

FINDING OF NO SIGNIFICANT IMPACT FOR THE CHICKASAW NATION ARDMORE FEE-TO-TRUST PROJECT

In 2016, the Chickasaw Nation (Nation) submitted an application to the Bureau of Indian Affairs (BIA) to transfer into trust approximately 248.09 acres of land known as the Ardmore Tract (Site) in the City of Ardmore, Carter County, Oklahoma, for gaming and other purposes. The Nation seeks to develop approximately 14.26 acres within the Site by constructing a casino-resort (Proposed Project).

The BIA prepared an environmental assessment (EA) pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* The EA evaluated the transfer of the Site into trust and the subsequent development of the Proposed Project by the Nation. The BIA made the EA available for public comment from February 15, 2019, through March 18, 2019. The BIA received no comments from the public. The EA is available www.ardmorecasinoea.com.

Based on the findings in the EA, I determine that transferring the Site into trust and the subsequent development of the Proposed Project by the Nation will have no significant impact on the quality of the human environment. In accordance with Section 102(2)(c) of NEPA, an environmental impact statement is not required. This fulfills the requirements of NEPA as set out in the Council on Environmental Quality Regulations for implementing NEPA, 40 C.F.R. Parts 1500-1508, and the BIA NEPA Guidebook, 59 IAM 3-H, August 2012.

Purpose and Need for Action

The federal Proposed Action is the transfer of the Site into trust pursuant to the Secretary's authority under the Indian Reorganization Act, 25 U.S.C. § 5108. The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development. This purpose satisfies the Department of the Interior's (Department) land acquisition policy articulated in the Department's trust land regulations at 25 C.F.R. Part 151, and is the principle goal of the Indian Gaming Regulatory Act articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 C.F.R. §§ 151.10(h) and 151.12.

Alternatives

The BIA considered two alternatives:

Alternative A - Proposed Casino-Resort Alternative

Under Alternative A, the Department of the Interior (Department) would transfer the approximately 248.09-acre Site into trust for the benefit of the Nation. Subsequently, the Nation proposes to develop approximately 14.26 acres within the Site by constructing a 40,835 square foot (sf) gaming facility with 700 gaming machines and eight table games. The remainder of the

facility will be comprised of a restaurant and sports bar, retail space, and back-of-house areas. Approximately 984 surface-level parking spaces would be constructed to accommodate patrons and employees.

Alternative B - No Action Alternative

Under the No Action Alternative, the Department would not transfer the Site into trust for the benefit of the Nation, no development would occur, and the land would remain in its existing condition.

Alternatives Eliminated from Further Analysis:

- *Off-Site Alternatives:* The Nation selected the Site for its location near major roadways, the City of Ardmore, and Lake Murray State Park, which is a major tourist attraction. The Nation considered other land near the Lake Murray Golf Course, but was unable to acquire such land because no current owners were interested in selling their properties. Additionally, lands closer to the golf course were deemed less favorable due to their distance from the population center of the City of Ardmore and pass-by traffic on US-70, both of which are expected to attract patrons to the Proposed Project. The BIA did not evaluate other off-site alternatives in detail because they were either unavailable for acquisition and/or would not generate sufficient revenue to meet the Purpose and Need for action.
- *Non-Gaming Alternative:* The BIA considered a non-gaming alternative, but eliminated it from further consideration because it would not facilitate long-term economic development sufficient to meet the Purpose and Need for action. While the nearby City of Ardmore offers a number of attractions and entertainment venues, there are currently no gaming facilities to serve residents and travelers. The market research and analysis finds that a gaming facility would be meet the Purpose and Need for Action. Accordingly, the BIA considered, but rejected a non-gaming alternative from further consideration.
- *Reduced Intensity Alternative:* The BIA considered a reduced intensity alternative, involving a smaller footprint than the Proposed Project, but dismissed it from further consideration. This alternative would result in environmental effects similar to the Proposed Project, although possibly reduced. Because the Proposed Project is already relatively small and low-intensity (only developing approximately 10 percent of the site), and all of the effects of the Proposed Project would be less than significant after mitigation, the reduced intensity alternative would not avoid the effects of the Proposed Project. The BIA determined that the Reduced Intensity Alternative would not be sufficiently distinguishable from the Proposed Project to assist the BIA in its consideration of impacts under NEPA.

