

Indian Gaming Management
MS 2070-MIB

SEP 24 1993

Memorandum

To: Assistant Secretary - Indian Affairs

From: ACTING Deputy Commissioner of Indian Affairs *Wyman D. Babby*

Subject: Request by the Cherokee Nation of Oklahoma for Trust
Acquisition of 15.66 Acres in Rogers County, Oklahoma

The Muskogee Area Director (Area Director) by memorandum dated March 26, 1993, transmitted to Central Office, the request of the Cherokee Nation of Oklahoma (Nation) to acquire fee property in trust. The acquisition request and the supporting documentation were transmitted by the Area Director to the Central Office pursuant to directives issued by former Secretary Lujan dated July 19, 1990, which required that all requests to acquire land in trust for gaming purposes be approved or disapproved by Central Office. Since the purpose of the acquisition is intended for a gaming facility, the acquisition documents were referred to the Office of Indian Gaming Management (OIGM). The OIGM has completed its review and analysis of the request and the supporting documentation. The findings and recommendations of the OIGM are set forth in this memorandum for your approval or disapproval, to place the off-reservation land acquisition into trust status for gaming purposes.

I. PROPERTY TO BE ACQUIRED

The significant points for your consideration are as follows:

The acquired property consists of a parcel of land situated within the historical boundary of the Cherokee lands and within the platted subdivision of the City of Catoosa, Oklahoma. The property consists of three (3) vacant commercially-zoned lots with the legal description:

Lots Two (2) and Three (3), Block Two (2), and Lots One (1) and Three (3), Block One (1), Port Place, an Addition to the City of Catoosa, Rogers County, State of Oklahoma, according to the recorded plat thereof, LESS AND EXCEPT a part of Lot 1, Block 1, Port Place, an Addition to the City of Catoosa, Rogers County, State of Oklahoma, according to the Recorded Plat thereof, more particularly described as follows: Beginning at a point, said point being the Northeast corner of Lot 2, Block 1, Port

Place; thence due West a distance of 196.35 feet to a point; thence due North a distance of 157.88 feet to a point; thence South 76°26'43" East a distance of 45.12 feet to a point; thence along a curve to the left having a radius of 336.58 feet and a delta angle of 13°33'17" a distance of 79.63 feet to a point; thence due East a distance of 7.56 feet to a point being the extreme Northeast corner of said Lot 1, Block 1, Port Place; thence South 02°38'24" East a distance of 17.75 feet to a point; thence South 50°34'43" East a distance of 82.34 feet to a point; thence South 01°24'32" East a distance of 69.93 feet to the Northeast corner of Lot 2, Block 1, Port Place and the point of beginning, containing 15.66 acres.

The property is vacant and contains no improvements other than water, electric, gas and sewer lines. Lot 1 has over 1,000 feet of road frontage and is surrounded on three sides by a street (Timbercrest Circle), and is considered adequate street frontage to allow ingress and egress. (Appraisal Report. 03/12/93).

II. TITLE TO THE PROPERTY

The Nation acquired the property in fee status on March 10, 1993. The title to the property is held in the name of the Cherokee Nation Bingo Outpost (Corporation), Inc., a business of the Nation. The title insurance lists title in the name of Cherokee Nation Bingo Outpost, Inc.

We foresee no problems with the title conveyance to trust status. Upon approval of the trust transaction the Corporation will convey the title of the property to *The United States of America in Trust for the Cherokee Nation*.

III. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

The factors on which the request was evaluated are outlined in 25 CFR 151.10, land acquisitions and discussed herein.

A. 25 CFR 151.10(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

The statutory authority cited for the Nation to acquire land in trust is Section 5 of the Indian Reorganization Act (IRA) of June 18, 1934 (40 Stat. 984). The Nation is a federally recognized Indian tribe located in the eastern area of the State of Oklahoma. In 1975, the Oklahoma Cherokees reorganized their tribal government and adopted a new constitution which was approved by the Bureau of Indian Affairs (BIA). The Council of the Cherokee Nation enacted Resolution No. 13-19 on February 13, 1993, to request that the above-described property be taken in trust status for the Nation. The resolution also authorized the Principal Chief of the Nation to execute the request for trust status action from the BIA. The resolution was adopted by a vote of 9 for; 3 against; and 1 abstention.

The Federal authority for the Nation to acquire property as well as the authority for the Government to acquire it in trust status is the authority granted by the IRA. Section 5 of the IRA authorizes the Secretary, in his discretion, to acquire interest in land for the purpose of providing land for Indians. Any land acquisition pursuant to this act, shall be taken in trust in the name of the United States in trust for the Indian tribe for which the land is acquired. Such lands shall be exempt from State and local taxation.

