

Record of Decision

**Trust Acquisition of 165.81± Acres in the City of South Bend, Indiana, for the Pokagon
Band of Potawatomi Indians, Michigan and Indiana**

**U.S. Department of the Interior
Bureau of Indian Affairs
November 2016**

U.S. Department of the Interior

Agency: Bureau of Indian Affairs

Action: Record of Decision (ROD) for acquisition in trust by the United States of 165.81± acres in the City of South Bend, Saint Joseph County, Indiana, for the Pokagon Band of Potawatomi Indians, Michigan and Indiana (Band) for gaming and other purposes.

Summary: On May 14, 2012, the Band submitted an application to the Bureau of Indian Affairs (BIA) requesting that the Secretary of the Interior (Secretary) acquire in trust 165.81± acres of land currently held in fee by the Band in the City of South Bend, Indiana (Site).

The Band proposes to construct and operate a class III gaming facility, hotel, and Tribal Village. The single-story class III gaming facility would consist of 216,000 square feet of gaming floor, 20,000 square feet of meeting and banquet space, 23,605 square feet of administrative offices, and 48,144 square feet of housing facilities and casino support. The proposed 18-story hotel would consist of 500 hotel rooms. Parking would consist of 3,500 spaces in a multi-level parking garage and 500 spaces of surface parking. The mixed-use Tribal Village would include 44 housing units consisting of single family homes, duplex homes, and apartments. The Tribal Village would also include governmental offices, educational facilities, health care services, and a multi-purpose facility to serve as a community gathering place.

The Department of the Interior (Department) analyzed the proposed trust acquisition 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 a notice of the availability of the Draft EIS on March 12, 2015, and of the Final EIS on July 22, 2016. The Draft EIS and Final EIS considered a reasonable range of alternatives to meet the purpose and need for acquiring the Site in trust, and analyzed the potential effects and feasible mitigation measures. The Final EIS and information contained within this ROD fully consider comments received from the public on the Draft EIS and Final EIS. The comments and the Department's responses to the comments on the Final EIS are included in **Attachment I** of this ROD and are incorporated herein. The Department has considered potential effects to the environment, including potential impacts to local governments, has adopted all practicable means to avoid or minimize environmental harm, and has determined that

potentially significant effects will be adequately addressed by the mitigation measures.

Congress enacted the Pokagon Restoration Act in 1994. Congress expressly found that the Band had been administratively terminated and that the termination was wrongful. The Pokagon Restoration Act reaffirmed the Band's Federal recognition, thus, restoring the Band's government-to-government relationship with the United States. The Pokagon Restoration Act mandates the Secretary of the Interior to acquire land in trust for the Band to establish reservation lands and identifies an area within Michigan and Indiana where mandatory acquisitions could be made.

In 1999, the Band and the Department entered into a Memorandum of Understanding (1999 MOU) that established four geographic consolidation sites within the Pokagon Restoration Act's area for mandatory acquisitions. Pursuant to the 1999 MOU, the Band agreed to concentrate its land holdings in four geographic consolidation sites in the vicinity of Dowagiac, Michigan; New Hope, Michigan; Hartford, Michigan; and South Bend, Indiana. The Site lies within the area identified in the Act and within the consolidation site identified in the 1999 MOU.

The Band seeks to conduct gaming on the Site pursuant to the "Restored Lands Exception" of the Indian Gaming Regulatory Act (IGRA). In 1997, the Department's Office of the Solicitor issued an opinion interpreting the application of the Restored Lands Exception to the Band. The Solicitor determined that lands taken into trust for the Band pursuant to the Pokagon Restoration Act would meet the Restored Lands Exception. As discussed in the ROD, the Band meets the requirements of the Restored Lands Exception and may conduct gaming on the Site upon its acquisition in trust.

With issuance of this ROD, the Department has determined that it will acquire the Site in trust for the Band for gaming and other purposes. The Department has selected Alternative A as the Preferred Alternative because it will best meet the purpose and need for acquiring the Site in trust by promoting the long-term economic self-sufficiency, self-determination, and self-governance of the Band. Implementation of this action will provide the Band with a restored land base and the best opportunity for development of a significant, stable, and long-term source of governmental revenue. This action will also provide the best prospects for maintaining and expanding tribal governmental programs to provide a wide range of health, education, housing, social, and other programs, as well as creating employment and career development opportunities for tribal members.

This decision to acquire the Site in trust for the Band is based on a thorough: 1) review and consideration of the Band's application and materials submitted therewith; 2) the applicable statutory and regulatory authorities governing

acquisition of land in trust and the eligibility of land for gaming; 3) the Draft EIS and Final EIS; 4) the administrative record; and 5) comments received from the public, Federal, state, and local governmental agencies, and potentially affected Indian tribes.

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Attachment III: EIS Notices
Attachment IV: Mitigation Monitoring and Enforcement Plan

1.0 INTRODUCTION

1.1 Summary

On May 14, 2012, the Pokagon Band of Potawatomi Indians, Michigan and Indiana (Band) submitted an application to the Bureau of Indian Affairs (BIA) requesting that the United States acquire in trust 165.81± acres of land currently held in fee by the Band in the City of South Bend, Saint Joseph County, Indiana, (Site) for gaming and other purposes.¹

The Band proposes to construct and operate a class III gaming facility, hotel, and Tribal Village. The single-story class III gaming facility would consist of 216,000 square feet of gaming floor (including a slot floor area, beverage service, public amenities and circulation, and food and beverage retail), 20,000 square feet of meeting and banquet space, 23,605 square feet of administrative offices, and 48,144 square feet of house facilities and casino support. The proposed 18-story hotel would consist of 500 hotel rooms, and include a 12,875 square foot public lobby with amenity spaces and a 15,000 square foot spa. Parking would consist of 3,500 spaces in a multi-level parking garage and 500 spaces of surface parking. The mixed-use Tribal Village would include 44 housing units consisting of single family homes, duplex homes, and apartments. The Tribal Village would also include governmental offices, educational facilities, health care services, and a multi-purpose facility to serve as a community gathering place.

Pokagon Restoration Act

The Band submitted its application pursuant to the Pokagon Restoration Act of 1994,² and the Memorandum of Understanding between the Band and the Department of the Interior (Department) dated January 11, 1999.³ The Pokagon Restoration Act's specific purpose was to "reaffirm and clarify the Federal relationship of the Pokagon Band of Potawatomi Indians of Michigan as a distinct federally recognized Indian tribe, to reaffirm the jurisdiction and other rights of the tribe, provide for the establishment of a trust land base for the tribe," and "authorize the organization of the tribe and for other purposes."⁴ The Band's status as a federally recognized tribe was, thus, restored. In the Pokagon Restoration Act, Congress

¹ See Letter from Matthew A. Wesaw, Tribal Chairman, Pokagon Band of Potawatomi Indians, to Gerald F. Parrish, Superintendent Bureau of Indian Affairs, Michigan Agency (May 12, 2012), in Memorandum from Regional Director, Midwest Regional Office, to Assistant Secretary – Indian Affairs (June 16, 2016) [hereinafter Regional Director's Recommendation], Appx. 2. The Band submitted an amended application dated March 5, 2015, to address the resolution of certain title issues concerning several parcels included within the Site. See Letter from Michael G. Phelan, to Diane Rosen, Regional Director, Midwest Regional Office, Bureau of Indian Affairs (Mar. 5, 2015) [hereinafter Band's Amended Application], in Regional Director's Recommendation, Appx. 1.

² Pub. L. No. 103-323 (Sept. 21, 1994), 108 Stat. 2152 [hereinafter Pokagon Restoration Act]. The recent reclassification of chapters 14 and 19 of Title 25 of the United States Code by the House Office of Law Revision Counsel removed the provisions of the Pokagon Restoration Act formerly codified at 25 U.S.C. § 1300j *et seq.* To avoid confusion, the ROD therefore refers to the sections of the Pokagon Restoration Act as it appears in the Statutes at Large.

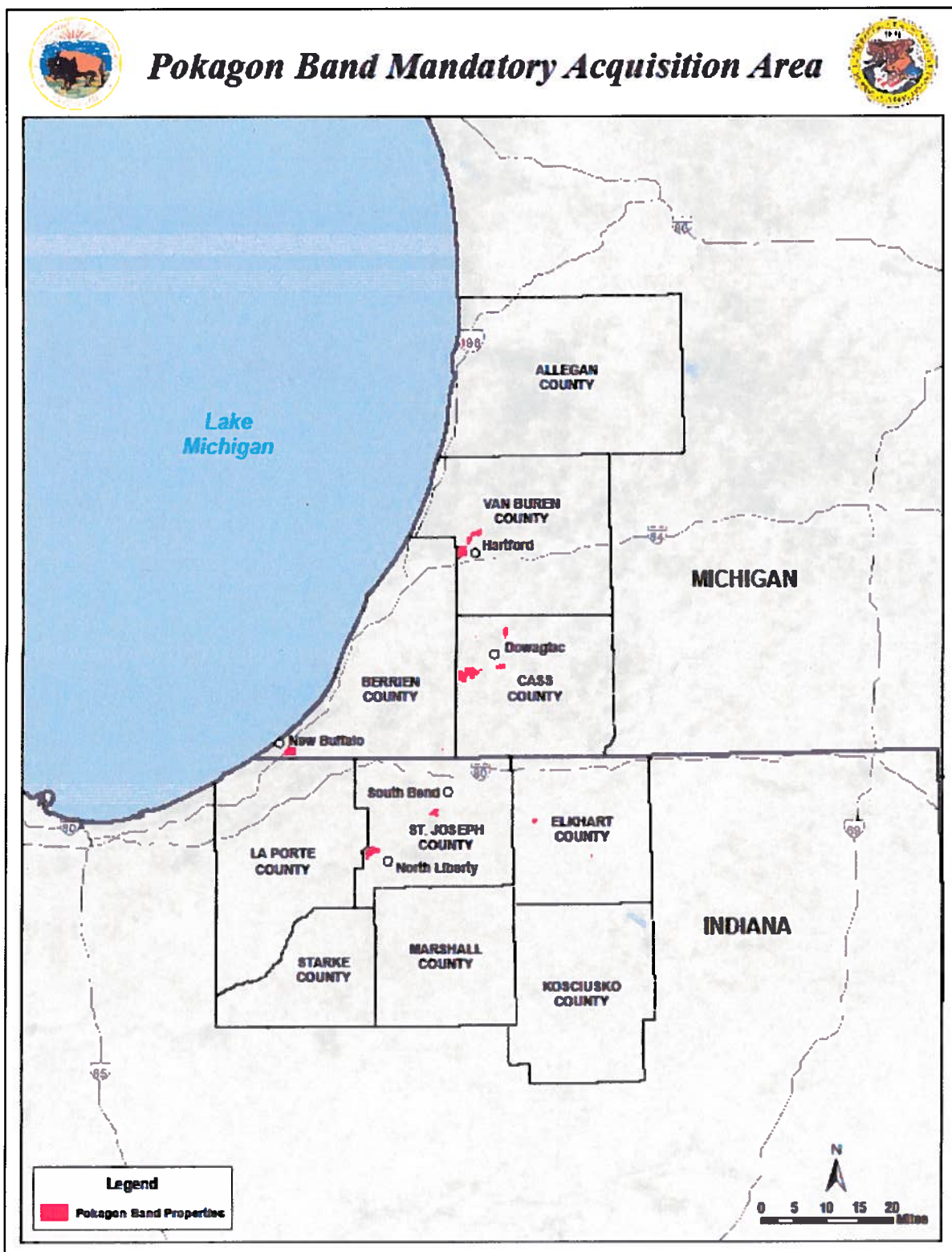
³ Memorandum of Understanding between the Secretary of the Interior and the Pokagon Band of Potawatomi Indians (Jan. 11, 1999) [hereinafter 1999 MOU], in Regional Director's Recommendation, Appx. 14.

⁴ S. Rep. No. 103-266 (1994) at 1.

expressly found that the Band had been administratively terminated and that this termination was wrongful.⁵ In recognition of the need for the Band to establish a reservation land base, Congress through the Act further mandated the Secretary to acquire real property for the Band by taking land in trust to become part of its reservation. Congress established a mandatory acquisition area for the Band in Michigan and Indiana where acquisitions could be made, where the Band is eligible to receive the Federal services that accompany recognition, and within which lies the proposed acquisition. In considering proposed restoration legislation for the Band, the House Committee on Natural Resources and the Senate Committee on Indian Affairs each issued reports that both included extensive findings on the historical background of the Band.⁶ See **Map 1** below.

⁵ S. Rep. No. 103-266 at 6.

⁶ See S. Rep. No. 103-266 (1994); H.R. Rep No. 103-620 (1994).



Map 1. Pokagon Band Mandatory Acquisition Area.

In 1999, the Band and the Department entered into a Memorandum of Understanding (1999 MOU) that established four geographic “consolidation sites” within the Pokagon Restoration Act’s acquisition area.⁷ Pursuant to the 1999 MOU, the Band agreed to restrict its land holdings to the consolidation sites. The consolidation sites are located in the vicinity of Dowagiac, Michigan; New Hope; Michigan; Hartford, Michigan; and South Bend, Indiana. The proposed Site lies within the consolidation site of South Bend. The 1999 MOU provides that a land base of up to 4,700 acres would be “commensurate with the anticipated needs of the Band.”⁸

Section 6 of the Pokagon Restoration Act mandates that the Secretary “*shall acquire* real property for the Band.”⁹ However, the 1999 MOU provides that acquisition of trust land for the Band within the four consolidation sites would be governed by the procedures in the Department’s trust land acquisition regulations found at 25 C.F.R. Part 151. The Band entered into the 1999 MOU in good faith, agreeing to restrictions on the location of trust acquisition and the process by which applications would be reviewed. In entering into the 1999 MOU, the Band voluntarily agreed to comply with the procedures in Part 151 reserved for acquisitions of trust land for which the Secretary has discretion to approve or deny. Absent the 1999 MOU, the Band’s fee-to-trust applications in the four consolidation sites “shall be acquired,” and are not subject to the Secretary’s discretion or subject to state and local government input regarding impacts to those jurisdictions.¹⁰ Further, absent the MOU, the Band’s applications are not subject to environmental review pursuant to the National Environmental Policy Act (NEPA).¹¹ However, in keeping with the Band’s commitment to follow the Part 151 process, the Department prepared an Environmental Impact Statement (EIS)¹² containing an exhaustive environmental review (see **Sections 3.0 – 6.0** of this ROD) and reviewed the acquisition pursuant to Part 151 (see **Section 8.0** of this ROD).

Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act (IGRA)¹³ was enacted “to provide express statutory authority for the operation of ... tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming.”¹⁴ Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust

⁷ 1999 MOU, ¶ 3.

⁸ *Id.* at ¶ 3.

⁹ Pokagon Restoration Act, § 6 (emphasis added).

¹⁰ See 25 C.F.R. § 151.11 (“The Secretary shall consider the requirements of [§§ 151.10 (a) through (c), and (e) through (h)] in evaluating tribal requests for the acquisition of lands in trust status, when the ... acquisition is not mandated.”).

¹¹ 43 U.S.C. § 4321 *et seq.*

¹² Final Environmental Impact Statement for the Pokagon Band of Potawatomi Indians Fee to Trust Transfer for Tribal Village and Casino, City of South Bend, St. Joseph County, Indiana (June 2016) [hereinafter FEIS], available at <http://pokagonsouthbendeis.com>.

¹³ 25 U.S.C. § 2701 *et seq.*

¹⁴ *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002). See also 25 U.S.C. § 2702(1) (stating that one purpose of

by the United States on behalf of a tribe after October 17, 1988. Congress, however, expressly provided that lands taken into trust after that date as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition” are not subject to IGRA’s general prohibition.¹⁵

The Band seeks to conduct gaming on the Site pursuant to the “Restored Lands Exception” of Section 20 of IGRA.¹⁶ In 1997, the Department’s Office of the Solicitor issued an opinion interpreting the application of the Restored Lands Exception to the Band.¹⁷ The Solicitor determined that the Pokagon Restoration Act statutorily qualified the Band as a “restored tribe,” and that lands acquired in trust pursuant to the Pokagon Restoration Act are “restored lands,” thus meeting the requirements of the Restored Lands Exception.

The Band’s tribal headquarters is in Dowagiac, Michigan. In accordance with the 1999 MOU, a total of 2,883 acres of land at the geographic consolidation sites in Michigan have already been acquired in trust and developed: New Buffalo (674 acres), Hartford (775 acres), Dowagiac (1,434 acres), for a total of 2,883 acres of trust land in Michigan. Acquisition of the proposed Site in South Bend, Indiana, would be the first land acquired in Indiana under the Pokagon Restoration Act, and would bring the total land acquired in trust in for the Band at the consolidation sites in Michigan and Indiana to 3,048 acres.

The acquisition of the New Buffalo site in trust was the subject of years of litigation in *Tax Payers of Michigan Against Casinos (TOMAC) v. Norton*,¹⁸ in which TOMAC challenged, among other things, the Band’s status as a restored tribe under IGRA. Ultimately, the United States Court of Appeals for the District of Columbia Circuit upheld the district court’s finding in favor of the United States and rejected plaintiff’s challenges, finding that the Band was a “restored” tribe within the meaning of IGRA.¹⁹ In reaching this conclusion, the Court held that the language and the legislative history of the Pokagon Restoration Act “clearly demonstrate” that the Pokagon Band is a “restored tribe” within the meaning of IGRA.²⁰ Further, in holding that the Pokagon Restoration Act constituted a lawful delegation of power from Congress to the Secretary, the Court reasoned that the “primary purpose” of the Pokagon Restoration Act is “to allow the Band to restore its land base - a reservation - and to exercise jurisdiction on that reservation.”²¹

IGRA is to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments”).

¹⁵ 25 U.S.C. § 2719 (b)(1)(B)(iii).

¹⁶ See 25 U.S.C. § 2719 (b)(1)(B)(iii).

¹⁷ See *Pokagon Band of Potawatomi Indians*, Op. Solic. Interior M-36991 (Sept. 19, 1997), available at <https://solicitor.doi.gov/opinions.html>.

¹⁸ *Taxpayers of Michigan Against Casinos (TOMAC) v. Norton*, 433 F.3d 852 (D.C. Cir. 2006).

¹⁹ *Id.* at 865-66. In addition, the Court held that the BIA reasonably concluded that it only had to prepare an environmental assessment and not an environmental impact statement under the National Environmental Policy Act, *Id.* at 862, and that Congress’s delegation to the Secretary to “acquire real property ... in trust for the benefit of the Band” under the Pokagon Restoration Act was not an unlawful delegation of legislative power, *Id.* at 862.

²⁰ *Id.* at 867.

²¹ *Id.*

1.2 Description of Proposed Action

The Band proposes to construct and operate a class III gaming facility, hotel, and Tribal Village. The single-story class III gaming facility would consist of 216,000 square feet of gaming floor (including a slot floor area, beverage service, public amenities and circulation, and food and beverage retail), 20,000 square feet of meeting and banquet space, 23,605 square feet of administrative offices, and 48,144 square feet of house facilities and casino support. The proposed 18-story hotel would consist of 500 hotel rooms, and include a 12,875 square foot public lobby with amenity spaces, and a 15,000 square foot spa. Parking would consist of 3,500 spaces in a multi-level parking garage and 500 spaces of surface parking. The mixed-use Tribal Village would include 44 housing units consisting of single family homes, duplex homes, and apartments. The Tribal Village would also include governmental offices, educational facilities, health care services, and a multi-purpose facility to serve as a community gathering place.

1.3 Description of the Land to be Acquired

The legal description of the Site is found in **Attachment II** of this ROD.

1.4 Purpose and Need for Acquiring the Site in Trust

The purpose and need for acquiring the Site in trust is to allow the Band to create a tribal land base to meet the needs of its members in Indiana. The Band does not currently have any trust land in Indiana. The Band seeks to establish residential, governmental, and economic development facilities to fulfill its governmental responsibilities to its members in Indiana who are currently without those services.

The proposed acquisition will meet four primary needs of the Band in Indiana: 1) an increased tribal land base, the first in Indiana, which will provide suitable housing for a growing Band membership; 2) community-focused spaces; 3) a suitable location for the delivery of needed tribal government services to the Band's Indiana community; and 4) a suitable location for commercial development to provide economic and employment opportunities for the Band's South Bend area community. See Section 8.4 of this ROD for further discussion of the Band's need for acquiring the Site in trust.

1.5 Procedural Background and Cooperating Agencies

On August 24, 2012, BIA published the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in South Bend in the Federal Register describing the proposed action of acquiring the Site in trust and inviting comments.²² See **Attachment III** of this ROD. In addition to accepting written comments, BIA held a public scoping meeting near the project area during the initial 30-day scoping period. Meeting details (time and location) were publicized in the NOI and the South Bend Tribune newspaper. The BIA sent out over 50 scoping letters

²² 77 Fed. Reg. 51,558 (August 24, 2012).

to Federal, state, local, and tribal entities, as well as individuals and organizations that were interested or may be affected by the trust acquisition, requesting their participation in the scoping process and, if eligible, participation as a cooperating agency. The meeting was held at the South Bend Century Center on September 27, 2012. A total of 66 individuals signed in at the meeting. During the scoping process, BIA identified cooperating agencies: the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

The BIA identified issues to be covered during the scoping process such as land resources (topography, land forms, drainage and gradients, soils, geology, minerals and paleontological resources); water resources (drainage and surface water quality, groundwater quantity and quality); air quality; biological resources (wildlife and habitats, threatened and endangered species, vegetation, wetlands); cultural resources; socioeconomic conditions (effects to the Pokagon Band, employment and income, housing, community infrastructure, potential social costs associated with gambling, fiscal effects to the county); resource use patterns (transportation, land use, agriculture); public services (water supply, wastewater, solid waste, electric, natural gas, and telecommunications); public health and safety services (including law enforcement, fire protection and emergency medical services); other values (noise, hazardous materials, visual resources); and environmental justice. In addition, BIA identified cumulative effects of the project (effects on specific resources, ecosystems, and human communities that occur incrementally in conjunction with other actions, projects, and trends); indirect effects; and unavoidable adverse effects.

