

JAN 14 2025

**MITIGATED FINDING OF NO SIGNIFICANT IMPACT
FOR THE PRAIRIE ISLAND INDIAN COMMUNITY
NORTH ELK RUN COMMUNITY DEVELOPMENT
AND FEE-TO-TRUST PROJECT**

The Prairie Island Indian Community (Tribe) submitted an application requesting that the Bureau of Indian Affairs (BIA) acquire approximately 781 acres (Project Site) into federal trust for the benefit of the Tribe for tribal housing and community development purposes (Proposed Action). The Project Site, owned by the Tribe in fee, is located partially within unincorporated Olmstead County and partially within the City of Pine Island, Minnesota, within Sections 1 and 12 of Township 108 North, Range 15 West and Sections 6 and 7 of Township 108 North, Range 14 West, within the Fifth Principal Meridian, and within the Oronoco U.S. Geological Survey 7.5' quadrangle map.

Approval of the fee-to-trust acquisition constitutes a federal action under the governing regulations for compliance with the National Environmental Policy Act (NEPA). The Proposed Action was analyzed within an Environmental Assessment (EA) dated October 2024¹ that was prepared in accordance with NEPA. Based on the analysis contained in the EA, the BIA makes a mitigated finding of no significant impact for the Proposed Action. This finding constitutes a determination that the Proposed Action is not a federal action that would result in significant adverse effects to the quality of the human environment with mitigation; therefore, additional environmental review and preparation of an Environmental Impact Statement (EIS) is not required.

BACKGROUND

The Tribe is a federally recognized Indian Tribe representing the Mdewakanton Dakota people, who have lived in what are now known as the States of Minnesota, Iowa, and Wisconsin since time immemorial. As a result of eight treaties between 1805 and 1858, the Dakota War of 1862, and acts of Congress in 1863, the Dakota were completely dispossessed of their ancestral lands and mostly driven from Minnesota; however, a small group of Dakota remained and settled near Prairie Island. The reacquisition of the Tribe's homelands began in the late 19th century and continued in the 1930's with the purchase of 414 acres of land at Prairie Island by the federal government for the benefit of the Community. This acreage constitutes the central core of the Tribe's Reservation that has provided a small footprint for the tribal members' homes.

The Tribe provides a full range of governmental services to more than 1,000 currently enrolled members and owns and operates businesses on the Reservation including, notably, the existing Treasure Island Resort & Casino (Casino). The Casino is the largest employer in Goodhue County with over 1,700 employees. The Tribe provides virtually all essential governmental services to its members.

¹ The October 2024 EA is hereby incorporated by reference as part of this mitigated finding of no significant impact. The EA is available for public review at <http://www.PIICcommunityEA.com>

The Tribe is a member of the Inter-Tribal Buffalo Council which includes over 60 tribes with a goal of restoring buffalo to Indian County. The Tribe currently has a growing buffalo herd and as such, a portion of the Project Site is proposed for buffalo pastureland. The Tribe's current Reservation and facilities are limited and at risk. Serious ongoing risks include flooding and loss of land from the construction of a federal dam (Lock and Dam 3) and nuclear risks associated with the adjacent Prairie Island Nuclear Generating Plant and on-site waste storage facilities. These risks are discussed in depth within Section 1 of the EA.

PURPOSE AND NEED FOR THE PROPOSED ACTION

The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department of the Interior's (Department's) land acquisition policy as articulated in the Department's trust land regulations at 25 Code of Federal Regulations (CFR) § 151. The Department's authority to act on the Tribe's application is governed by the Department's regulations at 25 CFR § 151, in particular the requirements at § 151.3, 151.11, and 151.12.

DESCRIPTION OF THE PROPOSED ACTION

The Proposed Action consists of the following components: (1) Transfer of the Project Site into federal trust status with accompanying reservation proclamation for the benefit of the Tribe; and (2) Subsequent land use planning and development of the Project Site for tribal residential, commercial/industrial, and community development purposes to support the Tribe.

ALTERNATIVES CONSIDERED

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

Alternative A – Proposed Project: Alternative A consists of the transfer of the Project Site into federal trust status for the benefit of the Tribe and subsequent land use planning and development of the Project Site for tribal residential, commercial/industrial, and community development purposes. The Project Site would be utilized for tribal residences, community and cultural facilities, commercial and industrial development natural areas and parks, agricultural and cropland, and bison pastureland. The Tribe has entered into an enforceable Intergovernmental Agreement (IGA) with the City of Pine Island (see Appendix A of the EA). The IGA addresses cooperative efforts for law enforcement, emergency response, and water and sewer infrastructure.

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

Alternative B – No Action: Under Alternative B, the Project Site would not be placed in federal trust for the benefit of the Tribe and jurisdiction of the Project Site would remain with the City of Pine Island and Olmsted County. The existing tribal housing shortages would continue, and in the event of a catastrophic event on the existing Reservation, the Tribe would not have access to a safer and more reliable land base. Therefore, this alternative would not meet the stated purpose of facilitating tribal self-sufficiency, self-determination, and economic development.

ALTERNATIVES ELIMINATED FROM FURTHER ANALYSIS

Alternative Location: The Project Site is already owned by the Tribe in fee and was selected by the Tribe as it falls within the Tribe’s ancestral land base, was available to the Tribe for purchase, is safe and developable, has adequate site access, and is located outside of flood risks from the Mississippi River and the FEMA-designated nuclear incident impact zone and 10-mile radius emergency planning zone for the Prairie Island Nuclear Generating Plant. Consideration of an alternative site would require the Tribe to purchase additional land, thus placing an undue financial burden on the Tribe. Therefore, alternative locations for the trust acquisition are not evaluated within the EA.

ENVIRONMENTAL IMPACTS

The EA documents and analyzes the potential environmental impacts of the Proposed Action and alternatives and was released to the public and agencies for a review and comment period beginning on November 9, 2024 and ending on December 9, 2024. The EA is hereby incorporated by reference as part of this mitigated finding of no significant impact. The EA is available online at www.PIICcommunityEA.com. As part of the EA, potential direct, indirect, and cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation and circulation, land use, public services and utilities, noise, hazards and hazardous materials, and visual resources were evaluated, with the following conclusions:

- Having considered potential land resource impacts during project design/planning, and with the incorporation of BMPs, impacts to land resources would be less than significant. See EA Sections 2.1.10 and 3.2.
- Having considered potential water resources impacts during project design/planning, and with the incorporation of BMPs, impacts to water resources would be less than significant. See EA Sections 2.1.10 and 3.3.
- Having considered potential air quality impacts during project design/planning, and with the incorporation of BMPs, there would be no significant adverse effects associated with the regional air quality. See EA Sections 2.1.10 and 3.4.
- Having considered potential biological resources impacts during project design/planning, and with the incorporation of BMPs and implementation of mitigation measures, impacts to biological resources would be less than significant. See EA Sections 2.1.10, 3.5, and 4.
- There would be no significant impacts to known cultural or paleontological resources as no significant cultural or paleontological resources were identified within the Project Site. Adherence to applicable laws and implementation of mitigation measures would ensure that no adverse effects to previously unknown cultural resources would occur. See EA Sections 3.6 and 4.

- There would be no significant impacts associated with socioeconomic conditions or environmental justice. See EA Section 3.7.
- Having considered potential transportation and circulation impacts during project design/planning, impacts to transportation and circulation would be less than significant. See EA Section 3.8.
- Having considered potential land use conflicts during project design/planning, and with the incorporation of visual resource BMPs to manage lighting impacts, impacts regarding land use would be less than significant. See EA Sections 2.1.10 and 3.9.
- Having considered potential public services impacts during project design/planning, and with the incorporation of BMPs and implementation of mitigation measures, impacts to public services would be less than significant. See EA Sections 2.1.10, 3.10, and 4.
- Having considered potential noise impacts during project design/planning, and with the incorporation of BMPs, no significant impacts to the ambient noise environment would occur during construction or operation. See EA Sections 2.1.10, 3.11, and 4.
- Having considered potential hazardous materials impacts during project design/planning, and with the incorporation of BMPs, hazardous materials impacts would not be significant. See EA Sections 2.1.10 and 3.12.
- Having considered potential visual resource impacts during project design/planning, and with the incorporation of BMPs, no adverse effects to visual resources would occur. See EA Sections 2.1.10 and 3.13.
- BMPs and/or mitigation measures incorporated would ensure that cumulative impacts to land resources, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions/environmental justice, transportation/circulation, land use, public services/utilities, noise, hazards/hazardous materials, and visual resources are not significant. There would be no significant indirect or growth-inducing effects. See EA Section 3.15.

