



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

APR 162020

The Honorable Tony Evers  
Governor of Wisconsin  
Madison, Wisconsin 53702

Dear Governor Evers:

On March 29, 2012, the Ho-Chunk Nation of Wisconsin (Nation) submitted an application to the Bureau of Indian Affairs requesting that the Department of the Interior (Department) transfer into trust approximately 32 acres in the City of Beloit, Rock County, Wisconsin, (Beloit Site) for gaming and other purposes. The Nation also requested that the Secretary of the Interior (Secretary) determine whether the Beloit Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act (IGRA).

Section 20 of IGRA generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions. One exception, known as the "Secretarial Determination" or "two-part determination" permits a Tribe to conduct gaming on lands acquired after October 17, 1988 where the Secretary of the Interior (Secretary), after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian Tribes, determines that:

1. A gaming establishment on the trust lands would be in the best interest of the Tribe and its members; and
2. Gaming on the trust lands would not be detrimental to the surrounding community.

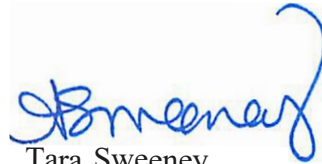
The Governor of the State in which gaming would be conducted must concur in the Secretary's determination in order for the applicant Tribe to conduct gaming on the proposed site.

I have completed my review of the Nation's application and have reviewed submissions by State and local officials, officials of nearby Indian Tribes, and all applicable documents in the record. I have determined that gaming on the proposed site in the Beloit, Wisconsin, would be in the best interest of the Nation and its members and would not be detrimental to the surrounding community. I have set forth the bases for my decision below and request your concurrence in this Determination pursuant to 25 U.S.C. § 2719(b)(1)(A). A final determination on the Tribe's request to acquire the Beloit Site in trust will be made by me following final action by you on the Secretarial Determination.

Much of the information relied on in the Secretarial Determination contains the Tribe's commercial and/or financial information, which is customarily and actually treated as private by the Tribe, and was submitted to the Department under an assurance of privacy. The Department will withhold this information in its entirety from the public because it is confidential within the meaning of Exemption 4 of the Freedom of Information Act (FOIA) 43 C.F.R. §§ 2.23 and 2.24. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356(2019). I request that this information be similarly withheld by the State.

I request your concurrence in this Secretarial Determination within one year of the date of this letter, pursuant to 25 U.S.C. § 2719(b)(1)(A). After one year, this Secretarial Determination will no longer be valid in accordance with the Department's regulations at 25 C.F.R. § 292.23(c). If you need additional time or at the request of the Nation, the Department's regulations at 25 C.F.R. § 292.23 permit me to grant an extension of 180 days. I look forward to your response and thank you for your time and attention to this matter.

Sincerely,



Tara Sweeney

Assistant Secretary - Indian Affairs

## Secretarial Determination for the Ho-Chunk Nation of Wisconsin Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2719 (b)(1)(A)<sup>1</sup>

### DECISION

In 2012, the Ho-Chunk Nation of Wisconsin (Nation)<sup>2</sup> submitted an application to the Bureau of Indian Affairs (BIA) requesting that the Department of the Interior (Department) transfer into trust approximately 32 acres in the City of Beloit, Rock County, Wisconsin (Beloit Site) for gaming and other purposes.<sup>3</sup> The Nation also requested that the Secretary of the Interior (Secretary) determine whether the Beloit Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act (IGRA).

The Nation proposes to develop a casino-resort on the Beloit Site that would include a casino, hotel, restaurants, convention center, and a waterpark. In addition, the Nation would develop retail outlets and parking on the adjacent 40-acre fee parcel.

Section 2719 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States for the benefit of an Indian tribe after October 17, 1988, subject to several exceptions. One exception, known as the "Secretarial Determination" or "Two-Part Determination" permits a tribe to conduct gaming on lands acquired in trust after October 17, 1988 where the Secretary, after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that:

1. A gaming establishment on the trust lands would be in the best interest of the tribe and its members; and
2. Gaming on the trust lands would not be detrimental to the surrounding community.

The governor of the state in which the gaming activity is to be conducted must concur with the Secretary's Determination before the tribe may conduct gaming activities on the site.<sup>4</sup>

We have completed our review of the Nation's application, and determined that the proposed gaming establishment at the Beloit Site would be in the best interest of the Nation and its members, and would not be detrimental to the surrounding community.

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<sup>1</sup> See Table of Contents in Attachment I.

<sup>2</sup> In 1993, the Wisconsin Winnebago Nation formally changed its name to the Ho-Chunk Nation of Wisconsin. See 85 Fed. Reg. 5463 (Jan. 30, 2020).

<sup>3</sup> See Letter to Diane Rosen, Midwest Regional Director, from Greg Blackdeer, Vice President, Ho-Chunk Nation (March 29, 2012) [hereinafter Nation's Application]. On February 19, 2019, the Ho-Chunk Nation Legislature approved Resolution No. 02-19-19F to adopt a corrected deed description, which reduced the overall acreage of the Nation's application request from 32.7 acres to 31.87 acres.

<sup>4</sup> 25 U.S.C. § 2719(b)(1)(A). The Department's regulations allow a governor one year from the date of the Secretary's request in which to concur. The Secretary may grant an extension of up to 180 days upon request of the applicant tribe or the governor. See 25 C.F.R. § 292.23. If the governor does not affirmatively concur within that time period, or if the governor provides a written non-concurrence, the Secretarial Determination is no longer valid, and the land may not be acquired in trust for gaming purposes. *Id.*

## BACKGROUND

### The Proposed Project

The Nation proposes to develop a casino-resort on the Beloit Site (Proposed Project). The casino would feature 2,200 class III gaming machines and 50 table games on an approximately 139,700-square foot (st) gaming floor. The casino-resort would also feature food and beverage space of approximately 45,580 sf. The hotel would consist of 300 rooms and include a convention center with approximately 45,190 sf for meetings and entertainment. The casino-resort would also feature an indoor waterpark of approximately 40,000 sf, and parking for 5,000 vehicles. In addition, the Nation would develop retail outlet space of approximately 175,000 sf, and parking on the adjacent 40-acre fee parcel.

### The Ho-Chunk Nation

#### *History*

The Winnebago Tribe<sup>5</sup> once held title to at least 7.8 million acres of land in southern Wisconsin and northern Illinois.<sup>6</sup> The identity of the Winnebago as a tribe can be traced back to 1634 when a Frenchman recorded his contact with the Tribe.<sup>7</sup> At that time, the Tribe was living around the Green Bay area in Wisconsin. Due to intertribal warfare, the Tribe split around 1730. One group remained in Green Bay while the other eventually moved south to the Rock River area. Spanish reports from 1777 confirmed the presence of members of the Winnebago Tribe near the Rock River in Wisconsin.<sup>8</sup> See Attachment II for map showing the location of the Rock River in Beloit.

In 1816, the Winnebago Tribe entered into a treaty of peace and friendship with the United States.<sup>9</sup> Between 1825 and 1858, the Tribe entered into numerous treaties with the United States in which the Winnebago Tribe ceded all of its lands east of the Mississippi River.<sup>10</sup> After these cessions, the United States removed the Tribe to a reservation set aside for them in Nebraska. While many Winnebago people relocated to Nebraska, others refused to leave their ancestral homelands in Wisconsin. After a final unsuccessful removal attempt in 1873, the United States made no further attempts to relocate the Wisconsin Winnebago people. Because of the United States' pattern of unsuccessful and uneven removal and relocation attempts, and because there was no reservation established in Wisconsin, the Winnebago people resettled on lands scattered throughout Wisconsin and neighboring states. See Attachment II.

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<sup>5</sup> In 1993, the Wisconsin Winnebago Nation formally changed its name to the Ho-Chunk Nation of Wisconsin. See 85 Fed. Reg. 5463 (Jan. 30, 2020).

<sup>6</sup> *Winnebago Tribe et al. v. United States*, 16 Ind. Cl. Com. 81 (1965); *Winnebago Tribe, et al. v. United States*, 8 Ind. Cl. Com. 78, 81-82 (1959).

<sup>7</sup> *Winnebago Tribe*, 8 Ind. Cl. Com. at 80.

<sup>8</sup> *Id.*

<sup>9</sup> Treaty with the Winnebago, 7 Stat. 144 (1816).

<sup>10</sup> *Winnebago Tribe*, 8 Ind. Cl. Com. at 81-82 (1959) (list of treaties).

### *Scattered Landholdings*

The Nation reports that one of its greatest governmental challenges is its scattered land base.<sup>11</sup> The Nation's trust lands total 6,633 acres located in 12 different counties in Wisconsin.<sup>12</sup> The Nation owns 2,520 acres of fractionated lands in Wisconsin, and 4,693 acres of fee lands in Wisconsin.<sup>13</sup> As a result, the Nation's members are also scattered between small tribal communities separated by hundreds of miles. The Nation's members live in 22 counties in Wisconsin, two counties in Minnesota, and 2 counties in Illinois. Individual tribal members own individual trust lands totaling 3,327 acres in Wisconsin and 302 acres in Minnesota.

The Nation's scattered land base creates difficulties that the Nation cannot address through a conventional tribal government structure.<sup>14</sup> For example, the Nation organizes its government and the administration of its programs and services by creating five legislative districts, four of which are located in Wisconsin. The fifth legislative district represent members living outside of Wisconsin. The four legislative districts in Wisconsin encompass 63,910 square miles. Each district delivers programs and services to the Nation's members through branch offices. The Nation reports that maintaining five separate districts results in increased costs.<sup>15</sup> The Nation reports that it is often difficult to even provide services to members in a single legislative district. For example, in District 1, members have to travel up to 155 miles to reach the closest Nation government office and health facility.

### *Employment*

The Nation is experiencing an unemployment crisis.<sup>16</sup> The Nation reports that its unemployment rate is 32 percent, while the states of Wisconsin, Minnesota, and Illinois, have unemployment rates between 4.0 percent, and 5.5 percent. According to the 2010 Census, nearly 25 percent of families on the Ho-Chunk Reservation were living in poverty in 2010, compared to 10.1 percent in Rock County and 9.1 percent in the state of Wisconsin.<sup>17</sup>

The Nation established Departments of Education, Labor, and Personnel to assist its members in attaining higher education and employment through job skills training, but these departments lack sufficient funding to provide adequate services. In addition, many members cannot afford childcare, which further limits their employment options.

