

Lac Vieux Desert Band Of Lake Superior Chippewa Tribal Government

N4698 US 45 P.O. Box 249 • Watersmeet, Michigan 49969

Phone: 906-358-4577 • Fax: 906-358-4785

Executive Officers:

James Williams Jr., Tribal Chairman
Samuel Klingman, Tribal Vice-Chairman
Patrick Garrison, Tribal Treasurer
Roxann McGeshick, Tribal Secretary



Council Members:

Patrick Hazen II
Jeffery McGeshick
Tyrone McGeshick
Henry Smith
Keith Williams

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Submitted via email

ATTN: Katie Otanez
US Army Corps of Engineers
Detroit District Regulatory Office
477 Michigan Avenue
Detroit, MI 48226
Line_5_LRE@usace.army.mil
www.line5tunneleis.com

RE: Enbridge Line 5 Tunnel Supplemental Draft Environmental Impact Statement

The Lac Vieux Desert Band of Lake Superior Chippewa Indians (Tribe), a federally recognized sovereign Nation located in Watersmeet, Michigan, submits this government-to-government correspondence regarding the United States Army Corps of Engineers' (USACE) Supplemental Draft Environmental Impact Statement (SDEIS) for the Enbridge Line 5 Tunnel Project. The proposed federal action and the alternatives under review occur within the Tribe's treaty-ceded territories under the 1842 and 1854 Treaties. The lands and waters of these territories support the fish, wildlife, and plant communities that sustain the Tribe's treaty-reserved rights and the ecological conditions that make those rights meaningful.

The Tribe exercises its reserved rights to hunt, fish, and gather throughout these territories and maintains ongoing responsibilities to steward the lands and waters that support those practices. These rights arise from binding federal treaties that retain full legal force unless explicitly abrogated by Congress. The continuity of these rights depends on intact ecosystems, stable hydrology, clean water, and the protection of Tribally significant and ecologically important species. Any federal action that introduces new risks to these resources or fails to evaluate potential impacts to them threatens the Tribe's ability to continue exercising rights reserved in these Treaties. The Tribe therefore evaluates the SDEIS through its sovereign authority and

through the federal government's trust responsibility to protect treaty rights and uphold the ecological integrity of ceded territories.

The USACE eliminated the Horizontal Directional Drilling (HDD) Installation Alternative from detailed review in the May 2025 Draft Environmental Impact Statement (DEIS) on feasibility grounds, yet the SDEIS now treats this same alternative as feasible without providing the level of analysis required under the National Environmental Policy Act (NEPA). The SDEIS relies on generalized mapping and database information, acknowledged data gaps, and bounding assumptions that do not provide the information needed to support a meaningful comparison between the HDD alternative and the Applicant's proposed tunnel.

The Tribe asserts that the SDEIS does not satisfy NEPA's requirement to rigorously explore and objectively evaluate reasonable alternatives. The information gaps acknowledged during the December 2, 2025 Tribal webinar further underscore the deficiencies that are central to the Tribe's concerns, which include limitations in the environmental data used to assess impacts to wetlands, water resources, and the habitats that sustain treaty-reserved practices and rights. These gaps reduce the clarity needed to understand potential consequences for the ecosystems on which the Tribe relies. For these reasons, the Tribe provides the following detailed comments on the inadequacy of the alternatives analysis, omissions in environmental review, and potential impacts to treaty-reserved resources. The Tribe offers these comments to uphold its sovereign responsibilities and to ensure that federal decision-making reflects the obligations established under the 1842 and 1854 Treaties.

