

ATTACHMENT III

MITIGATION MONITORING AND ENFORCEMENT PLAN

LITTLE RIVER BAND OF OTTAWA INDIANS, MICHIGAN TRUST ACQUISITION AND CASINO PROJECT

MITIGATION MONITORING AND ENFORCEMENT PLAN

Mitigation Monitoring Overview

This Mitigation Monitoring and Enforcement Plan (MMEP) has been developed to guide mitigation compliance before, during, and after implementation of the Bureau of Indian Affairs' (BIA) Preferred Alternative. The mitigation measures described below in **Table 1** were developed through the analysis of potential impacts within the Final Environmental Impact Statement (EIS). As specified in **Table 1**, the compliance monitoring and evaluation would be performed by the Little River Band of Ottawa Indians, Michigan (Tribe), Fruitport Township (Township), Muskegon County (County), Michigan Department of Transportation (MDOT), the BIA, the U.S. Fish & Wildlife Service (USFWS), and the U.S. Environmental Protection Agency (USEPA) as indicated in the description of each measure. The MMEP provides:

- requirements for compliance of the mitigation measures specifically created to mitigate impacts;
- a list of responsible parties; and
- timing of mitigation measure implementation.

A Municipal Services Agreement (MSA) was executed on March 23, 2012, by and between the Township, the County, and the Tribe (Appendix B of the Draft EIS). The MSA describes the payments, both non-reoccurring and reoccurring, 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 mitigating any impacts that the project may have on the Township and County, which are included in the mitigation measures below.

Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as the Record of Decision (ROD).

Note that the Preferred Alternative includes numerous Best Management Practices (BMPs) that are to be incorporated into the design and construction of the Preferred Alternative. Although not listed in this MMEP, these BMPs shall be included in the Preferred Alternative. Please see Final EIS, Volume II, Section 2.3.1 for a list of BMPs.

TABLE 1
MITIGATION MONITORING AND ENFORCEMENT PLAN

Mitigation Measure	Responsible for Monitoring and/or Reporting	Timing of Implementation	Verification (Date and Initials)
1. Geology and Soils			
<p>The following mitigation measure shall be implemented for the Preferred Alternative in accordance with federal regulatory requirements.</p> <p>A. The Tribe shall obtain coverage under the USEPA National Pollutant Discharge Elimination System (NPDES) General Construction Permit Program under the requirements of the federal Clean Water Act (CWA). As required by the NPDES General Construction Permit Program, a Stormwater Pollution Prevention Plan (SWPPP) shall be prepared that addresses potential water quality impacts associated with construction and operation of the Preferred Alternative. 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 shall be implemented to prevent erosion and minimize sediment transport. BMPs shall be inspected, maintained, and repaired to assure 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. 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 Program.</p> <ol style="list-style-type: none"> 1. Prior to land-disturbing activities, the clearing and grading limits shall be marked clearly, both in the field and on the plans, using construction fences or by 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. 	Tribe/USEPA	Planning Phase Construction Phase	

<ol style="list-style-type: none"> 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 stabilized 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 onsite 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. 			
<p>2. Water Resources</p>			
<p>As described above in Mitigation Measure 1 (A), in accordance with federal regulatory requirements for the Preferred Alternative, coverage under the NPDES General Construction Permit Program 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 1 (A).</p>	<p>Tribe</p>	<p>Planning Phase Construction Phase Operation Phase</p>	

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.			
4. Biological Resources			
The following mitigation measures shall be implemented in accordance with federal regulatory requirements (Migratory Bird Treaty Act [MBTA] and Endangered Species Act) for the Preferred Alternative.			
<p>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 the young have fledged. Guidance from the USFWS should be requested if establishing 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.</p>	Tribe/USFWS	Planning Phase Construction Phase	
<p>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 may include the following.</p> <ol style="list-style-type: none"> 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 	Tribe/USFWS	Planning Phase Construction Phase	