BEST MANAGEMENT PRACTICES AND MITIGATION MEASURES

Best Management Practices

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

Land Resources

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

Water Resources

- To reduce water usage, low-flow toilets, faucets, and other water-using appliances shall be installed to the extent feasible.
- Should an on-site WWTP be selected, wastewater shall be treated to tertiary levels consistent with USEPA standards.

- Final stormwater designs shall be consistent with USEPA standards and the Minnesota Stormwater Manual MIDS.
- Coverage under the National Pollutant Discharge Elimination System (NPDES) Construction General Permit shall be obtained from the USEPA for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA).
- A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. The SWPPP would include, but would not be limited to, the following BMPs to minimize storm water effects to water quality during construction:
 - Grading activities shall be limited to the immediate area required for construction.
 - Temporary erosion control measures (such as silt fences, fiber rolls, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed as needed for disturbed areas.
 - Construction activities shall be scheduled to minimize land disturbance during peak runoff periods to the extent feasible.
 - Disturbed areas shall be paved, re-vegetated, and/or stabilized following construction activities.
 - A spill prevention and countermeasure plan shall be developed that identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, etc.) used on-site.
 - Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the CWA (33 USC § 1251 to 1387).
 - Construction materials shall be stored, covered, and isolated to prevent runoff loss and contamination of surface and groundwater.
 - Fuel and vehicle maintenance areas shall be limited to the impact area.
 - Sanitary facilities shall be provided for construction workers.
 - To minimize dust generation during construction, soil will be wetted down with water prior to ground disturbance as needed.
 - Generated waste shall be properly disposed of.

Biological Resources

- Exterior lighting shall be downcast and shielded such that lighting and glare do not overspill the built environment.
- Uplighting, disruptive flashing lights, or materials that cause excessive glare shall not be used.
- Due to the cultural and biological importance of oak habitat, healthy oaks within the oak savanna habitat shall not be removed.

Air Quality

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

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

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

- The Tribe shall control criteria pollutants and GHG emissions from the facility by requiring all diesel-powered equipment be properly maintained and minimize idling time to five minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required.
Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above measures.
- The use of low reactive organic gases (150 grams per liter or less) shall be required for architectural coatings to the extent practicable.
- Environmentally preferable materials, including recycled materials, shall be used to the extent readily available and economically practicable for construction of facilities.

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

- The Tribe shall install electric vehicle charging stations for all residential, commercial/industrial, and administration land uses .
- Water consumption shall be reduced through low-flow appliances, drought resistant landscaping, and the incorporation of "Save Water" signs near water faucets throughout the development.
- The Tribe will use electric boilers and appliances in lieu of natural gas or propane units to the greatest extent practicable.
- The Tribe shall control CAPs, GHG, and DPM emissions during operation by requiring that all diesel-powered vehicles and equipment be properly maintained and minimizing idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use, unless per engine manufacturer's specifications or for safety reasons more time is required.
- The Tribe shall use energy efficient lighting and appliances, which would reduce energy usage, thus reducing indirect CAP and GHG emissions.

Public Services and Utilities

BMPs to be implemented during construction:

- Construction equipment shall contain spark arrestors, as provided by the manufacturer.
- Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel.
- The Tribe shall contact the Utility Notification Center to notify the utility service providers of excavation at the work site. In response, the utility service providers shall mark or stake the horizontal path of underground utilities, provide information about the utilities, and/or give clearance to dig.
- The site shall be cleaned daily of trash and debris to the maximum extent practicable.

BMPs to be implemented during operation:

- A solid waste management plan shall be developed and adopted by the Tribe that addresses recycling and solid waste reduction and proper disposal onsite during construction and operation. These measures shall include, but not be limited to, the installation of a trash compactor for cardboard and paper products, the installation of ample and visible trash bins to encourage proper disposal, recycling, and periodic waste stream audits.

Hazardous Materials

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

- Fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment to reduce the potential for accidental release.
- Catch-pans shall be placed under equipment to catch potential spills during servicing.
- Refueling shall be conducted only with approved pumps, hoses, and nozzles.
- Disconnected hoses shall be placed in containers to collect residual fuel from the hose.
- Vehicle engines shall be shut down during refueling.
- No smoking, open flames, or welding shall be allowed in refueling or service areas.
- Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
- Service trucks shall be provided with fire extinguishers and spill containment equipment.
- Should a spill contaminate soil, the soil shall be put into containers and disposed of in accordance with local, State, and federal regulations.
- All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure.
- In the event that contaminated soil and/or groundwater is encountered during construction related earthmoving activities, work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Tribe shall consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.

Noise

BMPs to be implemented during construction:

- Construction activities shall be limited to daytime hours between 7 am and 10 pm.
- Construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and acoustical shields or shrouds in accordance with manufacturers' specifications.
- Maintenance of construction equipment and machinery, including noise reducing components such as mufflers, silencers, covers, guards, vibration isolators, etc., shall be performed regularly to reduce excess noise.
- Haul trucks shall be operated in accordance with posted speed limits.
- Construction equipment and machinery shall only be operated by trained and qualified personnel.
- Loud stationary construction equipment shall be located as far away from sensitive receptor areas as feasible.
- Construction equipment and machinery that produce reduced noise levels shall be utilized to the extent feasible

BMPs to be implemented during operation:

- Heating, ventilation, and air conditioning equipment associated with tribal facilities shall be shielded to reduce noise.

Visual Resources

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

MITIGATION MEASURES

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

Biological Resources

Federally Listed Roosting Bats:

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

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

OR

- If tree removal occurs within the active season of roosting bats, a qualified biologist shall perform a preconstruction survey prior to tree removal to identify suitable roost trees. Suitable roost trees shall be removed over a two-day period utilizing hand tools. On the first day, tree limbs shall be removed. On the second day the balance of the tree will be felled.

Nesting Migratory Birds/Raptors:

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

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

Monarch Butterfly:

The following measures are recommended to avoid and/or reduce impacts to monarch butterfly:

- Landscaping shall maximize the use of native vegetation.
- Landscaping plans shall not include non-native tropical milkweed (*Asclepias curassavica*).
- Land management activities shall minimize the use of pesticides, including insecticides, fungicides, and herbicides. Pest management shall be conducted through non-chemical means as feasible.
- If use of chemical pesticides is necessary, the following practices shall be implemented:
 - Avoid use during summer, which is the peak time for Monarchs to occur in the vicinity of the Project Site.
 - Avoid the use of neonicotinoids or other systemic insecticides.
 - Avoid the application of pesticides on milkweed plants and define buffer zones to protect habitat from nearby areas where pesticides are applied.
 - Avoid insecticides that target lepidopterans.
 - Avoid the use of strobilurin fungicides on milkweeds.
 - Use targeted application methods, avoid large-scale broadcast applications, and take precautions to limit off-site movement.

Seasonal Wetlands:

The following measures are recommended to avoid and/or reduce impacts to seasonal wetlands:

- Prior to construction within 200 feet of the seasonal wetland within the impact area, a qualified biologist shall demarcate the boundaries of the wetland with high visibility pin flagging or similar.
- No activities shall occur within the boundary. The boundary shall remain in place until construction activities within 200 feet of the seasonal wetland have been completed.

Cultural Resources

Inadvertent Discoveries of Cultural Resources:

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

Inadvertent Discoveries of Human Remains:

- Consistent with NAGPRA requirements, if human remains or objects of cultural patrimony are discovered during project-related ground-disturbing activities, ground disturbance in the vicinity of the find shall be halted and the location shall be secured (43 CFR § 10.4(c)).
- The BIA and Prairie Island Indian Community THPO shall be immediately notified of the discovery and the Olmsted County Sheriff/Coroner shall be immediately informed of the find in accordance with the Minnesota Statutes § 307.08, and 43 CFR § 10.5(a) (1).
- If the remains are determined to be Native American in origin, the BIA shall consult with the THPO and/or appropriate Tribe to discuss the recovery and treatment of the remains (43 CFR § 10.5).
- A written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR § 10.5(b)).
- The disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 CFR §10.6.