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<sup>11</sup> See Ho-Chunk Nation of Wisconsin, *The Unmet Needs of the Ho-Chunk Nation: The Extensive Challenges of Scattered lands* (Aug. 7, 2018) [hereinafter *Needs Report*] at 5.

<sup>12</sup> Memorandum to Director, Office of Indian Gaming, from Acting Regional Director, Midwest Region (Dec. 23, 2019) [hereinafter *Acting Regional Director's Findings of Fact*] at 7.

<sup>13</sup> Ho-Chunk Nation, *Ho-Chunk Nation at a Glance* (April 1, 2019).

<sup>14</sup> *Needs Report* at 9.

<sup>15</sup> *Id.* at 9 -10.

<sup>16</sup> *Id.* at 39 - 41.

<sup>17</sup> Final Environmental Impact Statement, *Beloit Fee-to-Trust and Casino Project* (May 2019) [hereinafter *FEIS*], § 3.7.2, available at <https://www.ho-chunkbeloiteis.com/>.

## *Education*

The Nation has significant educational needs.<sup>18</sup> Currently, only 6.8 percent of the Nation's members have college degrees, compared to 17.4 percent statewide.<sup>19</sup> The Nation provides access to educational programs and services regardless of where members live, but reports that it struggles to provide opportunities to all of its members.

Approximately 39.7 percent of the Nation's members are enrolled in either the Head Start Program, Hoocak Ee Cooni Early Learning Center, or PreK-12 Grant Program.<sup>20</sup> The Grant Program provides grants to meet children's basic educational needs and to ensure that students can participate in educational opportunities. Approximately 40 percent of families apply for grants each year. Despite the Nation's strict grant guidelines, there is a waiting list for grants. Similarly, the Nation's Higher Education Scholarship Program provides scholarships, but the Program's funds are depleted before meeting existing demand.

The Nation lacks funding to provide culturally specific educational opportunities such as revitalizing the Ho-Chunk aboriginal language, the Hoocak language.<sup>21</sup> With additional funding, the Nation would establish a tribal school, a Hoocak language learning center, and certify Ho-Chunk teachers. The Nation needs funds to certify its programs in the Hoocak language, renovate buildings, develop curriculum, and ensure compliance with state educational laws.

## *Health Care*

The Nation has poor health outcomes compared to the Wisconsin's general population.<sup>22</sup> The Nation experiences health concerns that are generally found in under-served and economically depressed communities, including high obesity rates, alcoholism, drug addiction, diabetes, depression, and hypertension. For example, within the Nation's communities of Wittenberg, Nekoosa, Tomah, La Crosse, Wisconsin Dells, and Black River Falls, 312 members tested positive for heroin/opiates, methamphetamine, and other drugs within a 12-month period.

The Nation's caseload for child protection cases, domestic abuse cases, elder neglect and abuse cases, and family displacement continue to rise.<sup>23</sup> In 2014, 417 Ho-Chunk members were diagnosed with alcoholism, 198 members were diagnosed with drug addiction, and six newborns tested positive for alcohol, marijuana, and opiates. In 2014, the Nation reported that there were 346 requests for emergency health care assistance averaging \$600 per case for a total of \$207,600 in costs for that year. The Tribal Child and Family Services (CFS) Placement Assistance Program lacks adequate funding.<sup>24</sup> This is due in great part to the increasing drug use

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<sup>18</sup> Needs Report at 26.

<sup>19</sup> FEIS § 3.7.1.

<sup>20</sup> Needs Report at 26.

<sup>21</sup> *Id.* at 27.

<sup>22</sup> *Id.* at 30-32.

<sup>23</sup> *Id.* at 32.

<sup>24</sup> *Id.* at 39.

epidemic, and children born with neonatal abstinence syndrome. Consequently, the CFS Placement Assistance Program lacks critical funding to address these issues.

Wisconsin's health for Native Americans rank among the worst in the United States. In 2013, the University of Wisconsin graded Wisconsin Native American child and young adult death rates from ages 1-24 with an F on a grading scale from A-F, with A being the best possible grade and F being the worst possible grade.<sup>25</sup> The report found that Wisconsin is failing in its efforts to promote health for Native American children and young adults. Wisconsin barely received a passing grade of D for its efforts to promote the health of Native American infants and infants whose mothers have no education beyond high school. Wisconsin also received a grade of F in its efforts to improve the health of Native Americans ages 25-64.

A lack of funding and the dispersed nature of the Nation's lands contribute to a lack of access to quality health care, an insufficient number of clinics, and difficulty accessing existing health care facilities.<sup>26</sup> To reach its members, the Nation built multiple offices and facilities in centralized areas near tribal communities. The Nation has two health care facilities located in its most populated areas. The Black River Falls facility is funded through a combination of Indian Health Service funds, grants, and net gaming revenue. The second medical facility is located 75 miles south of Black River Falls, near Wisconsin Dells, and is completely funded by the Nation from net gaming revenue. The Nation's Health Department also operates four satellite offices, but the services at each are limited to community health and behavioral health services. The Nation provides health-related transportation over long distances to these health facilities.

In addition to the lack of accessible health care services, the Nation reports that it experiences medical staff shortages and difficulty in recruiting and retaining physicians, dentists, optometrists, nurses, and other health care professionals because of the lack of funding and the inability to provide sufficient salaries.<sup>27</sup> The Nation compensates doctors and other medical professions at below the state annual average. The Nation's annual compensation to dentists is \$47,012.43 below the state average. Salaries for clinical nurses are \$16,455.20 below the state annual average. In total, the Nation anticipates a cost of \$12.1 million to address the health related concerns of its members.

### *Housing*

The Nation has a severe housing shortage.<sup>28</sup> The Nation owns 194 tribal rental units, but reports that 1478 members, or 19 percent of tribal members, were on the rental housing waiting list in 2018. The Nation's Department of Housing (DOH) receives an average of 94 requests per month from members requesting emergency housing. The DOH also has a backlog of requests for assistance from members whose homes are dilapidated or undersized.

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<sup>25</sup> *Health of Wisconsin Report Card, 20/3*, at 7. Available at <https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2018/01/Report-Card-2013.pdf>.

<sup>26</sup> *Needs Report* at 30-35.

<sup>27</sup> *Id.* at 34.

<sup>28</sup> *Id.* at 24-25.

Currently, the DOH provides limited assistance and services to the Nation's members through the following programs: Down Payment Assistance Grants, Mortgage Assistance Grants, Home Ownership Programs, Home Repair Loans, and Roof Repair Grants for elders. The Nation reports, however, that due to insufficient funds, some members are homeless, live in severely over-crowded homes, or are awaiting permanent housing options.<sup>29</sup>

The Nation estimates that it would need approximately \$3 million to build 20 homes per year through its Home Ownership Programs to address the housing shortage.<sup>30</sup> The Nation has, however, only built an average of five elder and five non-elder homes per year due to the lack of adequate funding. The funding available within the Home Ownership Program is not adequate and forces some tribal families to continue to live in poor conditions. For example, many of the members' homes need mold removal; however, the Nation has no funding to allocate for mold removal.<sup>31</sup>

In 2013, the Nation's Department of Environmental Health sampled 332 homes with household wells to identify water quality issues.<sup>32</sup> Of those, 22 homes had critical water quality needs. Another 184 homes had secondary water quality issues that result in damage to plumbing, clothing, and appliances. Of these, 28 had existing water treatment equipment that is either non-functional, needs maintenance, or needs replacement. The total estimated cost for the Nation to address these issues is \$221,000.

### ***Conclusion***

The Nation lacks funding to meet the critical needs of its members. The scattered locations of tribal communities exacerbates the need for multiple, duplicate facilities and resources. As a result, members suffer severe consequences.

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<sup>29</sup> Needs Report at 25.

***Id.***

<sup>31</sup> *Id.* at 33.

<sup>32</sup> *Id.* at 37



## **REVIEW OF THE NATION'S APPLICATION PURSUANT TO IGRA AND PART 292, SUBPART C**

The Department's regulations at 25 C.F.R. Part 292 set forth the procedures for implementing Section 2719 of IGRA. Subpart C of Part 292 governs Secretarial Determinations.

- Sections 292.16 through 292.18 identify information that must be included in a tribe's request for a Secretarial Determination.
- Section 292.17 pertains to an evaluation of whether the gaming establishment would be in the best interest of the tribe and its members.
- Section 292.18 pertains to an evaluation of whether there is detriment to the surrounding community.

**Section 292.16 provides that a tribe's application requesting a Secretarial Determination under section 292.13 must include the following information:**

***(a) The full name, address, and telephone number of the tribe submitting the application.***

Ho-Chunk Nation of Wisconsin  
W0814 Airport Road, Black River Falls, Wisconsin, 54615  
Post Office Box 667, Black River Falls, Wisconsin, 54615  
(715) 284-9343

***(b) A description of the location of the land, including a legal description supported by a survey or other document.***

The Beloit Site consists of approximately 32 acres of land. The legal description is included as Attachment III.

***(c) Proof of identity of present ownership and title status of the land***

The Nation purchased the Beloit Site in fee simple in 2009 as shown by the Warranty Deed of Conveyance between Beloit Properties, LLC, and the Ho-Chunk Nation.<sup>33</sup>

***(d) Distance of the land from the Tribe's reservation or trust lands, if any, and tribal government headquarters.***

The Beloit Site is located approximately 175 miles from the Nation's headquarters in Black River Falls, and approximately 40 miles from the nearest Ho-Chunk trust land in Madison, Wisconsin.<sup>34</sup>

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<sup>33</sup> See Nation's Application, Tab 4.

<sup>34</sup> Acting Regional Director's Findings of Fact at 14.

- (e) ***Information required by section 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members.***

As discussed more fully below under Section 292.17, the Nation submitted the required information.