On March 12, 2015, BIA published the Notice of Availability (NOA) for the Draft EIS for the Pokagon Band of the Potawatomi Indians Fee-to-Trust Transfer for Tribal Village and Casino, City of South Bend, St. Joseph County, Indiana, in the *Federal Register*.²³ See **Attachment III** of this ROD. The NOA announced the 45-day public review period for the Draft EIS. The review period concluded on April 30, 2015. The availability of the Draft EIS was also publicized in the *South Bend Tribune*. The Draft EIS was made available on the project website (www.pokagonsouthbendeis.com). A compact disc was available by request from BIA, and hard copies of the Draft EIS were available at the South Bend Public Library and the Elkhart Public Library main branches. In addition, a compact disk copy was sent, at their request to any party who wished to provide comments to the Draft EIS and/or requested that they be added to the mailing list.

During the public comment period between March 12, 2015, and April 30, 2015, BIA held a public meeting so that the public could submit comments on the Draft EIS. The meeting was held at the South Bend Century Center on April 14, 2015, with 156 individuals signing in at the meeting. The meeting location was publicized in the NOA, which stated that the date and time of the meeting would be posted in the *South Bend Tribune* and on the EIS website 15 days in advance of the meeting. Once meeting details were finalized, a meeting notice and request for comments were published in the *South Bend Tribune* and on the EIS website. Additionally, a meeting invitation was sent to over 80 Federal, state, local, and tribal entities as well as any

²³ 80 Fed. Reg. 13,014 (March 12, 2015).

individuals who requested updates during the scoping process. Comments received during the 45-day review period have been addressed in the Final EIS.

On July 22, 2016, BIA published the NOA for the Final EIS for the Pokagon Band of the Potawatomi Indians Fee-to-Trust Transfer for Tribal Village and Casino, City of South Bend, St. Joseph County, Indiana, in the *Federal Register*.²⁴ See **Attachment II**. The NOA announced the public availability of the Final EIS. The Final EIS was made available on the project website; via compact disc by request; and copies were available at the South Bend Public Library and the Elkhart Public Library main branches. Further, BIA provided notice in the *Federal Register* and within the *South Bend Tribune* newspaper that the Final EIS was publicly available. In addition, a compact disk copy was sent, at their request, to any party who provided comments on the Draft EIS and/or requested that they be added to the mailing list. The Final EIS took into account and addressed all public comments received on the Draft EIS. The comments received on the Final EIS during the comment period and the responses to each comment are included in **Attachment III**.

2.0 ANALYSIS OF ALTERNATIVES

2.1 Alternative Screening Process

Project sites and development intensities were evaluated when considering the alternatives for NEPA analysis. Alternatives were screened for their ability to meet the purpose and need for acquiring the site in trust, reducing environmental impacts, and establishing an inalienable land base for the development of a Tribal Village in Indiana. Sites and alternatives that did not meet the purpose and need or were technically/economically impractical or infeasible were eliminated from consideration. Through this screening process, three development alternatives and a no action alternative were evaluated in the Draft EIS and Final EIS.

2.2 Overview of Alternatives

Four possible alternatives were considered during planning. These alternatives include three development alternatives as well as the No Action Alternative. Two of the development alternatives were proposed on the South Bend site and one of the development alternatives was proposed to be located on property in Elkhart County. The three development alternatives each include the establishment of an inalienable tribal land base in northern Indiana, development of a Tribal Village, and commercial activities to generate revenues to fund the Tribal Village, all in support of the purpose and need for acquiring the Site in trust for the Band.

2.3 Reasonable Alternatives Considered in Detail

The Draft EIS and Final EIS evaluated the following reasonable alternatives and the mandatory No Action Alternative in detail. Four possible alternatives that meet the purpose and need for acquiring the Site in trust were considered by BIA during planning. These alternatives include

²⁴ 81 Fed. Reg. 47,817 (July 22, 2016).

three development alternatives as well as the No Action Alternative. Preferred Alternative A and Alternative C were proposed for the South Bend Site. Alternative B was proposed for a site in Elkhart County. Each of the three development alternatives include the acquisition of land in trust in northern Indiana, development of a Tribal Village, and development of commercial activities to generate revenue to fund the Tribal Village. Only Alternatives A and B include a proposed gaming facility.

2.3.1 *Alternative A – South Bend Site Tribal Village and Casino (Preferred Alternative)*

Preferred Alternative A includes the construction and operation of a class III gaming facility, hotel and Tribal Village. The single-story class III gaming facility would consist of 216,000 square feet of gaming floor (including a slot floor area, beverage service, public amenities and circulation, and food and beverage retail), 20,000 square feet of meeting and banquet space, 23,605 square feet of administrative offices, and 48,144 square feet of house facilities and casino support. The proposed 18-story hotel would consist of 500 hotel rooms, and include a 12,875 square foot public lobby with amenity spaces, and a 15,000 square foot spa. Parking would consist of 3,500 spaces in a multi-level parking garage and 500 spaces of surface parking. The mixed-use Tribal Village would include 44 housing units consisting of single family homes, duplex homes, and apartments. The Tribal Village would also include governmental offices, educational facilities, health care services, and a multi-purpose facility to serve as a community gathering place. **Table 1** displays the breakdown of square footage for each component of the proposed Tribal Village. **Table 2** displays the breakdown of proposed uses with associated square footage for the proposed casino/hotel.

Table 1			
Preferred Alternative A – Tribal Village Uses and Size			
Proposed Use	Total Units	Square Feet Per Unit	Square Feet Total
Single Family Homes	24	1,200	28,800
Duplex Homes (2 Units/building)	8	800	6,400
Apartments (4 Units/building)	12	850	13,600
Community Center	1	8,500	8,500
Total			57,300

Table 2	
Preferred Alternative A – Casino Uses and Size	
Proposed Use	Square Feet
Gaming Floor and Other Public Areas	216,061
• Slot Floor Area • Beverage Service	

• Public Amenities and Circulation • Food and Beverage / Retail	
Meeting and Banquet Space	20,000
Administrative Areas	23,605
Casino Support	48,144
Facilities and Maintenance	48,144
Building Support	67,408
Total	423,362



Figure 1: Alternative A: South Bend Site Tribal Village and Casino (Preferred Alternative).

Site Drainage: Runoff from the project site will be conveyed through storm sewers, vegetative swales and culverts. The drainage plan includes the use of vegetative swales onsite which will be designed to help filter surface runoff and increase infiltration during small storm events. Runoff from the project site will be directed into vegetated swales or other traditional storm water conveyance systems that will lead to a detention basin and then be released from the project site through an existing culvert beneath Prairie Avenue. The vegetative swales will

provide initial filtration of sediment and pollutants and increased infiltration during small storm events prior to reaching the detention basins.

The detention basins will be designed to provide both water quality and water quantity benefits. Permanent pools associated with wet detention basins will be designed to capture settling debris through increased retention time and reduced peak flows, while also providing storage for large storm events. These basins will assure that post development runoff peaks from the project site will not exceed the predevelopment conditions. The detention of water on site will be designed using standard site design practice to reduce the potential for downstream erosion and water quality issues from high flow velocities typically associated with storm water runoff on impervious surfaces. The maximum amount of water to be detained in the detention pond will be based upon the 100-year, 24-hour storm event. Detention basins will be constructed at both the residential and gaming sectors of the project site.

Wastewater Treatment and Disposal: The proposed method of wastewater treatment for Preferred Alternative A will be provided through the City of South Bend because the project site is within the wastewater treatment service district of the City. The City's treatment facility is classified as Class IV activated sludge treatment and is designed to produce an average 48.0 MGD (million gallons per day) of treated, reclaimed water with a peak design flow of 77.0 MGD. Currently, the project site is located near three main sewer lines varying from 8-15 inches in diameter that are available for connection to the service lines of the proposed development.

The Band met with the City of South Bend Engineering Department on several occasions to discuss sanitary sewer service from the City. The City completed a regional master plan for utilities to determine the short and long-term needs so improvements can be coordinated as development occurs. The plan identified the improvements required to serve the development and potential long term expansion of the collection system beyond the development area. The plan identified initial development, up to 190gpm of peak wastewater flow, can be serviced by an onsite lift station and the existing 8" gravity sewer on Locust Road. The lift station will be located on-site at a central location northwest of the gaming facility parking lot where gravity sewer pipes from the gaming facilities, Tribal Village, and tribal government facilities will converge. The lift station will have two pumps with a capacity of 180 GPM and power of 6.5 hp. The wet well capacity will be approximately 421 cubic feet. A 6-inch PVC forced main meeting the requirement of ASTM D2241 with a SDR of 21, rated at a working pressure of 200 PSI with reduced wall compact ductile iron fittings, will extend approximately 3,500 feet to an existing manhole on Locust Road where the forced main will connect at an invert elevation of approximately 771 feet.

Once peak flow from the Band's development exceeds 190gpm, the Band will construct the additional 36" gravity sewer from the initial lift station, north under Prairie Avenue to the existing Calvert Street lift station and abandon the on-site lift station and forced main to redirect the discharge from Locust Road to the Calvert Street lift station. The City has a need to increase the capacity of the Calvert Street lift station and is currently planning those improvements. The lift station will be designed to accommodate potential future flows from the Band's development.

The Band has agreed to contribute \$400,000 to the cost of upgrading or replacing the Calvert Street lift station at the time the City completes those improvements.

The Band and City of South Bend have signed a Water Service and Sewer Service Agreement dated March 22, 2016, where the City has agreed to provide service and the Band has agreed to install the improvements in phases noted above to serve the development. The gravity collection sewers, lift station, and forced main will be constructed by the Band, but will be owned and operated by the City of South Bend. The Band has completed the design for the initial phase of development and the City of South Bend has reviewed and approved the plans for construction. No improvements have been completed at this time.

Water Delivery: For Preferred Alternative A, the potable water system and fire service will be supplied by the City of South Bend. South Bend Water Works, in accordance with the local fire codes, will provide compliant emergency fire flow, pressure, and storage. The closest water mains to the proposed trust parcels include an existing 12-inch water main beneath Locust Road and a 10-inch water main under a portion of Prairie Avenue.

The City completed a regional master plan for utilities to determine the short and long-term needs so improvements can be coordinated as development occurs. The plan identified the improvements required to serve the development and potential long term expansion of the water distribution system beyond the development area. The plan identified initial development, up to 190gpm of peak wastewater flow, can be serviced by a 12" water main extension from Locust Road. Once peak flow exceeds 190gpm, the water main will need to be looped. The Band and City of South Bend have signed a Water Service and Sewer Service Agreement dated March 22, 2016, in which the City has agreed to provide service and the Band has agreed to install the improvements in phases to serve the development.

South Bend Water Works has the capacity to provide sufficient operational, emergency, and fire flow water; therefore, onsite storage reserves will not be required.²⁵ Field hydrant flow tests have been completed to identify current system pressures and capacities at the site. The tests indicate the current water system has the capacity and pressure to serve the proposed development without the need for a booster station or additional storage. A new water main varying in size between 8-inch and 12-inch will connect to the City of South Bend's existing 12-inch water main service on Locust Road. The initial phase of the water main will be approximately 10,500 feet long. Once peak flow from the Band's development exceeds 190gpm, the Band will construct the water main loop around the gaming facility and connect back into an existing main to increase the system reliability and capacity. The water main will be ductile iron pipe with polyethylene encasement per ASTM A674 and AWWA C105.

The new water main serving the site will be constructed by the Band, but will be owned and operated by the City of South Bend. The Band has completed the design for the initial phase of development and the City of South Bend has reviewed and approved the plans for construction. No improvements have been completed at this time.

²⁵ FEIS, § 4.14.2.2 (citing personal communication of John Wiltrout, Director of Water Treatment).

Utilities: The project site is currently serviced by an Indiana Michigan Power (I&M) circuit via a 12KV cable. The I&M will be capable of providing electricity of the same scale as required for Four Winds New Buffalo Casino and Hotel with the following upgrades in infrastructure: new transformer at the station; new regulator; new breaker; and approximately 5,000 feet of wire upgrades. The North Indiana Power Service Commission's existing infrastructure should be able to fulfill the natural gas needs for Alternative A, with the exception of natural gas generators, should they be used. Based on data provided by Lakeshore Energy Services Annual Report for Four Winds New Buffalo Casino and Hotel, minimal to no infrastructure enhancements will be anticipated to be required to deliver the natural gas demand required.

Law Enforcement: Because Preferred Alternative A includes the trust acquisition of the Site and a jurisdictional shift to the Band, primary law enforcement services will be provided by the Band's Police Department. In November of 2014, in preparation for jurisdictional changes that would result from the proposed transfer of land owned by the Band in South Bend into trust, the St. Joseph County Board of Commissioners unanimously adopted Resolution R-12-C-2014 which approved the local governmental cross-deputization agreement for law enforcement with the Band. The agreement will allow both tribal Police deputies and Sheriff's deputies to have reciprocal law enforcement jurisdiction and authority throughout St. Joseph County. This includes land that will be held in trust for the Pokagon Band as detailed within this resolution. The Band could eventually enter into cross-deputization agreements with other Indiana police agencies (state or city) to improve the ability of these jurisdictions to share enforcement personnel and resources.

Fire Protection and Emergency Medical Services: Chapter 2 of the Band's Health and Safety Act adopts as Band law the 2012 International Building Code, including all international fire, plumbing, electrical, mechanical and related referenced standards. The proposed facilities in Preferred Alternative A will be designed to comply with International Building Codes, and the Band will be given a certificate of occupancy by the Tribal Gaming Agency once construction is complete. Automatic fire sprinkler systems, standpipes and smoke detectors will be installed in both commercial and residential facilities according to the current standards of the National Fire Protection Association (NFPA), International Building Code, the Health, Environmental Protection and Building Codes Act. Memorial Hospital of South Bend and St. Joseph Regional Medical Center are the closest hospitals that could provide emergency medical services to the proposed Tribal development and casino. Emergency air transportation will be provided by Memorial MedFlight. Calls to 911 will be dispatched to the nearest available ambulance, mostly likely to the fleet of EMS vehicles/personnel at the South Bend Fire Department.

Transportation: With implementation of mitigation measures, four intersections and six lane groups will operate adequately and with no significant impact during the Opening Year (2020) and the Horizon Year (2035) for Preferred Alternative A. These measures will be evaluated in more detail by the Band, the Indiana Department of Transportation (INDOT), and the St. Joseph County Engineer's Office prior to project development. Potential improvements that may be implemented for the Opening Year (2020) or in subsequent phases of project development consist of:

- US 31/20 Westbound Ramps
 - Install a traffic signal with protected phase for northbound left turn (intersection expected to meet INDOT signal warrants under 2020 no build traffic volumes).
 - Construct westbound right turn only lane, reassign lanes on westbound approach to left/right turn lane and right turn only.
- US 31/20 Eastbound Ramps
 - Install traffic signal with protected phase for southbound left turn (intersection expected to meet INDOT signal warrants under 2020 build conditions).
 - Construct eastbound left turn only lane, reassign lanes on eastbound approach to left turn only and left/right turn lane.
- SR-23 between US 31/20 Westbound Ramps and New Energy Drive
 - Provide two lanes for each direction of travel.
- New Energy Drive at SR-23
 - For northbound drive approach, provide two left turn lanes, one through lane, and one right turn lane.
 - Add left turn lane to westbound approach.
 - Add left turn lane to southbound approach.
 - Drop second eastbound through lane as a right turn only lane into site driveway.
 - Install actuated signal with protected left turn phases for eastbound, westbound, and southbound approaches and protected right turn phases for eastbound and northbound approaches (intersection expected to meet INDOT signal warrants under 2020 build conditions).
- Locust Road at SR-23
 - Add protected southbound left turn phase.
- Ewing Avenue at SR-23
 - Install traffic signal (intersection expected to meet INDOT signal warrants under 2020 no build conditions).

2.3.2 *Alternative B – Elkhart Site Tribal Village and Casino*

Alternative B is similar in scope to Preferred Alternative A. Alternative B also includes a class III gaming facility including hotel facilities, food and beverage facilities, administration facilities to support the Casino operations, conference facilities, small retail shop, and office space. Alternative B also includes the development of a Tribal Village, including single family housing, duplex housing, apartments, and a community center with meeting rooms, community room, administrative offices for community gathering, educational facilities, governmental offices, and health services facility. The uses and sizes of the Tribal Village and casino/hotel listed above for Preferred Alternative A in the Final EIS at Table 2.2-1 and Table 2.2-2 also characterize Alternative B; the proposed development for both alternatives is identical except for the location; Alternative B is located within Elkhart County in the northwest portion of Indiana. County Road 26 and State Road 19 border the Elkhart site to the north to the west.

2.3.3 *Alternative C – South Bend Site Tribal Village with Commercial Development*

Alternative C includes the development of a travel plaza, family entertainment center, and strip shopping center without any class III gaming facility. Alternative C also includes the development of a Tribal Village that would include single family and duplex housing. The Tribal Village would also include a community center with rooms for community meetings and gatherings, educational facilities, governmental offices, and health services facilities. Alternative C is located on the South Bend Site described in Preferred Alternative A.

2.3.4 Alternative D – No Action

Under the No-Action Alternative or Alternative D, the acquisition in trust of the Site would not occur, and the Site in South Bend or the Elkhart site would not be developed as described above in Alternatives A, B and C. Land use jurisdiction would remain with the City of South Bend.

3.0 ENVIRONMENTAL IMPACTS

Implementation of Preferred Alternative A and Alternatives B and C (Development Alternatives) could result in direct, indirect, and cumulative impacts to the environment. The resource areas evaluated during the EIS process include:

- Land Resources
- Water Resources
- Air quality
- Biological Resources
- Cultural Resources
- Socioeconomic Resources
- Resource Use Patterns
- Public Services
- Other Values
- Environmental Justice

Each of the alternatives considered in the Final EIS were evaluated for the potential for environmental impacts as required under NEPA. A summary of the analysis of the environmental issues within the Final EIS is presented below.

3.1 Land Resources

Although the Development Alternatives would require clearing and grading, none of the alternatives have significant impacts on topography, land forms, drainage, gradients, soils, geology, or access to valuable minerals or paleontological resources. Preferred Alternative A involves clearing and grading 78.79 acres of the currently variable surface and the smoothing of hilly contours to accommodate the proposed construction. Excavation and fill will be required to establish adequate foundation for development features. Alternative B involves clearing and grading of 87.86 acres of the current relatively flat surface to accommodate the proposed construction elements. Alternative C involves clearing and grading 41.87 acres of the surface

area to accommodate the proposed construction elements. See Section 4.2 of the Final EIS for a full impact analysis. The No Action Alternative would not have any impact on land resources.

3.2 Water Resources

Surface Water: Construction of the Development Alternatives would alter land usage, creating more impervious surface area which generally leads to larger quantities of storm water runoff. Preferred Alternative A would create 34 acres of new impervious surface on the project site, while Alternative B and C would create approximately 37 and 14 acres, respectively. None of the Development Alternatives would have an adverse effect on surface water quality nor would they be expected to have adverse impacts on the St. Joseph Sole Source Aquifer. The No Action Alternative D would not impact surface water quality from construction activity; however, current agricultural practices would continue at the Elkhart site location. See Section 4.3 of the Final EIS for a full impact analysis.

Groundwater: The Development Alternatives have the potential to contaminate groundwater from accidental spills during construction or operation; however, groundwater quality is not expected to be significantly impacted based on adherence to Best Management Practices (BMPs) proposed and regulations enforced by the U.S. Department of Labor Occupational Safety and Health Administration. Implementation of Preferred Alternative A and C could benefit the area through increased groundwater extraction and potential lowering of the groundwater table. See Section 4.3 of the Final EIS for a full impact analysis. The No-Action Alternative would not impact groundwater.

3.3 Air Quality

Construction activities related to the Development Alternative could result in emissions of VOC, NO_x, CO, SO_x, PM₁₀, and PM_{2.5} as well as area and vehicle source emissions during operation. The air contaminant emissions from construction of each Development Alternative are less than the general conformity thresholds as specified in the General Conformity Rules (40 C.F.R § 51.853(b) (2010)). None of the Development Alternatives would have significant impacts with regard to greenhouse gas emissions or global climate change. See Section 4.4 of the Final EIS for a full impact analysis. The No-Action Alternative would not impact air quality.

