

Record of Decision

**Secretarial Determination Pursuant to the Indian Gaming
Regulatory Act and Trust Acquisition of 60 Acres in the Township
of Fruitport, Michigan, for the Little River Band of Ottawa
Indians, Michigan**

**U.S. Department of the Interior
Bureau of Indian Affairs
December 2020**

U.S. Department of the Interior

Agency: Bureau of Indian Affairs

Action: Issuance of a Record of Decision (ROD) for a Secretarial Determination pursuant to the Indian Gaming Regulatory Act (IGRA), and the trust acquisition of a 60-acre portion of the 86.5-acre Muskegon Property in Fruitport Township, Michigan, for the Little River Band of Ottawa Indians, Michigan (Tribe).

Summary: In 2015, the Tribe submitted an application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) acquire in trust approximately 60 acres of land in Fruitport Township, Muskegon County, Michigan, (Proposed Site) for gaming and other purposes. The Proposed Site lies within the 86.5-acre Muskegon Property. The Tribe also requested that the Secretary of the Interior issue a Secretarial Determination, also known as a Two-Part Determination, to determine whether the Proposed Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act. The Tribe proposes to develop the Proposed Site with a casino resort, hotel, multi-use facility, and supporting facilities on the Muskegon Property. The Tribe's developments on the Proposed Site and Muskegon Property comprise the Proposed Project.

The BIA analyzed the proposed trust acquisition and issuance of a Secretarial Determination (Proposed Actions) in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act under the direction and supervision of the BIA Midwest Regional Office. The BIA issued the Draft EIS for public review and comment on November 21, 2018. After consideration of comments received during the public comment period and at the public hearing on the Draft EIS, the BIA issued the Final EIS on October 23, 2020. The Draft EIS and Final EIS evaluated a reasonable range of alternatives that would meet the purpose and need for the Proposed Actions, analyzed the potential effects of those alternatives, and identified feasible mitigation measures.

With this ROD, the Department announces it will implement Alternative A as the Preferred Alternative and implement the Proposed Action of issuing a Secretarial Determination pursuant to the Indian Gaming Regulatory Act. A decision whether to implement the Proposed Action of acquiring the Proposed Site in trust pursuant to the Indian Reorganization Act will be made after the Governor determines whether she will concur with the Secretarial Determination as required by IGRA.

The Department considered potential effects to the environment, including potential impacts to local governments and other tribes, and has adopted all practicable means to avoid or minimize environmental harm. The Department has also determined that potentially significant effects will be adequately addressed by mitigation measures as described in this ROD. This decision is based on the thorough review and consideration of the Tribe's fee-to-trust

application; request for a Secretarial Determination; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming purposes; the Draft and Final EIS; the administrative record; and comments received from public, federal, state, and local governmental agencies, as well as potentially affected Indian tribes.

For Further Information Contact:

Mr. Scott Doig
Regional Environmental Scientist, Division of Environmental, Facilities,
Safety, and Cultural Resource Management
Bureau of Indian Affairs, Midwest Regional Office
5600 West American Boulevard, Suite 500
Bloomington, MN 55437

1.0	INTRODUCTION	6
1.1	Summary	6
1.2	Description of the Proposed Actions.....	6
1.3	Purpose and Need.....	7
1.4	Procedural Background	7
2.0	ANALYSIS OF ALTERNATIVES.....	8
2.1	Alternative Screening Process.....	8
3.0	PREFERRED ALTERNATIVE	15
4.0	ENVIRONMENTALLY PREFERRED ALTERNATIVE(S).....	15
5.0	ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS.....	16
5.1	Environmental Impacts Identified in Final EIS.....	16
5.1.1	Geology and Soils.....	16
5.1.2	Water Resources.....	17
5.1.3	Air Quality	19
5.1.4	Biological Resources	20
5.1.5	Cultural and Paleontological Resources.....	20
5.1.6	Socioeconomic Conditions.....	21
5.1.7	Transportation/Circulation	22
5.1.8	Land Use.....	23
5.1.9	Public Services	24
5.1.10	Noise.....	25
5.1.11	Hazardous Materials.....	26
5.1.12	Aesthetics	26
5.1.13	Indirect and Growth-Inducing Effects.....	27
5.1.14	Cumulative Effects	28
5.1.15	Unavoidable Adverse Effects	29
5.2	Comments on the Final EIS and Responses.....	29
6.0	MITIGATION MEASURES	31
6.1	Geology and Soils	31
6.2	Water Resources.....	33
6.3	Air Quality	33
6.4	Biological Resources.....	33
6.5	Cultural And Paleontological Resources.....	34
6.6	Socioeconomic Conditions.....	35
6.7	Transportation/Circulation	35
6.8	Land Use	37
6.9	Public Services	37
6.10	Noise 39	
6.11	Hazardous Materials.....	39
6.12	Aesthetics	39
6.13	Mitigation Measures that are not Adopted.....	39
7.0	DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE.....	39
7.1	The Preferred Alternative Results in Substantial Beneficial Impacts	40
7.2	Reduced Intensity Alternative Restricts Beneficial Effects	40
7.3	Non-Gaming at the Muskegon Property Restricts Beneficial Effects to the Tribe and Surrounding Community	40
7.4	Alternative D Restricts Beneficial Effects and Creates a market Overlap.....	41
7.5	No Action Alternative Fails to Meet Purpose and Need	41
8.0	SIGNATURE	41

ATTACHMENTS

Attachment I

Attachment II

Attachment III

Final EIS Notice of Availability

Comments on the Final EIS

Mitigation Monitoring and Enforcement Plan

1.0 INTRODUCTION

1.1 SUMMARY

In 2015, the Little River Band of Ottawa Indians, Michigan (Tribe), submitted an application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) acquire in trust approximately 60 acres of land (Proposed Site) within the 86.5-acre Muskegon Property, a former horse racing track, in Fruitport Township, Muskegon County, Michigan, for gaming and other purposes pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. The Tribe also requested that the Secretary of the Interior (Secretary) issue a Secretarial Determination, also known as a “Two-Part Determination,” to determine whether the Proposed Site is eligible for gaming pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719 (b)(1)(A).

The BIA analyzed the potential environmental impacts of the proposed trust acquisition and Secretarial Determination (Proposed Actions) in an Environmental Impact Statement (EIS). The Draft EIS, issued for public review on November 21, 2018, and the Final EIS, issued on October 23, 2020, considered various alternatives to meet the stated purpose and need, and analyzed in detail potential effects of a reasonable range of alternatives. As stated in the Final EIS, the Department identified Alternative A as the Preferred Alternative, which consists of the construction of a casino, hotel, multi-use facility, supporting facilities, and mitigation measures presented in **Section 6.0** of this Record of Decision (ROD). With this ROD, the Department announces it will implement Alternative A as the Preferred Alternative, and implement the Proposed Action of issuing a Secretarial Determination. A decision whether to implement the Proposed Action of acquiring the Proposed Site in trust pursuant to the IRA will be made after the Governor determines whether she will concur with the Secretarial Determination as required by IGRA, 25 U.S.C. § 2719 (b)(1)(A).

The Department has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Actions. The Department’s decision is based on the thorough review and consideration of the Tribe’s fee-to-trust application and request for a Secretarial Determination, the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming, the Draft and Final EISs, the administrative record, and comments received from the public, federal, state, and local governmental agencies, as well as potentially affected Indian tribes.

1.2 DESCRIPTION OF THE PROPOSED ACTIONS

The federal Proposed Actions are the trust acquisition of the 60-acre Proposed Site and issuance of a Secretarial Determination. The Tribe proposes to develop an approximately 149,069 square foot (sq. ft.) casino, a 220-room hotel, a 38,790 sq. ft. multi-use facility, parking, and supporting facilities. The Proposed Site, located in the Township of Fruitport, lies within the 86.5-acre Muskegon Property. The Tribe’s developments on the Muskegon Property comprise the Proposed Project.

1.3 PURPOSE AND NEED

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

1.3.1 Background

The Tribe's government is responsible for providing a full range of services to its members, including education, health, public safety, and economic development. The Tribe's headquarters is located in Manistee County, Michigan, approximately 90 miles from the Muskegon Property. Muskegon County, however, has the largest concentration of tribal members of any county in Michigan. Inclusive of adjacent counties, the greater Muskegon area is home to approximately 45 percent of the Tribe's members.

The Tribe is currently facing several obstacles to providing adequate services to its membership in both the short and long term. Some of these issues include stagnant or declining revenues from existing enterprises, reductions in federal financial support, lack of funding for crucial programs for members of the Tribe living in Muskegon County, limited access to transportation necessary for employment, high cost of health care, reductions in affordable housing, and an increasing number of elders in need of housing and social services. Most of the declines in revenues are due to increases in gaming competition in the State of Michigan (*see* Final EIS, Appendix S). In general, the Proposed Actions are needed so that the Tribe can:

- increase funding to governmental programs and services, including housing, education, judicial, environmental, health, safety, and emergency programs and services;
- hire additional staff and generally improve governmental operations;
- provide employment opportunities for tribal members, other tribal people, and local non-tribal residents;
- decrease the Tribe's and its members' dependence on federal funding; and
- provide additional capital for other economic development and investment opportunities, allowing the Tribe to diversify its holdings over time so that it is no longer dependent upon the federal government or even upon gaming to survive and prosper.

1.4 PROCEDURAL BACKGROUND

The Proposed Actions require compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.* The BIA published a Notice of Intent to prepare an EIS in the *Federal Register* on September 21, 2015, (80 Fed. Reg. 57014) describing the Proposed Actions, announcing its intent to prepare an EIS for the Proposed Actions, and inviting public

and agency comments. The comment period was open until October 21, 2015, and the BIA held a scoping meeting at the Fruitport Middle School Auditorium on October 15, 2015. The BIA issued a report outlining the results of scoping in February 2016. The scoping report summarized the major issues and concerns identified in the comments received during the scoping process. The BIA considered the scoping comments in developing the project alternatives and analytical methodologies presented in the EIS. During the NEPA process, the BIA invited five cooperating agencies: the Tribe, Fruitport Township, the Federal Highway Administration (FHWA), the U.S. Environmental Protection Agency (USEPA), and Muskegon County. All of these agencies accepted the invitation.

The BIA circulated an administrative version of the Draft EIS to cooperating agencies in August 2016 for review and comment. The BIA considered comments and revised the Draft EIS as appropriate prior to public release. In November 2018, the BIA made the Draft EIS available to the public, tribal, federal, state, and local agencies, and other interested parties for review and comment. The BIA published the Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on November 21, 2018, (83 Fed. Reg. 58783) initiating a 45-day public review period. The BIA also published the NOA in the *Muskegon Chronicle*, which circulated in Muskegon County and surrounding area on November 23, 2018. The NOA provided information concerning the Proposed Actions, public comment period, and the time and location of the public hearing to receive comments from the public concerning the Draft EIS. The BIA held a public hearing at the Fruitport Middle School Auditorium in Fruitport, Michigan, on December 12, 2018. The comment period on the Draft EIS initially ran through January 7, 2019. The public comment period for the Draft EIS was reopened on March 18, 2019, for an additional 30 days, and concluded on April 17, 2019 (84 Fed. Reg. 9807).