- (f) ***Information required by section 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community.***

As discussed more fully below under Section 292.18, the Nation submitted the required information.

- (g) ***The authorizing resolution from the tribe submitting the application.***

On March 20, 2012, the Ho-Chunk Nation Legislature approved Resolution No. 03-20-12F, ***Authorization and Request to Place Property into Trust for the Ho-Chunk Nation.*** On February 19, 2019, the Ho-Chunk Nation Legislature approved Resolution No. 02-19-19F, ***Rescission and Restatement of Resolution 03-20-12F,*** which reduced the overall acreage of the Nation's application request from 32.7 acres to 31.87 acres.<sup>35</sup>

- (h) ***The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C § 2710, if any.***

On February 7, 2008, the National Indian Gaming Commission approved the most recent amendment to the Nation's existing Gaming Ordinance.<sup>36</sup>

- (i) ***The tribe's organic documents, if any.***

On September 17, 1994, the Nation adopted its Constitution pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. § 5123. The Assistant Secretary - Indian Affairs approved the Nation's Constitution on November 1, 1994.<sup>37</sup>

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<sup>35</sup> Acting Regional Director's Findings of Fact at 15.

<sup>36</sup> See Letter to Daniel Brown, Vice President, Scott Sussman, Legislative Council, Ho-Chunk Nation, from Philip N. Hogen, Chairman, National Indian Gaming Commission (Feb. 7, 2008), in Nation's Application, Tab 11; <https://www.nigc.gov/images/uploads/gamingordinances/hochunknation-HCNordapprov020708.pdf>.

<sup>37</sup> Acting Regional Director's Findings of Fact at 16.

- (j) *The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated.*

The Nation entered into a class III Tribal-State Compact with the State of Wisconsin, which went into effect on August 5, 1992.<sup>38</sup> In 2008, the Nation and the State of Wisconsin amended the Compact, which extended the Compact to December 12, 2033.

- (k) *If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment.*

The Nation has a Tribal-State Compact; therefore, this section is not applicable.

- (l) *A copy of the existing or proposed management contract required to be approved by the NIGC under 25 U.S.C. § 2711 and 25 CFR Part 533, if any.*

The Nation will manage the casino-resort itself; therefore, this section is not applicable.

## **ANALYSIS OF BEST INTEREST OF THE TRIBE AND ITS MEMBERS**

Section 292.17 provides that an application must contain:

- (a) *Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe.*

When considering whether a proposed gaming project is in the best interest of the tribe and its members, we examine the income statement, which projects the income and expenses in accordance with generally accepted accounting principles. We use the income data to determine the profitability of a proposed gaming project. We also review the balance sheet, which lists assets, liabilities, and capital. From the balance sheet, we identify ratios to determine if a proposed gaming project will grow, and whether the tribe will have the resources to pay its obligations in the short term and long term. It also allows us to review the ownership composition of the proposed gaming project.

Cash flow statements project the distribution to the various stakeholders, such as debt holders and owners. They project ongoing investments the tribe will make, debt that will be incurred or repaid, and the projected utilization of non-cash expenses, such as depreciation and amortization. We review cash flow statements to determine the amounts that will go to the manager/developer, the debt holders, the state and its political subdivisions, and the tribe. From cash flow statements, we can generally determine whether the tribe will be the primary beneficiary of the proposed gaming project.

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<sup>38</sup> Notice of approved Tribal-State Compact, 57 Fed. Reg. 334654 (Aug. 5, 1992).

Because the financial documents are based on projections rather than actual performance, we examine the financial information to determine whether they are reasonable. This assists us in reaching conclusions that the proposed gaming project will likely perform according to the projections.

### *Reports*

The Nation submitted a 2012 *Project Plan and Cost Estimate* report (Project Plan)<sup>39</sup> and a 2020 Pro Forma financial statement prepared by the Innovation Group that includes income statement, balance sheet, and statement of cash flow for the first five years of operation.<sup>40</sup>

The Innovation Group prepared an analysis of the economic impact of the Proposed Project in the 2018 *Market and Impact Assessment for Retail, Gaming, and Waterpark Hotel Development: Beloit, Wisconsin* (Economic Impact Analysis).<sup>41</sup> The Economic Impact Analysis analyzed the local gaming market and expected impacts to the local economy and the Nation from construction of the Proposed Project and its subsequent operation.

The Project Plan and the Economic Impact Analysis used certain assumptions. The new casino-resort will be a high-quality facility comparable to other casino-resorts in the Chicago market. The casino would have 2,200 gaming machines and 50 table games. The 300-room hotel and other amenities would be of a similar quality, design, and service as competing facilities. The Pro Forma financial statements rely on expected visitation rates and the win-per-visit identified in the Economic Impact Analysis. We find these to be reasonable by industry standards and market research.

### *Analysis*

The Economic Impact Analysis and the Pro Forma financial statement estimate that the Proposed Project will cost between \$405.5 and \$416.4 million to construct.<sup>42</sup> The Pro Forma anticipates that the Nation will obtain a loan of \$312.3 million, representing a 75/25 debt-to-equity ratio.<sup>43</sup> Based on that debt-to-equity ratio, the Pro Forma anticipates a loan term of 15 years with interest rates ranging from 8 percent to 12 percent.<sup>44</sup> The cash flow statement utilizes a 15-year term and 10 percent interest rate.<sup>45</sup>

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<sup>39</sup> Ho-Chunk Nation Department of Business, *Ho-Chunk Gaming - Beloit Project Plan and Cost Estimate* (March 2012) [hereinafter Project Plan], in Nation's Application, Tab 2. This document contains trade secrets financial information, is marked confidential, and submitted to the Department with an expectation of confidentiality. This information is protected from release to third parties without the consent of the Nation (5 U.S.C § 552(b)(4)).

<sup>40</sup> The Innovation Group, *Ho-Chunk Beloit Casino Pro Forma Financial Statements* (March 2020) [hereinafter Pro Forma].

<sup>41</sup> The Innovation Group, *Market and Impact Assessment/or Retail, Gaming, and Waterpark Hotel Development: Beloit, Wisconsin* (June 2018) [hereinafter Economic Impact Analysis]

<sup>42</sup> Pro Forma at 5; Economic Impact Analysis at 59.

<sup>43</sup> Pro Forma at 5.

<sup>44</sup> /dat 6.

<sup>45</sup> /dat 7.

The Proposed Project is expected to capture nearly 3 million gaming visits per year or approximately 9 percent of the gaming market.<sup>46</sup> The Pro Forma estimates the net revenue from the casino-resort and water park to be \$282.8 million in the first year of operation in 2021.<sup>47</sup> Retail sales from the adjacent retail development is projected to produce an additional \$60.5 million.<sup>48</sup>

We find that the financial projections are reasonable, and indicate that the Proposed Project would provide much-needed revenue for the Nation.

***(b) Projected tribal employment, job training, and career development***

The Proposed Project is expected to create 2,595 direct construction jobs, 1,985 direct operational jobs for the casino-resort and the retail operations.<sup>49</sup> The Nation expects that tribal members employed at the Proposed Project will either live in the surrounding community or commute.<sup>50</sup>

Federal census data for the general population in the Beloit region showed that only 29.7 percent of workers living in the City of Beloit work there, with more than 70 percent commuting out to other areas or working remotely for businesses located elsewhere.<sup>51</sup> Of those commuter residents, 60 percent work in other areas of Rock County and Winnebago County, Illinois. Similarly, 70 percent of the 15,671 jobs in the City of Beloit are occupied by workers living outside of the city limits, with two-thirds living in other areas of Rock and Winnebago Counties.

The Nation expects that there will be a variety of employment opportunities for tribal members at the Proposed Project. Positions will be available in purchasing, accounting, supervision, building and crowd safety, security, facility management, human resources, warehousing, office administration, computer programming, marketing, and supporting occupations.<sup>52</sup> The Nation reports that top management at its facilities is composed of tribal members who have typically worked their way up through lower level and management positions, and now have considerable and broad experience. Staffing of a casino-resort requires a wide variety of skill levels, from wait staff and janitors to supervisors, managers, auditors, and executives. The average total employee compensation, including tips, taxes, and benefits at the Proposed Project is estimated to be approximately \$48,000 per employee.<sup>53</sup>

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<sup>46</sup> Economic Impact Analysis at 31.

<sup>47</sup> Pro Forma at 4.

<sup>48</sup> *Id* at 47.

<sup>49</sup> Economic Impact Analysis at 53, 61.

<sup>50</sup> Nation's Application at 21.

<sup>51</sup> Economic Impact Analysis at 74.

<sup>52</sup> Nation's Application at 21.

<sup>53</sup> FEIS, Vol. I, Response to Comments at 3-15.

With increased revenue, the Nation would offer training programs to assist tribal members.<sup>54</sup> The Nation would use revenue from the Proposed Project to develop small business incubators, adult and vocational training programs, and skilled trade apprenticeship centers. A new training center would include offices of the Nation's Department of Labor, Personnel/Human Resource Training, and all other training and development programs. The Proposed Project would also create additional jobs within the Nation's administration including the Gaming Commission, the business department, and general administration. The revenue generated from the Beloit facility would allow the Nation to expand its governmental services and create additional jobs in social services, language and cultural programs, educational facilities, and community centers.

We find that the Proposed Project will create meaningful employment opportunities and increased opportunities for job training and career development for tribal members.

*(c) Projected benefits to the tribe and its members from tourism*

The Beloit region draws large numbers of tourists and generates significant tourist spending. For example, the Beloit area draws approximately 6,000 yearly visitors to the Beloit International Film Festival, 5,500 weekly visitors during the summer to open-air farmers markets, and additional tourists to the numerous music and food festivals.<sup>55</sup> The tourism industry in Rock County generated \$384.3 million in sales in 2016. Rock County's visitor spending increased by 6.64 percent (the second highest mark among Wisconsin counties) since 2015.

The Nation intends the Proposed Project to be a destination resort. The Economic Impact Analysis estimates that visits to the casino, hotel, waterpark, and convention center would be approximately 3 million per year plus more than 73,000 shopping visits.<sup>56</sup>

We find that tourism to the Beloit region will benefit the Nation by increasing the number of potential patrons. In addition, the Proposed Project will draw additional patrons to the region.

