

## Record of Decision

Approval of Management Contract for Gaming Facility at  
the 79-acre Former Sackrider Site (Parcel H) in Calhoun  
County, Michigan, for the Nottawaseppi Huron Band of  
Potawatomi Indians

## NATIONAL INDIAN GAMING COMMISSION

### **ACTION:**

Record of Decision (ROD) for the approval of a management contract for a gaming facility to be located at the 79-acre former Sackrider Site (Parcel H) in Calhoun County, Michigan, pursuant to 25 U.S.C. § 2711 for the Nottawaseppi Huron Band of Potawatomi Indians (Tribe).

### **SUMMARY:**

The proposed gaming facility to be located at the former Sackrider Site (Parcel H) in Calhoun County, Michigan, for the Nottawaseppi Huron Band of Potawatomi Indians was analyzed in a Draft Environmental Impact Statement (DEIS) issued for public review on August 5, 2005. The Draft EIS (DEIS) and the Final EIS (FEIS), issued July 3, 2006, considered various alternatives to meet the purpose and need of the Proposed Action and analyzed in detail the potential effects of various reasonable alternatives. The Sackrider Farm Site (Parcel H) was accepted into trust by the United States for the Tribe's benefit and proclaimed as an initial reservation. The land, therefore, qualifies as "Indian Lands" under the Indian Gaming Regulatory Act (IGRA). With the issuance of this ROD, the National Indian Gaming Commission (NIGC) announces that the Sackrider Farm Site (Parcel H) Alternative, an option allowing construction of a 136,000 square ft. casino, is the Preferred Action and is the action to be implemented. The NIGC has determined that the Preferred Alternative would not create significant, unmitigated impacts to the human environment. The NIGC decision is based on its review of the DEIS, the FEIS, the entire administrative record and comments received from the public, federal agencies, state agencies, local governmental entities, and potentially affected Tribes.

### **FOR FURTHER INFORMATION, CONTACT:**

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## **1.0 INTRODUCTION**

### **1.1 Description of the Proposed Action**

Under the Proposed Action, the NIGC would approve a management contract for the proposed gaming facility that would be located at the former Sackrider Site, Parcel H, a site to which the Tribe has a historic and geographical nexus. The Sackrider Site has already been accepted into trust by the United States for the Tribe. The Tribe's management agreement would be with Gaming Entertainment Michigan, LLC (GEM LLC). The former Sackrider Site, Parcel H is a 79-acre parcel located in Calhoun County at the interchange of I-94 and the I-94 Business Route, also named Michigan Avenue. The facility would include gaming conducted in accordance with the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (IGRA), and Tribal-State Compact requirements. The gaming facility would be approximately 136,000 square feet and would be designed to accommodate 2,000 electronic games of chance, commonly known as slot machines, and 50 gaming tables. The facility is planned to include a poker room, a bingo room, food and beverage accommodations, and gift shop operations.

The Tribe is in need of a sustainable source of net income adequate to allow it to achieve self-sufficiency, self-determination, and a strong Tribal government, and to enable the Tribe to meet the needs of its members. The purpose of the Proposed Action is to generate a dependable stream of net income that the Tribe would use to perform the functions of a Tribal government and to meet the needs of its members in accordance with Federal policies enunciated in the IGRA, the Indian Reorganization Act (IRA), and related laws and regulations.

### **1.2 Procedural Background**

On December 3, 1998, the Tribe entered into a compact with the State of Michigan that allows the development of a casino on trust land in Calhoun County, Michigan. On December 11, 1999, the Tribe submitted a fee-to-trust application and reservation proclamation request to the BIA to accept a 79-acre parcel of land in trust on which the Tribe plans to construct a casino.

The Tribe and GEM have executed a management agreement setting out their respective obligations for the operation and management of the Tribe's gaming facility as required under IGRA. The management agreements between the Tribe and GEM require the establishment of a gaming enterprise on Indian lands for the conduct of gaming, in accordance with IGRA to serve the social, economic, educational, and health needs of the tribe, and to increase Tribal revenues and enhance the Tribe's self-sufficiency and self-determination. The Tribe seeks financial assistance and expertise from GEM for the management and operation of the gaming enterprise.

In February 2002, the BIA as lead agency issued an Environmental Assessment (EA) for the Proposed Action, and in August 2002, the BIA issued a Finding of No Significant Impact (FONSI). The NIGC participated in the preparation of the EA as a cooperating agency. Subsequently, Citizens Exposing the Truth About Casinos (CETAC) filed a lawsuit in U.S. District Court for the District of Columbia regarding the FONSI and other issues. In April 2004, the Court temporarily enjoined the trust acquisition and remanded the matter to the BIA to either prepare a supplement to the EA or to prepare an Environmental Impact Statement (EIS). In June 2004, in conjunction with the NIGC, the BIA announced its decision to prepare an EIS.

The Notice of Intent to prepare an EIS for the Proposed Action was published in Volume 69, page 42065, of the Federal Register on July 13, 2004. The Notice of Intent identified issues to be addressed, provided supplementary information on the history of the project, invited comments, and held a public scoping

meeting on July 28, 2004. A scoping report issued in February 2005 summarized and categorized the major themes, issues, and concerns of the written and verbal scoping comments. All scoping comments were considered by the BIA and the NIGC in developing the alternatives and analytical issues of the EIS.

The Notice of Availability of the Draft EIS for the Proposed Action (EIS No. 20050318) was published in Volume 70, page 45389, of the Federal Register on August 5, 2005. This initiated the public comment period, which lasted from August 5, 2005 to October 4, 2005. A public hearing seeking comments on the DEIS was held on August 24, 2005.

In addition to comments received at the public hearing, written comments on the Draft EIS were received from 18 parties; responses to the comments received were included in Volume I of the Final EIS and relevant information in the Draft EIS was revised as appropriate to address those comments. The Final EIS was issued on July 3, 2006.

Comments on the Final EIS were received from the U.S. Environmental Protection Agency (EPA), CETAC, and approximately a dozen individuals. A summary of those comments and responses to them are included in Section 3.2 of this ROD.

On September 4, 2006, the BIA issued a Record of Decision designating the proposed gaming project on the former Sackrider Site (Parcel H) its preferred alternative and the action to be implemented. On \_\_\_\_\_, 2006 the BIA accepted the Sackrider Site into trust for the Tribe's benefit and declared it to be the Tribe's initial reservation.

## **2.0 ANALYSIS OF ALTERNATIVES**

### **2.1 Description of Possible Alternatives**

A wide range of possible alternatives to meet the purpose and need of the Proposed Action, including non-casino alternatives, alternate sites for a casino and alternate casino sizes and hours of operation were considered in the Draft EIS and the Final EIS.

#### **2.1.1 *Non-Casino Alternatives***

In the Indian Gaming Regulatory Act Congress authorized the operation of gaming by Indian tribes as a means of promoting Tribal economic development, self-sufficiency and strong Tribal governments, and for the regulation of such gaming as a means of generating Tribal revenue. In hearings on IGRA, Congress considered testimony indicating that gaming was the only source of funds available to Indian tribes to help them address the critical needs in Indian Country. Nevertheless, analysis of several non-gaming alternatives is included in this EIS. The non-gaming alternatives include a hotel or motel, a recreational vehicle park, a truck stop or travel plaza, and other commercial developments.

Because of the Tribe's very limited financial resources and the significant resource needs of the Tribe and its members, none of these non-casino alternatives would meet the purpose and need for the Proposed Action. The Tribe has no capital reserves available for economic development purposes and lacks an adequate source of funding that would allow it to start up and sustain a non-casino economic development.

#### **2.1.2 *Alternative Casino Sites***

Battle Creek Sites: Because scoping comments requested that the EIS evaluate a site in Battle Creek, an effort was made to locate potential locations in Battle Creek for a casino. A search of the available

Battle Creek casino sites identified potential locations at:

- Beckley Road.
- Jackson Street.

In addition, in response to a comment received during the comment period for the DEIS, sites located at I-94, Exit 92 were also evaluated.

The Beckley Road Site was selected as a proper representative example of the possible Battle Creek Sites because development of this site would likely result in substantially fewer impacts and development issues than development of the Jackson Street site or any of the Exit 92 sites. With respect to the Exit 92 sites, two are too small to accommodate the proposed facility. The remaining two Exit 92 sites have potential environmental conditions, substantial access concerns, and/or constraints on the developable area. In addition, because of significant development restrictions at the Jackson Street site and the associated impacts that would result from development, the Jackson Street site likely would not be technically and economically practical or feasible and therefore is not a reasonable alternative.

Non-Battle Creek Sites: The FEIS considered the following potential non-Battle Creek sites in Calhoun County:

- Former Sackrider Site, Parcel H.
- Sackrider Site A-1.
- 22-1/2 Mile Road.
- 28 Mile Road.
- Route 66.

The former Sackrider Site, Parcel H was selected as a proper representative example of the possible alternative sites in the non-Battle Creek site category because development of the Sackrider Site would likely result in similar but generally fewer impacts than development at any of the other sites.

Tribal Sites (in addition to Sackrider Site): The Tribe owns the following three properties:

- Pine Creek Parcel.
- Fuller Farm.
- Bradley Property.

Of the three Tribal sites, only the Pine Creek parcel and the Fuller Farm are located in Calhoun County. The Bradley property is located in Allegan County, and under the terms of the Tribe's compact with the State of Michigan, cannot be developed as a casino.

In addition, the Pine Creek parcel and Fuller Farm do not represent reasonable alternatives. The environmental and other constraints associated with the Pine Creek parcel and Fuller Farm would likely make development of a casino at either site technically and economically impractical and infeasible.

### **2.1.3 *Alternative Casino Sizes***

Proposed Action Size: The Proposed Action would house 2,000 slot machines and 50 gaming tables. The proposed facility was sized based on an analysis performed by GEM LLC using information from a Michigan-based marketing consultant. The analysis considered many market and industry factors in order to develop a project that attempts to balance revenues and risks to the Tribe without unnecessarily over sizing or under sizing the facility. According to GEM LLC, a responsible design target for the number of slot machines and gaming tables in the proposed casino would be in the range of 2,100 to 2,400 slots and 42 to 47 gaming tables. This design target is slightly below the facility averages of 2,512 slots and 75 gaming tables, which were determined based on a review of eight existing or proposed casinos located within the approximate southern half of lower Michigan and northern Indiana.

However, both a somewhat smaller and larger facility could be financially viable and could provide at least a portion of the financial resources needed to meet the Tribe's goal. Accordingly, both a smaller as well as a larger casino were considered as alternatives to the proposed action.

Smaller Casino Alternative: Of the eight casinos in the approximate southern half of lower Michigan and northern Indiana, the smallest facility is the Little River casino which houses 1,300 slots and 30 gaming tables. Because the eight casinos represent the likely primary competitive market for the proposed casino, a facility substantially smaller than the Little River facility may not be competitive in the market and could have difficulties attracting a sufficient number of patrons to remain financially viable.

As noted above, the proposed casino would house 2,000 slots and 50 gaming tables. A facility half the size of the proposed casino would house 1,000 slots and 25 gaming tables. A casino this size is somewhat smaller but still roughly comparable to the Little River casino (at approximately 77 percent of the number of slots and 84 percent of the gaming tables) and therefore was determined to have a reasonable chance of being competitive in the likely primary market area. As a result, in accordance with NEPA, a reduced size casino was evaluated in detail in the EIS.

Larger Casino Alternative: Another possible alternative would be a facility larger than the proposed casino. However, it is likely that a larger gaming facility would have similar if not greater impacts than the proposed casino on many resource areas. For example, the facility itself, as well as the associated parking areas and storm water retention areas would need to be correspondingly larger than the proposed casino. These larger features would likely create generally greater impacts in terms of land disturbances, storm water runoff and sedimentation. At a minimum, the impacts associated with a larger facility could not reasonably be expected to be less than those anticipated from the proposed casino.

