



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 17 2022

The Honorable Michael Fairbanks
Chairman, White Earth Band
of the Minnesota Chippewa Tribe
P.O. Box 418
White Earth, Minnesota 56591

Dear Chairman Fairbanks:

On December 4, 2017, the White Earth Band of the Minnesota Chippewa Tribe (Tribe)¹ submitted a request to the Department of the Interior (Department) for the acquisition in trust of approximately 92.18 acres of land known as the Buschelle Site (Site) in Clearwater County, Minnesota for gaming and other purposes.² The Site is within the boundaries of the White Earth Reservation and is owned in fee by the Tribe.³ The Tribe also requested confirmation that the Buschelle Site would remain eligible for gaming if acquired in trust.⁴

The Tribe currently operates the Shooting Star Casino in a building located on the Site. The Tribe owns and operates several businesses within the Shooting Star Casino building including a restaurant, bar, and a lounge.⁵ The Tribe will continue these existing uses after the Site is transferred into trust.

We have completed our review of the Tribe's request, the Regional Director's Findings of Fact, and the documentation in the record. As discussed below, I determine that the Buschelle Site will be acquired in trust for the benefit of the Tribe for gaming and other purposes pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. Once acquired in trust, the Tribe may continue to conduct gaming on the Site pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(a)(1).

¹ See *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022) (the Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)).

² See Memorandum, Findings of Midwest Region Concerning the Factors Codified in 25 C.F.R. § 151 for the Fee-to-Trust (Gaming) Application, Buschelle Tract, for the White Earth Band of Minnesota Chippewa, from Acting Regional Director, Midwest Region to Director, Office of Indian Gaming at 1. (Apr. 1, 2020) (hereinafter Regional Director's Findings of Fact).

³ See Application Tab 2, Letter from Chairman, White Earth Band of the Minnesota Chippewa Tribe, to Superintendent, Minnesota Agency (Dec. 4, 2017) at 1.

⁴ *Id.* at 2.

⁵ Regional Director's Findings of Fact at 5.

BACKGROUND

The White Earth Band of the Minnesota Chippewa Tribe of Indians is one of six Chippewa bands comprising the Minnesota Chippewa Tribe.⁶ The White Earth Reservation was established by the Treaty of 1867.⁷ The Secretary of the Interior (Secretary) called an election pursuant to Section 18 of the IRA, which was held on the White Earth Indian Reservation on October 27, 1934, at which a majority of the adult Indians residing there voted to adopt the IRA by a vote of 1,122 to 245.⁸ In 1936, the Minnesota Chippewa Tribe, of which the White Earth Band is a component part, adopted an IRA constitution under the name of the Minnesota Chippewa Tribe, which was approved by the Secretary on July 24, 1936.⁹ On September 17, 1937, the Secretary approved a Section 17 charter for the Minnesota Chippewa Tribe, which was subsequently ratified by a majority of the adult Indians residing on the White Earth Indian Reservation. Both the constitution and charter specifically listed the White Earth Band as a constituent reservation community of the Minnesota Chippewa Tribe.¹⁰ As detailed in the Haas Report, a majority of the adult Indians residing on the White Earth Reservation voted in favor of adopting the IRA.¹¹

During the allotment era of federal Indian policy, Congress authorized allotments within the White Earth Reservation.¹² Over time, most of the allotments were conveyed to non-Indians by sale, foreclosure, or enforcement of tax liens.¹³ The Buschelle Site is part of the lands that were lost during allotment.

DESCRIPTION OF THE PROPERTY

The Buschelle Site is approximately 92.18 acres located within the boundaries of the White Earth Reservation in Clearwater County, Minnesota.¹⁴ The Site is owned in fee simple by the Tribe.¹⁵ The Shooting Star Casino is located on the north part of the Site and there is vacant agricultural land on the south part of the Site.¹⁶ The Tax parcel number for the Site is 06.004.0300.¹⁷ In its initial application to acquire the Site in trust, the Tribe mentioned also

⁶ *White Earth Band of Chippewa Indians v. Alexander*, 518 F. Supp. 527 (D. Minn. 1981).

⁷ *Id.*; see also Treaty with the Chippewa of the Mississippi, 1867, 16 Stat. 719, (Mar. 19, 1867).

⁸ Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.* at 16 (1947) (listed under the Consolidated Chippewa Agency as White Earth).

⁹ *Id.* at 23 (listed under Consolidated Chippewa as White Earth).

¹⁰ *Ibid.*

¹¹ *Id.* at 16.

¹² See Act of January 14, 1889, 25 Stat. 642 (Nelson Act), and the Act of February 8, 1887, 24 Stat. 388 (General Allotment Act).

¹³ See, e.g., H.R. Rep. No. 112-501, 112th Cong., 2d. Sess., to accompany Minnesota Chippewa Tribe Judgement Fund Distribution Act of 2012 (May 30, 2012) (noting that tribal lands were ceded to the United States and those ceded lands were opened for settlement under the homestead laws); see also *Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2012*, Pub. L. 112-179, 126 Stat. 1411 (Oct. 5, 2012).

¹⁴ Regional Director's Findings of Fact at 1.

¹⁵ *Id.* at 5 (the Tribe purchased the property in 2015 and it is owned in fee simple).