Purpose and Need and Alternatives Evaluation

The Tribe reviewed the SDEIS and has several concerns with how the agency approached the purpose and need and the evaluation of alternatives. The SDEIS does not provide an updated purpose and need statement even though the underlying circumstances have changed. The HDD installation method was previously eliminated as infeasible, yet the Applicant later asserted that advances in drilling technology now make the method feasible. The agency accepted that claim without revising the purpose and need statement to evaluate whether the original framing continues to reflect the full range of reasonable alternatives. Because the agency did not update the purpose and need statement, it did not reassess what information would be required to meaningfully evaluate HDD, which contributed to the absence of site-specific baseline data in later chapters. This gap was also noted by multiple Tribal representatives during the consultation webinar meeting on December 2, 2025, where the agency acknowledged that its characterization of baseline conditions relies heavily on generalized and model-based datasets rather than site-specific surveys tailored to the HDD corridor.

The SDEIS states that the Applicant provided information demonstrating HDD feasibility, yet the agency did not identify whether it conducted any independent review. During the consultation webinar meeting, questions were raised about what technological advances

supposedly make HDD viable and whether the agency confirmed those claims through its own analysis. The agency did not provide clear or detailed answers. NEPA requires independent evaluation of an applicant's information, and without technical review or third-party assessment, the feasibility determination remains unsupported. The SDEIS later describes drilling risks for HDD, including the lack of early gas-detection capabilities and the absence of secondary containment, which highlights why independent engineering verification is essential before treating HDD as a reasonable alternative.

The SDEIS relies entirely on the alternatives screening criteria developed in the May 2025 Draft EIS, even though those criteria were created when HDD was considered infeasible. When feasibility assumptions change, the screening framework must be reevaluated to ensure that it reflects current information and does not constrain environmentally protective alternatives. The decision not to update the screening framework contributed to the narrow information-gathering approach carried into Chapters 3 and 4. This issue surfaced again during the Tribal webinar, where questions about the adequacy of the alternatives framework and the sufficiency of the data underpinning it were met with limited or non-specific agency responses. By using screening criteria developed under earlier feasibility assumptions, the SDEIS does not evaluate alternatives in a way that reflects treaty-reserved rights or trust obligations, even though federal responsibilities require that alternatives be analyzed in relation to the ecological conditions that support those rights.

The Tribe requests that the Final EIS include an updated purpose and need statement, a revised alternatives analysis that reflects current feasibility information, and a clear explanation of how treaty-reserved rights and trust responsibilities shape the definition of reasonable alternatives. The Tribe also requests that USACE conduct and document independent technical review of HDD feasibility, rather than relying on the Applicant's assertions. These technical reviews should be made accessible to the Tribe and the public in a transparent manner.

Incomplete and Unavailable Information and Environmental Consequences

Chapters 3 and 4 rely on regional mapping layers, statewide databases, and incomplete contamination information to characterize existing conditions along the potential HDD corridor. The SDEIS explains that baseline data for the HDD installation method rely on geographic information system products and federal and state databases rather than site-specific surveys, which the agency concedes can be less informative of the actual resources and conditions present than field-based studies. USACE states that site-specific surveys are not available for the HDD construction footprints and that completion of comprehensive surveys could result in shifts to the pipeline assembly area alignments and changes to the number and type of affected properties and resources. These constraints limit the accuracy of the effects analysis and introduce uncertainty into determinations of where impacts would occur, how extensive they would be, and how they would influence interconnected ecological systems. The agency also notes that key datasets such

as projected daily truck traffic, ambient noise measurements, and modeled noise for the HDD method were not available at the time of this analysis. These omissions reduce the reliability of conclusions regarding construction impacts to communities, wildlife, waters, and land uses. This is not acceptable.

The SDEIS further explains that substantial shifts in the pipeline assembly areas may be required because the footprints extend onto properties that the applicant does not currently own and for which it cannot exercise eminent domain. The document notes that lack of property owner permission or easements could result in shifts to the pipeline assembly area alignments, the need for additional access permits, and additional temporary impacts to wetlands and streams. These uncertainties directly influence the accuracy of the environmental consequences analysis because the location and extent of clearing, grading, road construction, noise generation, and wetland disturbance may change once property access issues are resolved. A NEPA effects analysis must be based on the most accurate information reasonably available, and in this case the agency has not established whether the footprints used in Chapter 4 represent the actual areas where construction would take place. This is also not acceptable.