3.4 Biological Resources

Wildlife and Habitats: The Development Alternatives would affect habitats used by wildlife species. Preferred Alternatives A and C would result in direct and indirect impacts to habitat and wildlife, but due to the previously impacted nature of the site and the overall size of the Site, it has been determined to not have a significant effect on the diversity or quantity of local wildlife populations. From an ecological standpoint, impacts to the habitat and wildlife from Alternative B has been determined to be beneficial through the conversion of agricultural land to 86 acres of native prairies. There is the potential for increased wildlife mortality from construction vehicles during operation for the Development Alternatives. Construction of each Development

Alternative would create detention ponds, resulting in increased habitat for waterfowl and some common species of frogs and toads. See Section 4.5 of the Final EIS for a full impact analysis

Federally Listed Species: The Site is within the range of four federally listed species: the candidate eastern massasauga rattlesnake (*Sistrurus catenatus catenatus*); the federally threatened northern copperbelly watersnake (*Nerodia erythrogaster neglecta*); the federally endangered Indiana bat (*Myotis sodalis*); and the federally threatened Northern long-eared bat (*Myotis septentrionalis*). However, the Section 7 consultation completed pursuant to the Endangered Species Act looked at both the Site (Preferred Alternative A and Alternative C) and the Elkhart site (Alternative B) and concluded that the proposed project on both sites is not likely to adversely affect the indicated endangered, threatened, and candidate species. There is a very limited amount of habitat for the two snake species and the Indiana bat at the Site, and there are no known northern long-eared bat occurrences documented near the project area. Given the very limited amount of habitat on the subject property at the Elkhart site, no direct impacts to federally listed species is expected from Alternative B. See Section 4.5 of the Final EIS for a full impact analysis.

Vegetation: Vegetation impacts include the creation of edge habitat and changes to the site hydrology, both of which can result in a shift in community structure and species composition. The introduction of nuisance/exotic species is a concern both during construction and in the operational phase. Preferred Alternative A would result in the loss of approximately 78.9 acres of existing vegetative community, including old field, Eurasian meadow, shrub/tree, and fence row trees/shrub. Alternative B would result in the creation of approximately 86 acres of native prairie. Alternative C would result in the loss of approximately 42.6 acres of existing vegetative community, including old field, Eurasian meadow, shrub/tree, and fence row trees/shrub. See Section 4.5 of the Final EIS for a full impact analysis. The No-Action Alternative would not impact vegetation.

Wetlands: Preferred Alternative A and Alternative C would result in direct and indirect impacts to jurisdictional wetlands. These impacts are not considered significant because the impacts will be minimized and mitigated for compliance with Section 404 of the Clean Water Act and Executive Order No. 11990 (1977), Protection of Wetlands. Approximate impacts of Preferred Alternative A include 0.96-acre forested wetland, 0.71-acre emergent wetland, and 0.67-acre (3,300 linear feet) riverine wetlands. Approximate impacts of Alternative C include 0.19-acre forested wetland, 0.62-acre emergent wetland and 0.46-acre (2,000 linear feet) riverine wetlands. Alternative B does not have direct wetland impacts but could potentially impact 13 acres of wetlands if the existing hydrological modifications within the row crop fail and these areas return to wetlands prior to development. Given the expected future maintenance of existing conditions prior to development, no wetland impact is anticipated in these areas. See Section 4.5 of the Final EIS for a full impact analysis.

3.5 Cultural Resources

Although three archeological sites were identified within the Site and one site was identified within the Elkhart site, these resources are not listed in or eligible for inclusion in the National

Register of Historic Places (NRHP). Four non-archeological, historic-age resources were identified by Atkins North America, Inc., within the Site. Of these, one resource was determined eligible for inclusion in the NRHP, but no direct impact to the resource is anticipated. No potentially historic-age resources were identified by BIA within the Elkhart site. Therefore, at this time, no archaeological sites will be affected and no non-archaeological historic-age resources will be adversely affected by the project. However, if future development occurs in the immediate vicinity of BIA Structure 10 (Atkins Resource 04A) or if alterations to the exterior of BIA Structure 10 (Atkins Resource 04A) occur, these actions may indirectly and/or directly adversely affect BIA Structure 10 (Atkins Resource 04A), and compliance with Sections 106 and possibly 110 of the NHPA may be required. See Section 4.6 of the Final EIS for a full impact analysis.

3.6 Socioeconomic Conditions

Economic Effects: Socioeconomic conditions were analyzed at four geographic scales to encompass the proposed alternatives: St. Joseph County, City of South Bend, Elkhart County, and City of Elkhart. Each Development Alternative provides the necessary Tribal Village and community space to fulfill part of the purpose and need for acquisition, and none would result in significant fiscal impacts including property tax, sales and related taxes and governmental expenditures. An increase in the number of school-age children and increased use of libraries and parks is expected, as well as an increase in demand on local government services. An increase in indirect sales and related tax revenue would offset the loss of state tax base resulting from the acquisition in trust of the Site. The No Action Alternative D would be significantly adverse to the Band's Indiana members that are currently without the necessary housing and community services.

The profits generated by the economic activities in Alternative C would yield significantly smaller amounts of additional income for tribal governmental programs than Preferred Alternative A and Alternative B. Preferred Alternative A best meets the purpose and need for acquisition. In order to meet this need, both Preferred Alternative A and Alternative B include a class III casino. The project net economic impact from a class III casino in St. Joseph County for Preferred Alternative A is approximately \$620,420,000 in contrast to \$414,251,000 in Elkhart County for Alternative B. The commercial development included in Alternative C has a projected net revenue of \$9,358,000. The casino development provides significantly more income and job opportunities than the other commercial development or the no action alternative. See Section 4.7 of the Final EIS for a full impact analysis.

Problem Gambling: Construction of Preferred Alternative A and Alternative B have potential social costs from gambling addiction and other problem gambling behavior. However, social costs associated with a casino will not be significant and will decrease over time. Studies have found that exposure to new gambling opportunities often results in a short-term spike that disappears as the novelty effect wears off and residents adapt to the new exposure, rather than a long-term increase in gambling disorders. See Section 4.7 of the Final EIS for a full impact analysis.

3.7 Resource Use Patterns

Transportation: Construction of Preferred Alternative A would result in the anticipated congestion on US 31/20 East and Westbound Ramps, SR-23 between US 31/20 Westbound Ramp and New Energy Drive, New Energy Drive at SR-23, Locust Road at SR-23, and Ewing Avenue at SR-23. Construction of Alternative B would result in the anticipated congestion on County Road 28 at SR-19, SR-19 at Proposed Driveway A (Main Casino Driveway), and US 20 Westbound Ramps. Construction of Alternative C would result in the anticipated congestion on US 31/20 East and Westbound Ramps, SR-23 and Driveway B, New Energy Drive at SR-23, and Ewing Avenue at SR-23. However, analysis of each Development Alternative shows that with mitigation measures all previously unacceptable intersection and lane groups would operate adequately (no significant impact) during both the Opening Year (2020) and the Horizon Year (2035). Alternative D would not alter traffic patterns and therefore mitigation measures are not necessary. See Section 4.8 of the Final EIS for a full impact analysis.

Land Use and Agriculture: Land use alterations associated with each of the alternatives would not be considered significant impacts. The Development Alternatives would cause impacts to prime farmlands. The Preferred Alternative and Alternative C would each have impacts to 109 acres of prime and unique farmland, designated soils. Alternative B would have impacts to 172 acres of prime farmland if drained. Therefore, Preferred Alternative A would impact less prime farmland than Alternative B. Coordination with the Natural Resources Conservation Service regarding Farmland Protection Policy Act concerns has been completed regarding the evaluation of the prime farmland at both South Bend and Elkhart sites. See Section 4.8 of the Final EIS for a full impact analysis.

3.8 Public Services

Public Services: The Development Alternatives will increase demand for drinking and fire water but will not significantly impact the city's public water supply system. All three alternatives include the construction or upgrade of water main. Similarly, with standard mitigation features such as grease traps, Preferred Alternative A or Alternatives B or C would have no significant impact to the City's wastewater infrastructure. Solid waste transfer or landfill capacity would not be significantly impacted by any of the build alternatives or the No Action Alternative. The Development Alternatives will not significantly impact electricity, natural gas and telecommunications with implementation of mitigation measures described in the Final EIS. See Section 4.9 of the Final EIS for a full impact analysis.

Public Health and Safety Services: Construction of the Development Alternatives will not significantly impact demand for law enforcement, fire protection services, and/or Emergency Medical Service if the proposed mitigation measures such as the existing cross-deputization agreement with Saint Joseph County are implemented. See Section 4.9 of the Final EIS for a full impact analysis.

3.9 Other Values

Noise: Although the Development Alternatives have the potential to affect the existing ambient noise environment in the immediate project vicinity, none of the Alternatives would have significant impacts in regards to construction noise, site noise, or traffic noise. See Section 4.10 of the Final EIS for a full impact analysis.

Hazardous Materials: With the assumption that all Alternatives would remain in compliance with Federal environmental and safety mandates (including CERCLA, RCRA, and OSHA regulations), none of the Alternatives would have significant effects pertaining to hazardous materials, for existing conditions, construction, or facility operations. See Section 4.10 of the Final EIS for a full impact analysis.

Visual Resources: As a result of incorporating mitigation, none of the Alternatives would have significant impacts regarding aesthetic resources, including lighting and landscaping. See Section 4.10 of the Final EIS for a full impact analysis.

3.10 Environmental Justice

Preferred Alternative A would provide the greatest beneficial Environmental Justice (EJ) effects. Alternatives B and C would also provide beneficial EJ impacts, although fewer. The No Action Alternative would not provide beneficial EJ impacts, and would instead result in significant adverse EJ impacts, as opportunities to improve conditions for Band members and other low-income or minority populations would be lost. More specifically, construction of the Development Alternatives would result in the creation of an inalienable land base in Indiana for Band members and non-tribal residents, the creation of 44 housing units for Band member residences, and a community center for the Band to provide government services to its citizens. Revenue would be generated to fund the Tribal Village, and revenue would be spent on services and supplies in the state and local vicinity. Preferred Alternative A would have no significant adverse EJ impacts on minority and low-income populations. Rather, Preferred Alternative A would have substantial beneficial impacts for minority and low-income populations, particularly members of the Band living in the vicinity of the project area. Preferred Alternative A would create approximately 1,470 temporary construction positions needed for a period of 24-months, and 3,256 permanent positions with benefits related to operation of the hotel and casino. Some minority and low-income individuals may benefit from these employment opportunities. Beneficial consequences that are anticipated to result from Alternative B and C are similar to those described for Preferred Alternative A, though benefits would be less than those created by Preferred Alternative A. See Section 4.11 of the Final EIS for a full impact analysis.

3.11 Growth Inducing Effects

Preferred Alternative A includes the construction of 44 housing units but is not projected to have a significant effect on the housing market in the area. They are also not projected to have a significant effect on the capacity of nearby schools, the library or park system. Preferred Alternative A is projected to add jobs to the City of South Bend and St. Joseph County, which

is likely to result in an increase in housing demand over time as workers seek to relocate closer to their place of employment. The demand for housing would be expected to be dispersed throughout South Bend and St. Joseph County. However, the new demand is not projected to have a significant effect on the housing market in the area. It is also not projected to have a significant impact on the school systems of South Bend or St. Joseph County. Preferred Alternative A is projected to result in indirect and induced growth in the economic output of St. Joseph County; the total projected indirect and induced growth in output for St. Joseph County amounts to 1.3 percent of the Gross Domestic Product (GDP) for the South Bend/Mishawaka Metropolitan Statistical Area (MSA). Since the growth in output would be spread across multiple industries throughout the county, it is not anticipated to result in any disorder in commercial growth patterns. See Section 4.12 of the Final EIS for a full impact analysis.

Alternative B includes the construction of 44 housing units, but is not projected to have a significant effect on the housing market in the area. They are also not projected to have a significant effect on the capacity of nearby schools, the library or park system. Alternative B is projected to add jobs to Elkhart County which is likely to result in an increase in housing demand over time as workers seek to relocate closer to their place of employment. The demand for housing would be expected to be dispersed throughout Elkhart County. However, the new demand is not projected to have a significant effect on the housing market in the area. It is also not projected to have a significant effect on Elkhart County school systems. Alternative B is projected to result in indirect and induced growth in the economic output of Elkhart County; the total projected indirect and induced growth in output for Elkhart County amounts to 1.0 percent of the GDP for the Elkhart/Goshen MSA. Since the growth in output would be spread across multiple industries throughout the county, it is not anticipated to result in any disorder in commercial growth patterns. See Section 4.12 of the Final EIS for a full impact analysis.

Alternative C includes the construction of 44 housing units, but is not projected to have a significant effect on the housing market in the area. They are also not projected to have a significant effect on the capacity of nearby schools, the library or park system. Alternative C is projected to add a smaller number of jobs to the City of South Bend and St. Joseph County and would not be expected to generate additional housing demand or population growth for the city or county. Alternative C is projected to result in indirect and induced growth in the economic output of St. Joseph County; the total projected indirect and induced growth in output for St. Joseph County under Alternative C amounts to 0.02 percent of the GDP for the South Bend/Mishawaka MSA. Since the growth in output would be spread across multiple industries throughout the county, it is not anticipated to result in any disorder in commercial growth patterns. See Section 4.12 of the Final EIS for a full impact analysis.

No changes in existing conditions would occur under the No Action Alternative; therefore, the potential for growth-inducing effects from Alternative D would not occur. Accordingly, in the absence of project implementation, historic trends are reasonably expected to continue, and any future growth and development at or around the South Bend or Elkhart project sites would be

considered a continuation of existing development patterns and be unrelated to implementation of the No Action Alternative. See Section 4.12 of the Final EIS for a full impact analysis.

3.12 Indirect Effects

With the No Action Alternative, in the absence of Alternatives A, B and C, the purpose and need for the proposal would not be addressed. The Pokagon Band would not receive jurisdiction on an inalienable land base to use to serve tribal members currently living offsite. No Tribal Village would be developed with 44 housing units and a community center building where Band members living within approximately 10 miles could receive services such as education, health and culture. No commercial development would occur to generate revenues to pay for government services on the site and to service the debt for the land the Pokagon Band has already acquired and potential future debt for beneficial alternative development. The No Action Alternative would result in significant adverse indirect environmental justice impacts to minority or low income people that would otherwise be employed by Alternatives A, B or C and live in the vicinity. The No Action Alternative would be a lost opportunity to improve indirect socioeconomic conditions for potential environmental justice objectives of the Pokagon Band to address the purpose and need for the proposal. On the other hand, with the No Action Alternative there would be no demand on offsite utilities, roads, water supply, waste water, public safety and government services from adjoining governments. See Section 4.14 of the Final EIS for a full impact analysis.

Indirect impacts from the Development Alternatives on topography and soils, water quantity and quality, federally listed species, vegetation, cultural resources, land use, agriculture, water supply, wastewater, solid waste, electricity, natural gas, and telecommunications, public health and safety services, and noise are expected to be less than significant, minimal, or temporary. The resources discussed below were analyzed to have a significant level of indirect impacts and will be mitigated as needed. See Section 4.0 for further descriptions of mitigation measures. Preferred Alternative A would generate the greatest net revenues for the Pokagon Band to use to develop the Tribal Tillage and provide government services to Band members. See Section 4.14 of the Final EIS for a full impact analysis.

Air Quality: With the implementation of Alternatives A or C, the City of South Bend would oversee traffic analysis to ensure intersections and lane groups affected by these alternatives would operate adequately and thus minimize indirect air quality impacts. In addition, air emissions from vehicular traffic are estimated to be less than 1 percent of the corresponding South Bend-Elkhart area inventory of emissions for each air contaminant. Therefore, the increase in vehicular traffic is not expected to cause an exceedance of the National Ambient Air Quality Standards (NAAQS). See Section 4.14 of the Final EIS for a full impact analysis.

Alternative B would not significantly indirectly impact air quality by threatening to violate NAAQS. Indirect emissions associated with this alternative would be primarily from the additional vehicle trip generation in the area, including later and offsite emissions, both from customers and workers. With the implementation of potential improvements, the intersections and lane groups affected by the alternative would operate adequately. In addition, air emissions

from vehicular traffic are estimated to be less than 1 percent of the corresponding South Bend-Elkhart area inventory of emissions for each air contaminant. Therefore, the increase in vehicular traffic is not expected to cause an exceedance of the NAAQS. See Section 4.14 of the Final EIS for a full impact analysis.

Wildlife and Habitat: The Development Alternatives could result in habitat fragmentation on adjoining or nearby lands. Indirect effects associated with the operation of the proposed facilities and occupation of the residences would introduce vehicular traffic, noise, light and human activity which would disrupt future wildlife use of the site. See Section 4.14 of the Final EIS for a full impact analysis.

Wetlands: Potential indirect effects from Alternatives A and C to the wetlands located both on-site and off-site could include changes in wetland hydrology due to site development. Site development could increase or decrease surface and/or groundwater flows to wetlands on adjoining lands through the addition of impervious surfaces, underground utilities and storm water management features. Maintaining existing wetland hydrologic regimes through the pre-development assessment of contributing hydrologic inputs, use of culverts and swales to maintain existing onsite surface water patterns and use of storm water best management practices to treat water quality prior to release into wetlands would all serve to minimize indirect effects. Stormwater generated on-site for Alternative B, both during construction and operation phases would be managed to minimize off-site transport of nutrients, contaminants and problematic volumes of water to wetlands located off-site. See Section 4.14 of the Final EIS for a full impact analysis.

Socioeconomic Conditions: The Development Alternatives would have offsite impacts over time to schools, libraries, parks, social services, social costs, taxes and governmental expenditures, but would not be significant. Alternatives A and B could have indirect effects on existing non-tribal gaming operations that those developers consider to be significant. Indirect effects of Alternatives A and B would not be significant to existing tribal gaming facilities operated by the Pokagon Band. A portion of the gaming revenue captured by Alternatives A and B would come from casino customers captured from other existing Indiana gaming operations. As a result, gaming tax payments from those operations would be lower than otherwise expected, an indirect impact. A portion of gaming revenue from Alternatives A and B would also come from casino customers captured from other Pokagon Band gaming operations. As a result, income from those operations to the Pokagon Band would be lower than otherwise expected. See Section 4.14 of the Final EIS for a full impact analysis.

Transportation: Alternatives A and B would cause offsite increases in traffic levels that without mitigation would have significant indirect impacts. Because Alternatives A and B include traffic mitigation features located offsite on adjoining roadways, they would not have significant indirect impacts to Level of Service (LOS) levels on local roadways or the public transportation system. Construction of Alternatives A and B would likely result in both induced growth impacts and secondary impacts. These impacts are unlikely to include substantial new non-Tribal housing development but could, over a period of time, include commercial development

such as lodging facilities, restaurants, and convenience stores, especially at the highway interchange nearest the project sites (US 31/US 20 and S.R. 23 for Preferred Alternative A and US 20 and S.R.19 for Alternative B). The LOS values reported for Alternatives A and B should be consistent with what would be reasonably expected with all traffic volume increases from induced growth. It is unlikely that Alternatives A or B or the indirect growth associated with them would significantly impact public transportation needs because as new development occurs in the vicinity of the project sites, the sponsors of those developments would be responsible for conducting impact analyses and making any roadway improvements necessary to maintain an acceptable LOS. It is unlikely that Alternatives A or B or the indirect growth associated with it would significantly impact public transportation needs.

Alternative C is located on the same site as Preferred Alternative A, however the character of the development is such that there would be considerably less patron and employee traffic accessing the site without the casino component. Despite this, there is some potential that the construction of Alternative C would result in both induced growth impacts and secondary impacts, although on a lesser scale. These impacts are unlikely to include substantial new non-Tribal housing development but could, over a period of time, include commercial development such as lodging facilities, restaurants, and convenience stores, especially at the highway interchange nearest the project site (US 31/US 20 and S.R. 23). See Section 4.14 of the Final EIS for a full impact analysis.

Hazardous Materials: Alternatives A and B are not expected to result in indirect effects on hazardous materials. Alternative C may result in both induced growth and indirect impacts in a one-mile radius of the South Bend property. Over time, the Band's proposed mixed-use development may facilitate construction of new commercial, industrial, and/or residential facilities in surrounding areas. This potential indirect development resulting from Alternative C could result in increased risk of offsite release of petroleum and hazardous materials from operation of the travel center and gas station facility that would require underground storage tanks for gasoline. See Section 4.14 of the Final EIS for a full impact analysis.

Visual Resources: Alterations to visual resources on-site would indirectly affect the Area of Potential Effect (APE) within the line-of-site of the Preferred Alternative A project area. The effects to visual resources would result in the development of a service road adjacent to Prairie Avenue. This site development would result in the removal or alteration of significant areas of the vegetation along Prairie Avenue. The remaining site development would not result in the removal or alteration of significant areas of the surrounding woodland vegetation. Therefore, a less than significant effect at the site perimeter is expected. Removal of existing Eurasian meadow, interior woodlands and hedgerow vegetation and alteration to the topography in the interior of the site would be significant.

Alterations to visual resources on-site would indirectly affect the APE within line-of-sight of the Alternative B project area. Implementation of Alternative B would result in the development of a Tribal Village and casino replacing the current agricultural setting with various types of housing units and a community facility along with planned managed landscapes of both adaptive and native plantings. The site development would not result in the removal or alteration of

adjacent hedgerow vegetation. Therefore, a less than significant effect at the site perimeter is expected. Alteration to the topography in the interior of the site would be significant.

Alterations to visual resources on-site would indirectly affect the APE within line-of-sight of the Alternative C project area. Implementation of Alternative C would result in the development of a Tribal Village replacing the current landscape setting with various types of housing units and a community facility along with planned managed landscapes of both adaptive and native plantings which would be landscaped and architecturally designed to blend into the surrounding view sheds as much as possible. The site development would remove most of the interior vegetation and most of the perimeter vegetation. Therefore, a significant effect at the site perimeter is expected. See Section 4.14 of the Final EIS for a full impact analysis.