The BIA considered the comments received during the Draft EIS comment period, including those submitted or recorded at the public hearing, in preparing the Final EIS. The BIA revised the Final EIS as appropriate to address those comments. The BIA circulated an administrative version of the Final EIS to cooperating agencies on August 26 and 27, 2019, for review. The BIA considered all comments received from cooperating agencies, and made changes to the Final EIS in Volume II as appropriate. The BIA published an NOA for the Final EIS in the *Federal Register* on October 23, 2020, (67 Fed. Reg. 67562) and the USEPA published its NOA on October 30, 2020 (85 Fed. Reg. 68871). The BIA also published the NOA in the local newspaper, the *Muskegon Chronicle* on October 23, 2020. A copy of the Final EIS NOA is included in **Attachment I** of this ROD. The comments received during the 30 day waiting period are included in **Attachment II** of this ROD. The responses to issues that were not previously raised and responded to in the EIS process are included in **Section 5.2** of this ROD.

2.0 ANALYSIS OF ALTERNATIVES

2.1 ALTERNATIVE SCREENING PROCESS

The BIA considered a range of possible alternatives to meet the purpose and need for the Proposed Actions in the EIS, including a reduced intensity alternative, a non-casino alternative, alternative water/wastewater infrastructure arrangements, a reduced development configuration, an alternative site, and expansion of the existing casino. Alternatives other

than the No Action/No Development Alternative were screened based on four criteria: 1) extent to which the alternative meets the purpose and need for the Proposed Actions, 2) feasibility, 3) ability to reduce environmental impacts, and 4) ability to contribute to a reasonable range of alternatives. An alternative considered but rejected from detailed analysis is described in the Final EIS, Section 2.8. It consists of an expansion of the Tribe's existing Little River Casino Resort. This alternative was eliminated because the existing casino is already optimally sized for the regional market, and an expansion would not result in increased revenues.

2.1.1 Alternative A – Proposed Project on the Muskegon Property

Alternative A, which is the Tribe's Proposed Project and has been identified as the Preferred Alternative of the BIA (see Section 2.10 of the Final EIS), consists of the following components: (1) the Department's acquisition in trust of the approximately 60-acre Proposed Site (Assessor's Parcel Number 15-115-300-0026-00); (2) the Secretary's issuance of a Secretarial Determination; (3) the subsequent development of the 60-acre Proposed Site, with a variety of uses including a casino, hotel, multi-use facility, parking, with supporting facilities on the Muskegon Property. Components of Alternative A are described below.

Casino Resort Facility: Alternative A would result in the development of a casino resort within the Proposed Site, consisting of an approximately 149,069 sq. ft. casino, a 220-room hotel, 33,231 sq. ft. of dining and retail space, a 38,790 sq.ft. multi-use facility, and ancillary infrastructure. The proposed hotel would be an approximately 100-foot tall, nine story building with a footprint of approximately 175,087 sq. ft. The multi-use facility would be located in the western portion of the development and would include a pre-function area, stage, green room, banquet kitchen, and storage. The entirety of the casino resort would be constructed on the 60-acre Proposed Site. A portion of the main entry road and part of the stormwater detention basin would be developed west of the Proposed Site, on the remainder of the Muskegon Property.

Agreements with State and Local Agencies: The Tribe entered into a number of agreements with state and local agencies, including the following.

Muskegon County and Fruitport Township Municipal Services Agreement.

A Municipal Services Agreement (MSA) was executed on March 23, 2012, by the Township, the County, and the Tribe, collectively referred to therein as the "Parties." The MSA is included in the Final EIS as Appendix B. The agreement includes law enforcement, fire protection, emergency response, public works, and other municipal services that are summarized below. The Parties set forth certain terms and conditions with regard to their respective commitments in conjunction with the Proposed Actions and subsequent Proposed Project. The MSA also describes the payments, both non-recurring and recurring, to be made by the Tribe to the Township and County related to the provision of municipal services and improvements, and other potential costs relating to the mitigation of any impacts that the project may have on the Township and County. The MSA applies to Alternatives A and B.

Cooperative Law Enforcement Agreement.

In accordance with Section 2.1 of the MSA, the Tribe shall have the primary responsibility for law enforcement on the Proposed Site with the support of the Fruitport Police Department, located at 5825 Airline Road in Fruitport, and the County Sheriff's Department, located at 25 West Walton Avenue, Muskegon, Michigan. The Parties entered into a Cooperative Law Enforcement Agreement (CLEA) (Appendix C of the Final EIS). The CLEA addresses operational issues that the respective law enforcement agencies deem reasonable and necessary for the provision of law enforcement services to the Proposed Site, including, without limitation, staffing and scheduling matters; cross-deputization or appointment; protocols for apprehension, detention, and transfer of detainees; and the conduct of investigations involving activities occurring on the Proposed Site. The cost of providing law enforcement services would be compensated through the non-recurring and recurring payments provided pursuant to Section 3.1(a) and 3.2(b) of the MSA. Additionally, the Township and County shall bill the Tribe for actual costs of providing any additional law enforcement services expressly requested by the Tribe for specific, non-regularly scheduled events or functions.

Fire Protection and Emergency Response Services.

In accordance with Section 2.2 of the MSA, the Township, through the Fruitport Fire Department, shall provide fire protection, emergency response, and ambulance services to the Proposed Site of the same quality and general responsiveness as are provided to commercial establishments in the Township. The cost of providing fire protection and emergency response services would be compensated through the non-recurring and recurring payments provided pursuant to Sections 3.1 and 3.2 of the MSA. Additionally, the Township shall bill the Tribe for actual costs of providing any additional fire protection services expressly requested by the Tribe for specific, non-regularly scheduled events or functions.

Sewer Service and Water Supply.

In accordance with Sections 2.3 and 2.4 of the MSA, the Township shall provide sewage disposal services and water supply services, respectively, for the Proposed Project through the existing infrastructure. The Tribe agrees that it shall, at its expense, construct or cause to be constructed, in compliance with Township ordinances, as amended, all infrastructure or improvements necessary for the Proposed Project to connect to the existing sewer and water supply systems of the Township. The Tribe also agrees that all infrastructure improvements shall be constructed pursuant to and in accordance with Township standards at the time of construction. The Tribe shall also pay connection fees and periodic sewer and water supply service charges similar to other commercial users.

Other Utilities and Services.

The Tribe shall obtain gas, electric, and telephone services for the property from local area providers of such services. The infrastructure and connection improvements for these utilities shall be constructed pursuant to and in accordance with all current applicable standards at the

time of construction. The Tribe shall pay all normal fees and costs associated with connecting the Proposed Project to the existing utility distribution systems.

Water Supply: There are two options for project water supply under Alternative A, as described below.

Municipal Water Connection (Water Supply Option 1). The Township municipal public water system would serve the project in accordance with Section 2.4 of the MSA. The Muskegon Property is currently connected to an 8-inch diameter water main along East Ellis Road through two connections that are 6 inches and 8 inches in diameter. In order to serve Alternative A, the 8-inch water main in East Ellis Road would be replaced with a 12-inch water main and a new 8-inch pipeline would be installed onsite. The new 8-inch on-site pipeline would be looped from the proposed 12-inch water main in East Ellis Road to the existing 12-inch water main in Harvey Street. Pursuant to Section 2.4 of the MSA, water infrastructure would be designed, installed, and maintained in accordance with Fruitport Water Department water infrastructure standards. As set forth in the MSA, upon connection to the Township water system, the Tribe would pay connection charges and monthly service fees in the same manner as is usual and customary for all other users of the municipal public water system.

On-Site Supply (Water Supply Option 2). If the Township is unable to provide water services to the Muskegon Property due to unforeseen circumstances, water for domestic use, emergency supply, and fire protection would be provided by on-site wells. On-site water facilities would include two groundwater wells (one for continuous supply and one for redundancy in case of malfunction or maintenance of the primary well), a treatment system, three booster pumps, an internal distribution system, and either a backup generator system or a 300,000-gallon storage tank to maintain adequate fire flow.

Wastewater Treatment and Disposal: There are two options available for wastewater treatment and disposal, as described below.

Municipal Treatment and Disposal (Wastewater Treatment Option 1). Wastewater service would be provided by the Township in accordance with Section 2.3 of the MSA. Wastewater would be conveyed from the Muskegon Property via two existing 8-inch diameter sewer lines connected to a 10-inch sewer line in East Ellis Road. Pursuant to Section 2.3 of the MSA, wastewater infrastructure would be designed, installed, and maintained in accordance with Fruitport Public Works infrastructure standards. As set forth in the MSA, upon connection to the Township sewer system, the Tribe would pay connection charges and monthly service fees in the same manner as is usual and customary for all other users of the municipal public water system.

On-Site Treatment and Disposal (Wastewater Treatment Option 2). If the Township is unable to provide wastewater service to the Muskegon Property due to unforeseen circumstances, wastewater generated at the casino resort would be treated at a package treatment facility sized to treat the peak flow, and treated water would be disposed of via an approximately 100,000-sq. ft. leach field. Both the package treatment plant and the leach field would be located within the Proposed Site.

Grading and Drainage: Construction would involve grading and excavation for building pads, parking lots, and utilities. The total earthwork estimated for Alternative A is approximately 146,000 cubic yards of cut and 130,000 cubic yards of fill. Topsoil would be imported onto the site to support the landscaping around the buildings. The excess soil from grading during construction would be stockpiled onsite and landscaped along the western border of the casino resort to provide a visual barrier between Harvey Street and the back of the casino resort.

Stormwater retention ponds for Alternative A would be constructed on the northern portion of the Muskegon Property, along the north and south side of the main entrance drive off of Harvey Street. A portion of the retention ponds would be constructed within the portion of the Muskegon Property that would remain in fee. The two hydraulically connected stormwater retention ponds would total approximately eight acres in surface area and would reduce stormwater runoff offsite for up to a 100-year storm event. The ponds would empty by infiltration to the groundwater; however, the ponds would have an emergency overflow near the inlet of an existing off-site culvert that transports runoff from the west to the east side of Interstate 96 (I-96). Roof downspouts from the casino resort would outlet to the ground and stormwater would be routed through rain gardens and bioswales to increase groundwater recharge and provide for improved stormwater quality. Parking lots would drain to the stormwater collection system and outlet to the stormwater retention pond south of the access road.

Best Management Practices: Construction and operation of Alternative A would incorporate a variety of industry standard best management practices (BMPs) that are consistent with local, state, and international fire codes, and that are designed to avoid or minimize potential adverse effects resulting from the development of Alternative A. These are listed in Final EIS Section 2.3.1.

2.1.2 Alternative B – Reduced Intensity Alternative on the Muskegon Property

Alternative B includes many of the same development components as Alternative A, but on a reduced scale. Unlike Alternative A, there would be no hotel or multi-use facility. Alternative B includes the development of a casino within the Proposed Site, consisting of an approximately 99,558 sq. ft. casino, 21,668 sq. ft. of restaurants, and associated parking and infrastructure. Consistent with Alternative A, the entirety of the casino facility, including parking, would be constructed on the Proposed Site, with a portion of the main entry road and water detention basin to be developed west of the Proposed Site, on the remainder of the Muskegon Property. Water and wastewater infrastructure options are the same as those under Alternative A.