Several sections of Chapter 4 identify long-term detrimental impacts, and those determinations warrant closer review. The SDEIS states that vegetation clearing for pipeline assembly would extend for approximately four miles from the HDD workspace, resulting in extensive tree removal across both applicant-owned and private lands. It notes that forested areas may not regenerate quickly, that areas requiring full logging would experience long-term land use change from forested conditions to open meadow because of slow canopy reestablishment, and that some forested wetlands could convert to emergent wetlands. These effects are described as long-term but are not evaluated in the context of landscape-level fragmentation, wildlife movement corridors, cumulative loss of forested wetland functions, or treaty-protected resources that rely on intact ecosystems. The SDEIS presents these impacts as separate findings and does not assess how they influence integrated ecological processes or Tribal uses that depend on healthy forest and wetland systems.

The analysis also incorporates by reference all decommissioning impacts from the May 2025 Draft EIS without evaluating whether those impacts would manifest differently under the HDD installation method. The SDEIS assumes that decommissioning effects would be the same, yet it also acknowledges that the HDD method introduces new features, new disturbance patterns, and new uncertainties. Decommissioning activities may require different access, staging, sediment controls, or restoration measures depending on how and where the HDD infrastructure is installed. The decision to rely entirely on earlier decommissioning assumptions does not meet NEPA's requirement for alternative-specific analysis.

The SDEIS does not clearly explain how incomplete surveys and generalized datasets influence its conclusions regarding wildlife, listed species, surface waters, groundwater, wetlands, and

other resource areas. The Corps states that resources such as National Wetlands Inventory layers and state databases can be less informative than field surveys and acknowledges that more complete data could shift pipeline assembly alignments and change the scope of impacts. Even with these admissions, the SDEIS does not adjust its conclusions to reflect the degree of uncertainty or the likelihood that real-world impacts may be greater than the document currently identifies. This approach limits the usefulness of the impact analysis for Tribal decision making and undermines confidence in the accuracy of the findings.

The document also frames resource-specific impacts without analyzing how they combine across systems, even though the SDEIS recognizes that resources are dynamic and interrelated. The effects of noise, traffic, vegetation removal, and water degradation are presented in separate sections, but their combined ecological and tribal significance is not addressed in the environmental consequences. This separation does not provide a full understanding of how impacts may compound across ecological systems, treaty-reserved species, or Tribal resource uses.

Chapter 4 adopts bounding assumptions to estimate the range of potential environmental effects when information is incomplete or unavailable. Although bounding analyses can be appropriate when data gaps exist, they require justification demonstrating that the range adequately reflects potential real-world outcomes. The SDEIS does not explain how bounding assumptions were developed, what the upper and lower bounds represent in practical terms, or how those bounds ensure that impacts important to Tribal rights and interests are not understated. Without this explanation, the bounding approach does not provide the transparency NEPA requires.

Public and Tribal concerns raised during the consultation meeting reflect many of these issues. When Tribes questioned how meaningful comparisons can be made without on-the-ground wetland and other site-specific environmental information, USACE responded that it must rely on available datasets and public input because it cannot require the applicant to conduct field surveys for an alternative that has not been formally proposed by the applicant. USACE acknowledged the limitations of national datasets and recognized that better information would improve the analysis. The comments made during the meeting reinforce the concern that the SDEIS depends on incomplete and less reliable data, and that this affects the accuracy of the environmental consequences. USACE also stated that it expects to gather appropriate information but not necessarily field studies, which leaves unclear how key data gaps will be resolved before reaching final conclusions.

The Tribe requests that the Final EIS include updated environmental consequences that reflect site-specific surveys, verified construction footprints, and a complete assessment of how vegetation removal, wetland alteration, hydrologic disruption, and noise and traffic impacts influence ecological systems that support treaty-reserved practices. The Tribe also requests a clear explanation of bounding assumptions, revised analyses if property access shifts

construction areas, and a cumulative effects review that evaluates the interaction of long-term impacts on forests, wetlands, wildlife, water, and Tribal uses.