Environmental Justice: Alternatives A and B may result in both induced growth and indirect impacts in St. Joseph County and Elkhart County, respectively. Over time, casino and hotel development may facilitate construction of new commercial, industrial, and/or residential facilities in surrounding areas. Any offsite or later indirect economic activity resulting from Alternatives A or B could result in an increase in employment opportunities and commerce that could benefit minority or low income people. These economic and employment opportunities could positively affect EJ populations in St. Joseph County and Elkhart County through subsequent increases in median annual income, decreases in the percentage of individuals living below the poverty line, and decreases in unemployment rates. Band members living both on and off tribal land could also benefit from the additional employment opportunities and economic ventures associated with indirect development resulting from Alternatives A and B.

Alternative C may result in both induced growth and indirect EJ impacts in St. Joseph County. Over time, the Band's proposed mixed-use development may facilitate construction of new commercial, industrial, and/or residential facilities in surrounding areas and could create an associated increase in employment opportunities and commerce. Alternative C would generate fewer indirect development activities (and subsequently fewer jobs and economic outlets than Alternatives A or B), but any new jobs and economic activity from Alternative C could positively indirectly affect EJ populations living offsite in St. Joseph County. Increases in employment opportunities and commerce could benefit EJ populations through subsequent increases in median annual income, decreases in the percentage of individuals living below the poverty line, and decreases in unemployment rates. Band members living both on and off the Alternative C site could also benefit from the additional employment opportunities and economic ventures associated with indirect development resulting from Alternative C. See Section 4.14 of the Final EIS for a full impact analysis.

3.13 Cumulative Effects

Assuming proper mitigation is implemented in a timely manner, the Development Alternatives would not have cumulatively significant impacts to land, water, air or biological resources; socioeconomic conditions; resource use patterns; public services; other values, environmental justice or growth-inducing, indirect or unavoidable adverse effects. Under Alternative D, no project-related activities would occur at the South Bend or Elkhart sites; therefore, the No Action

Alternative would not add to potential adverse impacts from past, present, or reasonably foreseeable future actions and/or projects in the vicinity.

However, the Development Alternatives would have similar substantial beneficial cumulative effects to contribute to the purpose and need for the proposal. The Development Alternatives would result in BIA approval of an inalienable land base for the purposes of establishing a consolidation site in the vicinity of South Bend, Indiana. Cumulatively, Alternatives A, B, and C would result in the establishment of four separate consolidation sites for Band citizens. These alternatives would also include commercial development to generate net revenues to fund a tribal government services center that would cumulatively increase opportunities for Band members. However, Preferred Alternative A would generate the greatest net benefits and therefore result in the greatest cumulative amount of governmental services (tribal and non-tribal) for Band members. The Development Alternatives would cumulatively increase housing availability for Band members compared to existing conditions, and likely result in a more culturally appealing setting.

With the No Action Alternative, in the absence of the Development Alternatives, the purpose and need for the proposal would not be addressed. The Band would not receive jurisdiction on an inalienable land base to serve tribal members currently living offsite. No Tribal Village would be developed, therefore, the 44 housing units and community center building where Band members living within approximately 10 miles could receive services such as education, healthcare and cultural enrichment, would not be constructed. No commercial development would occur to generate revenue to pay for government services on the site, to help service the debt for the land the Band has already acquired, and to service potential future debt for beneficial alternative development. Conversely, with the No Action Alternative, there would be no demand on offsite utilities, roads, water supply, wastewater, public safety services and government services from adjoining governments.

In comparing the Development Alternatives, all impacts are similarly insignificant with implementation of mitigation measures, except that Preferred Alternative A would generate the greatest net revenues for the Band to use to develop the Tribal Village and provide government services to Band members living up to approximately 10 miles from South Bend.

3.14 Unavoidable Adverse Effects

With mitigation measures employed, the anticipated adverse impacts are not drastically different between the Development Alternatives. No Unavoidable Adverse Effects are anticipated for water resources, cultural resources, federally listed species, land use, or public services.

Land Resources: Construction of Alternatives A and B would involve extensive grading which would represent an unavoidable adverse impact on land resources. Construction of Alternative C would involve moderate grading. The soil augmentation that would occur during construction would be in the form of cutting, thus keeping the naturally occurring soil as the primary ground constituents. Although these aspects resulting from the proposed action(s) would be unavoidable, they would not be inherently adverse effects. During the operation of Alternatives

A, B, or C, adverse effects to land resources would be mitigated through standardized BMPs. See Section 4.15 of the Final EIS for a full impact analysis.

Air Quality: It is expected that air contaminant emissions from construction activities for the Development Alternatives would result in minor short-term impacts on air quality in the immediate vicinity of the construction site; however, due to the anticipated short-term duration of construction activities, there would be no long-term impacts and therefore, emissions from the construction activities are not expected to contribute to regional haze, adversely impact long-term visibility, or adversely impact the long-term air quality in the area. Air emissions that may affect ambient air quality during commercial operation would be from area sources and vehicular sources. As the increase in estimated air emission rates is anticipated to be small compared to existing emissions for the South Bend-Elkhart Area, the incremental increase is not expected to cause an exceedance of the NAAQS. See Section 4.15 of the Final EIS for a full impact analysis.

Biological Resources – Wildlife and Habitats: Preferred Alternative A would result in the removal of approximately 80 acres of existing wildlife habitat. Of this total area, approximately 8 acres are mature woods, while the remaining habitats have been historically disturbed by human activities such as agriculture or residential use. Approximately 97 percent of the habitat that would be removed by Alternative B is active agricultural cropland. Given its current limited wildlife value, no unavoidable adverse effects to wildlife habitat would be anticipated. Alternative C would result in the removal of approximately 43 acres of existing wildlife habitat. Of this total area, approximately 5 acres are mature woods, while the remaining habitats have been historically disturbed by human activities such as agriculture or residential use. The No Action Alternative would not remove existing wildlife habitat. See Section 4.15 of the Final EIS for a full impact analysis.

Biological Resources – Vegetation: Development of Preferred Alternative A would primarily affect the old field and Eurasian meadow, shrub/tree, and fence row trees/shrub vegetation zones by removing 48 percent of these low quality vegetation communities. Development of Alternative B would affect the active annual row crop agriculture and homestead landscape vegetation communities by removing 98 percent of the total vegetation. As a result of past disturbance from agricultural practices, the natural vegetation communities have already been altered, thus, additional impacts from Alternative B would be unavoidable, but not inherently adverse. Development of Alternative C would remove 26 percent of old field and Eurasian meadow, shrub/tree, and fence row trees/shrub vegetation zone. As a result of past disturbance from agricultural practices, grazing, and timbering, the natural vegetation communities have already been altered, thus, additional impacts to these low quality vegetative communities from the Development Alternatives would be unavoidable, but not inherently adverse. The No Action Alternative would not affect existing vegetation types. See Section 4.15 of the Final EIS for a full impact analysis.

Biological Resources – Wetlands: Preferred Alternative A proposes to directly impact 0.96 acre forested wetland, 0.71 acre emergent wetland and 0.67 acre (3,300 linear feet) riverine wetlands; this represents impacts to approximately 19 percent of the total 12.69 acres of jurisdictional

wetlands on the site, thus avoiding impacts to 10.35 acres of wetlands. No wetland impacts are anticipated for Alternative B. Alternative C proposes to directly impact 0.19 acre forested wetland, 0.62 acre emergent wetland and 0.46 acre (2,000 linear feet) riverine wetlands; this represents impacts to approximately 10 percent of the total 12.69 acres of jurisdictional wetlands on the site, thus avoiding impacts to 11.42 acres of wetlands. Wetland impacts would require a permit from the U.S. Army Corps of Engineers (USACE), which would necessitate demonstration of compliance to avoid, minimize and mitigate jurisdictional wetland impacts. No adverse effects to wetlands would be anticipated once compliance with USACE permitting requirements has been achieved. The No Action Alternative would not impact wetlands. See Section 4.15 of the Final EIS for a full impact analysis.

Socioeconomic Conditions: Adverse effects under Alternatives A and B would include fiscal impacts from lost property taxes and gaming taxes, as well as possible increases in governmental expenditures for emergency services and other social impacts. Increased output, employment and earnings from Alternatives A and B, and the resulting increases in related tax revenue would mitigate any adverse impacts. Potential adverse effects under Alternative C would not be considered to be material in magnitude. Under the No Action Alternative, the Band would be prevented from providing additional housing and community resources for Band members living in Indiana, and would be prevented from generating the additional economic activity for the benefit of tribal government and membership made possible under the Development Alternatives. See Section 4.15 of the Final EIS for a full impact analysis.

Resource Use – Transportation: With the addition of the Development Alternatives, traffic at several intersections would experience higher delays and would be adversely affected by the addition of development traffic. Mitigation measures would be employed to mitigate background, anticipated indirect and secondary, and direct project-related traffic impacts at these intersections and approaches to acceptable LOS (*i.e.*, LOS D or better). See Section 4.15 of the Final EIS for a full impact analysis.

Resource Use – Agriculture: For Alternatives A and C at the Site, unavoidable effects would occur through permanent conversion of 109 acres of Prime and Unique Farmland designated soils to non-agricultural uses. For Alternative B at the Elkhart site, the Federal action would cause unavoidable adverse effects to both parcels by converting up to 172 acres of Prime and Unique Farmland designated soils to non-agricultural purposes. See Section 4.15 of the Final EIS for a full impact analysis.

Other Values – Noise: Mitigation measures would minimize noise from construction activities to the extent feasible. However, because construction of the Development Alternatives would occur near some noise receptors and could generate substantial noise levels for an extended period of time, construction noise impacts are considered potentially unavoidable and adverse. Site noise levels from the Development Alternatives would be lower than the existing ambient noise levels and would not change existing noise levels. As a result, no unavoidable adverse impacts are anticipated. With the addition of the Development Alternatives, there would be an increase in traffic volumes which would lead to an increase in ambient noise levels within the project area. No feasible mitigation measures are available to reduce noise impacts

associated with the increase in traffic noise generated by project-related traffic or the project's contribution to cumulative noise impacts. Consequently, noise impacts would remain unavoidable and adverse. See Section 4.15 of the Final EIS for a full impact analysis.

Other Values - Hazardous Materials: If a spill of substantial quantity (*e.g.*, an accident involving a service or refueling vehicle) were to occur onsite during construction of the Development Alternatives or during operation of Alternative C, this release could pose a hazard for construction employees and the environment. While not expected, a large spill would be considered an unavoidable adverse effect. See Section 4.15 of the Final EIS for a full impact analysis.

Other Values - Visual Resources: Alternatives A and C would contribute to the visual transformation of the landscape within the surrounding South Bend area. Alternative B would contribute to the visual transformation of the farmland south of the City of Elkhart. Alternatives A, B, and C would likely result in increased light source from nighttime traffic, signage, and building/parking lot lights. With the addition of proposed lighting mitigation measures, there would be no unavoidable adverse impacts expected for either the South Bend or Elkhart sites. See Section 4.15 of the Final EIS for a full impact analysis.

Environmental Justice: It is possible that problem gambling and related social issues such as bankruptcy, divorce, domestic violence, suicide, and crime may initially increase following construction of the casino proposed in Alternatives A and B. As there is no casino component included under Alternative C, no unavoidable adverse social impacts related to the introduction of gaming facilities would be expected to negatively impact EJ populations. The No Action Alternative would not meet the essential needs of the Band and would thus result in unavoidable adverse EJ impacts; these impacts would be disproportionately focused on the Band's citizens, which qualify as minority and possibly low-income individuals. This Alternative would not create an increased tribal land base and would provide no tribal land base in Indiana, no suitable and healthy housing would be provided for Band citizens, no community-focused spaces would be created, tribal governmental and social services would not be delivered, and no economic or employment opportunities would be created. Similarly, no employment opportunities or economic benefits would be created for non-tribal minority and low-income populations. See Section 4.15 of the Final EIS for a full impact analysis.

3.15. Comments

After the issuance of the Final EIS on April 18, 2014, BIA received comment letters from agencies and from other interested parties. All comment letters on the Final EIS were reviewed and considered by BIA and are included within the administrative record. A list of comment letters and a copy of each letter received are included within **Attachment I**.

4.0 MITIGATION MEASURES

The Council on Environmental Quality NEPA Regulations require the development of mitigation measures for all of the proposal's effects on the environment where it is feasible to do so.²⁶ The NEPA Regulations define mitigation as "avoiding the impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, compensating for the impact by replacing or providing substitute resources or environments."²⁷ These principles have been applied to guide design and siting criteria for all of the alternatives and discussed in the EIS. Where potential effects on the environment were identified in early stages of design and EIS preparation, appropriate changes to the proposed action alternatives were made to minimize or eliminate them. In addition to the mitigation measures that have been incorporated into the design, the following sections provide measures to mitigate specific effects identified in the preparation of the EIS specific to Preferred Alternative A. Mitigation measures have been identified where feasible to address specific effects regardless of whether they are considered "significant." Mitigation Measures are discussed in Section 5.0 of the Final EIS.

4.1 Land Resources

Direct impacts to the Development Alternatives include land clearing/grading of more than one acre of land. Section 15-5 of Title 327 of the Indiana Administrative Code, also known as Rule 5 (the National Pollutant Discharge Elimination System General Permit), is administered by the Indiana Department of Environmental Management (IDEM) and is required for all land disturbing activities greater than 1 acre. This rule requires an erosion control plan which will strive to follow the 10 general principles outlined by IDEM for an erosion and sediment control (ESC) plan: fit the project to the existing terrain and soil, develop the erosion and sediment control plan before land-disturbing activities begin, retain existing vegetation on the construction site wherever possible, minimize the extent and duration that bare soil is exposed to erosion by wind and water, keep sediment confined to the construction site as much as possible, if possible, divert off-site runoff away from disturbed areas, minimize the length and steepness of slopes, stabilize disturbed areas as soon as possible, keep velocity of runoff leaving the site low and inspect and maintain erosion control measures regularly.

The ESC plan will show the placement and location of erosion and sediment control features necessary during construction to prevent runoff and storm water pollution. The ESC plan will include construction details, compliance standards, procedural and regulatory compliance requirements as well as implementation timeframes. Historically, the Band has embraced BMPs and intends to continue to do so, as feasible. Such practices include minimizing the width of temporary access roads for construction; using easily-removable materials for construction of temporary access roads; using alternative matting to distribute weight of construction equipment; using long reach excavators to avoid traversing or staging in streams or wetlands; and placing

²⁶ See 46 Fed. Reg. 18,026 (March 23, 1981), Question 19a; 40 CFR §§ 1502.14(f), 1502.16(h).

²⁷ 40 CFR § 1508.20.

mats under construction equipment to contain spills or leaks. Additionally, typical ESC measures include installing non-sediment producing dikes, cofferdams or other barriers to separate work areas and prevent sediment from entering lakes, wetlands and actively flowing streams; maintaining the barriers during construction; and removing barriers post-construction and restoring staging areas through re-establishment of vegetation using native species as quickly as possible after construction to minimize erosion. Mitigation for indirect and induced growth development will reasonably be expected to include and be in compliance with existing management practices and applicable tribal, local, state and Federal laws and requirements relating to land clearing and site development. It is reasonable to expect that existing practices and requirements will be imposed upon and implemented by new developments because such practices and requirements are typically mandated as a condition of site development permits and approvals. Similar to the indirect and induced growth impacts, mitigation measures for cumulative impacts will reasonably be expected to include and be in compliance with existing management practices and tribal, local, state, and Federal laws and requirements, as previously described. See Section 5.2 of the Final EIS for a full description of mitigation measures.

4.2 Water Resources

Surface Water: The following mitigation measures apply to Preferred Alternative A and to Alternatives B and C. There is an additional operations concern for Alternative C because it includes refueling services for a gas station component of the proposed action. Surface water quality will be protected during construction using BMPs as described in the sediment and control plan text above. Construction activities on the project site are regulated by EPA's NPDES storm water program and require coverage under EPA's NPDES Phase II General Permit for Storm Water Discharges from Construction Activities or EPA's NPDES Municipal Separate Storm Sewer System. The required Storm Water Pollution Prevention Plan (SWPPP) will be kept on-site during construction and will be available for review by EPA upon request. The plan will incorporate temporary BMPs, including those listed in the Indiana Storm Water Quality Manual Planning and Specification Guide for Effective Erosion and Sediment Control and Post-Construction Water Quality. It will also include an inspection and monitoring section consistent with the requirements of the NPDES program. Implementation of the SWPPP will ensure that pollutants in storm water runoff from the construction site will be limited to the maximum extent practicable.

The following BMPs will be incorporated into the SWPPP as appropriate: silt fences, vegetated swales, inlet protection, temporary seeding, erosion control blankets, energy dissipaters, sediment traps, dust control procedures, and crushed aggregate construction entrances and exits.

The EPA recommends that green infrastructure practices for stormwater and wastewater management be incorporated as much as possible. Examples of these practices include: retaining trees and other vegetation during construction, as well as using practices that reduce stormwater discharge volumes and protect water bodies from pollutants carried by urban stormwater, such as rain gardens and permeable pavers (which can enhance groundwater recharge). The Band has utilized green infrastructure practices at other construction projects

in the past and will voluntarily implement, as feasible, similar methods during design and construction of the project.

Post construction measures will include the implementation of vegetated swales throughout the site for stormwater conveyance and water quality purposes to direct flows into detention basins as appropriate. Wet detention basins, including retention ponds and wet extended detention ponds, allow contaminated sediments to settle and remain in the pond while providing flood storage for peak flow attenuation. Additionally, areas which are considered sensitive (including high quality receiving waters and waters currently impaired) may be given additional treatment measures. To verify control measures and appropriate reduction of contaminants in surface water runoff, EPA's NPDES permit program requires surface water quality monitoring on a regular basis. The site-specific surface water quality program will identify the water quality objectives, source reduction measures, record keeping protocol and an annual review of the surface water quality program to identify any necessary changes or additions to the program to ensure the surface water quality objectives are met. See Section 5.3 of the Final EIS for a full description of mitigation measures.

Groundwater: The following mitigation measures apply to the Development Alternatives. There is an additional operations concern for Alternative C because it includes refueling services for a gas station component of the proposed action. The final SWPPP will include detailed groundwater contamination prevention processes and mitigation. Additionally, the Sole Source Aquifer Protection Program is authorized by Section 1424(e) of the Safe Drinking Water Act of 1974 stating that if a sole source aquifer designation is approved, proposed Federal financially assisted projects which have the potential to contaminate the aquifer are subject to EPA review, whereas proposed projects that are funded entirely by state, local, or private concerns are not subject to EPA review.²⁸ The St. Joseph Sole Source Aquifer System underlies portions of St. Joseph County, including the South Bend project site, however, funding sources for the Preferred Alternative have not yet been secured. If Federal funding is sought for any housing and other non-commercial development, the Sole Source Aquifer Protection Program would apply and the Federal funding agency would initiate the EPA review process. Should this occur, the Band would provide all necessary information and documentation to EPA for review. See Section 5.3 of the Final EIS for a full description of mitigation measures.

4.3 Air Quality

The following mitigation measures apply to the Development Alternatives. Fugitive dust PM₁₀ emissions from exposed soil disturbed by construction activities will be effectively controlled by the application of water. The effectiveness of this measure is dependent on the maintenance of adequate soil moisture content, which is dependent on the frequency of watering. The sites will be watered according to permit conditions to minimize construction-related PM₁₀.

²⁸ Pub. L. No. 93-523, *codified at* 42 U.S.C. § 300 *et. seq.*

Additional mitigation measures to reduce potential impacts during construction may include:

- Use of equipment and trucks that are maintained in good operational condition;
- Retrofitting of off-road equipment with emission reduction equipment;
- Implementation of restrictions on construction truck idling; e.g., limiting idling to a maximum of 5 minutes;
- Spraying exposed soil with water or other suppressant to reduce emissions of dust and deposition of particulate matter;
- Pavement or use of gravel on staging areas and roads that will be exposed for long periods;
- Covering trucks transporting materials, wetting materials in trucks or providing adequate freeboard (space from the top of the material to the top of the truck bed) to reduce particulate matter emissions and deposition during transport; and
- Providing wheel washers to remove particulate matter that would otherwise be carried off- site by vehicles to decrease deposition of particulate matter on area roadways.

Additional mitigation measures to reduce emissions from the combustion of fuel during operations may include:

- Using solar or low-emission water heaters or central water heating;
- Increasing the thickness of insulation used for walls and attic spaces;
- Where possible, utilizing electric powered cooking appliances, comfort systems and landscaping equipment; and
- Implementing restrictions on bus or recreational vehicle idling; e.g., limiting idling to a maximum of 5 minutes.

The Band is committed to reducing exposure to diesel exhaust during construction and operation of facilities and will strive to implement measures to effectively limit pollution and impacts to human health. The EPA gives the following recommendations:

- using low-sulfur diesel fuel (less than 0.5 percent sulfur);
- positioning the exhaust pipe so that the diesel fumes are directed away from the operator and nearby workers, thereby reducing the fume concentration to which personnel are exposed;
- using catalytic converters to reduce carbon monoxide, aldehydes and hydrocarbons in diesel fumes;
- ventilating wherever diesel equipment operates indoors, including using roof vents, open doors and windows, roof fans or other mechanical systems help move fresh air through work areas;
- attaching a hose to the tailpipe of diesel vehicles running indoors and exhaust the fumes outside, where they cannot reenter the workplace;
- using climate controlled cabs pressurized and equipped with high efficiency particulate air filters to reduce operators' exposure to diesel fumes;
- regularly maintaining diesel engines;

- purchasing new vehicles that are equipped with the most advanced emissions control systems available; and
- with older vehicles, using electric starting aids such as block heaters to warm the engine reducing diesel emissions using respirators, which are only an interim measure to control exposure to diesel emissions.