In addition, the overhead costs incurred in construction and operation of a larger facility would be greater than with the proposed casino and it would therefore require additional up-front and operating capital. These additional costs associated with a larger-sized facility could affect the net income available to the Tribe. Thus, a larger gaming facility would likely have similar if not greater impacts than the proposed casino. Accordingly, the larger casino facility was not reviewed in detail in the EIS.

### **2.1.4 *Alternative Hours of Operation***

Preferred Alternative (24 hour/day operation, 7 day/week): The proposed gaming facility is designed to be operated on a 24-hour per day basis, seven days a week. Such a 24-hour per day operation would be consistent with other commercial enterprises currently operating in close proximity to the former Sackrider Site, Parcel H.

Reduced Operating Hours Alternative: With one exception, all of the casinos currently operating in

southern lower Michigan and northern Indiana operate 24-hours per day. That exception is the Blue Chip casino in Michigan City Indiana, which is open 24-hours per day on Thursday, Friday, and Saturday, and from 8:00 A.M. to 3:00 A.M. the rest of the week. Thus, despite the nature of the existing 24-hour a day operations near the proposed location of the Proposed Action and the typical round-the-clock operation of most casinos currently operating in and around lower Michigan, it appears that a casino with reduced hours of operation could be financially viable and could provide at least a portion of the financial resources needed to meet the Tribe's goal. As a result, in accordance with NEPA, a reduced hours of operation casino was evaluated in detail in the FEIS.

## **2.2 Reasonable Alternatives Considered in Detail**

The DEIS and Final EIS evaluate the No-Action alternative and the following reasonable alternatives in detail.

### **2.2.1 No-Action Alternative**

Under this alternative, the the NIGC would not approve a management agreement between the Tribe and GEM LLC. As a result, presumably, the Tribe would not construct a gaming facility on the former Sackrider Site, Parcel H. For the time being, existing surface drainage patterns on site would be maintained and no new utility extensions or upgrades would be required.

It is foreseeable and highly probable, however, that in the reasonably foreseeable future, some other kind of commercial development would occur on the Sackrider Site. In addition, the site is designated for development for Highway Commercial land use by the Emmett Township Master Plan. The site is also located within the development corridor identified in the Calhoun County Master Plan. Thus, little restriction exists for future commercial development of the property.

The type, quantity and quality of commercial development occurring at and around the Sackrider Site is likely to be dependent on when and if public water supply and sanitary sewer lines are extended to the area. The estimated cost of extending public utilities to this area is \$3,767,504 in 2006 dollars. Without a very large and potentially profitable enterprise located in the interchange area, it is unlikely that there would be funding available for utility extensions. Thus, there are two general development scenarios that could occur at the Sackrider Site if the Proposed Action did not occur at the site.

Under a scenario that would include public utilities, the most likely development would be a large commercial enterprise or non-profit facility (e.g., college campus, regional government center). However, the relatively depressed regional economy in Calhoun County combined with slow population growth in the area severely limits development opportunities. Based on existing conditions, there is little evidence that there is sufficient market demand in the region to support hotels, recreation-oriented resorts, business parks, or other major non-casino venues that would be of sufficient size to justify or support the approximately \$3.77 million cost for public utilities. There is also little evidence that there would be a demand or need for a large non-profit or governmental "campus" that could purchase the parcel at its likely market price or support infrastructure development.

Thus, a more probable near-term "no-action" outcome for the Sackrider Site area would be smaller commercial development not dependent on public utilities. Examples of such development could include warehousing and distribution facilities that utilize the Interstate 94 and 69 corridors, contractor's yards, or other facilities with large outdoor storage requirements, or automotive/equipment dealerships. There could be smaller scale commercial developments that could function on private wells and septic systems.

### 2.2.2 *Proposed Action*

Under the Proposed Action, the Tribe would construct and operate a casino at that site and enter into a gaming management agreement with GEM LLC, which would be approved by the NIGC. The Proposed Action would include gaming conducted in accordance with IGRA and Tribal-State Compact requirements. The gaming facility would be approximately 136,000 square feet, would be designed to accommodate 2,000 slot machines and 50 gaming tables, and would operate 24 hours per day, seven days a week.

Approximately 44 of the 79 acres on-site would be ponds, berms or undeveloped green spaces. Site development would include parking for approximately 3,600 cars for patrons and gaming facility employees and 75 visitor spaces for buses and other over-sized vehicles. The parking area would cover approximately 32 acres. The majority of traffic would arrive via I-94 with the exit ramp situated a few hundred yards from the site.

Roadway improvements would be implemented by the Tribe as part of project development. These improvements consist of:

- Signalization of main casino entrance.
- Left-turn-only lanes eastbound along Michigan Avenue at each project driveway entrance.
- Dual left-turn lanes for southbound traffic at intersection of Michigan Avenue and Eleven Mile Road.
- Exclusive right-turn lane for northbound traffic on I-94 Eastbound Off Ramp at Eleven Mile Road.
- Exclusive left-turn lane for southbound traffic on I-94 Westbound Off Ramp at Eleven Mile Road.
- Exclusive right-turn lane for northbound traffic on I-94 Westbound Off Ramp at Eleven Mile Road.
- Split-phase semi-actuated traffic signal at intersection of Michigan Avenue and Eleven Mile Road.
- Two-phase, semi-actuated traffic signal at intersection of I-94 Eastbound Off Ramp and Eleven Mile Road.
- Hardwire interconnection between intersection of I-94 Eastbound Off Ramp and Eleven Mile Road and the intersection of Michigan Avenue and Eleven Mile Road.
- Two-phase, semi-actuated traffic signal with cycle length conducive to progression along Eleven Mile Road at intersection of I-94 Westbound Off Ramp and Eleven Mile Road.
- Exclusive left-turn lane for Southbound on Westbound I-94 Off Ramp at Eleven Mile Road.
- Exclusive left-turn lane for Southbound Eleven Mile Road at Eastbound I-94 Off Ramp.



A storm water management system is included in the Proposed Action, including a combination retention and detention pond located at the northwest corner of the site. Detention for the 100-year storm event would be provided above the retention water elevation. A riser-type outlet control structure would control outflow from the pond. Storm water would be discharged via an outlet pipe to an existing drainage ditch north of the site, adjacent to I-94. This ditch flows to an MDOT culvert that drains into Dickinson Creek. Because the pond would be designed for up to a 100-year flood event, flow to the ditch would not increase from current conditions for flood events up to and including the 100-year event. Thus, the 100-year storm flow in Dickinson Creek would not be increased. The storm water facilities would be designed to meet state of the art practices and would comply with the U.S. Environmental Protection Agency's (EPA) NPDES general permit requirements for storm water discharge.

A 10-foot-high landscaped berm would be constructed along the eastern edge of the property. A fence would also be included along the eastern side of the berm. The landscaping would consist primarily of trees that would retain their foliage year round. The dimensions of the berm, approximately 85 feet wide at its base and 10 feet in height, is designed to create a substantial visual and light buffer, as well as a noise attenuation barrier, between the casino and the residences along Ackerson Drive.

As part of project development, the Tribe would participate in the extension of municipal water service to the project site, and the upgrade of wastewater conveyance facilities currently serving the area. The existing 12-inch water main situated in the Michigan Avenue right-of-way terminates approximately two miles west of the project site. The line would be extended southeast along Michigan Avenue in the existing utility right-of-way. The existing 6-inch sewer force main extending northwest from the project site along Michigan Avenue would be upgraded to a 12- to 15-inch force main. Lift Station #2-8, located immediately northwest of the Michigan Avenue overpass with I-94, would be upgraded to accommodate projected flow.

The Tribe has adopted and will enforce as a matter of tribal law the Building Officials and Code Administrator's (BOCA) national, building, electrical, fire and safety standards. Public safety services, consisting of law enforcement, emergency medical, and fire suppression services, would be provided by Emmett Township under the terms of an agreement between the Tribe and the Township. Emmett Township has determined the number of additional personnel and equipment needed to maintain normal response times within its service area. Site development would also include a 250,000-gallon water storage tank for emergency fire suppression purposes.

### **2.2.3 *Reduced Hours of Operation***

The Reduced Hours of Operation alternative would be identical to the Proposed Action except the gaming facility would not be operated 24-hours per day, but would be closed between the hours of 3:00 A.M. and 8:00 A.M. seven days a week. These hours of operation would be less than those of the Blue Chip casino, currently the most limited casino operating hours in or around lower Michigan.

### **2.2.4 *Reduced Facility Size Casino***

The Reduced Facility Size alternative would be located at the same site as the Proposed Action location and would therefore have the same existing site features. The Reduced Facility Size alternative would include gaming conducted in accordance with IGRA and Tribal-State Compact requirements. However, the facility would be designed to accommodate 1,000 slot machines and 25 gaming tables. The facility would be similar to, but would have smaller poker, bingo, food and beverage, and gift shop operations than the Preferred Alternative.

The design of the Reduced Facility Size alternative would have the same basic character and architectural

features as the Proposed Action. Approximately 61 of the 79 acres on site would be pond, berms or undeveloped space. Site development would include parking for approximately 1,800 cars for patrons and gaming facility employees and 38 visitor spaces for buses and other over-sized vehicles. Parking would cover approximately 16 acres.

A variety of roadway improvements would be implemented by the Tribe as part of project development. Although the number of visitors to the reduced-size casino would be somewhat smaller than expected for the Proposed Action, the roadway improvements would be generally the same as proposed in the Proposed Action.

The Reduced Facility Size alternative would have a similar storm water management system as the Proposed Action with a retention and detention pond located at the northwest corner of the site. However, because the total impervious area associated with this alternative would be approximately 48 percent less than the Proposed Action, the retention/detention pond would be approximately 48 percent smaller than that for the Proposed Action.

Similar to the Proposed Action, the reduced-size alternative would have a 10-foot high landscape berm and fence on the eastern edge of the property to create a substantial visual and light buffer, as well as a noise attenuation barrier, between the facility and the residences along Ackerson Drive. As a part of development, the Tribe would participate in an extension of municipal water to the project site and the upgrade of wastewater conveyance facilities currently serving the area as described for the Preferred Alternative. Public safety services consisting of law enforcement, emergency medical and fire suppression services would similarly be provided by Emmett Township. Site development would also include a 250,000-gallon water storage tank for emergency fire suppression purposes.

#### **2.2.5 *Beckley Road Site***

Under this alternative, the proposed casino would be located on the 170-acre Beckley Road Site in the southern portion of Battle Creek. This alternative would include gaming conducted in accordance with IGRA and Tribal-State Compact requirements. The conceptual site plan, design, and size of the gaming facility for the Beckley Road alternative would be the same as the Proposed Action.

Approximately 135 of the 170 acres on-site would be ponds, berms or undeveloped green space. The majority of traffic accessing the site would be expected to arrive via I-94 exiting the interstate at either Capital Avenue or Helmer Road and proceeding to the site on Beckley Road.

A variety of roadway improvements would need to be implemented by the Tribe as part of project development. These improvements would consist of:

##### **Capital Avenue and Beckley Road:**

- Adding Left-Turn Lane Southbound on Capital Avenue approach.

##### **Capital Avenue and I-94 WB ramps terminal:**

- Adding Left-Turn Lane Northbound on Capital Avenue approach.
- Adding Right-Turn Lane Southbound on Capital Avenue approach.

##### **Beckley Road and Sonoma Road:**

- Installing Traffic signal.
- Adding Left-turn lane westbound on Beckley Road approach.
- Adding Right-turn lane eastbound on Beckley Road approach.

**Helmer Road and I-94 WB ramp terminal:**

- Installing traffic control.
- Adding Left-Turn Lane Northbound on Helmer Road approach.
- Adding Right-Turn Lane Southbound on Helmer Road approach.

**Helmer Road and I-94 eastbound (EB) ramp terminal:**

- Installing traffic control.
- Adding Right-Turn Lane Northbound on Helmer Road approach.
- Adding Left-Turn Lane Southbound on Helmer Road approach.

