant. *See* EA § 3.10.3.

Impacts on Housing

As discussed in detail in the EA and FONSI, the proposed emergency interim gaming facility would have less than significant impacts on housing. The EA provides a conservative estimate that the project would result in approximately 98 new households moving into the area. The EA estimates that, due to the surplus housing in Olmsted County, MN, the additional households that

²⁹ EA §§ 1.5 and 2.1.

are projected to relocate to the Site are likely to result in an absorption of some of the surplus housing in the area and result in less than significant impacts. *See* EA § 3.7.3.

Impacts on Community Character and Land Use

As discussed in detail in the EA and FONSI, the proposed emergency interim gaming facility would have less than significant impacts on community character and land use. *See* EA § 3.9.3. Potential future development, including the Tribe's North Elk Run Community Development Project and growth and development envisioned in the in the City of Pine Island Comprehensive Plan, Olmsted County General Land Use Plan, the Oronoco Planned Future Land Use map, and the Oronoco Township Land Use Plan, has the potential to result in cumulative land use effects associated with potential conflicts with existing land uses, and conversion of agricultural land. Generally, adherence to local planning documents is intended to prevent disorderly growth or incompatible land uses. The City of Pine Island and Olmsted County have included the Elk Run Site and vicinity within the designated Urban Growth Area, with future land uses to include low, medium, and high density residential, as well as commercial, land uses. Future development of the adjacent PIIC North Elk Run Community Development Project on the properties to the east, west, and north of the Elk Run Site could include residential areas and commercial development, in addition to infrastructure support facilities. The Elk Run Site and adjacent PUC North Elk Run Community Development are part of a larger, previously planned development area referred to as the "Elk Run Concept Master Plan." The Elk Run Concept Master Plan originally envisioned the Elk Run Site as a mixture of regional commercial/retail, neighborhood commercial, and rural residential lots ranging from a quarter of an acre to an acre in size. The development components of the emergency interim gaming facility are similar to those included in the Elk Run Concept Master Plan but would be smaller in scale (City of Pine Island, 2008).

Construction Economic Impact

As discussed in detail in the EA and FONSI, the proposed emergency interim gaming facility would have positive economic impacts. The Elk Run Site is situated on land that was previously used for agriculture and commercial purposes. Initial improvements would begin immediately after the subject property is placed in trust and would take approximately 1 year. These improvements would include stormwater and drainage improvements, re-paving the existing parking lot, and installing water, utility, and wastewater treatment infrastructure. Renovations on the existing structures to convert it to an emergency interim gaming facility would only occur during the 6-Year Forbearance Period if a catastrophic flood or nuclear disaster from PINGP renders the Tribe's Casino inoperable. After the 6-Year Forbearance Period, the Tribe may conduct gaming on the Site if it determines that it would be beneficial to the Tribe and its members.

The capital required to construct the project would bring an estimated \$24 million to the area in construction cost alone and an additional \$831,534 in design and site fees. This investment would bring approximately \$4.5 million in labor income to the area and \$13.7 million to the local and State economy.

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

The Tribe anticipates that several of the impacts of operation of the proposed project, while less than significant, would, nevertheless, result in incremental costs to the surrounding community. The Tribe intends to address all such costs through Intergovernmental Agreements or Memoranda of Understanding with affected local government entities, paying its fair share of costs to improve existing infrastructure, and, where possible, providing services on-site. Additionally, the construction and operation of the proposed emergency interim gaming facility would generate increased economic activity, resulting in increased tax revenue for the State and local governments of approximately \$4,774,400, more than offsetting losses in property tax and incremental increases in demands for services. *See* EA 3.7.3.

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

As discussed in detail in the EA and FONSI, problem gambling is not anticipated to increase from the proposed emergency interim gaming facility given the widespread availability of casino gaming already present throughout the State and its smaller size compared to the existing Prairie Island gaming facility. Therefore, potential problem gambling due to the Tribe's operation of an emergency interim gaming facility at the Elk Run Site would be less than significant. *See* EA §3.7.3. In addition, the Tribe has created material concerning the symptoms of problem gambling and has established a toll-free problem gambling hotline. This information is currently available at the existing Casino and would also be available at the proposed new gaming facility if and when it becomes operational.³⁰

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 located within a 25-mile radius of the Site.

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.

As discussed above, the Tribe has entered into an enforceable IGA with the City of Pine Island. The IGA addresses law enforcement needs for the Tribe, emergency response, and water and sewer infrastructure. The agreement also contains a forbearance provision, wherein the Tribe has agreed to forbear from conducting gaming on the Elk Run Site for six years after it is placed into trust status. After the 6-Year Forbearance Period, the Tribe may conduct gaming on the Site if it determines that it would be beneficial to the Tribe and its members. If a catastrophic event

³⁰ Tribe's Application, Appendix 20.

were to take place before the Forbearance Period expires, the Tribe will be able to conduct gaming on the Elk Run Site.³¹

Conclusion: Detriment to the Surrounding Community

The Tribe has submitted the documents required by Section 292.18. As discussed above in detail, the EA found that the issuance of a Secretarial Determination and the development of the proposed project did not significantly affect the quality of the human environment within the meaning of NEPA. Further, the Tribe has entered into or plans to enter into Intergovernmental Agreements or Memoranda of Understanding with affected local government entities, paying its fair share of costs to improve existing infrastructure, and, where possible, providing services on-site. The proposed emergency interim gaming facility at the Elk Run Site would have beneficial impacts to the surrounding community.

Based on the Tribe's application and supporting documents, the EA and associated studies, the consultation process, and the entire record before us, we conclude that gaming at the Elk Run Site would not be detrimental to the surrounding community.

V. Consultation

Section 292.19 provides that in conducting the consultation process:

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 July 5, 2024, a Consultation Notice was sent to 99 governing entities within a 25-mile radius of the Site.³² Responsive comments were received from the City of Mantorville and Olmsted County. The City of Mantorville is not opposed to an emergency gaming project in response to a disaster but expressed concern with its impact on revenue stream collected from gambling activities associated with local charities. The City did not provide specific information as to what programs would be affected, nor did it provide information on amounts collected. Olmsted County stated that it was difficult to quantify any specific potential impact an emergency gaming facility may have in the County. Instead, it provided a list of county services that may be impacted. The County did not oppose the proposed gaming facility.

³¹ Intergovernmental Agreement between the Prairie Island Indian Community and the City of Pine Island (November 23, 2023).

³² See Memorandum dated September 13, 2024, from Regional Director, Midwest Region to Director, Office of Indian Gaming; and Memorandum dated September 24, 2024, from Regional Director, Midwest Region to Director, Office of Indian Gaming.

Conclusion

We have completed our review and analysis of the Tribe's application, including submissions by State and local officials, as well as from the public. For the reasons discussed above, we have determined that gaming on the Elk Run Site 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 Elk Run 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 cannot use the Elk Run 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. I request that this information be similarly withheld by the State under its equivalent provisions.

Thank you for your consideration of this important matter. Copies of the record are included for your review and consideration.

Attachment 1
Legal Description

Legal Description of Elk Run Emergency Gaming Parcel

The part of the Southwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter, of Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, lying northerly and easterly of the following described line:

Commencing at the northwest corner of said Section 1; thence on an assumed bearing of South 00 degrees 54 minutes 41 seconds East along the west line of said Section 1 a distance of 778.98 feet; thence South 44 degrees 55 minutes 49 seconds East 764.84 feet to the north line of said Southwest Quarter of the Northwest Quarter to the point of beginning of the line to be described; thence South 44 degrees 55 minutes 49 seconds East 5121.99 feet; thence southeasterly 389.04 feet to the south line of said Section 1 along a tangential curve concave to the southwest having a radius of 1083.65 feet and a central angle of 20 degrees 34 minutes 11 seconds and there terminating.