¹⁶ *Id.*

¹⁷ APP Tab-3 (Clearwater County 2017 property tax statement).

building a gas station and convenience store on the Site at some future date.¹⁸ The Tribe clarified that it intends to maintain the existing uses of the property.¹⁹ The legal description for the Buschelle Site is included as Enclosure II.²⁰



Figure 1 Buschelle Site²¹

¹⁸ APP Tab-2 (Letter to Patricia Olby, Superintendent, Minnesota Agency from Terrence Tibbetts, Chairman, White Earth Band of Minnesota Chippewa at 2 (Dec. 4, 2017)).

¹⁹ Letter to Tim LaPointe, Midwest Regional Director, from Terrence Tibbetts, Chairman White Earth Band of Minnesota Chippewa (Nov. 26, 2018) (“[t]here are no plans for expansion or construction of other amenities at the subject property in the foreseeable future; and there are no plans to change the existing use of the property.” On file with the Office of Indian Gaming as 2018_11_26 Buschelle Letter signed by Chairman).

²⁰ See PTO Tab 2, Buschelle Parcel Certificate of Inspection and Possession at 1, BIA Regional Environmental Protection Specialist (Mar. 6, 2019).

²¹ *Id.* at 3

THE INDIAN GAMING REGULATORY ACT

Congress through IGRA recognized Tribes' inherent and exclusive right to regulate and conduct gaming activity on Indian lands²², which are defined, in pertinent part, as "all lands within the limits of any Indian reservation."²³ This definition includes all lands within the boundaries of a Tribe's reservation, including lands owned in fee simple.²⁴ Section 20 of IGRA permits tribes to conduct gaming on lands located within or contiguous to the boundaries of the reservation of an Indian tribe on October 17, 1988 (on-reservation exception).²⁵

As explained above the White Earth Reservation was established by treaty in 1867 and remains intact. Therefore, I conclude the Tribe had a reservation on October 17, 1988. The Buschelle Site is located within the boundaries of the White Earth Reservation in Minnesota. The Map at Figure 2 below, shows the approximate location of the Site within the White Earth Reservation.

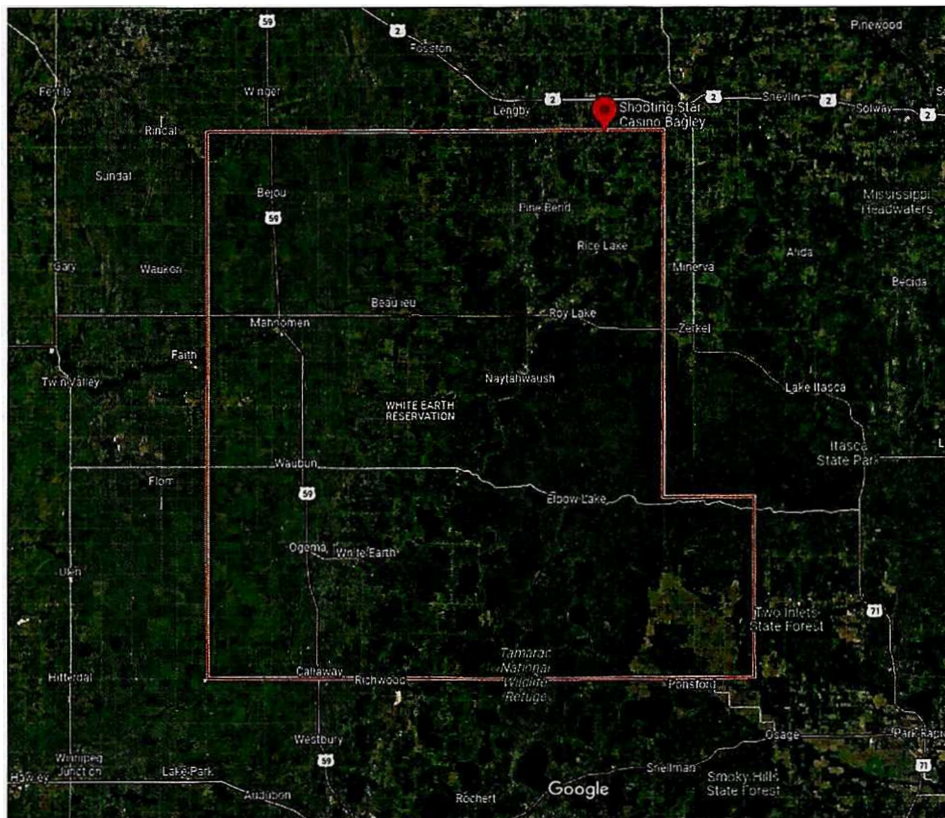


Figure 2 Approximate Location of Buschelle Site within White Earth Reservation

²² See 25 U.S.C. § 2701(5).

²³ 25 U.S.C. § 2703(4)(A).

²⁴ See e.g., Letter from Roger W. Thomas, Office of the Solicitor, to Mr. Donald C. Kittson, Tribal Attorney, Blackfeet Tribe, dated December 3, 1990 (on file with the Office of Indian Gaming).

²⁵ 25 U.S.C. § 2719 (a)(1).

Because the Buschelle Site is located within the White Earth Reservation, I conclude the Tribe may continue to conduct gaming pursuant to IGRA regardless of the trust status of the property on which the Site is located.²⁶

TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

The Secretary's authority for acquiring the Buschelle Site in trust is found in Section 5 of the IRA.²⁷ The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5.