**Casino Site entrances:**

- Both entrances would be signalized, and synchronized within a system including Sonoma Road and Beckley Road traffic signal.

A storm water management system would be needed, including a combination retention and detention pond located towards the southwest corner of the site. Detention for the 100-year storm would be provided above the retention water elevation. A riser-type outlet control structure would control outflow from the pond. Storm water would be discharged to Minges Brook. The storm water facilities would be designed to meet state of the art practices and would comply with the EPA NPDES general permit requirements for storm water discharge.

As part of project development, the Tribe would need to participate in the extension of municipal water service to the project site, and the upgrade of wastewater conveyance facilities currently serving the area. The existing water main situated in the Beckley Road right-of-way terminates approximately ½ mile west of the project site. The line would need to be extended east along Beckley Road in the existing utility right-of-way.

Public safety services, consisting of law enforcement, emergency medical, and fire suppression services, would be provided by the City of Battle Creek under an agreement that would need to be negotiated between the Tribe and the City. Site development would include a 250,000-gallon water storage tank for emergency fire suppression purposes.

As described in the FEIS, the Beckley Road alternative is reasonably expected to result in potentially significant impacts on living/biological resources (subsection 4.5.5), historic resources (subsection 4.6.1.5.1), archeological resources (subsection 4.6.2.5.1), land use resources (subsection 4.8.4.5.1), and traffic safety (subsection 4.9.2.5.2).

### **3.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS**

#### **3.1 Environmental Impacts Identified in FEIS**

A number of specific issues were raised during the environmental assessment process that preceded the EIS process, the EIS scoping process and public comments on the DEIS. Each of the alternatives considered in the FEIS was evaluated relative to these and other issues. The categories of the most substantive issues listed in the scoping document include:

- Land resources
- Water resources
- Air quality
- Living and biological resources, including threatened or endangered species and their habitat;
- Cultural resources, including Section 106 consultation with Tribes and the State Historic Preservation Officer;
- Socioeconomic, including other businesses, demographic trends, community wide social service infrastructure, crime and law enforcement, housing capacity and property values, and net revenues to the Tribe, being the key need of the Tribe and purpose of the proposed action;
- Community civil works infrastructure;
- Resource use patterns, including effects on agriculture, planning and zoning, air transportation safety;
- Other values, including effects on sound and noise, management of hazardous substances, petroleum and solid waste, public health and safety, environmental justice and aesthetics and lighting;

The evaluation of impacts included consultation with entities that have jurisdiction or special expertise to ensure that the impact assessments for the FEIS were accomplished using accepted industry standard practice, procedures and the most currently available data and models for each of the issues evaluated in the FEIS. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues. Chapter 4 of the FEIS describes effects of the alternatives as follows:

Socio-economics – Every alternative would generate net revenues for the applicant Tribe, but the Preferred Alternative would generate the greatest amount of net revenues compared to the other alternatives that use the Sackrider site (Parcel H). This impact is the primary purpose and need stated in the FEIS and the Preferred Alternative would have a significant beneficial effect, but may not totally satisfy the Tribe's need for net revenues for governmental services. The Preferred Alternative would increase the demand for social services, law enforcement, schools, housing, employees of other businesses and general community infrastructure more so than the other alternatives that use the Sackrider site (Parcel H). Some of these impacts would be significant without the funding that the Tribe has agreed to provide to help mitigate the increased costs anticipated to provide these services. The Preferred Alternative would increase employment, income and secondary revenue shifts in the community and help

reduce unemployment more than the other alternatives.

**Land Resources** – All alternatives include revision of topography to facilitate construction, but with no significant impacts. All alternatives are likely to increase the potential for erosion but not significantly with proper engineering and best management practices. Public safety risk from possible liquefaction of soils, landslides, earthquakes, subsidence or collapse is not significant for all alternatives. None of the alternative locations contain critical mineral reserves.

**Water Resources** – The Preferred Alternative including cumulative conditions, No Action Alternative and some of the other alternatives would all have significant impacts to storm water quality, cause increased 100-year flood events and threaten to violate state or local regulations without the integral storm water management mitigation features included in each alternative that reduces impacts of all alternatives to less than significant. All alternatives including No Action and the Preferred Alternative would increase the demand for groundwater, but would not significantly deplete supplies or degrade water quality in violation of ground water standards or threaten public safety. The Preferred Alternative, No Action Alternative and other alternatives on the same site could have significant impacts to jurisdictional wetlands at the crossing of Dickenson Creek without mitigation included in the alternatives for directional drilling to drill under and avoid the most productive strata of wetlands at that location. For indirect and cumulative impacts of the Preferred Alternative, it is reasonable to assume that there would be some significant impacts to jurisdictional wetlands in the impact area, but the impacts would be limited because the Corps of Engineers or MDEQ would likely impose mitigation for all development projects brought to their attention. Impacts to jurisdictional wetlands at the Beckley Road site would be significant but for mitigation, primarily avoidance, that would likely be required by the Corps of Engineers or MDEQ.

**Air Quality** – All of the alternatives considered would increase emissions from traffic, construction and building mechanical systems. The Preferred Alternative would increase traffic emissions more than the other alternatives that use the Sackrider Parcel H, but the emissions would not be significant and would not exceed thresholds set by the Clean Air Act for projects requiring conformity analysis with the state improvement plan (SIP) for the EPA designated 8-hour ozone non-attainment area. The casino alternatives would increase exposure to second hand smoke and related human health risks that can be partially mitigated with ventilation equipment and ordinances to limit smoking to designated locations. None of the alternatives would violate air quality standards, even when considering cumulative conditions. No air quality impacts were found significant for any alternative, but mitigation was included for each alternative to help minimize air quality impacts and public health risks.

**Living & Biological Resources** – No significant impacts are anticipated from any of the alternatives to threatened or endangered species, their critical habitat or non-critical habitat in the affected area. Vegetation at the Preferred and Beckley Road sites is already highly disturbed by agriculture. The use of native vegetation and vegetative buffers will help mitigate impacts.

**Cultural Resources** – None of the alternatives would have significant impacts to historic or religious properties. In the event that unevaluated, buried historic, cultural or religious properties are identified during construction of the Preferred Alternative, development activity would cease in the affected area and the Tribe and other regulators would be contacted as required under 36 C.F.R. Part 800.

**Resource Use Patterns** – None of the alternatives would have significant impacts on hunting, fishing, gathering, timber or public or private recreation because these land uses do not currently occur in substantial amounts. The Preferred and Beckley Road alternatives would impact agricultural uses and prime farm lands, but the impacts would not be significant within the context of prime farmlands remaining in the county and other factors after implementation of either alternative. The trust acquisition that would accompany each of the alternatives except No Action would result in a shift of planning and

zoning jurisdiction from county, township or city to Tribal. Some local planning and zoning conflicts might arise in time, depending on views of planning and zoning officials of adjacent jurisdictions.

Traffic and Transportation Networks – All alternatives would increase traffic and the Beckley Road and Preferred Alternatives would significantly reduce the level of service (LOS) at a few intersections and in some cases increase numbers of collisions if mitigation were not implemented as described in FEIS sections 2.2.2 and 2.2.5. But with standard road improvement mitigation features, all alternatives would have less than significant impacts to transportation systems. The proximity of the Beckley Road site to existing population concentrations and housing and other development would result in greater disruption of existing traffic during construction than the Preferred Alternative. The cumulative and induced growth and indirect impacts to transportation are spread out through the community so that cumulative impacts to the transportation network would not be concentrated enough to cause significant impacts.

Other Values – Noise increases from the Preferred Alternative would not be significant, partly because the site already experiences high levels of noise from the adjacent I-94. An earthen berm near adjacent housing would shield residents from noise from the site such that the additional noise could not be perceived from the ambient noise already coming from I-94. The Beckley Road Alternative would be reasonably be expected to have significant traffic noise impacts because existing noise levels happen to be just below critical levels near existing housing. The additional traffic noise added to ambient noise would exceed critical levels. Mitigation that would be effective would not likely lower noise levels to less than significant.

Public Health and Safety Services – All alternatives including No Action would increase the demand for services for water supply, waste water, solid waste, gas and electric, telecommunications, fire protection, law enforcement, EMS, courts, inspections and so forth from state and local governments. The Preferred Alternative and other gaming alternatives would likely have significant public health and safety impacts because they would increase the demand for the services to a level that exceeds the capacity of the existing system to provide services. However, the impacts to public safety services would be reduced to less than significant with an agreement to provide revenues to maintain capacity for public health and safety.

Environmental Justice -- The purpose and need described in the FEIS is for the applicant Tribe to generate maximum net revenues to provide services for Tribal members who are members of a minority population and some of which are low income. The Preferred, Beckley Road and Reduced Hours Alternatives have similar higher amounts of net revenues compared to the other alternatives and thus would be the alternatives to provide the greatest beneficial effect from an environmental justice perspective. On the other hand, the other alternatives generate less net revenue, and some significantly less net revenue than the Preferred, Beckley Road and Reduced Hours Alternatives, which would be a significant adverse effect focused on minority and low income populations.

Aesthetic Resources and Lighting – None of the alternatives are expected to have significant impacts. For the Preferred Alternative, impacts would be reduced by an earthen berm and parking lot lighting that is directed downward.

### **3.2 Responses to Comments on Final EIS**

The following comments on the FEIS were received from EPA, CETAC and private citizens during the 30-day waiting period for the Notice of Availability (NOA). The responses to the comments provide additional analysis or indicate specifically where the analysis can be found in the FEIS.

Comment: The FEIS improperly limits its analysis to environmental tobacco smoke (ETS) and that

the FEIS is deficient because it fails to identify, assess, or evaluate the air quality impacts of indoor air or the adverse health effects of indoor air.

Contrary to this comment, the EIS includes a thorough evaluation of ETS as well as other indoor air pollutants. Section 3.4.3 of the EIS discusses many of the indoor air pollutants that can have an adverse effect on public health. Table 1 of Appendix C outlines typical sources and potential health effects associated with indoor air pollutants. The EIS also discusses the findings of several U.S. EPA documents regarding indoor air quality (EPA 1995, EPA 2005, EPA 1991). In addition to discussing the types of indoor air pollutants that may be present in the proposed casino and the potential health effects of such pollutants, the FEIS also includes a thorough evaluation of potential mitigation measures that could be used to adequately address indoor air pollutants, including relevant measures identified in the applicable EPA guidance documents. (FEIS Section 4.4.2.4).

Comment: The materials used in the construction of the casino should be evaluated along with alternative materials and ventilation.

The Tribe has committed to use modern ventilation systems and a HVAC consultant to estimate the number of air changes per hour necessary to ensure adequate ventilation. Based on an initial evaluation of the proposed HVAC system, the Tribe will use, to the extent practicable, 100 percent fresh air with no recycling of indoor air in the ventilation system for the proposed casino. See FEIS Section 4.4.2.4. In addition, although it is not reasonable to evaluate all of the hundreds of types of materials that are typically used in the construction of commercial buildings such as the proposed casino, the Tribe has agreed to adopt an additional mitigation measure that would require all contractors bidding on construction work to consider using, to the extent practicable, materials that have a low potential to adversely impact indoor air quality.

Comment: The use of ventilation to reduce the impacts of ETS and other indoor air pollutants is contrary to the known science regarding the health and environmental impacts of indoor air pollution and particularly of ETS.

As noted by EPA, ventilation improvements are a basic and effective strategy to improve indoor air quality (EPA 1995). Accordingly, the use of ventilation as a means to address indoor air pollutants is not contrary to known science and is in fact an accepted and recommended strategy. As noted above, the Tribe will use, to the extent practicable, 100 percent fresh air with no recycling of indoor air in the ventilation system for the proposed casino.

Comment: The EIS fails to address the impact of ETS on the health of patrons or workers at the casino and the impact of fine particulate resulting from cigarette smoke on the indoor and outdoor environment.