AND

That part of the Southwest Quarter of the Southeast Quarter, and Southeast Quarter of the Southeast Quarter, of Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, lying southerly and westerly of the following described line:

Commencing at the northwest corner of said West Half of the Northwest Quarter; thence on an assumed bearing of South 00 degrees 54 minutes 41 seconds East along the west line of said West Half of the Northwest Quarter 778.98 feet to the point of beginning of the line to be described; thence South 44 degrees 55 minutes 49 seconds East 5886.83 feet; thence southeasterly 389.04 feet to the south line of said Section 1 along a tangential curve concave to the southwest having a radius of 1083.65 feet and a central angle of 20 degrees 34 minutes 11 seconds and there terminating.

LESS:

That part of the Southwest Quarter of the Southeast Quarter of Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follow:

Commencing at the northwest corner of said Section 1; thence on an assumed bearing of South 00°54'41" East along the west line of the Northwest Quarter of said Section 1 for a distance of 778.98 feet; thence South 44°55'49" East 4566.75 feet to the point of beginning; thence continuing South 44°55'49" East 755.78 feet; thence South 88°57'41" West 1033.47 feet to the west line of said Southwest Quarter of the Southeast Quarter; thence North 01°13'47" West along said west line of the Southwest Quarter of the Southeast Quarter 515.04 feet; thence easterly a distance of 74.28 feet along a curve concave to the south and not tangent with the last described line, said curve has a radius of 22818.32 feet,

a central angle of $00^{\circ}11'11''$, and the chord of said curve bears South $89^{\circ}57'15''$ East 74.28 feet; thence South $89^{\circ}51'39''$ East tangent to said curve 7.10 feet; thence North $00^{\circ}09'26''$ East 40.00 feet; thence South $89^{\circ}51'39''$ East 429.10 feet to the point of beginning.

AND

That part of the Southeast Quarter of the Southwest Quarter of Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, which lies easterly of the easterly right-of-way line of State Highway 52.

LESS:

That part of the Southeast Quarter of the Southwest Quarter and that part of the Southwest Quarter of the Southwest Quarter, all in Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the northwest corner of said Section 1; thence on an assumed bearing of South $00^{\circ}54'41''$ East along the west line of the Northwest Quarter of said Section 1 for a distance of 778.98 feet; thence South $44^{\circ}55'49''$ East 4566.75 feet; thence continuing South $44^{\circ}55'49''$ East 755.78 feet; thence South $88^{\circ}57'41''$ West 1033.47 feet to the east line of said Southeast Quarter of the Southwest Quarter and the point of beginning; thence North $01^{\circ}13'47''$ West along said east line of the Southeast Quarter of the Southwest Quarter 515.04 feet; thence westerly a distance of 78.47 feet along a curve concave to the south and not tangent with the last described line, said curve has a radius of 22818.32 feet, a central angle of $00^{\circ}11'49''$, and the chord of said curve bears South $89^{\circ}51'15''$ West 78.47 feet; thence South $89^{\circ}45'20''$ West tangent to said curve 239.41 feet; thence North $00^{\circ}14'38''$ West 35.00 feet; thence South $89^{\circ}45'20''$ West 267.50 feet; thence southwesterly a distance of 466.08 feet along a tangential curve concave southerly having a radius of 1844.86 and a central angle of $14^{\circ}28'30''$; thence South $14^{\circ}43'05''$ East not tangent to said curve 5.00 feet; thence southwesterly a distance of 389.36 feet along a curve concave southeasterly and not tangent with the last described line, said curve has a radius of 1839.86 feet, a central angle of $12^{\circ}07'31''$, and the chord of said curve bears South $69^{\circ}13'05''$ West 388.64 feet; thence South $27^{\circ}44'48''$ West not tangent to said curve 56.31 feet; thence South $27^{\circ}00'55''$ East 356.65 feet; thence North $88^{\circ}57'41''$ East 1283.97 feet to the point of beginning.

AND

That part of the West Half of the Northeast Quarter of Section 12, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing for a place of beginning at the northwest corner of the Northeast Quarter of said Section and running thence East along the north line of said Section a distance of 1304.2 feet to the northeast corner of said West Half of the Northeast Quarter; thence South along the east line of said West Half a distance of 2101 feet to the northerly right-of-way

line of U.S. Trunk Highway Number 52; thence Northwesterly along said northerly right-of-way line a distance of 1816.68 feet to the west line of said Northeast Quarter; thence North a distance of 871.6 feet to the place of beginning.

AND

That part of the East Half of the Northwest Quarter of Section 12, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing for a place of beginning at the northeast corner of the Northwest Quarter of said Section 12 and running thence West along the north line of said Northwest Quarter a distance of 921.1 feet to a point in the northerly right-of-way line of U.S. Trunk Highway Number 52; thence southeasterly along said northerly right-of-way line a distance of 1264.65 feet to the east line of said Northwest Quarter thence North along the east line of said Northwest Quarter a distance of 871.6 feet to the place of beginning.

AND

That part of the East Half of the Northeast Quarter of Section 12, Township 108 North, Range 15 West, Olmsted County, Minnesota, lying and being north and east of Highway Number 52 and south and west of that certain Township Road, formerly known as State Highway Number 20, running northwesterly and southeasterly through said East Half of the Northeast Quarter.

AND

That part of the East Half of the Northeast Quarter of Section 12, Township 108 North, Range 15 West, Olmsted County, Minnesota, lying north and east of the Township Road.

AND

The Southeast Quarter of the Southwest Quarter of Section 6, Township 108 North, Range 14 West, Olmsted County, Minnesota.

AND

The Southwest Quarter of the Southwest Quarter of Section 6, Township 108 North, Range 14 West, Olmsted County, Minnesota.

AND

The Southeast Quarter of the Northwest Quarter and the North Half of the Southwest Quarter of the Northwest Quarter of Section 7, Township 108 North, Range 14 West,

Olmsted County, Minnesota.

AND

The North Half of the Northwest Quarter of Section 7, Township 108 North, Range 14 West, Olmsted County, Minnesota.

AND

The South Half of the Southwest Quarter of the Northwest Quarter of Section 7, Township 108 North, Range 14 West, Olmsted County, Minnesota.

AND

That part of the Southwest Quarter of the Southeast Quarter of Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follow:

Commencing at the northwest corner of said Section 1; thence on an assumed bearing of South $00^{\circ}54'41''$ East along the west line of the Northwest Quarter of said Section 1 for a distance of 778.98 feet; thence South $44^{\circ}55'49''$ East 4566.75 feet to the point of beginning; thence continuing South $44^{\circ}55'49''$ East 755.78 feet; thence South $88^{\circ}57'41''$ West 1033.47 feet to the west line of said Southwest Quarter of the Southeast Quarter; thence North $01^{\circ}13'47''$ West along said west line of the Southwest Quarter of the Southeast Quarter 515.04 feet; thence easterly a distance of 74.28 feet along a curve concave to the south and not tangent with the last described line, said curve has a radius of 22818.32 feet, a central angle of $00^{\circ}11'11''$, and the chord of said curve bears South $89^{\circ}57'15''$ East 74.28 feet; thence South $89^{\circ}51'39''$ East tangent to said curve 7.10 feet; thence North $00^{\circ}09'26''$ East 40.00 feet; thence South $89^{\circ}51'39''$ East 429.10 feet to the point of beginning.

