



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

**DEC 20 2011**

Honorable Rick Snyder  
Governor of Michigan  
Lansing, Michigan 48909

Dear Governor Snyder:

On March 29, 2006, the Keweenaw Bay Indian Community of Michigan (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to acquire approximately 80 acres of land commonly referred to as the "Airport Parcel" (Site) in trust on its behalf in Negaunee Township, Marquette County, Michigan. The Tribe submitted its application pursuant to the Indian Reorganization Act (IRA), 25 U.S.C. § 465, as amended by the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202. The purpose of the proposed trust acquisition is to establish a class III gaming facility (Airport Facility) pursuant to the Indian Gaming Regulatory Act's (IGRA) Secretarial Determination exception.<sup>1</sup>

The IGRA generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions and exemptions. One exception, known as the Secretarial Determination exception, permits a tribe to conduct gaming on lands acquired after that date 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 newly acquired lands would be in the best interest of the Indian tribe and its members; and
2. gaming on the newly acquired 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.

In May 2008, the Department of the Interior (Department) published new regulations in the *Federal Register* to implement the IGRA exceptions at 25 U.S.C. § 2719, titled, "Gaming on Trust Land Acquired after October 17, 1988" (Part 292 regulations), which went into effect August 25, 2008. The Part 292 regulations articulate standards that the Department follows in interpreting the various exceptions to the gaming prohibition on newly-acquired trust lands.

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<sup>1</sup> 25 U.S.C. § 2719(b)(1)(A).

Prior to acquiring land in trust on behalf of the Tribe, I must first determine that gaming on the Site would be in the best interest of the Tribe and its citizens, and would not be detrimental to the surrounding community, and you must concur in this determination.

I have completed my review of the Tribe's application under 25 U.S.C. § 2719(b)(1)(A), including submissions by State and local officials, and officials of nearby Indian tribes, and have determined that gaming on the Site in Marquette County would be in the best interest of the Tribe and its citizens, and would not be detrimental to the surrounding community.<sup>2</sup> 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).

The Part 292 Regulations provide:

(a) If the Governor provides a written non-concurrence with the Secretarial Determination:

(1) The applicant tribe may use the newly acquired lands only for non-gaming purposes; and

(2) If a notice of intent to take the land into trust has been issued, then the Secretary will withdraw that notice pending a revised application for a non-gaming purpose.

(b) If the Governor does not affirmatively concur in the Secretarial Determination within one year of the date of the request, the Secretary may, at the request of the applicant tribe or the Governor, grant an extension of up to 180 days.

(c) If no extension is granted or if the Governor does not respond during the extension period, the Secretarial Determination will no longer be valid.

25 C.F.R. § 292.23.

Should you concur in this determination, I will proceed with the final review of the Tribe's application to acquire the Site in trust on its behalf. The Tribe may use the Site for gaming purposes only after it is acquired into trust.

## **I. BACKGROUND**

The Keweenaw Bay Indian Community is the modern-day successor to the L'Anse and Ontanagon Bands of Lake Superior Chippewa Indians, located along Lake Superior in northern Michigan. The Tribe has approximately 3,313 citizens, of which approximately 284 live in

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<sup>2</sup> I am authorized to make this determination on behalf of the Secretary pursuant to authority delegated to me under 209 DM 8.1 – Secretarial Officers, ASIA Exhibit 1.

Marquette County. The Tribe's government is headquartered in Baraga, Michigan, and operates under a constitution adopted pursuant to the IRA in 1936.<sup>3</sup>

The Tribe's land-base consists of approximately 6,223 acres of land held in trust by the United States, in addition to approximately 3,920 acres of fee land, within its reservation. The Tribe is also the beneficial owner of 22 acres of land held in trust by the United States in Marquette County, in addition to approximately 160 acres of land owned in fee title within Marquette County.<sup>4</sup>

#### **A. Treaty Rights**

In 1842, the Tribe entered into the Treaty of LaPointe (7 Stat. 591) (Treaty of 1842), by which it ceded vast portions of Michigan's Upper Peninsula and northern Wisconsin. The Tribe entered into a subsequent treaty with the United States in 1854 (10 Stat. 1109) (Treaty of 1854), ceding most of the lands in northeast Minnesota. The Tribe retained usufructuary hunting and fishing rights in its ceded territory, pursuant to the Treaty of 1854, which was recognized in *People v. Jondreau*, 348 Mich. 539; 185 N.W.2d. 375 (1971). The Site is located within the lands ceded by the Tribe under the Treaties of 1842 and 1854, and within the territory where the Tribe's citizens currently exercise rights reserved under those treaties.

#### **B. Existing Gaming Facilities**

The Tribe currently operates two class III gaming facilities, including the Ojibwa I Casino within its reservation in Baraga County, Michigan, and the Ojibwa II Casino in Marquette County. The Ojibwa II Casino is located in a residential neighborhood within Chocolay Township, Michigan (Chocolay Facility) approximately 88 driving miles from the Tribe's headquarters in Baraga, Michigan.

The United States acquired the land in Chocolay Township in trust for the Tribe's benefit in 1990. The Tribe opened a class II gaming facility on that parcel in 1992, later converting it to a class III gaming facility in 1994.<sup>5</sup> These actions gave rise to litigation between the Tribe, the Department, and the State of Michigan (State) concerning a number of issues, including the applicability of IGRA and the Tribe's 1993 gaming compact with the State.<sup>6</sup>

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<sup>3</sup> Keweenaw Bay Indian Community Application for a Two Part Secretarial Determination Under Section 20(b)(1)(A) of IGRA at 3-4 (March 29, 2006).

<sup>4</sup> *Id.* at 3-5.

<sup>5</sup> See *Keweenaw Bay Indian Community v. United States*, No. 2:94-CV-262, Consent Judgment and Order of Dismissal (W.D. Mich. Feb. 2, 2001) (Consent Judgment), incorporating Agreement and Stipulation for Entry of a Consent Judgment (Nov. 13, 2000) (Consent Agreement).

<sup>6</sup> Section 9 of that gaming compact provides:

An application to take land into trust for gaming purposes pursuant to §20 of IGRA (25 U.S.C. §2719) shall not be submitted to the Secretary of the Interior in the absence of a prior written agreement between the tribe and the states' other federally recognized Indian tribes that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subject of the §20 application.

Based upon a 1994 application by the Tribe, the Department issued a Secretarial Determination on May 9, 2000, that the Chocoday Facility was in the best interest of the Tribe and its citizens, and was not detrimental to the surrounding community.<sup>7</sup>

In 2000, the Tribe, the Department, and the State resolved their litigation through the entry of the Consent Judgment, in which the State concurred in the Department's determination regarding the Chocoday Facility. The Consent Judgment provides:

Based on a thorough understanding of the relevant facts, the Governor also believes that the proposed relocation of the [Chocoday Facility] to the Airport Parcel likely is in the best interest of the [Tribe] and is not detrimental to the surrounding community. In the event that the Secretary determines that relocation of the Community's gaming operation from [Chocoday Township] to the Airport Parcel is in the best interest of the [Tribe] and its members and is not detrimental to the surrounding community, the State, including specifically the Governor, agrees to give due consideration to any such determination.<sup>8</sup>

In exchange, the Tribe agreed:

[I]f the Secretary determines pursuant to the [Airport Parcel trust acquisition application] that relocation of the Casino from [Chocoday Township] to the Airport Parcel is in the best interest of the Tribe and its members and is not detrimental to the surrounding community, and if the State, including specifically the Governor, concurs in that determination, the [Tribe] will cease gaming operations at the [Chocoday Facility] as soon as gaming commences on the Airport Parcel.<sup>9</sup>

Furthermore, the Consent Judgment provides:

The State and the [Tribe] agree that Section 9 of the Compact is not implicated by the continued operation of the [Chocoday Facility], or by any future relocation of that Casino to the Airport Parcel. In the event that it might be determined that Section 9 of the Compact is implicated by the continued operation of the Casino at either location, the State, including specifically the Governor, hereby waives Section 9 of the Compact and agrees not to take any

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Compact between the Keweenaw Bay Indian Community and the State of Michigan Providing for the Conduct of Class III Gaming by the [Tribe] (1993). The Department determined that this section was inapplicable to the existing trust parcel on which the Tribe opened the Chocoday Facility. See Consent Agreement at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 12.

action to enforce, or aid in the enforcement of, Section 9 of the Compact.<sup>10</sup>

The Tribe's proposed gaming facility on the Airport Parcel would consist of approximately 135,000 square feet and include the capacity for 600 slot machines and up to 20 gaming tables. Also included will be a smoke-free game room, a restaurant, other food service options, and a cabaret/night club.