As noted above, the EIS includes a thorough evaluation of ETS as well as other indoor air contaminants. The FEIS Section 3.4.3 discusses the findings of numerous studies regarding the potential health effects of ETS (e.g., EPA 1992a, U.S. Department of Health and Human Services 2002, California Environmental Protection Agency 1997, Pachacek and Babb 2004, Wincup et al. 2004, Zhang et al. 2005, Otsuke et al. 2001). Section 4.4.2.1.2.1 of the FEIS also notes that if the gaming facility, like most, allows patrons to smoke within the building, ETS could affect workers and other patrons. However, the EIS also notes that the Tribe would limit smoking to designated areas and that the HVAC system could be designed to ensure adequate ventilation and associated filtering for designated smoking areas. The Tribe has agreed to use, to the extent practicable, 100 percent fresh air with no recycling of indoor air in the ventilation system for the proposed casino. In addition, the Tribe has agreed that provisions of the Michigan Clean Indoor Air Act would be followed to the extent applicable. Accordingly, the EIS

appropriately concludes that it is likely that the proposed casino would adopt measures to mitigate the harmful effects of ETS and that potential indoor air quality issues, including fine particulates from EIS, are not reasonably expected to be significant.

Regarding the potential impact of fine particulate from cigarette smoking on the outdoor environment, it is reasonably expected that the amount of cigarette smoke emitted from the building into the outside ambient air would be a minor amount and would be readily and widely dispersed. Accordingly, no significant impacts on the outdoor environment are reasonably expected to result from fine particulates from cigarette smoking within the building.

Comment: The EIS does not address issues related to the health effects of indoor exposure to formaldehyde and that indoor air pollution and related health effects have not been addressed in the EIS.

The EIS includes a thorough evaluation of potential indoor air pollutants and related health effects. Formaldehyde is specifically addressed, along with numerous other contaminants, in Table 1 of Appendix C of the EIS (citing EPA 1995). This table identifies typical sources of formaldehyde emissions and notes the potential health effects from formaldehyde emissions. Mitigation measures such as the use of low emitting adhesives and airing out carpeting are also identified in the EIS (Section 4.4.2.4). In addition, consistent with EPA 1995, the Tribe has committed to not use urea formaldehyde foam insulation and to require contractors to consider using, to the extent practicable, materials that have a low potential to adversely impact indoor air quality. The commenter also appears to assert that indoor air pollution cannot be addressed by ventilation. However, as noted above, EPA has determined that ventilation improvements are an effective and recommended approach to lowering the concentrations of indoor air pollutants. (EPA 1995).

The comment notes that EPA and other federal agencies have published extensive information regarding indoor air pollution and the related health effects. As noted above, and as detailed in EIS Sections 3.4.3 and 4.4.2.1.2.1 many of these studies and guidance documents have been reviewed and are cited in the EIS. In summary, the EIS includes an appropriate and detailed analysis of indoor air pollution and thoroughly evaluates potential effects and appropriate mitigation measures.

Comment: The issue of localized ambient air quality impacts was completely ignored in the EIS.

Many of the pollutants of concern evaluated in the EIS, such as ozone and particulate matter, are analyzed by the EPA and other regulatory agencies on a regional basis. That is because these pollutants can travel great distances and may be concentrated far away from an emission source. Accordingly, the air quality analysis in Section 4.4.2.1.2.2 of the FEIS followed appropriate and generally accepted methodologies to evaluate air quality impacts. However, to the extent practicable, localized ambient air quality impacts were also considered and evaluated in the EIS. For example, although vehicle emissions are spread over a wide area during the vehicle's trip, potential localized impacts to ambient air quality were modeled in accordance with EPA standards using models recommended by EPA. These models demonstrated that vehicle emissions, specifically carbon monoxide, would not have a significant localized impact under either shorter term or longer term standards. Since carbon monoxide is a primary component of vehicle emissions (see EIS Table 4.4-4), it is reasonable to expect that other components from vehicle emissions would similarly not have a significant impact on local air quality.

The BIA and the NIGC have evaluated the potential localized impact of particulates and other contaminant emissions. The analysis developed to evaluate localized impacts of other contaminants was based on the results for the carbon monoxide modeling using an appropriate factor to compare emissions. The analysis was carried out by multiplying the maximum predicted localized carbon monoxide impact, determined by computer modeling, by the ratio of the total emissions of each individual contaminant (in



tons per year) compared to the total emissions of carbon monoxide. Nitrogen oxides (NOx), sulfur dioxide (SO2), PM10 and PM2.5 as well as several hazardous air pollutants (HAPs) were evaluated using this methodology. This analysis demonstrated that the localized impacts for NOx, SO2, PM10 and PM2.5 were negligible when compared to background values and when added to background values did not exceed applicable national ambient air quality standards (NAAQS). The results of the localized analysis of HAP emissions were compared against the reference values for each particular contaminant established by the American Conference of Governmental Industrial Hygienists (ACGIH). The results of this analysis demonstrated that the localized impact of HAP emissions were a negligible percent of the ACGIH reference value. A copy of the summary table showing the predicted localized impact of particulate and other contaminants compared against the applicable NAAQS and ACGIH values is in the record. Accordingly, the localized ambient air quality impacts of particulate and other contaminants are not reasonably expected to be significant.

In addition, it is important to note that the carbon monoxide modeling was performed with receptor points right in and around the main entrance to the proposed casino during peak traffic flow. The nearest substantial residential development, Wagner Estates, is almost one half mile from the main entrance. Accordingly, emissions of carbon monoxide as well as any other contaminant from the vast majority of the traffic from the casino are reasonably expected to be greatly reduced by dispersion before any such emissions would reach Wagner Estates.

Comment: Emissions and evaporative losses from diesel engines could cause odors and nuisance pollution that would be expected to impact heavily on the local neighbors.

As noted above, localized air quality impacts associated with vehicle emissions, including emissions from diesel engines, were modeled using EPA approved models and appropriate methodology. The analysis demonstrated that vehicle emissions would not have significant impact on localized concentrations of carbon monoxide or other contaminants such as fine particulate or hazardous air pollutants and other carcinogens. Since these contaminants from vehicle emissions would not significantly impact local air quality, it is reasonable to expect that odor and nuisance pollution from vehicle emissions would similarly have no significant impact on local neighborhood air quality. Again, it is important to note that the carbon monoxide modeling upon which the analysis was based was performed with receptor points right in and around the main entrance to the proposed casino during peak traffic flow. Wagner Estates is about a quarter mile from the entrance that buses would use. Accordingly, emissions from the vast majority of the diesel vehicles going to and from the casino are reasonably expected to be greatly reduced by dispersion before any such emissions reach Wagner Estates. It should also be noted that the bus and truck traffic is reasonably expected to be very limited compared to the overall traffic for the site. For this reason, while the site will include 3,600 spaces for cars, it will include only approximately 75 spaces for buses and other oversized vehicles. (FEIS Section 2.2.3.2.7) Thus, emissions associated with buses and other larger diesel vehicles are reasonably expected to be a relatively small fraction of the overall traffic emissions.

The Tribe has also agreed to restrict vehicle engine idling on-site to a maximum of 5 minutes after drop-off and before pick-up. Thus, emissions from vehicles on-site would be appropriately limited. Accordingly, odors and other emissions from diesel engines in the parking area would be of short duration and are not reasonably expected to impact significantly local neighbors.

Comment: The EIS fails to take into account the commenter's assertions that ethanol has a lower BTU value than gasoline and therefore more ethanol must be used and that ethanol has significantly higher evaporative losses than gasoline and therefore can create more ozone on a per gallon basis than gasoline.

In response, vehicle emissions were properly evaluated in FEIS Section 4.4.2.1.2.2 and the air modeling appendix using in accordance with accepted methodologies and emissions factors. Although ethanol is shown as a parameter in the MOBILE6.2 output results shown in Appendix G of the FEIS, the value for ethanol use was set to be zero when the model was run. Therefore, the use of ethanol as a portion of the fuel blend was not considered. This was done at the recommendation of MDOT. Additionally, it should be noted that according to EPA studies (EPA 2002), the use of ethanol actually reduces ozone forming volatile organic compounds. Thus, the worst-case emissions factors used in the model more than account for any emissions that may occur associated with ethanol.

Comment: The EIS fails to consider vehicle emissions based on vehicle speed.

The EPA's MOBILE6.2 model, which is the model recommended by EPA and MDEQ for determining vehicle emissions factors, calculates air contaminant emission factors at specified average vehicle speeds. For analysis of vehicular air emissions in the FEIS, the model was run with a default average speed for vehicles. EPA and MDEQ recommend the use of this default speed value to estimate a composite air contaminant emission factor that would represent emissions for different types of vehicles and road types. In MOBILE 6.2, an average speed is used because the model must take into account temporal and spatial differences in speed over a given area. For example, the speed limit on any given road may be 55 mph, but during times of the day when roadways are more congested, the actual speed may be 45 and during low-traffic flow actual speeds may be closer to 65 mph. Additionally, the model is conducted for a regional area rather than for one specific roadway. Thus, it is reasonable and appropriate that the model uses an average speed to determine vehicle emissions factors.

Comment: The EIS does not address key factors that impact the ambient air quality in the neighborhoods and local areas surrounding the proposed casino and that the modeling performed was too simplistic and unrefined to evaluate localized impacts.

In accordance with NEPA, the BIA and the NIGC have evaluated air quality effects associated with the proposed project using appropriate and generally accepted methodologies. Ambient air quality impacts were evaluated in accordance with EPA and MDEQ recommended protocols using approved modeling software. Additionally, the information and analysis used in the air quality analysis has been reviewed by EPA, MDEQ and other state and federal agencies and these agencies have not identified any concerns with the air quality analysis. The commenter does not identify what additional "key factors" should have been considered. Also, as noted above, the analysis of air quality impacts contained in the FEIS appropriately included an evaluation of the localized impacts vehicle emissions may have on carbon monoxide concentrations.

The comment also states the air quality analysis used in the FEIS would not suffice as evidence that a facility should be permitted if the building being proposed was any type of industrial facility other than a casino. However, the casino is not an industrial facility. Also, the analysis contained in the FEIS is the same type of environmental impact analysis that would have been utilized to evaluate the impact of an industrial facility with the same emissions as the proposed casino. Accordingly, air quality impacts from the proposed casino were appropriately evaluated in the FEIS.

Comment: The FEIS fails to adequately analyze the impacts of the casino on other commercial developments.

The comment states that the FEIS "vaguely concludes that some businesses may benefit from the casino while others may suffer." However, FEIS Sections 4.7.6.2.1 and 4.7.6.2.2 describe in specific detail the types of, and in some cases, particular facilities that are reasonably expected to be affected either positively or negatively by the casino facility. These findings are made based on a number of

sources of information including a review of literature, a study of comparable and analogous casinos, interviews of local officials, and IMPLAN modeling which was determined to be the most appropriate economic effects made for the proposed facility.

The commenter also appears to assert that the FEIS fails to anticipate future commercial development impacts. However, the EIS carefully analyzes the anticipated future commercial development associated with the casino. FEIS Sections 4.1.4.2 and 4.7.6.2.2 discuss this analysis, which utilized IMPLAN modeling, a literature review, the comparable and analogous casinos study, and interviews of local officials to carefully evaluate the reasonably expected commercial development associated with the casino. In numerous other sections, the FEIS analyzes the anticipated environmental and related impacts of that reasonably foreseeable development.

Comment: The FEIS fails to consider the negative impacts of increased commercial activity associated with the casino.

The comment is that the additional commercial development associated with the casino may cause negative environmental impacts and affect the “rural nature of their community.” As noted above, the FEIS carefully evaluates potential increased commercial activity associated with the casino based on IMPLAN modeling, the comparable and analogous casino analysis, a literature review and interviews of local officials. As is discussed in Section 4.1.4.2 and elsewhere in the FEIS, it is reasonably anticipated that the future development induced by the casino will be relatively limited and likely focused at the 103/104 interchange. This relatively limited and concentrated development is not reasonably expected to significantly impact the rural areas of Emmett Township and Calhoun County outside of the 103/104 intersection area. This is consistent with the observations at FEIS Section 4.1.2.5 from the comparable and analogous casino study that rural areas have remained predominantly open space or agricultural production in the areas around the casinos. The development that does occur at 103/104 intersection is reasonably expected to be consistent with the existing commercial development that has already occurred at the intersection, which presently has several commercial developments. Throughout Section 4, primarily in the sections related to induced and indirect growth, the FEIS discusses the reasonably expected environmental impacts associated with the reasonably expected commercial development.