Public Services and Utilities

Service Agreement:

The following measure is recommended for Alternative A:

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

Noise

Construction Noise and Vibration:

The following mitigation measures are recommended for reducing potential construction noise and vibration impacts to sensitive receptors:

- The Tribe shall monitor construction noise and vibration and will designate a disturbance coordinator (such as an employee of the general contractor or the project manager for the Tribe), post the coordinator's contact telephone number conspicuously around the Project Site, and provide the number to nearby sensitive receptors. The disturbance coordinator shall receive all public complaints, be responsible for determining the cause of the complaints, and implement any feasible measures to alleviate the problem.
- The use of vibrational construction equipment shall be restricted such that vibration levels will not exceed 90 VdB at sensitive receptors adjacent to the Project Site on its norther border. Should any vibrational construction equipment be required that results in vibration decibel levels that would exceed 90 VdB at the adjacent sensitive receptors, a buffer or set back will be utilized.

PUBLIC AVAILABILITY AND RESPONSE TO EA COMMENTS

The EA was released to the public and agencies for a review and comment period beginning on November 9, 2024 and ending on December 9, 2024. The Notice of Availability (NOA) for the EA was published in the Post Bulletin online and in print. Additionally, the NOA was made available online at: <http://www.PIICcommunityEA.com>. The BIA received one comment letter during the public comment period for the EA, which was from the Shakopee Mdewakanton Sioux Community. Responses to the comments are included in Attachment 2.

DETERMINATION

Based on consideration of the analysis contained in the October 2024 EA and the entire administrative record, it is determined that by approval of the Proposed Action and the environmental mitigation measures specified above, the Proposed Project will have no significant impact on the quality of the human environment. In accordance with Section 106(b)(2) of NEPA, as amended, additional environmental review or an EIS will not be required. This determination is supported by the following findings:

1. Agency and public review were conducted. The EA discloses the potential environmental consequences of the Proposed Action. BMPs were incorporated into project design to safeguard land resources, water resources, biological resources, maintain air quality, reduce greenhouse gas emissions; preserve visual resources, minimize noise, prevent the release of hazardous materials, minimize transportation and circulation issues; and reduce the demand on public services and utilities as outlined in Section 2 of the EA.

2. Mitigation measures described in Section 4 of the EA will be implemented to reduce impacts to biological resources, cultural resources, public services, and noise.
3. The Proposed Action will not jeopardize federally threatened or endangered species with incorporation of mitigation measures described in Section 4 of the EA.
4. No known historic or prehistoric resources have been identified within the Project Site and consultation with the State Historic Preservation Office resulted in concurrence of No Historic Properties Affected. Should undiscovered archeological remains be encountered during project ground-disturbing activities, work will stop in the area of discovery and the stipulations of 36 CFR 800.11 and/or 43 CFR § 10 will be followed.
5. Impacts to public health and safety are mitigated through implementation of BMPs described in Section 2 of the EA.
6. Impacts to floodplains have been evaluated in accordance with E.O. 11988. The Proposed Action would have no effect on wetlands or floodplains as described in Section 3.3 of the EA.
7. The cumulative effects to the environment are mitigated to avoid or minimize effects of implementation of the Proposed Action as described in Section 3.14 of the EA.
8. The Proposed Action would improve the economic and social conditions of the Tribe and would also promote tribal self-sufficiency and self-determination.

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Date: 2025.01.14 14:03:59 -06'00'

Regional Director
Midwest Region
Bureau of Indian Affairs

Date

Attachments:

Attachment 1: Mitigation Monitoring and Compliance Plan

Attachment 2: Responses to Comments Received on the October 2024 Environmental Assessment

Attachment 1

Mitigation Monitoring and Compliance
Plan

Prairie Island Indian Community

North Elk Run Community Development & Fee-to-Trust Project

Mitigation Monitoring and Compliance Plan

The purpose of this Mitigation Monitoring and Compliance Plan (MMCP) is to guide compliance and implementation of mitigation measures associated with the Prairie Island Indian Community (Tribe) North Elk Run Community Development and Fee-To-Trust Project (Project). The mitigation measures listed in **Table 1** were identified within the Environmental Assessment (EA) dated October 2024 and Mitigated Finding of No Significant Impact (FONSI). This MMCP has been prepared consistent with the requirements of 40 CFR § 1508.1(y) and includes descriptions of the following:

- The mitigation measures identified within the EA;
- The parties responsible for monitoring and implementing the mitigation measures;
- The anticipated timeframe for implementing and completing the mitigation measures; and
- Compliance standards and entities responsible for the enforcement of the mitigation measures.

Mitigation measures detailed in **Table 1** were included in Section 4 of the EA and will be implemented to reduce potentially significant impacts to biological resources, cultural resources, public services, and noise. The Tribe will be the primary agency responsible for funding, monitoring and/or implementing the mitigation measures. Implementation of the mitigation measures will occur either during the planning phase, prior to beginning construction related activities (pre-construction), or during construction. Where applicable, the mitigation measures will be monitored and enforced pursuant to federal law and agreements between the Tribe and appropriate governmental authorities.

Table 1: Mitigation Monitoring and Compliance

| Mitigation Measure | Party Responsible for Monitoring and/or Implementation | Timing of Implementation | Compliance Standards and Enforcement |
|---|--|---|--|
| Biological Resources | | | |
| Federally Listed Roosting Bats | | | |
| <ul style="list-style-type: none"> ▪ Tree removal shall occur outside the active season of roosting bats (April 1 through October 31) as possible. <p style="text-align: center;">OR</p> | Tribe | Planning Phase | <p>Compliance Standards: Federal Endangered Species Act</p> <p>Enforcement Entity: USFWS/Tribe</p> |
| <ul style="list-style-type: none"> ▪ If tree removal occurs within the active season of roosting bats, a qualified biologist shall perform a preconstruction survey prior to tree removal to identify suitable roost trees. Suitable roost trees shall be removed over a two-day period utilizing hand tools. On the first day, tree limbs shall be removed. On the second day the balance of the tree will be felled. | Tribe | Pre-Construction Phase | <p>Compliance Standards: Federal Endangered Species Act</p> <p>Enforcement Entity: USFWS/Tribe</p> |
| Nesting Migratory Birds | | | |
| <ul style="list-style-type: none"> ▪ If construction activities commence during the general nesting season (February 15 to September 1), a preconstruction nest survey shall be conducted by a qualified biologist on and within 100 feet of proposed construction within 7 days of initiating ground disturbance. If active nests are identified, the qualified biologist shall determine a suitable avoidance buffer based on the needs of the species observed. ▪ Avoidance measures include establishment of a buffer zone using construction fencing or similar, or the postponement of construction until after the nesting season, or until after a qualified biologist has determined the nest is no longer active. Avoidance buffers may vary in size depending on habitat characteristics, project-related activities, and disturbance levels. ▪ Should work activity cease for 14 days or more during the nesting season, surveys shall be repeated to ensure birds and have not established nests during inactivity. | Tribe | Pre-Construction Phase and Construction Phase | <p>Compliance Standards: Migratory Bird Treaty Act</p> <p>Enforcement Entity: USFWS/Tribe</p> |
| Monarch Butterfly | | | |
| <ul style="list-style-type: none"> ▪ Landscaping shall maximize the use of native vegetation. ▪ Landscaping plans shall not include non-native tropical milkweed (<i>Asclepias curassavica</i>). ▪ Land management activities shall minimize the use of pesticides, including insecticides, fungicides, and herbicides. Pest management shall be conducted through non-chemical means as feasible. ▪ If use of chemical pesticides is necessary, the following practices shall be implemented: <ul style="list-style-type: none"> ○ Avoid use during summer, which is the peak time for Monarchs to occur in the vicinity of the Project Site. ○ Avoid the use of neonicotinoids or other systemic insecticides. ○ Avoid the application of pesticides on milkweed plants and define buffer zones to protect habitat from nearby areas where pesticides are applied. ○ Avoid insecticides that target lepidopterans. | Tribe | Pre-Construction Phase and Construction Phase | <p>Compliance Standards: Federal Endangered Species Act</p> <p>Enforcement Entity: USFWS/Tribe</p> |