25 C.F.R. § 151.3 - Land acquisition policy

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

- (1) When the property is located within the exterior boundaries of the tribe's reservation²⁸ or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Although only one factor in Section 151.3 must be met, the Tribe's application satisfies all three factors. The criteria of subsection (a)(1) are satisfied because the Site is located within the exterior boundaries of the White Earth Reservation in Minnesota. Subsection (a)(2) is satisfied because the Tribe owns the Site in fee.²⁹ The Tribe also satisfies the requirements of subsection (a)(3) because acquisition of the Site will facilitate tribal self-determination and economic development.³⁰ The Department's trust acquisition of the Buschelle Site reinforces the Tribe's governmental authority over the Site, facilitating the Tribe's self-determination and economic development.

²⁶ 25 C.F.R. § 292.4 (a). The Department's regulations at Section 292.2 define "reservation" as "[l]and set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent." 25 C.F.R. § 292.2. The Department's regulations similarly state that a Tribe may conduct gaming under the on-reservation exception if the Tribe had a reservation on October 17, 1988, and if the lands are located within or contiguous to the boundaries of the reservation. 25 C.F.R. Part 292.4(a).

²⁷ Act of June 18, 1934, ch. 576, § 5, 48 Stat. 984 ("IRA") (codified at 25 U.S.C. § 5108) ("The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.").

²⁸ Section 151.2(f) defines "Indian reservation" to mean, in relevant part, that area of land over which the tribe is recognized by the United States as having governmental jurisdiction.

²⁹ APP-Tab 11 (Buschelle Fee Deed White Earth) (Warranty Deed between Central Minnesota Land Company, LLC, and the White Earth Band of Chippewa Indians conveying the Site to the Tribe, Clearwater County Document dated August 4, 2015, recorded October 21, 2015); Regional Director's Findings of Fact at 5.

³⁰ Regional Director's Findings of Fact at 4-5.

25 C.F.R. § 151.10 - On-reservation acquisitions

Section 151.10 requires the Secretary to evaluate requests for acquisition of land under the on-reservation criteria when the land is located within or contiguous to an Indian reservation. Here, the Regional Director determined, and I concur, that the Tribe's application should be considered pursuant to the on-reservation criteria of Section 151.10 because the Buschelle Site is located within the Tribe's reservation.³¹

25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition, and if such authority exists, to consider any limitations contained in it including the effect, if any, of the decision in *Carcieri v. Salazar*.³²

In 2014, the Solicitor of the Interior (Solicitor) memorialized the Department's understanding of the phrase "now under federal jurisdiction" in the IRA in light of *Carcieri*, in the Sol. Op. M-37029 *The meaning of 'Under Federal Jurisdiction' for purposes of the Indian Reorganization Act* (M-37029).³³ The Solicitor provided a two part procedure to determine if a tribe was under federal jurisdiction before 1934, and whether that jurisdictional status remained intact in 1934.³⁴ In 2021 the Solicitor reinstated M-37029.³⁵ The Solicitor concluded that a Tribe's election under Section 18 of the IRA whether to adopt or reject application of the IRA unambiguously and conclusively establishes that the United States understood that this particular tribe was under federal jurisdiction in 1934.³⁶

The Tribe voted to accept the IRA. This is conclusive evidence that the Tribe was under "under Federal Jurisdiction" in 1934 and that the Secretary of Interior is authorized to acquire land in trust for the Tribe under Section 5 of the IRA.³⁷

25 C.F.R. § 151.10(b) - The need of the individual Indian or tribe for additional land

Section 151.10(b) provides that the Secretary will consider a tribe's need for additional land when reviewing a tribe's request to have land acquired land in trust. The Site is within the boundaries of the White Earth Reservation. Congress authorized allotments within the Reservation, eventually resulting in conveyance of most of the land to non-

³¹ See *Id.*, fn 7.

³² *Carcieri v. Salazar*, 555 U.S. 379 (2009) (hereinafter *Carcieri*).

³³ Sol. Op. M-37029, *The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act* (Mar. 12, 2014) ("M-37029").

³⁴ Sol. Op. M-37070, *Withdrawal of Certain Solicitor M-Opinions, Reinstatement of Sol. Op. M-37029, the Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act, and Announcement Regarding Consultation on "Under Federal Jurisdiction" Determinations* (Apr. 27, 2021).

³⁵ *M-37029* at 20.

³⁶ *Supra*, note 8.

Indians.³⁸ The Buschelle Site was part of the land lost during the allotment era.³⁹ The United States currently holds approximately 65,272 acres in trust for the Tribe of the 829,440 acres comprising the White Earth Reservation.⁴⁰ The acquisition of the Site in trust is a key component of the Tribe's planned economic development.⁴¹ The Department's acquisition of the Site in trust will restore a portion of the land lost within the Reservation and will secure it against alienation while protecting the Tribe's investment,⁴² thus facilitating the Tribe's goal of self-determination and economic development.⁴³

The Regional Director found, and I concur, that the Tribe has established a need for additional land and the acquisition of the Site in trust for the Tribe will help address the Tribe's need for additional land.

25 C.F.R. § 151.10(c) - The purpose for which the land will be used

Section 151.10(c) requires consideration of the purposes for which the land will be used. As discussed above, the Tribe currently owns and operates a casino and several tribally-owned businesses on the Buschelle Site. The Tribe will continue these existing uses after the Buschelle Site is acquired in trust.