See Section 5.4 of the Final EIS for a full description of mitigation measures.

4.4 Biological Resources

Wildlife and habitats: The following mitigation measures apply to the Development Alternatives. Mitigation for impacts to habitat may include activities during and after construction. During construction, vegetation clearing will occur outside the Spring/Summer nesting and fledging period to protect migratory bird species as required by the Migratory Bird Treaty Act. If vegetation removal activities are to be conducted during the nesting season, a pre-construction survey for active migratory bird nests within proposed disturbance areas will be conducted by a qualified wildlife specialist within two weeks to a month prior to vegetation removal, to include nests, ground nests, and their activity status. If vegetation removal activities are delayed or suspended for more than a month after the preconstruction survey, the site will be resurveyed. If active migratory bird nests are identified, vegetation removal that would disturb these nests will be postponed until after the nesting season, or a qualified wildlife specialist will determine if the young have fledged and were independent of the nest site. No active nest of a migratory bird protected by Federal law will be disturbed without a permit or other authorization from the U.S. Fish and Wildlife Service (USFWS). Construction activities will be limited outside daylight hours to minimize impacts to wildlife from noise and direct collision. The BMPs agreed upon in the SWPPP as described above, will serve the secondary purpose of limiting the amount of sediment entering into the remnant forest systems.

Post construction measures will be put into place to protect wildlife utilizing the surrounding remaining habitat. Driving speeds within the project area will be limited to 20 mph or less to avoid potential road-kill of wildlife. Lighting from the front of the casino will be directionally pointed away from the remaining habitats where feasible and lighting for the back of the casino will consist of low wattage security and safety lighting near doorways to minimize effects from on-site lighting. See Section 5.5 of the Final EIS for a full description of mitigation measures.

Federally Listed Species: Consultation with the USFWS resulted in a determination of “not likely to adversely affect” endangered, threatened or candidate species. The following mitigation measures apply to the Preferred Alternative A and Alternative C. Indiana bats and Northern long-eared bats were the only listed species with potential habitat occurring on the Site. Potential bat trees were identified on-site, primarily located in the more mature wooded area along US 31. Potential roosting trees will be avoided when possible; those that cannot not be avoided will be flagged/marked so that the construction company only removes those necessary to proceed with construction as designed. If potential roosting trees need to be removed, they will not be removed during the summer season (May 15 to August 15) to avoid affecting potential habitat. Additionally, as the main threat to the Northern long-eared bats’ existence

is white nose syndrome and not habitat loss, the most vulnerable life stages of the northern long-eared bat (i.e., while in hibernacula or in maternity roost trees) are used to evaluate impacts to the species. As there are no known northern long-eared bat occurrences documented near the project area, based on search results obtained from the Indiana Natural Heritage Data Center, no impacts to the northern long-eared bat are expected. Concurrence with this no effect determination was received on February 19, 2016. Alternative B, the Elkhart site, does not contain potential habitat for bats. See Section 5.5 of the Final EIS for a full description of mitigation measures.

Vegetation: The following mitigation measures apply to the Development Alternatives. Vegetation impacts include the creation of edge habitat and changes to the site hydrology, both of which can result in a shift in community structure and species composition. The introduction of nuisance/exotic species is a concern both during construction and in the operational phase. Mitigation for indirect impacts to the remaining habitats will be accomplished through enhancement activities when possible within those systems including: selective thinning, enhanced species biodiversity, and the introduction of controlled fires. Cutting and removal of vegetation by site users or residents could occur to prevent personal or property damage, or to facilitate personal interest in physical access, visual access or aesthetics. Unnecessary cutting of vegetation can be addressed through educational communication, the establishment of conservation easements or restrictive covenants, signs and/or fences to minimize this indirect effect. Users and residents could also become stewards of the site to manage remaining habitats, treat invasive species and enhance biological diversity.

Nuisance and exotic species introduction during construction will be minimized by establishing a vehicle wash station to remove soil potentially containing invasive species from construction equipment, and replanting of disturbed ground to establish non-invasive vegetative cover. Within the developed portion of the site, all landscaping will consist of native or non-invasive species. During the operation phase, exotic and nuisance species will be regularly and actively controlled through direct removal or approved herbicide application. See Section 5.5 of the Final EIS for a full description of mitigation measures.

Wetlands: The following mitigation measures apply to the Preferred Alternative A and Alternative C. Both direct and indirect wetland impacts may occur during the construction and operation phases of the project. Direct impacts to wetlands will be regulated by the USACE. A permit will be required from the USACE prior to construction, which will specify permitted impacts to wetlands and required mitigation measures. In these situations, the USACE and IDEM typically use the same mitigation standards which include ratios of 2.0 to 1.0 for emergent wetlands and 4.0 to 1.0 for forested wetlands, both on and off-site. Compensatory wetland mitigation for riverine wetland is typically provided through the relocation or restoration of stream channels at a minimum ratio of one foot of relocated or restored stream channel for each foot of impact. At this time, there are no wetland mitigation banks in the Kankakee River watershed or the St. Joseph River watershed with appropriate habitat credits. The USACE prefers to see suitable lands within the watershed used for wetland mitigation and that mitigation take place in the same wetland/habitat type as those impacted.

Construction impacts to wetlands will be limited through the implementation of the stormwater BMPs discussed above. The proper implementation of BMPs will limit the amount of stormwater and associated sediment and pollutants entering wetlands. Space permitting, temporary fencing will be installed around wetland or drainage areas prior to construction and will remain in place until all construction activities have been completed. Fencing will be checked frequently and maintained as necessary. Construction staging areas will, to the extent feasible, be located away from wetlands and drainage areas. Temporary stockpiling of excavated or imported material will occur only in approved construction staging areas. Excess excavated soil will be used on-site or disposed of at an approved regional landfill or other appropriate facility. Stockpiles that remain on-site for an extended period will be protected to prevent erosion. During operation, appropriate demarcation or informative signs will be installed near remaining wetland systems located close to the proposed development to keep maintenance crews from mowing within the wetland.

Alternative B, the Elkhart site, does not contain any identified wetlands or waters of the U.S. See Section 5.5 of the Final EIS for a full description of mitigation measures.

4.5 Cultural Resources

At this time, no archaeological sites will be affected and no non-archaeological historic-age resources will be adversely affected by the project; therefore, no mitigation is necessary. However, if future development occurs in the immediate vicinity of BIA Structure 10 (Atkins Resource 04A) or if alterations to the exterior of BIA Structure 10 (Atkins Resource 04A) occur, these actions may indirectly and/or directly adversely affect BIA Structure 10 (Atkins Resource 04A), and compliance with Sections 106 and possibly 110 of the NHPA may be required, necessitating mitigation for Alternatives A and C.

Should any archaeological artifacts, including human remains or other cultural resources be encountered during project construction, work will cease immediately in the vicinity of the resource, the discovery reported to BIA and the THPO and action taken as directed.

The preferred form of mitigation for effects on cultural resources is avoidance. Where avoidance is not possible, effects can be mitigated in consultation with appropriate entities. An alternative form of mitigation of direct effects would be detailed data retrieval, if inadvertently encountered. Indirect effects on historic properties and landscapes can be lessened through careful design and landscaping considerations. Additionally, relocation may be possible for some historic structures. See Section 5.6 of the Final EIS for a full description of mitigation measures.

4.6 Socioeconomic Conditions

Socioeconomic conditions were analyzed at four geographic scales to encompass the proposed alternatives: St. Joseph County, City of South Bend, Elkhart County and City of Elkhart. The Preferred Alternative best provides necessary Tribal Village and community space to fulfill part of the purpose and need. The project will not result in significant fiscal impacts including property tax, sales and related taxes and governmental expenditures. Social costs associated with

a casino will not be significant and will decrease overtime. These costs will be mitigated through funding for treatment programs and employee training.

Mitigation measures include the following, consistent with current Band law, regulations, and practices:

- The Band has existing law and policy for dealing with problem gambling.
- The Band administers training programs to assist management and staff in recognizing and addressing customers whose gambling behavior may strongly suggest they may be experiencing serious to severe difficulties.
- The Band will refuse service to any customer whose gambling behavior convincingly exhibits indications of problem or pathological gambling.
- The Band will assist customers in need of access to gambling treatment professionals and programs and self-help group.
- The Band has existing regulations and policies that allow for voluntary self-exclusion, which enables gamblers to ban themselves from a gambling establishment for a specified period of time and the Band's Gaming Commission may initiate an involuntary exclusion procedure regarding patrons whose behavior meets regulatory requirements.

See Section 5.7 of the Final EIS for a full description of mitigation measures.

4.7 Resource Use Patterns

Transportation Mitigation Measures: The following roadway improvements will offset the potentially significant impacts noted in the Final EIS for Preferred Alternative A. Prior to project development the following measures will be evaluated in more detail by the Band, INDOT and the St Joseph County Engineer's Office. Potential improvements that may be implemented for the "Opening Year" (estimated for purposes of transportation mitigation in this section as year 2020) or in subsequent phases of project development consist of:

- US 31/20 Westbound Ramps
 - Install a traffic signal with protected phase for northbound left turn
 - Construct westbound right turn only lane, reassign lanes on westbound approach to left/right turn lane and right turn only
- US 31/20 Eastbound Ramps
 - Install traffic signal with protected phase for southbound left turn;
 - Construct eastbound left turn only lane, reassign lanes on eastbound approach to left turn only and left/right turn lane
- SR-23 between US 31/20 Westbound Ramps and New Energy Drive
 - Provide two lanes for each direction of travel
- New Energy Drive at SR-23
 - For northbound drive approach, provide two left turn lanes, one through lane, and one right turn lane
 - Add left turn lane to westbound approach

- Add left turn lane to southbound approach
 - Drop second eastbound through lane as a right turn only lane into site driveway
 - Install actuated signal with protected left turn phases for eastbound, westbound, and southbound approaches and protected right turn phases for eastbound and northbound approaches
- Locust Road at SR-23
 - Add protected southbound left turn phase
- Ewing Avenue at SR-23
 - Install traffic signal

No further improvements will be necessary to mitigate the 2035 traffic impacts. Auxiliary turn lanes do not appear to be warranted under the 2020 or 2035 conditions at Driveway B and Driveway C both accessing Locust Road. However, the Band may, subject to the approval of INDOT, wish to install these lanes for the added safety benefit. If the potential roadway improvements (i.e., mitigation measures) mentioned above are implemented, all of the analyzed intersections and all previously unacceptable intersection lane groups are expected to operate at LOS D or better during both the Opening Year (2020) and the Horizon Year (2035).

The following roadway improvements will be considered to offset the potentially significant impacts noted in the Final EIS for Alternative B. These measures will be evaluated in more detail by the Band, INDOT, and the Elkhart County Engineer's Office prior to project development. Potential improvements that may be implemented for the Opening Year (2020) or in subsequent phases of project development consist of:

- County Road 28 at SR-19
 - Install traffic signal
- SR-19 at Proposed Driveway A (Main Casino Driveway)
 - Install traffic signal
 - Inside southbound through lane becomes a left turn only lane
 - Provide two northbound through lanes and add one right turn only lane
 - Provide two westbound right turn lanes and one left turn lane

The following additional roadway improvements will be considered to offset the potentially significant impacts under the Horizon Year (2035) scenario. These measures will be evaluated in more detail by the Band, INDOT, and the St Joseph County Engineer's Office prior to project development. Potential improvements that may be implemented for the Horizon Year (2035) consist of:

- US 20 Westbound Ramps
 - Remove the off ramp splitter island; provide two left-turn only lanes and two right-turn only lanes

Auxiliary turn lanes do not appear to be warranted under the 2020 or 2035 conditions at Driveway B; however the Band may wish to install these lanes for the added safety benefit. If the potential roadway improvements (i.e., mitigation measures) mentioned above are

implemented, all the analyzed intersections and all previously unacceptable intersection lane groups are expected to operate at LOS D or better during both the Opening Year (2020) and the Horizon Year (2035).

The following roadway improvements will be considered to offset the potentially significant impacts noted in the Final EIS for Alternative C. These measures will be evaluated in more detail by the Band, INDOT, and the St Joseph County Engineer's Office prior to project development. Potential improvements that may be implemented for the Opening Year (2020) or in subsequent phases of project development consist of:

- US 31/20 Eastbound Ramps
 - Install traffic signal
- US 31/20 Westbound Ramps
 - Install traffic signal
- SR-23 & Driveway B
 - Install traffic signal
 - Add northbound right turn lane
 - Add southbound left turn lane
 - Add westbound left turn lane
- New Energy Drive at SR-23
 - Install traffic signal
 - For northbound drive approach, provide one left turn lane and one shared through/right turn lane
 - Add left turn lane to westbound approach
 - Add left turn lane to southbound approach
 - Add right turn lane to eastbound approach
- Ewing Avenue at SR-23
 - Install traffic signal

No further improvements would be necessary to mitigate the 2035 traffic impacts. Auxiliary turn lanes do not appear to be warranted under the 2020 or 2035 conditions at Driveway C and Driveway D; however the Band may wish to install these lanes for the added safety benefit. If the potential roadway improvements (i.e., mitigation measures) mentioned above are implemented, all the analyzed intersections and all previously unacceptable intersections and lane groups are expected to operate at LOS D or better during both the Opening Year (2020) and the Horizon Year (2035). See Section 5.8 of the Final EIS for a full description of mitigation measures.

Construction Impacts: It should be noted that construction of potential mitigation measures may introduce temporary or short term impacts to motorists, possibly including additional delay not quantified by this study. These temporary construction impacts are not considered to be significant. See Section 5.8 of the Final EIS for a full description of mitigation measures.

4.8 Public Services

Water Supply and Wastewater Service: Effective water management techniques can reduce water consumption and significantly reduce costs associated with water supply and wastewater discharge. Based on the preliminary analysis conducted by Wightman and Associates, Inc. to mitigate for inadequate capacities and to increase efficiencies, specific upgrades are required at the points of hook up with the City of South Bend wastewater and water supply mains. The use of the City of South Bend systems by the project will require a lift station and forced main for wastewater; and a new on-site water main for water delivery, but a booster station will not be required. Water agreements have already been established between the City of South Bend and the Band (signed March 22, 2016). For Preferred Alternative A, a new water main (approximately 10,500 feet long) would connect to the City of South Bend's existing 12-inch water main service on Locust Road. A lift station would be located on-site and a forced main would extend approximately 3,500 feet to connect to an existing manhole on Locust Road. For Alternative C, a new water main (approximately 10,000 feet long) would connect to the City of South Bend's existing 12-inch water main service on Locust Road. A lift station would be located on-site and a forced main would extend approximately 2,200 feet to an existing manhole on Locust Road.

For Alternative B, a new water main at an existing hookup point (approximately 8,000 feet) would connect to the City of Elkhart's existing water main on County Road 26. An additional 6,700 feet of water main would be constructed along Nappanee Street from County Road 26 extending north to the existing water main approximately 1,500 feet south of County Road 24, where a new booster station would be constructed. Approximately 12,500 feet of new sewer line would be needed. A lift station would be located on-site and a forced main would extend approximately 12,500 feet to connect to an existing manhole on West Mishawaka Road (County Road 20). The new water main components would be constructed by the Band, but would be owned and operated by the City of Elkhart.

Lift station for wastewater will be powered by the local electrical grid with a generator powered by diesel or other petroleum-based fuel for backup. As with any petroleum products stored on-site, diesel fuel will be retained in areas with secondary containment or kept in secured areas with impermeable floors and a Spill Prevention, Control, and Countermeasures Plan (SPCC) administered by EPA. Wastewater forced mains installed will feature 6-inch PVC meeting the requirement of ASTM D2241 with a SDR of 21, rated at a working pressure of 200 PSI with reduced wall compact ductile iron fittings. New water mains for water delivery by City of South Bend systems will be ductile iron pipe with polyethylene encasement per ASTM A674 and AWWA C105.

Some additional water management techniques used by EPA that may in some instances be applied to the proposed developments include:

- Metering, measuring and managing water processes to identify inefficiencies;
- Upgrading sanitary fixtures (waterless urinals, low-flow toilets, faucet flow controls);

- Eliminating single-pass cooling systems which uses a continuous flow of water circulated once through a system for cooling purposes and then disposed of, using recycled water and closed loop systems to cool air-conditioning equipment can reduce water consumption and reduce costs;
- Incorporating xeriscaping techniques which is a type of landscaping that conserves water by planting native, water-efficient plants utilizing techniques that minimize the need for irrigation;
- Recovering rooftop rainwater and redirecting it to storage tanks for various purposes throughout the facilities;

The U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) is a point-based system that awards points for new construction meeting specific requirements in terms of water usage. Should the Band choose to pursue LEED certification, there are three credit areas allocated to water efficiency:

- Credit 1 - Water-efficient landscaping
- Credit 2 - Innovative wastewater technologies
- Credit 3 - Water Use Reduction

Some strategies within the three credit areas could be easily incorporated into the proposed design during any phase of the project; however, other strategies would require long term planning and the integration of multiple disciplines. See Section 5.9 of the Final EIS for a full description of mitigation measures.

Solid Waste: The following mitigation measures apply to the Preferred Alternative A and Alternatives B and C. Effective mitigation techniques to reduce solid waste during the operation of the facility may include implementing an extensive recycling program and incorporating composting techniques. During construction, there will be opportunities to hire local contractors to salvage waste building materials to reduce waste quantities and save on disposal fees. See Section 5.9 of the Final EIS for a full description of mitigation measures.

Public Utilities (Electricity, Natural Gas and Telecommunications): The following mitigation measures apply to the Preferred Alternative A and Alternatives B and C. With each public utility, mitigation measures will be designed, installed or added as feasible to provide redundancy to the system thus avoiding disruption in utility services. As with any development, disruptions to services could occur from storms, non-related construction accidentally cutting or disrupting lines or system failures. Utility mitigation options will likely include backup electrical generators and looped systems. To mitigate telecommunication disruptions and outages, if feasible, fiber optics cable will be installed and the circuits will be configured so they may ride on either the copper or the fiber optics cable. This system has been successful at the Four Winds New Buffalo Casino at mitigating against unforeseen communication outages. There will be opportunities to reduce electrical demands by increasing the natural gas usage for powering the facility, which will increase efficiency and reduce electricity costs, while also providing greener power opportunities.

There will also be opportunities to introduce the LEED certification process and green building concepts when developing utility plans. The LEED certified buildings have been shown to cost less to operate by reducing energy and water bills. Green building concepts include optimizing four main areas in design: materials, energy, water, and health. Specifically, some green energy elements that may be introduced into the proposed design include:

- Passive solar design which involves high levels of insulation, energy-efficient windows, the use of natural daylight to reduce lighting needs, energy-efficient lighting and low energy appliances;
- Use of waste heat from other processes for temperature control;
- Incorporation of thermal masses to absorb, store and distribute heat; and
- Southern facing glass windows.

The actual mechanical, electrical, material design components and energy demand needs will be calculated during the final design process, and green building decisions and increased usage of natural gas and/or renewable energy options will be reviewed at that time. See Section 5.9 of the Final EIS for a full description of mitigation measures.

Public Health - Law Enforcement: Law enforcement measures may include:

- The Band will provide on-site security for casino operations to reduce and prevent criminal and civil incidents for Preferred Alternative A and Alternative B.
- The Band will require alcoholic beverage servers to undergo training to ensure responsible service, sale and consumption of alcohol to prevent intoxication, underage drinking and drunk driving for Preferred Alternative A and Alternative B.
- For Preferred Alternative A and Alternative B, security guards will routinely carry two-way radios to respond to backup and emergency related calls. This will aid in the prevention of auto theft and other related criminal activity.
- For Preferred Alternative A and Alternative B, all parking areas will be well lit and monitored by parking staff, surveillance cameras, and/or roving security guards at all times during operation. This will aid in the prevention of auto theft and other criminal activities.
- For Preferred Alternative A and Alternative B, areas surrounding the gaming facilities will be well lit and monitored by surveillance cameras and/or patrolled regularly by roving security guards. This will aid in the prevention of off-site parking, which has the potential create possible security issues.
- For Preferred Alternative A and Alternative C, at the County Sheriff's request or on the Band's own initiative, the Band would consider providing a location on or near the site for a law-enforcement substation, subject to the commitments agreed upon in Resolution R-12-C-2014 which approves cross-deputization between the Band and the County Sheriff's Department.
- In November of 2014, in preparation for jurisdictional changes that will result from the proposed transfer of land owned by the Pokagon Band in South Bend to Federal trust status, the St. Joseph County Board of Commissioners unanimously adopted Resolution

R-12-C-2014 which approved the local governmental cross-deputization agreement for law enforcement with the Pokagon Band of Potawatomi Indians. This agreement applies to the Preferred Alternative A and Alternative C. The agreement will allow both Tribal Police deputies and Sheriff's deputies to have reciprocal law enforcement jurisdiction and authority throughout St. Joseph County and the State of Indiana. This includes land that would be held in trust for the Pokagon Band as detailed within the resolution.