Comment: The FEIS generally fails to adequately analyze cumulative impacts.

The FEIS contains a thorough and adequate evaluation of cumulative impacts. Past, present and reasonably foreseeable future actions were considered in the evaluation. Potential indirect and induced growth projects and reasonably foreseeable future actions were identified in FEIS Sections 4.1.4 and 4.1.5 of the EIS. As demonstrated in the FEIS, the amount of future development is reasonably expected to be limited. As noted in Section 4.1.4.1 of the FEIS, “[a]n evaluation of existing conditions in Calhoun County indicated that because of the relatively depressed economy and historic slow growth trends within the county, it is likely that resources such as labor force, housing, recreational resources, and commercial capacity needed for construction and operation of the proposed gaming facility would be, for the most part, available.” Because of this existing economic situation in Calhoun County, which includes approximately 4,450 unemployed persons, 4,590 available housing units, and under utilization of existing lodging facilities, Section 4.1.4.2 of the FEIS notes that new development that occurs partially or wholly as a result of the proposed action is expected to be limited. Rather, it is reasonably foreseeable that the most likely effect of the proposed casino is first to increase demand for existing business and then potentially to induce additional limited development. This reasonable expectation is consistent with the findings of the comparable and analogous casino study as well as the relatively limited growth expected based upon the IMPLAN analysis.

In addition to the limited nature of the reasonably expected development, the commenter notes

that as part of the evaluation of cumulative impacts, the EIS indicated that reasonably anticipated compliance with applicable laws and regulations would likely further limit potential impacts. It is reasonable and appropriate to expect that future projects would comply with applicable laws and regulations designed to reduce environmental impacts, since those laws and regulations governing environmental matters are strictly enforced by competent federal, state and local agencies. To speculate that these agencies would allow a future development to violate applicable laws or requirements would be unreasonable.

Comment: The drafters of the EIS have confused regulatory requirements with environmental significance.

The significance criteria used in the FEIS analysis were developed in accordance with NEPA regulations in 40 C.F.R. 1508.27(b)(10) that define “significance” as at least partially based on potential violation of requirements imposed for protection of the environment. However, the FEIS also used a number of other specific significance criteria in response to the nine general significance criteria other than regulatory compliance as listed in 40 C.F.R. 1508.27. Accordingly, the EIS not only evaluated compliance with regulatory schemes but also evaluated the proposed action’s environmental impact.

Comment: The FEIS fails to recognize that isolated losses of non-jurisdictional wetlands in the aggregate can result in significant wetland loss.

As noted in Section 4.3.3.2.1 of the FEIS, there are no wetlands on the Preferred Alternative site, but there could be a small amount of wetland impacts associated with construction of the utility line. Except for the utility crossing no specific projects were identified that would directly impact wetlands. However, the EIS also notes that indirect and induced growth impacts could occur as a result of the proposed action. Section 4.3.3.2.2 of the FEIS indicates that this growth could include limited commercial development near major highway interchanges in the vicinity of the casino, most likely and primarily at Exit 103/104. Based on a review of wetlands maps, including Figure 4.3-1, substantial wetlands, whether jurisdictional or non-jurisdictional, do not appear to exist in the areas near Exit 103/104 most likely to be developed. Rather, there appears to be large tracts of upland areas available for development along Michigan Avenue and 11-Mile Road near Exit 103/104. Moreover, virtually all of the potential wetlands in the area of Exit 103/104 appear to be associated with Dickinson Creek, Pigeon Creek or the Kalamazoo River and therefore are not likely to be considered isolated wetlands. Because of the limited expected growth and the limited isolated and other wetlands in the most likely areas of growth, as well as the added construction costs associated with filling wetlands, it is not reasonably anticipated that significant effects to non-jurisdictional wetlands will occur as a result of growth associated with the casino.

The FEIS also notes that the high number of unemployed workers in the area combined with the large number of available housing units makes it unlikely that there would be substantial non-Tribal housing development associated with the casino that might significantly impact isolated wetlands. However, with the proposed action, the Tribe may be able to implement projects to start to address its significant needs. These projects may include limited housing and other Tribal facilities constructed on other Tribally-owned lands. As noted in Section 4.3.3.2.2 of the FEIS, Tribal developments are reasonably expected to be located in cleared, upland portions of its lands.

Thus, although it is possible that additional future development in the vicinity of the proposed casino could impact non-jurisdictional wetlands, as discussed above, the amount of future development is reasonably expected to be limited and would likely occur in areas that do not contain substantial non-jurisdictional wetland areas. Accordingly, any losses of non-jurisdictional wetlands, in the aggregate, resulting from development associated with the proposed action are not reasonably expected to be

significant.

Comment: The EIS concludes that there will be no significant impact from construction noise, in part because there are no noise ordinances in effect at the preferred site.

While the FEIS notes that there are no noise ordinances in effect at the preferred site, it also notes that construction activities would be temporary in nature and would be mitigated by limiting construction to normal daytime working hours. Thus, the FEIS appropriately concludes that there would be no significant impact from construction noise based on a number of relevant considerations.

Comment: The FEIS fails to consider the significance criteria for construction noise.

The comment states that the FEIS establishes that a noise impact would be considered significant if it exceeds by 5 dBA the existing noise level. The comment also notes that the evaluation found that construction noise impacts would increase by as much as 23 dBA. It is important to note that the 5 dBA significance criteria for noise relates to the operation of the facility not to construction. See FEIS Section 4.10.1. Because the facility would operate 24-hours a day for the foreseeable future, a very low threshold for noise increases was established to determine significance during operation. Thus, the significance criterion is not relevant for the short-term noise associated with construction of the facility, which is not reasonably expected to be greater than noise associated with other similar non-casino construction; is reasonably expected to be limited by the Tribe's commitment to ensure that all equipment is in proper tune and properly fitted with muffling devices; and will be limited to normal daylight hours. Accordingly, the potential impact from construction noise is not considered significant in accordance with the significance criteria established in the FEIS.

Comment: The FEIS is inconsistent because the FEIS notes at page 2-23 that the proposed casino will not be a "destination" casino, but also states in response to CETAC comment #6 that the economic benefits of the casino will be similar to a destination casino because the vast majority of patrons will come from more than 75 miles away and less than 20% of expenditures will come from Calhoun and the 7 adjacent counties.

The comment is incorrect. Page 2-23 of the FEIS states that "because the proposed action would not house other attractions, such as a hotel or entertainment venue . . . it would not be considered a 'destination' facility. . ." For this reason, the EIS notes that "it is reasonably expected that most visitors to the casino would travel to the casino and return home in a single day . . . and the likely market area to be served by the proposed casino encompasses the area that could reasonably be driven within a couple hours." See FEIS Section 2.2.2.1.

The response to CETAC comment #6 simply clarifies that the casino would have market capture effects more similar to the "destination" casinos referenced by CETAC in its comment than the localized draw casinos that CETAC referenced. The comment response noted that the "reason for the wide extent of the market area is that the proposed casino would be located near the intersection of two major Interstate Highways, which provide very efficient access to the facility from a broad area. Because of this highway access, visitors from almost 150 miles away to the north, south, east, and west can reach the facility within approximately two hours." Thus, because of the very good Interstate Highway access to the proposed facility, it is reasonably expected that patrons from almost 150 miles away could easily reach it for a day trip.

The market report included in Appendix B of the Final EIS shows that, although a substantially higher percentage of Calhoun and adjacent county residents are reasonably expected to visit the casino, substantially more total visits and casino hold are reasonably expected to come from more distant

counties. As shown in Table 3 of the market report, the report reasonably expects a substantially higher percent capture of potential casino patrons from Calhoun County and the adjacent counties than from more distant counties. However, Table 1 of the report notes that the over-21 population of Calhoun and the adjacent counties (less than 600,000) is dwarfed by that of the other counties within the two-hour driving distance (totaling over 6,000,000 people). Because of this, the total number of expected visits from Calhoun and the adjacent counties (about 1.05 million) is substantially less than that expected from elsewhere (about 2.5 million). See Table 3. In addition, because it is reasonably expected that casino visitors who travel further will, on average, tend to stay and gamble longer, it is reasonably expected that the average casino hold (i.e., the money the casino retains after paying out winnings, but before other expenses are applied) for more distant visitors will be higher than the average hold for nearby visitors. For this reason, the market report's reasonably expected hold for Calhoun and the adjacent counties (approximately \$56.6 million) is substantially less than the \$169.3 million for visitors from elsewhere.

The comment, however, does point out a typographical error in the FEIS. It should say that "approximately 25% of the expenditures will come from Calhoun and the seven adjacent counties," rather than "less than 20% of the expenditures will come from Calhoun and the seven adjacent counties."

#### **4.0 PREFERRED ALTERNATIVE**

For the reasons discussed below, the NIGC has determined that the Proposed Action is the agency's Preferred Alternative.

In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA) providing for the comprehensive regulation of Indian gaming. The IGRA's purposes include providing a statutory basis for the operation of gaming by Indian tribes as a means of promoting Tribal economic development, self-sufficiency, and strong Tribal governments, and the protection of such gaming as a means of generating Tribal revenues. 25 U.S.C. §2702(1) & (3). The Sackrider Farm Site (Parcel H) has been accepted into trust by the United States for the Tribe's benefit and declared to be its initial reservation. The land, therefore, qualifies as "Indian Lands" under IGRA.

The Proposed Action is expected to provide a stable source of net income for the Tribe that will allow it to begin to address the substantial and serious needs of its members and pursue its goal, of economic development, self-sufficiency, self-determination and strong Tribal government without resulting in substantial significant negative impacts on the surrounding environment and community. Because of these substantial benefits to the Tribe and its members, NIGC finds that gaming on the former Sackrider Site (Parcel H), and in particular the Proposed Action, is in the best interests of the Tribe.

With the exception of the Beckley Road alternative (which is reasonably expected to generate a similar amount of net income as the Proposed Action), the Proposed Action is expected to provide greater net revenue to the Tribe than any of the other alternatives, including the No Action Alternative and therefore better meets the project's purpose and need. The Proposed Action also will not result in significant adverse impacts on the human environment, following the implementation of appropriate mitigation measures identified in the FEIS. In contrast, the Beckley Road alternative is reasonably expected to result in potentially significant effects to living/biological resources, historic resources, archeological resources, land use resources, and traffic safety that could not be mitigated to levels less than significant primarily due to existing population density and related development around the Beckley Road site. Finally, the Proposed Action is economically and technically viable, and will likely create substantial socio-economic and other benefits for the Tribe and the surrounding areas.

As a result of this determination, throughout the remainder of this ROD, the terms Proposed Action and Preferred Alternative are used interchangeably.

## **5.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)**

It appears that either the Reduced Facility Size alternative or the No-Action alternative would result in the fewest effects to the biological and physical environment. This is because the Reduced Facility Size alternative would involve a smaller facility and operation than any of the other casino alternatives. Because NIGC cannot predict with certainty the exact type of development that would occur under the No-Action alternative, it is difficult to assess whether it would result in similar, lesser, or greater impacts to the biological and physical environment than the Reduced Facility Size alternative.

It is important to note that the No-Action alternative would not meet the purpose and need of the Proposed Action. Specifically, it would not provide any source of net income to allow the Tribe to achieve self-sufficiency, self-determination, or strong Tribal government. It also would not help protect, preserve, or enhance the Tribe, or the historic, cultural and natural resources of the Tribe. This alternative also would likely result in substantially less economic benefits to Calhoun County than the casino alternatives (See Section 5.10).