*(d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income*

Income from the Proposed Project would create stability for current and future members by providing critically needed revenue for governmental services. The Nation intends to use income from the Proposed Project to provide a variety of governmental programs for its members including land management, housing, health care and family services, education, job training, and employment programs.

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<sup>54</sup> Needs Report at 41-43.

<sup>55</sup> Economic Impact Analysis at 16.

<sup>56</sup> *Id.* at 31, 48.

## ***Land***

The Nation would pursue the following studies and develop long-range plans for land stewardship.

- Land Inventory Study: Define, rate and classify tribal lands using geotechnical reports to identify lands best suited for particular types of industry, residential development, and conservation.
- Gap Analysis: Study socioeconomic conditions in and near tribal lands to identify the types of industry and residential density best suited for specific areas.
- Freight/Traffic Analysis: Study major and minor components of transportation and freight movement in and around tribal lands.<sup>57</sup>

## ***Housing***

The Nation would address critical housing needs with additional revenue from the Proposed Project.

- Water quality (\$221,000): Upgrade, repair, or replace non-functional housing water systems. Hire a water quality specialist for an additional salary of \$60,000/year to develop federally approved water quality standards.
- Mold remediation (\$190,000): Remediate six homes needing \$1,000 or less in repairs, seven needing \$1,000 to \$5,000 in repairs, and six homes needing over \$5,000 in repairs.<sup>58</sup>

## ***Health Care and Family Services***

The Nation would expand its existing health care facilities and hire more health professionals, counselors, technicians, and support staff.

- Expansion of the Ho-Chunk Healthcare Center (\$1.2 million): Expand the pharmacy, and add other patient services such as physical therapy, chiropractic services and speech therapy. Construct a facility to meet the health needs of Black River Falls tribal members.
- Health and Nutrition (\$1.2 million): Construct community facilities that provide exercise areas and classrooms. Develop programs to encourage the production and distribution of locally grown produce by adding community gardens, purchasing produce from the Community Sharing Agriculture Program, adding farmers markets, and developing a Tribal Agriculture Program.
- Social Services (\$600,000): Provide additional funding for the Tribal Child and Family Services Placement Assistance Program.

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<sup>57</sup> Needs Report at 23.

<sup>58</sup> *Id.* at 37-38.

- Air Monitoring Program (\$210,000): Add two additional ambient air-monitoring stations to monitor air quality from the increase of sand mining near tribal lands. Add ozone monitoring at the existing stations.
- Public Health Accreditation (\$60,000): Hire a preparedness coordinator to secure public health accreditation for the Community Health and Environmental Health Program.<sup>59</sup>

### *Education*

The Nation would expand its existing educational programs.

- Develop a Hoocak Language Immersion School for Pre K - Grade 5 (\$1.5 million/year): Facilitate language revitalization through a tribal immersion school to keep the Ho-Chunk language alive. Fund certification programs in the Hoocak language, renovate buildings, develop the curriculum, and ensure the school complies with state education laws.
- Eight additional Ho-Chunk Language Teachers (\$320,000/year): Add new teachers to the Head Start and Immersion programs.
- New school playground equipment (\$50,000): Purchase playground equipment for the Nekoosa and Tomah Head Start Centers and the Ho-Chunk Ee Cooni Learning Center.
- Additional funding for Pre K - Grade 12 Educational Grant Program (\$500,000): Provide additional funding to address the waitlist for grants.
- Additional funding for Higher Education Scholarship Program (\$200,000): Provide additional funding to address the waitlist for scholarships.
- Childcare for students with children (\$260,000): Provide long-term childcare assistance for post-secondary students.
- Acquire the Children's Learning Village Montessori Academy (\$700,000/year): Acquire the not-for-profit Children's Learning Village Montessori Academy to serve the 50 enrolled Ho-Chunk children and children of the Nation's employees. Provide additional teaching locations for Hoocak language instructors.
- Technical Improvements and Equipment (\$120,000): Develop a database to keep records of students, programs, and outcomes. Upgrade technical support for web communication with students and families, IT security, server capacity, and video conferencing.
- Community Learning, Enrichment, and Financial Literacy (\$100,000): Offer pre-college, college, and career planning for students. Offer courses and programs in financial literacy, cultural awareness, and diversity.
- Wittenberg Early Childhood Education Center (\$121,700): Provide increased access to educational resources at the Wittenberg District Office.<sup>60</sup>

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<sup>59</sup> *Id* at 38-39.

<sup>60</sup> Needs Report at 26-30.



## *Employment*

The Nation would implement the following programs to address the Nation's unemployment and underemployment rate.<sup>61</sup>

- Adult Training Program Center (\$1.5 million): Provide educational, technical, and professional growth training programs. Provide classes for supervisory management, customer service, computers, food and beverage service, housekeeping, table games, financial literacy, safety and first aid, forklift and scissor machinery, basic carpentry, and electrical. Provide space for personnel at the Department of Labor, Personnel/Human Resource Training, and other training and development programs.
- Two Economic Development Business Incubators (\$1.6 million): Construct and operate new business incubator centers and provide office space, free accounting services, marketing consultation, and guidance to assist new businesses through their first year of operations.
- Adult Vocational Training Program (\$500,000): Provide the Nation's members with certificates for pharmacy technician, HVAC technician, medical assisting, massage therapy, museum studies, and other certificate programs not eligible for Higher Education assistance.
- Apprenticeship Program (\$3 million): Provide on-the-job training with supplemental instruction.
- The Nation's Police Department (\$2 million initially, \$1 million/year): Create a new satellite office to serve the Nation's scattered land holdings.

## *Administrative Functions*

The Nation would address aging, outdated IT systems, and expand maintenance operations.<sup>62</sup>

- Accounting System (\$823,700): Upgrade the IT system to integrate with external programs.
- Treasury System (\$3.3 million): Purchase a new treasury IT system.
- Human Resource Management System (\$2.4 million): Upgrade the system for employee files and hiring data for the tribal government and businesses.
- Community Center Operations and Maintenance (\$7.2 million): Improve operation and maintenance at the Nation's satellite offices.
- Technology Infrastructure (\$5.6 million): Upgrade the aging server and related IT programs.

We find that the Nation will use the increased income from the Proposed Project to address many pressing tribal needs.

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<sup>61</sup> Needs Report at 39-43.

<sup>62</sup> *Id.* at 43-45.

(e) *Projected benefits to the relationship between the tribe and non-Indian communities*

The Proposed Project will enhance the relationship between the Tribe and the local non-Indian Community. The Tribe has a strong relationship with the City of Beloit and Rock County.<sup>63</sup> The Nation also has the support of local business and tourism organizations.<sup>64</sup> In addition, the Nation has the support of the federal congressional delegation and representatives of the Wisconsin legislature.<sup>65</sup>

The Nation established a framework for future cooperation with Beloit and Rock County. In 2012, the Nation, Rock County, and the City of Beloit entered into an Intergovernmental Agreement (IGA).<sup>66</sup> The IGA acknowledges that the Proposed Project will benefit the City, County, area residents, and the Nation and its tribal members by providing increased revenue, economic development, and employment opportunities. The City of Beloit adopted a resolution of support for the Proposed Project.<sup>67</sup> In addition, the Village of Rockton Board of Trustees and the South Beloit City Council adopted resolutions in support of the Proposed Project.<sup>68</sup>

We find that the Proposed Project has enhanced and will continue to enhance the Nation's relationship with the local non-Indian communities.

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<sup>63</sup> See e.g., Letter to Tara Sweeney, Assistant Secretary - Indian Affairs, from Lori S Curtis Luther, Beloit City Manager (Jan. 27, 2020); letter to Russel Baker, Midwest Regional Office, Bureau of Indian Affairs, from Mark A. Freitag, City Manager, City of Janesville (April 22, 2019).

<sup>64</sup> See e.g., Letter to Tara Sweeney, Assistant Secretary - Indian Affairs, from Andrew Janke, Greater Beloit Economic Development Corporation (Jan. 28, 2020); letter to Bureau of Indian Affairs, from Celestino Ruffini, Executive Director, Visit Beloit (Nov. 27, 2017).

<sup>65</sup> See e.g., Letter to Ryan Zinke, Secretary of the Interior, from Senator Tammy Baldwin, Representatives Ron Kind, Gwen Moore, Mark Pocan ((Sept. 20, 2017); letter to David Bernhardt, Secretary of the Interior, from Senator Ron Johnson (Nov. 27, 2019); letter to Tara Sweeney, Assistant Secretary - Indian Affairs, from Amy Loudenberg, Wisconsin Assembly, Dist. 31 (Aug. 16, 2018).

<sup>66</sup> Ho-Chunk Nation, City of Beloit, and Rock County, Intergovernmental Agreement (March 9, 2012) [hereinafter IGA], in FEIS, Appendix C. The parties extended the term of the IGA with amendments to the IGA in 2015 and 2018.

<sup>67</sup> See Resolution of the Beloit City Counsel in Support of Beloit Class III Gaming Facility and the Ho-Chunk Nation's Federal Trust Application (March 5, 2012), in Nation's Application, Tab 7.

<sup>68</sup> See Resolution No. 2012-102, A Resolution by the Village of Rockton Board of Trustees in Support of Beloit Class III Gaming Facility and the Ho-Chunk Nation's Federal Trust Application (March 19, 2012); Resolution No. 5578, Resolution of the South Beloit City Council in Support of Beloit Class III Gaming Facility and the Ho-Chunk Nation's Federal Trust Application (March 19, 2012), *id.*

**(f) Possible adverse impacts on the tribe and its members and plans for addressing those impacts**

The Nation did not identify adverse impacts to itself or its members from the Proposed Project.<sup>69</sup>

We find that there are no appreciable adverse impacts on the tribe and its members to be expected from the Proposed Project.