See Section 5.9 of the Final EIS for a full description of mitigation measures.

Fire Protection / Emergency Medical Service: The following mitigation measures apply to the Development Alternatives. The Band will comply with all building code and fire protection regulations. Fire protection measures may include:

- Any construction equipment that normally includes a spark arrester will be equipped with an arrester in good working condition. This includes, but is not limited to: vehicles, heavy equipment and chainsaws. During construction, staging areas, welding areas, or areas slated for development using spark-producing equipment will be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor will keep these areas clear of combustible materials in order to maintain a firebreak.
- The Band will ensure that it has provisions in place for adequate emergency, fire, medical and related relief and disaster services for residents, patrons and employees.
- The Band will use fire resistant construction materials for the larger buildings as practical, and all equipment-enclosed buildings equipped with automatic sprinkler systems will be designed to meet or exceed the applicable NFPA standards governing the different occupancies associated with the project structures.
- Through the use of modern construction and fire engineering techniques, the Band will build automatic systems for certain rooms that are designed to contain any fire to the room of origin.
- Through the use of modern fire engineering technology the Band will create and maintain a facility equipped with the latest early detection systems that insure an initial response to any fire alarm (automatic, local or report) within three minutes. This will rely on automatic sprinkler systems in the occupied areas and smoke detention, along the automatic sprinkler systems, in the areas of the facility that are normally unoccupied, such as storerooms and mechanical areas.
- The Band will pursue an agreement with the South Bend Fire Department if needed to secure fire and emergency services for the Site.
- An Emergency Operation Plan must be developed under Band law, which will require cooperation with the South Bend Fire District, the project operators and other local authorities. This plan will provide for response and community notification protocols, as well as evacuation routes in the event of a catastrophic incident, such as a major earthquake or fire

See Section 5.9 of the Final EIS for a full description of mitigation measures.

4.9 Other Values

The following mitigation measures apply to the Development Alternatives.

Hazardous Materials: An Emergency Operation Plan must be developed under Band law, which requires detailed plans to protect life and property in any situation involving hazardous materials, including radiological hazards. As part of the Emergency Operation Plan, the following measures will be considered:

- Personnel will follow written standard operating procedure for filling and servicing construction equipment and vehicles. The standard operating procedures, which are designed to reduce the potential for incidents involving hazardous materials, include any of the following:
 - Refueling will be conducted only with approved pumps, hoses and nozzles.
 - Catch-pans will be placed under equipment to catch potential spills during servicing.
 - All disconnected hoses will be placed in containers to collect residual fuel from the hose.
 - Vehicle engines will be shut down during refueling.
 - No smoking, open flames or welding will be allowed in refueling or service areas.
 - Refueling will be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
 - Service trucks will be provided with fire extinguishers and spill containment equipment, such as absorbents.
 - Should a spill contaminate the soil, the soil will be put into containers and disposed of in accordance with local, state and Federal regulations.
 - All containers used to store hazardous materials will be inspected at least once per week for signs of leaking or failure. All maintenance and refueling areas will be inspected monthly. Results of inspections will be recorded in a logbook to be maintained onsite.
 - Staging areas, welding areas or areas slated for development using spark-producing equipment will be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor will keep these areas clear of combustible materials in order to maintain a firebreak.
- The amount of hazardous materials used in project construction and operation will be consistently kept at the lowest volumes needed.
- The least toxic material capable of achieving the intended results will be consistently used to the extent practicable.
- A hazardous materials and hazardous waste minimization program will be developed, implemented, and reviewed annually by the Band to determine if additional opportunities for hazardous materials and hazardous waste minimization are feasible, for both project construction and operation.
- The contractor will be requested to avoid and minimize the use of hazardous materials during the project's construction to the fullest extent practicable.

- The use of pesticides and toxic chemicals will be minimized to the greatest extent feasible in landscaping, or a less toxic alternative will be used.

See Section 5.10 of the Final EIS for a full description of mitigation measures.

Noise: Construction noise will be minimized by appropriate measures, which may include limiting the hours that construction occurs outside standard workday construction window and shutting down equipment when not in use. During the operation phase, shuttle bus drivers for the operation will turn off buses when not in use to reduce idling noise. See Section 5.10 of the Final EIS for a full description of mitigation measures.

5.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)

Either the No-Action Alternative or Alternative B would result in the fewest effects to the natural environment. The No-Action Alternative would be environmentally preferred but would not meet the stated purpose and need for acquiring the Site in trust. Specifically, the Band would not receive jurisdiction on an inalienable land base to use to serve tribal members currently living offsite. No Tribal Village would be developed with 44 housing units and no community center built where Band members living within approximately 10 miles could receive services such as education, health and culture. No commercial development would occur to generate revenues to pay for government services on the site and to service the debt for the land the Band has already acquired and potential future debt for beneficial alternative development. The No Action Alternative would not improve socioeconomic conditions and could negatively impact the existing socioeconomic conditions of the Tribe, nor would the No Action Alternative fulfill the purpose and need for the proposal.

Of the Development Alternatives, Alternative B in Elkhart County would result in the fewest adverse effects on the natural environment. The Alternative B project area in Elkhart County is currently disturbed by active agricultural practices and would therefore have no significant adverse effects on wildlife habitat, native vegetation, or wetlands. From an ecological standpoint, impacts to the habitat and wildlife for Alternative B has been determined to be beneficial in nature through the conversion of agricultural land to native prairies. However, Alternative B at the Elkhart site is anticipated to generate less revenue (see Section 4.7.2 of the Final EIS for full impact analysis) and fewer jobs than Preferred Alternative A at the South Bend Site, and would therefore reduce the number of programs and services the tribal government could offer tribal members and neighboring communities. Alternative B is the Environmentally Preferred Development Alternative, but it would not fulfill the purpose and need as adequately as Preferred Alternative A.

6.0 PREFERRED ALTERNATIVE

For the reasons discussed herein, the Department has determined that Alternative A is the Preferred Alternative. Of the alternatives evaluated within the Final EIS, Preferred Alternative A would best meet the purpose and need for acquiring the Site in trust because it will create an increased tribal land base in Indiana to provide housing and community services to members

who reside there, provide a community focused space, create a central location to administer government services to the Band's Indiana community, and create commercial development that would provide employment opportunities and economic stability in support of the Band's Indiana. Through implementation of Preferred Alternative A, the Band's government would be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Band, its members, and local communities with greater opportunities for employment and economic growth. Preferred Alternative A would have slightly greater environmental impacts than either of the environmentally preferred alternatives, however, those alternatives do not meet the purpose and need for acquiring the Site in trust to the same extent as Preferred Alternative A, and the environmental impacts of Preferred Alternative A are adequately addressed by the mitigation measures adopted in this ROD.

While Alternatives B and C would also create an unalienable land base to provide housing and community services to the Band's local residents, the economic returns would be smaller than under Preferred Alternative A. The Band needs a development option that would ensure adequate capital resources to fund tribal programs, and the reduced revenue anticipated from Alternatives B and C would limit the Band's ability to accomplish this. Additionally, with the No Action Alternative, the Band's purpose and need for the proposal would not be met, therefore, of all alternatives evaluated in this Final EIS, Preferred Alternative A best meets the purpose and need for acquiring the Site in trust, therefore, Alternative A is the Department's Preferred Alternative.

7.0 ELIGIBILITY FOR GAMING PURSUANT TO THE INDIAN GAMING REGULATORY ACT

As discussed below, the Band meets the requirements of the Restored Lands Exception of Section 20 of IGRA and the Department's implementing regulations contained at 25 C.F.R. Part 292. Accordingly, the Band may conduct gaming on the Site upon its acquisition in trust.

7.1 The Indian Gaming Regulatory Act of 1988

The Indian Gaming Regulatory Act (IGRA) was enacted "to provide express statutory authority for the operation of ... tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."²⁹ Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988. However, Congress expressly provided that lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition" are not subject to IGRA's general prohibition.³⁰ As discussed

²⁹ *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002). See also 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

³⁰ 25 U.S.C. § 2719 (b)(1)(B)(iii).

below, the Band meets the statutory requirements of the Restored Lands Exception in Section 20 of IGRA and its implementing regulations found in 25 C.F.R. Part 292.

7.2 The Pokagon Restoration Act of 1994

Congress enacted the Pokagon Restoration Act in 1994.³¹ The Act's specific purpose was to "reaffirm and clarify the federal relationship of the Pokagon Band of Potawatomi Indians of Michigan as a distinct federally recognized Indian tribe, to reaffirm the jurisdiction and other rights of the tribe, provide for the establishment of a trust land base for the tribe," and "authorize the organization of the tribe and for other purposes."³² In passing the Act, Congress expressly found that the Band had been administratively terminated, and that this termination was wrongful.³³ The purpose of the Pokagon Restoration Act was to reestablish the Band's status as a federally recognized tribe and bring the Band within the umbrella of Federal services and benefits extended to other federally recognized tribes.³⁴

The Pokagon Restoration Act mandates the Secretary to acquire land in trust for the Band to establish reservation lands in Michigan and Indiana.³⁵ The United States Court of Appeals for the District of Columbia subsequently held that in doing so, "it is clear that Congress set forth appropriate boundaries to guide the Secretary [of the Interior] in her acquisition of land in trust for the Tribe."³⁶ The proposed acquisition lies within the Act's area.

7.2.1 Solicitor M-Op. 36991 Interpreting the Pokagon Restoration Act

In 1997, then Solicitor of the Department of the Interior, Solicitor John D. Leshy, issued a M-opinion interpreting the application of the Restored Lands Exception to lands acquired in trust for the Band pursuant to the Pokagon Restoration Act (M-Opinion 36991).³⁷ The Solicitor determined that the Pokagon Restoration Act statutorily qualified the Band as a "restored tribe," and that lands acquired in trust pursuant to the Act would be "restored lands" within Section 20.³⁸

7.2.2 The 1999 Memorandum of Understanding

³¹ Pub. L. No. 103-323 (Sept. 21, 1994), 108 Stat. 2152.

³² *TOMAC*, 433 F.3d at 856, citing S. Rep. No. 103-266 (1994) at 1.

³³ See S. Rep. No. 103-266 (1994); H.R. Rep. No. 103-620 (1994).

³⁴ *TOMAC*, 433 F.3d at 865 (Act's specific purpose to reestablish Band's status as federally recognized tribe).

³⁵ Pokagon Restoration Act, § 6.

³⁶ *TOMAC*, 433 F.3d at 866.

³⁷ *Pokagon Band of Potawatomi Indians*, Op. Solic. Interior M-36991 (Sept. 19, 1997), available at <https://solicitor.doi.gov/opinions.html> [hereinafter M-Op. 36991]. Congress provided the Department's Office of the Solicitor with authority over the legal work of Department. 43 U.S.C. § 1455. That authority includes responsibility for issuing final legal interpretations in the form of M-Opinions on all matters within the jurisdiction of the Department. 209 D.M. 3.2(A)(11). When signed, M-Opinions are binding on all other Departmental offices and officials and may only be overruled or modified by the Solicitor, Deputy Secretary, or the Secretary. 209 D.M. 3.2(A)(11). After a signed M-Opinion issues, the DOI will take action consistent with the legal interpretation explained by the Solicitor therein. *Citizens Against Casino Gambling v. Chaudhuri*, 802 F.3d 267, 277 n. 8 (2d Cir. 2015), citing *Sims v. Ellis*, 972 F. Supp. 2d 1196, 1202 n. 5 (D. Idaho 2013).

³⁸ *Id.* at 8.

Consistent with M-Opinion 36991, in 1999 the Department entered into a memorandum of understanding with the Band setting forth the manner in which the Department would implement the provisions of the Pokagon Restoration Act (1999 MOU). The 1999 MOU's primary purpose was to "establish general principles setting forth the geographic areas within which the Band will acquire fee land to submit to the Secretary for trust acquisition" under the Pokagon Restoration Act.³⁹

The Department in the 1999 MOU noted that Congress, through the Pokagon Restoration Act, had established an area in Michigan and Indiana for the Band in "recognition of the Band's traditional territory and the current residence patterns of tribal members."⁴⁰ The 1999 MOU acknowledged that the Pokagon Restoration Act required the Secretary take land into trust for the Band to establish a reservation homeland. Its terms further provided that the Band would concentrate its land holdings within four geographic areas known as "consolidation sites." The four consolidation sites are to be located in the vicinity of Dowagiac, Michigan; New Hope, Michigan; Hartford, Michigan; and South Bend, Indiana,⁴¹ all of which lie within the Act's acquisition area. Under the 1999 MOU, after the initial acquisition at a consolidation site, further acquisitions at the same site should consist of contiguous parcels, to the maximum extent practicable.⁴²

Consistent with M-Opinion 36991, the 1999 MOU also acknowledged that the Band is a "restored tribe" within the meaning of Section 20 of IGRA,⁴³ and provided that trust land acquired within any of the four consolidation sites "will be properly characterized as 'restored lands' within the meaning of Section 20."⁴⁴ Though not required to do so by the Pokagon Restoration Act, the Band agreed to submit its proposals for trust acquisitions under the Act in the form set forth in 25 C.F.R. Part 151, which process provides, among other things, for comment by the State and local governments regarding a request by the Band that any particular parcel be taken into trust.⁴⁵

7.2.3 *TOMAC v. Norton*, 433 F.3d 852 (D.C. Cir. 2006)

In 2001, the Secretary determined to take land in trust for the Band under the Pokagon Restoration Act and pursuant to the Department's 1999 MOU at the New Buffalo, Michigan, consolidation site. A local citizens' group challenged the Secretary's decision to do so, alleging that the Band was not a "restored tribe" for purposes of Section 20 of IGRA. In *Taxpayers of Michigan Against Casinos (TOMAC) v. Norton*, 433 F.3d 852 (D.C. Cir. 2006), the United States Court of Appeals for the District of Columbia Circuit affirmed the district court's ruling rejecting plaintiff's challenges. The D.C. Circuit found that the Band fell within the Restored Lands

³⁹ 1999 MOU, ¶ 1.

⁴⁰ 1999 MOU, ¶ 2.

⁴¹ 1999 MOU, ¶ 3.

⁴² 1999 MOU, ¶ 3.

⁴³ 1999 MOU, ¶ 4.

⁴⁴ *Id.*

⁴⁵ 1999 MOU, ¶ 5.

Exception of Section 20 of IGRA because the Pokagon Restoration Act qualifies as a restoration of lands to an Indian tribe that is restored to Federal recognition within the meaning of IGRA. In reaching this conclusion, the D.C. Circuit held that the Pokagon Restoration Act's language and legislative history "clearly demonstrate" that the Pokagon Band is a "restored tribe" within the meaning of IGRA.⁴⁶ Further, in holding that Section 6 of the Pokagon Restoration Act constituted a lawful delegation of power from Congress to the Secretary, the Court reasoned that the primary purpose of the Pokagon Restoration Act is to allow the Band to restore its land base - a reservation - and to exercise jurisdiction on that reservation.⁴⁷

7.3 25 C.F.R. Part 292

In 2008, the Department issued final regulations at 25 C.F.R. Part 292 for determining whether land acquired in trust after October 17, 1988, is eligible for gaming pursuant to Section 20 of IGRA.⁴⁸

7.3.1 Grandfather Provision

The Part 292 regulations include a "grandfather" provision at Section 292.26. The purpose of the grandfather provision is to except certain agency actions and opinions from the effect of the Part 292 regulations if the Tribe received an Indian lands opinion issued by the Department or National Indian Gaming Commission (NIGC) prior to the regulations' effective date.

Subsection 292.26(a) addresses the retroactive effect of the Part 292 regulations on Section 20 opinions issued by the Department or NIGC before the regulations' effective date. It provides that "final agency decisions made pursuant to [Section 20] before the date of enactment of these regulations" shall not be altered by the regulations. The Department explained that Subsection 292.26(a) "makes clear that these regulations will have no retroactive effect to alter any final agency decision made prior to the effective date of these regulations."⁴⁹

Subsection 292.26(b) addresses the prospective effect of the regulations on a decision made after the effective date of the regulations but where the Tribe had received an Indian lands opinion. It provides, in relevant part, that the Part 292 regulations "shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the [NIGC] issued a written opinion regarding the applicability of [Section 20] for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions."

We conclude that the proposed acquisition satisfies the grandfathering provisions of Section 292.26, and that the proposed acquisition constitutes "[restored] lands for an Indian tribe that is

⁴⁶ *Id.* at 864-5.

⁴⁷ *Id.* at 867.

⁴⁸ U.S. Dept. of the Interior, Bureau of Indian Affairs, "Gaming on Trust Lands Acquired After October 17, 1988; Final Rule," 73 Fed. Reg. 29,354 (May 20, 2008).

⁴⁹ *Id.* at 29,372.

restored to Federal recognition” within the meaning of Section 20 of IGRA.⁵⁰ M-Opinion 36991 determined that the Band is a “restored tribe” for purposes of Section 20 and that lands taken into trust pursuant to the Pokagon Restoration Act should be considered “restored” lands within the meaning of Section 20.⁵¹ Consistent with M-Opinion 36991, the 1999 MOU stipulated that the Band would concentrate its trust land holdings within four consolidation sites⁵² within the 10-county service area in the vicinity of Dowagiac, Michigan; New Hope, Michigan; Hartford, Michigan; and South Bend, Indiana. The 1999 MOU further stipulated that lands taken into trust for the Band within the consolidation sites would be properly characterized as “restored lands” within the meaning of Section 20.⁵³

Prior to the effective date of the Part 292 regulations, the Department took land into trust for the Band in 2006 and 2008 at the consolidation sites of Dowagiac, New Buffalo and Hartford, Michigan.⁵⁴ Consistent with M-Opinion 36991 and the 1999 MOU, the Department determined that those sites statutorily qualified for gaming under the Restored Lands Exception. The proposed acquisition would be the first trust acquisition within the fourth consolidation site stipulated to by the Department and the Band in the 1999 MOU at South Bend, Indiana. Subsection 292.26(a) excepts the proposed action from the Part 292 regulations because the 1999 MOU (in reliance on M-Opinion 36991) constitutes a final agency decision made before June 19, 2008, that lands taken into trust pursuant to the Pokagon Restoration Act at consolidation sites may properly be considered “restored lands” within the meaning of Section 20 of IGRA.

In addition, even if the past actions are not considered final agency decisions and rather constitute opinions, the proposed acquisition is also subject to Subsection 292.26(b), because M-Opinion 36991 and the 1999 MOU constitute written opinions issued before June 19, 2008, regarding the applicability of Section 20 to lands within the South Bend, Indiana, consolidation site that the Band now proposes to use for a gaming establishment.

7.3.2 Restored Lands Exception

While no further analysis is required, we note that the Restored Lands Exception would also apply to the proposed acquisition based on the criteria set forth in the Part 292 regulations. Under Part 292, the Restored Lands Exception applies when all of the following conditions are met:

- (a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;

⁵⁰ See 25 U.S.C. § 2719 (b)(1)(B)(iii).

⁵¹ M-Op. 36991 at 7-8.

⁵² 1999 MOU, ¶ 3.

⁵³ *Id.* at ¶ 4.

⁵⁴ See Regional Director’s Recommendation, Appx. 2.

- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
- (d) The newly acquired lands meet the criteria of “restored lands” in § 292.11.⁵⁵

Congress, the Solicitor, and the courts have each determined that the Band is a restored tribe for purposes of Section 20 of IGRA and, therefore, satisfies criteria (a) through (c).⁵⁶ Where Congress restores a tribe through the enactment of legislation, the Part 292 regulations require a showing that such legislation “requires or authorizes” the Secretary to take land into trust for the benefit of the tribe within “a specific geographic area,” and that “the lands are within the specific geographic area.”⁵⁷ The Department and the courts have interpreted the Pokagon Restoration Act to require or authorize the Secretary to acquire land in trust for the Band within the 10-county service area established by the Act.⁵⁸

The provisions of the Pokagon Restoration Act provide that the Secretary shall acquire real property for the Band, without limitation, which shall become part of the Band’s reservation;⁵⁹ that the area shall consist of southern Michigan and northern Indiana;⁶⁰ and that the Band shall have jurisdiction over all lands taken into trust for its benefit and over all Band members residing in the area in matters pursuant to the Indian Child Welfare Act as if they resided upon a reservation.⁶¹

As noted, M-Opinion 36991 determined that trust lands acquired within the Band’s acquisition area would qualify as “restored lands” under Section 20 of IGRA. In reaching that conclusion, the Solicitor noted that Section 6 of the Pokagon Restoration Act did not speak to where trust lands for the Band should be located.⁶² Reading Section 6 in the context of the provisions that defined the Band’s 10-county service area and established its territorial jurisdiction, the Solicitor construed the Pokagon Restoration Act to authorize the Secretary to take land within the service area into trust,⁶³ and, further, as requiring such lands, once taken into trust, to be characterized as “restored,” because they formed part of the territory the Band’s predecessors ceded to the United States in a series of nineteenth-century treaties.⁶⁴ Consistent with M-Opinion 36991, the 1999

⁵⁵ 25 C.F.R. § 292.7.

⁵⁶ Pokagon Restoration Act; M-Op. 36991; *TOMAC*, 433 F.3d at 866 (“There can be no real doubt that the [Pokagon] Restoration Act restored the [Band] to federal recognition for the purposes of § 20 of IGRA”).

⁵⁷ 25 C.F.R. § 292.11(a).