Mitigation and Compensatory Mitigation

The Tribe reviewed the mitigation discussion in the SDEIS and has significant concerns about how mitigation is framed and documented for the HDD installation alternative. Chapter 5 states that it provides an overview of impact minimization and mitigation measures and that these measures are summarized for each resource in Chapter 4. It also explains that the applicant would adhere to permit conditions and that the construction contractor would follow the applicant's Environmental Protection Plan (EPP) and Spill Plan, which would be updated later to incorporate permit conditions. The mitigation framework in the SDEIS therefore relies heavily on applicant-prepared plans and future permit conditions that do not yet exist, instead of presenting a clear and enforceable set of mitigation requirements that the agency itself has evaluated.

Table 5-1 describes mitigation measures by resource area, but many of the measures restate standard legal requirements or general best management practices instead of specific actions that would reduce impacts from this project. For example, the table states that project plans and required permits such as National Pollutant Discharge Elimination System and Soil Erosion and Sedimentation Control permits would stipulate best management practices to prevent stormwater runoff and minimize impacts to downstream waters. Those measures represent basic regulatory compliance, not additional mitigation. The table also states that disturbed areas would be restored and revegetated and that site restoration would include seeding with appropriate native seed mixes and possible planting of tree root stock in forested wetlands, while acknowledging long-term conversion of forest to open meadow in the impact analysis. The SDEIS does not explain how short-term and long-term habitat and land use losses will be measured or offset, or how restoration success will be monitored and enforced over time.

For key technical risks that are central to the feasibility of HDD, the mitigation discussion remains general and lacks clear performance standards. The document states that potential loss of drilling fluids to fractured bedrock would be mitigated through annular pressure monitoring, improvements in mud and grouting design and placement, advancements in casing pipe, and microtunnel advancement at drill entry points. It also mentions construction approaches such as monitoring drill bit behavior and pressures to allow adjustments in drilling speed and fluid pressures. The SDEIS does not identify specific pressure thresholds that would trigger shut down, reevaluation, or redesign, does not describe how monitoring data would be reported to regulators and Tribes, and does not explain how the agency will verify that these measures are implemented in a way that actually reduces the risk of inadvertent returns along the full length of the bore. Without defined triggers, reporting requirements, and enforcement mechanisms, these

mitigation descriptions read as general intentions instead of enforceable commitments that can support the impact conclusions in Chapter 4.

The socioeconomics portion of the mitigation summary also requires clarification and strengthening. Chapter 5 states that the construction contractor would engage with local communities to identify available accommodations and that the applicant would prepare and implement a Missing and Murdered Indigenous Women Plan to prevent or reduce construction-related impacts to Tribal populations, including risks related to human trafficking, abuse, and missing and murdered Indigenous women and children. The Supplemental Draft EIS does not describe the scope, content, or enforcement of that plan, does not explain how Tribes will participate in developing and implementing it, and does not identify how USACE will monitor compliance or address violations. For a project that would bring an industrial workforce into a region that includes Tribal communities and treaty-ceded territories, the agency must provide a clear description of the plan, including the roles of Tribal governments, data sharing and confidentiality, and specific measures that will protect Indigenous women, children, Two-Spirit, and other Indigenous Peoples from construction-related harms.

The discussion of compensatory mitigation under the Clean Water Act is also incomplete. Chapter 5 recites the 2008 compensatory mitigation rule and the national goal of no net loss of wetland functions and values and states that construction of the HDD installation alternative may require compensatory mitigation to offset expected impacts to regulated wetlands. The Supplemental Draft EIS does not quantify likely impacts that would require compensation, does not identify the types or locations of compensatory mitigation that would be used, and does not address how mitigation will account for long-term losses of mature forest cover, hydrologic functions, and habitat connectivity that support treaty-reserved hunting, fishing, and gathering. The document also does not address whether compensatory mitigation would occur within the Tribe's treaty-ceded territories or in locations that support the continued exercise of treaty rights. Without that information, Tribes and the public cannot evaluate whether compensatory mitigation would meaningfully offset project impacts.