Findings

The BIA evaluated in the EA potential impacts to land resources; water resources; air quality; biological resources; cultural resources; socioeconomic conditions; transportation networks; land use; public services; visual resources; noise; and hazardous materials. The EA describes the Best Management Practices (BMPs) in Section 2.1.2 that are incorporated into the project design to eliminate or substantially reduce any environmental consequences to less-than-significant levels. The EA reached the following conclusions:

- With the inclusion of BMPs that were considered during project design/planning and incorporated into the Proposed Project, impacts to land resources would be less than significant. *See* EA Sections 2.1.2 and 4.1.
- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, impacts to water resources would not be significant. *See* EA Sections 2.1.2 and 4.2.
- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, there would be no significant adverse effects associated with the regional air quality environment. *See* EA Sections 2.1.2 and 4.3.
- Implementation of mitigation measures would ensure no adverse effects on biological resources. *See* EA Sections 4.4 and 5.4.
- There would be no significant impacts to known cultural resources, as no potentially significant cultural or paleontological resources were identified within the project area. Adherence to applicable laws and the BMPs incorporated into the project would ensure that no adverse effects to previously unknown cultural resources would occur. *See* EA Sections 2.1.2 and 4.5.
- There would be no significant impacts associated with socioeconomic conditions or environmental justice. *See* EA Section 4.6.
- Implementation of mitigation would ensure less-than-significant impacts to transportation and circulation. *See* EA Sections 4.7 and 5.7.
- With the implementation of air quality, noise, traffic, and visual resource BMPs that were considered during project design/planning and incorporated into the Proposed Project, and with mitigation measures, impacts to land use would be less than significant. *See* EA Sections 2.1.2, 4.8, and 5.0.
- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, impacts to public services would be less than significant. *See* EA Sections 2.1.2 and 4.9.

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, no adverse effects to visual resources would occur. *See* EA Sections 2.1.2 and 4.10.
- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, no significant adverse impacts to the ambient noise environment would occur during construction or operation. *See* EA Sections 2.1.2 and 4.11.
- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, and with mitigation measures, hazardous materials impacts would not be significant. *See* EA Sections 2.1.2 and 4.12.
- BMPs and/or mitigation measures incorporated into the Proposed Project would ensure that cumulative impacts to land resources, water resources, air quality and climate change, biological resources, cultural resources, socioeconomic conditions, transportation/circulation, land use, public services, visual resources, noise, and hazardous materials would be less-than-significant. There would be no significant growth inducing or other indirect effects. *See* EA Section 4.13.

Best Management Practices

Land Resources

- A grading report shall be prepared and submitted with the working design plans. Compliance with all recommendations shall occur.
- All site clearing, removal of all unsuitable soil, proper moisture conditioning, review of imported fill material, fill placement, observation of foundation excavations, and other site grading shall be verified during construction to ensure compliance with standard engineering practices.
- All structures shall meet International Building Code requirements.
- A site-specific soil erosion control plan will be prepared and implemented during construction.

Water Resources

The Nation shall comply with the National Pollutant Discharge Elimination System General Construction Permit from the U.S. Environmental Protection Agency (USEPA), for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA). A Stormwater Pollution Prevention Plan shall be prepared for the project area and may include, but would not be limited to, the following BMPs:

- Major grading activities will be scheduled during the dry season (June-September).