⁵⁸ See M-Op. 36991; 1999 MOU; *TOMAC v. Norton*, 433 F.3d 852 (D.C. Cir. 2006).

⁵⁹ Pokagon Restoration Act, § 6.

⁶⁰ *Id.* at § 7.

⁶¹ *Id.* at § 8.

⁶² M-Op. 36991 at 2.

⁶³ *Id.* at n. 2.

⁶⁴ Pokagon Restoration Act, § 1(1), (2), (8); M-Op. 36991 at 7; *see also* S. Rep. 103-266 at 5; H. Rep. 103-620 at 4. Written submissions to Congress during its consideration of the Act reflect the same view. *See, e.g.*, H. Rep. 103-620 at 8 and S. Rep. No. 103-266 at 8 (letters from Congressional Budget Office noting that Act would authorize Secretary to accept land into trust within the Band’s service area); S. Hrg. 103-543 at 104 (written testimony by Michigan Indian Legal Services noting that Section 6 of the Act reflected Band’s willingness to limit areas that

MOU stipulated that the Band would seek land for trust acquisition at four specific geographic sites within the acquisition area.⁶⁵ The United States successfully argued in the case of *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, that by identifying an area for the Band within its ancestral homelands and authorizing or requiring the Secretary to take land into trust for the Band to restore its land base in that area, “the [Pokagon Restoration] Act ... expressly provide[s] for acceptance of land into trust of a specified land area on behalf of a restored Tribe” (emphasis added).⁶⁶ The D.C. Circuit construed Section 6 of the Act similarly, finding that when “read in light of its clear purpose, the history of the [Band], and the Restoration Act as a whole,” Section 6 makes “clear that Congress set forth appropriate boundaries” to guide the Secretary in acquiring land in trust for the Band.⁶⁷

We conclude that the Pokagon Restoration Act authorizes or requires the Secretary to take land into trust within the Band’s 10-county service area, within which the proposed acquisition lies. Consistent with M-Opinion 36991, we therefore also conclude that the proposed acquisition qualifies as “restored lands” under 25 C.F.R. Part 292.11(a).

7.4 Conclusion

M-Opinion 36991 determined that land acquired in trust by the Secretary within the Band’s 10-county service area pursuant to the Pokagon Restoration Act would qualify as Restored Lands under Section 20 of IGRA. Consistent with M-Opinion 36991, the 1999 MOU determined that the Band would consolidate the lands seek lands within the 10-county service area. The M-Opinion satisfies the requirements of 25 C.F.R. § 292.26, and, therefore, no further analysis is required.

Notwithstanding application of the Part 292 grandfather provision, however, the Band separately satisfies the “restored tribe” requirements of Part 292, as evidenced in the congressional findings set forth in the Pokagon Restoration Act. The Site constitutes “restored lands” because it lies within a specific geographic area in which the Secretary is authorized or required to take land for the Band.

For all of these reasons, the Band is a “restored tribe” and the Site satisfies the criteria for “restored lands.” Upon its acquisition in trust, the Site is eligible for gaming pursuant to the Restored Lands Exception of Section 20 of IGRA.⁶⁸

8.0 TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

could become part of Band’s reservation to the primary geographic areas over which the Band traditionally exercised jurisdiction).

⁶⁵ 1999 MOU, ¶ 3.

⁶⁶ See Brief for Federal Appellees, dated July 29, 2005 at 38-39 (filed in *Taxpayers of Michigan Against Casinos v. Norton* (D.C. Circuit Docket No. 05-5206)).

⁶⁷ *TOMAC*, 433 F.3d at 866.

⁶⁸ 25 U.S.C. § 2719(b)(1)(B)(iii).

The Secretary's authority for acquiring the Site in trust is found in Section 6 of the Pokagon Restoration Act. Section 6 provides that "[t]he Secretary shall acquire real property for the Band" and that any real property so acquired "shall be taken by the Secretary ... in trust" for the Band, and "shall become part of the Band's reservation." Though not required by the Pokagon Restoration Act to do so, the Band in the 1999 MOU agreed to submit any proposals for trust acquisition under the Act pursuant to 25 C.F.R. Part 151.⁶⁹ Accordingly, while this acquisition is mandatory under the Act, we analyze the acquisition consistent with the process agreed upon in the 1999 MOU.

8.1 25 C.F.R. § 151.3 – Land acquisition policy

Section 151.3 (a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

- (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area;
- (2) when the tribe already owns an interest in the land; or
- (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The Band's application satisfies the criteria of Section 151.3 (a)(1) because the land is located within a tribal consolidation area. Part 151 defines a "tribal consolidation area" as specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.⁷⁰ The 1999 MOU establishes such a consolidation area, thus, meeting the requirements of subsection (a)(1).⁷¹

8.2 25 C.F.R. § 151.11 - Off-reservation acquisitions

The Band's application is considered under the off-reservation criteria of Section 151.11. Section 151.11 (a) requires consideration of the criteria listed in Sections 151.10 (a) through (c), and (e) through (h), each of which is discussed below.

8.3 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10 (a) requires consideration of the existence of statutory authority for the acquisition and any limitations on such authority.

⁶⁹ 1999 MOU, ¶ 5.

⁷⁰ 25 C.F.R. § 151.2 (h).

⁷¹ Although only one factor in Section 151.3 (a) must be met, the Band's application also satisfies the criteria of subsection (a)(2) because the Band owns the property in fee. Further, the Band's application satisfies subsection (a)(3) because acquisition of the Site is necessary to facilitate tribal self-determination and economic development as discussed in Section 8.0 this ROD.

The Pokagon Restoration Act directs the Secretary to acquire land in trust for the Band to establish reservation lands:

The Secretary shall acquire real property for the Band. Any such real property shall be taken by the Secretary in the name of the United States in trust for the benefit of the Band and shall become part of the Band's reservation.⁷²

In recognition of the Band's traditional territory and the residence patterns of tribal members, Congress established through the Pokagon Restoration Act an area for mandatory land acquisitions for the Band in Michigan and Indiana consisting of the Michigan counties of Allegan, Berrien, Van Buren, and Cass; and the Indiana counties of La Porte, St. Joseph, Elkhart, Starke, Marshall, and Kosciusko.⁷³ The Site is located in St. Joseph County, Indiana. The 1999 MOU limited the mandatory trust acquisition of land for the Band to four geographic consolidation sites within the 10-county service area. The Site lies within the consolidation site located in the vicinity of the City of South Bend, Indiana.⁷⁴ The 1999 MOU provides that a land base of up to 4,700 acres would be "commensurate with the anticipated needs of the Band."⁷⁵

The Band entered into the 1999 MOU in good faith, agreeing to restrictions on the location of trust acquisition and the process by which applications would be review. Section 1300j-5 of the Pokagon Restoration Act mandates that the Secretary "*shall acquire* real property for the Band."⁷⁶ In entering into the 1999 MOU, the Band voluntarily agreed to comply with the process in Part 151 reserved for acquisitions of trust land for which the Secretary has discretion to approve or deny. Absent the 1999 MOU, the Band's fee-to-trust applications in the four consolidation "shall be acquired," and are not subject to the Secretary's Part 151 process or subject to state and local government input regarding impacts to those jurisdictions.⁷⁷ Further, absent the MOU the Band's applications are not subject to environmental review pursuant to the National Environmental Policy Act. However, in keeping with the Band's commitment to follow the Part 151 process, the Department prepared an EIS containing an exhaustive environmental review, **Sections 3.0 – 6.0** of this ROD, and reviews the acquisition of the Site below.

8.4 25 C.F.R. § 151.10(b) - The need of the individual Indian or tribe for additional land

Section 151.10(b) requires consideration of the need of the tribe for additional land. The Band needs additional land to serve its growing population of Indiana residents. The Band currently has a total of 3,204 acres in trust in the vicinity of the three consolidation sites in Michigan:

⁷² Pokagon Restoration Act, § 6.

⁷³ 1999 MOU, ¶ 2; Pokagon Restoration Act, § 7. See **Map 1, Section 1.1** above.

⁷⁴ 1999 MOU, ¶ 3.

⁷⁵ *Id.*

⁷⁶ 25 U.S.C. § 1300j-5 (emphasis added).

⁷⁷ See 25 C.F.R. § 151.11 ("The Secretary shall consider the requirements of [§§ 151.10 (a) through (c), and (e) through (h)] in evaluating tribal requests for the acquisition of lands in trust status, when the ... acquisition is not mandated.").

Berrien County (674 acres), Cass County (1,755 acres), and Van Buren County (775 acres). The Band has no land in trust in the vicinity of the Indiana consolidation site. These existing land holdings cannot fully meet the needs of the Band's Indiana membership.

The Band also needs land in Indiana to counteract the long-lasting negative effects of the administrative termination of its government-to-government relationship with the United States when the government decided not to provide services or to extend the benefits of the Indian Reorganization Act to tribal governments in Michigan's Lower Peninsula.⁷⁸ **Table 3** presents socioeconomic data on the status of the Band's Indiana-based members in comparison to the total population of Indiana.⁷⁹

Table 3		
Socioeconomic Data, Pokagon Band Indiana Residents		
<i>Socioeconomic Measurement</i>	<i>Pokagon Band's Indiana Residents</i>	<i>Total Indiana Residents</i>
Income Below Poverty (\$11,720)	34%	15.6%
No Health Insurance Coverage	49%	12.7%
Home Ownership	44%	71.2%
Educational Attainment		
High School Graduate or More	81%	86.6%
Bachelor's Degree or More	17%	22.5%
Advanced Degree or More	4%	8.1%

The Band needs additional land to facilitate economic development and provide community services to its Indiana members. The acquisition of the Site will enable the Band to improve its members' employment rate, provide job training, increase homeownership, and provide educational opportunities. Development of the casino/hotel will further generate the revenue necessary to facilitate tribal self-determination, economic development, community development, and Indian housing to benefit the Band's members in Indiana.

Over 60 percent of the Band's members (362 members) live within 50 miles of the Site in the Band's Indiana 10-county service area.⁸⁰ As of June 2016, the Band had 5,191 members, 592 of which reside in Indiana. Over the 34-month period from February 2012 to December 2014, the Band's membership grew from 4,578 to 4,998 at a rate of 9.18 percent, as compared to the 1.7 percent rate of growth for the State of Indiana and the 0.3 percent growth-rate for the State of Michigan for the similar time-period of April 2010 to July 2014. The median age for the Band's population is approximately 23 years, and approximately 40 percent of the Band's members are minors. From 2011 to June 2016, the number of Band members residing in Indiana grew by 29 percent, from 458 to 592. **Table 4** shows the distribution of the Band's Indiana members by age.⁸¹

⁷⁸ S. Rep. No. 103-266 at 3 (1994); H.R. No. Rep 103-620 at 5 (1994). See discussion Section 1.2 above.

⁷⁹ FEIS, Table 3.7-3.

⁸¹ FEIS, Table 3.7-1.

Table 4					
Pokagon Band Residents in Indiana					
Residency	Age Cohort				Total
	<i>0-17</i>	<i>18-29</i>	<i>30-54</i>	<i>55+</i>	
St. Joseph County	96	53	72	31	252
Elkhart County	26	12	16	7	61
La Porte County	5	12	6	3	26
Starke Count	3	3	3	0	9
Marshall County	2	1	1	0	4
Kosciusko County	6	1	1	2	10
Within Service Area (Indiana)	138	82	99	43	362
Outside Service Area (Indiana)	106	55	55	14	230
Total Indiana	244	137	154	57	592

Need for Housing and Community Facilities⁸²

The Band's growing population in Indiana has substantial unmet housing needs. A substantial number of the Band's members live in substandard housing or experience significant challenges in maintaining adequate housing. From 2007 to 2012, approximately 6 percent (28 members) of the Band's members in Indiana received emergency assistance from the Pokagon Band Housing Department, which limits eligibility to once every five years. Participation by the Band's Indiana residents in available tribal housing programs is generally proportional to the 10 percent share they represent of the Band's population for the entire 10-county service area in Michigan and Indiana. Band members in Indiana also have notably lower homeownership rates than the State as a whole (44 percent versus 71.2 percent).⁸³ The mixed-use Tribal Village the Band plans for the Site would include 44 housing units consisting of single family homes, duplex homes, and apartments. Band members living in the South Bend area already have non-Band housing available to them, but the acquisition of additional land will increase housing availability for Band members, likely in a more culturally appealing setting. The Site's proximity to the Band's Indiana members makes it a suitable location for the development of housing in the proposed Tribal Village.

The acquisition of the Site will also assist the Band in developing community-focused spaces for its Indiana residents. The Site is large enough to provide the Band with the ability to develop community facilities near Band housing, which is particularly important for ensuring that Band elders will remain integrated in the Band's community life.

⁸² FEIS, § 3.7.3.4; § 3.7.3.5.

⁸³ See Table 1 above.

*Need for Governmental Services*⁸⁴

The Band needs additional land to provide services to its underserved members in Indiana. These members need health, educational, and social services, including assisted living and emergency shelters. With the exception of a satellite office on the Site that opened in June 2013, the Band's members in Indiana must access most tribal governmental programs and services and attend all community functions at the Band's governmental headquarters at Dowagiac, Michigan, approximately 20 miles north of the Site.

The Band's headquarters in Dowagiac house a Head Start program facility and the Pokagon Band Tribal Court. An administration building houses the Education, Elections, Enrollment, Human Resources, and Social Services Departments. The Pokagon Band Police Department, the Department of Natural Resources, and the Department of Language and Culture are housed in converted residential structures located on separate properties near Dowagiac. The Band's Housing Department is located on a mixed-use site in La Grange Township near the City of Dowagiac. At that site, the Band has 34 housing units, a community center, and an additional 32 housing units under construction. Outreach efforts and transportation services based at the Dowagiac consolidation site must reach Band members, including ill, elderly, and other at-risk members that live in Indiana.

The Band also needs sources of revenue to construct and operate the Tribal Village. The estimated cost to develop 20 housing units in the first project phase – less than half of the proposed 44-unit development – is \$3.4 million, excluding the cost to develop water, sewer, electric, gas, and other infrastructure needed to serve the Site. Annual operating costs for the 20-unit initial phase of development are estimated to be \$141,000. The estimated total annual cost to establish Indiana-based programs and services for the Indiana service area is \$8.884 million. The Band has successfully developed its economic resources at its Dowagiac site. The Four Winds Casino and related retail operations have provided revenue for the Band's current operations. However, the gaming and commercial operations are leveraged with substantial debt service, and are insufficient to support the development of government services and infrastructure in Indiana.

Trust acquisition of the Site would help the Band qualify for access to a number of major Federal programs that meet the needs of Indian country, including reservation housing programs available under the Native American Housing Assistance and Self-Determination Act of 1996,⁸⁵ contracting and compacting opportunities under the Indian Self-Determination and Education Assistance Act of 1975,⁸⁶ and the Indian Reservation Roads program under the Safe, Accountable, Flexible and Efficient Transportation Equity Act - A Legacy for Users.⁸⁷ Until the Site is acquired in trust, the Band can only offer a limited range of tribal services and programs from Federal sources in Indiana.

⁸⁴ FEIS, §§ 3.7.3.4; 3.7.3.6; 3.7.3.7.

⁸⁵ Pub. L. No. 104-330 (Oct. 26, 1996), 110 Stat. 4016, as amended.

⁸⁶ Pub. L. No. 93-638 (Jan. 4, 1975), 88 Stat. 2203, as amended.

⁸⁷ Pub. L. No. 109-59 (Aug. 10, 2005), 119 Stat. 1144, as amended.

Need for Elder Services⁸⁸

The Band needs additional land to provide elder services in Indiana. The Band provides a variety of benefits and services for its elders, but needs additional land and resources for these programs. The Band's Elder's Council, an elected body established under the Band's constitution and law, and an Elder's Program, which is staffed by a full-time Elder's Specialist, provide special focus on the needs of elders. In addition, the Pokagon Band Department of Health Services provides dedicated elder assistance and support services as well as home health visits, in-home assessments and referrals, and medical appointment transportation to serve the needs of elders. The Band's elders in Indiana, particularly those with transportation or mobility issues or who live at any significant distance from the Band's governmental headquarters in Dowagiac, Michigan, present special needs, and meeting those needs is a challenge for the Band's staff and resources. The Pokagon Band Housing Department provides special subsidized housing for elders and the Band's "Pokagonek Edawat" housing complex at the Dowagiac consolidation site. However, extending these programs and services to all of the Band's elders living in Indiana presents a significant challenge that cannot be overcome simply with outreach and transportation services.

Need for Social Services⁸⁹

The Band needs additional land to provide social services in Indiana. At-risk individuals among the Band's members often have more urgent needs for programs and services. This presents special challenges due to travel distances and programs that function on an intermittent basis in Indiana, with different service-delivery and regulatory requirements at the state and local level. For example, the Band's Department of Social Services is staffed with experienced child welfare specialists who, along with attorneys and Tribal Police, must be prepared to intervene on short notice to address the needs of at-risk children living within the Pokagon Restoration Act's expansive service area in Indiana.⁹⁰

The Pokagon Restoration Act authorizes the Band to exercise exclusive jurisdiction over all child custody proceedings involving the Band's children that reside within the Act's 10-county service area in Michigan and Indiana under the Indian Child Welfare Act.⁹¹ The Band will continue to face significant difficulties in its effort to fulfill its jurisdictional responsibilities in child welfare and other social service matters in Indiana without an Indiana land base from which it can coordinate services and respond on short notice.

⁸⁸ FEIS, § 3.7.3.5.

⁸⁹ FEIS, § 3.7.3.5.

⁹⁰ The Pokagon Band Department of Health Services and certain other Band programs that receive Federal funding must serve other Native Americans, provided that they reside within the Band's Service area and are enrolled in a federally-recognized Indian tribe. The area in Indiana included in the Act's service area encompasses 2,825 square miles, with 6,627 American Indian residents. FEIS, § 3.7.3.5.

⁹¹ Pokagon Restoration Act, § 8.

The Site is a suitable location for the Band to establish and maintain a northern Indiana point of delivery for tribal government programs and services to the Band's Indiana community. The Site has adequate land for the development of modestly-sized governmental offices and satellite office space for various other Band government programs and services.

*Need for Economic Development*⁹²

The Site is a suitable location for commercial development to provide employment opportunities for the substantial number of unemployed and underemployed Band members living in northern Indiana. According to the Band's enrollment data through May 2016, 344 Band members in Indiana are between the ages of 16 and 64 years and would be considered part of the northern Indiana labor force. Among the 106 northern Indiana respondents to the Band's 2012 census, 44 Band members stated that they were unemployed, which indicates an unemployment rate of 42 percent for the Band's northern Indiana work force. Acquisition of the Site and the creation of the projected 2,000 permanent jobs at the casino/hotel that would result from the proposed commercial gaming development would directly address the chronically high unemployment among the Band's northern residents.

Conclusion

The Regional Director found, and we concur, that acquisition of the Site in trust will address the Band's demonstrated need for land within the South Bend, Indiana, consolidation site.

8.5 25 C.F.R. § 151.10(c) – The purposes for which the land will be used

Section 151.10(c) requires consideration of the purposes for which the land will be used.

The Band proposes to construct and operate a class III gaming facility, hotel, and Tribal Village. The single-story class III gaming facility would consist of 216,000 square feet of gaming floor (including a slot floor area, beverage service, public amenities and circulation, and food and beverage retail), 20,000 square feet of meeting and banquet space, 23,605 square feet of administrative offices, and 48,144 square feet of house facilities and casino support. The proposed 18-story hotel would consist of 500 hotel rooms, and include a 12,875 square foot public lobby with amenity spaces, and a 15,000 square foot spa. Parking would consist of 3,500 spaces in a multi-level parking garage and 500 spaces of surface parking. The mixed-use Tribal Village would include 44 housing units consisting of single family homes, duplex homes, and apartments. The Tribal Village would also include governmental offices, educational facilities, health care services, and a multi-purpose facility to serve as a community gathering place.

We conclude that the Band has adequately described the intended purpose of the land to be acquired.

⁹² FEIS, § 3.7.3.4.

8.6 25 C.F.R. § 151.10(e) – If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

Current Property Taxes

On August 17, 2015, the BIA solicited comments from the State, St. Joseph County, and the City of South Bend regarding potential impacts resulting from the removal of the Site from the tax rolls.⁹³ On October 21, 2015, the State provided a tabulation of the net tax liabilities for the 22 tax parcels included in the application.⁹⁴ The State expressed no objection to the acquisition. The County and City did not provide information regarding their property tax levies or assessments, or express any objection to the acquisition. As discussed in Section 4.7.3.6 of the Final EIS, the 2014 total tax levy, payable in 2015, on the proposed fee-to-trust parcels was \$30,984.92, an amount representing approximately 0.07% of the city's total property tax revenue in 2014.⁹⁵

The City of South Bend posts the property tax file on its website, with the 2014 report for the City showing \$70,914,834.92 in total property tax collections. The most recent available report for St. Joseph County (2014) shows property tax levies totaling \$53,035,210.⁹⁶ Accordingly, removal of the Site from the City and County tax rolls would not be significant. Moreover, the loss of property tax revenue from the Site would be mitigated by the indirect impact of increased property taxes throughout the County from the demand for 350 new housing units in response to the new jobs created by the project.⁹⁷

Public Services

To further help mitigate the loss of property tax revenue that would result from acquiring the Site in trust, the Band voluntarily negotiated and entered into two agreements with the City of South Bend. The first, the Water and Sewer Service Agreement (March 22, 2016), enables the City to provide water and sewer services to the Site.⁹⁸ Through the Water and Sewer Service

⁹³ See Notice of Gaming Land Acquisition (August 17, 2015), in Regional Director's Recommendation, Appx 3. In response to a request by the State of Indiana, the BIA granted an additional 30 days to submit comments. *Id.*

⁹⁴ The State provided a net tax liability of \$24,938.58, in Regional Director's Recommendation, Appx 4. The FEIS provides updated tax information in § 4.7.3.6.