The Reduced Facility Size alternative would likely result in lesser social, economic, and other benefits for present and future members of the Tribe than the other casino alternatives, including the Proposed Action. In addition, the Reduced Facility Size alternative would likely not protect, preserve, and enhance the Tribe's historic and cultural resources as well as the Proposed Action or other casino alternatives. However, the Reduced Facility Size alternative would help meet the purpose and need better than the No-Action alternative and would provide better economic benefits to Calhoun County than the No-Action alternative.

In light of the above discussion and since one of NEPA's primary goals in identifying the environmentally preferred alternative appears to be highlighting the alternative that will result in the least environmental damage, NIGC hereby identifies the Reduced Facility Size alternative as the environmentally preferred alternative.

## **6.0 MITIGATION MEASURES**

Except as discussed below, all practicable means to avoid or minimize environmental harm from the Preferred Alternative have been identified and adopted. By implementing these mitigation measures, it is reasonably expected that the Preferred Alternative, like the Environmentally Preferred Alternative, would not result in any significant adverse impacts to the surrounding community or the environment generally. Thus, gaming on the Sackrider Site (Parcel H) would not create significant, unmitigated impacts on the surrounding community or environment generally.

The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities as well as this decision.

Specific best management practices and mitigation measures adopted pursuant to this decision are set forth below.

### **6.1 LAND RESOURCES**

- The Tribe will adhere to the facility design and drainage plan which will minimize earthmoving activities and topography changes and will reduce soil erosion and runoff.

- The Tribe will implement appropriate management practices such as silt fences, seeding and mulching, foundation design, and other practices designed to reduce the impacts of construction activities and modifications to the land surface as required pursuant to EPA standards for construction activities (EPA, 1992), which includes conditions imposed in a construction Storm Water Pollution Prevention Plan (SWPPP), and the Tribe's Soil Erosion and Sediment Control Ordinance (NHBP, 2000). These conditions are reasonably expected to be monitored and enforced by the EPA and the Tribe.

## 6.2 WATER RESOURCES

- To avoid potential significant impacts associated with storm water runoff, the Tribe will construct an on-site storm water retention/detention pond. This pond will be designed to capture the runoff from the impervious areas on the site so that contaminants in storm water runoff will be captured in the pond and allowed to settle from the water column prior to conveyance of the water to Dickinson Creek. The pond will provide detention for the 100-year storm event. A riser-type outlet control structure will control outflow from the pond such that the 100-year storm flow in Dickinson Creek will not be increased. The storm water facilities will be designed to meet state-of-the-art practices and will comply with EPA requirements for storm water discharge and will be monitored and enforced by EPA.
- Construction and operation of the project will adhere to best management practices (BMPs) (e.g., drift fences, interceptor dikes, berms, etc.) pursuant to Federal requirements and the Tribal Soil Erosion and Sediment Control Ordinance (NHBP, 2000). These BMPs will be monitored and enforced by the EPA and the Tribe and will reduce potential impacts to water resources by reducing erosion of soils and the run-off of soil particles into drainages.
- Over half of the site, 44 out of 79 acres, has been designed initially to include ponds, berms or undeveloped green spaces that will be revegetated with natural vegetation. The revegetated areas will have a lower runoff coefficient than currently exists on the site and will reduce storm water runoff from these areas.
- The parking lot will be designed so that the green areas around the planned parking surfaces can accept surface water runoff from a portion of the parking areas and can therefore serve as rain gardens reducing the overall amount of runoff.
- The Tribe has agreed to use deicing products on parking areas and roads similar to those used by Calhoun County for road maintenance.
- The Tribe will provide a letter to Emmett Township recommending that the Township employ directional drilling to extend the utility lines beneath Dickinson Creek, thereby avoiding potential impacts to the creek or adjacent wetlands (see EIS Volume II, Appendix K for a copy of the letter). Although the extension of utilities is the responsibility of Emmett Township, the Tribe has agreed to contribute to the cost of directional drilling.
- To the extent that any future Tribal projects necessitate upgrades in the county drainage system or other infrastructure, the Tribe has agreed to contribute an equitable share of the costs of such upgrades.

## 6.3 AIR QUALITY

The following is a list of impact minimization and mitigation measures that will be implemented to



reduce potential direct air quality impacts during construction.

- Use of equipment and trucks that are maintained in good operational condition.
- Retrofitting of off-road equipment with emission reduction equipment.
- Implementation of restrictions on construction truck idling (e.g., limiting idling to a maximum of 5 minutes).
- Daily on-site observations of site condition by construction manager to assess conditions (such as wind direction, wind speed and soil and dust conditions) that may require additional measures as described below to reduce fugitive dust to avoid a potential exceedance of the short-term NAAQS for particulate matter.
- Spraying exposed soil with water or other suppressant to reduce emissions of dust and deposition of particulate matter.
- Paving or using gravel on staging areas and roads that would be exposed for long periods.
- Covering trucks transporting materials, wetting materials in trucks, or providing adequate freeboard (space from the top of the material to the top of the truck bed) to reduce particulate matter emissions and deposition during transport.
- Providing wheel washers to remove particulate matter that would otherwise be carried off-site by vehicles to decrease deposition of particulate matter on area roadways.

Mitigation measures for indoor air quality and environmental tobacco smoke include the Tribe's agreement to voluntarily comply with existing state and local codes to protect public health and safety in effect on January 1, 2006 including:

- Use of existing physical barriers and ventilation systems to minimize the effect of smoke in both smoking and adjacent nonsmoking areas.
- Development and enforcement of a written policy for the separation of smokers and nonsmokers.
- Posting of signs that state that smoking is prohibited, except in designated areas.
- Arrangement of seating to provide, as nearly as practical, a smoke-free area.

Additional mitigation measures will include:

- Use of a HVAC consultant to estimate the number of air changes per hour necessary to ensure adequate ventilation for designated smoking areas.
- Requiring all contractors bidding on construction work to consider using to the extent practicable materials that have a low potential to adversely impact indoor air quality.
- Avoidance of urea formaldehyde foam insulation products to the extent practicable, use of 100 percent fresh air in the HVAC system with no recycling of indoor air in the facility.

- Designation of a non-smoking area.
- Ensuring that combustion devices are properly maintained and are burning efficiently and that they are properly vented and provided with adequate supply air.
- Use of low emitting adhesives during construction.
- Ensuring that carpet installers unroll and air out carpets in a well-ventilated area before installation.
- Maintenance of proper humidity in the buildings.
- Regular housekeeping to reduce dust buildup.
- Promptly repairing leaks or other conditions that could lead to moisture buildup.

The following is a list of mitigation measures that will be implemented by the Tribe to reduce emissions from the combustion of fuel during operation of the proposed casino:

- Use of low-emission water heaters or central water heating.
- Use of the appropriate R-factor insulation typically used for walls and attic spaces in commercial buildings.
- Where practicable, utilization of electric powered cooking appliances, comfort systems, and landscaping equipment.
- Implementation of restrictions on bus or recreational vehicle idling (e.g., the Tribe has agreed to limit bus and RV idling to a maximum of 5 minutes after drop-off and before pick-up).
- Provision of a separate drop-off area for bus groups to reduce the time buses would be idling during off-loading and on-loading.

#### **6.4 LIVING RESOURCES/BIOLOGICAL RESOURCES**

- The site will be landscaped using native plants where feasible on the undeveloped green spaces of the site to preclude the introduction of nuisance/invasive non-native species. The Tribe has also agreed not to use noxious/invasive plants in its revegetation and to maintain the landscaping around the site to present a visually pleasing site and to prevent the introduction of noxious/invasive species.
- The Tribe will provide a letter to Emmett Township recommending that the Township replace mature trees that are removed in connection with the utility extension using native species planted as close as possible to their original locations (see Volume II, Appendix K for a copy of the letter). Although the extension of utilities is the responsibility of Emmett Township, the Tribe has agreed to contribute to the cost of tree replacement.
- To avoid potential adverse effects to the endangered Indiana bat (*Myotis sodalis*), the Tribe will restrict the removal of potential roost trees associated with induced development on Pine Creek and Fuller Farm during the months of April through October in accordance with the report prepared by Dr. Alan Kutra in May 2005.

## 6.5 CULTURAL RESOURCES

- In the event that significant cultural resources (including buried historic, cultural, or religious properties, archaeological resources or Indian trust assets) are identified during construction, development activity will cease in the affected area, and the Tribe will contact appropriate agency officials as required under 36 C.F.R. Part 800. In that case, the Tribe will ensure that a qualified archaeologist will assess impacts to the cultural resource, the potential for additional resources and, if necessary, develop a program for mitigation of adverse effects.

## 6.6 SOCIOECONOMICS

In 1998, the Tribe and the State of Michigan entered into a Compact providing for the conduct of Tribal gaming by the Tribe. Under the 1998 Compact, the State of Michigan will, subject to the limits in the Compact, receive eight-percent, and local governments will receive two-percent, of the net win at the casino derived from all Class III electronic games of chance. A Local Revenue Sharing Board (LRSB), consisting of three members representing local governments and affected entities in Calhoun County, will be responsible for distributing the funds allocated to local governments. Pursuant to the Compact, the LRSB is to allocate payments to local units of government to offset the additional costs incurred by local units of government as a result of the development of the casino.

It is reasonable to expect that the State will monitor and enforce the Compact and that State and local governments will use the revenue from the Compact payments to address potential impacts the casino may have on certain socioeconomic resources. Although the Tribe and NIGC have no control over how the payments are allocated within local governments, it is reasonably foreseeable that the local authorities would generally allocate these funds appropriately to address the community's needs since the provision of community services is the responsibility of local governments.

In particular, it is expected that the payments to local governments will help mitigate potential socioeconomic impacts by providing financial support for public assistance and community services such as homeless shelters, medical facilities, schools and retirement communities. The payments would also likely be used to improve or supplement existing programs to mitigate any increases in societal issues such as unemployment, financial hardship or bankruptcy, child neglect, gambling addictions, underage gambling or alcoholism. In addition, the Compact requires that not less than one-eighth of the aggregate payment to local governments shall be paid to local public safety organizations for public safety purposes. The increase in spending on public safety organizations such as law enforcement departments is reasonably expected to help mitigate any increases in crime within Calhoun County.

In addition, potential socioeconomic impacts will also be mitigated by the significant revenues going to local governments from the business taxes resulting from the indirect and induced development associated with the Preferred Alternative. The IMPLAN model has indicated that the annual business taxes collected by governments as a result of the combined Preferred Alternative and water and sewer pipeline project would be approximately \$1,121,121 in 2006 dollars.

Additional mitigation measures for specific socioeconomic resource categories are described below:

### 6.6.1 *Employment and Income*

- The Tribe has committed to hire local employees for construction and operation of the proposed facility, to the extent that qualified individuals are locally available. To reduce any potential impacts on local businesses that could experience a loss of employees to the proposed gaming facility, the Tribe intends, among other things, to build strong cooperative

relationships with the Council for Employment Needs and Training (CENT) and to work with local business associations and the local STRIVE office in order to target the area's unemployed and underemployed.

#### **6.6.2**            *Public Assistance*

- In accordance with IGRA, and as overseen by the NIGC, the Tribe plans to use net gaming revenues to fund Tribal government operations and programs, to provide for the general welfare of the Tribe and its members, to promote Tribal economic development, to donate to charitable organizations and to help fund operations of local government agencies (IGRA, 2005). It is reasonably foreseeable that the Tribal expenditures, including payments to state and local governments pursuant to the State-Tribal Gaming Compact, will help to provide public assistance services for both Tribal members and non-tribal Calhoun County residents. The use of gaming revenues for these purposes will help mitigate any increased demand for public assistance services.