Finally, Chapter 5 explains that mitigation measures are summarized in Chapter 4 and that adherence to the applicant's Environmental Protection Plan and Spill Plan is expected to minimize or mitigate impacts to several resources. Those plans are not included in full in the SDEIS, and the document notes that the Environmental Protection Plan will be updated later to include permit conditions. As a result, many of the impact ratings in Chapter 4 rely on mitigation measures that are not fully described in the NEPA document and that may change during later permit processes. NEPA requires a hard look at environmental consequences, including a clear explanation of how mitigation will reduce impacts. A mitigation framework that depends on future plan updates and unspecified permit conditions does not meet that standard.

Conclusion and Requested Actions

The Tribe submits these comments to ensure that the environmental review for the Enbridge Line 5 Tunnel Project accurately evaluates the risks associated with the HDD installation alternative and fully reflects the federal government's obligations to protect treaty-reserved rights and the ecological conditions that make those rights meaningful. The SDEIS does not demonstrate that USACE has taken the hard look required by NEPA. The document relies on incomplete and non-site-specific information, adopts outdated alternatives screening criteria, applies earlier decommissioning assumptions to a fundamentally different installation method, and frames mitigation in general terms that are not yet enforceable. These deficiencies are particularly concerning because the affected lands and waters are within treaty-ceded territories where the Tribe exercises its reserved rights to hunt, fish, and gather.

Along with other requests made in this letter, the Tribe respectfully requests that USACE:

1. Revise the purpose and need statement to reflect current information, treaty-reserved rights, and the federal trust responsibility, and to ensure that the range of reasonable alternatives is not constrained by outdated assumptions.
2. Prepare a revised alternatives analysis that updates the screening criteria, documents independent technical review of HDD feasibility, and clearly explains how treaty rights and ecological conditions inform the identification and evaluation of alternatives.
3. Conduct and incorporate site-specific environmental surveys for the HDD corridor, including wetlands, hydrology, contamination, vegetation, wildlife, and other relevant resources, and update Chapters 3 and 4 to reflect those data.
4. Reevaluate environmental consequences and cumulative impacts for HDD using verified construction footprints and updated baseline information, rather than relying on assumptions and analyses developed for the tunnel alternative.
5. Replace the high-level mitigation summary with a detailed, enforceable mitigation program for the HDD installation alternative that distinguishes between compliance obligations and additional mitigation, includes measurable performance standards and monitoring requirements, and specifies how mitigation will be implemented, verified, and adapted over time.
6. Provide a clear description of the proposed Missing and Murdered Indigenous Women Plan, including the role of Tribal governments in its development and implementation, and explain how USACE will oversee and enforce that plan to protect Indigenous women, children, Two Spirit, and other Indigenous Peoples from construction-related harms.

7. Ensure that compensatory mitigation for wetland and related impacts is designed and located in ways that support the continued exercise of treaty-reserved hunting, fishing, and gathering rights within the Tribe's treaty-ceded territories.
8. Reissue a revised draft or supplemental environmental document that incorporates these changes and provides Tribes with an opportunity to review and comment before USACE makes any final decision on the HDD installation alternative or associated permits.

The Tribe remains committed to government-to-government consultation and expects USACE to honor its trust responsibility by ensuring that final decisions about the Enbridge Line 5 Tunnel Project do not impair the lands, waters, fish, wildlife, and plant communities that sustain the Tribe's treaty-reserved rights and responsibilities.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Williams, Jr.", with a stylized flourish at the end.

James Williams, Jr.
Tribal Chairman

CC

Tribal Council
Tribal Legal
Tribal Natural Resources Department
GLIFWC