**(g) Distance of the land from the location where the tribe maintains core governmental functions.**

The City of Beloit is located in southern Wisconsin, where it borders the Illinois state line.<sup>70</sup> The Beloit Site is located approximately 175 miles from the Nation's official seat in Black River Falls, and approximately 40 miles from the nearest Ho-Chunk reservation land in Madison, Wisconsin. The Nation maintains governmental offices in Madison to service over 300 members located in or near Dane County.

**(h) Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States.**

The Nation purchased the Beloit Site in fee-simple in 2009, as shown by the Warranty Deed of Conveyance between Beloit Properties, LLC, and the Ho-Chunk Nation.<sup>71</sup>

**(i) Evidence of significant historical connections, if any, to the land.**

The Department's regulations require the Secretary to weigh the existence of a historical connection between an applicant tribe and its proposed gaming site as a factor in determining whether gaming on the proposed site would be in the best interest of the tribe and its members.<sup>72</sup>

The Nation has a long history in the areas near the Proposed Project, particularly near the Rock River in Wisconsin. The earliest historical record of the Ho-Chunk presence near the Rock River is a 1738 recorded speech by a Ho-Chunk speaker to Paul Marin, a fur trader and military leader in Wisconsin in the 1720-1730s, reporting that the Ho-Chunk left the Rock River because of fear of attack by other tribes.<sup>73</sup> A 1742 record from a French/Native council records a Ho-Chunk speaker stating that half of his village is located near the Rock River.<sup>74</sup> The first recorded

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<sup>69</sup> The Nation's Application at 25.

<sup>70</sup> Acting Regional Director's Findings of Fact at 8.

<sup>71</sup> See Nation's Application, Tab 4.

<sup>72</sup> Section 292.17(i) does not require an applicant tribe to demonstrate an aboriginal, cultural, or historical connection to the land in order to receive a positive Secretarial Determination.

<sup>73</sup> *Ho-Chunk Aboriginal and Historical Homelands: Rock River, Wisconsin, ca 1650-/895*, Howell and Gilmore (2005) at 12, in the Nation's Application, Tab 8.

<sup>74</sup> *Id.*

contact between the newly formed United States and the Ho-Chunk consists of a 1778 letter of Alliance and Friendship written by Colonel George Rogers Clay to Chourachon, described as a Chief of the Ho-Chunk and his Nation living near the Rock River.<sup>75</sup>

Research suggests that by 1829 there were 36 Ho-Chunk villages including several in the general region of the study area.<sup>76</sup> Research also shows a Ho-Chunk village called "Kickunk" at present-day Beloit in 1810. A map prepared by researchers identifying 1830 settlements shows two Ho-Chunk villages near Beloit, "Kechank" and "Standing Post." Researchers have concluded that a large Ho-Chunk settlement existed at the east bank of the Rock River just south of what is now the Beloit College campus. Known variously as "Turtle Village" or "Turtle Creek," one scholar wrote that this was the village of "Kichunck" as known by the Ho-Chunk. This research shows that the Ho-Chunk occupied the Beloit region during the early American period and their settlements extended over a large territory prior to their cession of lands to the United States.

We find that the research shows that the Nation has a significant historical connection to the land near the Proposed Project.

- (j) ***Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any: (1) Consulting agreements relating to the proposed gaming establishment; (2) Financial and loan agreements relating to the proposed gaming establishment; and (3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located***

The Nation owns the Site in fee and intends to manage and operate the Proposed Project itself.<sup>77</sup>

The Nation will be financing the cost of planning, design, construction, equipping, and furnishing the gaming facility, hotel, convention center, and waterpark. Prior to entering into any financial agreements, the Nation will consult a financial advisor to review the scope of the project, projections, and risk assessment. The Nation already has consulting agreements for public relations, financial advice, a market study, application assistance, and legal assistance. Future consulting agreements will include services for planning and design, equipment installation, engineering, purchasing, and construction management.

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<sup>75</sup> *Id.* at 14.

<sup>76</sup> FEIS § 3.6.2.

<sup>77</sup> Nation's Application at 20, 26.

## **Conclusion: Best Interest of the Tribe and its Members**

The record demonstrates that development of the Proposed Project on the Beloit Site will be in the best interest of the Nation and its members. The additional revenue will strengthen the tribal government, and address critical needs of tribal members for housing, health care and family services, education, and employment. The Nation will use the additional revenue from the Proposed Project to provide additional services to its widely separated tribal communities.

We have determined that a gaming establishment on the Beloit Site would be in the best interest of the Nation and its members.

## **ANALYSIS OF DETRIMENT TO THE SURROUNDING COMMUNITY**

**Section 292.18 provides that to satisfy the requirements of § 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:**

- (a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA).***

The Department prepared an environmental impact statement (EIS)<sup>78</sup> to evaluate the potential impacts of gaming at the Beloit Site pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* After a thorough analysis, the EIS concluded that gaming at the proposed Beloit Site would not result in significant impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic resources and environmental justice, transportation and circulation, land use, public services and utilities, visual resources, or noise. This finding is discussed in detail in the Final EIS and the Record of Decision (ROD).

### ***Purpose and Need***

The federal proposed actions are 1) the acquisition of the Beloit Site in trust pursuant to the Secretary's authority under Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108, and 2) issuance of a Secretarial Determination to determine whether the Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719 (b)(1)(A).

The purpose of the Proposed Actions is to facilitate tribal self-sufficiency, self-determination, and economic development. This purpose satisfies the Department's land acquisition policy articulated in the Department's land acquisition regulations at 25 C.F.R. Part 151, and is the principal goal of IGRA articulated in 25 U.S.C. § 2701.

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<sup>78</sup> Final Environmental Impact Statement, Beloit Fee-to-Trust and Casino Project (May 2019) [hereinafter FEIS], available at <https://www.ho-chunkbeloiteis.com/>.

## ***Procedural Background***

The BIA published a Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on November 26, 2012, describing the Proposed Actions, announcing the BIA's intent to prepare an EIS for the Proposed Actions, and inviting public and agency comments.<sup>79</sup> The BIA also published the NOI in *The Daily News, The Janesville Gazette*, and *The Rockford Register Star*. The BIA held a scoping meeting in the City of Beloit on December 13, 2012. During the NEPA process, the BIA identified and invited five Cooperating Agencies: the Nation, the City of Beloit, Rock County, the U.S. Environmental Protection Agency (EPA), and the Wisconsin Department of Transportation (WisDOT). All accepted the invitation to be a Cooperating Agency, except for Rock County, which declined.

The BIA published the Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on November 9, 2018, initiating a 45-day public review period.<sup>80</sup> The BIA also published the NOA in *The Daily News, The Janesville Gazette*, and *The Rockford Register Star*. The NOA provided information concerning the Proposed Actions, public comment period, and the time and location of the public hearing where the BIA would receive public comments. The BIA held a public hearing at the Aldrich Middle School in Beloit, Wisconsin, on December 11, 2018.

The BIA considered public and agency comments on the Draft EIS including those submitted or recorded at the public hearing. The BIA provided responses to the comments in Volume I of the Final EIS, and revised relevant information in Volume II of the Final EIS as appropriate to address those comments. The BIA published the NOA for the Final EIS in the *Federal Register* on May 31, 2019.<sup>81</sup> The BIA also published the NOA in *The Daily News, The Janesville Gazette*, and *The Rockford Register Star*.

The EIS evaluated the following reasonable alternatives and the mandatory No Action Alternative in detail.

Alternative A - Proposed Project: Alternative A includes the transfer into trust of the Beloit Site. The Nation proposes to develop a 139,700-sf casino, 300-room hotel, restaurants, convention center, and waterpark. In addition, the Nation would develop retail outlets and parking on the adjacent 40-acre fee parcel. Alternative A is expected to generate an estimated annual total of approximately 3,421 employment opportunities, including 1,985 direct employment opportunities, 738 indirect employment opportunities, and 699 induced employment opportunities.

Alternative B - Reduced-Intensity Alternative: Alternative B includes the transfer into trust of the Beloit Site and casino development similar to Alternative A, but at a reduced scale. The Nation would only develop parking on the adjacent 40-acre fee parcel. Alternative B does not include a hotel, convention center, waterpark, or retail outlets. Operation of Alternative B would

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<sup>79</sup> 77 Fed. Reg. 70460 (Nov. 26, 2012).

<sup>80</sup> 83 Fed. Reg. 56096 (Nov. 8, 2018).

<sup>81</sup> 84 Fed. Reg. 25302 (May 31, 2019).

generate an estimated annual total of approximately 2,088 employment opportunities, including 1,127 direct employment opportunities, 516 indirect employment opportunities, and 446 induced employment opportunities.

Alternative C - Non-Gaming Retail: Alternative C includes the transfer into trust of the Beloit Site and the development of a 175,000 sf retail development and parking. The Nation would not conduct gaming or develop the adjacent 40-acre fee parcel. Operation of Alternative A would generate an estimated annual total of approximately 316 employment opportunities, including 236 direct employment opportunities, 36 indirect employment opportunities, and 45 induced employment opportunities.

Alternative D - No Action/No Development: Under the No Action Alternative, the Nation would implement none of the development alternatives, and no land would be transferred into trust. The Nation would continue the current agricultural use of the Beloit Site.

### ***Selection of Alternative A***

As discussed in more detail in the Final EIS and ROD, the Department determined that Alternative A is the Preferred Alternative because it best meets the purpose and need for the Proposed Actions. The Proposed Project described under Alternative A would provide the Nation with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the tribal government. Under such conditions, the Nation would be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Nation and its members with greater opportunities for employment and economic growth.

The Department identified all practicable means to avoid or minimize environmental harm from the Preferred Alternative. The Best Management Practices (BMPs) are set forth in Section 2.0 of the FEIS, and the mitigation measures are set forth in the Mitigation Monitoring and Enforcement Plan in Attachment 1 of the ROD for the Proposed Project.

### ***(b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.***

#### ***Impacts on Social Structure***

Crime (FEIS § 4.7.1): There is a general belief that the introduction of legalized gambling into a community increases crime. However, this argument is based more on anecdotal evidence rather than empirical evidence. Taken as a whole, literature on the relationship between casino gambling and crime rates suggests that communities with casinos are as safe as communities without casinos.