| Mitigation Measure | Party Responsible for Monitoring and/or Implementation | Timing of Implementation | Compliance Standards and Enforcement |
|--|--|--------------------------|---|
| <ul style="list-style-type: none"> ○ Avoid the use of strobilurin fungicides on milkweeds. ○ Use targeted application methods, avoid large-scale broadcast applications, and take precautions to limit off-site movement. | | | |
| Seasonal Wetlands | | | |
| <ul style="list-style-type: none"> ▪ Prior to construction within 200 feet of the seasonal wetland within the impact area, a qualified biologist shall demarcate the boundaries of the wetland with high visibility pin flagging or similar. ▪ No activities shall occur within the boundary. The boundary shall remain in place until construction activities within 200 feet of the seasonal wetland have been completed. | Tribe | Pre-Construction Phase | <p>Compliance Standards: Clean Water Act Sections 401 and 404</p> <p>Enforcement Entity: U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Tribe</p> |
| Cultural and Paleontological Resources | | | |
| Inadvertent Discoveries of Cultural Resources | | | |
| <ul style="list-style-type: none"> ▪ In the event that cultural resources are inadvertently discovered during project-related ground disturbance, ground disturbance shall be halted within 50 feet of the find and the BIA and the Tribe's THPO and/or a qualified archaeologist (i.e., an archaeologist that meets the qualifications at 36 CFR § 61), or paleontologist if the find is of a paleontological nature, shall be retained to assess its potential significance. ▪ Construction activities may continue in other areas but may not resume in the area of the find until the significance of the find is assessed and it is appropriately treated. ▪ If the find is determined by the BIA/THPO/qualified archaeologist to not be significant (i.e., not a <i>historic property</i>), no additional cultural resources investigations are necessary and work may resume in the area of the find. ▪ If any find is determined to be significant by the THPO or archaeologist or paleontologist, a BIA representative shall meet with the THPO or archaeologist or paleontologist to determine the appropriate course of action, including the development of a Treatment Plan and implementation of appropriate avoidance measures or other mitigation. | Tribe BIA as needed | Construction Phase | <p>Compliance Standards: Section 106 of the National Historic Preservation Act</p> <p>Enforcement Entity: BIA/Tribal Historic Preservation Office (THPO)</p> |
| Inadvertent Discoveries of Human Remains | | | |
| <ul style="list-style-type: none"> ▪ Consistent with NAGPRA requirements, if human remains or objects of cultural patrimony are discovered during project-related ground-disturbing activities, ground disturbance in the vicinity of the find shall be halted and the location shall be secured (43 CFR § 10.4(c)). ▪ The BIA and Prairie Island Indian Community THPO shall be immediately notified of the discovery and the Olmsted County Sheriff/Coroner shall be immediately informed of the find in accordance with the Minnesota Statutes § 307.08, and 43 CFR § 10.5(a)(1). ▪ If the remains are determined to be Native American in origin, the BIA shall consult with the THPO and/or appropriate Tribe to discuss the recovery and treatment of the remains (43 CFR § 10.5). | Tribe BIA as needed | Construction Phase | <p>Compliance Standards:</p> <ul style="list-style-type: none"> ▪ 43 CFR § 10.4(c) ▪ 43 CFR § 10.5 ▪ 43 CFR § 10.5(a)(1). ▪ 43 CFR § 10.5(b) ▪ 43 CFR § 10.6 ▪ Minnesota Statute § 307.08 <p>Enforcement Entity: BIA/THPO</p> |

| Mitigation Measure | Party Responsible for Monitoring and/or Implementation | Timing of Implementation | Compliance Standards and Enforcement |
|---|--|--|---|
| <ul style="list-style-type: none"> ▪ A written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR § 10.5(b)). ▪ The disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 CFR § 10.6. | | | |
| Public Services and Utilities | | | |
| <ul style="list-style-type: none"> ▪ The Tribe shall make good faith efforts to enter into a service agreement with the Pine Island Fire Department that will provide payment for the provision of fire protection and emergency medical services to the Project Site. The agreement shall address any required conditions and standards for emergency access and fire protection system. | Tribe | Planning Phase / Prior to Operation | <p>Compliance Standards: Intergovernmental Agreement Between PIIC and the City of Pine Island</p> <p>Enforcement Entity: City of Pine Island/Tribe</p> |
| Noise | | | |
| <ul style="list-style-type: none"> ▪ The Tribe shall monitor construction noise and vibration and will designate a disturbance coordinator (such as an employee of the general contractor or the project manager for the Tribe), post the coordinator’s contact telephone number conspicuously around the Project Site, and provide the number to nearby sensitive receptors. The disturbance coordinator shall receive all public complaints, be responsible for determining the cause of the complaints, and implement any feasible measures to alleviate the problem. ▪ The use of vibrational construction equipment shall be restricted such that vibration levels will not exceed 90 VdB at sensitive receptors adjacent to the Project Site on its norther border. Should any vibrational construction equipment be required that results in vibration decibel levels that would exceed 90 VdB at the adjacent sensitive receptors, a buffer or set back will be utilized. | Tribe | Construction Phase | <p>Compliance Standards:</p> <ul style="list-style-type: none"> ▪ Federal Noise Abatement Criteria ▪ Federal Highway Administration noise standards ▪ Federal Transit Administration noise standards ▪ Minnesota Rules Ch. 7030.0040 <p>Enforcement Entity: Tribe</p> |

Attachment 2

Responses to Comments Received on the
October 2024 EA

Responses to Comments on the October 2024 Environmental Assessment Prairie Island Indian Community North Elk Run Community Development and Fee-to-Trust Project

1.0 INTRODUCTION AND COMMENT LETTERS

An Environmental Assessment (EA) was prepared pursuant to the National Environmental Policy Act (NEPA) to assess potential environmental impacts of acquiring approximately 781 partially located in unincorporated Olmsted County and partially located in the City of Pine Island, Minnesota (Project Site) into federal trust status for the benefit of the for the Prairie Island Indian Community (PIIC; Tribe) for tribal residential and community development purposes (Proposed Action). A Notice of Availability (NOA) for the EA was published in the Post Bulletin online and in print. The NOA announced that the EA was available for public and agency review for a 30-day comment period beginning on November 9, 2024, and ending on December 9, 2024. The NOA and EA were also posted on the project website at <http://www.PIICcommunityEA.com>. The BIA received one comment letter on the EA during the public comment period, which was from the Shakopee Mdewakanton Sioux Community (SMSC) (**Table 1** and **Attachment 1**). Responses to the comments provided within the letter are included in **Section 2**.

TABLE 1: COMMENT LETTER LOG

| Letter # | Name | Agency/Organization/Tribe | Date |
|----------|--|--------------------------------------|------------------|
| 1 | Cole W. Miller, Chairman Natasha K. Hacker, Vice-Chairwoman Ashley J. Cornforth, Secretary/Treasurer | Shakopee Mdewakanton Sioux Community | December 9, 2024 |

2.0 RESPONSES TO COMMENTS

Substantive comments received on the EA during the public comment period are responded to within this section. Once an issue has been addressed in a response to a comment, subsequent responses to similar comments reference the initial response.

Response to Comment Letter 1: Shakopee Mdewakanton Sioux Community

Response to Comment 1

The commenter provides a summary of the topics included within the comment letter.

Comment noted. Each topic is responded to in detail below.

Response to Comment 2

The commenter states that the Tribe is relocating its reservation and summarizes the components of the Proposed Project and states that farmland would be converted.

Comment noted. Potential impacts associated with farmland conversion are addressed in Section 3.9.3 of the EA. The commenter is mistaken in that the Tribe is not relocating its reservation. The Tribe will continue to maintain its existing reservation and facilities. However, the existing reservation is currently subject to nuclear risks and other hazards as described in detail in Section 1.2 of the EA. Further, much of the existing reservation is undevelopable and inundated by flooding, and more than a thousand acres of land historically occupied by the Tribe, including village sites, ceremonial areas, and hundreds to thousands of burial sites have been flooded from implementation of Lock and Dam 3 on the Mississippi River by the former U.S. War Department. Therefore, while the Tribe will continue to occupy its existing reservation, a primary purpose of the Proposed Action is to provide additional land for tribal development in a safer and more developable area.

Response to Comment 3

The commenter states that the EA improperly addresses only the Proposed Project but there are in fact two projects that are a single course of action, and therefore the project is improperly segmented. The commenter states that the other “half” of the project is the PIIC Emergency Gaming Facility and Fee-to-Trust Project (addressed in an earlier EA for a site that is already in federal trust), and that the cumulative impacts of the combined projects were not addressed. Lastly, the commenter states that the BIA failed to publish the PIIC Unmet Needs and Resiliency Plan, which they state is needed to understand the full effects of the federal action.