- Erosion control blankets or jute netting will be placed in rough graded ditches and then hydroseeded.
- Fiber rolls and straw wattles will be installed around the down-slope perimeters of the construction-site.
- Hay or straw mulch and tackifier will be used as a temporary measure for stabilizing disturbed areas.
- Landscaping will be managed to minimize erosion and sedimentation according to the following practices:
 - Rock filter berms will be placed across roadways.
 - Sediment basins will be installed throughout the property and will be removed during the final phase of construction.
 - Silt fencing will be placed down-slope of exposed soil areas and around temporary soil stockpiles.
 - Stacked rock filters will be placed around new curbs and drainage inlets around the site until the soils are stabilized with permanent landscaping.
 - Catch basins, junction boxes, culverts and outfall structures/energy dissipaters will be used throughout the grading plan.
 - Detention basins will be constructed to provide for sediment settling.
 - Ingress/egress points to the property will be stabilized and graded.
 - Cleaning, fueling, maintenance, and repair of construction vehicles and equipment will be performed off-site whenever possible.
 - The contractor will be contractually responsible for all maintenance, inspection and repair to all erosion and sediment control measures throughout the construction period, and will ensure all other protective devices are maintained and repaired in good and effective condition.

Air Quality

The following BMPs will minimize the effects of construction on air quality:

- All active construction areas will be watered at least twice daily.
- All trucks hauling soil and other loose materials will be covered or will be required to maintain at least two feet of freeboard.
- All unpaved access roads, parking areas and staging areas at construction sites will be paved, or will be subject to twice-daily applications of water or (nontoxic) soil stabilizers.
- All paved access roads, parking areas and staging areas at construction sites will be swept daily (with water sweepers).
- Streets will be swept daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- Excavation and grading activity will be suspended when winds (instantaneous gusts) exceed 25 miles per hour.
- On-site traffic will be restricted to reduce soil disturbance and the transport of material onto roadways.

- Dirt, gravel, and debris piles will be covered as needed to reduce dust and wind-blown debris.
- Emissions of volatile organic compounds (VOC), nitrogen oxides (NOx), sulfur oxides (SOx), and carbon monoxide (CO) will be controlled whenever reasonable and practicable by requiring all diesel-powered equipment be properly maintained and minimizing idling time to five minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons, more time is required. Because these emissions will be generated primarily by construction equipment, machinery, engines will be kept in good mechanical condition to minimize exhaust emissions.

The following BMPs will ensure operation of the facility will have no adverse effect on air quality:

- On-site pedestrian facility enhancements such as walkways, benches, proper lighting, and building access will be provided, which are physically separated from parking lot traffic.
- Adequate ingress and egress at entrances to the facility will be provided to minimize vehicle idling and traffic congestion.

Cultural Resources

Any inadvertent discovery of archaeological resources shall be subject to Section 106 of the National Historic Preservation Act, 36 C.F.R. § 800, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 *et seq.*, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-mm. Specifically, procedures for post-review discoveries without prior planning pursuant to 36 C.F.R. § 800.13 shall be followed. The purpose of the following BMPs is to minimize the potential adverse effect of construction activities to previously unknown archaeological or paleontological resources in the case of inadvertent discovery:

- All work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications at 36 C.F.R. § 61, or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA, other appropriate agency, and the Nation.
- If any archaeological find is determined to be significant by the archaeologist or paleontologist, the Tribal Historic Preservation Officer (THPO) shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a Treatment Plan and implementation of appropriate provisions, if necessary.
- All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist or paleontologist according to current professional standards.
- If human remains are discovered during ground-disturbing activities on tribal lands, pursuant to NAGPRA, the THPO and a BIA representative shall be contacted

immediately, and shall determine whether the remains are Native American. If Native American, the provisions of NAGPRA shall apply. No further disturbance shall occur until the THPO and BIA representative have made the necessary findings as to the origin and disposition.

Public Services and Utilities - Fire Safety

- Construction equipment will contain spark arrestors, as provided by the manufacturer.
- Frequent watering will occur in and around areas where power tools or torches are used.