AND

That part of the Southeast Quarter of the Southwest Quarter and that part of the Southwest Quarter of the Southwest Quarter, all in Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the northwest corner of said Section 1; thence on an assumed bearing of South $00^{\circ}54'41''$ East along the west line of the Northwest Quarter of said Section 1 for a distance of 778.98 feet; thence South $44^{\circ}55'49''$ East 4566.75 feet; thence continuing South $44^{\circ}55'49''$ East 755.78 feet; thence South $88^{\circ}57'41''$ West 1033.47 feet to the east line of said Southeast Quarter of the Southwest Quarter and the point of beginning; thence North $01^{\circ}13'47''$ West along said east line of the Southeast Quarter of the Southwest Quarter 515.04 feet; thence westerly a distance of 78.47 feet along a curve concave to the south

and not tangent with the last described line, said curve has a radius of 22818.32 feet, a central angle of $00^{\circ}11'49''$, and the chord of said curve bears South $89^{\circ}51'15''$ West 78.47 feet; thence South $89^{\circ}45'20''$ West tangent to said curve 239.41 feet; thence North $00^{\circ}14'38''$ West 35.00 feet; thence South $89^{\circ}45'20''$ West 267.50 feet; thence southwesterly a distance of 466.08 feet along a tangential curve concave southerly having a radius of 1844.86 and a central angle of $14^{\circ}28'30''$; thence South $14^{\circ}43'05''$ East not tangent to said curve 5.00 feet; thence southwesterly a distance of 389.36 feet along a curve concave southeasterly and not tangent with the last described line, said curve has a radius of 1839.86 feet, a central angle of $12^{\circ}07'31''$, and the chord of said curve bears South $69^{\circ}13'05''$ West 388.64 feet; thence South $27^{\circ}44'48''$ West not tangent to said curve 56.31 feet; thence South $27^{\circ}00'55''$ East 356.65 feet; thence North $88^{\circ}57'41''$ East 1283.97 feet to the point of beginning.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCELS:

- 1) That part of the Southeast Quarter of the Northeast and the Northeast Quarter of the Southeast Quarter of Section 12, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at a surveyor's monument located at the northeast corner of the Southeast Quarter of said Section 12; thence on an assumed bearing of South $00^{\circ}36'36''$ East along the East line of said Section 12 a distance of 172.31 feet to the north right-of-way line of Minnesota Trunk Highway Number 52; thence North $65^{\circ}39'04''$ West 626.00 feet along said right-of-way line; thence North $22^{\circ}10'09''$ East 633.60 feet to the centerline of the Township Road presently known as 59th Avenue; thence South $31^{\circ}41'17''$ East 246.86 feet along said centerline; thence southeasterly a distance of 337.05 feet along a tangential curve concave to the northeast having a radius of 2600.00 feet and a central angle of $07^{\circ}25'39''$ to the east line of the Southeast Quarter of the Northeast Quarter of said Section 12; thence South $01^{\circ}24'13''$ East along the east line of the Southeast Quarter of the Northeast Quarter of said Section 12, not tangent to said curve, 188.00 feet to the point of beginning.

AND

- 2) That part of the Southwest Quarter of the Northwest Quarter of Section 7, Township 108 North, Range 14 West, described as follows:

Commencing at a Surveyor's monument located at the southwest corner of the Southwest Quarter of the Northwest Quarter of said Section 7; thence on an assumed bearing of the North $1^{\circ}24'13''$ West a distance of 188.00 feet along the West line of said Southwest Quarter of the Northwest Quarter; thence South $32^{\circ}52'02''$ East 221.13 feet to the South line of said Southwest Quarter of the Northwest Quarter; thence South $88^{\circ}54'04''$ West 115.42 feet to the point of beginning.

ALSO LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS:

Parcel C-1 Land Description

That part of the South Half of the Southeast Quarter of Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the southwest corner of said Southeast Quarter of Section 1; thence on an assumed bearing of South 89°01'27" East along the south line of said Southeast Quarter 1501.93 feet to the point of beginning; thence continuing South 89°01'27" East along the south line of said Southeast Quarter 250.81 feet; thence northwesterly 741.40 feet along a non-tangential curve, concave to the southwest, to the west line of the Southeast Quarter of said Southeast Quarter, said curve has a radius of 1151.74 feet, a central angle of 36°52'58", and the chord of said curve bears North 38°20'36" West 728.67 feet; thence North 15°38'02" West not tangent to said curve 663.34 feet; thence South 84°45'43" West 1022.66 feet; thence southeasterly 490.48 feet along a non-tangential curve concave to the northeast, said curve has a radius of 501.97 feet, a central angle of 55°59'02", and the chord of said curve bears South 37°44'18" East 471.20 feet; thence South 65°43'49" East tangent to said curve 720.38 feet; thence southeasterly 647.74 feet along a tangential curve, concave to the southwest, said curve has a radius of 921.74 feet, a central angle of 40°15'49", and the chord of said curve bears South 45°35'55" East 634.49 feet to the point of beginning.

The above-described parcel contains 16.85 acres and is subject to any easements, covenants and restrictions of record.

Parcel D-1 Land Description

That part of the East Half of the Northeast Quarter of Section 12, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the northwest corner of said Northeast Quarter of Section 12; thence on an assumed bearing of South 89°01'27" East along the north line of said Northeast Quarter 1501.93 feet to the point of beginning; thence continuing South 89°01'27" East along the north line of said Northeast Quarter 250.81 feet; thence southeasterly 83.97 feet along a non-tangential curve, concave to the southwest, said curve has a radius of 1151.74 feet, a central angle of 04°10'39", and the chord of said curve bears South 17°48'48" East 83.95 feet; thence South 15°43'28" East tangent to said curve 972.20 feet; thence South 29°45'39" East 103.08 feet; thence South 13°44'23" East 564.60 feet; thence South 30°55'39" East 552.38 feet; thence southeasterly 219.09 feet along a tangential curve, concave to the northeast, said curve has a radius of 2206.83 feet, a central angle of 05°41'18", and the chord of said curve bears South 33°46'17" East 219.00 feet to the east

line of said East Half of the Northeast Quarter and to a point that lies 334.93 feet north of the southeast corner of said East Half of the Northeast Quarter; thence South $00^{\circ}38'43''$ East not tangent to said curve and along the east line of said East Half of the Northeast Quarter 146.96 feet; thence northwesterly 336.64 feet along a non-tangential curve, concave to the northeast, said curve has a radius of 2600.00 feet, a central angle of $07^{\circ}25'07''$, and the chord of said curve bears North $34^{\circ}38'12''$ West 336.40 feet; thence North $30^{\circ}55'38''$ West tangent to said curve 246.86 feet; thence South $22^{\circ}55'47''$ West 117.64 feet; thence North $30^{\circ}55'39''$ West 384.85 feet; thence northwesterly 278.59 feet along a tangential curve, concave to the northeast, said curve has a radius of 1049.93 feet, a central angle of $15^{\circ}12'10''$, and the chord of said curve bears North $23^{\circ}19'34''$ West 277.77 feet; thence North $15^{\circ}43'28''$ West tangent to said curve 186.13 feet; thence North $33^{\circ}43'44''$ West 210.30 feet; thence North $09^{\circ}33'15''$ West 372.16 feet; thence North $15^{\circ}43'28''$ West 652.20 feet; thence northwesterly 156.73 feet along a tangential curve concave to the southwest, said curve has a radius of 921.74 feet, a central angle of $09^{\circ}44'32''$, and the chord of said curve bears North $20^{\circ}35'44''$ West 156.54 feet to the point of beginning.