## **II. REVIEW OF THE TRIBE'S APPLICATION PURSUANT TO IGRA AND 25 C.F.R. PART 292 SUBPART C**

Section 2719 of IGRA generally prohibits gaming on land acquired in trust after October 17, 1988, subject to several exceptions and exemptions. The Secretarial Determination exception permits gaming if the Secretary determines that: (1) gaming on the newly acquired lands would be in the best interest of the tribe and its members; (2) would not be detrimental to the surrounding community; and (3) only if the Governor of the State in which the gaming establishment is located concurs in the Secretary's determination. The Part 292 regulations, quoted below, contain factors that I must consider in making this determination under Section 2719 of IGRA.

### **SUBPART C – SECRETARIAL DETERMINATION AND GOVERNOR'S CONCURRENCE**

**§ 292.13 When can a tribe conduct gaming activities on newly acquired lands that do not qualify under one of the exceptions in subpart B of this part?**

**A tribe may conduct gaming on newly acquired lands that do not meet the criteria in subpart B of this part only after all of the following occur:**

**(a) The tribe asks the Secretary in writing to make a Secretarial Determination that a gaming establishment on land subject to this part is in the best interest of the tribe and its members and not detrimental to the surrounding community.**

On March 24, 2006, the Tribe approved Resolution No. KB-1461-2006 requesting the Secretary to accept an 80-acre parcel located in Negaunee Township, Marquette County, Michigan into trust for the benefit of the Tribe, and to make a determination that gaming on the Site is in the best interest of the Tribe and its citizens, and is not detrimental to the surrounding community.<sup>11</sup>

On March 29, 2006, the Tribe submitted a fee-to-trust application<sup>12</sup> to the Midwest Regional Office (MRO) of the BIA requesting that the United States acquire the Site in trust for its benefit in accordance with the requirements of the IRA and 25 C.F.R. Part 151. The statutory authority is the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202, which amended Section 5 of the IRA, 25 U.S.C. § 465.

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<sup>10</sup> *Id.* at 6.

<sup>11</sup> MRO Binder 1 of 2, Tab 1

<sup>12</sup> *Id.*

**(b) The Secretary consults with the tribe and appropriate State and local officials, including officials of other nearby Indian tribes.**

See Section 292.19 at Page 21.

**(c) The Secretary makes a determination that a gaming establishment on newly acquired lands would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community.**

See § 292.17 at page 9, and § 292.18 at page 16.

**(d) The Governor of the State in which the gaming establishment is located concurs in the Secretary's Determination (25 U.S.C. 2719(b)(1)(A)).**

The request seeking your concurrence is presently before you.

#### **§ 292.14 Where must a tribe file an application for a Secretarial Determination?**

The Tribe submitted its application for a Secretarial Determination with the MRO, which is the BIA Regional Office having responsibility over the land where the gaming establishment is to be located.

#### **§ 292.15 May a tribe apply for a Secretarial Determination for lands not yet held in trust?**

The Part 292 regulations provide that a tribe may apply for a Secretarial Determination at the same time that it requests the Department to acquire land in trust on its behalf.<sup>13</sup>

The Department's regulations governing the fee-to-trust process at 25 C.F.R. Part 151 requires an applicant tribe to set forth the purpose for the proposed trust acquisition. 25 C.F.R. §§ 151.10 and 151.11. For discretionary acquisitions, the Secretary must determine that the proposed purpose of the trust acquisition is lawful.

Where a tribe seeks to have land acquired in trust on its behalf to conduct gaming under IGRA's Secretarial Determination exception, the Secretary must determine, and the Governor must concur, that the conduct of gaming on those lands would be in the best interest of the tribe and its citizens, and would not be detrimental to the surrounding community.

The purpose of the proposed acquisition is only lawful when the Secretary makes this determination, and the Governor concurs. Therefore, when a tribe seeks to have land acquired in trust on its behalf for off-reservation gaming, the Secretarial Determination necessarily precedes the completion of the trust acquisition.

#### **§ 292.16 What must an application for Secretarial Determination contain?**

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<sup>13</sup> 25 C.F.R. § 292.15.

**A tribe's application requesting a Secretarial Determination under §292.13 must include the following information:**

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

Keweenaw Bay Indian Community of Michigan  
16429 Bear Town Road  
Baraga, Michigan 49908  
(906) 353-6623

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

The Site is located in Negaunee Township, Marquette County, Michigan, and is described as follows:<sup>14</sup>

Part of the South ½ of the Southwest ¼ of Section 22, the Northwest ¼ of the Northwest ¼ of Section 27, and the East ½ of the Northeast ¼ of Section 28, all in Town 48 North, Range 26 West, Negaunee Township, Marquette County, Michigan and more fully described as commencing at the corner common to Sections 21, 22, 27 and 28; thence, N01°04'57"W, 1319.68' to the South 1/16 line of said Section 22; thence N89°58'03"E, 550.16' along said South 1/16 line to the POINT OF BEGINNING; thence continuing N89°58'03"E, 1655.65' to the Westerly Right-of-Way (R/W) line of County Road 'JJO'/'JJN', commonly known as Snowfield Road (66'R/W); thence Southeasterly, 380.54' along the arc of a 357.00' radius R/W curve to the right, having a delta angle of 61°04'26" and a chord bearing S00°29'15"E, 362.78' to a Point of Tangency (P.T.) on said Westerly R/W line of Snowfield Road; thence S30°02'58"W, 525.75' along said Westerly R/W line to a bend; thence S34°10'08"W, 46.19' along said Westerly R/W line to a Point of Curvature (P.C.); thence Southwesterly, 395.56' along the arc of a 1042.18' radius R/W curve to the left, having a delta angle of 21°44'48" and a chord bearing S23°17'44"W, 393.19' to a P.T.; thence S12°25'21"W, 90.08' along said Westerly R/W line to the South line of said Section 22; thence S89°28'58"W, 421.49' along said South section line to the West 1/16 line of said Section 27; thence S00°39'21"E, 594.57' along said West 1/16 line; thence S76°41'54"W, 1484.07'; thence S24°14'33"E, 361.60'; thence S49°44'13"W, 413.98'; thence N40°30'25"W, 201.51'; thence N20°42'19"W, 259.90'; thence S76°43'09"W, 257.22'; N13°14'21"W, 274.74'; thence N76°11'29"E, 18.06'; thence N13°05'28"W, 392.25' to a point 33' Southerly of the centerline of the taxiway; thence N76°41'53"E, 1507.90' parallel with the

<sup>14</sup> MRO Binder 1 of 2, Tab 2

centerline of said taxiway; thence N01°04'57"W, 1503.57' parallel with the West line of said Section 22 to the POINT OF BEGINNING.

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

The Tribe currently owns the Site in fee. The commitment for title insurance prepared by Old Republic National Title Insurance Company, dated December 2, 2010, reflects the title to be vested in the Tribe.<sup>15</sup>

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

The Site is located approximately 69.9 driving miles<sup>16</sup> from the L'Anse Reservation Tribal headquarters and approximately 18.2 driving miles<sup>17</sup> from the existing Chocoley Facility, which is located on lands held in trust for the benefit of the Tribe.

**(e) Information required by § 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.**

See § 292.17 at Page 9.

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

See § 292.18 at Page 16.

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

On March 24, 2006, the Tribe approved Resolution No. KB-1461-2006 requesting the Secretary to accept into trust for the benefit of the Tribe an 80-acre parcel located in Negaunee Township, Marquette County, Michigan, and to make a determination that gaming on the Site is in the best interest of the Tribe and its citizens and would not be detrimental to the surrounding community.<sup>18</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.**

The Tribe's gaming ordinance was approved by the National Indian Gaming Commission (NIGC) on September 13, 2006.<sup>19</sup>

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<sup>15</sup> MRO Binder 1 of 2, Tab 2

<sup>16</sup> MRO Binder 1 of 2, Tab 2 (Google Map)

<sup>17</sup> *Id.*

<sup>18</sup> MRO Binder 1 of 2, Tab 1

<sup>19</sup> MRO Binder 1 of 2, Tab 5

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

On November 7, 1936, the Tribe's Constitution and Bylaws were adopted by the L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa Indians. These governing documents were approved by the Secretary on December 17, 1936.<sup>20</sup>

**(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 Tribe has an approved and effective tribal-state gaming compact with the State of Michigan, which was originally intended to expire on November 30, 2013.<sup>21</sup> Pursuant to the Consent Judgment, the State has agreed to forbear on exercising its right to renegotiate or terminate this compact until November 30, 2022.<sup>22</sup>

**(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.**

Not applicable.

**(l) A copy of the existing or proposed management contract required to be approved by the National Indian Gaming Commission under 25 U.S.C. 2711 and [25 C.F.R. Part 533], if any.**

According to the Tribe, it will manage its own facility. Therefore, it will not execute a management agreement.<sup>23</sup>

**§ 292.17 How must an application describe the benefits and impacts of the proposed gaming establishment to the tribe and its members?**

To satisfy the requirements of § 292.16(e), 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.**

On November 24, 2010, the Tribe submitted a Business Plan (Plan) pursuant to 25 C.F.R. § 292.17 and 25 C.F.R. § 151.11,<sup>24</sup> which provides an analysis of the anticipated economic benefits associated with relocating the operations of the Chocolate Facility to the Site located in Negaunee Township, Michigan. The Plan provides an explanation of the business operations of the Airport Facility, a Market and Competition Feasibility Study, financial data, and other

<sup>20</sup> MRO Binder 1 of 2, Tab 3

<sup>21</sup> MRO Binder 1 of 2, Tab 4

<sup>22</sup> Consent Agreement at 13.