The total earthwork estimated for Alternative B is approximately 139,000 cubic yards of cut and 132,000 cubic yards of fill. Topsoil would be imported onto the site to support the landscaping around the buildings. The excess soil from grading during construction would be stockpiled onsite and landscaped along the western border of the casino facility to provide a visual barrier between Harvey Street and the back of the casino facility. As with

Alternative A, stormwater retention ponds would be developed in the northern portion of the Muskegon Property.

2.1.3 Alternative C – Non-Gaming Alternative on the Muskegon Property

Alternative C differs from Alternatives A and B in that it does not include a casino or gaming element. Alternative C would occur on the Proposed Site and involves its transfer into federal trust status, but it would not require a Secretarial Determination for the purpose of gaming. Alternative C would result in the development of 175,000 sq. ft. of retail facilities, parking, and other supporting facilities. The entirety of the retail facilities would be constructed on the Proposed Site, with a portion of the main entry road and water detention basin to be developed west of the Proposed Site, on the remainder of the Muskegon Property.

Water and wastewater infrastructure options are the same as those under Alternative A.

The total earthwork estimated for Alternative C is approximately 142,000 cubic yards of cut and 132,400 cubic yards of fill. Topsoil would be imported onto the site to support the landscaping around the buildings. The excess soil from grading during construction would be stockpiled onsite and landscaped along the western border of the Proposed Site to provide a visual barrier between Harvey Street and the back of the retail facility. As with Alternative A, stormwater retention ponds would be developed in the northern portion of the Muskegon Property. An agreement with the Township to provide law enforcement and fire services to the Proposed Site under Alternative C is not currently in place; however, it is assumed that an agreement similar to the MSA would be executed prior to construction of Alternative C.

2.1.4 Alternative D – Custer Site Alternative

The approximately 45-acre Custer Site is located within an approximately 1,087-acre property currently held in federal trust for the Tribe, immediately west of the Village of Custer in Mason County, Michigan. Alternative D consists of the development of approximately 45 acres of the existing trust property with a variety of uses including an approximately 83,600 sq. ft. casino facility, an approximately 5,791 sq. ft. restaurant, and 630 parking spaces. The Department would have to make a determination whether the Tribe is eligible to conduct gaming on the Custer Site pursuant to IGRA.

Water Supply: There are two options for project water supply under Alternative D, as described below.

Municipal Water Connection (Water Supply Option 1). Potable water would be provided by the City of Scottville. Extension of facilities from the City of Scottville would consist of installing approximately 3 miles of water main from the City of Scottville east along U.S. Highway 10 (US-10), south along Tuttle Road, and east along East First Street to the Custer Site. Additionally, a 300,000-gallon water tank would be constructed onsite to satisfy the fire flow requirement. The Tribe would seek to enter into an agreement similar to the MSA to compensate the City of Scottville for providing water service, including system upgrades to connect the Custer Site to existing infrastructure.

On-Site Supply (Water Supply Option 2). Water for domestic use, emergency supply, and fire protection would be provided by on-site wells. On-site water facilities would include two on-site groundwater wells (one for continuous supply and one for redundancy in case of malfunction or maintenance of the primary well), a treatment system, two booster pumps, an internal distribution system, and a 300,000-gallon storage tank to maintain adequate fire flow.

Wastewater Treatment and Disposal: There are two options available for wastewater treatment and disposal, as described below.

Municipal Treatment and Disposal (Wastewater Treatment Option 1). Wastewater conveyance would be provided by the City of Scottville and treatment would be provided at the Ludington Wastewater Treatment Plant. Extension of the City of Scottville's facilities would consist of installing approximately 3 miles of sewer lines from the City of Scottville east along US-10, south along Tuttle Road, and east along East First Street to the Custer Site. Additionally, sanitary lift stations would be constructed offsite. The Tribe would seek to enter into an agreement similar to the MSA to compensate the City of Scottville and City of Ludington for providing wastewater conveyance and treatment services, respectively, including system upgrades to connect the Custer Site to existing infrastructure.

On-Site Treatment and Disposal (Wastewater Treatment Option 2). Under Wastewater Treatment Option 2, wastewater generated at the casino facility would be treated at a package treatment facility sized to treat the peak flow and treated water would be disposed of via an approximately 25,000-sq. ft. leach field. Both the package treatment facility and leach field would be located within the Tribe's existing trust land.

Grading and Drainage: Construction would involve grading and excavation for building pads, parking lots, and utilities. The total amount of earthwork estimated for Alternative D is 45,500 cubic yards of cut and 40,000 cubic yards of fill. The excess soil from grading during construction would be aesthetically placed onsite and landscaped. An approximately 217,000-cubic foot stormwater detention pond would be located within the Custer Site to provide optimum site drainage. During a 100-year event, up to 175,000 cubic feet would be stored in the detention pond. Drainage would continue to flow to the Pere Marquette River, after being held in the proposed detention basin.

Best Management Practices: BMPs would be implemented similar to those for Alternatives A, B, and C.

Law Enforcement, Fire Protection, and Emergency Response: No agreement with local municipalities has been made at this time to provide law enforcement and fire services to the site under Alternative D; however, it is assumed that an agreement similar to the MSA would be executed prior to construction of Alternative D.

2.1.5 Alternative E – No Action/No Development

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

3.0 PREFERRED ALTERNATIVE

For the reasons discussed herein and in the Final EIS, the Department has determined that Alternative A is the agency's Preferred Alternative because it best meets the purpose and need for the Proposed Actions. Of the alternatives evaluated within the EIS, Alternative A would best meet the purpose and need for the Proposed Action by promoting the long-term economic vitality, self-sufficiency, self-determination, and self-governance of the Tribe.

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

4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)

Among all of the alternatives, the No Action Alternative (Alternative E) would result in the fewest environmental impacts. Under the No Action Alternative, the Proposed Site would not be taken into trust and the Tribe would continue to operate its existing casino as it presently does. The Muskegon Property would likely be developed because of its location, existing improvements, and infrastructure, but the type of development cannot be predicted with certainty, and the scope of impacts from possible future development cannot be assessed. However, the No Action Alternative would not meet the stated purpose and need for the Proposed Actions. Specifically, it would not attract and maintain the same type of long-term, sustainable revenue stream, which would limit self-sufficiency, self-determination, and economic development. The No Action alternative would also likely result in substantially fewer economic benefits to the County and the Township than any of the development alternatives.

Among the development alternatives, the Custer Site Alternative (Alternative D) would result in the least environmental impacts. This is because Alternative D has a significantly smaller footprint than the other development alternatives. Because less economic development would

be feasible due to the relatively less central location of the Custer Site, fewer impacts from patron vehicle trips and the associated traffic, noise, and air quality impacts would occur.

5.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS

5.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN FINAL EIS

A number of specific issues were raised during the EIS scoping process and in public and agency comments on the Draft EIS. Each alternative considered in the Final EIS was evaluated relative to these and other issues. The categories of the most substantive issues raised include the following.

- Geology and Soils
- Water Resources
- Air Quality
- Biological Resources
- Cultural and Paleontological Resources
- Socioeconomic Conditions
- Transportation/Circulation
- Land Use
- Public Services
- Noise
- Hazardous Materials
- Aesthetics
- Indirect and Growth-Inducing Effects

The evaluation of project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments for the Final EIS were accomplished using accepted industry standard practice, procedures, and the most currently available data and models for each of the issues evaluated in the Final EIS. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues. Section 4 of the Final EIS describes environmental impacts of Alternatives A through D in detail. The environmental impacts of the Preferred Alternative (Alternative A) are described below.

5.1.1 Geology and Soils

Topography – Alternative A would involve grading and excavation for building pads, parking lots, and utilities. Grading would consist primarily of excavating for the drainage basins and filling both where cut slopes necessitate additional leveling and to prevent spillover of the drainage basins. The excess soil from grading during construction would be stockpiled onsite and landscaped along the western border of the casino resort to provide a visual barrier between Harvey Street and the back of the casino resort. Although this would constitute a change in the topography of the site, the stockpiles would not be tall enough or steep enough to result in any damages from slope failure (landslide). Additionally, the vegetation proposed to landscape the stockpiles would aid in preventing slope failure. Therefore, the development of Alternative A would not create an adverse effect on topographic characteristics of the

Muskegon Property, and no mitigation is required. Impacts to topography would be less than significant.

Soils/Geology – Alternative A could temporarily impact soils due to erosion during construction, operation, and maintenance activities, including clearing, grading, trenching, and backfilling. The soils on the Muskegon Property have minimal erosion susceptibility based on soil type and slope gradients. Construction of Alternative A would disturb more than one acre; therefore, the Tribe is required by the Clean Water Act (CWA) to obtain coverage under and comply with the terms of the National Pollution Discharge Elimination System (NPDES) General Construction Permit (#MIS310000) for construction activities on the Muskegon Property. Mitigation measures and BMPs, including NPDES General Construction Permit requirements, are presented in **Section 6.0** below, in Sections 2.3.1 and 5.0 of the Final EIS to reduce any potential adverse effects to less-than-significant levels. With regulatory requirements and BMPs described therein, effects from implementation of Alternative A on soils and geology would be minimal and, therefore, less than significant.

Seismicity – Construction of Alternative A would not be significantly affected by potential seismic conditions because there is low seismic risk in the State of Michigan. Since no known fault traces are mapped in the vicinity of the Muskegon Property, the potential for surface rupturing along an on-site fault trace is low and should not be considered a constraint for Alternative A. Additionally, the Tribe has committed in its MSA to develop its buildings in compliance with applicable building codes in effect in the State. Impacts from seismicity under Alternative A would be less than significant and no mitigation would be required.

Mineral Resources – Given that there are no known or recorded mineral resources within the Muskegon Property, construction and operation would not adversely affect known or recorded mineral resources. No significant impacts to mineral resources would occur. Impacts to mineral resources under Alternative A would be less than significant.

5.1.2 Water Resources

Flooding – The Muskegon Property is located outside the 100-year and 500-year floodplains; therefore, Alternative A would be in compliance with Executive Order No. 11988 (Floodplain Management). Alternative A would not impede or redirect flood flows, alter floodplain elevations, or affect floodplain management. No impacts related to flooding would occur as a result of Alternative A. Impacts related to flooding under Alternative A would be less than significant.

Construction – Alternative A construction activities would include clearing and grubbing, grading, and excavation that could lead to erosion of topsoil. Erosion from construction could increase sediment discharge to surface waters during storm events, thereby degrading downstream water quality. The discharge of pollutants to surface waters from construction activities and accidents are a potentially significant impact. Erosion control measures would be employed in compliance with the NPDES General Construction Permit for construction activities. A Stormwater Pollution Prevention Plan (SWPPP) would be developed prior to any ground disturbance at the development alternative site and would include BMPs to reduce potential surface water contamination during storm events. After implementation of the

mitigation measures and BMPs discussed in **Sections 6.1 and 6.2** below and **Sections 2.3.1 and 5.0** of the Final EIS, impacts from the construction of Alternative A on surface water quality would be less than significant.