The above-described parcel contains 11.93 acres and is subject to any easements, covenants and restrictions of record.

Parcel E-1 Land Description

That part of the Southwest Quarter of the Northwest Quarter of Section 7, Township 108 North, Range 14 West, Olmsted County, Minnesota, described as follows:

Commencing at the southwest corner of said Southwest Quarter of the Northwest Quarter of Section 7; thence on an assumed bearing of North $89^{\circ}39'37''$ East along the south line of said Southwest Quarter of the Northwest Quarter 115.42 feet to the point of beginning; thence continuing North $89^{\circ}39'37''$ East along the south line of said Southwest Quarter of the Northwest Quarter 185.96 feet; thence northwesterly 452.55 feet along a non-tangential curve concave to the northeast, said curve has a radius of 2206.83 feet, a central angle of $11^{\circ}44'58''$, and the chord of said curve bears North $42^{\circ}29'26''$ West 451.76 feet to the west line of said Southwest Quarter of the Northwest Quarter and to a point that lies 334.93 feet north of the southwest corner of said Southwest Quarter of the Northwest Quarter; thence South $00^{\circ}38'43''$ East along the west line of said Southwest Quarter of the Northwest Quarter 146.96 feet; thence South $32^{\circ}06'48''$ East 221.10 feet to the point of beginning.

The above-described parcel contains 0.83 acres and is subject to any easements, covenants and restrictions of record.

Parcel B-2 Land Description

That part of the East Half of the Southwest Quarter and the West Half of the Southeast

Quarter, all in Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the southeast corner of said East Half of the Southwest Quarter of Section 1; thence on an assumed bearing of North 00°28'22" West along the east line of said East Half of the Southwest Quarter 1088.11 feet to the point of beginning; thence North 89°29'55" West 1331.51 feet to the west line of said East Half of the Southwest Quarter; thence North 00°18'49" West along the west line of said East Half of the Southwest Quarter 815.48 feet; thence South 84°34'51" East 1180.79 feet; thence South 89°24'53" East 1298.60 feet; thence South 89°06'04" East 164.90 feet to the east line of said West Half of the Southeast Quarter; thence South 00°17'44" East along the east line of said West Half of the Southeast Quarter 610.13 feet; thence North 89°06'04" West 175.51 feet; thence South 84°45'43" West 1022.66 feet; thence North 89°29'55" West 112.27 feet to the point of beginning.

The above-described parcel contains 42.98 acres and is subject to any easements, covenants and restrictions of record.

Parcel C-2 Land Description

That part of the East Half of the Southeast Quarter, Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the southeast corner of said East Half of the Southeast Quarter of Section 1; thence on an assumed bearing of North 00°07'07" West along the east line of said East Half of the Southeast Quarter 1201.60 feet to the point of beginning; thence continuing North 00°07'07" West along the east line of said East Half of the Southeast Quarter 610.10 feet; thence North 89°06'05" West 1309.09 feet to the west line of said East Half of the Southeast Quarter; thence South 00°17'44" East along the west line of said East Half of the Southeast Quarter 610.13 feet; thence South 89°06'05" East 1307.21 feet to the point of beginning.

The above-described parcel contains 18.32 acres and is subject to any easements, covenants and restrictions of record.

Parcel D-2 Land Description

That part of the Northwest Quarter of the Southwest Quarter and the South Half of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter all in Section 6, Township 108 North, Range 14 West, Olmsted County, Minnesota, described as follows:

Commencing at the southwest corner of said Southwest Quarter of Section 6; thence on an assumed bearing of North 00°07'07" West along the west line of said Southwest Quarter 1201.60 feet to the point of beginning; thence continuing North 00°07'07" West along the

west line of said Southwest Quarter 610.10 feet; thence South $55^{\circ}42'31''$ East 737.89 feet; thence South $00^{\circ}10'16''$ East 80.00 feet to the north line of said South Half of the Southwest Quarter; thence North $89^{\circ}35'26''$ East along the north line of said South Half of the Southwest Quarter 1930.47 feet to the northeast corner of said South Half of the Southwest Quarter; thence North $89^{\circ}33'39''$ East along the north line of said Southwest Quarter of the Southeast Quarter 522.17 feet to the centerline of the Township Road; thence South $36^{\circ}29'59''$ East along said centerline 416.88 feet; thence South $89^{\circ}33'13''$ West 768.56 feet to the west line of said Southwest Quarter of the Southeast Quarter; thence North $00^{\circ}16'06''$ West along the west line of said Southwest Quarter of the Southeast Quarter 161.54 feet; thence northwesterly 652.55 feet along a non-tangential curve, concave to the southwest, said curve has a radius of 2211.83 feet, a central angle of $16^{\circ}54'14''$, and the chord of said curve bears North $81^{\circ}57'27''$ West 650.18 feet; thence South $88^{\circ}41'02''$ West not tangent to said curve 1896.57 feet to the point of beginning.

The above-described parcel contains 14.83 acres and is subject to any easements, covenants and restrictions of record.

Parcel C-3 Land Description

That part of the South Half of the Southwest Quarter and the Northwest Quarter of the Southwest Quarter of Section 1, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the southwest corner of said South Half of the Southwest Quarter of Section 1; thence on an assumed bearing of North $00^{\circ}09'22''$ West along the west line of said South Half of the Southwest Quarter and along the west line of said Northwest Quarter of the Southwest Quarter 1625.14 feet to the northeasterly right of way line of Trunk Highway No. 52 per the Minnesota Department of Transportation Right of Way Plat No. 55-30 and to the point of beginning; thence southeasterly 480.53 feet along a non-tangential curve, concave to the southwest, and along said northeasterly right of way line of Trunk Highway No. 52, said curve has a radius of 3999.88 feet, a central angle of $06^{\circ}53'00''$ and the chord of said curve bears South $50^{\circ}48'44''$ East 480.24 feet; thence southeasterly along said northeasterly right of way line of Trunk Highway No. 52 and along a Euler Spiral Curve which falls 100.00 feet northeasterly of and parallel with the Euler Spiral Curve on the existing right of way acquisition line per said Minnesota Department of Transportation Right of Way Plat No. 55-30, the chord of said Euler Spiral Curve bears South $46^{\circ}37'48''$ East 153.59 feet; thence South $46^{\circ}15'24''$ East along said northeasterly right of way line of Trunk Highway No. 52 a distance of 1768.30 feet to the south line of said South Half of the Southwest Quarter; thence South $89^{\circ}47'24''$ East along the south line of said South Half of the Southwest Quarter 160.50 feet; thence North $22^{\circ}45'42''$ West 1188.39 feet; thence North $89^{\circ}29'55''$ West 129.21 feet to the east line of the Southwest Quarter of said Southwest Quarter; thence North $00^{\circ}18'49''$ West along the east line of said Southwest Quarter of the Southwest Quarter and along the east line of said Northwest Quarter of the

Southwest Quarter 815.48 feet; thence North 84°34'51" West 1335.50 feet to the west line of said Northwest Quarter of the Southwest Quarter; thence South 00°09'22" East along the west line of said Northwest Quarter of the Southwest Quarter 406.41 feet to the point of beginning.

The above-described parcel contains 35.52 acres and is subject to any easements, covenants and restrictions of record.