<sup>23</sup> MRO Binder 1 of 2, RD Recommendation, p. 4

<sup>24</sup> MRO Binder 1 of 2, Tab 8

supporting documents. The business operation statement in the Plan provides a general overall explanation of the proposed operation.

### Class III- Airport Facility Income Statement<sup>25</sup>

#### Net Income:

Year 1	\$7,844,479
Year 2	\$7,632,543
Year 3	\$6,155,667
Year 4	\$8,286,009
Year 5	\$9,138,287

#### Cash Flow available to Tribe:

Year 1	\$8,514,479
Year 2	\$8,302,543
Year 3	\$5,612,667
Year 4	\$7,743,009
Year 5	\$8,345,287

#### Fixed Asset Investment

Site work and Buildings <sup>26</sup>	\$14,043,965
Furniture, Fixtures & Equipment <sup>27</sup>	\$ 4,098,500

#### Debt Repayment Schedule – Wells Fargo and PNC Bank<sup>28</sup>

Loan	\$15,000,000
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#### **(b) Projected tribal employment, job training, and career development.**

The Tribe reports that it has approximately 3,313 citizens,<sup>29</sup> and that approximately 1,535 citizens live in its service area. Baraga, Ontonagon, Houghton and Keweenaw Counties are known as the Community's Contract Health Services Delivery Area."<sup>30</sup> Approximately 63 tribal citizens live in tribal housing units. The Tribe employs approximately 347 tribal citizens: 172 by the tribal government; 101 by its two gaming facilities (Ojibwa I and Ojibwa II Casinos); and 74 by other tribal businesses.<sup>31</sup>

<sup>25</sup> MRO Binder 1 of 2, Tab 9

<sup>26</sup> MRO Binder 2 of 2, Tab 4

<sup>27</sup> MRO Binder 2 of 2, Tab 6

<sup>28</sup> MRO Binder 2 of 2, Tab 7 & 8

<sup>29</sup> MRO Binder 1 of 2, RD Recommendation, p. 5

<sup>30</sup> MRO Binder 1 of 2, RD Recommendation, p. 8

<sup>31</sup> MRO Binder 1 of 2, RD Recommendation, p. 5

The Chocloy Facility employs 158 people: 97 are full-time employees; 61 are part-time employees. Of these employees, 26 are tribal citizens.<sup>32</sup>

Given the short distance between the existing Casino and the Site, the Tribe anticipates that a substantial number of the Chocloy Facility employees will be employed at the Airport Facility. In its application, the Tribe states that it will need to hire an additional 60 employees for the Airport Facility operations, which will include approximately 10 tribal citizens.<sup>33</sup>

Revenues from the Airport Facility will enhance the Tribe's ability to provide educational and training opportunities to its tribal citizens, enabling those citizens to pursue employment opportunities that are not affiliated with gaming or tribal governmental services. These opportunities will, in turn, broaden employment and career prospects for the Tribe's citizens.

Finally, the Airport Facility would be located in relatively close proximity to the Tribe's existing community and, in fact, would be closer to the Tribe's existing reservation than the Chocloy Facility. Moreover, the Airport Facility would be located in an area where many tribal citizens live and do business today. The employment opportunities generated by the Airport Facility will also provide an opportunity for tribal citizens living far away to return to their community. All of these factors are consistent with our overall policy of self-determination, and will help correct the deep impacts of previous Federal Indian policy eras that encouraged tribal citizens to leave their communities.

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

The Tribe is attempting to diversify its economy and bring added tourism to the reservation. It has initiated a restoration of the tribally-owned Sand Point Lighthouse, and is working to restore the Keweenaw Bay shoreline to open it up to the public for camping, shoreline access, and tourism.<sup>34</sup> The Airport Facility will provide the Tribe with revenues that will allow it to complete these efforts, potentially increasing tourism in the local area.

The Tribe's application includes a Relocation Feasibility Analysis (Report) that was prepared by Gaming Market Advisors (GMA) in August of 2010.<sup>35</sup> The Report's projected tourism impact is stated as follows:

*GMA determined that there are 993 hotel rooms in the Marquette market that will serve to house potential patrons for the Project. Based on historical occupancy trends, it was estimated that these rooms would operate at 48% occupancy generating 173,974 room nights of demand. GMA estimates that the existing casino will capture approximately 7.5% of demand with an average win per room of \$75, generating \$978,000 of gaming revenue in 2014. Should the casino be relocated to the [Airport Facility], GMA*

<sup>32</sup> MRO Binder 1 of 2, RD Recommendation, p. 6

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

<sup>34</sup> MRO Binder 2 of 2, Tab 1, p. 7

<sup>35</sup> MRO Binder 1 of 2, Tab 9

*estimates that the Project will capture 15.0% of demand with an average win per room of \$85, generating \$2.2 million in gaming revenue in 2014. Based on these calculations, GMA estimates that the [Airport Facility] will generate an incremental \$2.2 million gaming revenue from the tourism market.*

The projected economic benefits resulting from tourism are estimated at an incremental \$1.2 million in gaming revenue from the tourism market.<sup>36</sup>

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

The primary purpose of Indian gaming, under IGRA, is to generate revenues for tribal governments and advance the social and political development of tribal nations. The net income from gaming at the Airport Facility will greatly benefit the Tribe by stimulating tribal economic development, promoting tribal self-sufficiency, and providing resources for the development of a strong tribal government.

On October 20, 2005, the Tribe's Council approved a Statement of the Community Values, Visions and Goals of the Tribe, which formed a part of the Tribe's 2006 Comprehensive Strategic Plan. The Statement sets forth a variety of goals for the improvement and advancement of the Tribe.<sup>37</sup> These goals include:

- (1) the encouragement and support of strong families;
- (2) the strengthening of tribal sovereignty;
- (3) the preservation of tribal language, culture and tradition;
- (4) the increased employment of tribal citizens and the diversification of the tribal economy;
- (5) the expansion and improvement of healthcare and the promotion of healthy lifestyles;
- (6) the expansion of educational opportunities for children and adults, and the increase in educational and vocational training levels within the Community;
- (7) the increased protection and preservation of the natural environment;
- (8) the expansion and improvement of mentoring and other programs and services for youth;
- (9) the improvement and expansion of services for the elderly;
- (10) the increase of community safety by reducing the occurrences of domestic violence and drug and alcohol abuse, and by other means;
- (11) the promotion of strong and ethical leadership within tribal government; and
- (12) the promotion of mutual respect and a sense of community within the Tribe.

The Tribe will use revenues generated by the Airport Facility to advance these objectives.

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<sup>36</sup> MRO Binder 2 of 2, Tab 2, p. 27

<sup>37</sup> MRO Binder 1 of 2, Tab 10

Increased tribal income will allow the Tribe to provide a variety of much needed social, housing, governmental, administrative, educational, health and welfare services to its citizens. This new income will expand and improve existing tribal governmental operations by funding additional staff and upgrading equipment and facilities. In turn, this will lead to increased professional employment opportunities for tribal citizens and incentivize the pursuit of higher education.

The tribal income also will provide capital for other non-gaming economic development and investment opportunities, including investments in businesses owned by tribal citizens, allowing the Tribe to diversify its holdings over time. Overall, this development will improve the quality of life of tribal citizens and strengthen the viability of the Tribe's government and economy.

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

Letters of support from the townships illustrate that the Airport Facility will create a positive relationship between the tribal and non-tribal communities by creating jobs in the Marquette area, and leading to the contribution of funds from the Tribe to the local community from gaming revenues.<sup>38</sup> On May 23, 2005, the Marquette County Board of Commissioners stated that, "[a] casino adds value to the multi-use development and helps ensure the property redevelopment is successful.

Negaunee Township, in which the Airport Facility would be located, has submitted several letters to the Department regarding the Tribe's application. On October 4, 2006, Negaunee Township stated that:

The Tribe has been a responsible member of the Marquette County community and we look forward to working with them to fulfill their promises to move the casino forward from its current location. The Township has enjoyed working with the Tribe in their efforts to relocate the casino to the Site, and we look forward to a positive relationship with the Tribe once the relocation has been accomplished. The Airport Facility will help to spur the revitalization of that area and create new jobs for local residents. It is a welcome development that will benefit Negaunee Township and, indeed, all of Marquette County.<sup>39</sup>

Finally, Chocolay Township, in which the Chocolay Facility lies, has expressed support for the Tribe's application on several occasions. On August 16, 1999, Chocolay Township's Board of Trustees approved a resolution noting their opposition to the Chocolay Facility's location "in a residentially developed and zoned area of the Township," and "support[ing] the Keweenaw Bay Indian Community's efforts to relocate their Ojibwa II Casino...to a more compatible commercial location."<sup>40</sup> In 2002, Chocolay Township issued a letter to the Department reiterating its support for the Tribe's "efforts to relocate it's [sic] facilities to a more suitable location." It also noted that, "Chocolay Township desires that the Casino indeed be retained in

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<sup>38</sup> MRO Binder 1 of 2, Tab 15

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

<sup>40</sup> Resolution of the Charter Township of Chocolay (August 16, 1999).

the Marquette region if located in a recognized commercial area; with appropriate supporting infrastructure.”<sup>41</sup>

These letters, from the local units of government directly affected by the Tribe’s application, indicate that the Tribe’s proposal would improve its relationship with local communities.

