

FEB 18 1994

Memorandum

To: Ada E. Deer
Assistant Secretary - Indian Affairs

From: ~~Acting~~ Deputy Commissioner of Indian Affairs *Wyman O. Bobby*

Subject: Request by the Cherokee Nation of Oklahoma for Trust Acquisition of 7.808 Acres in Delaware County, Oklahoma

The Muskogee Area Director (Area Director) by memorandum dated November 4, 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 was 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 Indian Gaming Management Staff (IGMS). The IGMS has completed its review and analysis of the request and the supporting documentation. The findings and recommendations of the IGMS to place the land in trust status for gaming purposes, are set forth in this memorandum for your approval or disapproval.

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 township of West Siloam Springs, Oklahoma. The property consists of two adjacent sites that are located in the Southeast quarter of Section 30, Township 20 North, Range 26 East, Delaware County, Oklahoma, more particularly described as follows:

TRACT I

Beginning at a point 428.08 feet West of the Southeast Corner of said Section 30; thence West a distance of 400.00 feet; thence North 00°25'30" East a distance of 700.00 feet; thence East a distance of 400.00 feet; thence South 00°25'30" West a distance of 700 feet to the point of beginning, containing 6.428 acres; and,

TRACT II

Commencing 278.08 feet West and North 00°25'30" East a distance of 300 feet from the SE corner of said Section 30 for the Point of Beginning; thence West 150 feet; thence North 00°25'30" East a distance of 400 feet; thence East 150 feet; thence South 00°25'30" West a distance of 400 feet to the point of beginning, containing 1.38 acres more or less.

The property is open flat land which presently contains vegetation. Infrastructure on the property consists of water provided by the Town of West Siloam Springs, electricity provided by NEO Cooperative, and propane gas supplied by a commercial vendor. The existing solid waste disposal system is considered adequate for the proposed project. The sewer system will be improved to meet the project's needs. E.A. Page 5.

The property is located on the north side of U.S. Highway 412, within the city limits of the small community of West Siloam Springs, Oklahoma, with a population of 550. The property lies 278.08 feet west of the Oklahoma/Arkansas state line. The community of Siloam Springs, Arkansas, with a population of approximately 8,151, lies just across the border. Immediately east of this property is a small branch bank (Peoples State Bank of Westville). The south border of the property fronts U.S. Highway 412 for 400 feet of ingress and egress. Highway 412 is a four-lane east/west asphalt roadway and the 400 feet of frontage is the feature that gives this property its commercial appeal.

II. TITLE TO THE PROPERTY

The Cherokee Nation Bingo Outpost, Inc., a business of the Nation, acquired the 1.38 acres in fee in June of 1993, and conveyed it to the Nation on September 13, 1993. The Nation acquired the 6.428 acres in fee on June 1, 1993. The Commitment for title insurance effective August 11, 1993, shows the title of the property to be vested the name of The Cherokee Nation.

We foresee no problems with the title conveyance to trust status. Upon approval of the trust transaction the Nation 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 Secretary to acquire land in trust for the Nation is Section 5 of the Indian Reorganization Act (IRA) of June 18, 1934, 25 U.S.C. § 465.

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

Subject to the provisions contained in the acts of Congress which authorize land acquisitions, the Secretary may acquire land for a tribe in trust status in certain instances as set forth in 25 CFR 151.3(a). The Secretary has determined that the land acquisition in this particular transaction is necessary to facilitate tribal self-determination and economic development (25 CFR 151.3(a)(3)).

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. 14-93 on February 13, 1993, to request that the 6.428 acres be taken in trust status for the Nation. A Modification of Resolution Placing Land in Trust, Resolution No. 73-93, was enacted by the council on September 13, 1993, requesting that both the 6.428 acres and 1.38 acres 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 to the BIA. Both resolutions were adopted with majority votes.

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 a mixture of fee simple and trust property. The land is checkerboarded over four counties in Oklahoma. The Nation has determined that the additional land in this request will facilitate the Nation's plans to generate funding for present economic advancement, health, education, housing and for future economic development (Nation's Application dated 09/16/93). The acquisition of this property in trust is needed to allow the development of a financial venture, which is a gaming facility.

This property will house the third bingo facility of the Nation. The Nation studied two other sites for the bingo facility; and found one site to be partially located in a flood area and the other site was involved in legal action. Thus, this particular property was found to be the best suited location because of its business potential for clientele and

accessibility. These factors will greatly enhance the Nation's potential for success with the gaming venture. The Nation is aware that the IGRA places certain requirements on the Tribe before gaming can be conducted on the newly acquired trust 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 for the 7.81 acres except gaming. The project will entail the construction of a 20,000 square foot facility with a capacity to seat 850 players. The operation will employ approximately 50 people in occupations typical to a bingo operation. The parking area will be designed to accommodate 450 vehicles.