#### **6.6.3**            *Societal Issues*

- The Tribe will adopt and implement an awareness program to address the issue of compulsive and adolescent gambling.
- As part of the employee training and orientation, the Tribe will ensure that all gaming operation employees and management are trained to recognize and identify of addictive behavior and adolescent gambling. The Tribe will define and implement a process to resolve and assist any affected individuals. The Tribe will seek the advice and input of local agencies, such as Gam-Anon, Gamblers Anonymous, National Center for Responsible Gaming, Wanna Bet, and the National Council on Problem Gambling, during the development of specific treatment programs.
- The Tribe will provide public messages in support of responsible gaming.
- The Tribe has adopted and is reasonably expected to enforce an ordinance prohibiting Class III gaming at the facility by persons under the age of 21. In contrast, some other existing gaming facilities (Class III gaming) have age limits of 18 years. The gaming facility staff and security force will be trained to identify and deny persons under the age of 21 access to the gaming premises.

#### **6.6.4**            *Tribal Revenue for Government Services*

- In accordance with IGRA the Tribe plans to use net gaming revenues to fund Tribal government operations and programs, to provide for the general welfare of the Tribe and its members, to promote Tribal economic development, to donate to charitable organizations and to help fund operations of local government agencies (IGRA, 2005).

#### **6.6.5**            *Purchase of Goods and Services*

- The Tribe has committed to make reasonable efforts to purchase goods and services from companies and contractors that are located within Calhoun County, provided suppliers are qualified and costs are competitive.

### 6.6.6

#### *Crime*

- All key employees for the proposed casino will be subject to criminal background checks pursuant to the Tribe's gaming ordinance and Federal law. Pursuant to the State-Tribal Gaming Compact, the Tribe cannot license, hire or employ any key employee who is under age 18, or who has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation, been convicted of or entered a plea of guilty or no contest to other offenses within the last five years, is determined to have participated in organized crime or unlawful gambling, or whose prior activities, criminal records, reputation, habits and/or associations pose a threat to the public interest, effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the business and financial arrangements incidental to the conduct of gaming. It is reasonable to expect that the Tribe, NIGC and the State, through its authority under the Compact, will monitor and enforce this mitigation measure.
- Security within the facility will include a private security staff, video surveillance and monitoring of the entire facility. On site uniformed security personnel will patrol the facility, parking areas and grounds during all hours of operation. Appropriate lighting will be provided for all parking areas and drop off points.
- The Tribe and Emmett Township have entered into an "Agreement for Firefighting, First Responder Rescue Services, and Law Enforcement Services." This Agreement provides for Tribal payment for public safety services to the proposed casino by the Emmett Township Public Safety Department to include law enforcement, fire suppression, and first responder medical services during all hours of operation. Under the Agreement, prior to the opening of the casino, Emmett Township will, at the Tribe's expense, increase its Public Safety Department by five full-time officers. In addition, one Public Safety Officer (PSO) will be stationed at the proposed casino during all hours of operation to facilitate public safety services between on-site security personnel and the Township's Public Safety Department. The Tribe will also contribute \$19,000 in the first year, \$15,000 in the second year, and \$15,000 in the third year for the purchase of additional public safety equipment by the Township. It is reasonable to expect that Emmett Township, through its authority under the Agreement, and the Tribe will monitor and enforce the provisions of the Agreement.

### 6.6.7

#### *Alcohol Consumption*

- Federal law requires the Tribe to adopt as Tribal law, those State of Michigan laws, as amended, relating to the sale and regulation of alcoholic beverages. These laws include provisions addressing sale to a minor, sale to a visibly intoxicated individual, sale of adulterated or misbranded liquor and hours of operation. It is reasonable to expect that the Tribe, the State and appropriate federal agencies, such as the Alcohol, Tobacco Tax and Trade Bureau of the Department of Treasury will monitor and enforce this mitigation measure.
- As with other establishments that serve alcohol, the Tribe will implement responsible alcohol service programs that prevent visibly intoxicated customers from entering or remaining in a casino, or from being served more alcohol. These programs will also include a staff awareness and training program to learn to recognize the signs of intoxication and arranging alternative transportation (e.g., taxi rides) for visibly intoxicated customers.

## **6.7 RESOURCE USE PATTERNS**

### **6.7.1 *Hunting, Fishing and Gathering***

- Although the site is not currently utilized for hunting, fishing, and gathering and will not be in the future, the restoration of the undeveloped areas on the subject property will help mitigate any potential wildlife effects through the creation and enhancement of natural features over these undeveloped areas. Such features will include planting of native vegetation and restoration of native plant communities at various strata to restore habitat types representative of those in the area.

### **6.7.2 *Timber Resources, Agriculture, and Prime Farmland***

- The Calhoun County Agricultural Preservation Board has delineated farmland preservation areas in the County. These areas are to be considered most eligible for preservation efforts (see subsection 4.8.2.2.1). Preservation of farmland in Calhoun County may be accomplished through the County Purchase of Development Rights (PDR) program, as well as other planning and zoning techniques. The County also discourages land fragmentation in the productive and active farmland areas through techniques such as quarter-quarter zoning, sliding scale zoning, and open space/conservation design elements. It is reasonable to expect that Calhoun County will monitor and implement its PDR program. However, it is noted that the program is voluntary; therefore the implementation of the program depends upon the willingness of property owners to participate.

## **6.8 PUBLIC AND PRIVATE RECREATION**

- It is reasonably foreseeable that local recreation departments may be allocated a portion of the Tribe's two-percent payment to local governments under the State-Tribal Gaming Compact to fund maintenance of current resources and to acquire additional lands for recreational purposes in the future. However, the LRSB will have discretion to determine how the funds are allocated.

## **6.9 LAND USE PLANS/JURISDICTION**

- Site features have been developed to mitigate potential impacts to the nearby residential community. The development will include a vegetated berm which would be 10-feet tall, would run the length of the property along Ackerson Drive, and would be planted with native vegetation, primarily evergreen, to shield the community.

## **6.10 TRAFFIC AND TRAFFIC SAFETY**

The following roadway improvements would be implemented at the Tribe's expense per an agreement between the Tribe and the Michigan Department of Transportation (MDOT):

- Signalization of main casino entrance;
- Left-turn only lanes eastbound along Michigan Avenue at each project driveway entrance;
- Dual left-turn lanes for southbound traffic at intersection of Michigan Avenue and 11 Mile Road;

- Exclusive right-turn lane for northbound traffic on I-94 Eastbound Off Ramp at 11 Mile Road;
- Exclusive left-turn lane for southbound traffic on I-94 Westbound Off Ramp at 11 Mile Road;
- Exclusive right-turn lane for northbound traffic on I-94 Westbound Off Ramp at 11 Mile road;
- Actuated traffic signal at intersection of Michigan Avenue and 11 Mile Road;
- Actuated traffic signal at intersection of I-94 Eastbound Off Ramp and 11 Mile Road;
- Interconnection between intersection of I-94 Eastbound Off Ramp and 11 Mile Road and the intersection of Michigan Avenue and 11 Mile Road;
- Actuated traffic signal with cycle length conducive to progression along 11 Mile Road at intersection of I-94 Westbound Off Ramp and 11 Mile Road;
- Exclusive left-turn lane for Southbound on Westbound I-94 Off Ramp at 11 Mile Road; and
- Exclusive left-turn lane for Southbound 11 Mile Road at Eastbound I-94 off Ramp.

It is reasonable to expect that the MDOT through its authority under the Agreement will monitor and ensure these mitigation measures are properly implemented. According to MDOT, no roadway improvements, beyond those recommended for this project, would be required in the vicinity of the Project Site to maintain an acceptable LOS (Tom Raymond, MDOT, pers. comm).

- It is the State's responsibility to finance maintenance on State roadways, and it is the local governments' responsibility to finance maintenance on local roadways. It is reasonably foreseeable that some of the funds allocated to the State and local governments pursuant to the State-Tribal Gaming Compact will be used as needed towards the maintenance of State and local roadways, especially near the casino and that the State and local governments will ensure roadways are properly maintained as they do with other roadways.

## 6.11 OTHER VALUES

### 6.11.1 *Sounds and Noise.*

- Short-term noise impacts during the construction phases of the project will likely be the most significant noise impact caused by the project. During construction activities, the Tribe will ensure that noise levels will be reduced by ensuring that all equipment is in proper tune and properly fitted with muffling devices.
- The Tribe will limit outdoor construction activities to normal daytime working hours.
- The site design layout includes a substantial vegetation earthen berm that is designed to be 85-feet in width at its base and 10-feet in height constructed along the eastern boundary to protect residences along Ackerson Drive. After the berm has been constructed, noise levels at the residences would be further reduced.

- The Tribe has agreed to establish a comment procedure that will allow, among other things, neighbors to raise legitimate complaints regarding noise levels. The Tribe has agreed to investigate and respond to legitimate complaints.

#### **6.11.2            *Hazardous Materials***

- Only normal quantities of common housekeeping/maintenance chemicals and small amounts of fuel for emergency backup generators and landscaping and maintenance equipment will be stored on-site. These chemicals and fuels will be stored in appropriate containers and kept in locked maintenance cabinets on impermeable surfaces or will be equipped with secondary containment. The Tribe has agreed to adopt and enforce local fire codes pertaining to the storage and use of flammable/hazardous materials. Any spills of hazardous materials will be contained and cleaned up to the extent practicable and in accordance with applicable federal and Tribal laws and ordinances. Additional mitigation measures to reduce the potential impact from spills or releases of hazardous materials will include the use of best management practices during construction such as storm water retention, interceptor dikes and berms.

#### **6.11.3            *Public Health and Safety Services***

- Payments to the State and local governments pursuant to the State-Tribal Gaming Compact will likely be used, in part, to fund local and county government agencies that will provide police, fire, and EMS services within the Project Area. The Compact requires that no less than one-eighth of the aggregate payment to local governments shall be paid to local public safety organizations for public safety purposes. It is reasonable to expect that the State will monitor and enforce the provisions of the Compact.
- Under the “Agreement for Firefighting, First Responder Rescue Services, and Law Enforcement Services,” prior to the opening of the casino, Emmett Township will, at the Tribe’s expense, increase its Public Safety Department by five full-time officers. In addition, one Public Safety Officer (PSO) will be stationed at the proposed casino during all hours of operation to facilitate public safety services between on-site security personnel and the Township’s Public Safety Department. The Tribe will also contribute \$19,000 in the first year, \$15,000 in the second year, and \$15,000 in the third year for the purchase of additional public safety equipment by the Township. It is reasonable to expect that Emmett Township, through its authority under the Agreement, and the Tribe will enforce the provisions of this Agreement.
- Life Care Ambulance Service has provided a will-serve letter indicating that it is capable of providing emergency medical transport services to the proposed casino.

#### **6.11.4            *Potable and Fire Fighting Water***

- The Tribe and Emmett Township have entered into a “Services Agreement between the Nottawaseppi Huron Band of Potawatomi Indians and Emmett Charter Township for the Extension of Municipal Water and Sewer Systems.” Pursuant to this Agreement, the Tribe has agreed to pay an agreed upon amount for the construction of a new water line to service the facility and immediate vicinity. It is reasonable to expect that Emmett Township, through its authority under the Agreement, and the Tribe will enforce the provisions of this Agreement. This new water line is projected to meet the water demands generated by the proposed facility.



- There is a reserve capacity of approximately 20 million gallons per day (MGD) as part of the City of Battle Creek water system that would be able to accommodate the proposed casino and any reasonably expected indirect and induced growth. In addition, where practicable, the Tribe has agreed to incorporate best available water conservation measures into the detailed facility design and into the operation of the facility.
- Site development will include a 250,000-gallon water storage tank for emergency fire suppression purposes.
- The Tribe has adopted and will enforce the Building Officials and Code Administrator’s (BOCA) national, building, electrical, fire and safety standards. Thus, the building is reasonably expected to meet building and safety standards designed to help protect occupants during fire and safety services.

**6.11.5            *Solid Waste***

- Mitigation would occur through participation in recycling programs and by reducing the amount of solid waste produced, where practicable. The Tribe has adopted a Solid Waste Disposal Ordinance. Pursuant to the Ordinance, the Tribe has agreed to participate in recycling programs and take-back programs with vendors, purchase recyclable and reusable products, and educate their employees and guests on reducing waste in order to reduce the amount of solid waste generated by the facility.