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

The Tribe has not identified any adverse impacts to itself or its citizens from the operation of the Airport Facility.

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

The Site is located approximately 70 driving miles from the Tribe’s headquarters in Baraga, Michigan, and approximately 18.2 driving miles from the Tribe’s trust land where the Chocolay Casino is located.<sup>42</sup> The Airport Facility would be 18.2 miles closer to the Tribe’s government headquarters than its existing Chocolay Facility.

**(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.**

According to the commitment of title insurance prepared by Old Republic National Title Insurance Company dated December 2, 2010, title is vested in the Tribe.<sup>43</sup>

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

The IGRA 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. Nevertheless, 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 significant factor in determining whether gaming on the proposed site would be in the best interest of the tribe and its citizens.

The Department’s regulations define the term “significant historical connection” as one in which “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” 25 C.F.R. § 292.2.

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<sup>41</sup> Letter from Ivan J. Fende, Supervisor of Charter Township of Chocolay to Larry Morrin, BIA Midwest Regional Director (December 17, 2002).

<sup>42</sup> MRO Binder 1 of 2, Tab 2 Google Map

<sup>43</sup> MRO Binder 1 of 2, Tab 2

Subsistence use and occupancy requires something more than a transient presence in an area. "Subsistence" is defined as "a means of subsisting as the minimum (as of food and shelter) necessary to support life."<sup>44</sup>

Originally, the Ojibwe or Chippewa people inhabited all of Michigan, Wisconsin, and Minnesota until the bands were settled on reservations pursuant to a series of treaties, including the Treaties of 1842 and 1854. Author James Mulholland places Indians on the Keweenaw Peninsula as early as 3,000 B.C., noting that "Native Americans mined copper from small pits on the Keweenaw Peninsula of northern Michigan as early as 3000 B.C."<sup>45</sup>

The Airport Facility lies outside of the boundary of the Tribe's existing reservation, but within lands ceded by the Tribe in the Treaty of 1842 and the Treaty of 1854. Through those treaties, the Tribe reserved its rights to continue to engage in hunting, fishing, and gathering within the lands it had ceded.<sup>46</sup> Many of the Tribe's citizens continue to engage in these activities throughout the ceded lands to this day.

In the seminal case of *United States v. Winans*, 198 U.S. 371 (1905), the United States Supreme Court explained that the right to hunt, fish, and gather, "were not much less necessary to the existence of the Indians than the atmosphere they breathed."<sup>47</sup> Thus, there is little doubt that these activities and rights qualify as "subsistence use," within the definition explained above.

In that same decision, the Supreme Court noted that, "[a] treaty was not a grant of rights to the Indians, but a grant of right from them, a reservation of those not granted."<sup>48</sup>

The Tribe's citizens continue to enjoy rights reserved by its predecessors on the Airport Facility lands and areas surrounding the parcel. Historically, the Tribe used and occupied the area of the Airport Facility. The Tribe could not have ceded the lands on which the Airport Facility would be developed, nor could it have reserved usufructuary rights on those lands, unless it first owned such lands. Thus, the record in this instance conclusively demonstrates that the Tribe has a significant historical connection to the Site within the meaning of our Part 292 Regulations.

**(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;**

According to the Tribe, there are no consulting agreements related to this project.

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<sup>44</sup> Webster's New Collegiate Dictionary 1153 (G. & C. Merriam Co. 1979).

<sup>45</sup> James A. Mulholland (1981) *A History of Metals in Colonial America*, University, Alabama: University of Alabama Press, p.41-42.

<sup>46</sup> See, *People v. Jondreau*, 348 Mich. 539; 185 N.W.2d. 375 (1971).

<sup>47</sup> *Winans*, 198 U.S. at 381.

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

**(2) Financial and loan agreements relating to the proposed gaming establishment; and**

Wells Fargo and PNC Bank have agreed to provide financing for the project. The estimated financing is projected to be \$15,000,000.<sup>49</sup>

**(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 Airport Parcel trust application was negotiated in the Consent Judgment entered into in 2001 in *Keweenaw Bay Indian Community v. United States*, No. 2:94-CV-262 (W.D. Mich. Feb. 2, 2001). The Consent Judgment provides that the Tribe would cease gaming operations at its Chocoday Facility, as soon as gaming activities begin at the Airport Facility.<sup>50</sup>

**§ 292.18 What information must an application contain on detrimental impacts to the surrounding community?**

**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).**

On January 4, 2008, the Office of the Assistant Secretary – Indian Affairs issued a Finding of No Significant Impact (FONSI) based on the Environmental Assessment (EA) dated December 2006, for the proposed relocation of the Chocoday Facility to the former Marquette County Airport located in Negaunee Township, Marquette County, Michigan. The proposal includes the trust acquisition of land at the former airport for the purpose of class III gaming, and approval of the proposed class III gaming operation by the BIA for the Tribe pursuant to the issuance of a Secretarial Determination.<sup>51</sup>

The environmental impacts are summarized in the EA:

The proposed action, along with cumulative impacts from operation of an existing business park adjacent to the Airport Parcel, would have significant impacts on traffic flow, wastewater disposal and water supply. The proposed action includes enforceable mitigation measures, including implementing directional crossovers, development of new wastewater treatment infrastructure, and development of new water supply infrastructure; these measures serve to mitigate these impacts to

<sup>49</sup> MRO Binder 2 of 2, Tab 7 & 8

<sup>50</sup> MRO Binder 1 of 2, Tab 6

<sup>51</sup> MRO Binder 1 of 2, Tab 13

less than significant levels. Other impacts are deemed to be less than significant; nevertheless, the Community has agreed to implement additional measures during and following construction to further mitigate impacts of the proposed action. There is no reasonably foreseeable future development or growth requiring additional analysis of indirect or growth-induced effects.

As noted in the FONSI, “none of the agencies with jurisdiction by law (40 C.F.R. 1508.15) or special expertise (40 C.F.R. 1508.26) provided any information during the assessment that indicated that any impacts identified in the EA were unacceptable, unduly intense for the context, in conflict with the intensity criteria (40 C.F.R. 1508.27(b)), not in compliance with environmental requirements, or were otherwise significant.”<sup>52</sup>

By letter dated October 4, 2006, Negaunee Township stated that the operation of the casino at the Site will not be detrimental to the surrounding community. The Township reviewed the draft EA prepared by the Tribe in fulfillment of the NEPA requirements and agreed that it will not significantly impact the local environment. The Township submitted letters to the Tribe indicating its willingness to provide water services, sewage treatment, landfill services, and fire protection services.

The Township further stated that, “we do not anticipate significant impacts on the community and . . . note the Tribe makes semi-annual payments in the amount of 2% of the net win from class III electronic games of chance to the local units of government in the immediate vicinity of the casino. The payments are for impacts associated with the casino. We anticipate those payments will be sufficient for those purposes.”<sup>53</sup>

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

The EA did not identify any changes in the social structure of the surrounding community. Neither the State nor any of the local governments that submitted comments indicated that the proposed Airport Facility would have a detrimental impact on the social structure of the surrounding community. This is consistent with the fact that the proposed Airport Facility would not establish an additional gaming facility within Marquette County, but rather would merely result in the relocation of an existing gaming facility.

**Crime:** The Tribe has executed a “Cross Deputization Agreement” with the Sheriff of Marquette County to promote effective law enforcement for the mutual benefit of the Indian and non-Indian communities in Marquette County, Michigan.<sup>54</sup>

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<sup>52</sup> See FONSI, § 1, p. 2.