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 subdivision resulting from the removal of the land from the tax rolls;

The Nation, as a self-governance tribe, took responsibility to notify the local governments of their proposal by letters dated March 23, 1993. Letters were sent to the Delaware County Assessor, the Board of Delaware County Commissioners, and the State of Oklahoma Tax Commission. The letters were written to give the Government officials an opportunity to comment on any foreseeable or actual impact on the local governments expected as a result of the action to remove the lands from the tax rolls, as well as to seek information on taxes, special assessments, and government services provided to the property. The only response was received from the County Assessor. The County Assessor reported that there were no special assessments on the 6.428 acre tract and the 1992 property taxes were assessed at \$123.00. The 1.38 acre tract has no special assessments and the property taxes were assessed at \$30.45 for 1992. There are no taxes due on either tract.

The Nation also held a public meeting at 3:00 p.m., June 22, 1993, at the Cherokee Nation Tribal Council Complex. There were no persons present with any opposition to the proposal.

A letter dated June 1, 1993, was sent to the Mayor of the City of West Siloam Springs seeking comment on any impacts that the gaming facility would have on the community. A response dated July 26, 1993, addressed to the People of the Cherokee Nation was received and indicated no negative impacts. The Mayor was very receptive to the Nation's proposal and expressed gratitude for the commercial expansion in the community.

Based on the Nation's contact with officials of the state and local governments to determine if any impacts might result from the proposed gaming facility, and the lack of opposition, it may be assumed that the removal of the property from the tax rolls will result in no adverse impact on the local government.

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 proposed to be resolved through a mutual agreement. City services in West Siloam Springs are limited, including no zoning or planning authority. Thus, any and all lawful uses would be permitted. The Nation has entered into a law enforcement jurisdictional cooperative agreement with Delaware County. The Nation anticipates no jurisdictional 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.

As a Self-Governance Tribe, the Nation will assume all administrative responsibilities associated with the provision of trust real estate services to the Nation's trust and restricted lands within their jurisdiction. The Nation states that it is equipped to discharge the additional responsibilities that would result from the acquisition. The Nation utilizes the services of Coopers and Lybrand, a national accounting firm to audit the financial activities of the Nation. The Nation is also a member in good standing with the government Finance Officers Association of the United States and Canada, and has, for the past six years, received the Certificate of Achievement for Excellence in Financial Management. Therefore, the Nation is ready to discharge any responsibility associated with the acquisition of the property in trust status.

The BIA does retain signatory authority for any required approvals. The Area Director also states that the acquisition will not cause a significant impact on the current staffing patterns and resources of the Muskogee Area BIA offices.

II. NATIONAL ENVIRONMENTAL-POLICY ACT (NEPA)

The transaction package has met compliance with the NEPA, P.L. 91-130, 83 Stat. 857, 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 September 1, 1993, and Area Director on September 2, 1993. The FONSI was based upon an Environmental Assessment (EA) prepared by the Cherokee Nation Community Development Department in August 1993. The EA was reviewed by the Environmental Services Staff in the Central Office's Office of Trust Responsibilities which found that it is adequate in scope and that its content supports the conclusions drawn.

The FONSI was published in The Delaware County Journal, a weekly newspaper printed in Grove, Delaware County, Oklahoma, for one day on September 15, 1993.

III. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed and certified by the Nation's Natural Resources Officer on August 16, 1993. 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 September 1, 1993. The survey was approved by the Area Director on September 2, 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 to the designated agencies of the proposal on the property:

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 that 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, concluding 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, indicating 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, indicating that the project contained no properties eligible or possibly eligible for historic preservation and that the project should proceed.

other: A letter dated June 24, 1993, from the USGS, Denver, Colorado, indicates unawareness of any environmental concerns in connection with the proposed facility.

State of Oklahoma Water Resources Board, Tulsa, Oklahoma, provided an undated response that no environmental concerns were noted for the proposed site.

U.S. Department of Agriculture, Farmers Home Administration, Rural Development Administration, Stillwater, Oklahoma, provided a response dated June 28, 1993, indicating that they had no environmental concerns regarding the proposed project; however, in a letter dated June 29, 1993, from the Soil Conservation Service, the Assistant State Conservationist states that prime farmland is present in the proposed project areas and all practicable alternatives should be evaluated to minimize adverse impact on these lands.

State of Oklahoma Scenic Rivers Commission, Tahlequah, Oklahoma, provided a response dated August 25, 1993, stating that Beaver Creek, located one-half mile west of project, is a tributary of the Illinois River (designated a scenic river area) and encouraged the Nation to be mindful of any environmental concerns that could impact the river.

The Nation has complied with applicable federal laws for acquisition of property in trust with regard to archeological sites, endangered species or wetlands, air quality, and historic preservation and has even sought out comments in other areas to assure that all environmental concerns are addressed by the project.

V. AREA DIRECTOR RECOMMENDATION

The Nation is a Self-Governance Tribe, and took complete responsibility for preparing 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 provided in support of the trust acquisition request satisfactorily shows compliance with the requirements of 25 CFR 151.

VI. NATIONAL INDIAN GAMING REGULATORY ACT (IGRA)

The property being acquired will be used for gaming purposes. As a general rule, gaming is prohibited on lands acquired after October 17, 1988, unless an exception applies as provided in Section 20 of the IGRA, 25 U.S.C. 2719.

The Nation contends that the exception found in Section 20 (a)(2)(A) applies in this case. In support of their contention the Nation states:

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