Parcel D-3 Land Description

That part of the Northeast Quarter of the Northwest Quarter, Section 12, Township 108 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Commencing at the northwest corner of said Northwest Quarter of Section 12; thence on an assumed bearing of South 89°47'24" East along the north line of said Northwest Quarter 1756.95 feet to the northeasterly right of way line of Trunk Highway No. 52 per the Minnesota Department of Transportation Right of Way Plat No. 55-15 and to the point of beginning; thence South 46°15'24" East along said northeasterly right of way line of Trunk Highway No. 52, a distance of 1012.61 feet; thence North 39°13'29" West 903.04 feet to the north line of said Northeast Quarter of the Northwest Quarter; thence North 89°47'24" West 160.50 feet to the point of beginning.

The above-described parcel contains 1.28 acres and is subject to any easements, covenants and restrictions of.

(Olmsted County Parcel IDs: 850131079584, 850143079564, 850134079589, 850132079567, 851221079590, 851212038600, 851214079569, 850144078534, 850144078533, 850144079565, 850144079566, 840633079595, 840634079597, 840634078541, 840633078539, 851211079570, 840721039660, 840724039662, 851214079571, 840723079573)

(The "Subject Property").

Attachment 2
Finding of No Significant Impact (FONSI)

**MITIGATED FINDING OF NO SIGNIFICANT IMPACT
FOR THE PRAIRIE ISLAND INDIAN COMMUNITY
EMERGENCY GAMING FACILITY AND FEE-TO-TRUST PROJECT**

The Prairie Island Indian Community (Tribe) submitted an application requesting that the Bureau of Indian Affairs (BIA) acquire approximately 397.77 acres¹ (Elk Run Site) into Federal trust for the benefit of the Tribe for gaming purposes (Proposed Action). The Tribe also requested that the Secretary of the Interior (Secretary) issue a Secretarial Determination pursuant to the Indian Gaming Regulatory Act (IGRA), determining whether the Elk Run Site is eligible for gaming activities. The Tribe subsequently proposes to improve the Elk Run Site for the potential future operation of an emergency interim gaming facility should a catastrophic event force the closure of the Tribe's existing Treasure Island Resort & Casino (Casino) (Proposed Project). The Elk Run Site, owned by the Tribe in fee, is located partially within unincorporated Olmsted County and partially within the City of Pine Island, Minnesota, within Sections 1 and 12 of Township 108 North, Range 15 West and Sections 6 and 7 of Township 108 North, Range 14 West, within the Fifth Principal Meridian, and within the Oronoco U.S. Geological Survey 7.5' quadrangle map.

Issuance of a Secretarial Determination and subsequent approval of the Fee-to-Trust gaming acquisition constitute federal actions under the governing regulations for compliance with the National Environmental Policy Act (NEPA). The Proposed Action was analyzed within an Environmental Assessment (EA), dated June 2024,² that was prepared in accordance with NEPA. Based on the analysis contained in the EA, the BIA makes a mitigated finding of no significant impact for the Proposed Action. This finding constitutes a determination that the Proposed Action is not a federal action that would result in significant adverse effects to the quality of the human environment with mitigation; therefore, additional environmental review and preparation of an Environmental Impact Statement (EIS) is not required.

BACKGROUND

The Tribe is a Federally recognized Indian Tribe with over 1,000 currently enrolled members, approximately 300 of whom live on the Tribe's Reservation at the confluence of the Vermillion and Mississippi Rivers near the cities of Red Wing and Hastings, Minnesota. The Tribe represents the Mdewakanton Dakota people who have lived in what are now known as the States of Minnesota, Iowa, and Wisconsin since time immemorial. As a result of eight treaties between 1805 and 1858, the Dakota War of 1862, and acts of Congress in 1863, the Dakota were completely dispossessed of their ancestral lands and mostly driven from Minnesota; however, a small group of Dakota remained and settled near Prairie Island. The reacquisition of the Tribe's

¹ The Tribe's application describes the property as approximately 419.8 acres, which was the acreage used in the EA, however review of a legal description and ALTA Survey by a BLM Indian Lands Surveyor resulted in an approximately 22.06-acre reduction of actual acreage to approximately 397.77 acres.

² The EA is, hereby, incorporated by reference as part of this mitigated finding of no significant impact. The EA is available for public review at <http://www.PIICcasinoEA.com>

homelands began in the late 19th century and continued in the 1930s with the purchase of 414 acres of land at Prairie Island by the federal government for the benefit of the Tribe.

The Tribe provides a full range of governmental services to its members and owns and operates businesses on the Reservation, including, notably, the existing Casino. With over 1,700 employees, the Casino is the largest employer in Goodhue County and includes a hotel and convention center, gaming, dining, bowling, live entertainment, an RV park, and a marina to accommodate visitors arriving by the Mississippi River.

The Tribe's current Reservation and facilities are at risk. Serious ongoing risks include nuclear risks associated with the adjacent Prairie Island Nuclear Generating Plant and on-site waste storage facilities, flooding and loss of land from the construction of a Federal dam (Lock and Dam 3), and restricted access to the Reservation by an adjacent railway. These risks are discussed in depth within Section 1 of the EA.

PURPOSE AND NEED FOR THE PROPOSED ACTION

The purpose of the Proposed Action is to facilitate Tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department of the Interior's (Department) land acquisition policy as articulated in the Department's trust land regulations at 25 C.F.R. Part 151 and the principal goal of the IGRA as articulated in 25 U.S.C. § 2701. The Department's authority to act on the Tribe's applications are governed by its regulations at 25 C.F.R. Part 151,³ particularly the requirements of §§ 151.11 and 151.13, as well as the regulations at 25 C.F.R. Part 292 Subpart C.

DESCRIPTION OF THE PROPOSED ACTION

The federal Proposed Action collectively consists of: 1) the transfer of the approximately 397.77-acre Elk Run Site into federal trust status for the benefit of the Tribe under Section 5 of the Indian Reorganization Act of 1934 (25 U.S.C. §§ 5108 and 5110), and 2) the issuance of a Two-Part Determination by the Secretary of the Interior under Section 20 of IGRA (25 U.S.C. § 2719), as well as the Department's implementing regulations at 25 C.F.R. Part 292, that the project would be in the best interest of the Tribe and not detrimental to the surrounding community (25 U.S.C. § 2719(b)(1)(A)).

ALTERNATIVES CONSIDERED

The BIA considered three alternatives. Summary descriptions of the alternatives are provided below, with detailed descriptions provided within the EA. Of the alternatives, Alternative A is considered the Proposed Project.

³ In the EA, the Department cited to the older Part 151 regulations because the Tribe's application was received on Oct. 12, 2023, prior to the Department's promulgation of the revised Part 151 regulations that went into effect on January 11, 2024. Subsequently, on February 7, 2024, the Tribe requested to process the application under the Department's updated regulations at Part 151 pursuant to § 151.17(a)(1).

Alternative A – Proposed Project: Alternative A consists of the transfer of the Elk Run Site into federal trust status for the benefit of the Tribe for gaming purposes and subsequent site improvements and renovations by the Tribe to the existing barn structure on the Elk Run Site into an emergency interim gaming facility that would only be operated in the event that a catastrophic event causes the closure of the existing Casino. The remaining areas of the site would continue to be utilized for cattle grazing and agricultural activities as they do under existing conditions. The Tribe has entered into an enforceable Intergovernmental Agreement (IGA) with the City of Pine Island (see Appendix A of the EA). The IGA addresses cooperative efforts for law enforcement, emergency response, and water and sewer infrastructure. Additionally, it includes a provision in which the Tribe has agreed to withhold from conducting gaming on the Elk Run Site for six years after acceptance into trust, known as the 6-year Forbearance Period. Although specific plans have not been developed, should the Tribe determine additional Tribal economic income and employment opportunities are needed after the 6-year Forbearance Period, the Tribe would have the ability to utilize the Elk Run Site for the permanent operation of a future gaming facility secondary to the existing Casino. If developed, it is anticipated that the secondary gaming facility would be identical to the proposed emergency interim gaming facility described above.

