EXHIBIT C

THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS OF MICHIGAN

SUBMISSION FOR MANDATORY FEE-TO-TRUST ACQUISITION PURSUANT TO THE MICHIGAN INDIAN LAND CLAIMS SETTLEMENT ACT

THE "CORNER PARCEL"

AND

THE "SHOWCASE PARCEL"

(+/- 2.26 acres in Lansing, Michigan)

Submission and Supporting Exhibits

June 10, 2014

Sault Ste. Marie Tribe of Chippewa Indians
Submission for Mandatory Fee-to Trust Acquisition
Lansing, Michigan parcels

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I. SUMMARY

The Sault Ste. Marie Tribe of Chippewa Indians of Michigan (the "Sault Tribe" or "Tribe") tenders this submission for a mandatory fee-to-trust acquisition of two parcels of land located in Lansing, Michigan:

(1) The "Corner Parcel," a 0.43 acre parcel acquired by the Tribe on November 1, 2012, and

(2) The "Showcase Parcel," a nearby 2.26 acre parcel that the Tribe has committed to acquire under an existing contract of purchase with the City of Lansing, Michigan.

The Tribe has acquired the Corner Parcel and will acquire the Showcase Parcel using interest or other income generated by the Tribe's Self-Sufficiency Fund, established pursuant to section 108 of the Michigan Indian Land Claims Settlement Act ("MILCSA"), Pub. L. No. 105-143, 111 Stat. 2652 (1997). Under Section 108(f) of MILCSA, "[a]ny lands acquired using amounts from interest or other income of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the [Sault] Tribe." 111 Stat. at 2661-2662. The Secretary is thus required to accept the Parcels in trust.

II. APPLICABLE LEGAL REQUIREMENTS

MILCSA does not set forth specific procedures for processing a trust acquisition mandated by Section 108(f), nor do any of the Department's regulations. Because, as discussed further below, the trust acquisition here is mandatory, the portions of the Department's regulations which govern discretionary acquisitions, 25 C.F.R. §§ 151.10, 151.11, do not apply. The Tribe's submission accordingly follows the guidance for mandatory acquisitions provided in section 3.1.3 of the Department's *Fee-To-Trust Handbook Version III* (rev. 2, issued Dec. 12, 2013).

Part II.A describes the Tribe and its background. Part II.B details the specific lands that are the subject of this submission and the Tribe's ownership interest in them, as required by step 2 of section 3.1.3 of the *Fee-to-Trust Handbook.* Part II.C sets forth the statutory authority for the mandatory acquisition: MILCSA § 108. In brief, Part II.C.1 explains that the express language of MILCSA § 108(f) ("shall be held in trust") imposes a non-discretionary duty on the Secretary to take lands in trust when MILCSA's requirements are otherwise satisfied; Part II.C.2 explains that MILCSA's requirements are satisfied here because the Tribe already has acquired or will acquire the Parcels with interest or income from the Self-Sufficiency Fund for the "enhancement or consolidation of tribal lands" within the meaning of MILCSA § 108(c)(5).[1]

[1] The Secretary's non-discretionary duty to take the land into trust does not depend in any way on the purposes for which the land may be used. *See* 25 C.F.R. § 151.11 (Secretary shall consider the purposes of an off-reservation acquisition only when "the acquisition is not

Finally, because the statutory authority for this acquisition emanates from a statute other than the Indian Reorganization Act, the Department need not make a determination as to whether the Sault Tribe was "under federal jurisdiction" in 1934 pursuant to *Carcieri v. Salazar.*

A. Tribal History, Recognition, And Name

The Sault Tribe descends from a group of Chippewa Bands who historically occupied and used a wide area in the Upper Great Lakes, bordering Lake Superior, Lake Michigan, and Lake Huron. The Commissioner of Indian Affairs acknowledged the Tribe's federal recognition on September 7, 1972. The United States first took land into trust for the Tribe by deed dated May 17, 1973 and approved by the Bureau of Indian Affairs on March 7, 1974. The Commissioner of Indian Affairs formally declared the trust land to be a reservation for the Tribe on February 20, 1975. The Tribe's formal name is the "Sault Ste. Marie Tribe of Chippewa Indians of Michigan." *See* 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010).