The Proposed Project would introduce a large number of patrons and employees into the community on a daily basis. As a result, criminal incidents would be expected to increase in the

area, as with any other development of this size. Pursuant to Section 2.1 of the IGA, the City and County will provide municipal services to the Nation, including law enforcement, and will bill the Nation in the same manner as other users of municipal services.

Environmental Justice (FEIS § 4.7.1): The FEIS identified one minority community and no low-income communities in the vicinity of the Beloit Site. In addition, the Nation is considered a minority community. The Proposed Project would have beneficial impacts to the minority community by creating employment opportunities and related social improvements. Other effects such as traffic, air quality, noise, etc. would be neutral after the implementation of the specific mitigation measures related to these environmental effects. Effects to the Nation are discussed in Section 292.17 above. The Proposed Project would not result in significant environmental justice impacts.

#### *Impacts on infrastructure*

Water Supply (FEIS §§ 4.3, 4.10.1): In accordance with Section 2.0 of the IGA, the Nation will use existing municipal services provided by the City of Beloit and Rock County. A letter from the City dated May 3, 2013, confirms the City's water supply system is capable of accommodating the water needs of the Proposed Project. The City's municipal potable water system will serve the Beloit Site through connections at the Nation's sole cost and expense. Water would be provided by extensions of the City water system at two locations along Willowbrook Road and East Colley Road. The Beloit Water Utility recently completed construction of a new well and reservoir which will enhance the utility's ability to serve its customers. The City rehabilitated another well in 2012 to provide critical system redundancy and assure reliable delivery.

In accordance with Section 2.0 of the IGA, the Nation would pay the current water connection charges and monthly service fees, as well as fund the extension of the City's municipal system to the Beloit Site. This fair share compensation would allow the City to expand its water supply infrastructure as necessary to serve the Proposed Project. The Proposed Project would not result in significant impacts to the water supply.

Transportation Infrastructure and Traffic Volume (FEIS §§ 4.8, 4.10.1, 5.2.7, Appendix I): The Traffic Impact Analysis (TIA) prepared for the Proposed Project analyzed potential impacts on traffic. Public access to the Proposed Project would be provided via the development of one driveway located along Willowbrook Road and two driveways located along East Colley Road. Improvements to these access points would manage safe ingress and egress of traffic at the Beloit Site. Traffic impacts resulting from the construction activities would be temporary and intermittent in nature and would generally occur during off-peak traffic hours. Increased traffic from operation of the Proposed Project would contribute to unacceptable traffic operations without mitigation. With implementation of mitigation measures, the Proposed Project would not result in significant impacts on traffic and circulation.

Air Quality (FEIS § 4.0): Operation of the Proposed Project would generate mobile emissions from patron, employee, and delivery vehicles, as well as stationary source emissions from combustion of natural gas in boilers and other equipment. Construction of the Proposed Project



would generate air pollutants during construction, although they would not exceed regulatory emissions threshold levels. Mitigation measures would reduce construction emissions. The Proposed Project would not result in significant impacts to air quality.

Solid Waste Service (FEIS § 4.15): The Proposed Project would result in an increase in the generation of solid waste. Waste that cannot be recycled would be disposed of at the City of Janesville Landfill. Solid waste would account for 0.02 percent of City of Janesville Landfill's total capacity. The Proposed Project would not result in significant impacts on solid waste services.

Electricity & Natural Gas (FEIS § 4.10): Alliant Energy would provide electricity and natural gas through nearby connections on Willowbrook Road and East Colley Road, north and west of the Beloit Site. Alliant Energy currently has sufficient capacity to serve the Proposed Project. The Proposed Project would not result in significant impacts to energy or natural gas services.

#### *Impacts on services*

Library Services, Recreation, and Schools (FEIS § 4.7): A limited number of employees are expected to relocate to the area for employment at the Proposed Project. Effects to area libraries, parks, and schools would not significantly increase the demand on these resources. The Proposed Project would not result in significant impacts to libraries, parks, and schools.

Law Enforcement, Fire Protection, and Emergency Medical Services (FEIS § 4.10.1): The Proposed Project would result in an increase in the need for law enforcement. The City of Beloit Police Department is located approximately three miles west of the Proposed Project. The Proposed Project would result in an increase in need for fire protection and emergency response services. The City of Beloit Fire Department is located approximately two miles west of the Proposed Project, and has plans to build a satellite fire station to accommodate the increased demand. Pursuant to Section 2.1 of the IGA, the City and County will provide municipal services to the Nation, and will bill the Nation in the same manner as other users of municipal services. The Proposed Project would not result in significant impacts to law enforcement, fire protection, or emergency medical services.

Housing (FEIS § 4.7): In 2023, there will be an estimated 195,724 housing units in the study area and approximately 10.8 percent of those units will be vacant. The majority of positions at the Proposed Project will be filled by people already living in the region and would, therefore, not require new housing. It is expected that there will be more than enough vacant housing units to support potential impacts to the regional labor market under the Proposed Project. The Proposed Project would not result in significant impacts to the housing supply.

#### *Impacts on community character and land use*

Visual Resources (FES § 4.13.1): The development of the Proposed Project would transform the current agricultural space to an urban appearance. The Proposed Project would not be visually incompatible with land uses currently existing in the immediate vicinity, and would result in a visually cohesive development that may be considered more aesthetically pleasing

than other regional commercial strip development. The design features described in Section 2.0 of the FEIS will minimize potential effects from lighting. Compliance with the City of Beloit's Architectural Review would ensure that the Proposed Project would be consistent with the local community standards and policies established for the area. The Proposed Project would not result in significant impacts to visual resources.

Noise (FEIS §§ 4.11.1, 5.2.10): Grading and construction activities would be intermittent and temporary, but could raise ambient noise levels along local routes. The closest sensitive receptors exposed to potential noise impacts during project construction are private residences located along East Colley Road. The increase in ambient noise levels on area roadways during construction would be less than the FHWA Noise Abatement Criteria for residential and commercial lands. Noise from roof-mounted HVAC equipment would not be audible to nearby sensitive receptors. Noise from loading docks, parking structures, and parking lots would be less than the FHWA Noise Abatement Criteria. The Proposed Project would not result in significant impacts from noise.

Land Use (FEIS § 4.9.1): The Proposed Project is located within the limits of the City of Beloit. The City of Beloit Comprehensive Plan and the City Zoning Ordinance guide development in the City. The Beloit Site is zoned for general manufacturing. The areas surrounding the Beloit Site are a mixture of General Manufacturing, Public Land, and Two-Family Residential. The City designated the Beloit Site as an area of economic development and reclassified it as a Community Commercial land use designation in the 2008 City of Beloit Comprehensive Plan, making the Proposed Project consistent the City's goal of creating an entertainment district including restaurants, a casino, and other related development. The Proposed Project would not disrupt or conflict with neighboring land uses, or prohibit access to neighboring parcels. The Proposed Project would not result in significant impacts to land use.

Agriculture (FEIS § 4.9.1): The local Natural Resources Conservation Service determined that the Beloit Site does not meet the requirements for protection under the Farmland Protection Policy Act. The Proposed Project would not result in significant impacts to agriculture.

Habitat (FEIS § 4.5.1): Development of the Proposed Project will affect approximately 73.5 acres of habitat. None of the habitats affected by the Proposed Project are considered sensitive biological communities. The Proposed Project would not result in significant impacts to habitats.

Special Status Species (FEIS §§ 4.5.1, 5.2.4): The Proposed Project complies with the Endangered Species Act. No federally listed wildlife species occur or have the potential to occur within the Beloit Site. No state listed plants or wildlife species occur or have the potential to occur. The Proposed Project would not result in significant impacts to special status species.

Migratory birds and other birds of prey protected under the Migratory Bird Treaty Act have the potential to nest within and in the vicinity of the Proposed Project. Implementation of mitigation measures including conducting a preconstruction survey prior to construction commencement and establishing buffers if active nests are observed, would reduce the potential for the Proposed

Project to significantly adversely affect active nests of migratory birds and other birds of prey. The Proposed Project would not result in significant impacts to migratory birds.

Wetlands and Waters of the U.S. (FEIS §§ 4.5.1, 5.2.1): There are no wetlands or waterways located within the Beloit Site; therefore, none would be subject to United States Army Corps of Engineers jurisdiction under Section 404 of the Clean Water Act. Implementation of mitigation including erosion and siltation controls around all ground-disturbing activities would ensure that the Proposed Project would not result in significant impacts to Turtle Creek, Springbrook Creek, or federally regulated Waters of the U.S.

Cultural Resources (FEIS §§ 4.6.1, 5.2.5): The Proposed Project complies with Section 106 of the National Historic Preservation Act. An archaeological investigation revealed no previously unrecorded cultural resources. Given the absence of pre-contact or historic properties within the Beloit Site, there would be no direct adverse effects to known properties on the National Register. Mitigation measures will be implemented if previously unknown cultural resources are encountered during ground-disturbing activities. The Proposed Project would not result in significant impacts to cultural resources.

Hazardous Materials (FEIS §§ 4.12.1, 5.2.11): There are no reported instances of contamination within the Beloit Site. The BMPs would minimize or eliminate adverse effects from undiscovered contaminants. Typical construction-related BMPs would limit and eliminate the effect of accidental releases from construction vehicles and accidental spills of construction materials. The BMPs in Section 2.3.1 would minimize the risk of inadvertent release and, in the event of a contingency, minimize adverse effects. Operation of the Proposed Project would typically produce non-hazardous waste. The Proposed Project would not result in significant impacts from hazardous materials.

### *Conclusion*

The Nation submitted the required information regarding anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community. We find, as discussed in detail in the ROD, that development of the Proposed Project would result in less-than-significant impacts to these resources.

(c) *Anticipated impacts on the economic development, income, and employment of the surrounding community.*

Expenditures on goods and services for construction and operational activities would generate substantial direct, indirect, and induced economic output. Output is defined as the total value of all goods and services produced at the facility or construction site. Direct output results from money spent on activities for construction and operational activities. Indirect output results from expenditures on goods and services by businesses that receive funds directly from the construction and operation of the Proposed Project. Induced output results from expenditures on goods and services by employees directly generated from construction and operation of the Proposed Project.