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls

Section 151.10(e) requires consideration of the impact on the State and its political subdivisions resulting from removal of land from the tax rolls. As explained below, the transfer of approximately 92.18 acres into trust will have a minimal impact on the State and its political subdivisions.

³⁸ See Act of January 14, 1889, 25 Stat. 642 (Nelson Act).

³⁹ See, e.g., H.R. Rep. No. 112-501, 112th Cong., 2d. Sess., to accompany Minnesota Chippewa Tribe Judgement Fund Distribution Act of 2012 (May 30, 2012).

⁴⁰ App Tab-4 (list of tracts and total acreage held in trust for the Tribe); <https://mn.gov/indianaffairs/whiteearth-iac.html> (size of White Earth Reservation on Minnesota Indian Affairs Council web site. Site last visited September 20, 2022).

⁴¹ See APP Tab-2 (Letter to Patricia Olby, Superintendent, Minnesota Agency from Terrence Tibbetts, Chairman, White Earth Band of Minnesota Chippewa at 2 (Dec. 4, 2017)).

⁴² In *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), the Supreme Court ruled that a Oneida Nation could not unilaterally assert tribal tax immunity to prevent a local government from assessing real property taxes on lands that the Nation re-acquired two centuries after they had last been possessed by the Oneidas. The Supreme Court instructed that the "proper avenue" for the Nation "to reestablish sovereign authority over" the lands is by a fee-to-trust application to the Secretary of the Interior pursuant to 25 U.S.C. § 465 and the Department's implementing regulations at 25 C.F.R. Part 151. See *City of Sherrill*, 544 U.S. at 221.

⁴³ Regional Director's Findings of Fact at 4.

On March 18, 2019, the Midwest Regional Office of the Bureau of Indian Affairs (Midwest Region or BIA) solicited comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments from:

- State of Minnesota
- Clearwater County
- Town of Falk.⁴⁴

The BIA received responses from the State⁴⁵ and the County,⁴⁶ but did not receive a response from the Town of Falk.⁴⁷

The State provided a breakdown of how the \$102,426 in 2019 taxes levied were allocated (Clearwater County received \$37,663.05, Falk Township received \$14,801.04, the remainder was allocated to other purposes). The State indicated that there are no special assessments on the property, that police, ambulance, and firefighting services are provided to the property, and there is no land use zoning in Falk Township. The State notes that because the property is already located within the exterior boundaries of the White Earth Reservation, acquisition of the land into trust can have little, if any, effect on state tax collections.⁴⁸

The County listed the amount of 2019 taxes levied against the property as \$102,426, with no other assessments levied. The County asked that none of the property be placed in trust. It requested, however, that if BIA does acquire the parcel into trust, it should acquire only the 10 acres that the Shooting Star Casino occupies so that the County may continue to collect taxes on the remaining property.⁴⁹

The amount of property taxes that the County collects from the Buschelle Site is less than .2 percent of the County's total revenue, which was approximately \$18.6 million in 2017, \$20.4 million in 2018, and \$20.7 million in 2019.⁵⁰ The Regional Director determined, and I concur, that the impacts of removing the Buschelle Site from the tax rolls is minimal.⁵¹

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

⁴⁴ See Regional Director's Findings of Fact at 3; NOA-Tab 1 (Notice of Gaming Land Acquisition) (showing notice sent to Governor of Minnesota, Clearwater County Commissioner, and Town of Falk).

⁴⁵ NOA-Tab 3 (Letter from Emily Parks, Deputy General Counsel, State of Minnesota, to Tim LaPointe, Midwest Regional Director, Bureau of Indian Affairs (April 17, 2019)).

⁴⁶ NOA Tab-2 (Letter from Alan G. Rogalla, Clearwater County Attorney, to the Department of the Midwest Regional Office of the Bureau of Indian Affairs, (April 11, 2019)).

⁴⁷ See Regional Director's Findings of Fact at 3-4.

⁴⁸ NOA Tab 2 at 2; Regional Director's Findings of Fact at 3.

⁴⁹ Regional Director's Findings of Fact at 4.

⁵⁰ See Audit Report, Clearwater County, Ending December 31, 2019 at 8, available at https://www.co.clearwater.mn.us/vertical/sites/%7BD1BE6F66-A19E-4CC1-ADD8-8DF38E31F1E3%7D/uploads/Audit_Report_-_Clearwater_19.pdf (site last visited on August 2, 2022).

⁵¹ See Regional Director's Findings of Fact at 7.

Section 151.10(f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise if the land is acquired in trust.

As discussed in Section 151.10(e) above, the BIA requested comments regarding jurisdictional problems and potential conflicts of land use from state and local governments. The BIA received responses from the State and the County.⁵² The State notes that Right of Way No. 383310 (Plat No. 25-47, April 24, 1995) should be reflected on the title if the property is acquired in trust. The County does not have issues relating to zoning on the subject property. Additionally, the State notes that there is an existing tax agreement between the Minnesota Department of Revenue and the White Earth Band that covers sales tax, liquor, petroleum, and tobacco excise taxes, which applies to all transactions within the boundaries of the White Earth Reservation. Therefore, there is no jurisdictional problems relating to covered transactions occurring on the Site.⁵³