Stormwater Runoff – Drainage and stormwater treatment analyses for Alternative A have been completed and are included in Appendices E and F of the Draft EIS. Alternative A would generate increased runoff during rain events due to an increase in impervious surfaces on the Muskegon Property. Stormwater runoff on the Muskegon Property would be directed into on-site water retention ponds sized to accommodate excess water draining from impervious surfaces. Runoff from the buildings and parking lots would be routed through bioswales and/or rain gardens wherever practical for treatment before flowing into the retention ponds. The concentrated flows would initially be routed to the southern retention pond that would act as a forebay to capture sediment prior to being outlet to the larger northerly pond that would be hydraulically connected. Pursuant to Section 2.8 of the MSA, stormwater drainage facilities would be constructed pursuant to and in accordance with the standards of the State of Michigan Drain Code, as updated and as enforced by the Muskegon County Drain Commissioner. During a 100-year, 24-hour storm event, the surface elevation of the ponds would increase by approximately 2.8 feet. The ponds would empty by infiltration to groundwater; however, the ponds would have an emergency overflow near the inlet of an existing off-site culvert that transports runoff from the west side of I-96. No discharge to Waters of the U.S. is proposed, either through non-point source stormwater runoff or through point source discharge of stormwater from a culvert or outfall. Additionally, mitigation measures and BMPs described in **Section 6.1** below and **Sections 2.3.1 and 5.0** of the Final EIS would ensure that the impacts to regional stormwater runoff and surface water quality under Alternative A would be less than significant.

Groundwater Levels – The construction of impervious surfaces on the Muskegon Property could reduce groundwater recharge, resulting in the lowering of groundwater levels. Although Alternative A would introduce large areas of impermeable surfaces, the use of retention ponds for storing stormwater would allow collected stormwater to percolate into the groundwater over time, subject to soil permeability, weather, and depth to the water table. Impacts from the introduction of impermeable surfaces on the on groundwater levels would be less than significant.

Under Water Supply Option 1, water would be provided via a services agreement pursuant to Section 2.4 of the MSA between the Tribe, the Township, and the County. Alternative A would not have significant impacts to aquifers under Water Supply Option 1, as no groundwater would be used. Under Water Supply Option 2, on-site wells would supply the project with water for domestic use, an emergency supply, and fire protection. Additionally, the BMPs provided in Section 2.3.1 of the Final EIS requiring a test well be drilled and groundwater testing be conducted would minimize potential effects to water resources. Due to the high static water levels of nearby wells and the lack of significant groundwater use in the area by others, impacts to groundwater levels under Alternative A Water Supply Option 2 would be less than significant.

Groundwater Quality – Runoff from Alternative A could flush trash, debris, oil, sediment, fertilizers, and grease that accumulate on impervious surfaces into stormwater runoff.

Although stormwater would not normally flow offsite and impact surface water quality, the retention ponds would percolate the accumulated stormwater into the shallow unconfined alluvial aquifer, potentially transporting chemical contaminants into the groundwater. Several features such as rain gardens and bioswales have been incorporated to remove suspended solids such as trash, sediment, and other potential materials that could degrade water quality. Additionally, mitigation measures and BMPs provided in **Sections 5.1 and 5.2** of this ROD, and Sections 2.3.1 and 5.0 of the Final EIS, would minimize potential effects to water resources. Therefore, impacts to groundwater quality from stormwater runoff under Alternative A would be less than significant.

Under Wastewater Treatment Option 1, wastewater generated by Alternative A would be collected by the Township wastewater collection system and treated offsite by the Muskegon County Wastewater Management System (MCWMS). The MCWMS would continue to operate in accordance with its NPDES Permit (Permit No. MI0027391) issued by the Michigan Department of Environment, Great Lakes, and Energy (EGLE). Therefore, the impacts to groundwater quality from wastewater under Alternative A Wastewater Treatment Option 1 would be less than significant. Under Wastewater Treatment Option 2, Alternative A would include the development of an on-site packaged wastewater treatment system. On-site disposal of wastewater would be accomplished through an approximately 100,000-sq. ft. leach field that would allow treated wastewater to drain into the soil. As the on-site wastewater treatment system would be located on trust land, treatment requirements with respect to wastewater effluent quality for on-site disposal would be regulated by the USEPA. The disposal of wastewater onsite via subsurface drainage would be regulated by the USEPA within the Underground Injection Control program. Therefore, impacts to groundwater under Alternative A Wastewater Treatment Option 2 would be less than significant.

5.1.3 Air Quality

Construction Emissions – Alternative A would generate air pollutants through construction but would not exceed regulatory emissions threshold levels. However, to further reduce project-related construction criteria air pollutants (CAP) and diesel particulate matter emissions, the mitigation measures described in **Section 6.3** below and Section 5.0 of the Final EIS would further reduce impacts from construction emissions on air quality. Impacts from construction emissions on air quality will be less than significant.

Operational Emissions – Buildout of Alternative A would result in the generation of mobile emissions from patron, employee, and delivery vehicles, as well as area and energy criteria pollutant emissions. Also, stationary source emissions from combustion of natural gas in boilers, stoves, heating units, and other equipment on the project sites would result from buildout of Alternative A. The Muskegon Property is in a region of attainment for all CAPs. Under the regulations of the federal Clean Air Act, 40 C.F.R. § 93, if a region is in attainment for all criteria pollutants, then the region meets the National Ambient Air Quality Standards and there are no applicable *de minimis* levels. In addition, operational emissions from stationary sources would not exceed the minor new source review (NSR) thresholds and, therefore, an associated minor NSR permit would not likely be required. However, a tribal minor NSR permit would likely be required for the emergency generator. The BMPs

discussed in Sections 2.3.1 and 5.0 of the Final EIS would minimize CAP emissions from the operation of Alternative A. With these BMPs, impacts to the regional air quality environment under Alternative A would be less than significant.

5.1.4 Biological Resources

Wildlife and Habitats - Development of Alternative A on the Muskegon Property would affect roughly 86.5 acres of ruderal/developed habitat within the site. None of the habitats that would be affected by the implementation of Alternative A are considered sensitive biological communities; therefore, no adverse effects would be expected to occur. Impacts to wildlife and habitats under Alternative A would be less than significant.

Special Status Species - Three federally listed wildlife species have the potential to occur within the Muskegon Property: the federally threatened northern long-eared bat (*Myotis septentrionalis*), the federally endangered Indiana bat (*Myotis sodalis*), and the federally threatened eastern massasauga rattlesnake (*Sistrurus catenatus*). Alternative A could potentially impact these federally listed species through removal of roosting habitat or direct mortality; however, with implementation of mitigation measures in **Section 6.4** below and Section 5.0 of the Final EIS, impacts to federally listed species under Alternative A would be less than significant.

None of the state-listed species that have the potential to occur in the area would be expected to occur within the Muskegon Property. Therefore, Alternative A would have no effect on state-listed plants or wildlife species. Impacts to state-listed species under Alternative A would be less than significant.

Migratory Birds – Alternative A could adversely affect active migratory bird nests if tree removal and other construction activities were to occur during the nesting season. With the mitigation measures listed in **Section 6.4** below and Section 5.0 of the Final EIS, potential impacts to migratory birds under Alternative A would be less than significant.

Waters of the U.S. - There are likely no jurisdictional wetlands or other Waters of the U.S. located within the Muskegon Property. The five existing detention basins and roadside ditch are man-made features designed to capture runoff from impervious surfaces within the Muskegon Property. Prior to disturbing these areas, confirmation from the U.S. Army Corps of Engineers (USACE) that these areas are not jurisdictional shall be obtained. Implementation of mitigation identified in **Section 6.1** below and Section 5.0 of the Final EIS, including erosion and siltation controls around ground-disturbing activities, and the mitigation identified in **Section 6.4** below, including a wetland delineation, would ensure that impacts to federally regulated Waters of the U.S. under Alternative A would be less than significant.

5.1.5 Cultural and Paleontological Resources

No known historic properties or paleontological resources have been identified within the Muskegon Property. Therefore, Alternative A would not result in significant adverse effects to known historic properties. There is a slight possibility that previously unknown archaeological or paleontological resources could be encountered during construction

activities. With implementation of mitigation measures described in **Section 6.5** below and Section 5.0 of the Final EIS, impacts to cultural resources under Alternative A would be less than significant.

5.1.6 Socioeconomic Conditions

Socioeconomics Conditions – The construction and operation of Alternative A would result in economic output to Muskegon County in the form of jobs, purchases of goods and services, and through positive fiscal effects. The construction of Alternative A would result in indirect and induced economic activity among a variety of different industries and businesses throughout Muskegon County. Output received by Muskegon County businesses would in turn increase spending and labor demand, thereby further stimulating the local economy. This would be considered a beneficial impact.

The operation of Alternative A would have substitution or competitive effects on competing gaming venues, including tribal casinos and local gaming venues. The substitution effects would be greater for those gaming facilities that are closest to the proposed gaming project and most similar in terms of the types of customers that would visit the venues. Estimated substitution effects are anticipated to diminish after the first year of operation of Alternative A. The substitution effects resulting from this gaming alternative to competing tribal gaming facility revenues is not anticipated to significantly impact these casinos, or to cause their closure, or to significantly impact the ability of the tribal governments that own the facilities to provide essential services to their respective memberships. Impacts from substitution or competitive effects on competing gaming venues, including tribal casinos and local gaming venues under Alternative A would be less than significant, and no mitigation would be recommended.

Alternative A would result in decreased property taxes from those land parcels taken into trust, or already in trust, and increased costs to local agencies for the provision of governmental services, including police, fire and emergency services. However, operating revenues associated with Alternative A would result in increased payments to state and local governments, pursuant to the terms of the MSA. These payments would more than offset decreases in government revenues attributable to the decrease in property taxes.

Similar to commercial developments of comparable scale, operation of Alternative A would likely increase crime. The provisions of the MSA, detailed in **Section 6.9** below and Section 5.0 of the Final EIS, would avoid, minimize, or mitigate adverse effects associated with public services for Alternative A. Fiscal costs would also be partially offset through increased tax revenues that would be stimulated by the operation and increased employment of the Preferred Alternative.

Given the existing availability of gaming, the addition of gaming in Muskegon County under Alternative A is not expected to lead to a significant increase in prevalence rates of problem gaming in the local area. BMPs described in Final EIS Section 2.3.1 include provisions requiring the Tribe to maintain programs and policies similar to those currently in effect at its existing Manistee casino to address problem gambling. Pursuant to the terms of the MSA, the Tribe would also make payments to state and local agencies to mitigate problem gambling.

Alternative A would have a less-than-significant effect on local housing values, the housing supply, parks, and libraries. Alternative A would have a beneficial impact on the Tribe and would generate new income to fund the operation of the tribal government. This income is anticipated to have a beneficial effect on tribal quality of life, health, education, and culture by funding tribal programs that serve tribal members, including education, health care, housing, social services, and tribally sponsored cultural events, and by supporting tribal self-sufficiency and self-determination.

Environmental Justice – No low-income communities were identified in the vicinity of the Muskegon Property. The Census Tract Muskegon 4.02, approximately three miles from the Muskegon Property, was identified as a minority community. The Tribe is considered a minority community affected by Alternative A. Increased economic development and opportunities for employment would positively affect the minority community in the vicinity of the Muskegon Property. Therefore, impacts to minority or low-income communities under Alternative A would be less than significant.

5.1.7 Transportation/Circulation

Construction Traffic - Alternative A would result in temporary impacts resulting from construction activities. These effects would include temporary inconveniences to travelers. This minimal addition of construction traffic would not result in significant traffic impacts. Mitigation included in **Section 6.7** below and Section 5.8 of the Final EIS would further reduce any impacts from construction traffic.