Environmental impacts resulting from Alternative A would be reduced to less than significant levels with the inclusion of best management practices (BMPs) and mitigation measures. Among the alternatives considered, Alternative A would best meet the stated purpose to facilitate Tribal self-sufficiency and self-determination as it would provide the greatest economic and workforce opportunities.

Alternative B – Event Center (Non-Gaming): Alternative B consists of the transfer of the Elk Run Site into federal trust status for the benefit of the Tribe and subsequent site improvements and renovations by the Tribe to the existing barn structure on the Elk Run Site into a non-gaming event center that would be operated should a catastrophic event causes the closure of the existing Casino. The development area under Alternative B would be the same as Alternative A. Alternative B would employ fewer people and attract fewer patrons, which would generate less traffic and have a reduced demand for public services and utilities. This alternative, however, would provide the Tribe with fewer economic benefits than Alternative A.

Alternative C – No Action: Under Alternative C, the Elk Run Site would not be placed in Federal trust for the benefit of the Tribe and no development activities would occur on the Elk Run Site. In the event of a catastrophic event that results in the closure of the existing Casino, the Tribe would have neither the means to address the economic impacts and job losses nor access to a safer and more reliable land base. Therefore, this alternative would not meet the stated purpose of facilitating economic development, tribal self-sufficiency, and self-determination.

ALTERNATIVES ELIMINATED FROM FURTHER ANALYSIS:

- **Alternative Location:** The Elk Run Site is already owned by the Tribe in fee and was selected by the Tribe as it falls within the Tribe's ancestral land base, was available to the Tribe for purchase, is safe and developable, has adequate site access, offers a suitable structure for renovation for use under either Alternative A or B, and is located outside of flood risks from the Mississippi River, as well as the FEMA designated nuclear incident impact zone and 10-mile radius emergency planning zone (EPZ) for the Prairie Island Nuclear Generating Plant. Consideration of an alternative site would require the Tribe to purchase additional land, thus, placing an undue financial burden on the Tribe. Alternative locations for the trust acquisition, therefore, are not evaluated within the EA.
- **Expansion of the Existing Casino:** The Tribe currently operates the existing Casino on land already held in trust for the benefit of the Tribe. Expansion of the existing Casino would not require an additional trust acquisition and may provide economic benefits to the Tribe; however, a primary purpose of Alternative A is to provide an emergency gaming location in the event of a catastrophic event that would result in closure of the Reservation and existing Casino. Additionally, the existing Casino is within the FEMA EPZ area; areas around the Casino and Reservation are largely developed and/or experience ongoing flooding from Lock and Dam 3 and are generally located within a 100-year floodplain. As such, expansion of the existing Casino was eliminated as a feasible alternative as it would not meet the Tribe's stated purpose and need of providing a safer and more reliable area for economic and workforce opportunities.

ENVIRONMENTAL IMPACTS

The EA documents and analyzes the potential environmental impacts of the Proposed Action and alternatives. It was released to the public and agencies for a review and comment period beginning on July 15, 2024, and ending on August 14, 2024. The EA is, hereby, incorporated by reference as part of this mitigated finding of no significant impact. The EA is available for public review at <http://www.PIICcasinoEA.com>. As part of the EA, potential direct, indirect, and cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation and circulation, land use, public services and utilities, noise, hazards and hazardous materials, and visual resources were evaluated, with the following conclusions:

- Having considered potential land resource impacts during project design/planning, and with the incorporation of BMPs, impacts to land resources would be less than significant. See EA Sections 2.1.10 and 3.2.
- Having considered potential water resources impacts during project design/planning, and with the incorporation of BMPs, impacts to water resources would be less than significant. See EA Sections 2.1.10 and 3.3.
- Having considered potential air quality impacts during project design/planning, and with

the incorporation of BMPs, there would be no significant adverse effects associated with the regional air quality. See EA Sections 2.1.10 and 3.4.

- Having considered potential biological resource impacts during project design/planning, and with the incorporation of BMPs and implementation of mitigation measures, impacts to biological resources would be less than significant. See EA Sections 2.1.10, 3.5, and 4.0.
- There would be no significant impacts to known cultural or paleontological resources as no significant cultural or paleontological resources were identified within the Elk Run Site. Adherence to applicable laws and implementation of mitigation measures would ensure that no adverse effects to previously unknown cultural resources would occur. See EA Sections 3.6 and 4.0.
- There would be no significant impacts associated with socioeconomic conditions or environmental justice. See EA Section 3.7.
- Having considered potential transportation and circulation impacts during project design/planning, and with the incorporation of BMPs, impacts to transportation and circulation would be less than significant. See EA Sections 2.1.10 and 3.8.
- Having considered potential land use conflicts during project design/planning, and with the incorporation of visual resource BMPs to manage lighting impacts, impacts regarding land use would be less than significant. See EA Sections 2.1.10 and 3.9.
- Having considered potential public services impacts during project design/planning, and with the incorporation of BMPs and implementation of mitigation measures, impacts to public services would be less than significant. See EA Sections 2.1.10, 3.10, and 4.0.
- Having considered potential noise impacts during project design/planning, and with the incorporation of BMPs, no significant impacts to the ambient noise environment would occur during construction or operation. See EA Sections 2.1.10 and 3.11.
- Having considered potential hazardous materials impacts during project design/planning, and with the incorporation of BMPs, hazardous materials impacts would not be significant. See EA Sections 2.1.10 and 3.12.
- Having considered potential visual resource impacts during project design/planning, and with the incorporation of BMPs, no adverse effects to visual resources would occur. See EA Sections 2.1.10 and 3.13.
- BMPs and/or mitigation measures incorporated would ensure that cumulative impacts to land resources, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions/environmental justice, transportation/circulation, land use, public services/utilities, noise, hazards/hazardous materials, and visual resources are not significant. There would be no significant indirect or growth-inducing effects. See EA Section 3.15.

BEST MANAGEMENT PRACTICES AND MITIGATION MEASURES

Best Management Practices

Protective measures and BMPs, including regulatory requirements and voluntary measures that would be implemented by the Tribe, have been incorporated into the design of the Alternative A to eliminate or substantially reduce environmental consequences and are listed below.

Land Resources

- Erosion control measures will be implemented during construction, as discussed further under the Water Resources BMPs.
- Standard engineering practices and International Building Code (IBC) standards will be used, including adherence to geotechnical standards, ensuring soil suitability for structures.

Water Resources

- To reduce water usage, low-flow toilets, faucets, and other water-using appliances shall be installed to the extent feasible.
- Coverage under the National Pollutant Discharge Elimination System (NPDES) General Construction Permit shall be obtained from the U.S. Environmental Protection Agency (USEPA) for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA).
- A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with General Construction Permit requirements. The SWPPP would include, but would not be limited to, the following BMPs to minimize storm water effects to water quality during construction:
 - Grading activities shall be limited to the immediate area required for construction.
 - Temporary erosion control measures (such as silt fences, fiber rolls, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed as needed for disturbed areas.
 - Construction activities shall be scheduled to minimize land disturbance during peak runoff periods to the extent feasible.
 - Disturbed areas shall be paved, re-vegetated, and/or stabilized following construction activities.
 - A spill prevention and countermeasure plan shall be developed that identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.
 - Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the CWA (33 U.S.C. §§ 1251 to 1387).
 - Construction materials shall be stored, covered, and isolated to prevent runoff loss and contamination of surface and groundwater.