In 1953, Congress passed Public Law 83-280 (P.L. 280), a statute granting to five states, including Minnesota, jurisdiction over most crimes and some civil regulatory matters on Indian reservations in the states.⁵⁴ Following enactment of P.L. 280, the county sheriffs in Minnesota became responsible for providing law enforcement services on Indian reservations, including the White Earth Reservation.⁵⁵ P.L. 280 left intact Tribes' inherent civil and criminal jurisdiction.⁵⁶

The land within the White Earth Reservation is subject to multiple jurisdictions operating within the same area, depending on the ownership status of the land and/or the identity of the individual or entity involved. Land held in trust for the Tribe is subject to the jurisdiction of the United States and the Tribe, as well as to the State of Minnesota for certain criminal matters. In 2013 the Department of Justice granted a request by the Tribe for the United States to assume concurrent criminal jurisdiction on the White Earth reservation, under the Tribal Law and Order Act of 2010, which granted the Department of Justice discretion to accept concurrent federal jurisdiction to prosecute major crimes within areas of Indian country that are also subject to state criminal jurisdiction under Public Law 280.⁵⁷ The Department of Justice noted that the Tribe and the State will maintain existing jurisdiction.

To address the jurisdictional complexity, the Tribe entered into intergovernmental agreements with the State addressing taxes and with three counties, including Clearwater County where the Buschelle Site is located, addressing law enforcement issues.⁵⁸ The agreement with the County allows the County and Tribal police officers to perform law enforcement duties for both the Tribe and the County, which alleviates much of the jurisdictional confusion caused by

⁵² See Regional Director's Findings of Fact at 4.

⁵³ NOA Tab 3 at 2.

⁵⁴ COHENS HANDBOOK OF FEDERAL INDIAN LAW Section 6.04[3][a], at 537 (Nell Jessup Newton ed., 2012).

⁵⁵ See, e.g., Minn. Stat. § 626.93 (2021) (a tribe may have concurrent jurisdictional authority under this section with the local county sheriff within the geographical boundaries of the tribe's reservation to enforce state criminal law).

⁵⁶ COHENS HANDBOOK OF FEDERAL INDIAN LAW Section 6.04[3][c], at 555-556 (Nell Jessup Newton ed., 2012).

⁵⁷ See Press Release, United States to Accept Concurrent Jurisdiction Over White Earth Reservation in Minnesota, available at <https://www.justice.gov/opa/pr/united-states-accept-concurrent-jurisdiction-over-white-earth-reservation-minnesota#:~:text=Public%20Law%20280%20is%20the,effect%20on%20June%201%2C%202013> (site last visited September. 19, 2022).

⁵⁸ APP Tab-8 (Cooperative Law Enforcement Agreement between the White Earth Reservation of Chippewa Indians and Clearwater County, Minnesota (May 23, 2007)).

checkerboard jurisdictions. This existing jurisdictional framework will not change after the Buschelle Site is acquired in trust.

The Regional Director's Findings of Fact outlines the jurisdictional framework agreed to between the Tribe, the State, and the County. I find that acquiring the Site into trust will create no jurisdictional problems or conflicts of land use.⁵⁹

25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Section 151.10(g) requires consideration whether the BIA is equipped to discharge the additional responsibilities resulting from acquisition of the land in trust.

The Buschelle Site is located within the White Earth Reservation for which the BIA Minnesota Agency currently provides services. The Regional Director found that the agency staff members are available to assist the Tribe when needed and the Midwest Regional Office will provide additional support.

The Regional Director determined, and I concur, that the BIA has sufficient resources to assume the additional responsibilities resulting from the acquisition of the Buschelle Site in trust.⁶⁰

25 C.F.R. § 151.10(h) - The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act (NEPA),⁶¹ and a determination of the risk of the presence of hazardous substances.

Acquiring land in trust for tribes is a major federal action requiring review under NEPA.⁶² If the federal action belongs to a category of actions which do not individually or cumulatively have a significant effect on the human environment it can be categorically excluded from further analysis.⁶³

Pursuant to Department policy, where no change in land use will occur as a result of the acquisition, the acquisition is subject to a categorical exclusion.⁶⁴ Here, there will be no change in land use because the Tribe intends to continue the existing uses of the Buschelle Site.⁶⁵ On

⁵⁹ Regional Director's Findings of Fact, 7-11.

⁶⁰ Regional Director's Findings of Fact at 7.

⁶¹ 42 U.S.C. § 4321 *et seq.*

⁶² *See* 40 C.F.R. § 1508.1(q).

⁶³ 40 C.F.R. § 1501.4(a); 43 C.F.R. § 46.205.

⁶⁴ *See* 516 DM 10.5(I), 83 Fed. Reg. 9535, 9537 (Mar. 6, 2018).

⁶⁵ Regional Director's Findings of Fact at 7-8.

March 11, 2019, the BIA issued a Categorical Exclusion for the Buschelle Site.⁶⁶ The BIA determined that no extraordinary circumstances existed that would require further analysis or the preparation of an environmental assessment.⁶⁷

The BIA completed a Phase I Environmental Site Assessment on March 11, 2019, which determined that there were no hazardous materials or contaminants.⁶⁸ The BIA will update the Phase I prior to acquisition of the Site in trust, therefore complying with 602 DM 2. I find the Tribe's application satisfies the requirements of this section.