The Tribe's current trust lands are scattered throughout the eastern and central portions of Michigan's Upper Peninsula and include approximately 1262 acres in Chippewa County, 37 acres in Alger County, 20 acres in Delta County, 324 acres in Mackinac County, 5 acres in Marquette County, 17 acres in Luce County, and 78 acres in Schoolcraft County. The Tribe also owns the Corner Parcel in the City of Lansing, Ingham County, and 7 acres of restricted land in Huron Charter Township, Wayne County, in Michigan's Lower Peninsula.

The Tribe is by far the largest tribe in Michigan, with more than 40,000 enrolled members. More than 14,000 tribal members reside in Michigan's Lower Peninsula, and approximately 11,000 of those tribal members reside within a 100-mile radius of the Lansing metropolitan area. The Tribe's current trust lands equate to .0427 acres per member.

The Tribe also enjoys judicially recognized treaty rights to hunt, fish, and gather within the vast 1836 Treaty cession area that includes the eastern half of the Upper Peninsula and a huge swath of the Lower Peninsula extending south as far as the Grand River. *See United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979).

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mandated"). In the interest of full disclosure, however, the Tribe currently anticipates that it will conduct gaming activities on each of the Parcels under the terms of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.* At a minimum, the Tribe intends to conduct Class II gaming on the properties; if lawfully permitted under IGRA and under the Tribe's tribal-state gaming compact with the State of Michigan, the Tribe may also conduct Class III gaming activities. To that end, the Tribe and the City of Lansing have already executed an Intergovernmental Agreement and a Law Enforcement Agreement; the City's approval of these agreements is testament to the broad support the Tribe's gaming plans enjoy in the local community.

B. Acquisition Of The Parcels

The Tribe currently owns the Corner Parcel. *See* Ex. 1 (Warranty Deed for Corner Parcel); Ex. 2 (Title Policy for Corner Parcel). The Tribe also has a binding right to acquire the Showcase Parcel under its Comprehensive Development Agreement with the City of Lansing, Michigan. Title to the Showcase Parcel will be transferred to the Tribe upon acquisition in trust. *See* Ex. 3 (Comprehensive Development Agreement); Ex. 4 (Title Commitment and Proposed Warranty Deed for Showcase Parcel); *see also Fee-to-Trust Handbook* 29 (tribe may submit "written evidence that title will be transferred to the tribe … upon acquisition in trust" in lieu of current evidence of ownership); Memorandum from Assistant Secretary–Indian Affairs Larry Echo Hawk to Regional Directors and Superintendents, *Updated Guidance on Processing of Mandatory Trust Acquisitions* 4 n.9 (Apr. 6, 2012) (same).

The Corner Parcel comprises .43 acres in the City of Lansing, Michigan. *See* Ex. 5 (Legal Description and Survey for Corner Parcel). The nearby Showcase Parcel comprises 2.26 acres in the City of Lansing, Michigan. *See* Ex. 6 (Legal Description and Survey for Showcase Parcel); *see also* Ex. 7 (Location Map). Both parcels are immediately adjacent to the Lansing Center, a large convention facility owned and operated by the City of Lansing.

The Corner Parcel was acquired using interest or other income generated by the Tribe's Self-Sufficiency Fund, as described in more detail below. The Showcase Parcel will likewise be acquired using interest or other income generated by the Tribe's Self-Sufficiency Fund, as described in more detail below. Consistent with the terms of MILCSA, § 108, the Tribe's Board of Directors expressly authorized this use of the Self-Sufficiency Fund by Resolution 2012-11 (January 24, 2012) (Ex. 8) and reaffirmed that authorization by Resolution 2012-223 (October 29, 2012) (Ex. 9).

C. Statutory Authority

The Michigan Indian Land Claims Settlement Act ("MILCSA"), Pub. L. No. 105-143, 111 Stat. 2652 (1997), provides the statutory authority for this acquisition. As discussed below, Section 108(f) of MILCSA requires the Secretary to take land into trust for the Tribe when the statute's requirements are met, and those requirements are met here.

1. MILCSA Imposes A Mandatory Trust Obligation When Its Requirements Are Satisfied

The Secretary's duty to accept the Parcel in trust for the benefit of the Tribe is mandatory under Section 108(f) of MILCSA.