The Proposed Action and the separate PIIC Emergency Gaming Facility are not a single course of action. The PIIC North Elk Run Community Development and Fee-to-Trust Project and the PIIC Emergency Gaming Facility and Fee-to-Trust Project each occur independently of the other. Projects are defined to have independent utility if “...each project would have taken place in the other's absence...”¹. The PIIC North Elk Run Community Development and Fee-to-Trust Project and the PIIC Emergency Gaming Facility and Fee-to-Trust Project would occur regardless of the other, require different federal approvals, and have different buildout timelines. The federal actions needed to complete the PIIC Emergency Gaming Facility and Fee-to-Trust project are so distinct that the agency decision already has been completed and that land is already in trust (see discussion in next paragraph) and will remain so regardless of the decision made by the Department on the current North Elk Run Community Development project. The development timeline for the Proposed Project is discussed in Section 2 of the EA.

The BIA did not violate NEPA by segmenting or dividing a major federal action into smaller components such that the application of NEPA to some of its segments would be avoided². In the case of the Proposed Action and the separately approved PIIC Emergency Gaming Facility and Fee-to-Trust Project, NEPA review was not avoided, and EAs were prepared for each separate project accordingly.

Potential impacts of the PIIC Emergency Gaming Facility and Fee-to-Trust Project were assessed within an EA dated June 2024 that was prepared in accordance with NEPA. Based on the analysis contained in the EA, the BIA approved a Mitigated Finding of No Significant Impact for the PIIC Emergency Gaming Facility and Fee-to-Trust Project. A Notice of Determination approving the PIIC Emergency Gaming Facility and Fee-to-Trust Project was published in the Federal Register on December 11, 2024.

¹Webster v. U.S. Dept of Agriculture; 685 F.3d 411, 426 (4th Cir. 2012)

²Fath v. Texas DOT, 924 F.3d 132, 137 (5th Cir. 2018)

The BIA properly considered both federal actions and identified and analyzed the cumulative effects of each project in each respective EA (see Section 3.14 of each EA). Section 3.14 of the PIIC North Elk Run Community Development and Fee-to-Trust Project assesses the potential for the Proposed Project to contribute to “cumulative” environmental impacts. Cumulative impacts are defined by the CEQ as effects “on the environment which result from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions,” (40 CFR Section 1508.1(g)(3)). The cumulative setting includes known development projects that are proposed, planned, and/or currently being constructed within one mile of the Project Site as shown in Table 3.14-1 of the EA. The PIIC Emergency Gaming Facility and Fee-to-Trust Project is included in this analysis. The EA concluded that with the implementation of mitigation measures, the Proposed Action in combination with the PIIC Emergency Gaming Facility Project would not result in cumulatively significant environmental impacts. Therefore, in accordance with 25 CFR § 1501.3, the BIA did not avoid a determination of significance resulting from implementation of both federal actions.

The PIIC Unmet Needs and Resiliency Plan (Resiliency Plan) is a Tribal government planning document developed by the Tribe and provided to the BIA by the Tribe. The Resiliency Plan is not mandated by any federal laws or regulations and does not require review and approval by the Department of the Interior (Department) or BIA as part of the fee-to-trust application or acquisition process. Thus, it is not a federal action subject to NEPA compliance and is not an essential part of BIA’s analysis for the purpose of the EA. Instead, it is referenced merely to provide additional information for the reader concerning the Tribe’s reasons for selecting the property. The federal Proposed Action subject to NEPA compliance is the acquisition of the 781-acre project site into federal trust under the Indian Reorganization Act of 1934 (25 USC § 5108. 5110), with regulations codified at 25 CFR § 151.

The purpose and need for the federal Proposed Action is stated in Section 1.3 of the EA as follows: “...to facilitate tribal self-sufficiency, self-determination, and economic development, thus satisfying the Department’s land acquisition policy as articulated in the Department’s trust land regulations at 25 CFR Part 151”. The Tribe’s Resiliency Plan is briefly described in the background Section 1.2 of the EA to help demonstrate how the fee-to-trust acquisition of the Project Site would further the purpose and need of the BIA to “...facilitate tribal self-sufficiency, self-determination, and economic development...” Because the Proposed Action does not constitute the approval and implementation of the Resiliency Plan, there is no requirement for the BIA to make the Resiliency Plan available for public review, to analyze alternatives to the Plan, or to subject the plan to a NEPA review process; the Resiliency Plan is a Tribal planning document, not a federal action.

Response to Comment 4

The commenter states that the true purpose of the Proposed Action is hidden, ill-defined, and unlawfully segmented, that the BIA has failed to provide a detailed statement on the overall Proposed Project, and that therefore an EIS is required.

Refer to Response to Comment 3 regarding segmentation. The level of detail of the project description and associated site planning included within the EA provides sufficient detail to determine the extent of environmental impacts as required by NEPA. No EIS is required because, as detailed in the EA, all impacts associated with the Proposed Action were determined to be less than significant or less than significant with mitigation.

Regarding the need to prepare an EIS, an EA may be prepared for an action that is not likely to result in significant effects or for which the significance of the effects is unknown, and in doing so support an agency's determination of whether to prepare an EIS or a FONSI (40 CFR § 1508.1 (j)). As such, the purpose of an EA is to determine if an EIS is necessary or if a FONSI can be issued. Therefore, the classification of a project as a "major federal action" does not automatically necessitate an EIS.

To determine the appropriate level of review, CEQ regulations (e.g., 40 CFR § 1501.3(d)) permit agencies to make significance determinations based on context and intensity. The BIA's decision to prepare an EA based on this significance determination aligns with these regulations. The EA process also provides for public engagement consistent with 40 CFR § 1501.5(e) and (f), as well as agency guidelines. A 30-day public and agency review and comment period was conducted, and only one comment letter was received on the EA. The commenter makes some comments about the PIIC Emergency Gaming Facility and Fee-to-Trust Project, but that is not the subject of the EA and the agency decision for that project has been completed; the commenter did not participate in the public comment process for the PIIC Emergency Gaming Facility and Fee-to-Trust Project.

In accordance with 40 CFR §1501.5(c)(2), Section 3 of the EA provides an analysis of the potential environmental consequences associated with the Proposed Action and the subsequent development of the project alternatives. Pursuant to 40 CFR §1501.5(c)(1), this information is intended to assist the BIA in determining whether a FONSI should be prepared or whether additional environmental analysis should be conducted in the form of an EIS (see Section 1.1 of the EA). As detailed in Section 3 of the EA, all impacts associated with the Proposed Action were determined to be less than significant or less than significant with mitigation. Therefore, the BIA has determined that additional analysis in the form of an EIS is not warranted and a FONSI should be prepared in compliance with NEPA.

NEPA and the CEQ regulations require that environmental documents include adequate detail to allow decision makers to appropriately consider environmental effects and also encourage agencies to start NEPA early, to assist agency planning and decision-making. Under 40 CFR § 1501.2, agencies are encouraged to integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental effects in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts. Therefore, agencies are not required to develop design-level detail construction documents as part of the NEPA process. The EA properly relies upon concept-level plans and drawings prepared by licensed engineers as the basis for the analysis of reasonably foreseeable environmental impacts during the decision-making process.

Response to Comment 5

The commenter states that the BIA has unlawfully segmented the project into two parts, and that this is contradicted by the EA.

Refer to Response to Comment 3.

Response to Comment 6

The commenter states that the Tribe is relocating its reservation and that the BIA has unlawfully segmented the project into two parts, and that this is contradicted by the EA. The commenter also states that the proposed action cannot be sufficiently understood when it is not available to the public and does not form the basis of the BIA's environmental review under NEPA, and that the Unmet Needs and Resiliency Plan should be published for public review.

Refer to Responses to Comments 2 and 3. Additionally, the EA for the PIIC North Elk Run Community Development and Fee-to-Trust Project is available online at PIICCommunityEA.com, and the EA and FONSI for the PIIC Emergency Gaming Facility and Fee-to-trust Project is available online at www.PIICCasinoEA.com.³

Response to Comment 7

The commenter states that the BIA has failed to "...study, develop, and describe appropriate alternatives to recommended course of action in any proposal (40 CFR § 1501.2(b)(3))."

Refer to Responses to Comments 2 and 3. The commenter does not specifically state how the alternatives are lacking or what additional alternatives should have been studied.