DECISION TO APPROVE THE TRIBE'S FEE-TO-TRUST APPLICATION

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Buschelle Site in trust for the Tribe. Furthermore, I have determined the Tribe may continue to conduct gaming on the Buschelle Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(a)(1). Consistent with applicable law and the Departmental requirements, the Regional Director shall immediately acquire the land in trust. This decision constitutes a final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosures

- I. Maps
- II. Legal Description
- III. Categorical Exclusion Exception Review

cc: Regional Director, Midwest Region

⁶⁶ See Regional Director's Findings of Fact at 7; ENV-Tab 2 at 3 (Environmental Coordinator Review (Mar. 19, 2019)).

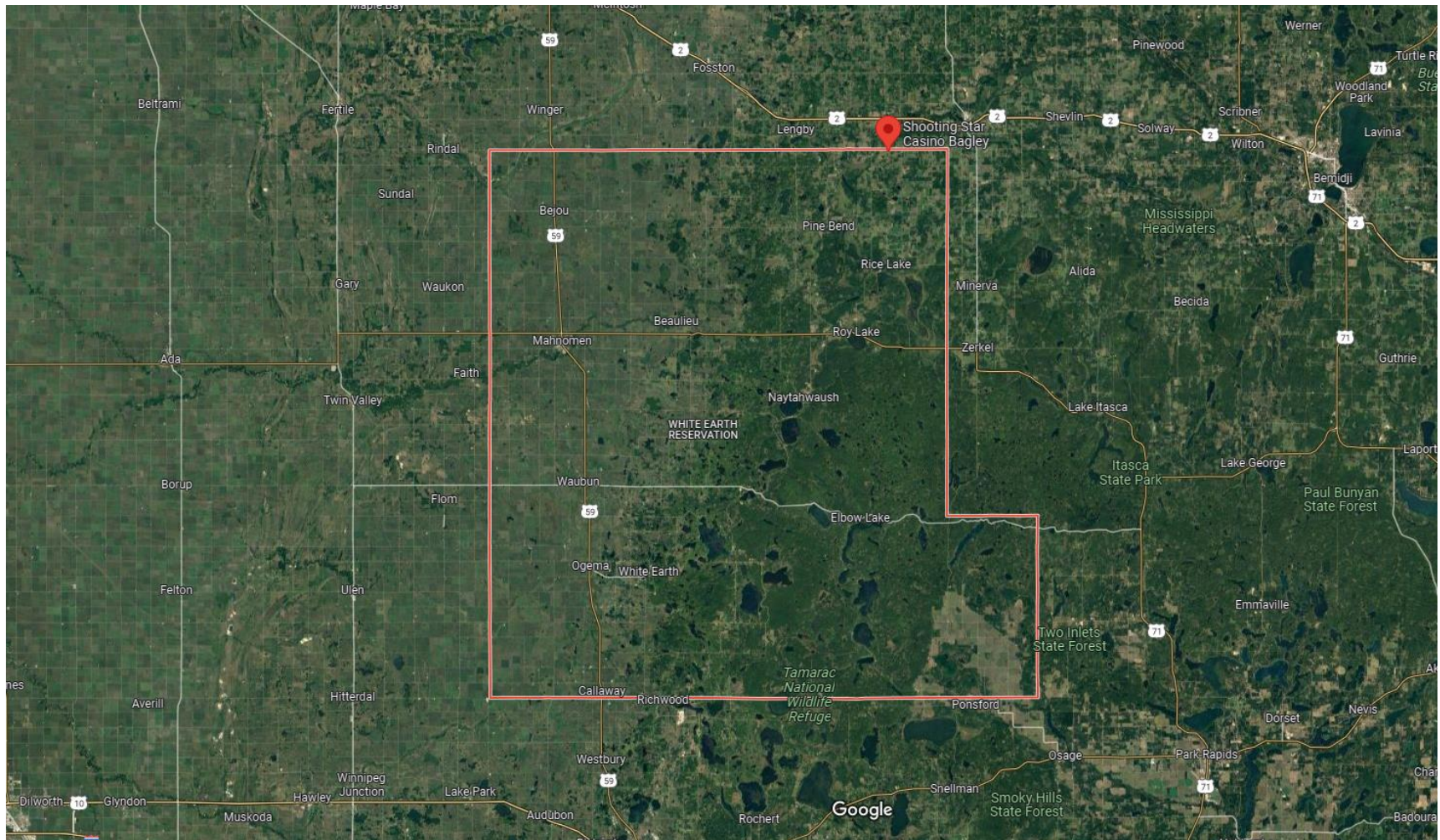
⁶⁷ *Id.*

⁶⁸ ENV-Tab 2 at 23 (Phase I Environmental Site Assessment Buschelle Parcel at 16 of the Phase I) (March 11, 2019)).