⁹⁵ FEIS, § 4.7.3.6. The information in the EIS does not include tax information for the Donmoyer 1 and Donmoyer 2 parcels because these parcels were recently created by the abandonment of a right-of-way. Updated tax information is now available. The net property tax for Donmoyer 1 is \$21.60, and for Donmoyer 2 is \$14.40, (on file with the Office of Indian Gaming).

⁹⁶ Property Tax Summary – County Report (2014), available at https://gateway.ifionline.org/report_builder/Default3a.aspx?rptType=PropertyTax&rpt=PropTaxCntySummary&rptName=Property%20Tax%20Summary%20-%20County.

⁹⁷ FEIS, § 4.7.3.6.

⁹⁸ See Water Service and Sewer Service Agreement (March 22, 2016).

Agreement, the City will receive \$400,000 from the Band to assist with replacement and upgrade to the Calvert Street Lift Station to allow for future expansion of services in the area to additional customers.

The second, the Local Agreement (April 11, 2016), provides that the Band will make payments in lieu of taxes to the City based on a percentage of casino revenues.⁹⁹ The following initiatives are proposed to be funded by the Band through the Local Agreement:

- Howard Park Improvements: \$2,225,000 for improvements such as renovation and modernization
- Memorial Children's Hospital: \$500,000 for renovation of the Newborn Intensive Care Unit
- Bowman Creek Project: \$500,000 to help restore and protect the creek
- South Bend Community Schools: \$500,000 to South Bend Community School Corporation
- Prairie Avenue Resurfacing - From US 31 to Locust Road: not to exceed \$500,000
- Prairie Avenue Landscaping - Enhancements: not to exceed \$200,000
- YMCA Women's Shelter of South Bend: \$125,000
- Jobs for America's Graduates: Indiana: \$250,000
- Food Bank of Northern Indiana: \$100,000
- Boys and Girls Clubs of St. Joseph County: \$100,000

The Local Agreement ensures the Band will pay all upfront costs for initial and future development of the Site, such as related professional fees, road improvements, and traffic safety control devices, to ensure safe and efficient means of ground transportation, water, wastewater treatment, as well as any City-supplied utility services and infrastructure for the Site, including operational expenses of such services.

Offsetting Economic Benefits

While local governments may experience a loss of property tax revenue if the Site is acquired in trust, the casino and hotel components of the project will benefit both Band members and non-tribal residents of St. Joseph County by generating revenue and creating approximately 1,470 temporary construction jobs and 3,256 permanent positions related to operation of the hotel/casino (includes direct, indirect, and induced employment opportunities).

Approximately 65% of the total development cost would be comprised of hard construction and site work expenditures. The total development cost of Preferred Alternative A, including the hotel/casino and Tribal Village, is estimated to be approximately \$480 million,¹⁰⁰ of which \$135.5 million in construction payroll is estimated. The remaining 35% of total development cost would include furnishings, fixtures, equipment, fees, working capital, pre-opening costs and construction interest. Based on an annual average construction wage of \$46,000, which is

⁹⁹ See Local Agreement (April 11, 2016), ¶ 14.

¹⁰⁰ FEIS, § 4.7.3.1.

consistent with state averages, that equates to more than 1,470 full-time equivalent construction jobs, assuming a 24-month construction period.

The projected net economic impact from a class III casino in St. Joseph County will be approximately \$620,420,000. The full projected impacts of Preferred Alternative A on the economies of the City of South Bend and St. Joseph County are presented in **Table 5**.¹⁰¹

Table 5		
Projected Full Economic Impact – Preferred Alternative A		
	City of South Bend	St. Joseph County
Output:		
Direct	\$427,690,000	\$427,690,000
Indirect	\$49,579,000	\$96,330,000
Induced	\$49,615,000	\$96,400,000
Total Output	\$526,884,000	\$620,420,000
Employment:		
Direct	2,065	2,065
Indirect	416	808
Total Employment	2,927	3,739
Earnings:		
Direct	\$68,108,000	\$68,108,000
Indirect	\$18,034,000	\$35,040,000
Induced	\$17,834,000	\$34,650,000
Total Earnings	\$103,834,000	\$137,798,000

Conclusion

Neither the City nor the County objected to, or expressed any concerns regarding the potential loss of tax revenue associated with this acquisition. We conclude that the tax loss will be minimal, and that the predetermined payments by the Band will mitigate the fiscal impact on the local governments. We further conclude that the benefits associated with the proposed acquisition, enhanced by the agreements between the Band and the local jurisdictions, outweigh the impact to the local political jurisdictions.

8.7 25 C.F.R. §151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10 (f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise.

¹⁰¹ FEIS, § 4.7.3.1, Table 4.7-2. Figures are presented for the third year of operation, after the new gaming portion of the facilities would have established their position in the competitive marketplace. See also Table 4.7-3 for Net Economic Impact.

Lands held in trust by the United States are not subject to the regulatory requirements of the State or local jurisdictions. Tribal and Federal laws, including Federal environmental laws, will apply to the Site. Any development or construction on lands not held in trust would be subject to state and local laws.

The Band agreed in the 1999 MOU to limit its land acquisitions to the four consolidation sites and, to the maximum extent practicable, to acquire contiguous sites thereafter.¹⁰² Doing so would reduce the impact of jurisdictional conflicts with the State and local governments. In the 1999 MOU, the Band and Secretary also acknowledged that the intent of such acquisitions was to avoid, if possible, the establishment of “checkerboard” jurisdiction and thereby minimize jurisdictional problems sometimes associated with such reservations.¹⁰³

Law Enforcement

Jurisdiction over the Site will be shared by the Band and the Federal government. Because Indiana is not a Public Law 280¹⁰⁴ state, the State would not have jurisdiction for incidents committed by Indians on trust land. The Band has a well-established tribal court and police department which will provide law enforcement and judicial services to the Site.¹⁰⁵ The State and local governments will have law enforcement jurisdiction over incidents by non-Indians at the Site. Thus, the Band and St. Joseph County entered into a Law Enforcement Agreement that cross-deputizes County Sheriff deputies and Band police officers, ensuring that no gap in law enforcement coverage is created as a result of Band’s proposed trust acquisitions.¹⁰⁶

Land Use Designations and Zoning

The Site is currently zoned by the City of South Bend as Single Family and Two Family District under the South Bend zoning regulations.¹⁰⁷ The adjacent and proximate parcels are zoned as “Light Industrial District” and “General Industrial District.” Nearby businesses within the City’s city limits include Noble Americas South Bend Ethanol, Shrader Tire & Oil, Bruno’s Original Pizza, Phillips 66 gas station, Steve & Gene’s Auto & Truck, Bulldog Auto Parts, and Coca-Cola Enterprises Inc. Outside of the City limits, businesses include Great Lakes Mini Max Storage and Great Lakes Heating and Air Conditioning. The northwest and western boundaries of the Site border the City of South Bend zoning limits.

Existing businesses would not be displaced by the proposed action, but some homes would be removed for the development of Preferred Alternative A. The Site is currently vacant, and the only occupied structure is the Band’s South Bend office along the west side of Locust Street,

¹⁰² 1999 MOU, ¶ 3.

¹⁰³ *Id.*

¹⁰⁴ Pub. L. No. 83–280, 67 Stat. 588, codified as amended as 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326.

¹⁰⁵ Regional Director’s Recommendation at 19; Band’s Amended Application at 12.

¹⁰⁶ Law Enforcement Agreement Between the Pokagon Band of Potawatomi Indians and the County of St. Joseph, Indiana (Nov. 12, 2014).

¹⁰⁷ FEIS, § 4.8.3.3.

which is not slated for removal. Proposed development for parcels along the eastern edge of the property would feature tribal housing, and, thus, be generally consistent with its applicable designation as Single Family and Two Family District zoning. Existing homes along Locust Street to the east of the Site would neighbor existing houses. To avoid potential conflicts with adjacent land uses along the eastern property boundary along Locust Street, the casino entrance would be located along the north western property edge along Prairie Street. Any deliveries to the casino would use the main entrance.

Considering the current function of the Site, Preferred Alternative A would moderately impact land use by increasing land use intensity. However, since no occupied structures would be removed for the development, and adjacent/proximate parcels indicate a variety of land uses, including numerous businesses in relatively close vicinity, the proposed development would not create potential conflicts of land use.

Conclusion

The BIA received no comments or concerns regarding potential jurisdictional problems of potential conflicts of land use from the State, St. Joseph County, or the City of South Bend. The Regional Director found, and we concur, that no jurisdictional problems and potential conflicts of land use will arise from acquisition of the Site in trust.

8.8 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the Acquisition

The BIA is equipped to discharge the additional responsibilities that may result from the acquisition of the Site in trust. Acquisition of the Site in trust is not likely to cause significant additional responsibilities for BIA. The Band already provides governmental services to its existing consolidation sites with minimal involvement from BIA. There are no forest or mineral resources that would require BIA management, and the Band does not expect a significant number of leases, rights-of-way, or other transactions that may require Secretarial approval. The BIA will have minimal additional law enforcement responsibilities. The BIA Michigan Agency determined it could discharge any additional responsibilities associated with the acceptance of the Site in trust.¹⁰⁸ We concur with this determination and conclude that BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the Site into trust.

¹⁰⁸ Memorandum from Jason D. Oberle, Superintendent, to Diane Rosen, Regional Director (May 24, 2016).

8.9 25 C.F.R. § 151.10(h) - The extent of information to allow the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

On August 24, 2012, BIA published the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in South Bend in the Federal Register describing the proposed action of acquiring the Site in trust and inviting comments.¹⁰⁹ See **Attachment III** of this ROD. In addition to accepting written comments, BIA held a public scoping meeting near the project area during the initial 30-day scoping period. Meeting details (time and location) were publicized in the NOI and the South Bend Tribune newspaper. The BIA sent out over 50 scoping letters to Federal, state, local, and tribal entities, as well as individuals and organizations that were interested or may be affected by the trust acquisition requesting their participation in the scoping process and, if eligible, participation as a cooperating agency. The meeting was held at the South Bend Century Center on September 27, 2012. At this meeting, 66 individuals signed in. During the scoping process, BIA identified cooperating agencies: the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

The BIA identified issues to be covered during the scoping process such as land resources (topography, land forms, drainage and gradients, soils, geology, minerals and paleontological resources); water resources (drainage and surface water quality, groundwater quantity and quality); air quality; biological resources (wildlife and habitats, threatened and endangered species, vegetation, wetlands); cultural resources; socioeconomic conditions (effects to the Pokagon Band, employment and income, housing, community infrastructure, potential social costs associated with gambling, fiscal effects to the county); resource use patterns (transportation, land use, agriculture); public services (water supply, wastewater, solid waste, electric, natural gas, and telecommunications); public health and safety services (including law enforcement, fire protection and emergency medical services); other values (noise, hazardous materials, visual resources); and environmental justice. In addition, BIA identified cumulative effects of the project (effects on specific resources, ecosystems, and human communities that occur incrementally in conjunction with other actions, projects, and trends); indirect effects; and unavoidable adverse effects.

On March 12, 2015, BIA published the Notice of Availability (NOA) for the Draft EIS for the Pokagon Band of the Potawatomi Indians Fee-to-Trust Transfer for Tribal Village and Casino, City of South Bend, St. Joseph County, Indiana, in the *Federal Register*.¹¹⁰ See **Attachment III** of this ROD. The NOA announced the 45-day public review period for the Draft EIS. The review period concluded on April 30, 2015. The availability of the Draft EIS was also publicized in the *South Bend Tribune*. The Draft EIS was made available on the project website (www.pokagonsouthbendeis.com). A compact disc was available by request from the BIA, and hard copies of the Draft EIS were available at the South Bend Public Library and the Elkhart Public Library main branches. In addition, a compact disk copy was sent, at their request

¹⁰⁹ 77 Fed. Reg. 51,558 (August 24, 2012).

¹¹⁰ 80 Fed. Reg. 13,014 (March 12, 2015).

to any party who wished to provide comments to the Draft EIS and/or requested that they be added to the mailing list.

During the public comment period between March 12, 2015, and April 30, 2015, BIA held a public meeting so that the public could submit comments on the Draft EIS. The meeting was held at the South Bend Century Center on April 14, 2015, with 156 individuals signing in at the meeting. The meeting location was publicized in the NOA, which stated that the date and time of the meeting would be posted in the *South Bend Tribune* and on the EIS website 15 days in advance of the meeting. Once meeting details were finalized, a meeting notice and request for comments were published in the *South Bend Tribune* and on the EIS website. Additionally, a meeting invitation was sent to over 80 Federal, state, local, and tribal entities as well as any individuals who requested updates during the scoping process. Comments received during the 45-day review period have been addressed in the Final EIS.

On July 22, 2016, the BIA published the NOA for the Final EIS for the Pokagon Band of the Potawatomi Indians Fee-to-Trust Transfer for Tribal Village and Casino, City of South Bend, St. Joseph County, Indiana, in the *Federal Register*.¹¹¹ See **Attachment II**. The NOA announced the public availability of the Final EIS. The Final EIS was made available on the project website; via compact disc by request; and copies were available at the South Bend Public Library and the Elkhart Public Library main branches. Further, BIA provided notice in the *Federal Register* and within the *South Bend Tribune* newspaper that the Final EIS was publicly available. In addition, a compact disk copy was sent, at their request, to any party who provided comments on the Draft EIS and/or requested that they be added to the mailing list. The Final EIS took into account and addressed all public comments received on the Draft EIS. The comments received on the Final EIS during the comment period and the responses to each comment are included in **Attachment III**.

In compliance with 602 DM 2 and ASTM E 1527-13, the BIA completed a Phase I Environmental Site Assessment for each parcel in April 2016.¹¹² No Recognized Environmental Conditions were found on the subject properties.

8.10 25 C.F.R. § 151.11(b) - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

Section 151.11(b) provides that as the distance between a tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition, and give greater weight to the concerns raised by the state and local governments having regulatory jurisdiction over the land to be acquired in trust.

The Site is located in Indiana approximately eight miles from the Michigan-Indiana boundary. It is approximately 20 miles south of the Band's headquarters on trust lands at the Dowagiac, Michigan, consolidation site. As discussed above, acquisition of the Site in trust will provide

¹¹¹ 81 Fed. Reg. 47,817 (July 22, 2016).

¹¹² See Regional Director's Recommendation, Appx. 19.

significant benefits to the Band. The BIA received no concerns regarding acquisition of the Site from the State, St. Joseph County, or the City of South Bend.

8.11 25 C.F.R. § 151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use

The Band submitted a detailed business and development plan that specifies the anticipated economic benefits associated with the proposed casino project.¹¹³ The Band analyzed the available market area for the commercial development within 50 miles of the Site. The market area contains over 1.3 million potential visitors. The Band projects the creation of 2,000 new jobs associated with the gaming project with many of these to be filled by non-members. Thus, the region will benefit as a whole from acquisition of the Site.

The gaming facility at the Site will be very similar in size, quality, and amenities to the Band's existing Four Winds Casino Resort in New Buffalo, Michigan.¹¹⁴ The proposed gaming facility and the existing Four Winds New Buffalo facility have identical or nearly identical specifications regarding size of gaming floor space, number of slot machines and table games, food and beverage outlets, total parking spaces, and number of employees. The Band reports that its existing Four Winds properties employ a total of 206 Band members, comprising, 11 percent of the workforce, 58 of who are in supervisory roles. Development of the Site will provide similar employment opportunities to the Band's members in Indiana.

8.12 25 C.F.R. § 151.11(d) – Consultation with the State of Indiana and local governments having regulatory jurisdiction over the land to be acquired regarding potential impacts on regulatory, jurisdiction, real property taxes, and special assessments

See discussion in Sections 8.6 and 8.7 above.

9.0 DECISION TO APPROVE THE BAND'S FEE-TO-TRUST APPLICATION

I have determined to approve the Band's request to acquire the Site in trust and implement Preferred Alternative A. This decision is based upon the Pokagon Restoration Act's mandate that the Secretary acquire land in trust for the Band; the 1999 MOU between the Department and the Band in which the Band agreed to restrict trust acquisitions to four geographic consolidation sites; the environmental impacts identified in the EIS and corresponding mitigation; and a consideration of the purpose and need for acquiring the Site in trust.

Of the alternatives evaluated in the EIS, Preferred Alternative A will best meet the purpose and need for acquiring the Site in trust. The project described under Preferred Alternative A will

¹¹³ FEIS, Appx. J, (on file with Office of Indian Gaming).

¹¹⁴ Band's Amended Application at 19 - 20.

provide the Band with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its government, and to fund necessary mitigation for development of economic ventures. This will enable the Band's government to establish, fund, and maintain governmental programs that offer a wide range of services to its members including housing, as well as provide the Band with greater opportunities for economic growth. Importantly, this acquisition will implement the congressional purpose of acquiring land in trust for the Band that will become part of its reservation. Accordingly, I approve the fee-to-trust application subject to implementation of the mitigation measures identified in the Mitigation Monitoring and Enforcement Plan (MMEP) in **Attachment IV** of this ROD.

9.1 Preferred Alternative A Results in Substantial Beneficial Impacts

Preferred Alternative A best meets the purpose for acquiring the Site in trust. Preferred Alternative A is reasonably expected to result in beneficial effects for the Band, the State of Indiana, St. Joseph County, and the City of South Bend. Key beneficial effects include:

- New sources of revenue that will allow the Band to meet its and its members' significant needs and to help develop the political cohesion and strength necessary for tribal self-sufficiency, self-determination and strong tribal government.
- Estimated construction costs of \$312 million, comprised of hard construction and site-work expenditures, including an estimated \$135.5 million in construction payroll equating to over 1,400 full-time equivalent construction jobs over a 24-month period.
- During operation, net indirect and induced spending of approximately \$167,831,000 in St. Joseph County annually and generation of approximately 1,666 indirect and induced jobs within St. Joseph County, representing an increase of nearly 2.9 percent over the current number of jobs in St. Joseph County.
- During operation, an estimated addition of 2,548 jobs in the City of South Bend and a total of 3,256 jobs throughout St. Joseph County.

9.2 Alternatives B and C Result in Fewer Beneficial Effects

Alternatives B and C would both establish a permanent land base for the Band from which to provide governmental services to Band members residing in northwest Indiana. The Tribal Village housing and community center components of each would also benefit Band members by providing them with clustered and enhanced housing options and a focal point for community functions. The community-building benefits from the new housing and community center in Alternatives B and C would enhance tribal attitudes, expectations, lifestyle and culture and community programs would be supported by the income produced by Alternative B as well as by the modest non-gaming income produced by Alternative C.

Both Alternatives B and C would limit the Band's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency as compared to Preferred Alternative A. While the profits generated by the economic activities in Alternative B would yield millions of dollars annually for the Band more than the No Action Alternative, such revenues would be less than the net revenues generated by Preferred Alternative A. The funds generated by the economic activities in Alternative C would yield significantly smaller

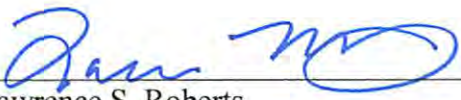
amounts of additional income for tribal government and programs than Preferred Alternative A and Alternative B, but greater tribal government revenues than the No Action Alternative. Cumulatively, Alternatives A, B and C would include commercial development to generate net revenues to fund a tribal government services center that would cumulatively increase opportunities for Band members. However, Preferred Alternative A would generate the greatest net benefits resulting in the greatest cumulative amount of governmental services (tribal and non-tribal) for Band members, and, thus, best meets the purpose of acquiring the Site in trust. Alternatives A, B, and C would cumulatively increase housing availability for Band members compared to existing conditions, and likely result in a more culturally appealing setting. In comparing Alternatives A, B and C, all impacts are insignificant with implementation of mitigation measures, except that Preferred Alternative A generates the greatest net revenues for the Band to use to develop the Tribal Village, and provide government services to Band members residing in Indiana. We believe the reduced economic and related benefits of Alternatives B and C make them less viable options.

9.3 Alternative D (No-Action Alternative) Does Not Meet Purpose and Need of Project

The No-Action Alternative (Alternative D) would not establish a permanent land base or meet the purpose for acquiring the Site in trust. Specifically, it would not provide the Band with a restored trust land base at the South Bend consolidation site from which to provide governmental services to Band members. It would also not provide a source of net income to allow the Band to achieve self-sufficiency, self-determination, and a strong tribal government. Alternative D also would likely result in substantially fewer economic benefits to St. Joseph County and the City of South Bend than the other Alternatives.

10.0 SIGNATURE

By my signature, I state my decision to implement Preferred Alternative A and acquire 165.81± acres in the City of South Bend, Indiana, for the Pokagon Band of Potawatomi Indians, Michigan and Indiana, for gaming and other purposes. Consistent with applicable law, the Regional Director shall immediately record the land in trust.



Lawrence S. Roberts
Principal Deputy Assistant Secretary – Indian Affairs

NOV 17 2016
Date