### *Construction Impact*

The Economic Impact Analysis projects that the Proposed Project will:

- Directly support 2,595 workers in Rock County and Winnebago County, Illinois, earning a labor income nearing \$151 million.
- Indirectly support 419 jobs in both counties earning a labor income of 22.3 million from \$67.5 million in indirect purchases or spending through supply chains in the counties.
- Induce employment of 1,015 workers earning a labor income of \$40.9 million from household spending by employees through construction (either directly or indirectly through the local supply chain).<sup>82</sup>

Rock and Winnebago Counties will see a combined one-time employment impact of 4,029 workers from construction, earning \$214 million in labor income, and \$560.3 million in total spending.

### *Operational impact*

The Economic Impact Analysis projects that casino-resort operations of the Proposed Project will:

- Directly support 1,734 employees earning a labor income of \$83.7 million, adding a value to the economy of \$162.8 million.
- Indirectly generate 700 jobs earning a labor income of \$28.7 million, adding a value to the economy of \$59 million.
- Induce 651 induced jobs earning a labor income of \$29.6 million, adding a \$47.8 value to the economy of \$47.8 million.<sup>83</sup>

Rock and Winnebago Counties will see a combined operational impact from the casino-resort of 3,085 jobs, providing \$139 million in labor income, and adding \$269.6 million in value to the economy. The majority of these economic effects are estimated to accrue to Beloit and its residents.

The retail component of the Proposed Project will:

- Directly add 251 direct jobs in Rock and Winnebago Counties earning a labor income of \$6.5 million, adding \$10.5 million to the economy.
- Indirectly add 38 jobs earning a labor income of \$1.7 million, adding \$2.9 million to the economy.

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<sup>82</sup> Economic Impact Analysis at 60-62.

<sup>83</sup> *Id.* at 52-54.

- Induce 48 jobs<sup>84</sup> earning a labor income of \$1.9 million, adding \$3.5 million to the economy.

Rock and Winnebago Counties will see a combined operational impact from the retail component of the Proposed Project of 336 jobs, providing \$10.1 million in labor income, and adding \$16.9 million in value to the economy.

The total combined operational impact from the Proposed Project will be 3,421 jobs earning \$149 million in labor income, adding approximately \$286 million in value to the economy in Rock and Winnebago Counties.

### *Gaming Substitution Effects*

Potential substitution effects (the loss of customers at existing commercial businesses to the new business) on existing restaurant, recreation, and retail establishments must be considered when attempting to determine the true magnitude of the casino's impact on the economy. The magnitude of the substitution effect varies greatly by specific location and according to a number of variables. These include the number and types of other establishments within the same market area as the casino, disposable income of local residents and their spending habits, and other economic and psychological factors affecting the consumption decisions of local residents.

The Potawatomi Bingo Casino in Milwaukee will be affected by the Proposed Project. It lies within the 120-minute drive market area. There are also commercial casinos in Illinois and Iowa. The anticipated decline in revenues at regional, competitive facilities within the local market would be:<sup>85</sup>

- Potawatomi: -7%
- Des Plaines: -2%
- Elgin: -2%
- Aurora: -4%
- Joliet Harrah's: -2%
- Joliet Hollywood: -3%
- Hammond: -3%
- Clinton: -7%
- Dubuque: -3%

These substitution effects are future revenue forecasts measured against a future baseline year assuming Beloit does not open. Anticipated substitution effects are likely to diminish after the first year of operation, once local residents experience the casino and return to typical spending patterns. Therefore, substitution effects resulting from the Proposed Project to competing gaming facility revenue would not significantly impact the ability of existing commercial

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<sup>84</sup> *Id.* at 53.

<sup>85</sup> Economic Impact Analysis at 67.

businesses to continue operating, and would not diminish the Potawatomi tribal government's provision of essential services and facilities to its membership.

### ***Non-Gaming Substitution Effects***

Research has dispelled the concern that substitution of consumer spending (the substitution effect) will negatively impact local businesses, especially smaller "mom and pop" retail, restaurant and entertainment businesses. Research shows, rather, that casinos can stimulate local economies, resulting in community wide growth, including in the local food and beverage business, and retail businesses. There is little evidence of significant economic substitution after the introduction of new casinos, particularly for casinos in urban areas. Casino development increases room demand at non-casino hotels even when casino hotels are built.

Hotel effects: The region has 22 hotels within 15 miles of the proposed location. The market has a large selection of economy and midscale hotels, which are not considered competition for the Proposed Project's hotel.<sup>86</sup>

The majority of hotel demand will be related to waterpark use and from group demand from distant markets like Chicago. The Proposed Project is not expected to materially impact existing hotels in Rock and Winnebago Counties. Moreover, the presence of the casino is expected to benefit other local hotels. First, it is expected that the hotel will experience capacity constraints on weekends, with the overflow going to other local hotels. Second, many patrons who do not get free hotel rooms at the casino hotel prefer staying off-site at local budget hotels.<sup>87</sup>

Retail outlet mall effects: The Proposed Project includes a retail outlet mall. There are no outlet malls within a 60 minute drive of the Proposed Project. Because outlet malls are sited and designed to capture interstate highway traffic, the Proposed Project's retail is not expected to have material impact on existing retail establishments in the Beloit area. Further impacts would be mitigated because the Proposed Project's retail would offer different retail than currently available locally.<sup>88</sup>

### ***Conclusion***

We find that the Proposed Project will generate increases in economic activity directly and indirectly, and will create employment opportunities for the surrounding community.

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<sup>86</sup> Economic Impact Analysis at 36.

<sup>87</sup> *Id.* at 71.

<sup>88</sup> *Id.*

- (d) *Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.*

#### *Law Enforcement, Fire Protection, and Emergency Medical Services*

The Proposed Project would increase demand for public services, resulting in increased costs for local governments. Pursuant to Section 21 of the IGA, the City and County will provide municipal services to the Nation, and will bill the Nation for the provision of municipal services in the same manner as other users. Section 31 of the IGA requires the Nation to make an infrastructure down payment of \$2 million that will be applied against the cost of the City's improvements. The IGA also requires the Nation to make a monthly payment of 2 percent of net win. The City will distribute 30 percent of the net win to the County. The Nation's business operations on the adjoining fee property will be taxed as other businesses. In addition, the Nation will make annual payments to the State and local governments in accordance with the IGA and the tribal-state gaming compact. These annual payments will provide support for public services, community benefits, and utilities throughout the region.<sup>89</sup>

#### *Property Taxes*

The Proposed Project includes the transfer of approximately 32 acres from fee status into federal trust, resulting in the loss of local property taxes. During 2018, the Beloit Site generated \$280.88 in property tax and assessments for the City of Beloit and Rock County.<sup>90</sup> Because property held in trust is not subject to local taxes, these property taxes would be lost to state and local officials. These losses would be mitigated by the significant economic output of the Proposed Project. The adjacent retail development would remain in fee and be subject to property and sales taxes.

#### *Transportation Infrastructure*

Section 2.2 of the IGA details the improvements to the City's infrastructure intended to support the Proposed Project. The preliminary scope of the improvements to City infrastructure includes: (1) construction of a fourth lane on the east side of Willowbrook Road between Staline Road and Colley Road; (2) reconstruction of Colley Road to meet applicable design standards and as deemed appropriate by the City and Nation, including the installation of curb and gutter; and (3) construction of traffic signalization in the vicinity of the Beloit Site as warranted by applicable design standards. The cost of necessary improvements will be financed and paid for exclusively by the City and will be subject to repayment from the Nation to the City pursuant to a guaranteed minimum payment and an infrastructure down payment.

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<sup>89</sup> FEIS § 4.7.

<sup>90</sup> See Letter to Timothy LaPointe, Regional Director, Midwest Region, from Lori S. Curtis Luther, City Manager, City of Beloit (April 4, 2019).

### ***Mitigation of Economic Impacts on Local Governmental Services***

The Nation anticipates that operation of the Proposed Project, while less than significant, would nevertheless result in incremental costs to the surrounding community. The Nation will address all such costs through the IGA. The Impact Payments made by the Nation, listed in Section 3.1 of the IGA, will reimburse the City for lost taxes as a result of taking the Beloit Site into trust. In addition, the Proposed Project will generate substantial tax revenue for state and local government from economic activity associated with construction and operation. Local governments likely to experience economic activity as a result include the City of Beloit, Rock County, the City of South Beloit, and Winnebago County, Illinois. The Proposed Project would generate \$3.3 million in retail sales tax, \$20.9 million in revenue sharing with state and local governments, \$35.6 million in direct state and local taxes, \$5.89 million in indirect state and local taxes, and \$5.98 million in induced state and local taxes.<sup>91</sup> An additional \$1.5 million is projected for state and local governments from hotel tax.

### ***Conclusion***

We find that the Nation has submitted the required information regarding anticipated costs of impacts to the surrounding community and has identified sources of revenue to mitigate them.

#### ***(e) Anticipated cost if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.***

The Nation intends to apply its existing responsible gambling and self-limitation policies as further described below:

#### ***Responsible Gambling Policies***

Because three existing casinos are located within the 120-minute drive market area surrounding the Beloit Site, there would be no anticipated significant increase to problem gambling rates in the local area. The Nation will implement the programs and policies currently in effect at its other gaming facilities for the assessment, identification, and assistance of compulsive gamblers. Additionally, the Nation would make annual payments to the State, Rock County, and local governments per its Tribal-State Compact. In accordance with Section 3.8 of the IGA, the Nation will provide support for public services and community benefits, including problem gambling services, throughout the region. Furthermore, the Nation currently contributes to the Wisconsin Council on Problem Gambling, which is a non-profit organization dedicated to providing resources, public awareness, and education on problem gambling.

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<sup>91</sup> FEIS § 4.7.