Congress enacted MILCSA in 1997 to settle land claims brought against the United States by a number of Ottawa and Chippewa tribes in Michigan, including the Sault Tribe, and to distribute the judgment funds found to be owing to the tribes. MILCSA's stated purpose is "to provide for the fair and equitable division of [Indian Claims Commission] judgment funds

among the beneficiaries and to provide the opportunity for the tribes to develop plans for the use or distribution of their share of the funds." MILCSA § 102(b).

Section 108 of MILCSA applies exclusively to the Sault Tribe. There, Congress directed the Tribe, through its Board of Directors, to establish a trust fund—the "Self-Sufficiency Fund"—into which the Tribe's share of the judgment funds would be transferred. MILCSA § 108(a)(1). Congress further specified that the Sault Tribe's Board "shall be the trustee of the Self-Sufficiency Fund and shall administer the Fund in accordance with the provisions of this section." *Id.* § 108(a)(2).

Once established, the Self-Sufficiency Fund may be used for purposes defined in Sections 108(b) and 108(c). As relevant here, MILCSA permits the Tribe to expend the "interest or other income of the Self-Sufficiency Fund" in the following ways:

(1) as an addition to the principal of the Fund;

(2) as a dividend to tribal members;

(3) as a per capita payment to some group or category of tribal members designated by the board of directors;

(4) for educational, social welfare, health, cultural, or charitable purposes which benefit the members of the Sault Ste. Marie Tribe; or

(5) for consolidation or enhancement of tribal lands.

MILCSA § 108(c). The decision to expend funds for these purposes is vested exclusively in the Tribe's Board of Directors and is not subject to the review or approval of the Secretary. *See id.*§ 108(e)(2). Finally, Section108(f) provides:

> Any lands acquired using amounts from interest or other income of the Self-Sufficiency Fund *shall be held in trust* by the Secretary for the benefit of the tribe.

Id. § 108(f) (emphasis added).

Under these unambiguous statutory provisions, the Secretary must take lands into trust for the benefit of the Tribe when—as here—the Tribe uses interest or other income of the Self-Sufficiency Fund to acquire lands for the purposes set forth in Section 108(c), including the "consolidation or enhancement of tribal lands." *See, e.g.*, *Lopez v. Davis*, 531 U.S. 230, 241 (2001) (contrasting "may" and "shall" and observing that "Congress use[s] 'shall' to impose discretionless obligations").

The Office of the Solicitor has not previously issued a written determination that Section 108(f) mandates that the Secretary take lands into trust when purchased with interest or income from the Self-Sufficiency Fund. However, the Solicitor considered other provisions of

MILCSA, pertaining to the Bay Mills Indian Community, in a letter to the National Indian Gaming Commission dated December 21, 2010 ("*Bay Mills Op.*"). In that opinion, the Solicitor recognized that because Section 108(f) requires that lands "shall be held in trust by the Secretary," it "call[s] for a mandatory trust acquisition." *Bay Mills Op.* 12.[2] The Solicitor further explained that the same phrase ("shall be held in trust") appeared in the Bay Mills-specific portions of a draft bill before the House Committee on Resources but that this "mandatory trust language" was replaced in the final bill at the request of the Department of the Interior. *Id.* at 9-10; *see also id.* at 13-14 ("Had Congress retained its original ['shall be held in trust'] language, the [Bay Mills] Tribe would have had a strong argument that any lands purchased … would have been subject to mandatory trust acquisition.").

The Solicitor was correct that the phrase "shall be held in trust" is "mandatory trust language." *Bay Mills Op.* 9; *see also* DOI, Bureau of Indian Affairs, *Acquisition of Title to Land Held in Fee or Restricted Fee* 8 (2008) (first edition of *Fee-to-Trust Handbook*) (under MILCSA, "the Sault Ste. Marie Tribe of Chippewa Indians [is] authorized to use a portion of the judgment fund for the consolidation and enhancement of tribal landholdings," and "[t]he Secretary is authorized and *required* to hold any such land" as directed by the statute, including the requirement "that any lands acquired using any interest or income from the Self-Sufficiency Fund shall be held in trust" (emphasis added)). The phrase "shall be held in trust" creates a non-discretionary duty for the Secretary to take land into trust when the provisions of MILCSA are satisfied. A contrary reading would render this language superfluous, because the Secretary already has discretionary authority under other statutes to take lands acquired by the Tribe into trust. *See, e.g.*, Indian Reorganization Act § 5, 25 U.S.C. § 465; *see also, e.g.*, *Corley v. United States*, 556 U.S. 303, 315 (2009) (rejecting government's proposed construction as "at odds with one of the most basic interpretive canons, that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous'").