Project Traffic - With the addition of project traffic related to Alternative A, the following study intersection movements are projected to operate at an unacceptable level of service (LOS) and/or exceed available queue lengths under 2020 Buildout Year and 2025 Future Year conditions.

- Airline Highway and Airport Road
- Harvey Street and Hile Road
- Harvey Street and Independence Drive
- Harvey Street and Sternberg Road
- Airline Highway and Westbound (WB) I-96 Off-Ramp
- Airline Highway and Southbound (SB) US-31 Ramps
- Hile Road and I-96 Ramps
- Sternberg Road and Northbound (NB) US-31 Ramps
- Pontaluna Road and NB US-31 Ramps
- Pontaluna Road and SB US-31 Off-Ramp
- Harvey Street and Pontaluna Road (2025 Future Year conditions only)

For more details regarding the specific lanes and approaches operating at an unacceptable LOS, refer to Section 4.8 of the Final EIS.

It should be noted that the intersection of Pontaluna Road/SB US-31 would operate unacceptably with or without the addition of Alternative A, and vehicular delay would not

increase with Alternative A. Therefore, the impacts at this intersection would be less than significant and no mitigation would be necessary.

Since the completion of the TIS, Harvey Street has been widened to five lanes between Hile Road and Ellis Road. This, along with mitigation measures provided in **Section 6.7** below and Section 5.8 of the Final EIS regarding lane striping and adjustments of signal timing, ensures that Alternative A would not contribute towards significant effects on roadway segments under 2020 Buildout Year and 2025 Future Year conditions.

With incorporation of the mitigation measures in **Section 6.7** below and Section 5.8 of the Final EIS, Alternative A would not contribute towards significant effects on study intersections or roadway segments under 2020 Buildout Year or 2025 Future Year conditions.

Transit Facilities - Currently the Muskegon Area Transit System (MATS) Harvey Route provides transit service in the vicinity of the Muskegon Property. Alternative A could potentially impact the Harvey Route due to increased ridership from casino employees and patrons. However, mitigation included in **Section 6.7** below and Section 5.8 of the Final EIS would ensure that the Tribe offers to enter into an agreement with MATS to optimize routes and timing, including constructing a bus stop on the Muskegon Property, if requested by MATS. With implementation of mitigation measures in **Section 6.7** below and Section 5.8 of the Final EIS, impacts to the public transit system under Alternative A would be less than significant.

Bicycle and Pedestrian Facilities - Bicycle and pedestrian facilities in the vicinity of the Muskegon Property are limited, with no sidewalk facilities in the vicinity of the Muskegon Property and 4-foot shoulders for cyclists only along Harvey Street. Because sufficient parking is available onsite and because off-site sidewalk and the only bicycle facilities adjacent to the site are 4-foot shoulders along Harvey Street, no significant effects would occur to the existing pedestrian or bicycle facilities as a result of Alternative A.

5.1.8 Land Use

Alternative A would result in approximately 60 acres of land within the Muskegon Property being transferred from fee to federal trust, thereby removing the property from the Township's land use jurisdiction. The remaining approximately 26.5 acres would be left in fee and would continue to be subject to applicable State and local land use regulations. To facilitate implementation of Alternative A on the multi-jurisdictional Muskegon Property, the Tribe, Township, and the County have entered into the MSA described above.

The Muskegon Property is zoned Shopping Center (SC-1), and the areas in the surrounding vicinity are zoned a mixture of General Business, Service Business, and Planned Unit Development. Previous uses of the Muskegon Property include a horse racetrack and associated facilities. This is considered a past commercial use for entertainment purposes. Similarly, Alternative A would be categorized as a commercial development for entertainment purposes. Thus, Alternative A would be consistent with adjacent land uses and the Muskegon County Comprehensive Plan, which seeks to increase economic development

within the County. For these reasons, Alternative A would not impede local and regional planning efforts.

The development of Alternative A has the potential to result in significant impacts to adjacent sensitive receptors residing in the few nearby residences to the west of the Muskegon Property. Impacts may include, but are not limited to, air quality and noise effects from construction and operational activities and congestion on local roads from increased traffic. Implementation of mitigation measures and BMPs provided in **Section 6.0** below and Sections 2.3.1 and 5.0 of the Final EIS would reduce these potential adverse effects. Impacts to land use compatibility under Alternative A would be less than significant.

5.1.9 Public Services

Water Supply – Under Water Supply Option 1, the Muskegon Property would be connected to the existing water distribution system maintained by the Township in accordance with Section 2.4 of the MSA. The Township’s municipal potable water infrastructure would serve the Muskegon Property. The existing 8-inch diameter water main on East Ellis Road does not have adequate capacity to serve Alternative A and would need to be replaced with a 12-inch diameter water main. The Regional Water System has available capacity to service the increased demands from Alternative A. Mitigation included in **Section 6.9** below and Section 5.10 of the Final EIS would ensure that the Tribe would either construct the new pipeline or pay the full actual cost to the Township for constructing the new pipeline. If the Township is unable to provide water services to the Muskegon Property due to unforeseen circumstances, the Tribe would construct on-site wells and water tanks to supply water to the project (Water Supply Option 2). Under Water Supply Option 2, development of Alternative A on this site would not have any effect on the Township water distribution system or the City of Muskegon Filtration Plant. Impacts to the water supply under Alternative A would be less than significant.

Wastewater Service – Under Alternative A, the Muskegon Property would either be connected to existing wastewater lines maintained by the Township (Wastewater Treatment Option 1) in accordance with Section 2.3 of the MSA or, should the Township be unable to provide wastewater services to the Muskegon Property due to unforeseen circumstances, the Tribe would construct on-site wastewater facilities (Wastewater Treatment Option 2). Under Wastewater Treatment Option 1, the Township’s municipal wastewater infrastructure would serve the Muskegon Property through the existing 10-inch sewer line in East Ellis Road that connects to a 12-inch line on Harvey Street. The existing wastewater treatment facility has adequate capacity to serve the development alternatives on the Muskegon Property. In accordance with Section 2.3 of the MSA, upon connection to the Township sewer system, the Tribe would pay the current capital connection charges and monthly service fees, as well as fund the upgrade of the Township municipal system to the Muskegon Property. With implementation of the conditions of the MSA and mitigation measures in **Section 6.9** below and Section 5.10 of the Final EIS, no significant adverse effects to the Township public wastewater collection and treatment system and LOS, such as the exceedance of the system’s capacity, would occur. Under Wastewater Treatment Option 2 the Muskegon Property would not connect to the Township wastewater infrastructure; therefore, development alternatives on the Muskegon Property would not have any effect on the Township wastewater infrastructure

or the Muskegon County Wastewater Treatment Facility. Impacts to wastewater service would be less than significant.

Solid Waste Service – Construction and operation of the Proposed Project under Alternative A would result in an increase in the generation of solid waste. The Muskegon County Landfill and the Ottawa County Farms Landfill both have capacity to absorb solid waste from Alternative A. Operation of Alternative A would not result in no adverse effects to the physical environment would occur. Impacts to solid waste service and landfill capacities would be less than significant.

Law Enforcement, Fire Protection, and Emergency Medical Services – Alternative A has the potential to increase demand for law enforcement, fire protection, and emergency medical services. Police, fire inspection and emergency response, public safety dispatch, emergency medical, and ambulance services would be provided by the Township and Muskegon County, in accordance with Section 2.1 of the MSA. With implementation of mitigation measure described in **Section 6.9** below and Section 5.10 of the Final EIS, impacts to these services would be less than significant.

Energy and Natural Gas – Electricity and natural gas would be provided by Consumers Energy and DTE Energy, respectively, for the Muskegon Property through nearby connections; the providers currently have sufficient capacity to serve Alternative A. Therefore, Alternative A would not result in significant effects on energy or natural gas services, such as the exceedance of available system capacities. Impacts to electricity and natural gas services would be less than significant.

5.1.10 Noise

Construction Traffic – Grading and construction activities associated with Alternative A would be intermittent and temporary in nature. The closest sensitive receptors that would be exposed to potential noise impacts during construction are private residences located along Harvey Street approximately 100 feet west of the Muskegon Property. Employee construction trips would result in a 1.72 A-weighted decibel (dBA) equivalent sound level (Leq) increase in the existing ambient noise level. A 3-dBA increase in noise is barely perceivable; therefore, the increase in traffic noise due to construction trips from Alternative A would not be a significant change in traffic noise in the vicinity of the Muskegon Property. Additionally, the ambient noise would be 54.4 dBA Leq (below the FHWA construction noise threshold of 72 dBA Leq for sites near residential uses).

Construction Equipment - The maximum noise level at the nearest sensitive noise receptor, a private residence located 100 feet to the west of the Muskegon Property, would be 83 dBA Leq. The maximum noise level at the nearest sensitive noise receptor would be greater than the FHWA threshold of 72 dBA Leq. However, BMPs provided in Final EIS Section 2.3.1 would reduce the potential for stationary construction noise effects. Additionally, construction would be temporary and intermittent in nature. Therefore, with implementation of BMPs, construction noise associated with Alternative A would not result in significant adverse effects associated with the ambient noise environment.

Impacts to nearby structures or sensitive receptors from construction vibration under Alternative A would be less than significant.

Operational Noise – None of the roadways that would experience the most increase in project-related traffic would exceed Michigan Department of Transportation (MDOT) thresholds. Commercial uses on the Muskegon Property, such as operation of roof-mounted air handling units and idling vehicles would generate noise; however, given the distance to the nearest sensitive noise receptor, noise from roof-mounted heating, ventilation, and air conditioning equipment would not be audible and loading dock noise and idling vehicle noise would be below MDOT thresholds. Therefore, operational noise would not result in significant adverse effects associated with the ambient noise environment for Alternative A. Impacts from operational noise would be less than significant.

5.1.11 Hazardous Materials

The possibility exists that undiscovered contaminated soil and/or groundwater is present on the Muskegon Property due to the migration of hazardous materials from off-site properties or unknown hazardous materials dumping. Construction personnel could encounter contamination during construction-related earth-moving activities. BMPs presented in Section 2.3.1 of the Final EIS would minimize or eliminate adverse effects from undiscovered contaminated soil or groundwater. During grading and construction, the use of routine hazardous materials may include gasoline, diesel fuel, motor oil, hydraulic fluid, solvents, cleaners, sealants, welding flux, various lubricants, paint, and paint thinner. Specific BMPs presented in Section 2.3.1 of the Final EIS would minimize the risk of inadvertent release of these materials. With these measures, Alternative A would not result in significant adverse effects associated with hazardous materials during construction. Potential hazardous operational materials such as diesel fuel storage tanks, swimming pool and landscape materials, and small quantities of motor oil, cleaners, lubricants, and paint would not result in significant adverse effects with proper storage, handling, and disposal. Impacts from hazardous materials would be less than significant.