- (f) *If a nearby Indian Tribe has a significant historical connection to the land then the impact on that tribe's traditional cultural connection to the land.*

The BIA mailed consultation letters on September 29, 2015, to 12 potentially interested tribes as listed on the National Park Service's Native American Consultation Database to consult on cultural resources in accordance with Section 106 of the NHPA.<sup>92</sup> These tribes included: Forest County Potawatomi Community, Citizen Potawatomi Nation, Flandreay Santee Sioux of South Dakota, Winnebago Tribe of Nebraska, Upper Sioux Community, Spirit Lake Tribe, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Santee Sioux Nation, Prame Island Indian Community, Prairie Band Potawatomi, and Lower Sioux Indian Community. The BIA received no responses.

- (g) *Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and intergovernmental agreements with affected local governments.*

The Proposed Project has the support of numerous local officials, other tribes, and local businesses. The Nation has or will enter into a number of agreements with local governments, including an Intergovernmental Agreement with the City of Beloit and Rock County, a Municipal Services arrangement with the City and County, and a Development Agreement for city improvements to the infrastructure.

The Nation submitted the required information under 25 C.F.R. § 292.18(g) regarding other information that may provide a basis for a determination that the Proposed Project would or would not be detrimental to the surrounding community.

### **Conclusion: Detriment to Surrounding Community**

The FEIS considered reasonable alternatives and analyzed the potential impacts. The FEIS found that the issuance of a Secretarial Determination and the development of the Proposed Project would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act. Further, the City of Beloit has expressed its support for the Nation's proposal, and is committed to continue working with the Nation. This support from the local government is strong evidence of the lack of detriment to the surrounding community. The Proposed Project would have beneficial impacts to the surrounding community. The Proposed Project incorporates best management practices and mitigation measures, which limit potential negative impacts to less than significant.

Based on the Nation's application and supporting documents, the FEIS and associated studies, the consultation process, submissions by citizens and local governmental representatives, and the entire record before us, we conclude that gaming at the Beloit Site would not be detrimental to the surrounding community.

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<sup>92</sup> FEIS, Appendix F.

## CONSULTATION

Section 292.19 provides that in conducting the consultation process:

- (a) *The Regional Director will send a letter that meets the requirements in Section 292.20 and that solicits comments within a 60-day period from: (1) Appropriate State and local officials; and (2) Officials of nearby Indian Tribes.*

On March 13, 2019, the BIA sent Consultation Notices to appropriate state and local officials within a 25-mile radius of the Proposed Project, as required by the Department's regulations.<sup>93</sup> The list of recipients included the governors of Wisconsin and Illinois, the Rock County Administrator, and the Beloit City Manager. The Consultation Notice and list of recipients is included as Attachment III. There are no nearby Indian tribes located within a 25-mile radius of the Proposed Project.<sup>94</sup> The BIA received responsive comments from the following local governments and council:

- City of Beloit, Wisconsin
- City of Janesville, Wisconsin
- Town of Richmond, Wisconsin
- City of Rockford, Illinois
- Region 1 Regional Planning Council (comprised of local and regional governments in Illinois)

Of the five responses, the three Wisconsin municipalities supported the Proposed Project, noting the positive economic impact, increased employment, economic growth, and a strengthened community partnership that will benefit the greater Beloit community.<sup>95</sup> For example, the City Manager of Beloit stated:

Please note that the City of Beloit has carefully weighed [the potential impacts to the City] and strongly believes that the positive economic impact, increased employment, both direct and indirect economic growth and strong community partnership of the

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<sup>93</sup> See Consultation Notice in Accordance with Section 20 of the Indian Gaming Regulatory Act for the Ho-Chunk Nation of Wisconsin's Keecak Casino Project (March 13, 2019). "Appropriate state and local officials" are defined as the "governor of the state and local officials within a 25-mile radius of the proposed gaming establishment." 25 C.F.R. § 292.2.

<sup>94</sup> "Nearby Indian tribe" is defined as an "Indian tribe with tribal Indian lands located within a 25-mile radius of the proposed gaming establishment, or if the tribe has no trust land, within a 25-mile radius of its governmental headquarters." *Id.*

<sup>95</sup> See Letter to Timothy LaPointe, Regional Director, Midwest Region, from City Manager, City of Beloit (April 4, 2019); Letter to Russel Baker, Bureau of Indian Affairs, from City Manager, City of Janesville (April 22, 2019); Letter to Russel Baker, Bureau of Indian Affairs, from Town Clerk, Town of Richmond (April 29, 2019).

Ho-Chunk Nation all serve to benefit the Beloit community and greater Beloit regional area. We urge the Secretary's approval of this project.<sup>90</sup>

The City of Rockford, Illinois, and the R1 Regional Planning Council opposed the Proposed Project, expressing concerns.<sup>91</sup> Responses to environmental concerns and economic concerns are addressed in detail in the FEIS, the ROD, and this Secretarial Determination. Certain other concerns are addressed below.

### ***Impacts to the Interstate 90 corridor from increased traffic congestion***

WisDOT is currently overseeing the I-39/90 Expansion Project, which extends approximately 45 miles from the Illinois state line to the US 12/18 interchange near Madison. This portion of I-39/90 is currently experiencing significant traffic delays, especially during peak travel times. In its current condition, I-39/90 cannot adequately support the existing traffic volumes, or projected increases, thus resulting in poor traffic flow and increased safety problems. WisDOT plans to reconstruct and expand I-39/90 from four to six lanes and reconfigure 11 interchanges. Due to projected traffic increases in the Janesville area, the Interstate will be expanded to eight lanes for 6.5 miles from Avalon Road north to Interstate 26. Construction of the I-39/90 Expansion Project began in 2015, and is scheduled to be completed in 2022. WisDOT reviewed the addition of a potential future 4th and 5th lane on the I-39/90 southbound lanes adjacent to the Beloit Site, and determined that the expansion would likely require an additional 40-foot right-of-way along the eastern boundary of the Beloit Site. As described in FEIS Section 2.3.1, the Nation has dedicated the eastern 40 feet of the Beloit Site to WisDOT to be kept in fee title and reserved for the potential future expansion of the I-39/90 corridor. *See* FEIS § 4.15.2.

### ***Impacts from increased compulsive and problem gambling***

The Proposed Project is not expected to increase the prevalence of problem gamblers. *See* Section 292.18(e) above. With regard to impacts to Illinois residents, Section 3.8 of the IGA requires the Nation to maintain programs and policies for the assessment, identification, and assistance of compulsive gamblers at the Proposed Project, making them available to all patrons.

### ***Impacts of Illinois Senate bill 690 which allows for gaming expansion in Illinois***

Impacts to and from Illinois Senate bill 690, enacted on June 28, 2019, are considered speculative at this time.

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<sup>90</sup> Letter to Timothy LaPointe, Regional Director, Midwest Region, from Lori S. Curtis Luther, City Manager, City of Beloit (April 4, 2019).

<sup>91</sup> *See* Letter to Timothy LaPointe, Regional Director, Midwest Region, from Thomas P. McNamara, Mayor, City of Rockford (June 19, 2019); letter to Russel Baker, Bureau of Indian Affairs, from Michael Dunn, Jr., Region J Planning Council (May 10, 2019).

***The Proposed Project may do little to relieve local fiscal stress***

The Proposed Project will generate substantial tax revenue for state and local government from economic activity associated with construction and operation. Local governments likely to experience economic activity as a result include the City of Beloit, Rock County, the City of South Beloit, and Winnebago County, Illinois. The Proposed Project would generate \$3.3 million in retail sales tax, \$20.9 million in revenue sharing with state and local governments, \$35.6 million in direct state and local taxes, \$5.89 million in indirect state and local taxes, and \$5.98 million in induced state and local taxes.<sup>98</sup> An additional \$1.5 million is projected from hotel tax based on the room revenue forecast. Local jurisdiction can use this revenue to address local fiscal stress. See Section 292.18(d) above.

***The Proposed Project will negatively impact other casinos.***

Anticipated impacts to other gaming facilities are likely to diminish after the first year of operation, once local residents experience the casino and return to typical spending patterns. Therefore, substitution effects resulting from the Proposed Project to competing gaming facility revenue would not significantly impact them. See Section 292.18(c) above.

***The Department must consider the location of the project relative to state boundaries, whether or not the Nation was under federal jurisdiction when the IRA was enacted in 1934, and the Nation's need for additional land***

These issues will be addressed by the Department when it considers the Nation's application to transfer the Beloit Site into trust pursuant to the Indian Reorganization Act, 25 U.S.C. § 5801, and its implementing regulations at 25 C.F.R. Part 151. The Department will make a final decision on the Nation's application after the Governor of Wisconsin makes a determination whether to concur in this Secretarial Determination. The Department's regulations allow a governor one year to respond from the date of the Secretary's request for concurrence to respond. The Secretary may grant an extension of up to 180 days upon request of the applicant tribe or the governor.<sup>99</sup>

## **CONCLUSION**

We have completed our review and analysis of the Nation's application, including submissions by state and local officials and the public. For the reasons discussed above, we have determined that gaming on the Beloit Site would be in the best interest of the Nation and its members, and would not be detrimental to the surrounding community, including nearby Indian tribes.

The Department respectfully requests that you concur in this Determination, pursuant to 25 U.S.C §2719 (b)(1)(A). Under Department's regulations at 25 C.F.R. § 292.23, you have one year from the date of this letter to concur in this Determination. You may request an

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<sup>98</sup> FEIS § 4.7.

<sup>99</sup> See 25 C.F.R. § 292.23.

extension of this period for up to 180 days. The Nation may also request an extension of this period for up to 180 days.

If you concur in this Determination, the Nation may use the Beloit Site for gaming purposes after it has complied with all other requirements in IGRA and its implementing regulations, and upon its acquisition in trust. If you do not concur in this Determination, the Nation cannot use the Beloit Site for gaming purposes.

This letter and its attachments contain commercial and financial information that is protected from release under Exemption 4 of the Freedom of Information Act (FOIA). Due to the sensitive nature of this information, it is the Department's practice to withhold it from the public under FOIA, and to contact the Nation any time a member of the public requests it. I request that this information be similarly withheld by the State under its equivalent provisions.

Thank you for your consideration of this important matter. Copies of the record are included for your review and consideration.

Sincerely,



Tara Sweeney  
Assistant Secretary - Indian Affairs

Enclosures