<p>3. Environmental awareness training for construction personnel</p>			
<p>The following mitigation measure shall be implemented in accordance with federal regulatory requirements (Endangered Species Act) for the Preferred Alternative. C. To avoid potential adverse effects to the northern long-eared bat and the Indiana bat, demolition of unoccupied structures on the Muskegon Site shall occur between November 1 and March 1, 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).</p>	<p>Tribe</p>	<p>Planning Phase Construction Phase</p>	
<p>The following mitigation measure shall be implemented in accordance with the CWA requirements for the Preferred Alternative. D. 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 onsite. If less than 0.5 acres of potential wetlands would be disturbed, project activities could fall under an existing nationwide permit. However, impacts to wetlands would likely require a USEPA 401 water quality certification and a U.S. Army Corps of Engineers 404 permit before wetland impacts occur, and would likely require mitigation for disturbance. All project activities, including off-site improvements areas, shall comply with these permits, should they be necessary.</p>	<p>Tribe/USEPA</p>	<p>Planning Phase Construction Phase</p>	
<p>5. Cultural and Paleontological Resources</p>			
<p>The following mitigation measures shall be implemented in accordance with federal regulatory requirements (National Historic Preservation Act [NHPA], Native American Graves Protection and Repatriation Act [NAGPRA], and Archaeological Resources Protection Act [ARPA]) for the Preferred Alternative.</p>			
<p>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 CFR § 800). Specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 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.</p>	<p>Tribe/BIA</p>	<p>Construction Phase</p>	
<p>B. If human remains are discovered during ground-disturbing activities on tribal lands, the finds shall be subject to the requirements of the NAGPRA and/or ARPA, as applicable.</p>	<p>Tribe/BIA/County</p>	<p>Construction Phase</p>	
<p>C. In the event of accidental discovery of paleontological materials during ground-disturbing activities, a qualified professional paleontologist shall be contacted to evaluate the significance of the find and collect the materials for curation as appropriate.</p>	<p>Tribe/BIA</p>	<p>Construction Phase</p>	

6. Socioeconomics			
The following mitigation measure shall be implemented pursuant to Section 3.2(b)(ii) 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, in order to obtain the necessary expertise to respond to problems that may arise as a result of gambling addictions.	Tribe	Operation Phase	
7. Transportation			
Construction			
To comply with federal, state, and local policies related to traffic operations (40 CFR 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 Federal Highway Administration <i>Manual on Uniform Traffic Control Devices for Streets and Highways</i> . The Traffic Management Plan shall be submitted to MDOT and the County for approval.	Tribe/County/MDOT	Planning Phase	
Operation			
To prevent violation of federal, state, and local policies related to traffic operations imposed for the protection of the environment (40 CFR 1508.27[b][10]), the following mitigation measures have been identified within the Updated Traffic Impact Study for the project alternatives (Final EIS Appendix T). 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 estimate 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 northbound (NB) and southbound (SB)	Tribe, MDOT, Muskegon County, Mason County,	Planning Phase Construction Phase	

<p>approaches and upgrade the existing diagonal span pre-timed signal to a fully actuated box span signal.</p> <ol style="list-style-type: none"> 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 westbound (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 Interstate 96 (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 	<p>and/or WESTPLAN as necessary</p>		
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<p>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.</p> <p>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 Site.</p>			
<p>C. The Tribe shall seek to enter into an agreement with Muskegon Area Transit System (MATS) for transit services to the Muskegon Site, in order to optimize bus routes and timing. If requested by MATS, the Tribe shall construct a bus stop and shelter on the Muskegon Site.</p>	<p>Tribe and MATS</p>	<p>Planning Phase Construction Phase</p>	
<p>D. 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.</p> <ol style="list-style-type: none"> 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 	<p>Tribe/MDOT</p>	<p>Planning Phase Construction Phase Operation Phase</p>	
<p>8. Land Use</p>			
<p>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 MMEP would reduce adverse impacts regarding land use compatibility. See BMPs listed in Final EIS Section 2.3.1.</p>			
<p>9. Public Services</p>			
<p>The following provisions of the MSA are applicable to the Preferred Alternative and would avoid, minimize, or mitigate adverse effects associated with public services.</p>			

<p>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.</p>	<p>Tribe/Township</p>	<p>Construction Phase Operation Phase</p>	
<p>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 Site.</p>	<p>Tribe/Township</p>	<p>Construction Phase Operation Phase</p>	
<p>C. Pursuant to Section 3.1 of the MSA, the Tribe shall make the following non-recurring contributions to the Township.</p> <ol style="list-style-type: none"> 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 the Township standards and requirements and be subject to the approval of the Township. 	<p>Tribe/Township</p>	<p>Operation Phase</p>	
<p>D. Pursuant to Section 3.2 of the MSA, the Tribe shall make the following recurring contributions to the Township:</p> <ol style="list-style-type: none"> 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 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. 	<p>Tribe/Township</p>	<p>Operation Phase</p>	
<p>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.</p> <p>E. 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 Site, between Harvey Street and Quarterline Road.</p>	<p>Tribe/Township</p>	<p>Construction Phase Operation Phase</p>	

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. See BMPs listed in Final EIS Section 2.3.1.
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. See BMPs listed in Final EIS Section 2.3.1.
6.12 Aesthetics
The BMPs described in Final Section 2.3.1 would minimize potential effects to aesthetics resulting from lighting and glare of the Preferred Alternative. See BMPs listed in Final EIS Section 2.3.1.