Alternatives are described in Section 2 of the EA and include the Proposed Project Alternative (Alternative A) and the No Action Alternative (Alternative B). The CEQ does not mandate specific alternatives that should be assessed in EAs. Rather, 40 CFR § 1501.5(c)(2)(ii) states that EAs should include alternatives as required by Section 102 (2)(H) of NEPA, which states that agencies should "...study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." The BIA evaluated the Proposed Project and the No Action alternative and eliminated two alternatives (alternative location and development on the Tribe's existing Reservation) from consideration as either being infeasible, not providing environmental advantages, or not fulfilling the purpose and need. See EA Section 2.4.1. The BIA, accordingly, evaluated a reasonable range of alternatives in the EA – alternatives that are technically and economically feasible and meet the purpose and need for the Proposed Action.⁴ As detailed in Section 3 of the EA, all impacts associated with the Proposed Project were determined to be less than significant or less than significant with mitigation under NEPA. Therefore, additional alternatives are not necessary to further reduce potential impacts, as there are no outstanding and unavoidable significant impacts that would result from the Proposed Project.

Response to Comment 8

The commenter states that the BIA has failed to "determine the scope of issues" that begins "as soon as practicable after the proposal for action is sufficiently developed for agency consideration," (40 CFR § 1501.9(a)).

The BIA has followed the applicable regulations in 40 CFR § 1500 regarding the NEPA process. Consistent with 40 CFR § 1501.8 and 1501.9, the BIA invited the participation of likely affected agencies and governments in the NEPA process. The EA was released to the public and agencies for a review and comment period beginning on November 9, 2024 and ending on December 9, 2024. The NOA for the EA was published in the Post Bulletin online and in print.

Additionally, the NOA was made available online at: www.PIICCommunityEA.com. Therefore, the BIA followed the protocol for noticing the EA.

³The Tribe's Resiliency Plan also was mentioned in the June 2024 EA for the PIIC Emergency Gaming Facility and Fee-to-Trust Project. The commenter failed to raise any issues with the Resiliency Plan or any other aspects of that EA during the comment period. The project was approved in December 2024.

⁴Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 195-98 (1991).

Response to Comment 9

The commenter states that the BIA has violated NEPA because it requires an agency to "evaluate in a single environmental impact statement proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action, (40 CFR § 1502.4(a))." Refer to Response to Comment 3.

Response to Comment 10

The commenter states that the project is "of unusual scope or complexity" that requires preparation of an EIS (40 CFR § 1502.7), and that the BIA cannot approve the project due to segmentation.

Refer to Responses to Comments 3 and 4.

Response to Comment 11

The commenter states that the BIA has misrepresented the scope of the Proposed Project in that it initially claimed in the PIIC Emergency Gaming Facility and Fee-to-Trust Project EA that the Proposed Project was in the planning phase, however the BIA then immediately issued an NOA for the EA.

The commenter is mistaken in that development of the Proposed Project itself is within the planning phase, but the NEPA process for the Proposed Project is not. Refer to Response to Comment 4. The Proposed Project is of a programmatic level, as it will be developed over the course of 10 – 20 years, further discussed in Section 2 of the EA.

Response to Comment 12

The commenter states that the BIA has failed to consider the cumulative effects of the Proposed Project. Specifically, the commenter states that there is no cumulative analysis for impacts associated with water and wastewater.

Refer to Response to Comment 3. Potentially cumulatively considerable impacts associated with water and wastewater are discussed in Section 3.14.3 of the EA and in Section 5 of Appendix B of the EA.

Response to Comment 13

The commenter states that the EA does not properly assess potential impacts to farmland, including cumulative impacts to farmland.

Refer to Response to Comment 2. Potential effects to agriculture/farmland are addressed in Section 3.9 of the EA. Cumulative effects to agricultural land are addressed in Section 3.14.9 of the EA.

Response to Comment 14

The commenter states that the BIA has violated NEPA by breaking down larger actions and related actions into smaller pieces, thereby resulting in minimizing the cumulative impacts of the Proposed Action, constraining the consideration of alternatives, and skewing agency decision-making in favor of the two proposed actions.

Refer to Responses to Comments 3, 4, and 7.

Response to Comment 15

The commenter states that the EA fails to take into account the indirect effects of the Proposed Action, the Proposed Action was segmented, that had the BIA properly considered the indirect effects, it would have reasonably determined that an EIS is required, and that the PIIC ‘...is refusing to commit to constructing a specific gaming facility.’

Refer to Responses to Comments 3, 4, and 7. Potential indirect effects of the Proposed Action are assessed in Section 3.15 of the EA. Comments regarding the PIIC Emergency Gaming Facility and Fee-to-Trust Project are outside the scope of the NEPA process for the PIIC North Elk Run Community Development and Fee-to-Trust Project.

Response to Comment 16

The commenter states that the BIA unlawfully failed to notify or consult the SMSC and that the BIA has violated the SMSC's procedural right to notice, consultation, and involvement in preparing an EA (40 CFR § 1506.6(b)(3), 40 CFR § 1501.2(b)(4), 40 CFR § 1501.5(e)).

The commenter cites a prior iteration of the CEQ 40 CFR § 1500 regulations. Updated 40 CFR § 1500 regulations took effect July 1, 2024. Under the updated CEQ regulations, there is no 40 CFR § 1506.6(b)(3). Under 40 CFR § 1501.2(b)(4), an agency is encouraged to consult early in the NEPA process with appropriate State, Tribal, and local governments and with interested persons and organizations when their involvement is reasonably foreseeable. Per the commenter, the SMSC reservation is over 70 miles from the project site. The SMSC does not have legal jurisdiction over the project site. Therefore, pursuant to 40 CFR § 1501.8 and Section 8.2.3 of the BIA NEPA Guidebook, the SMSC was not invited to participate as a cooperating agency or similar for the EA because it does not have jurisdiction by law with respect to the Proposed Action or alternatives. Additionally, 25 CFR § 151.9(d) requires that the BIA notify the State and local governments with regulatory jurisdiction over the land to be acquired of the applicant's request, which was conducted. There is no formal regulation that requires further notification of the Proposed Action to the SMSC outside of the public comment period that was conducted for the EA.

The EA for the PIIC Emergency Gaming Facility and Fee-to-Trust Project was released to the public and agencies for a review and comment period beginning on July 15, 2024 and ending on August 14, 2024. A virtual public hearing to solicit public comments on the EA was held on July 31, 2024. The NOA for the EA was published in the Star Tribune and the Post Bulletin online and in print, and a physical copy was made available at the Van Horn Public Library in Pine Island, Minnesota. Additionally, the NOA was distributed to counties, cities, villages, Tribes, and townships identified within a 25-miles radius of the Project Site consistent with 25 CFR § 292.2 and was made available online at: <http://www.PIICcasinoEA.com>. The BIA received no comment letters during the public comment period for the EA, including from the SMSC.

Under 40 CFR § 1501.5(e), if an agency publishes a draft environmental assessment, the agency shall invite public comment and consider those comments in preparing the final environmental assessment. In accordance with this, the EA was released for a 30-day public comment period beginning on November 9, 2024, and ending on December 9, 2024. The NOA and EA were also posted on the project website at <http://www.PIICcommunityEA.com>. SMSC did submit comments, which have been considered herein.

Response to Comment 17

The commenter provides a closing summary of the topics included within the comment letter and states that the BIA "...must withdraw the two EAs, treat the project as a single project that is not subject to segmentation, and require an EIS."

Refer to Responses to Comments 3, 4, and 7.

Attachment 1
Comment Letters



Shakopee Mdewakanton Sioux Community

2330 SIOUX TRAIL NW • PRIOR LAKE, MINNESOTA 55372
TRIBAL OFFICE: 952.445.8900 • FAX: 952.233.4256

OFFICERS

Cole W. Miller
Chairman

Natasha K. Hacker
Vice-Chairwoman

Ashley J. Cornforth
Secretary/Treasurer

December 9, 2024

Scott Doig, Branch Chief and Regional Environmental Scientist
Bureau of Indian Affairs, Midwest Regional Office
Norman Pointe II Building
5600 W. American Blvd., Suite 500
Bloomington, MN 55437

**Re: Environmental Assessment regarding trust acquisition of 781 acres for the
Prairie Island Indian Community**

Mr. Doig,

On behalf of the Shakopee Mdewakanton Sioux Community, this letter is provided to comment on the October 2024 environmental assessment (“EA”) prepared by Acorn Environmental on behalf of the Bureau of Indian Affairs (“BIA”) with regard to the Prairie Island Indian Community (“PIIC”) “north elk run community development and fee-to-trust project.” To move forward in compliance with the National Environmental Policy Act (“NEPA”) and the regulations promulgated by the Council on Environmental Quality (“CEQ”), the BIA must withdraw its two EAs related to the proposed action. The BIA must first provide an accurate description of PIIC’s proposal because the current proposal is not fully disclosed and is hidden from the public. Additionally, the BIA must perform an environmental impact statement (“EIS”) because it has unlawfully segmented PIIC’s proposal into (at least) two parts, has failed to adequately consider the cumulative and indirect effects of the two proposals, and violated the CEQ regulations by failing to provide notice and consult with the SMSC.