- Fuel and vehicle maintenance areas shall be limited to the impact area.
- Sanitary facilities shall be provided for construction workers.
- To minimize dust generation during construction, soil will be wetted down with water prior to ground disturbance as needed.
- Generated waste shall be properly disposed of.

Biological Resources

- Exterior lighting shall be downcast and shielded such that lighting and glare do not overspill the built environment.
- Uplighting, disruptive flashing lights, or materials that cause excessive glare shall not be used.
- Staging of materials and equipment shall occur within the impact area and shall not disturb habitat beyond these areas.

Air Quality

The following dust suppression measures shall be implemented during construction to control the production of fugitive dust (particulate matter 10 microns in size [PM10]) and prevent wind erosion of bare and stockpiled soils:

- Exposed soil shall be sprayed with water or other suppressants twice a day or as needed to suppress dust.
- Dust emissions during transport of fill material or soil shall be minimized by wetting loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, cleaning the interior of cargo compartments on emptied haul trucks before leaving a site, and/or covering loads.
- Spills of transported fill material on public roads shall be promptly cleaned.
- Traffic speeds on the Elk Run Site shall be restricted to 15 miles per hour to reduce soil disturbance.
- Wheel washers shall be provided to remove soil that would otherwise be carried offsite by vehicles to decrease deposition of soil on area roadways.
- Dirt, gravel, and debris piles shall be covered as needed to reduce dust and wind-blown debris.

The following measures shall be implemented to reduce emissions of criteria air pollutants (CAP), greenhouse gases (GHG), and diesel particulate matter (DPM) from construction:

- The Tribe shall control criteria pollutants and GHG emissions from the facility by requiring that all diesel-powered equipment be properly maintained and by minimizing idling time to five minutes when construction equipment is not in use, unless more time is required per engine manufacturer's specifications or for safety reasons. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above measures.

- The use of low reactive organic gases (150 grams per liter or less) shall be required for architectural coatings to the extent practicable.
- Environmentally preferable materials, including recycled materials, shall be used to the extent readily available and economically practicable for construction of facilities.

The Tribe shall reduce emissions of CAPs and GHGs during operation through the following actions:

- The Tribe shall use clean fuel vehicles in the vehicle fleet where practicable, which would reduce CAPs and GHG emissions.
- The Tribe shall provide preferential parking for employee vanpools, carpools, and or other rideshare vehicles which would reduce CAPs and GHGs.
- The Tribe shall incorporate preferential parking for Plug-In Electric Vehicles along with the installation of corresponding electric vehicle charging stations.
- Shuttle service to and from population centers shall be provided as feasible, which would reduce CAPs and GHGs.
- Water consumption shall be reduced through low-flow appliances, drought resistant landscaping, and the incorporation of “Save Water” signs near water faucets throughout the development.
- The Tribe will use electric boilers and appliances in lieu of natural gas or propane units to the greatest extent practicable.
- The Tribe shall control CAPs, GHG, and DPM emissions during operation by requiring that all diesel-powered vehicles and equipment be properly maintained and by minimizing idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use, unless more time is required per engine manufacturer’s specifications or for safety reasons.
- The Tribe shall use energy efficient lighting and appliances, which would reduce energy usage, thus, reducing indirect CAP and GHG emissions.
- The Tribe shall install recycling bins throughout the facility for glass, cans, and paper products. Trash and recycling receptacles shall be placed strategically outside to encourage people to recycle. In addition, the Tribe shall promote the use of non-polystyrene take-out containers and encourage food waste composting programs at all restaurants that serve more than 100 meals per day. The Tribe shall reduce the solid waste stream of the facility by at least 50%.
- The Tribe shall discourage buses from idling for extended periods.
- Adequate ingress and egress at entrances shall be provided to minimize vehicle idling and traffic congestion.

Public Services and Utilities

BMPs to be implemented during construction:

- Construction equipment shall contain spark arrestors, as provided by the manufacturer.
- Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire

fuel.

- The Tribe shall contact the Utility Notification Center to notify the utility service providers of excavation at the work site. In response, the utility service providers shall mark or stake the horizontal path of underground utilities, provide information about the utilities, and/or give clearance to dig.
- The site shall be cleaned daily of trash and debris to the maximum extent practicable.

BMPs to be implemented during operation:

- The Tribe will conduct background checks of all gaming employees and ensure that all employees meet licensure requirements established by IGRA and the Tribe's Gaming Ordinance.
- Parking areas shall be well lit and monitored by parking staff, and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other similar criminal activity.
- Facilities shall have "No Loitering" signs in place, be well lit, and be patrolled regularly by roving security guards.
- Security guards patrolling the facilities would carry two-way radios to request and respond to back up or emergency calls.
- Security cameras and Tribal security personnel would provide surveillance of Elk Run Site to both lessen and apprehend criminal activity onsite.

Hazardous Materials

Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. BMPs that are designed to reduce the potential for incidents/spills involving hazardous materials include the following:

- Fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment to reduce the potential for accidental release.
- Catch-pans shall be placed under equipment to catch potential spills during servicing.
- Refueling shall be conducted only with approved pumps, hoses, and nozzles.
- All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
- Vehicle engines shall be shut down during refueling.
- No smoking, open flames, or welding shall be allowed in refueling or service areas.
- Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
- Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
- Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, State, and Federal regulations.
- All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure.
- A Construction Contingency Plan (CCP) will be prepared and implemented during

development activities that will provide procedures for the management of any impacted soil and groundwater that may be encountered.

- In the event that contaminated soil and/or groundwater is encountered during construction related earthmoving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Tribe shall consult with USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan, if necessary. Contaminated soils that are determined to be hazardous shall be disposed of in accordance with Federal regulations.

Transportation and Circulation

- A southbound left-turn lane on White Pine Road SE at the approach to the project driveway access will be constructed per MnDOT's Access Management Manual guidelines.

Noise

BMPs to be implemented during construction:

- Construction activities shall be limited to daytime hours between 7:00 AM and 10:00 PM.
- All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and acoustical shields or shrouds in accordance with manufacturers' specifications.
- Maintenance of construction equipment and machinery, including noise reducing components such as mufflers, silencers, covers, guards, vibration isolators, etc., shall be performed regularly to reduce excess noise.
- Haul trucks shall be operated in accordance with posted speed limits.
- Construction equipment and machinery shall only be operated by trained and qualified personnel.

BMPs to be implemented during operation:

- Heating, ventilation, and air conditioning equipment shall be shielded to reduce noise.

Visual Resources

- Placement of lights on buildings shall be designed so as not to cast light or glare offsite.
- Shielding, such as with a horizontal shroud, shall be used for outdoor lighting to ensure it is downcast.
- Timers shall be utilized to limit lighting to necessary times.
- Exterior glass shall be non-reflective low glare.

MITIGATION MEASURES

The EA identifies the following mitigation measures to reduce potentially significant impacts to a less-than-significant level. The Tribe would exercise governmental jurisdiction over the Elk Run Site once acquired into trust and will have the authority to enforce the mitigation measures outlined below. Additionally, these measures are enforceable through federal law and through the terms of the IGA between the Tribe and the City of Pine Island (provided as Appendix A to the EA). In accordance with 40 C.F.R. § 1501.6(d), a mitigation monitoring and compliance plan is provided in **Attachment 1**.