5.1.12 Aesthetics

During construction activities on Muskegon Property, heavy construction equipment, materials, and work crews would be readily visible from stationary locations, as well as from vehicles traveling on nearby roadways. Aesthetic impacts from construction would be temporary in nature and would not result in obstructed views of scenic resources. The most visually dominant feature of Alternative A would be the nine story hotel tower. The development of Alternative A would transform the current unused space to a more urban appearance. However, the development of Alternative A would not be visually incompatible with currently existing land uses in the immediate vicinity. Alternative A would result in a visually cohesive development that may be considered more aesthetically pleasing than other regional commercial strip development. While the site-specific visual effects may be considered significant, the context of the project development in relation to the larger landscape would be less than significant because the changes would not affect any significant visual resources. The potential for Alternative A to produce light and glare in the vicinity is a potentially significant adverse effect. BMPs included in Section 2.3.1 of the Final EIS would

ensure that effects from lighting and glare are minimized. Therefore, the potential for Alternative A to produce glare in the project vicinity would not be a significant adverse effect. Impacts to aesthetics would be less than significant.

5.1.13 Indirect and Growth-Inducing Effects

Indirect Effects from Off-Site Traffic Mitigation Improvements – Alternative A would require the most traffic improvements resulting in the most indirect effects. The mitigation measures that would require construction to widen/improve intersection approaches, add lanes, and install traffic signals and/or roundabouts may require grading and the introduction of fill material. Construction of these improvements could generate indirect impacts to geology and soils, water resources, air quality, biological resources, and cultural resources. A Storm Water Pollution Prevention Plan (SWPPP) would be developed that would include soil erosion and sediment control practices to reduce the amount of exposed soil, prevent runoff from flowing across disturbed areas, slow runoff from the site, and remove sediment from the runoff. Mitigation for these activities is provided in the relevant subsections of **Section 6.0** below and Section 5.0 of the Final EIS.

Indirect Effects from Municipal Water Infrastructure Improvements for the Muskegon Property – In accordance with Section 2.4 of the MSA, the Township municipal water system would serve the Muskegon Property under Alternative A Water Supply Option 1 through the Township's existing connections. Under Alternative A, the Township's existing 8-inch water main along East Ellis Road would be replaced with a 12-inch water main to accommodate increased flow requirements. Construction of this improvement could generate indirect impacts to geology and soils, water resources, biological resources, and cultural resources. With standard construction practices and specifications required by the Township and the NPDES Permit Program, there would be no indirect effects to geology and soils. A SWPPP would be developed that would include soil erosion and sediment control practices to reduce the amount of exposed soil, prevent runoff from flowing across disturbed areas, slow runoff from the site, and remove sediment from the runoff. Mitigation for this activity is provided in the relevant subsections of **Section 6.0** below and Section 5.0 of the Final EIS.

Growth-Inducing Effects – Alternative A would result in temporary employment opportunities from construction and permanent employment opportunities from operation. These opportunities would result from direct as well as indirect and induced effects. Construction opportunities would be temporary in nature, and would not be anticipated to result in the permanent relocation of employees into Muskegon County. The potential for commercial growth resulting from the development of Alternative A would result from direct, indirect, and induced economic activity. However, such demand would be diffused and distributed among a variety of different sectors and businesses in Muskegon County. As such, significant regional commercial growth-inducing impacts would not be anticipated to occur with Alternative A.

There are more than enough vacant homes to support potential impacts to the regional labor market under Alternative A. As such, the development of Alternative A would not stimulate

regional housing development and a significant adverse growth-inducing impact to the housing market would not occur.

Indirect and growth-inducing impacts would be less than significant.

5.1.14 Cumulative Effects

The development of Alternative A, when added to past, present, and reasonably foreseeable future actions, would not result in significant cumulative impacts to geology and soils, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, land use, water supply, wastewater, solid waste, electricity, natural gas, telecommunications, or hazardous materials.

Geology and Soils – Local permitting requirements for construction would address regional geotechnical and topographic conflicts, seismic hazards, and resource extraction availability. Approved developments would be required to follow applicable local permitting procedures. In addition, Alternative A and all other developments that disturb 1 acre or more must comply with the requirements of the NPDES Construction General Permit that requires that various strategies be implemented to address water quality degradation by preventing erosion, as outlined in **Section 6.1**. Therefore, implementation of Alternative A would not result in significant cumulative effects to geology or soils.

Water Quality (Stormwater) – Proposed development projects would include erosion control measures in compliance with the NPDES Permit Program and EGLE regulations. In addition, Alternative A would treat all stormwater onsite, consistent with current conditions, and would therefore not contribute to non-point source pollution. Therefore, implementation of Alternative A would not result in significant cumulative effects to stormwater.

Water Quality (Groundwater) – Under Water Supply Option 2, Alternative A would install on-site wells for necessary water supply. This option would not result in cumulative effects on groundwater supply in the area with the addition of future developments due to the high static water levels in the area and the lack of significant existing or planned groundwater use in the area by others.

Under Wastewater Treatment Option 1, wastewater generated by Alternative A would be collected by the Township wastewater collection system and treated by the MCWMS. The system would continue to operate in accordance with its NPDES Permit (Permit No. MI0027391) issued by EGLE. Therefore, the impact to groundwater quality from wastewater under Wastewater Treatment Option 1 would be less than significant. Under Wastewater Treatment Option 2, wastewater generated by Alternative A would be treated onsite in a packaged wastewater treatment system. On-site disposal would be accomplished through an approximately 100,000-sq. ft. leach field that would allow treated wastewater to percolate into the soil. Treated wastewater would be further filtered through the soil and would not degrade groundwater quality. Therefore, Alternative A Wastewater Treatment Option 2 would not have significant adverse cumulative effects on groundwater quality.

Air Quality - The Muskegon Property and vicinity is in attainment for all CAPs, therefore, air quality in the region would not be cumulatively impacted. Additionally, BMPs provided in Section 2.3.1 of the Final EIS would minimize CAP emissions from operation of Alternative A. Alternative A would not contribute to a significant cumulative effect to air quality in the year 2040. In addition, the project area is not sensitive to the adverse impacts associated with climate change. Furthermore, reasonable BMPs have been identified in Final EIS Section 2.3.1 to reduce greenhouse gas emissions.

Biological Resources - The Muskegon Property does not contain sensitive habitats. Implementation of the mitigation measure described in **Section 6.4** below and Section 5.5 of the Final EIS would reduce cumulative impacts on federally listed species or migratory birds to less-than-significant levels.

Transportation – Development of Alternative A, in combination with anticipated growth, would result in increased traffic flow, congestion, and a number of intersections and roadway segments that do not meet minimum LOS levels. Such effects would be reduced to less-than-significant levels through fair share contributions and other mitigation for direct project impacts described in **Section 6.7** below and Section 5.0 of the Final EIS.

Law Enforcement, Fire Protection, and Emergency Medical Services – The Fruitport Police Department (FPD) would provide law enforcement services for Alternative A and cumulative development in the Township. New development in the Township would receive fire protection and emergency medical services from the Fruitport Fire Department (FPFD). Future development and buildout of the Township would result in increased demands on both the FPD and FPFD. With implementation of the conditions of the MSA, as discussed in **Section 6.9** below and Section 5.0 of the Final EIS, development of Alternative A would not result in significant cumulative effects on law enforcement, fire protection, or emergency medical services.

Impacts from Cumulative Effects would be less than significant.

5.1.15 Unavoidable Adverse Effects

All potential adverse effects can be mitigated with measures outlined in **Section 6.0** of this ROD.

5.2 COMMENTS ON THE FINAL EIS AND RESPONSES

The BIA received 437 written comments from cooperating agencies, interested parties, and individuals on the Final EIS, during the 30-day waiting period following the publication of the USEPA Notice of Availability of the Final EIS on October 30, 2020. The vast majority of the comments were supportive of the conclusions of the Final EIS, citing positive economic benefits and new employment opportunities that would result from the Proposed Actions. Eight commenters opposed the Proposed Actions, as discussed further below.

Several comments from officials in the City of Wayland and Allegan County stated that operation of the Preferred Alternative would result in detrimental economic impacts to the existing Gun Lake Casino in Wayland, Michigan, owned by the Match-e-be-nash-she-wish Band of Pottawatomis Indians of Michigan. The comments alleged that operation of the Preferred Alternative would capture at least 30 percent of the gaming revenue of the Gun Lake Casino resulting in reduced revenue sharing with the community. The comments stated that this would negatively impact local governmental programs and schools by potential loss of funding support.

As addressed in General Response 3.1.3 of the Final EIS, Volume I, the economic analysis in Section 4.7.2.1 of the Final EIS estimated that the Preferred Alternative will result in a less than 21 percent reduction in that portion of the gaming revenues of the Gun Lake Casino that lies within a 120-minute drive time of Muskegon. The Gun Lake Casino would retain its location advantage as the closest casino to Grand Rapids, which is the second largest population base in Michigan. Although the Gun Lake Casino and other competing facilities are projected to experience a decrease in revenue, properly managed facilities should have the ability to absorb the impacts and remain operational. Further, substitution effects typically lessen over time due to economic growth and because patrons will have experienced the new casino and will adjust their spending habits following the first year of the opening of a new gaming venue. Although the substitution effects resulting from the Preferred Alternative will likely cause the revenues of the Gun Lake Casino to decline in the year the Preferred Alternative begins operations, it would not cause its closure. Therefore, under the Preferred Alternative, the Gun Lake Casino would continue to operate and generate profit that would be used to provide services to the membership of the Match-e-be-nash-she-wish Band of Pottawatomis Indians of Michigan and continue to benefit the surrounding community. We note that IGRA does not guarantee that tribes operating existing facilities will conduct gaming free from tribal and non-tribal competition.¹ Nor is competition in and of itself sufficient to conclude a detrimental impact on a tribe.²

Additional comments stated that the Preferred Alternative would result in detrimental socioeconomic impacts on the community in the form of increased problem gambling, addictive behavior, and related negative outcomes. As addressed in General Response 3.1.5 of the Final EIS, Volume I, the Final EIS fully analyzed both positive and negative socioeconomic effects, including problem gambling. The potential impacts associated with an increase in problem gambling as a result of the Proposed Project were determined to be less than significant, because the Municipal Services Agreement between the Tribe, Township, and Muskegon County includes recurring contributions to mitigate the impacts of problem gambling and to provide mental health services to the community.

Some comments raised concerns regarding the current status of the Tribe's Tribal-State Gaming Compact with the State of Michigan. As addressed in General Response 3.1.2 of the Final EIS, Volume I, the Secretary will use the information and analysis in the EIS to determine whether to transfer the 60 acres into trust under Section 5 of the Indian

¹ See *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 947 (7th Cir. 2000).

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

Reorganization Act, 25 U.S.C. § 5108, and to prepare the Secretarial Determination that will determine whether the Tribe is eligible to conduct gaming activities on the trust parcel under Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(A). The EIS will provide the Secretary with information on the potential physical environmental effects of the proposed federal actions that must be considered under the Department's trust land acquisition regulations at 25 C.F.R. Part 151, and the Secretarial Determination regulations at 25 C.F.R. Part 292, Subsection C. Tribal-state compacts are governed by Section 2710(d) of IGRA and considered under the Department's compact regulations at 25 C.F.R. Part 293. Neither IGRA nor the Department's compact regulations require preparation of an EIS when evaluating compact terms. Accordingly, consideration of the Compact's terms are outside the scope of this EIS.

The BIA reviewed and considered all comment letters on the Final EIS during the decision-making process for the Proposed Actions. The comment letters received on the Final EIS are included in **Attachment II** to this ROD.