The Proposed Action

The PIIC is proposing a major federal action, 40 C.F.R. § 1508.1(q), of relocating the PIIC and its members to a new Reservation because the PIIC’s “current Reservation

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and facilities are limited and at risk” due to potential flooding and risks associated with being located near “nuclear power plant and storage waste facilities.”¹ The PIIC’s relocation to a new Reservation entails massive development:

- “Proposed residential uses include 154 single-family residences across approximately 154 acres, 70 multi-family residences and a 30-unit (10,000 sf) assisted living facility.”²
- “Community and administrative facilities would include a public safety facility; public works/maintenance facility; administration building; community center/wellness center; health clinic/health care facility; education center/library; ceremonial/cultural uses, and buffalo maintenance facility.”
- “Commercial/industrial uses would include 5,000 sf of convenience, fast food, and drive thru facilities as well as 15,000 sf of grocery store and co-op facilities.”
- “A 6.9-acre cemetery as well as a cultural center/Wacipi and ceremonial house/bark lodge are planned.”
- “Approximately 80.46 acres of the Project Site would be dedicated as buffalo pastureland.”
- Natural Areas, Parks and Recreation, and Agriculture.
- Access Roads and Utilities.
- Water tower and lift station.

This unprecedented development of relocating an entire Reservation involves conversion of existing farmland into entirely new uses. “Alternative A would directly convert 412 acres of farmland and indirectly convert 189 acres of farmland across the 781-acre site into commercial, commercial/industrial, community and administrative uses, cultural facilities, multi-family and single-family residential areas, roads, utilities, and a water tower/lift station.”³

The proposed action described in the November 9, 2024, EA only tells half the story of PIIC’s project to relocate.

¹ § 1.2.1, p. 1-2, Environmental Assessment for the Prairie Island Indian Community, North Elk Run Community Development and Fee-To-Trust Project.

² *Id.* § 2.1.1, p. 2-1.

³ *Id.* § 3.9.3, p. 3-57.

The other half, buried within the document, is “the PIIC Emergency Gaming Facility and Fee-to-Trust Project.” The BIA represents that the PIIC Emergency Gaming Facility consists of an additional “development footprint” that is smaller in size but much more intensive.⁴ The actual proposed action is described in the PIIC’s Unmet Needs Report and Resiliency Plan (the “Resiliency Plan”). But the BIA failed to publish the PIIC’s Resiliency Plan, which ensures that the breadth and scope of the massive relocation effort to a new Reservation is unknown and not subject to scrutiny.

The BIA refers to the more intensive gaming project as a “separate project,” as opposed to being a part of the Resiliency Plan, which is unsupported and contradicted by its environmental assessment:

PIIC Emergency Gaming Facility and Fee-to-Trust Project consists of another element of the Resiliency Plan that is intended to provide a back-up means to address risks to the Tribe’s economy (and related impairment of governmental functions) and potential job losses should a catastrophic event occur that would result in closure of the Tribe’s existing Casino.⁵

“The Tribe owns property directly adjacent to the Project Site and submitted a separate application for the Prairie Island Indian Community Emergency Gaming Facility and Fee-to-Trust Project for the development of an emergency gaming facility.”⁶

PIIC’s relocation effort is so massive that President Grant Johnson recently submitted testimony to the United States House of Representatives, Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies urging appropriations for relocation funding. “We need this new land placed in trust and we need federal financial help to develop infrastructure, housing, and employment opportunities there. Unfortunately, existing federal funding for tribal relocation is woefully inadequate.”⁷ President Johnson’s testimony follows up PIIC’s legislative efforts for

⁴ *Id.* § 3.7.3, p. 3-44.

⁵ *Id.* § 1.2.4, p. 1-4.

⁶ *Id.* § 3.9.2, p. 3-56.

⁷ *See* American Indian/Alaska Native Public Witness Hearings, House Subcomm. On Interior, Environment, and Related Agencies, 118th Cong. (2024), written statement of President Grant Johnson at <https://appropriations.house.gov/schedule/hearings/public-witness-hearing-american-indian-alaska-native-day-1-morning-session>

Congress to acquire the Elk Run properties in trust and be declared a “part of the Tribe’s Reservation.” H.R. 4752, 116th Cong, 1st Session, Oct. 18, 2019.

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cont.

1. The BIA Has Unlawfully Segmented the Proposed Action Into Two Parts To Avoid Environmental Impacts

The true purpose of the proposed action is hidden, ill-defined, and unlawfully segmented. The BIA has failed to provide a detailed statement on the PIIC’s overall plan and proposed action. 40 C.F.R. § 1500.1(a). The BIA has vaguely defined the proposed action and segmented its review of the proposed action into two parts thereby avoiding an assessment of the entire environmental impacts (and the resulting scrutiny), which require an EIS.

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The BIA has coordinated a plan to permit a segregated two-step review of PIIC’s acquisition of 1,178 acres of contiguous land commonly referred to as Elk Run. Part of the BIA’s plan has been to divide the overall acquisition of 1,178.77 acres into two parts: 399.77 acres of land to be used for gaming purposes and 781 acres for residential, commercial, industrial, and community development purposes. The overall purpose of this proposal is solely justified in the PIIC’s “Resiliency Plan”. But the Resiliency Plan – the scope of the proposal -- is never shared with the public.⁸

The purpose of the Resiliency Plan, as far as can be deciphered, is that the PIIC will move to a new Reservation that will meet all of its governmental needs, including a new gaming facility, to avoid a catastrophe. The BIA fails to explain why it segmented the single plan of PIIC moving to a new Reservation into two parts. Still, if you read the documents closely, the draft EA admits that the two parts are a part of a single proposal and need for the proposed action:

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Additionally, the Tribe owns parcels adjacent to the Project Site within the boundaries of both the City of Pine Island and Olmsted County and has submitted a separate fee-to-trust application for this land. *This separate project, referred to as the PIIC Emergency Gaming Facility and Fee-To-Trust Project, consists of another element of the Resiliency Plan that is intended to provide a back-up means to address to the Tribe’s economy*

⁸ *Id.* § 1.2.4, p. 1-4.

(and related impairment of governmental functions) and potential job losses should a catastrophic event occur that would result in closure of the Tribe's existing Casino."⁹

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The failure to treat this singular project as a single proposed action is a federal agency responsibility and precludes meaningful environmental review and public scrutiny.

Just a month ago, the BIA's EA for the emergency gaming facility confirmed that the Resiliency Plan involves relocating the PIIC to a new Reservation to serve all of its needs – gaming and non-gaming:

The Tribe has prepared an Unmet Needs Report and Resiliency Plan (Resiliency Plan) to address the potential health and safety risks to the Reservation and tribal businesses posed by the flooding, adjacent Prairie Island Nuclear Generating Plant and associated on-site waste storage facilities, and the land access issues posed by a busy railway. The Resiliency Plan outlines the steps the Tribe intends to take to establish tribal community resources, including housing, and back-up means to compensate for economic and job losses within the Tribe's ancestral lands in an area outside the 10-mile EPZ of the Prairie Island Nuclear Generating Plant. The Proposed Project is one aspect of this Resiliency Plan and is intended to provide a back-up means to address risks to the Tribe's economy (and related impairment of governmental functions) and potential job losses.

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In this closely related EA, the BIA represented that the North Elk Run project "is in the planning phases and consists of another element of the Resiliency Plan."¹⁰ Elsewhere, the BIA represented that the North Elk Run project is in the "planning stages."¹¹

"The rule against segmentation was developed to ensure that interrelated projects the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions." *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987). The BIA "cannot evade responsibilities under [NEPA] by artificially

⁹ *Id.* at § 1.2, p. 1-6.

¹⁰ *Id.* § 1.2, p. 1-8.