Visual Resources

- Placement of floodlights on buildings will be designed to not cast light off-site.
- Shielding, such as with a horizontal shroud, will be used for all outdoor lighting to ensure it is downcast.

Noise

- Construction activities within a half-mile of existing noise-sensitive uses will be limited to daytime hours (7:00 AM to 10:00 PM).
- All powered equipment will comply with applicable local, state and, federal regulations, and all such equipment will be fitted with adequate mufflers according to the manufacturer's specifications to minimize construction noise effects.
- Heating Ventilating and Air Conditioning (HVAC) equipment will be shielded to reduce noise.
- To the extent feasible, pile driving, should it take place, will not occur prior to 9:00 AM or after 5:00 PM.

Hazardous Materials

The Nation will include the following requirement in construction contract specifications for construction activities associated with the project area:

- If contaminated soil and/or groundwater are encountered or if suspected contamination is encountered during project construction, work will be halted in the area, and the type and extent of the contamination will be determined. A qualified environmental professional, in consultation with appropriate regulatory agencies, will then assess and develop appropriate methods to remediate the contamination. If necessary, the Nation will implement a remediation plan in conjunction with continued project construction.

Mitigation Measures

The EA identifies the following mitigation measures to reduce potentially significant impacts to a less-than-significant level:

Biological Resources

Implementation of the following mitigation measures would ensure that the Proposed Action of transferring the Site into trust would avoid or minimize potential adverse effects to migratory birds and other birds of prey protected under the Migratory Bird Treaty Act:

- If construction begins during the nesting season for birds of prey and migratory birds (between February 1 and October 1), a preconstruction bird survey for nesting sites will be conducted within the project area by a qualified biologist no more than 14 days prior to commencement of construction activities. If no active nests or roosts are identified during the preconstruction survey, no further mitigation is required.
- If any active nests are identified during the preconstruction survey within the project area, a buffer zone will be established around the nest. A qualified biologist will monitor nests weekly during construction to evaluate potential nesting disturbance by construction activities. The biologist will delimit the buffer zone with construction tape or pin flags within 100 feet of the active nest and maintain the buffer zone until the end of the breeding season or until the young have fledged. Guidance from the U.S. Fish and Wildlife Service (USFWS) will be requested if establishing a 100-foot buffer zone is impractical if the nestlings within the active nest appear disturbed.

With respect to the American Burying Beetle (ABB), the USFWS Southwest Region, Oklahoma Ecological Services Field Office, publishes guidance on conducting impact assessments for ABB in Oklahoma (*American Burying Beetle Impact Assessment for Project Reviews*; USFWS, 2016), as well as survey protocols (*American Burying Beetle *Nicrophorus americanus* Oklahoma Presence/Absence Live-Trapping Survey Guidance*; USFWS, 2015). The assessment guidance recommends the process for determining the potential for take of ABB under Section 7 of the Endangered Species Act resulting from a Proposed Action. The steps of the process include the following:

- For a project with a federal nexus, determine if the action would occur in ABB range;
- For projects in ABB range, determine if the action area includes habitat considered favorable to ABB;
- For projects with habitat considered favorable to ABB, determine if the project would include soil disturbance, use of vehicles or heavy equipment, artificial lighting, vegetation removal, or use of herbicides, pesticides, other hazardous chemicals.
- Determine presence or absence by conducting a valid and current ABB presence/absence survey in the action area where ABB habitat was identified:
 - If no ABB are found through a valid survey, then a project "may affect, not likely to adversely affect" ABB and request concurrence with USFWS through informal Section 7 consultation; or
 - If ABB are found through a valid survey, or if no valid survey is conducted (presence assumed), then submit a Biological Assessment to USFWS to initiate formal consultation under Section 7 of the Endangered Species Act.