<sup>53</sup> MRO Binder 1 of 2, Tab 15

<sup>54</sup> This agreement has been in place since at least 1999. It provides, in part, “Officers of the Sheriff’s Department deputized pursuant to this Agreement shall remain employees of and under the ultimate control of the Sherriff, but shall take supervision and directions from the Tribal Police Department while working within the authority of such deputization.” MRO Binder 1 of 2, Tab 16. Based upon the terms of this agreement, and the fact that it has been in place for more than a decade, I am satisfied that the Tribe will continue to retain ultimate control over the exercise

## Infrastructure and Services

Both the EA and the FONSI explain that mitigation measures will be necessary to reduce the impact of the proposed Airport Facility on existing infrastructure to below significant levels, including the use of directional crossovers and restrictions on routine access in the area of the proposed project.<sup>55</sup>

Municipal Services: The Airport Facility would require additional services such as water service, sewage treatment, landfill services, water & fire services, and a wastewater treatment system. Negaunee Township expressed support for the relocation of the casino, and committed to providing additional services necessary to support the Tribe's proposal.<sup>56</sup> In a submission to the Department, Negaunee Township stated, "we expect...that there will not be a strain on the Township Services. If anything, the reliance on social services offered by local governments should be reduced by the increased employment opportunities."<sup>57</sup>

Housing: Neither the EA nor comments from the State and local governments indicated that the proposed Airport Facility would have a significant impact on housing in the surrounding community. The existing housing stock available in the surrounding community is sufficient for the anticipated increase in employment opportunities associated with the Airport Facility. This is consistent with the fact that the proposed Airport Facility would not establish an additional gaming facility within Marquette County, but rather would result in the relocation of an existing gaming facility.<sup>58</sup>

## Community Character and Land Use Patterns

As a general rule, lands acquired in trust on behalf of an Indian tribe are not subject to state and local land use requirements. Nevertheless, the Secretary will consider the compatibility of a proposed off-reservation gaming facility with local land uses when making a determination as to whether gaming would be detrimental to the surrounding community.

Comments from the local governments indicate that the proposed gaming facility at the Site is compatible with the planned use of the former-airport area, even though the use will offer a new entertainment option to the surrounding community. The change to the community character was not identified as significant in the EA and FONSI.

The Airport Facility would be consistent with Negaunee Township's plans to redevelop the former airport.<sup>59</sup> The Site is zoned for commercial purposes, and the proposed project is consistent with the existing zoning requirements. The County of Marquette continues to support the relocation of the Chocolay Casino to the vacant Site.<sup>60</sup> The County's letter dated May 23, 2005 states, "A casino adds value to the multi-use development and helps ensure the property

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of governmental power on its trust lands in Marquette County.

<sup>55</sup> Environmental Assessment, p. 58-61

<sup>56</sup> MRO Binder 1 of 2, Tab 15

<sup>57</sup> *Id.*

<sup>58</sup> MRO Binder 1 of 2, Appendix R

<sup>59</sup> *Id.*

<sup>60</sup> MRO Binder 1 of 2, Tab 15

redevelopment is successful. The casino will provide jobs for county residents and generate other economic benefits."

Finally, the Tribe's proposed Airport Facility would result in the closure of its existing Chocolay Facility, which is located in a residential area. Closure of that facility would be compatible with surrounding land use. Chocolay Township has expressed its support for the Tribe's proposal for this reason.<sup>61</sup>

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

**Economic Development**

The primary impact on the economic development of the surrounding community will be the Airport Facility itself. The Tribe does not plan additional businesses on the Site, and Marquette County has not developed a specific development plan for the surrounding land. The impacts on economic development in the surrounding community are not specified in the EA or in comments by local governments.

**Income**

The GMA estimates that the Airport Facility will generate \$26 million in gaming revenue in 2014 (the expected first stabilized year of operations) compared to \$18.4 million in gaming revenue if the Chocolay Facility stays in operation.<sup>62</sup>

The increased revenue generated by the proposed Airport Facility would lead to an increased financial contribution from the Tribe to the surrounding local communities through payments it has agreed to make under its class III gaming compact. In addition, the proposed Airport Facility would induce additional spending at small businesses in the surrounding community.

**Employment**

Currently, the Chocolay Casino has 158 employees: 97 are full-time and 61 are part-time; 26 are tribal citizens; and, 132 are non-tribal citizens. Given the short distance between the two locations (18.2 driving miles), it is anticipated that a substantial number of the employees of the Chocolay Casino will be employed at the Airport Facility. The Tribe states that it anticipates 60 additional employees will be hired for the Airport Facility; 10 will be tribal citizens and 50 will be non-tribal citizens. Therefore, the employment impact on the surrounding community will be maintaining the existing 132 jobs for non-tribal citizens, and adding 50 new jobs for non-tribal citizens.<sup>63</sup>

The Tribe did not submit information to the Department concerning the number of jobs that would be associated with construction of the Airport Facility. Nevertheless, the construction of the Airport Facility is also likely to lead to a significant number of temporary jobs.

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<sup>61</sup> Resolution of the Charter Township of Chocolay (August 16, 1999) ("[T]he Chocolay Township Board has been steadfastly opposed to the Ojibwa II Casino in Chocolay Township since its inception due to its placement in a residentially developed and zoned area of the Township[.]").

<sup>62</sup> MRO Binder 1 of 2, Tab 9

<sup>63</sup> MRO Binder 1 of 2, RD Memorandum, p. 6

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

The Consent Judgment filed in 2001 provides that the Tribe will make semi-annual payments in the amount of 2 percent of net win from class III electronic games of chance to the local units of government in the immediate vicinity of the relocated gaming facility (Marquette County & Negaunee Township). The payments to the local units of government are to reimburse the local units of government for government services provided to the Tribe and for impacts associated with the relocated casino.<sup>64</sup>

As noted above, increased revenue generated by the proposed Airport Facility would lead to an increased financial contribution from the Tribe to the surrounding local communities through these payments.

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

In the Consent Judgment,<sup>65</sup> the Tribe agreed to make semi-annual payments to the Michigan Economic Development Corporation in an annual amount equal to 8 percent of the net win derived from all Class III electronic games of chance. The Consent Judgment also provides that "each tribal party to the Stipulation shall make semi-annual payments to any local units of state government in the immediate vicinity of each tribal casino in the aggregate amount equal to two percent (2%) of the net win at each casino derived from all class III electronic games of chance." A portion of these payments will be used to treat compulsive gambling.<sup>66</sup>

The Tribe has indicated that it would continue the programs currently in place at its Chocolay Facility for the proposed Airport Facility to address problem gambling. This program permits patrons to voluntarily "ban" themselves from gaming activities, and allows patrons to voluntarily suspend their ability to cash checks at the gaming facility. The Tribe also provides patrons with information for treatment for gambling addiction.<sup>67</sup>

**(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 Part 292 Regulations define a "nearby Indian tribe" as "an Indian tribe with tribal Indian lands located within a 25-mile radius of the location of the proposed gaming establishment, or, if the tribe has no trust lands, within a 25-mile radius of its government headquarters."<sup>68</sup>

There are no tribes that qualify as a "nearby Indian tribe" under the Part 292 Regulations in this instance. The next Indian tribe nearest to the Site is the Hannahville Indian Community, which

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<sup>64</sup> MRO Binder 1 of 2, Tab 6

<sup>65</sup> MRO Binder 1 of 2, Tab 12

<sup>66</sup> MRO Binder 1 of 2, RD Recommendation, p. 15

<sup>67</sup> Letter from Warren C. Swartz, President of the Keweenaw Bay Indian Community to Diane Rosen, BIA Midwest Regional Director (October 24, 2011).

<sup>68</sup> 25 C.F.R. § 292.2.

is located 89 driving miles south of the Site.<sup>69</sup> The second next Indian tribe nearest to the Site is the Lac Vieux Desert Band of Lake Superior Chippewa Indians, which is located 104 driving miles southwest of the Site.<sup>70</sup>

Notwithstanding the definition of “nearby Indian tribe” in the Part 292 Regulations, the Department did not receive any statements expressing the likelihood of an impact on any other federally recognized Indian tribe.

**(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 inter-governmental agreements with affected local governments.**

The Tribe entered into a settlement agreement and consent order with the State of Michigan in 2001 in *Keweenaw Bay Indian Community v. United States*, No. 2:94-CV-262 (W.D. Mich. 2001). The Consent Judgment notes the Tribe’s, “intention that, upon favorable determination by the Secretary, and a concurrence in that determination by the Governor of the State, the Community will relocate all gaming operations in Marquette County from the Marquette County Parcel to the Airport Parcel.”<sup>71</sup>

### **Local Opposition**

No state or local unit of government has submitted comments to the Department expressing opposition to the Tribe’s proposal. Likewise, no other federally recognized Indian tribe has submitted comments to the Department expressing opposition to the Tribe’s proposal.

### **Local Support**

The Tribe’s application has received overwhelming support from surrounding local units of government, as evidenced by letters and documents submitted to the Department throughout the consultation process. Those letters are described in more detail below.

### **§ 292.19 How will the Regional Director conduct the consultation process?**

**(a) The Regional Director will send a letter that meets the requirements in 292.20 and that solicits comments within a 60-day period from “(1) [a]ppropriate State and local officials, and (2) [o]fficials of nearby Indian tribes.”**

On September 7, 2006, the MRO issued the consultation letter seeking comments from:

Jennifer Granholm, Governor of Michigan – responded in support.  
Gerald O. Corkin, Chairperson, Marquette County Board of Commissioners – responded in support.