The conclusion reached after review and analysis of the fee-to-trust acquisition transaction is that, the regulatory authority for the Secretary to accept this land in trust comports with 25 CFR 151.3(a)(3) in that the acquisition of the land is necessary to facilitate tribal self-determination through economic development.

B. 25 CFR 151.10(b) The need of the individual Indian or the tribe for additional land;

The Nation has a land base of approximately 60,000 acres which consists of property which is fee simple or in trust status. The land is checkerboard over four counties in Oklahoma. The Nation has determined that to further the social and economic advancement of the Nation citizenry through the achievement of self-sufficiency the acquisition of the additional land in trust status is necessary. (Nation's Application. 03/22/93). The acquisition of this property in trust is needed to further the development of a financial venture which is a gaming facility.

In a telephone conversation on April 27, 1993, with the Realty Officer for the Nation, Ms. Annette Jenkins, it was learned that the Nation did an economic feasibility study on the location of a second bingo facility on their existing landholdings and surrounding areas. Of the three sites considered, the study indicated that this property in Rogers County was the best suited location because of its business potential for clientele and accessibility for enhancement of the tribe's venture. According to Ms. Jenkins, the property is located 60 miles from the Nation's headquarters. The Nation's existing bingo facility is located in the southeast portion of the Nation's 14-county jurisdiction and the proposed facility will be located in the northwest.

Presently, the Nation does not possess any trust property in Rogers County. The Nation is well aware that in order to conduct gaming on the newly acquired property, trust status is needed for the property.

C. 151.10(c) The purposes for which the land will be used;

The Nation intends to use the property for a Class II gaming facility. The documents do not indicate any other use of the four lots except for gaming. The lots in Block 1 and 2 are separated by a street known as Timbercrest Circle. As noted earlier, there is sufficient ingress and egress to the property.

D. 25 CFR 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 the land from the tax rolls;

The Nation took responsibility to notify the local governments of their proposal by letter. The notice was intended to give the Government officials an opportunity to indicate what impact, if any, the action to remove the lands from the tax rolls would have on the local governments. Eight notices dated February 17, 1993, were mailed to the county offices consisting of: two county assessors and six county commissioners. There is no indication that the City of Catoosa was included and notified of the Nation's proposal; however, the Mayor of the City of Catoosa, by letter dated March 25, 1993, to Chief Wilma P. Mankiller, indicated that the city government supported the Nation's proposal to open a bingo facility in the City of Catoosa.

The only response to the February 17 notification letter, (included in the package), came from the Assessor's Office in Claremore, Oklahoma. The letter indicated that there were no services, nor special assessments to the commercial zoned properties and the taxes for the 1992 property tax year for the four properties total \$4,052.90.

Based on the lack of response by the county officials, it may be assumed that the impact on local government resulting from removal of the lands from the tax rolls will be insignificant.

E. 25 CFR 151.10(f) Jurisdictional problems and potential conflicts of land use which may arise;

Any potential or real jurisdictional problems or conflicts over land use have been anticipated and propose to be resolved through a mutual agreement. The Nation has entered into a jurisdictional cooperative agreement with Rogers County. The Nation states that they anticipate no jurisdiction problems.

F. 25 CFR 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.

The Nation states that it is equipped to handle the additional responsibilities that would result from the acquisition.

In the initial submission, the Area Director did not offer any comments as to the additional responsibility that the BIA will acquire as a result of the acquisition of this land in trust status. However, upon request for further review and response for the factor for land acquisition, the Area Director did respond by memorandum dated September 15, 1993. The Area Director advised that the Muskogee Area Office possesses adequate staff to provide technical assistance to the Tribe with administering the property. It is the determination of the Area Director that the proposed acquisition will not cause a

significant impact on the current staffing and resources of the local agency and area BIA offices that they are equipped to assume the additional responsibilities associated with the property acquisition in trust status.

The Nation is one of several tribes that have signed a self-governance compact. This status will require the Nation to assume the bulk, if not all of the administration responsibilities associated with the addition of new land. It is assumed that the Area would not be burdened with any responsibilities of the property with the exception of normal accounting of trust property.

II. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The transaction package has met compliance with the NEPA, P.L. 91-130, 83 Stat. 852, January 1, 1970. The documentation in support of the acquisition includes a Finding of No Significant Impact (FONSI) signed by the Area Environmental Resources Officer on July 26, 1993, and Area Director on July 27, 1993. The FONSI was based upon an Environmental Assessment (EA) prepared by the Cherokee Nation Community Development Department in July 1993. The EA was reviewed by the Environmental Services Staff in the Division of Trust Responsibilities which advised that the documents were acceptable for completion of the NEPA process.