The Proposed Action has federal nexus, would occur in ABB range, does contain suitable habitat, and would result in soil disturbance, use of vehicles or heavy equipment, artificial lighting, and vegetation removal, and may include the use of herbicides, pesticides, or other hazardous chemicals. Since there is the potential for take of ABB, the following measures will be implemented prior to commencing any construction activities on the property to reduce potential impacts to a less-than-significant level:

- Contract with a qualified biologist for a survey that will be conducted per the USFWS *American Burying Beetle *Nicrophorus americanus* Oklahoma Presence/Absence Live-Trapping Survey Guidance* to determine the presence or absence of ABB on all or a portion of the property. This survey will occur in the annual survey window that occurs prior to planned construction. Per the ABB survey guidance (USFWS, 2015), surveys must occur between May 26 and September 15 in Oklahoma. Because of the life stages of the ABB, surveys that occur between May 26 and July 28 are valid until September 15 of that year, while surveys conducted between July 29 and September 15 are valid until May 26 of the following year.
- If no ABB are found during the survey, seek concurrence with USFWS through informal Section 7 consultation that the Proposed Action "may affect, not likely to adversely affect" ABB.
- If ABB are found during the survey, prepare a Biological Assessment and initiate formal Section 7 consultation with USFWS. This consultation process will determine the level of take and the amount of compensatory mitigation required. This mitigation may occur by creating a conservation area on suitable Chickasaw Nation lands in another area, through conservation banking, or through in-lieu mitigation through a third party.

As noted in EA Section 3.4.3, on March 16, 2016, the USFWS published a notice in the *Federal Register* announcing its findings on various petitions to list, reclassify, or delist fish, wildlife, or plants under the Endangered Species Act. One of the petitions under review was a proposal to delist the ABB. The USFWS announced that they will initiate a status review of ABB in the future. However, there is no notice that the status review was initiated and thus the ABB remains listed as a federal endangered species. If the USFWS delists the ABB, then it would no longer be subject to Section 7 consultation under the Endangered Species Act.

Implementation of the following mitigation measure would ensure that impacts to potential waters of the U.S. are reduced:

- Potential "waters of the U.S." on the site shall be avoided to the extent possible. If not possible, a permit shall be obtained from U.S. Army Corps of Engineers (USACE) prior to any discharge of dredged or fill material into waters of the U.S. A USACE Section 404 Permit may be required since the development of the Proposed Action may result in impacts to less than 1.0 acre of potential waters of the U.S. on the property. The Nation shall comply with all the terms and conditions of the permit and compensatory mitigation will be in place prior to any direct effects to waters of the U.S. At minimum, mitigation

measures require the creation of wetlands at a 1:1 ratio for any affected waters of the U.S. The US EPA will require a Section 401 Water Quality Certification permit prior to the USA CE issuance of a Section 404 permit. Mitigation will be implemented in compliance with any permits.

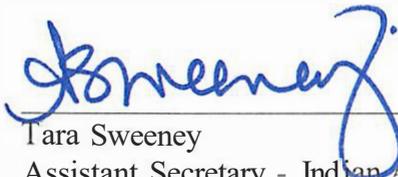
Transportation Networks

Implementation of the following mitigation measure would ensure that the Proposed Action would avoid or minimize potential adverse traffic effects:

- An exclusive eastbound right turn lane with a minimum storage depth of 150 feet and adequate taper length shall be constructed at the proposed development drive.

Determination

Based on the findings in the EA, I determine that transferring the Site into trust for the benefit of the Chickasaw Nation and the subsequent development of the Site with the Proposed Project will have no significant impact on the quality of the human environment. In accordance with Section 102(2)(c) of NEPA, an environmental impact statement is not required. This fulfills the requirements of NEPA as set out in the Council on Environmental Quality Regulations for Implementing NEPA, 40 C.F.R. §§ 1500-1508, and the BIA NEPA Guidebook, 59 IAM 3-H, August 2012.


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OCT 15 2020
Date