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<sup>69</sup> Google Map, ASIA Exhibit 5

<sup>70</sup> Google Map, ASIA Exhibit 4

<sup>71</sup> MRO Binder 1 of 2, Tab 6

Wayne Johnson, Supervisor, Negaunee Township – responded in support.  
Gerald Peterson, Manager, City of Negaunee – no response.  
Greg Seppanen, Supervisor, Negaunee Township – no response.

By letter dated October 26, 2006, Deputy Legal Counsel John Wernet responded on behalf of then-Governor Granholm. Mr. Wernet indicated that the Governor's office did not have sufficient time in which to review the application and thanked the Tribe for the opportunity to consult. This letter was outside of the 30-day time frame notice; however the MRO included this comment in the official record.<sup>72</sup>

Subsequently, former Governor Granholm contacted the Secretary by letter dated December 8, 2010, supporting the relocation of the gaming facility and urged the Secretary "to act swiftly on this matter." Former Governor Granholm further stated that "[t]he proposed relocation of the Community's existing casino to this new site has enjoyed strong local support from all of the affected units of government throughout this period – and it continues to do so."<sup>73</sup>

The response from the Chairman of the Marquette County Board of Commissioners, dated September 28, 2006, indicated that the County of Marquette fully supports the Tribe's proposed relocation of the Chocoday Facility to the Site. Mr. Corkin concluded that the Tribe has generously supported local government programs by sharing gaming revenue.<sup>74</sup>

The response from Negaunee Township, dated October 4, 2006, expressed support for the Tribe's efforts, and agreed with the EA that it would not significantly impact the local environment.<sup>75</sup>

On July 18, 2011, the MRO sent consultation letters to the Governor of Michigan and the following Township Supervisors and City Managers pursuant to the Part 292 Regulations that went into effect in 2008:<sup>76</sup>

Governor of Michigan – See above discussion of letter dated Dec. 8, 2010.  
Berle V. LaPin, Champion Township – responded in support.  
Ted A. Pepin, Ely Township – responded.  
Joseph Minelli, Forsyth Township – responded in support.  
James B. Nankervis, Ishpeming Township – responded in support.  
Jean Howe, Clerk, Michigamme Township – responded.  
Daryl J. Wilcox, Powell Township – responded.  
William E. Luetzow, Richmond Township – responded in support.  
Dave Kallio, Sands Township – responded.  
Art Lauren, Skandia Township – responded.  
Lori K. Kuljy, Tilden Township – responded in support.  
Jered Ottenwess, Ishpeming City Manger - responded in support.

<sup>72</sup> MRO Binder 4 of 6, Tab 9

<sup>73</sup> MRO Binder 1 of 2, Tab 15

<sup>74</sup> MRO Binder 4 of 6, Tab 4

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

<sup>76</sup> MRO Binder 1 of 2, Tab 11. Please note that these regulations were not in effect at the time the original letters were issued from the Department to local units of government in 2006.

Bill Vajda, Marquette City Manager – responded.  
Jeff Thorton, Negaunee City Manager – responded in support.  
Joseph d. Derocha, Humboldt Township – no response.  
Jack L. Heidtman, West Branch Township – no response.

The majority of the responses from the local governments clearly expressed support for the Tribe’s proposal. The following local units of government submitted favorable comments, without expressly indicating their support for the Tribe’s proposal:

- Ely Township responded that the Airport Facility will have favorable economic impacts.<sup>77</sup>
- Powell Township stated that the “impacts would be more positive than negative.”<sup>78</sup>
- Sands Township stated that there “are no negative feelings by Township Board.”<sup>79</sup>
- Skandia Township responded by indicating that the Airport Facility would have no significant impact on the township.<sup>80</sup>

The Michigamme Township Board identified its only concern as the “[a]nticipated impact on the economic development, income and employment of the surrounding community” and stressed “that the “HIRING PROCESS of personnel/companies/and businesses be NON-DISCRIMINATORY (the people do not have to be of Indian Heritage).”<sup>81</sup>

Ishpeming Township questioned whether an environmental study had been conducted, and expressed some concern regarding the impact of the proposed Airport Facility in connection with gambling addiction.

The City of Ishpeming commented that it “expects that traffic will increase significantly within the immediate vicinity of the proposed casino site. This will likely lead to increased traffic along U.S. 41 in Ishpeming. The City views that as a benefit. There is adequate capacity on U.S. 41.”<sup>82</sup>

**(b) Upon written request, the Regional Director may extend the 60-day comment period for an additional 30 days.**

The MRO did not receive any requests to extend the comment period.

**(c) After the close of the consultation period, the Regional Director must . . . [a]llow the Tribe to address or resolve any issues raised in the comments.**

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<sup>77</sup> ASIA Exhibit 6.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> MRO Binder 1 of 2, Exhibit 25A

On September 26, 2011, the MRO transmitted copies of the comments to the Tribe for review and comment.<sup>83</sup> By letter dated October 24, 2011, the Tribe responded to the comments as follows:

- Ely and Ishpeming Townships. “Programs for Gambling Addiction. The Tribe has two programs at the Chocolay Casino to assist gamblers. One program allows customers to “self-ban” themselves from gaming at the casino. Another program allows customers to “self-suspend” check cashing privileges at the casino. The Chocolay Casino also has posted a sign at the casino for the toll-free number of the Michigan Problem Gaming Help Line at 800-270-7117. These programs will also be offered by the Community in connection with the operation of the proposed Airport Casino (emphasis added).”<sup>84</sup>
- Michigamme Township. “Non-discriminatory Hiring Process for Personnel, Companies and Businesses.” The Tribe responded that: “[s]ubject to the Community’s hiring preference for tribal members and other Indians as established by the Community’s duly enacted Tribal Employment Rights Ordinance (TERO), the Community is an Equal Opportunity Employer.” The Tribe further stated, “[p]ursuant to the Community’s Procurement Policy, contracts for construction, goods and services are open to public bidding by non-Indians and Indian bidders. Winning bidders are required to comply with the Community’s TERO in their employment practices.”<sup>85</sup>
- Ishpeming Township. “Environmental Assessment. An Environmental Assessment, dated December 2004, as revised December 2006 (EA), relating to the Community’s land-into-trust application for the Airport Parcel was prepared by the Community and Bureau of Indian Affairs, and filed with the Department of Interior. A time period for public comment was noticed, public comments were received and a Finding of No Significant Impact (FONSI), dated January 4, 2008, was issued, all in accordance with applicable laws and regulations.”<sup>86</sup>
- City of Ishpeming. “Traffic Issues. As discussed in the EA and noted in the FONSI, mitigation measures will be necessary to reduce impacts on existing capacity-constrained infrastructures to below significant levels, including the use of directional crossovers and restrictions on routine access in the area of the proposed project. (See Section 4.14 and 5.1.1 of the EA.)”

**§ 292.20 What information must the consultation letter include?**

**a) The consultation letter required by Sec. 292.19(a) must:**

- (1) Describe or show the location of the proposed gaming establishment;**
- (2) Provide information on the proposed scope of gaming; and**
- (3) Include other information that may be relevant to a specific proposal, such as the size of the proposed gaming establishment, if known.**

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<sup>83</sup> ASIA Exhibit 7

<sup>84</sup> MRO Addendum, Oct. 24, 2011

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

- (b) The consultation letter must include a request to the recipients to submit comments, if any, on the following areas within 60 days of receiving the letter:
- (1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts;
  - (2) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;
  - (3) Anticipated impact on the economic development, income, and employment of the surrounding community;
  - (4) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;
  - (5) Anticipated costs, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment; and
  - (6) Any other information that may assist the Secretary in determining whether the proposed gaming establishment would or would not be detrimental to the surrounding community.

The consultation letter included all elements required by Department regulations.<sup>87</sup>

### III. ANALYSIS OF THE FACTORS IN 25 C.F.R. PART 292, SUBPART C

The IGRA was enacted, in part, to balance state and tribal interests in tribal gaming activities. With respect to tribal interests, the regulatory intent established by IGRA favors on-reservation gaming to off-reservation gaming. Congress expressly prohibited gaming on lands acquired in trust after October 17, 1988. In establishing this prohibition, Congress exempted lands acquired after that date which are within, or contiguous to, a tribe's existing reservation. It also exempted lands acquired after October 17, 1988 that are within the boundaries of a tribe's former reservation.

Congress also established limited exceptions to this prohibition. The first category of exceptions, known as the "equal footing" exceptions, were intended to permit more recently recognized tribes with an equal opportunity to engage in gaming. A second type of exception, known as the "off-reservation" exception, was to provide tribes with a limited opportunity to conduct gaming outside of their existing or former reservations where circumstances warrant.

Consistent with the intent established by IGRA, the Department will apply heavy scrutiny to tribal applications for off-reservation gaming on lands acquired after October 17, 1988. The Department will also seek to uphold the intent of Congress, which favors tribal gaming on existing and former reservations, and on lands acquired in trust prior to October 17, 1988.