2. MILCSA's Requirements Are Satisfied Here

The requirements of MILCSA have been satisfied with respect to the Parcels, thus triggering the mandatory duty to take the Parcels into trust under MILCSA § 108(f). The Corner Parcel has already been purchased using interest or income of the Self-Sufficiency Fund. *See* Ex. 10 (Affidavit of Sault Tribe CFO William Connolly). With regard to the Showcase Parcel, when the lands are taken into trust, the Board's Resolution directs that the acquisition be completed using interest or income of the Self-Sufficiency Fund. *See* Ex. 3 (Comprehensive Development Agreement); Ex. 8 (Tribal Resolution). Also, the Tribe's Board of Directors has determined that acquiring the Parcels satisfies the purposes for which income or interest of the Self-Sufficiency Fund must be used, including "consolidation or enhancement of tribal lands."

[2] The Solicitor speculated, without explanation, that this language may have been "a mistake by Congress." *Bay Mills Op.* 12. However, as the Solicitor herself points out, the original version of MILCSA contained "no explicit language relating to land acquisition." *Id.* at 11. The later addition of such language indicates that Congress' action was intentional, as does Congress' retention of this language despite the Department's express opposition to it.

MILCSA § 108(c)(5). The authority to make such a determination is vested exclusively with the Board. *Id.* § 108(e)(2).

The terms "consolidation" and "enhancement" are not defined in MILCSA. Absent a statutory definition, they should be given their plain and ordinary meaning. *See, e.g.*, *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 724 (2011). In ordinary usage, "enhance" means "[t]o make greater" or "augment." *American Heritage Dictionary* 611 (3d ed. 1996); *see also Webster's New Collegiate Dictionary* 375 (1979) (defining "enhance" as "to make greater"). To "consolidate" means to "reinforce or strengthen []one's position" or to "combine (a number of things) into a single more effective or coherent whole." *New Oxford American Dictionary* 363 (2d ed. 2005); *see also Webster's New Collegiate Dictionary* 240 (defining "consolidate" as "to make firm or secure" or "to join together into one whole").

Acquisition of the Parcels will be an "enhancement" of the Tribe's existing land base because it will augment that land base by increasing the total land possessed by the Tribe. Both in quantity and quality, the Tribe's current lands are inadequate to support its more than 40,000 members, as explained in more detail below. That problem is pronounced in the Lower Peninsula, where more than 14,000 members of the Tribe reside. Because Section 108(c)(5) is disjunctive—requiring that funds be used for "consolidation *or* enhancement of tribal lands"—an acquisition using income or interest that is judged by the Board to be an enhancement of tribal lands satisfies the provisions of MILCSA and triggers the Secretary's mandatory duty to take the lands into trust.[3]

In her prior opinion, the Solicitor considered similar but not identical language elsewhere in MILCSA, which permits the Bay Mills Indian Community to use certain funds for "improvements on tribal land or the consolidation *and* enhancement of tribal landholdings." *Bay Mills Op.* 4 (quoting MILCSA § 107(a)(3)) (emphasis added). The Solicitor acknowledged that these terms should be given their ordinary meaning. *Id.* She understood the ordinary meaning of "consolidate" to be "unite (various units) into one mass or body," and she concluded that the acquisition in question would not "unite" Bay Mills' landholdings because the tribe owned no other lands near the newly acquired lands. *Id.* at 4-5 (noting specifically that Bay Mills owned no other fee lands nearby). Because the Bay Mills language is conjunctive—requiring both consolidation and enhancement, in contrast to MILCSA § 108(c)(5), which applies exclusively to the Sault Tribe—the Solicitor did not need to consider whether the acquisition would be an "enhancement" of Bay Mills' landholdings. *See id.* at 5-6. But she expressed her "belie[f]" that the acquisition in question also would not be an "enhancement" of Bay Mills' tribal landholdings because "the term *enhancement* of tribal landholdings means that any Land Trust purchase must somehow enhance (*i.e.*, make greater the value or attractiveness [of]) some other tribal landholding already in existence," and the site at issue was "very far from all other tribal landholdings." *Id.* at 6.