6.0 MITIGATION MEASURES

All practicable means to avoid or minimize significant environmental impacts from the Preferred Alternative have been identified and adopted. The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures would be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this ROD. Specific BMPs and mitigation measures adopted pursuant to this decision are set forth below and included within the Mitigation Monitoring and Enforcement Plan (**Attachment III** of this ROD).

6.1 GEOLOGY AND SOILS

The following mitigation measure shall be implemented for the Preferred Alternative in accordance with federal regulatory requirements.

- A. The Tribe shall obtain coverage under the USEPA NPDES General Construction Permit under the federal requirements of the federal CWA. As required by the NPDES General Construction Permit, a SWPPP shall be prepared that addresses potential water quality impacts associated with construction and operation of the Preferred Alternative. As required by the NPDES General Construction Permit, the SWPPP shall include provisions for erosion prevention and sediment control and control of other potential pollutants by describing construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport. BMPs shall be inspected, maintained, and repaired to ensure continued performance of their intended function. Reports summarizing the scope of these inspections, the personnel conducting the inspection, the dates of the inspections, major observations relating to the implementation of the SWPPP, and actions taken as a result of these inspections shall be prepared and retained as part of the SWPPP.

B. To minimize the potential for erosion to occur onsite, the following items shall be addressed in the SWPPP and implemented pursuant to the NPDES General Construction Permit.

- 1. Prior to land-disturbing activities, the clearing and grading limits shall be marked clearly, both in the field and on the plans, by using construction fences or creating buffer zones.**
- 2. Stripped areas shall be stabilized through temporary seeding using dryland grasses.**
- 3. Conveyance channels and severe erosion channels shall be mulched or matted to prevent excessive erosion.**
- 4. Exposed stockpiled soils shall be covered with plastic covering to prevent wind and rain erosion.**
- 5. The construction entrance shall be stabilized by the use of rip-rap, crushed gravel, or other such material to prevent the track-out of dirt and mud.**
- 6. Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or rip-rap.**
- 7. Filter fences shall be erected at all on-site stormwater exit points and along the edge of graded areas to stabilize non-graded areas and control siltation of on-site stormwater.**
- 8. Dust suppression measures shall be implemented to control the production of fugitive dust and prevent wind erosion of bare and stockpiled soils.**
- 9. Haul roads and staging areas shall be developed to control impacts to on-site soil. All access points, haul roads, and staging areas shall be stabilized with crushed rock. Any sediment shall be removed daily and the road structure maintained.**
- 10. Concentrated flows create high potential for erosion; therefore, any slopes shall be protected from concentration flow by using gradient terraces, interceptor dikes, and swales, and by installing pipe slope drains or level spreaders. Inlets shall be protected to provide an initial filtering of stormwater runoff; however, any sediment buildup shall be removed so the inlet does not become blocked.**
- 11. The SWPPP shall address maintenance and repair of heavy equipment on-site to remove the potential for pollution from oil, fuel, hydraulic fluid, or any other potential pollutant.**
- 12. Staging areas and haul roads shall be constructed to minimize future over-excavation of deteriorated sub-grade soil.**
- 13. Temporary erosion control measures (such as silt fence, gravel filter berms, straw wattles, sediment/grease traps, mulching of disturbed soil, construction stormwater chemical treatment, and construction stormwater filtration) shall be employed for disturbed areas.**
- 14. Exposed and unworked soils shall be stabilized by the application of effective BMPs. These include, but are not limited to, temporary or permanent seeding, mulching, nets and blankets, plastic covering, sodding, and gradient terraces.**
- 15. The SWPPP shall address the maintenance of both temporary and permanent erosion and sediment control BMPs.**

6.2 WATER RESOURCES

As described above in Mitigation Measure 6.1 (A), in accordance with federal regulatory requirements for the Preferred Alternative, coverage under the NPDES General Construction Permit shall be obtained from the USEPA and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined in Mitigation Measure 6.1 (A).

6.3 AIR QUALITY

The BMPs described in Final EIS Section 2.3.1 would minimize potential effects to air quality resulting from construction and operation of the project alternatives; therefore, no mitigation would be required.

6.4 BIOLOGICAL RESOURCES

The following mitigation measures shall be implemented in accordance with federal regulatory requirements of the Migratory Bird Treaty Act (MBTA) and Endangered Species Act for the Preferred Alternative.

- A. If construction-related activities such as tree removal or grubbing of vegetation occur during the nesting bird season (between March 15 and August 31), a qualified biologist shall conduct a pre-construction survey within the site for active nests for bird species protected under the MBTA. The pre-construction survey shall be conducted within seven days prior to commencement of construction activities. If surveys show that there is no evidence of nests, then no additional mitigation would be required so long as construction activities commence within seven days following the survey. If active nests are identified, appropriate, species-specific buffer zones shall be established around the nests. Buffer zones are species dependent, and generally range from 100 to 500 feet from the nest site. The biologist should delimit the buffer zone with construction tape or pin flags and maintain the buffer zone until the end of breeding season or until the young have fledged. Guidance from the United States Fish and Wildlife Service (USFWS) would be requested if establishment of a buffer zone is impractical. A qualified biologist should monitor nests weekly during construction to evaluate potential nesting disturbance by construction activities. The tree shall not be removed until the biologist determines that the nestlings have successfully fledged. If tree removal or grubbing of vegetation occurs outside of the nesting bird season, a nesting bird survey would not be required and no further mitigation would be required.
- B. To avoid potential adverse effects to the eastern massasauga rattlesnake, a qualified biologist shall conduct two pre-construction surveys within all suitable habitats of the site. The surveys shall be conducted in accordance with the USFWS-accepted protocol for eastern massasauga. If the eastern massasauga is not found during the pre-construction surveys, no further mitigation would be required. If eastern massasauga is observed within the site, additional mitigation measures would be implemented.

Additional mitigation measures could include the following.

1. Relocation of eastern massasauga to suitable habitat in the vicinity of the site
 2. Installation of exclusion fencing around construction areas prior to eastern massasauga den emergence
 3. Environmental awareness training for construction personnel
- C. The following mitigation measure shall be implemented in accordance with federal regulatory requirements of the Endangered Species Act for the Preferred Alternative.
- D. To avoid potential adverse effects to the northern long-eared bat and the Indiana bat, demolition of unoccupied structures on the Muskegon Property shall occur between November 1 and March 1, which is well outside of the summer roosting seasons of both species: April 1 to September 30 for the northern long-eared bat and April 1 to October 15 for the Indiana bat.
- E. The following mitigation measure shall be implemented in accordance with the Clean Water Act (CWA) requirements for the Preferred Alternative.
- F. A formal delineation and verification of wetlands and other Waters of the U.S. shall occur if construction-related activities have the potential to affect aquatic resources on the site. If less than 0.5 acres of potential wetlands would be disturbed, project activities may fall under an existing nationwide permit. However, impacts to wetlands would likely require a USEPA 401 water quality certification, a USACE 404 permit before wetland impacts occur, and mitigation for disturbance. All project activities, including off-site improvements areas, shall comply with these permits, should they be necessary.

6.5 CULTURAL AND PALEONTOLOGICAL RESOURCES

The following mitigation measures shall be implemented in accordance with federal regulatory requirements of the National Historic Preservation Act (NHPA), Native American Graves Protection and Repatriation Act (NAGPRA), and Archaeological Resources Protection Act (ARPA) for the Preferred Alternative.

- A. In the event of any inadvertent discovery of prehistoric or historic archaeological resources or paleontological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the NHPA as amended (36 C.F.R. § 800). Specifically, procedures for post-review discoveries without prior planning pursuant to 36 C.F.R. § 800.13 shall be followed, including re-consulting with the State Historic Preservation Officer and the nearby community and identifying reasonable and prudent measures to avoid, minimize, or mitigate adverse effects to such discoveries.
- B. If human remains are discovered during ground-disturbing activities on tribal lands, if applicable, the finds shall be subject to the requirements of NAGPRA and/or ARPA.

- C. In the event of accidental discovery of paleontological materials during ground-disturbing activities, a qualified paleontologist shall be contacted to evaluate the significance of the find and collect the materials for curation as appropriate.

6.6 SOCIOECONOMIC CONDITIONS

The following mitigation measure shall be implemented pursuant to Section 3.2(b)(ii) of the MSA (Appendix B of the Final EIS) for the Preferred Alternative.

- A. The Tribe shall fund an annual grant in the amount of \$25,000.00, to the Muskegon County Community Mental Health Department for training purposes only. This training will include any certification necessary, as well as in-service training necessary for the department's psychologists and social workers to obtain the necessary expertise to respond to problems that may arise as a result of gambling addictions.

6.7 TRANSPORTATION/CIRCULATION

6.7.1 Construction

To comply with federal, state, and local policies related to traffic operations (40 C.F.R. § 1508.27(b)(10)), the following mitigation measure shall be implemented in accordance with the regulatory requirements of the applicable jurisdictional agency for the Preferred Alternative.

- A. A traffic control plan shall be prepared to identify where construction routes are proposed, and other standards set forth in the FHWA *Manual on Uniform Traffic Control Devices for Streets and Highways*. The Traffic Management Plan (TMP) shall be submitted to MDOT and Muskegon County for approval.

6.7.2 Operation

To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 C.F.R. 1508.27(b)(10)), the following mitigation measures have been identified within the Updated TIS (Final EIS Appendix T) for the project alternatives. The Tribe is committed to fair share contributions for operational mitigation provided in the measures below, that shall be based on the proportion of traffic in future years that is introduced by the project alternatives, calculated as a percentage of total estimated future traffic flows. The fair share contributions ultimately paid by the Tribe shall be determined in consultation with the appropriate jurisdiction (e.g., MDOT, Muskegon County, Mason County, and/or the West Michigan Metropolitan Transportation Planning Program Metropolitan Planning Organization). The construction of recommended roadway improvements shall be at the discretion of the respective jurisdictions that are responsible for the design, permitting, and timing of roadway improvements based on their established planning processes.

B. Prior to operation of the Preferred Alternative, the Tribe shall implement and/or pay a fair share contribution towards the following improvements.