**6.11.6            *Wastewater***

- The Tribe and Emmett Township have entered into a “Services Agreement Between the Nottawaseppi Huron Band of Potawatomi Indians and Emmett Charter Township for the Extension of Municipal Water and Sewer Systems.” Pursuant to this Agreement, the Tribe has agreed to pay an agreed upon amount for the construction of a new wastewater line to service the facility and immediate vicinity. It is reasonable to expect that Emmett Township, through its authority under the Agreement, and the Tribe will enforce the provisions of this Agreement. The new wastewater line is projected to meet the wastewater demands of the facility.

**6.11.7            *Electric***

- Mitigation will occur through the proper use of electricity and by conserving energy where practicable. Where practicable, the Tribe has agreed to incorporate best available energy conservation measures into the detailed facility design and into the operation of the facility. It is reasonable to expect that the Tribe will implement this mitigation measure to reduce energy costs.

**6.11.8            *Natural Gas***

- Mitigation will occur through the proper use of natural gas resources and by conserving energy where practicable. Where practicable, the Tribe has agreed to incorporate best available energy conservation measures into the detailed facility design and into the operation of the facility. It is reasonable to expect that the Tribe will implement this mitigation measure to reduce energy costs.
- If the natural gas utility determines the existing 4-inch natural gas line is inadequate for the

proposed casino, the Tribe will pay any appropriately assessed fee for replacing the existing line and providing service to the casino in accordance with the gas utility's normal assessment procedures.

#### **6.11.9 Telecommunications**

- The Tribe as applicant will work closely with the telecommunications provider, SBC, to coordinate service extension that should ensure that impacts, if any, to others are minimal. The Tribe will pay any appropriately assessed fee for providing service to the casino in accordance with SBC's normal assessment procedures.

#### **6.11.10 Cable/Satellite Television**

- To mitigate any potential impacts associated with the installation of cable/satellite connections, the Tribe will work closely with the provider to ensure that services are performed in a manner that does not impact others.

### **6.12 AESTHETIC RESOURCES AND LIGHTING**

- Mitigation measures taken to minimize visual impacts include a well-designed and architecturally attractive casino that is complimented by a professionally designed landscape that would reduce the contrast of the property with its surroundings (EIS Figure 2.2-11).
- According to site design specifications, a vegetated earthen berm 10-feet in height and 85-feet in width at its base will create a barrier for both light and sound between the casino and Wagner Acres Subdivision. This element is also designed to add texture and height to the site when planted with trees and shrubs.
- Aesthetic impacts to the site will be reduced by the proposed water retention pond that would be visible from I-94. The pond will be designed as to provide a pleasing vista or focal point when viewed from I-94.
- Intensity and height of the parking area's lights will be designed to the minimum levels required to ensure public safety and security. Lighting over the majority of the parking areas will consist of mercury vapor lamps mounted on 30-foot poles. Lighting fixtures will be downward shielded as appropriate to reduce the "skyglow" effect and to direct light only where needed.
- The Tribe has agreed to establish a comment procedure that would allow, among other things, neighbors to raise legitimate complaints regarding light and glare issues. The Tribe has agreed to develop a procedure to investigate and respond to legitimate complaints.

### **6.13 MITIGATION MEASURES THAT ARE NOT ADOPTED**

CEQ NEPA regulations 40 C.F.R. 1505.2(c) call for identification in the ROD of any mitigation measures specifically mentioned in the FEIS that are not adopted. The following mitigation measures specifically mentioned in the FEIS are not adopted:

- The traffic signal at Michigan Avenue and 11 Mile Road could be improved to add intersection illumination to improve visibility. The Tribe and the Michigan Department of

Transportation have entered into an agreement whereby the Tribe would implement, at its expense, the traffic and traffic safety mitigation measures described above. According to MDOT, no roadway improvements, beyond those agreed to be implemented by the Tribe, would be required to maintain an acceptable level of service in the project area. In addition, after considering the traffic improvements agreed to by the Tribe, the NIGC has determined that the Preferred Alternative would not result in a significant impact on traffic safety. Accordingly, adding intersection illumination to the traffic signal at Michigan Avenue and 11 Mile Road is not warranted for the Preferred Alternative in light of the traffic improvements the Tribe has agreed to undertake.

- Because certain carpeting may be a potential source of indoor air pollutants, a potential mitigation measure would involve the reduction of the use of carpeting in building areas. However, the use of carpeting in gaming facilities is important for both aesthetics and noise control and as a result, the reduction of carpeting is not practicable in a gaming facility. In addition, the Tribe has agreed to ensure that carpet installers unroll and air out carpets in a well-ventilated area before installation. Accordingly, a reduction in the use of carpeting is not warranted for the Preferred Alternative.
- The use of permeable paving materials was evaluated as a potential mitigation measure to reduce impacts associated with storm water runoff. However, permeable paving materials increase the potential for adverse impacts to the environment that could occur as a result of leaching into the groundwater aquifers of drips, leaks or spills of vehicle fluids. In addition, the harsh winters and freeze/thaw cycle in Michigan may adversely affect the performance and longevity of permeable paving materials, potentially increasing pot holes and other driving hazards in parking areas. Finally, the Tribe has agreed to construct a state-of-the-art storm water management system which is reasonably expected to mitigate any potential adverse impacts associated with storm water runoff, including mitigation of lost infiltration capacity from increasing impervious surfaces which is a key reason why permeable paving materials were suggested in the comments. Accordingly, the use of permeable paving materials for the entire parking area surfaces is not warranted for the Preferred Alternative.

## 7.0 DECISION

The NIGC has determined that it will implement the Proposed Action and the Proposed Alternative. This decision has been made based upon the environmental impacts identified in the EIS as well as a consideration of economic and technical considerations. While the No-Action alternative and the Reduced Facility Size alternative may result in somewhat lower environmental impacts with respect to certain environmental and other resources, these alternatives would limit the ability of the Tribe to facilitate and promote tribal economic development, self-determination and self-sufficiency. The No-Action alternative would result in no net income or other economic benefits to the Tribe, and thus does not meet the purpose and need of the Proposed Action. Likewise, the Reduced Facility Size alternative, which has been identified in Section 5.0 as the Environmentally Preferred Alternative, would substantially limit the positive effects that would otherwise be available to the Tribe and the communities within Calhoun County under the Preferred Alternative.

The Proposed Action results in substantially greater beneficial effects to the Tribe and the local community than any of the other alternatives, with the exception of the Beckley Road alternative. However, the Beckley Road alternative, unlike the Preferred Alternative, is reasonably expected to result in potentially significant negative effects for which mitigation may not reduce impacts to less than significant levels. Accordingly, the NIGC will implement the Proposed Action subject to implementation of the mitigation measures discussed in Section 6.0.

## **7.1 Proposed Action results in Substantial Beneficial Impacts and No Significant Negative Effects after Mitigation**

The Proposed Action is reasonably expected to result in beneficial effects for Calhoun County, the Tribe and its members. Key beneficial effects include:

- Needed revenues to the Tribe to allow it to begin to meet the Tribe's and its members' significant needs and to help develop the political cohesion and strength necessary for self-sufficiency, self-determination and strong Tribal government.
- Employment of 770 workers during construction and 1,227 workers during operation.
- Induced growth employment of 254 workers.
- Indirect and induced economic output totaling about \$22,290,425 in 2006 dollars.
- Increased revenues of at least \$10 million per year to the state and \$2.5 million per year to local governments under the Compact between the Tribe and the State of Michigan.
- Increased annual business tax revenues paid by other business entities totaling \$1,121,121 in 2006 dollars.

The Proposed Action may also have potential negative impacts on several resource areas. For example, the Proposed Action is predicted to result in potential increases in traffic volume, air emissions, erosion, and sedimentation during construction, problem gambling, and demand for public services and infrastructure. However, with appropriate mitigation measures as discussed in Section 6.0, none of these impacts are reasonably expected to be significant based on the criteria discussed in the EIS.

## **7.2 No-Action Alternative Fails to Meet Purpose and Need of Project**

Under the No-Action alternative, it is reasonably foreseeable that the former Sackrider Site, Parcel H site would likely be developed into a small-scale highway commercial or trucking-related development, similar to other interchanges in Calhoun County that are not fully served by public utilities. The government revenue and employment impacts from such development would be relatively low, particularly compared to the government revenue and employment impacts of a casino. Because of this, Calhoun County residents and the Tribe and its members would not receive the economic and related benefits that the proposed casino is reasonably anticipated to provide. This would result in a continuation of the poor economic conditions and very limited economic opportunities of the Tribe and its members.

## **7.3 Reduced Hours of Operation Alternative Limits Ability of Tribe to Meet Purpose and Need**

It is reasonably expected that the Reduced Hours of Operation alternative would have generally similar environmental and related effects as the Proposed Action. This is because the reduced hours of operation would be identical to the Proposed Action, with the exception of being closed from 3:00 A.M. to 8:00 A.M. However, because this alternative would not operate for five hours per day, it is likely to generate approximately 10 percent less revenue for state and local governments and to assist the Tribe in its efforts for self sufficiency, self-determination, and strong Tribal government as well as to attempt to meet the significant needs of its membership.

**7.4 Reduced Facility Size Alternative Substantially Limits Beneficial Effects of Proposed Action**

The Reduced Facility Size alternative is reasonably expected to provide beneficial effects for Calhoun County and the Tribe and its members. However, these benefits would be substantially reduced as compared to the Proposed Action. Key beneficial effects include:

- Employment of 407 workers during construction and 960 workers during operations (compared to 770 workers during construction and 1,227 workers during operations for the Proposed Action).
- Induced growth of 122 jobs instead of 254 jobs.
- Indirect and induced economic output totaling about \$10,798,740 in 2006 dollars (compared to about \$22,290,425 for the Proposed Action).
- Reduced Compact payments to state and local governments.
- Increased annual business tax revenues paid by other business entities totaling about \$543,351 in 2006 dollars (compared to about \$1,121,121 for the Proposed Action).

The Reduced Facility Size alternative is also reasonably expected to result in approximately 40 percent less revenues compared to the Proposed Action to help the Tribe meet its' and its members' significant needs and to help develop the political cohesion and strength necessary for self-sufficiency, self-determination, and strong Tribal government. Because the Proposed Action, like the Reduced Facility Size alternative, would not result in significant effects to the environment after the implementation of mitigation measures, the NIGC believes that the reduced economic and related benefits of the Reduced Facility Size alternative do not warrant its selection over the Proposed Action.

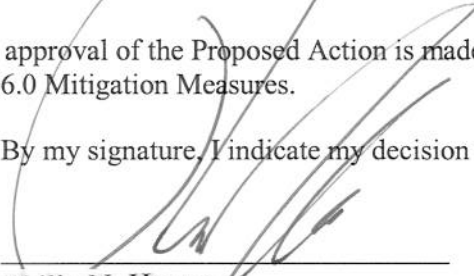
**7.5 Beckley Road Alternative may Result in Significant Adverse Environmental Effects**

Because the Beckley Road alternative would be located near I-94 relatively close to the Sackrider Site, Parcel H and would have essentially the same facility and operation as the Proposed Action, the Beckley Road alternative is reasonably expected to result in similar beneficial economic and related effects for Calhoun County, the Tribe and its members as the Proposed Action.

However, unlike the Proposed Action, the Beckley Road alternative is reasonably expected to result in potentially significant impacts on historic resources, archeological resources, land use resources, traffic safety and sound and noise. Accordingly, NIGC has selected the Proposed Action over the Beckley Road alternative.

NIGC's approval of the Proposed Action is made subject to the conditions and commitments found in Section 6.0 Mitigation Measures.

By my signature, I indicate my decision to implement the Preferred Alternative.

  
Philip N. Hogen  
NIGC Chairman

DEC 14 2007

Date