

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

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

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

## **BACKGROUND**

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

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

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

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

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

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

## **PURPOSE AND NEED FOR THE PROPOSED ACTION**

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

## **DESCRIPTION OF THE PROPOSED ACTION**

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

## **ALTERNATIVES CONSIDERED**

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

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

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

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

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

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

## ALTERNATIVES ELIMINATED FROM FURTHER ANALYSIS:

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

## ENVIRONMENTAL IMPACTS

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

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

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

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

## **BEST MANAGEMENT PRACTICES AND MITIGATION MEASURES**

### ***Best Management Practices***

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

### **Land Resources**

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

### **Water Resources**

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

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

### **Biological Resources**

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

### **Air Quality**

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

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

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

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

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

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

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

### **Public Services and Utilities**

BMPs to be implemented during construction:

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



fuel.

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

BMPs to be implemented during operation:

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

## **Hazardous Materials**

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

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

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

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

### **Transportation and Circulation**

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

### **Noise**

BMPs to be implemented during construction:

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

BMPs to be implemented during operation:

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

### **Visual Resources**

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

## MITIGATION MEASURES

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

### *Biological Resources*

#### **Federally Listed Roosting Bats:**

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

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

OR

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

OR

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

## **Nesting Migratory Birds/Raptors:**

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

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

## ***Cultural Resources***

### **Inadvertent Discoveries of Cultural Resources:**

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

### **Inadvertent Discoveries of Human Remains:**

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

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

### ***Public Services and Utilities***

#### **Service Agreement:**

The following measure is recommended for Alternatives A and B:

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

### **PUBLIC AVAILABILITY AND RESPONSE TO EA COMMENTS**

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

### **DETERMINATION**

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

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



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Bryan Newland  
Assistant Secretary – Indian Affairs

NOV 08 2024

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Date

**Attachments:**

Attachment 1: Mitigation Monitoring and Compliance Plan

# Attachment 1

## Prairie Island Indian Community Emergency Gaming Facility and 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) Emergency Gaming Facility and Fee-To-Trust Project (Project). The mitigation measures listed in **Table 1** were identified within the Environmental Assessment (EA) dated June 2024 and Mitigated Finding of No Significant Impact (FONSI). This MMCP has been prepared consistent with the requirements of 40 CFR § 1501.6(d) and 1505.3 (c) 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, and public services. 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
<b>Biological Resources</b>			
<b>Federally Listed Roosting Bats</b>			
<ul style="list-style-type: none"> <li>▪ Timing of impacts to the barn structure shall occur outside the active season of roosting bats (April 1 through October 31) as possible.</li> </ul>	Tribe	Planning Phase	<p><b>Compliance Standards:</b> Federal Endangered Species Act</p> <p><b>Enforcement Entity:</b> USFWS/Tribe</p>
<p>OR</p> <ul style="list-style-type: none"> <li>▪ If impacts to the barn may commence within the active season, bats shall be excluded from the barn structure during the winter hibernation season. Exclusion shall be completed within the winter hibernation season to ensure that there are no active-season roosting bats within the structure during exclusion activities.</li> </ul>	Tribe	Pre-Construction Phase	<p><b>Compliance Standards:</b> Federal Endangered Species Act</p> <p><b>Enforcement Entity:</b> USFWS/Tribe</p>
<p>OR</p> <ul style="list-style-type: none"> <li>▪ Should commencement of impacts to a barn structure occur during the active season and prior to bat exclusion of the structure, emergence surveys of the impacted barn structure shall be conducted by a qualified biologist consistent with Appendix E: Phase 4 Emergence Surveys of the USFWS Range-Wide Indiana Bat and Northern Long-Eared Bat Survey Guidelines.</li> <li>▪ As tricolored bat can be difficult to detect in emergence surveys, USFWS shall be consulted prior to emergence surveys to approve the surveying biologist as well as the survey methodology and timing. If no bats are observed, data sheets shall be submitted to the USFWS and no further action is necessary.</li> <li>▪ If one or more bats are observed emerging from the barn, it shall be assumed that the bat is a listed bat. In which case, an avoidance and exclusion plan shall be developed with USFWS that identifies passive exclusion methods such as one-way doors or timing of disturbance with periods of bat activity to confirm bats are absent from the structure(s) prior to impacts.</li> </ul>	Tribe  USFWS as needed	Pre-Construction Phase	<p><b>Compliance Standards:</b> Appendix E: Phase 4 Emergence Surveys of the USFWS Range-Wide Indiana Bat and Northern Long-Eared Bat Survey Guidelines</p> <p><b>Enforcement Entity:</b> USFWS/Tribe</p>
<b>Nesting Migratory Birds</b>			
<ul style="list-style-type: none"> <li>▪ If construction activities (either site preparation or barn conversion) commence during the general nesting season (February 15 to September 1), a preconstruction nest survey shall be conducted by a qualified biologist on and within 100 feet of proposed construction within 7 days of initiating ground disturbance.</li> </ul>	Tribe	Pre-Construction Phase and Construction Phase	<p><b>Compliance Standards:</b> Migratory Bird Treaty Act</p> <p><b>Enforcement Entity:</b> 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"> <li>▪ If active nests are identified, the qualified biologist shall determine a suitable avoidance buffer based on the needs of the species observed.</li> <li>▪ 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.</li> <li>▪ 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.</li> </ul>			
<b>Cultural and Paleontological Resources</b>			
<b>Inadvertent Discoveries of Cultural Resources</b>			
<ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ 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.</li> </ul>	Tribe BIA as needed	Construction Phase	<b>Compliance Standards:</b> Section 106 of the National Historic Preservation Act  <b>Enforcement Entity:</b> BIA/Tribal Historic Preservation Office (THPO)
<b>Inadvertent Discoveries of Human Remains</b>			
<ul style="list-style-type: none"> <li>▪ 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)).</li> <li>▪ 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).</li> <li>▪ 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).</li> </ul>	Tribe BIA as needed	Construction Phase	<b>Compliance Standards:</b> 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  <b>Enforcement Entity:</b> BIA/THPO

Mitigation Measure	Party Responsible for Monitoring and/or Implementation	Timing of Implementation	Compliance Standards and Enforcement
<ul style="list-style-type: none"> <li>▪ A written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR § 10.5(b)).</li> <li>▪ 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.</li> </ul>			
<b>Public Services and Utilities</b>			
<ul style="list-style-type: none"> <li>▪ 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.</li> </ul>	Tribe	Planning Phase / Prior to Operation	<p><b>Compliance Standards:</b> Intergovernmental Agreement Between PIIC and the City of Pine Island</p> <p><b>Enforcement Entity:</b> City of Pine Island/Tribe</p>