ATTACHMENT I

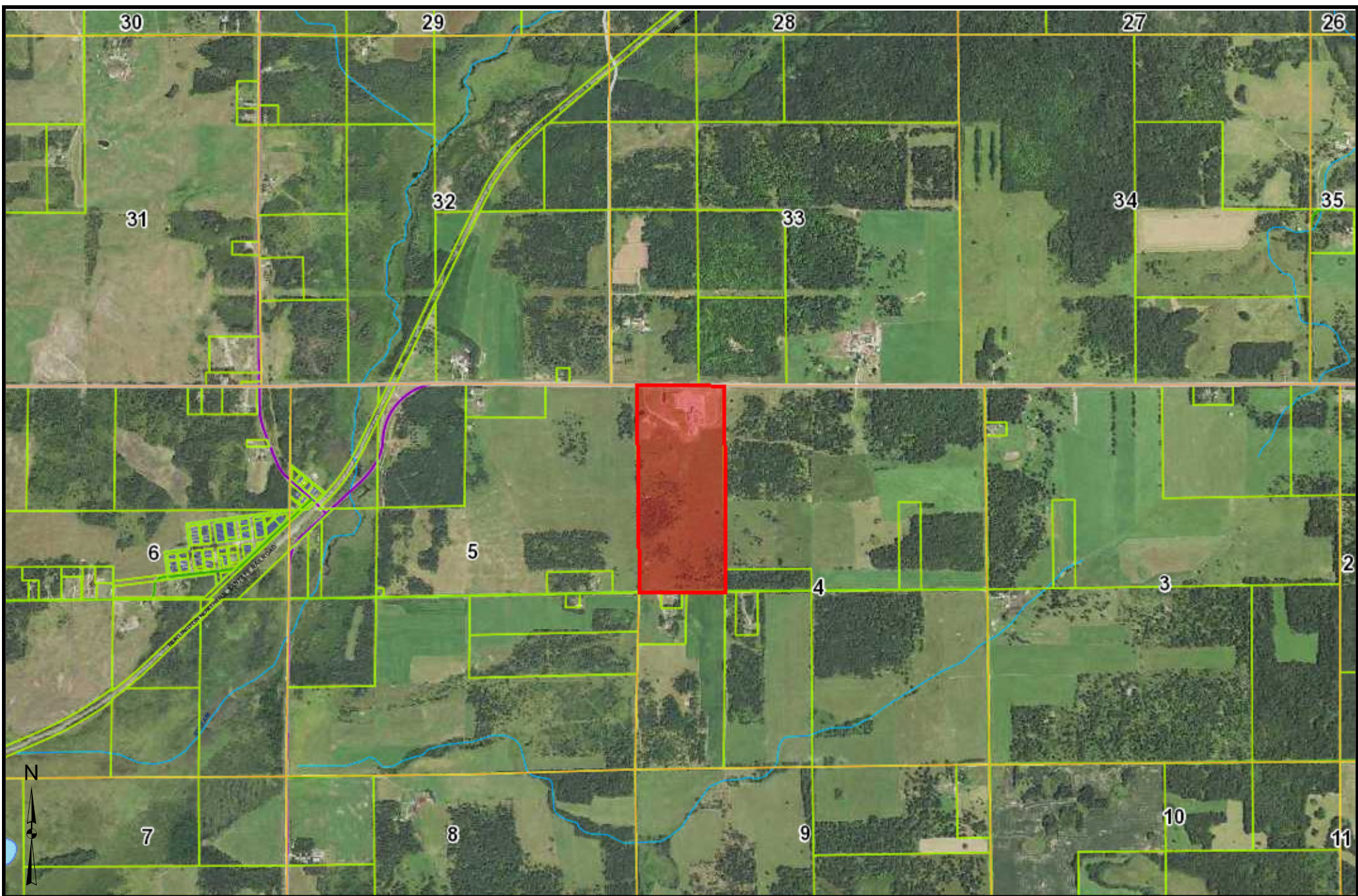
MAPS

White Earth Reservation



340th Street Marks the Northeastern border of the White Earth Reservation



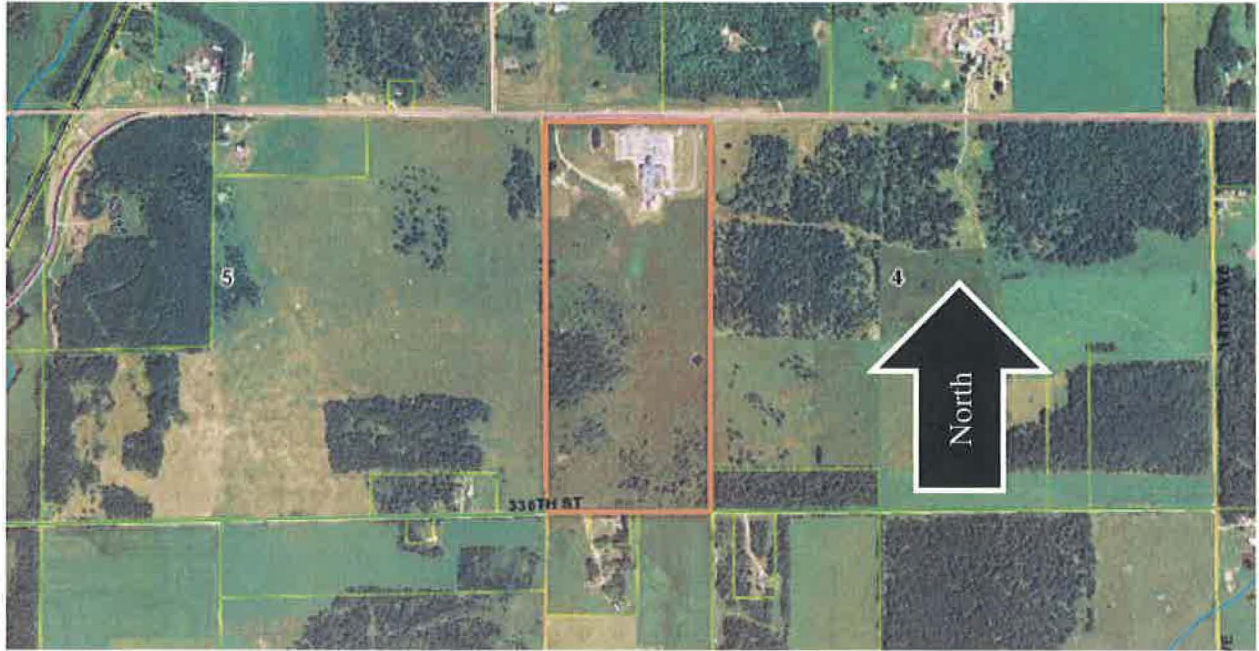


These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

<h1>Buschelle</h1>	
1:33,802	Date: 3/19/2020
<small>This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.</small>	