The Department will also apply heavy scrutiny to tribal applications for off-reservation gaming on lands acquired after October 17, 1988 to ensure that they do not result in a detrimental impact to communities surrounding the proposed gaming Site. The Department will seek to uphold the intent of Congress in enacting IGRA, which balances the interests of Indian tribes in economic development with the interests of states in protecting local communities from detrimental impacts.

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<sup>87</sup> MRO Binder 1 of 2, Tab 11

**A. The proposed Airport Facility is in the best interest of the Tribe and its members.**

Based upon my review of the record, I am satisfied that the development of the Airport Facility is in the best interest of the Tribe and its citizens. First, the development will likely result in a significant increase in funds available to the Tribe.

Information in the record forecasts that the Airport Facility will generate \$26 million in gaming revenue in the first stabilized year of operations, compared to the \$18.4 million in gaming revenue from the existing Chocolay Facility.<sup>88</sup>

The annual net income of the Airport Facility is projected to be approximately \$6,155,667 in its third year of operation, increasing to approximately \$9,138,000 in the fifth year of operation.<sup>89</sup> This will result in an annual cash flow to the Tribe's government of approximately \$5,612,267 in the third year of the Airport Facility operation, increasing to approximately \$8,345,287 in the fifth year of operation.<sup>90</sup>

These revenues will allow the Tribe to expand the services delivered by the tribal government. An expansion of the tribal government would have several positive impacts on the Tribe and its citizens. One positive impact would be the availability of essential services to tribal citizens, such as health care and education. Another positive impact would be the availability of professional job opportunities for those tribal citizens to manage and implement tribal programs. Finally, the Tribe will use revenues generated by the Airport Facility to advance the objectives it set forth in its 2005 Statement of the Community Values, Visions and Goals, and provide services to the tribal citizens.

New revenues will also allow the Tribe to pursue opportunities to invest in other ventures and diversify its economy, which could potentially lead to additional revenues for the tribal government and more job opportunities for tribal citizens.

The development of the Airport Facility itself presents some new employment opportunities for tribal citizens, although most of the Airport Facility's employees would be transferred employees from the existing Chocolay Facility. Nevertheless, the Tribe expects to hire an additional 60 employees for the Airport Facility operations, which will include approximately 10 tribal citizens.

The Site is located 70 miles from the Tribe's existing headquarters in Baraga, Michigan. The relatively short distance between the Tribe's seat of government and the proposed gaming facility leads to the logical conclusion that the Tribe will be able to sufficiently regulate the conduct of class III gaming and exercise governmental power over the Site. This is further supported by the fact that the Tribe has been regulating the conduct of class III gaming and exercising governmental power over its existing Chocolay Facility since at least 2000. The Chocolay Facility is located approximately 18 miles farther from the Tribe's headquarters than the proposed Airport Facility.

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<sup>88</sup> MRO Binder 1 of 2, Exhibit 8

<sup>89</sup> MRO Binder 1 of 2, Tab 9

<sup>90</sup> *Id.*

This positive Secretarial Determination regarding the Airport Facility constitutes an appropriate exercise of discretion pursuant to IGRA because the Site is located in an area to which the Tribe has a significant historical connection. This significant historical connection is evidenced by the treaties executed between the Tribe and the United States, and the recognized right of the Tribe's citizens to continue to exercise reserved treaty rights on the Site and lands surrounding the Site. It is further evidenced by the fact that a significant number of the Tribe's citizens – approximately 284 – continue to live within Marquette County today.

Finally, development of the Airport Facility would result in the closure of the Chocolay Facility pursuant to the Consent Judgment. This would minimize a longstanding point of contention between the Tribe and its neighbors, and permit the Tribe to conduct class III gaming activities in a manner consistent with surrounding land use.

For the foregoing reasons, I have determined that the Keweenaw Bay Indian Community's proposed class III gaming facility in Negaunee Township, Marquette County is in the best interest of the Tribe and its citizens.

**B. The proposed Airport Facility would not be detrimental to the surrounding community, including nearby Indian tribes.**

The record before me includes overwhelming evidence demonstrating that the Airport Facility would not be detrimental to the surrounding community. In fact, the record demonstrates that development of the Airport Facility would benefit the surrounding community.

The Tribe currently operates a class III gaming facility within a residential area of Chocolay Township that is ill-suited for such an operation. Pursuant to the Consent Judgment, the Tribe would close this facility when it begins gaming activities at the Airport Facility. Development of a gaming facility on the Site would be consistent with surrounding land use in Negaunee Township, and would enable the Tribe to bring the use of its existing trust lands in Chocolay Township into harmony with surrounding lands.

The fact that the Tribe is merely proposing to transfer an existing gaming facility from one area of Marquette County to another means that the surrounding community would not necessarily be required to plan for the same social, infrastructure, housing, and government service impacts as those associated with a new or additional gaming facility.

The Tribe has worked with Negaunee Township to provide for the delivery of certain municipal services required by the proposed facility, and has entered into an agreement with the Marquette County Sheriff to govern law enforcement at the Site.

The facts in the record also indicate that the Tribe has worked closely with surrounding local units of government to identify and mitigate any environmental impacts associated with the Airport Facility. This is supported by the FONSI and EA developed under NEPA and the comments received by the Department in the consultation process required under the Part 292 Regulations.

Notably, the Department has not received any statements of opposition to the Tribe's application from local units of government, the State, or other federally recognized Indian tribes. To the contrary, the Department received comments indicating the overwhelming support of the Tribe's application by local units of government. This strong local support, coupled with the lack of *any* opposition, indicates that the relocation of the Tribe's existing gaming facility from Chocolay Township to Negaunee Township will be beneficial to the surrounding community, and will not detrimentally impact other Indian tribes.

Finally, the State itself agreed in the Consent Judgment, "the proposed relocation of the [Chocolay Facility] to the Airport Parcel likely is in the best interest of the [Tribe] and is not detrimental to the surrounding community."<sup>91</sup>

For the foregoing reasons, I have determined that the Keweenaw Bay Indian Community's proposed class III gaming facility in Negaunee Township, Marquette County, will not have a detrimental impact to the surrounding community.<sup>92</sup>

#### **IV. CONCLUSION**

I have completed my review of the Tribe's application under 25 U.S.C. § 2719(b)(1)(A), including submissions by state and local officials. For the foregoing reasons, I have determined that gaming on the proposed Site in Negaunee Township, Marquette County, would be in the best interest of the Tribe and its citizens, and would not be detrimental to the surrounding community. I am requesting that you concur in this determination, pursuant to 25 U.S.C. § 2719(b)(1)(A). Under the Part 292 regulations, you have one year from this date to concur in my determination. You may request an extension of this period for up to 180 days. The Tribe may also request an extension of this period for up to 180 days.

Should you decide not to concur in my determination, the Tribe may not proceed with its request for the acquisition of the land in trust on its behalf for gaming purposes.

Should you concur in my determination, I will proceed with the final review of the Tribe's application to acquire the proposed site in trust on its behalf. The Tribe may use the proposed site for gaming only after it has been accepted into trust.

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 the FOIA, and to contact the Tribe anytime a member of the public requests it. I respectfully request that the State of Michigan take appropriate steps to similarly protect the commercial interests of the tribes.

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<sup>91</sup> Consent Judgment at 5-6.

<sup>92</sup> Nothing in the Tribe's class III gaming compact with the State or in the 2001 Consent Judgment conflicts with this determination.

I thank you for your consideration of this important matter. I have included copies of the record for your review and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Hawk", with a long horizontal line extending to the right.

Larry Echo Hawk  
Assistant Secretary – Indian Affairs

cc: Warren C. Swartz, Jr., President, Keweenaw Bay Indian Community of Michigan



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



## Finding of No Significant Impact

### **Proposed Keweenaw Bay Indian Community Gaming and Entertainment Facility at the Former Marquette County Airport In Negaunee Township, Marquette County, Michigan**

The Keweenaw Bay Indian Community (the "Community") proposes relocating the operation of a currently operating class III gaming facility, the Ojibwa II Casino, in Chocolay Township, Marquette County, Michigan, to a new casino to be constructed on land currently owned by the Tribe at the location of the former Marquette County Airport in Negaunee Township, Michigan (the "Airport Parcel") (the "proposed action"). The proposed action would involve the construction, operation, and maintenance by the Community of a casino, hotel, and related office space, with associated parking lots, utilities, and approach roads, at the Airport Parcel. The Community has filed a land into trust application with the Bureau of Indian Affairs for the Airport Parcel. Relocation of the casino to the Airport Parcel is necessary to meet the commitment made by the Community in an Agreement and Stipulation for Entry of a Consent Judgment resolving litigation between the Community and the United States (Agreement and Stipulation for Entry of a Consent Judgment, dated November, 2000, *Keweenaw Bay Indian Community v. United States of America*, No. 2:94-CV-262 (W.D. Mich.)) ("Agreement and Stipulation"). Continuing operation of the casino is necessary to ensure a continuing and increased stream of revenue to provide vital governmental services for the Community and its tribal members. The local community supports the proposed action, and there is no known opposition to the proposed action.