The FONSI was published in the Claremore Progress in Rogers County, Oklahoma, for one day on September 12, 1993.

III. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed on March 5, 1993 and certified on March 6, 1993, by the Nation's Natural Resources Officer. The completion of the form indicates compliance with the required survey for hazardous substance on property to be acquired in trust and concludes that no contaminants are present on the property. The Muskogee Area Environmental Resources Officer concurred with the Nation's recommendation on March 22, 1993. The survey was approved by the Area Director on March 22, 1993.

IV. OTHER CONSULTATION/REQUIREMENTS

In addition to compliance with NEPA, the documentation supports a finding of compliance with other related requirements as indicated by the following letters received in response to the Nation's notices:

archeological sites: The University of Oklahoma, Oklahoma Archeological Survey, provided a response dated February 8, 1993, indicating that no archaeological materials were likely to be encountered and a field survey was not necessary.

endangered species or wetlands: The Fish and Wildlife Services, Ecological Services, Tulsa, Oklahoma, provided a response dated February 2, 1993, that the action will have no effect on listed species, wetland, or other important wildlife resources.

air quality: Oklahoma State Department of Health, Air Quality Services, Oklahoma City, Oklahoma, provided a response dated February 2, 1993, that the construction of a recreational facility will not have a significant effect on Oklahoma Air Quality.

historical preservation: Oklahoma Historical Society, State Historic Preservation Office, provided a response dated February 18, 1993, that the project contained no properties eligible or a possibility of eligibility for historic preservation and the project should proceed.

The Nation has complied with applicable federal laws for acquisition of property in trust in regard to archeological sites, endangered species or wetlands, air quality, and historic preservation.

V. AREA DIRECTOR RECOMMENDATION

The Nation is a self-governance compact tribe, and as such took complete responsibility through its staff to provide the necessary documentation to support the acquisition request. The completed documents were submitted to the Area Director for review and recommendation. The Area Director recommended that title to the subject property be converted to trust status subject to receipt of satisfactory title evidence in accordance with 25 CFR 151.12.

It is our determination that the documentation in support of the acquisition have satisfactorily complied the requirements of 25 CFR 151.

VI. NATIONAL INDIAN GAMING REGULATORY ACT (IGRA)

The property being acquired will be used for gaming purposes and while gaming is prohibited on lands acquired after October 17, 1988, Section 20 of the IGRA, 25 U.S.C. 2719, allows certain exceptions.

It is determined that this proposed acquisition comes under the exception found in Section 20(a)(2)(A)(i). This exception provides that the section 20 prohibition does not apply if the tribe had no reservation on October 17, 1988, and the lands to be acquired in trust are located in Oklahoma and within the boundaries of the tribe's former reservation as defined by the Secretary. Specifically, the facts supporting the determination that this exception applies are:

1. the Nation had no reservation on October 17, 1988; and,
2. the property is located in the State of Oklahoma; and,
3. (i) the property is within the boundaries of the Nation's former reservation as defined by the Secretary.

The Solicitor's Office concludes that the former "treaty lands" of the Cherokee Nation, and specifically the proposed acquisition, are tantamount to "former reservation lands" as mentioned in the IGRA and they should be treated as "former reservation lands" for purposes of the IGRA. (See September 21, 1993, memorandum of Tulsa Field Solicitor.)

Additionally, with regard to the factual finding that the land is within the boundaries of the Nation's former reservation as defined by the Secretary, the Area Director has relied on past practice defining the particular jurisdictional areas of the Five Civilized Tribes of Oklahoma established by the last treaties executed by the tribes themselves. The Area Director took particular note of the Federal Register Notice, Vol. 36, No. 135, dated, July 14, 1971, which established Agency jurisdictional boundaries (issued by the Acting Commissioner, Department of the Interior, BIA) to "correspond more closely with the original Indian Nations boundaries" to support his position. The Nation is relying upon the first part of Section 20 of the IGRA in order to use the property for gaming purposes.

Therefore, it is our position that this property is within the Nation's former reservation and as such comes within the exception of 25 U.S.C. 2719(a)(2)(A).

VII. RECOMMENDATION

It is the recommendation of this office that the property be taken in trust for the benefit of the Nation. The documents provided by the Nation support this recommendation. We recommend that the Area Director be notified to approve the conveyance document accepting the property in trust for the Nation with a proviso that such approval should not be exercised until the title requirements have been satisfactorily approved by the Office of the Solicitor, Regional Office, Southwest Region.

If you concur with this recommendation to approve the trust acquisition, we have attached for your signature a memorandum to the Area Director authorizing him to proceed with the conveyance to *The United States of America in Trust for the Cherokee Nation*, subject to satisfaction of all title requirements pursuant to 25 CFR 151.12.

Attachment