¹¹ *Id.* § 3.14.1, p. 3-75.

dividing a major federal action into smaller components.” *Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs.*, 87 F.3d 1242, 1247 (11th Cir. 1996). Segmentation is readily apparent because the BIA “would necessarily have to know about the entire proposal on the front end.” *Lowman v. Federal Aviation Admin.*, 83 F.4th 1345, 1359 (11th Cir. 2023). Here, the BIA was in possession of the Resiliency Plan from the outset and the two environmental assessments demonstrate that the BIA also clearly understood PIIC’s plan to relocate to address the potential emergencies that they could encounter at their existing reservation.

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To be sure, the Resiliency Plan, which describes the PIIC’s proposal and goals, includes both the gaming parcel and the parcel to be used for residential, commercial, industrial, and community development purposes. The proposed action cannot be sufficiently understood when it is not available to the public and does not form the basis of the BIA’s environmental review under NEPA. The PIIC’s Resiliency Plan is not a part of the record, which precludes meaningful environmental review, including:

- The BIA has failed to “study, develop, and describe appropriate alternatives to recommended course of action in any proposal.” 40 C.F.R. § 1501.2(b)(3).
- The BIA has failed to “determine the scope of issues” that begins “as soon as practicable after the proposal for action is sufficiently developed for agency consideration.” 40 C.F.R. § 1501.9(a).
- The BIA has violated NEPA because it requires an agency to “evaluate in a single environmental impact statement proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action.” 40 C.F.R. § 1502.4(a).
- Thus, the proposal is “of unusual scope or complexity” that demands an EIS. 40 C.F.R. § 1502.7.

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The BIA must withdraw both EAs because it cannot unlawfully segment the proposed action.

2. The BIA Has Misrepresented the Scope Of The Proposed Action

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The BIA’s efforts are deceptive and appear deliberate. The BIA issued a finding of no significant impact with regard to the emergency gaming facility on November 8,

2024,¹² representing that the present project is still “in the planning phases.” Yet, a day later, on November 9, 2024, the BIA issued notice of availability of an environmental assessment for North Elk Run Community Development and Fee-To-Trust Project to be used for residential, commercial, industrial, and community development purposes.¹³ Within 24 hours, the project went from being in the planning phases to being fully developed.

The BIA has violated NEPA and the CEQ regulations by misrepresenting the scope and status of these projects, which constitutes agency misconduct.

By all appearances, the BIA is making this misrepresentation because it is hurrying its approval of PIIC’s off reservation gaming. On November 8, 2024, the BIA also issued a favorable two-part determination that the PIIC’s off reservation gaming would benefit the PIIC and would not be detrimental to the surrounding community. And on the same date, the BIA provided the two-part determination to the Governor requesting concurrence.¹⁴

3. The BIA Has Failed To Adequately Consider The Cumulative Effects

Under NEPA and its implementing regulations, 40 C.F.R. Parts 1500-1508, agencies are required to take a hard look at the environmental impacts of proposed

¹² <https://www.piiccasinoea.com/> November 8, 2024, Bureau of Indian Affairs, Mitigated Finding of No Significant Impact for the Prairie Island Indian Community Emergency Gaming Facility and Fee-To-Trust Project.

¹³ <https://piiccommunityea.com/> November 9, 2024, Bureau of Indian Affairs, Notice of Availability Environmental Assessment for the Prairie Island Indian Community, North Elk Run Community Development and Fee-To-Trust Project.

¹⁴ PIIC appears to both oppose and support the expansion of gaming. On its website, the PIIC represents that “[t]he Prairie Island Indian Community is opposed to any expansion of non-tribal gambling in Minnesota. Minnesota already has a mature market with numerous gambling options across the state and a proven infrastructure to safely and securely regulate existing gambling. There’s room to offer new opportunities, such as sports betting, within that existing infrastructure. Expanding non-tribal gaming will take away resources that allow tribal governments to provide employment, vital programs, and support to rural communities. Tribal communities have worked hard to establish and grow gaming operations that benefit tribal members, surrounding communities, and the state. Any expansion of non-tribal gaming would harm rural economies and damage existing businesses.” <https://prairieisland.org/our-government/priorities>

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actions, including the cumulative impacts associated with a proposed action. Cumulative effects are defined as:

Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.1(g)(3). “[T]he purpose of the cumulative impact requirement is to prevent agencies from dividing one project into multiple individual actions each of which has an insignificant environmental impact, but which collectively have a substantial impact.” *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 514 (D.C. Cir. 2010) *see Tinian Women Assoc. v. U.S. Dept. of the Navy*, 976 F.3d 832, 838 (9th Cir. 2020) (“The rationale for evaluating cumulative impacts together is to prevent an agency from dividing a project into multiple actions to avoid a more thorough consideration of the impacts of the entire project.”).

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The potential cumulative impacts for the BIA’s two environmental assessments – one finalized on November 8, 2024, and the other published for comment on November 9, 2024 – will significantly affect the quality of the human environment. The BIA mentions the gaming project but only in conclusory terms and fails to present the entire picture when analyzing the cumulative effects. In particular, there still is no cumulative analysis for fresh water, nor wastewater, and the cumulative effects were not properly analyzed.

All 781 acres are presently farmland and over 600 acres would be converted “into commercial, commercial/industrial, community and administrative uses, cultural facilities, multi-family and single-family residential areas, roads, utilities, and a water tower/lift station.”¹⁵ The BIA fails to properly analyze the addition of converting 419 acres of farmland into a large scale gaming operation at the same site under the same proposed action. “Overall, there is nothing in the EA that could constitute quantified or

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¹⁵ *Id.* § 3.9.3, p. 3-57.

detailed information about the cumulative effects of the Project.” *Bark v. United States Forest Service*, 958 F.3d 865, 873 (9th Cir. 2020).

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The BIA has violated NEPA by breaking down larger actions and related actions into smaller pieces, which resulted in minimizing the cumulative impacts of the proposed action, constraining the consideration of alternatives, and skewing agency decision-making in favor of the two proposed actions.

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4. The BIA Has Failed to Adequately Consider The Indirect Effects

The EA fails to take into account the indirect effects of the proposed action. NEPA regulations require the BIA to consider indirect effects in determining whether an EIS is required. Indirect effects are defined as:

Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.1(g)(2). The BIA, however, has not yet taken into account the indirect impacts of the PIIC’s past, present and reasonably foreseeable future actions with regard to this single project.

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For example, had the BIA treated the relocation as one project, as the Resiliency Plan provides, the BIA would have properly considered the indirect effects pertaining to PIIC’s commitment to conduct gaming on the parcel although PIIC is refusing to commit to constructing a specific gaming facility. The BIA notes that the PIIC might need the current barn structure for an emergency gaming facility, might need the barn structure for a second gaming operation, or the PIIC may build an entirely new gaming facility on the land. The BIA understands this intentional lack of commitment by PIIC to construct a specific gaming facility because the BIA is the same agency that issued the two-part determination, which purported to authorize not only a replacement gaming facility (should an emergency occur), but a second gaming facility that PIIC may choose to construct after 6 years.

Had the BIA properly considered the indirect effects, it would have reasonably determined that an EIS is required.

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5. The BIA Unlawfully Failed to Notify or Consult The SMSC

Because of a stated likelihood of an emergency – whether it would derive from flooding or a nuclear disaster – the PIIC proposes to establish an entirely new Reservation, which would be located 50 miles from its current Reservation and gaming operation and 70 miles away from the SMSC’s Reservation and gaming operation. The BIA has violated the SMSC’s procedural right to notice, 40 C.F.R. § 1506.6(b)(3), consultation, 40 C.F.R. § 1501.2(b)(4), and involvement in preparing an environmental assessment, 40 C.F.R. § 1501.5(e).

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Conclusion

The BIA must withdraw the two EAs, treat the project as a single project that is not subject to segmentation, and require an EIS. An environmental assessment is used “to determine whether an action significantly affects the environment.”¹⁶ An EIS is required from “all federal agencies . . . for all ‘major Federal actions significantly affecting the quality of the human environment.’”¹⁷ For all of the reasons provided above, the BIA must conduct an EIS for this major federal action of relocating the PIIC to a new Reservation.

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Sincerely,



Cole W. Miller
Chairman



Natasha K. Hacker
Vice-Chairwoman



Ashley J. Conforth
Secretary/Treasurer

¹⁶ *Newton Cty. Wildlife Assoc. v. Rogers*, 141 F.3d 803, 809 (8th Cir. 1998).

¹⁷ *Rogers*, 141 F.3d at 809, quoting, 42 U.S.C. § 4332(2)(C).