Biological Resources

Federally Listed Roosting Bats:

The following measures are recommended to avoid and/or reduce impacts to potentially roosting bats:

- Timing of impacts to the barn structure shall occur outside the active season of roosting bats (April 1 through October 31) as possible.

OR

- If impacts to the barn may commence within the active season, bats shall be excluded from the barn structure during the winter hibernation season. Exclusion shall be completed within the winter hibernation season to ensure that there are no active season roosting bats within the structure during exclusion activities.

OR

- Should commencement of impacts to a barn structure occur during the active season and prior to bat exclusion of the structure, emergence surveys of the impacted barn structure shall be conducted by a qualified biologist consistent with Appendix E: Phase 4 Emergence Surveys of the U.S. Fish and Wildlife Service (USFWS) Range-Wide Indiana Bat and Northern Long-Eared Bat Survey Guidelines. As tricolored bat can be difficult to detect in emergence surveys, USFWS shall be consulted prior to emergence surveys to approve the surveying biologist, as well as the survey methodology and timing. If no bats are observed, data sheets shall be submitted to USFWS, and no further action will be necessary.
- If one or more bats are observed emerging from the barn, it shall be assumed that the bat is a listed bat. In this case, an avoidance and exclusion plan shall be developed with USFWS that identifies passive exclusion methods such as one-way doors or timing of disturbance with periods of bat activity to confirm bats are absent from the structure(s) prior to impacts.

Nesting Migratory Birds/Raptors:

The following measures are recommended to avoid and/or reduce impacts to nesting migratory birds/other birds of prey:

- If construction activities (either site preparation or barn conversion) commence during the general nesting season (February 15 to September 1), a preconstruction nest survey shall be conducted by a qualified biologist on and within 100 feet of proposed construction within 7 days of initiating ground disturbance. If active nests are identified, the qualified biologist shall determine a suitable avoidance buffer based on the needs of the species observed.
- Avoidance measures include establishment of a buffer zone using construction fencing or similar, or the postponement of construction until after the nesting season, or until after a qualified biologist has determined the nest is no longer active. Avoidance buffers may vary in size depending on habitat characteristics, project-related activities, and disturbance levels.
- Should work activity cease for 14 days or more during the nesting season, surveys shall be repeated to ensure birds and have not established nests during inactivity.

Cultural Resources

Inadvertent Discoveries of Cultural Resources:

- In the event that cultural resources are inadvertently discovered during project-related ground disturbance, ground disturbance shall be halted within 50 feet of the find and the BIA and the Tribe's Tribal Historic Preservation Officer (THPO) and/or a qualified archaeologist (i.e., an archaeologist that meets the qualifications at 36 C.F.R. § 61), or paleontologist if the find is of a paleontological nature, shall be retained to assess its potential significance.
- Construction activities may continue in other areas but may not resume in the area of the find until the significance of the find is assessed and appropriately treated.
- If the find is determined by the BIA/THPO/qualified archaeologist to not be significant (i.e., not a historic property), no additional cultural resources investigations are necessary, and work may resume in the area of the find.
- If any find is determined to be significant by the THPO or archaeologist or paleontologist, a BIA representative shall meet with the THPO or archaeologist or paleontologist to determine the appropriate course of action, including the development of a Treatment Plan and implementation of appropriate avoidance measures or other mitigation.

Inadvertent Discoveries of Human Remains:

- Consistent with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA), if human remains or objects of cultural patrimony are discovered during project-related ground-disturbing activities, ground disturbance in the

- vicinity of the find shall be halted and the location shall be secured (43 C.F.R. § 10.4(c)).
- The BIA and Tribe's THPO shall be immediately notified of the discovery and the Olmsted County Sheriff/Coroner shall be immediately informed of the find in accordance with Minnesota Statute § 307.08, and 43 C.F.R. § 10.5(a)(1).
 - If the remains are determined to be Native American in origin, the BIA shall consult with the THPO and/or appropriate Tribe to discuss the recovery and treatment of the remains (43 C.F.R. § 10.5).
 - A written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 C.F.R. § 10.5(b)).
 - The disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 C.F.R. § 10.6.

Public Services and Utilities

Service Agreement:

The following measure is recommended for Alternatives A and B:

- The Tribe shall make good faith efforts to enter into a service agreement with the Pine Island Fire Department that will provide payment for the provision of fire protection and emergency medical services to the Elk Run Site. The agreement shall address any required conditions and standards for emergency access and fire protection system.

PUBLIC AVAILABILITY AND RESPONSE TO EA COMMENTS

The EA was released to the public and agencies for a review and comment period beginning on July 15, 2024, and ending on August 14, 2024. A virtual public hearing to solicit public comments on the EA was held on July 31, 2024. The Notice of Availability (NOA) for the EA was published in the Star Tribune and the Post Bulletin online and in print, and a physical copy was made available at the Van Horn Public Library in Pine Island, Minnesota. Additionally, the NOA was distributed to counties, cities/villages, and townships identified within a 25-mile radius of the Elk Run Site and was made available online at: <http://www.PIICcasinoEA.com>. The BIA received no comment letters during the public comment period for the EA.

DETERMINATION

Based on consideration of the analysis contained in the EA and the entire administrative record, it is determined that by approval of the Proposed Action and the environmental mitigation measures specified above, the Proposed Project will have no significant impact on the quality of the human environment. In accordance with Section 106(b)(2) of NEPA, as amended, additional environmental review or an EIS will not be required. This determination is supported by the following findings:

1. Agency and public review were conducted. The EA discloses the potential environmental consequences of the Proposed Action. BMPs were incorporated into the project's design to safeguard land resources, water resources, biological resources, maintain air quality, reduce greenhouse gas emissions, preserve visual resources, minimize noise, prevent the release of hazardous materials, minimize transportation and circulation issues, and reduce the demand on public services and utilities as outlined in Section 2 of the EA.
2. Mitigation measures described in Section 4 of the EA will be implemented to reduce impacts to biological resources, cultural resources, and public services.
3. The Proposed Action will not jeopardize threatened or endangered species. Informal consultation with USFWS was conducted in accordance with Section 7 of the Endangered Species Act and determined that the Proposed Action is not likely to adversely affect Federally listed species with the incorporation of mitigation measures.
4. No known historic or prehistoric resources have been identified within the Elk Run Site and consultation with the State Historic Preservation Office resulted in concurrence of No Historic Properties Affected. Should undiscovered archeological remains be encountered during project ground-disturbing activities, work will stop in the area of discovery and the stipulations of 36 C.F.R. § 800.11 and/or 43 C.F.R. Part 10 will be followed.
5. Impacts to public health and safety are mitigated through implementation of BMPs described in Section 2 of the EA.
6. Impacts to floodplains have been evaluated in accordance with E.O. 11988. The Proposed Action would have no effect on wetlands or floodplains as described in Section 3.5 of the EA.
7. The cumulative effects to the environment are mitigated to avoid or minimize effects of implementation of the Proposed Action as described in Section 3.14 of the EA.
8. The Proposed Action would improve the economic and social conditions of the Tribe and would also promote tribal self-sufficiency and self-determination.



Bryan Newland
Assistant Secretary – Indian Affairs

NOV 08 2024

Date

Attachments:

Attachment 1: Mitigation Monitoring and Compliance Plan