Initial CIP: Buschelle Parcel



12/18/2018 Site Visit Route of Shooting Star Casinno



*This certificate is to be retained in the official case file.
Release #16-47, Version IV (rev.1) Issued 6/28/16
Replaces: Version IV, Issued: 5/16/16*

This CIP is from the Department of Justice Title Standards 2001.

ATTACHMENT II

WARRANTY DEED WITH LEGAL DESCRIPTION

ATTACHMENT III

**CATEGORICAL
EXCLUSION**

Print

NEPA Coordinator Review

MAR 11 2019

Routing

Recycle Review? (Checking this box will remove this from views but not delete)

Alternate NEPA Coordinator

NEPA Coordinator Approval

Approvals

Agency Environmental Specialist Approval Approved *03/11/2019*
Pat B. Long
 CATEX, White Earth Band of Minnesota Chippewa proposes no change land use for subject parcel.

Regional Wildlife Biologist Approval Approved *3/11/2019*
Jessica Koshl
 CATEX signed 3/11/2019. BIA makes effect determination.

Regional Archaeologist Approval Approved *3/11/2019*
Tom Wilkins
 CATEX signed 3/11/2019. Undertake will not cause effects to Historic properties (800.3(a)(1)).

Responsible Official Approval Approved *03/11/2019*
Tom Wilkins
 signed on 03/11/2019

Other Environmental Professional Approved *03/11/2019*
Pat B. Long
 signed on 3/11/2019

MAR 11 2019

Request

Project Name Buschella Parcel dba Shooting Star Cas...

Record ID F-408-2018-XXXX (Initial)

Action Contact Name Tom Wilkins
 Action Contact Phone 612-725-4584
 Action Contact Email thomas.wilkins...

Regions Midwest

Agencies FS3-02 Minnesota Agency

Programs Forestry/Fire

Date Request Received 12/18/2018

NEPA Complete Yes
 Date NEPA Completed 3/11/2019

Proponent White Earth Band of Minnesota Chippe...

Endangered Species Act Consultation Required Yes
 ESA Consultation Initiated Yes
 ESA Consultation Completed 3/11/2019

Section 106 NHPA Consultation Required Yes
 Section 106 NHPA Consultation Initiated Yes
 Section 106 NHPA Consultation Completed 3/11/2019

Level of NEPA Review CEER
 Environmental Document CEER Checklist

CE

- Was a CEER submitted by another entity? (if yes, attach document or link) No
- Evaluation of Extraordinary Circumstances (43 CFR 46.215)
- (A "yes" to any of the exceptions will require that an environmental assessment be prepared)
1. This action would have significant impacts on public health or safety. No
 2. This action would have significant impacts on natural resources & unique geographical features as historic or cultural resources; park, recreation or refuge lands; wilderness areas, wild & scenic rivers; national natural landmarks; sole or prime drinking water aquifers; prime farmlands wetlands; floodplains; national monuments; migratory birds; and other ecologically significant areas. No
 3. This action would have highly controversial environmental effects or unresolved conflicts concerning alternate uses of available resources. No
 4. This action would have highly uncertain environmental effects or involve unique or unknown environmental risk. No
 5. This action will establish a precedent for future actions. No
 6. This action is related to other actions with individually insignificant but cumulatively significant environmental effects. No
 7. This action will have significant impacts on properties listed or eligible for listing in the National Register of Historic Places. No
 8. This action will have significant impacts on a species listed or proposed to be listed as endangered or threatened, or Critical Habitat of these. Yes
 9. This action threatens to violate federal, state, local, or tribal law or requirements imposed for protection of the environment. No
 10. This action will have disproportionately high and adverse effect on low income or minority populations. No
 11. This action will limit access to, and ceremonial use of, Indian sacred sites on federal lands, by Indian religious practitioners, and/or adversely affect the physical integrity of such sites. No
 12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species. No

Agency Cooperation Lead Cooperating Agencies Number with Cooperator

Mitigation Needed No

Supporting Information No hyperlink inserted

Notes Fee to Trust Acquisition Initial Phase I ESA

✓ View Additional Optional Fields

Applicant Type Tribal Government

Section/Township/Range

City

County Clearwater

State Minnesota

Acres Affected 19.180

Latitude

Longitude

Environmental Studies ✓ Phase I

Name of Environmental Study P1 ESA v.1 - Buschelle Parcel dba Shooting Star Casino

Date of Environmental Study 3/11/2019

Buildings ✓

Ground Disturbance ✓

Tribal/Alaska Village

☛ Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band, Mille Lacs Band, White Earth Band)

Land Ownership
Environmental Hours
Cultural Hours

Fee