Based on an Environmental Assessment ("EA"), dated December 2006, for the proposed action and corresponding mitigation measures, I have determined that implementation of the proposed fee-to-trust acquisition, a federal action by the Bureau of Indian Affairs, and the subsequent construction and operation of a gaming facility at the former Marquette County airport will have no significant impact on the quality of the human environment. Therefore, in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, an Environmental Impact Statement will not be required.

This determination is supported by the following findings:

1. Agency and public involvement was conducted and environmental issues were identified, including issues submitted by agencies and the public in comment letters appended to the EA. All comment letters received during the thirty-day public comment period that commenced on December 9, 2002, are reproduced in Appendices D, E, F, H, J, K, N, O, P, R, S and T. No public meetings were requested. Appendix R contains responses from the Bureau of Indian Affairs ("BIA") to specific comments and describes revisions to the EA made in response to those comments. EA Chapter 6 lists who was contacted for agency and public involvement.

Chapter 2 contains Project alternatives with mitigation measures developed in response to environmental concerns and issues related to the proposed action. None of the agencies with jurisdiction by law (40 CFR 1508.15) or special expertise (40 CFR 1508.26) provided any information during the assessment that indicated that any impacts identified in the EA were unacceptable, unduly intense for the context, in conflict with the intensity criteria (40 CFR 1508.27(b)), not in compliance with environmental requirements, or were otherwise significant. Further, none of the jurisdictional or expertise agencies disagreed with the mitigation measures identified in the EA, or the standard procedures used in the EA to evaluate the significance of impacts.

2. EA Chapter 2 describes the preferred alternative as well as alternatives that were considered but eliminated from detailed analysis. EA Chapter 4 discloses the environmental consequences of the preferred alternative and the no-action alternative. Chapter 4 also summarizes how each alternative complies with “requirements imposed for the protection of the environment” (40 CFR 1508.27(b)(10)), which is one of the criteria for assessing the intensity and thus the significance of impacts. The Community considered the following alternatives to meet the purpose of the proposed project and needs of the Community: relocation of the casino to another location than the Airport Parcel, or building a casino of smaller size on the Airport Parcel. Relocation to another location was rejected because first, it would violate the Agreement and Stipulation and could result in a reopening of the underlying case, and second, it would unnecessarily further deplete the resources of the Community, as the Community would have to acquire new property to locate the casino but already owns the Airport Parcel. Siting a casino of smaller size on the Airport Parcel was rejected because economic evaluations concluded that a smaller casino would neither generate a viable, sustained revenue stream at levels sufficient to meet the needs and goals of the Community nor adequately meet the purpose or need for the proposed action.

3. EA Chapter 5 describes protective mitigation measures that will be implemented to protect the human environment. For the preferred alternative, mitigation measures are necessary to reduce traffic impacts on existing capacity-constrained infrastructure to below significant levels (Sections 4.14 and 5.1.2 of the EA), including the use of directional crossovers and restrictions on routine access in the area of the proposed project. Mitigation measures are also necessary to reduce impacts on the existing capacity-constrained water supply and distribution system from the increased water demand resulting from construction of the proposed project (Sections 4.3.3 and 5.1.3 of the EA), including upgrades to the existing water supply and distribution system. In addition, in the event that a secondary option for wastewater disposal is necessary, mitigation through the construction and operation of an aerated lagoon system by Negaunee Township would be implemented to ensure that impacts resulting from wastewater generation remain at less than significant levels (Section 4.17.2 and 5.1.2 of the EA). Taken together, these mitigation measures, including payments by the Tribe to cover the costs of adding capacity and expanding infrastructure sufficient to address the increased impact from the proposed project, mitigate the impacts of the proposed action to less than significant levels. The letters in Appendix N and O from the jurisdictional entities confirm that the proposed mitigation measures are both feasible and enforceable.

4. EA Section 4.6 finds that the proposed action will not have a significant impact on threatened or endangered species because it complies with the Endangered Species Act (40 CFR 1508.27(b)(9) and (10)). As the agency with special expertise (40 CFR 1508.26) and jurisdiction by law (40 CFR 1508.15) under the Endangered Species Act, the U.S. Fish and Wildlife Service ("FWS") provided a letter in Appendix D confirming that threatened or endangered species do not occur within the proposed project area and re-confirmed the finding in a January 4, 2007, letter to the U.S. Bureau of Indian Affairs, Midwest Regional Office. This precludes the need for further compliance action under Section 7 of that Act. Similarly, EA Section 4.2.1 finds that impacts of the proposed action to prime and unique farmland are not significant (40 CFR 1508.27(b)(3)) due to compliance with the Farmland Protection Agency Act, and, as the U.S. Department of Agriculture determined in a letter reproduced at Appendix P, there are no prime or unique farmlands within the proposed project area. EA section 4.4 finds that the preferred alternative will not cause significant impacts to air resources because construction and operation of the gaming facility will comply with the Clean Air Act (42 U.S.C. 7401-7671q) and the National Ambient Air Quality Standards. Since the proposed action would be located in an attainment area for all of USEPA's current priority pollutants, a general conformity determination is not required. Section 6.2 lists the names of employees at the Michigan State air quality jurisdictional entity that provided BIA with technical support for the EA's air assessment.

5. EA Section 4.11 finds that the preferred alternative will not result in adverse effects to historic properties for the purpose of compliance with 36 CFR 800.5. As the entity with jurisdiction by law and special expertise, the State Historic Preservation Officer in his letter contained in Appendix E concurs with the BIA's finding. Thus, it is anticipated that there would be no significant impacts to such properties (40 CFR 1508.27(b)(8) and (10)) based on compliance with 36 CFR 800.5. Should undiscovered archeological resources be encountered during project-related ground-disturbing activities, work will stop in the area of discovery and the stipulations of 36 CFR 800.13(b), (c) and (d) will be followed to avoid significant impacts.

6. Impacts of the proposed action to public health and safety are determined to be not significant in EA section 4.20 and 4.21. The capacities for fire protection, law enforcement and emergency medical services would not be exceeded under the preferred alternative, and thus the impacts to those resources would neither be unduly intense nor significant (40 CFR 1508.27(b)(2)). The Agreement and Stipulation contains revenue sharing provisions that would further help fund mitigative measures for impacts to public health and safety (Agreement and Stipulation, ¶¶ 4, 5).

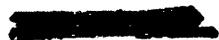
7. EA Section 4.2.2 finds no significant impacts related to floodplains because the proposed action would not be located in a floodplain or intensify any downstream flooding risk, in compliance with Executive Order 11988, and compliance with this requirement helps demonstrate the lack of significance of floodplain impact (40 CFR 1508.27(b)(10)). EA Sections 4.3.1 and 4.19 find that the proposed action increases storm water runoff, and that the existing retention pond, with the proposed upgrades discussed in Section 4.19 of the EA, along with the existing storm drains, have adequate capacity under permit number MIRO 11739, supporting the conclusion that impacts to water quality from storm water would not be significant. EA Section 4.3.2, together with Appendix S, find that the proposed action will not result in significant impacts to wetlands (40 CFR 1508.27(b)(3)). The project would not require filling the one

wetland located on the project site, and is otherwise in compliance with Executive Order 11990 and Section 404 of the Clean Water Act (40 CFR 1508.27(b)(10)). Best management practices will be stipulated in a storm water permit for construction under Section 402 of the Clean Water Act to minimize soil erosion during construction that would otherwise impact downstream water quality. Discharge limitations contained within a National Pollutant Discharge Elimination System permit will ensure that any wastewater impacts to water quality from the wastewater lagoon system will not be significant because the terms of such a permit must comply with the Clean Water Act, as well as water quality standards in the receiving waters (the Carp River or Morgan Creek).

8. EA sections 4.22 and 4.23 find that cumulative and indirect effects of the proposed action will not be significant with the implementation of mitigation measures specified in EA Chapter 5.0, which will ensure that adequate capacity is maintained to protect both public health and safety (40 CFR 1508.27(b)(2)) and unique characteristics of the area (40 CFR 1508.27(b)(3)). Negaunee Township and the State of Michigan, as jurisdictional entities, addressed impacts from and proposed mitigation measures for the proposed action; their concerns have been addressed by the proposed mitigation measures.

9. EA section 4.13 finds that the proposed action would significantly improve the economic and social conditions of the Keweenaw Bay Indian Community, and would accomplish the purpose and need for the action, as described in EA section 1.1, without significant adverse socio-economic or environmental justice impacts. Federal actions that have significant economic or social effects without significant impacts to the natural or physical environment do not require the preparation of an EIS (see 40 CFR 1508.14). EA section 4.13.3 finds that the proposed action is in compliance with Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations) in that the proposed action causes no disproportionately high adverse impacts specific to minority or low-income populations.

  
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Assistant Secretary – Indian Affairs  
U.S. Department of the Interior

  
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JAN 04 2008  
Date