[3] The Tribe believes that the acquisition of the Parcels will also "consolidate"—*i.e.*, "reinforce or strengthen"— the Tribe's landholdings within the meaning of MILCSA, but the Secretary need not reach that question here for the reasons given in text.

Respectfully, that atextual construction of "enhancement" should not be carried over to Section 108(c)(5) of the statute. Nothing in the phrase "enhancement of tribal lands" suggests an implied requirement that the newly acquired lands be closely proximate to or increase the value of a specific preexisting tribal landholding. Subsection 108(c)(5) refers to the "enhancement of tribal lands" generally, not to enhancement of a specific parcel of land, and is thus most naturally read simply to require that the tribe's landholdings, viewed collectively, be increased. Had Congress intended to require that newly acquired lands augment the value or attractiveness of a specific preexisting landholding, it would have said so. Furthermore, the Solicitor read "consolidation" in the Bay Mills-specific portion of MILCSA to have a geographic proximity requirement (*Bay Mills Op.* 4); reading a similar proximity requirement into "enhancement" would collapse the distinction between those two terms, rendering one or the other superfluous. *See Michigan v. Bay Mills Indian Community*, No. 10-CV-1273, slip op. 3, 10-11 (W.D. Mich. Mar. 29, 2011) (distinguishing between consolidation and enhancement and finding that acquisition of parcel more than 100 miles from existing Bay Mills tribal lands "is an enhancement of tribal landholdings, as the additional land augmented, or made greater, the total land possessed by Bay Mills"), *rev'd on other grounds*, 695 F.3d 406 (6th Cir. 2012), *aff'd*, No. 12-515 (U.S. May 27, 2014). Finally, even if "enhancement" were ambiguous (which it is not) and could be read as the Solicitor suggests, any statutory ambiguity should be resolved in favor of the Tribe under the Indian canon of construction. *See, e.g.*, *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985).

Nevertheless, acquisition of the Parcels would satisfy even the Solicitor's narrow reading of "enhancement," because it would increase the value of the Tribe's existing landholdings throughout Michigan. Once the parcel is acquired in trust, the Tribe anticipates that it will generate revenues that will be used to improve, restore, or otherwise increase the usefulness or value of the Tribe's existing lands.

Many tribal members have moved to the southern portion of the State to seek employment opportunities, often as the direct result of relocation efforts sponsored by the Bureau of Indian Affairs. Many of those members are in serious need of tribal services and employment opportunities. The Parcels will provide both economic means and a geographic base to enable the Tribe to address the health, educational, welfare, and cultural needs of these members. At the present time, the Tribe lacks the resources to provide any meaningful direct services to the thousands of its tribal members who live in southern Michigan and in other downstate communities. Commercial development of the land will also enhance the Tribe's economic self-sufficiency, which is the express, eponymous purpose of the Self-Sufficiency Fund and which is a shared priority of both the Tribe and the federal government in this time of declining federal resources. *See also* H.R. Rep. 105-352, at 8 (1997) (statute "provides for the creation and operation of a self-sufficiency fund by the Sault Ste. Marie Tribe").

Given these anticipated benefits, the acquisition is also independently justified under Section 108(c)(4) of MILCSA as an expenditure for "educational, social welfare, health, cultural, or charitable purposes which benefit members of the Sault Ste. Marie Tribe." The acquisition of the Parcel will provide a land base for the thousands of tribal members who live in southern Michigan and other downstate communities, will facilitate the delivery of services to those tribal

members, will generate revenues necessary for the provision of social services, and will create hundreds of jobs for those members. The Tribal Board of Directors was well aware of these ramifications when it authorized the purchase of the Parcel. *See* Ex. 8 (Tribal Resolution) (mandating that portions of the revenues generated from the land be set aside to support specific social programs for elders, scholarships, and other social welfare purposes, to serve and benefit its membership in southeastern Michigan).

III. CONCLUSION

The Tribe requests that the Secretary promptly accept the Parcel in trust, as required by Section 108(f) of MILCSA.

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