1. At the intersection of Airline Highway and Airport Road (#1), add permissive-protected left turn phasing to the NB and SB approaches and upgrade the existing diagonal span pre-timed signal to a fully actuated box span signal.
2. At the intersection of Harvey Street and Independence Drive (#6), restripe to provide a shared left/through lane and an exclusive right turn lane on the WB approach along with the addition of the associated right turn overlap phase for the eastbound (EB) and WB approaches.
3. At the intersection of Harvey Street and Sternberg Road (#7), construct a right turn lane on the WB approach; restripe the WB and SB approaches to provide dual left turn lanes; modify the signal phasing to run lead-lag for opposing left turn movements due to conflicting vehicular paths; and add right turn overlap phasing for the EB and WB approaches.
4. At the intersection of Harvey Street and Pontaluna Road (#10), construct a right turn lane on the SB approach and add an associated right turn overlap phase.
5. At the intersection of Hile Road and the EB I-96 Ramps (#18), install a traffic signal; optimize and coordinate the signal with the signal at the intersection of Harvey Street and Airline Highway; and construct a WB left turn lane along Hile Road with 50 feet of storage.
6. At the intersection of Hile Road and the NB U.S. Highway 31 (US-31) Off-Ramp (#19), relocate the off-ramp approximately 200 feet to the west along Hile Road.
7. At the intersection of EB Sternberg Road with the NB US-31 Off-Ramp (#20), install a traffic signal; optimize and coordinate the signal with the signal at the intersection of Harvey Street and NB US-31; and construct dual right turn lanes on the NB US-31 off-ramp approach.
8. At the intersection of Airline Highway and the WB I-96 Off-Ramp (#15), install a traffic signal with split phasing for the ramp approach; coordinate the signal with the signal at the intersection of Airline Highway and US-31 ramps; and construct a right turn lane on the off-ramp approach with 150 feet of storage.
9. At the intersection of Airline Highway and the SB US-31 Ramps (#16), install a traffic signal with split phasing for the ramp approach; coordinate the signal with the signal at the intersection of Airline Highway and the WB I-96 off-ramp; construct a right turn lane on the off-ramp approach with 175 feet of storage; construct a WB left turn lane with 50 feet of storage; remove the existing channelizing island at the SB US-31 ramps; and construct an EB right turn lane along Airline Highway between the SB US-31 ramps and WB I-96 off ramp.
10. At the intersection of Harvey Street and Hile Road (#3), stripe the NB approach to provide an exclusive left turn lane, shared through/right turn lane, and exclusive right turn lane; and install signage along the NB approach indicating that EB I-96 traffic should use the outer right turn lane and EB Hile

Road traffic should use the inner right turn lane. Restripe the existing WB shared through/right turn lane to provide a shared left/through/right turn lane; modify signal operations to run EB and WB approaches as split phases; and upgrade the existing diagonal span signal to a fully actuated box span signal with right turn overlap phasing provided for the NB approach.

11. Install a traffic signal at the intersection of Harvey Street and the proposed site driveway (#29) with permissive-protected left turn phasing for the SB left turn movement into the Muskegon Property.

- C. The following mitigation measures are recommended for the Preferred Alternative.
- D. The Tribe shall seek to enter into an agreement with MATS for transit services to the Muskegon Property, in order to optimize bus routes and timing. If requested by MATS, the Tribe shall construct a bus stop and shelter on the Muskegon Property.
- E. The Tribe shall seek to enter into a Memorandum of Understanding (MOU) with MDOT to address short-term transportation issues, recommended roadway improvements, and longer term areas to monitor for possible future actions as needed. The MOU should address the following items.
 1. Review and agreement on the priority transportation issue locations
 2. Review and agreement on the recommended roadway improvement options at each location
 3. Determination of the cost participation responsibility for each party
 4. Schedules for the improvements, based on impacts and funding available from all affected parties
 5. Longer term transportation issues to be monitored by the Tribe and MDOT for possible future action
 6. An ongoing consultation process between the Tribe and MDOT staff, to review transportation and related issues discovered once the casino is open and operating

6.8 LAND USE

Impacts related to land use include air quality and noise effects, congestion of local roads, and alterations to visual resources. Therefore, design features and BMPs presented in Final EIS Section 2.3.1 as well as mitigation measures in other sections of this ROD would reduce adverse impacts regarding land use compatibility.

6.9 PUBLIC SERVICES

The following provisions of the MSA are applicable to the Preferred Alternative and would avoid, minimize, or mitigate adverse effects associated with public services.

- A. Pursuant to Section 2.3(c) and Section 2.4(c) of the MSA, the Tribe shall pay water and wastewater capital connection charges and monthly service fees in the same

manner as usual and customary for all other users of the municipal public water system.

- B. Pursuant to Section 2.3(b) of the MSA, the Tribe shall fund the upgrade of the Township municipal wastewater system to the Muskegon Property.
- C. Pursuant to Section 3.1 of the MSA, the Tribe shall make the following non-recurring contributions to the Township.
 - 1. The Tribe shall contribute \$200,000.00 to the Township in recognition of the expenses the Township would incur to properly equip its police department and its fire department to respond to emergencies at or resulting from the Proposed Project. This shall occur in three annual installments of \$66,666.66, with the first such installment due and payable no later than 60 days after the Commencement Date (the first day the Gaming Facility is open to the public), the second installment due and payable on the first anniversary of the Commencement Date, and the third installment due and payable on the third anniversary of the Commencement Date.
 - 2. The Tribe shall pay the full cost of on-site water main improvements that shall be constructed by either the Township or the Tribe. The improvements shall be constructed according to Township standards and requirements and be subject to the approval of the Township.
- D. Pursuant to Section 3.2 of the MSA, the Tribe shall make the following recurring contributions to the Township.
 - 1. The Tribe shall make annual payments to the Township to cover the added personnel, training, and equipment to maintain necessary police and fire service levels.
 - 2. The Tribe shall pay incident-dependent fees, pursuant to Section 3.2 of the MSA, as related to arrests of individuals due to development of the Proposed Project.
 - 3. The Tribe shall pay a per day charge to the County for the actual use of beds in the County Jail for the use of all prisoners arrested by the Tribe or the Township, pursuant to Section 3.2 of the MSA.
- E. The following mitigation measure is applicable to the Preferred Alternative, per Section 2.4 of the MSA, and would mitigate adverse effects associated with water supply infrastructure:
 - 1. The Tribe shall either construct or offer to pay the full actual cost for the Township to construct a new 12-inch diameter water main to replace the existing 8-inch water main along East Ellis Road adjacent to the Muskegon Property, between Harvey Street and Quarterline Road.

6.10 NOISE

The BMPs described in Final EIS Section 2.3.1 would minimize potential effects to noise resulting from construction of the Preferred Alternative; therefore, no mitigation would be required.

6.11 HAZARDOUS MATERIALS

The BMPs described in Final EIS Section 2.3.1 would minimize potential effects to hazardous materials resulting from construction and operation of the Preferred Alternative; therefore, no mitigation would be required.

6.12 AESTHETICS

The BMPs described in Final Section 2.3.1 would minimize potential effects to aesthetics resulting from lighting and glare from the Preferred Alternative; therefore, no mitigation would be required.

6.13 MITIGATION MEASURES THAT ARE NOT ADOPTED

Council on Environmental Quality NEPA regulations (40 C.F.R. § 1505.2(c)) call for identification in the ROD of any mitigation measures specifically mentioned in the Final EIS that are not adopted. Because Alternative A has been selected by the BIA in this ROD, mitigation measures for other alternatives in the Final EIS are not adopted.

7.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE

The Department has determined that it will implement the Proposed Actions as identified within the Preferred Alternative (Alternative A) which includes the issuance of a Secretarial Determination, the acquisition of the Proposed Site in trust, and the subsequent development of a casino resort. This decision has been made based upon the environmental impacts identified in the EIS, a consideration of economic and technical factors, as well as the policy goals and objectives of the BIA and the purpose and need for the project.

Of the alternatives evaluated in the EIS, Alternative A would best meet the purpose and need to promote the long-term economic vitality and self-sufficiency, self-determination, and self-governance of the Tribe. The construction of a casino resort and other supporting facilities on the Muskegon Property would provide the Tribe the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government. This would enable the tribal government to establish, fund, and maintain governmental programs that offer a wide range of health, housing, education, and welfare services to Tribal members, as well as provide the Tribe, its members, and local communities with greater opportunities for employment and economic growth.

The development of Alternative A would meet the purpose and need of the Proposed Actions better than the other development alternatives due to the reduced revenues that would be expected from the operation of Alternatives B, C and D (described in Section 2.9 of the Final EIS). While Alternative A would have greater environmental impacts than the No Action Alternative, the No Action Alternative does not meet the purpose and need for the Proposed Actions, and the BMPs and mitigation measures adopted in this ROD adequately address the environmental impacts of the Preferred Alternative. Accordingly, the Department will implement Alternative A subject to the implementation of the applicable BMPs and mitigation measures listed in **Section 6.0** and **Attachment III** of this ROD.

7.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS

The Preferred Alternative is reasonably expected to result in beneficial effects for the Tribe and its members, and residents of Muskegon County and Fruitport Township. Key beneficial effects include the following.

- Establishment of a land base for the Tribe to establish a viable business enterprise. Revenues from the operation of the casino resort would provide funding for a variety of health, housing, education, social, cultural, and other programs and services for tribal members, and provide employment opportunities for its members.
- Revenue generated from the development would also provide capital for other economic development opportunities, and would allow the Tribe to achieve tribal self-sufficiency, self-determination, and a strong, stable tribal government.
- Generation of approximately 1,763 employment positions within Muskegon County during the construction period, with total wages of \$74.7 million.
- Generation of approximately 1,624 employment positions within Muskegon County, including estimated indirect and induced employment opportunities of 150 and 273, respectively. Operational activities associated with Alternative A would generate annual wages of approximately \$67.5 million in Muskegon County. Direct wages are estimated to total approximately \$52.6 million. Indirect and induced wages are estimated to total \$5.2 million and \$9.7 million, respectively.
- State, county, and local taxes of approximately \$15.6 million per year would result from operating activities, after adjusting for the elimination of the property taxes on the Muskegon Property once it is taken into trust. This amount includes payments that would be made pursuant to the MSA.

7.2 REDUCED INTENSITY ALTERNATIVE RESTRICTS BENEFICIAL EFFECTS

The Reduced Intensity Alternative (Alternative B) would generate less revenue than the Preferred Alternative. As a result, this Alternative would restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency.

7.3 NON-GAMING AT THE MUSKEGON PROPERTY RESTRICTS BENEFICIAL EFFECTS TO THE TRIBE AND SURROUNDING COMMUNITY

The non-gaming alternative (Alternative C) would result in less employment and economic growth for both the Tribe and neighboring communities than the Preferred Alternative. As a result, it would restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. The reduced economic and related benefits of Alternative C make it a less viable option, which would fulfill the purpose and need of the Proposed Actions to a lesser extent than the Preferred Alternative.

7.4 ALTERNATIVE D RESTRICTS BENEFICIAL EFFECTS AND CREATES A MARKET OVERLAP

The Custer Site alternative (Alternative D) would generate far less revenue than the Preferred Alternative due to the smaller development scale; the location would also result in market overlap with the Tribe's existing facility. Additionally, as the Custer Site is not currently served by water or wastewater services, extensive development would be required to serve the proposed casino facility. Furthermore, Alternative D would result in significant adverse and unavoidable effects associated with traffic noise levels for sensitive receptors located along East First Street.

7.5 NO ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED

The No Action Alternative (Alternative E) would not meet the stated purpose and need. Specifically, it would not provide a stable income source that would enable the tribal government to provide essential social, housing, educational, health, and welfare programs. Therefore, the No Action Alternative would not promote the economic development and self-sufficiency of the Tribe. The No Action Alternative also would likely result in substantially less economic benefits to Muskegon County and Fruitport Township than any of the development alternatives.

8.0 SIGNATURE

By my signature, I indicate my decision to implement Alternative A as the Preferred Alternative, and implement the Proposed Action of issuing a Secretarial Determination pursuant to the Indian Gaming Regulatory Act. A decision whether to implement the Proposed Action of acquiring the Proposed Site in trust pursuant to the Indian Reorganization Act will be made after the Governor determines whether she will concur with the Secretarial Determination as required by IGRA, 25 U.S.C. § 2719 (b)(1)(A).



Tara Sweeney
Assistant Secretary – Indian Affairs

DEC 16 2020

Date