



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



REVISED FINDING OF NO SIGNIFICANT IMPACT AND DECISION RECORD

**PROPOSED NORTHERN CHEYENNE TRIBE CASINO
BIG HORN COUNTY, MONTANA**

Summary

The project entails two phases of development associated with the development of a Class III gaming enterprise (casino) and overnight accommodations for casino patrons. Phase I of the proposed project consists of the casino construction on a five-acre portion of a 160 acre tract of trust land adjacent to the western shore of the Tongue River Reservoir. This land was placed in trust with the passage of the Northern Cheyenne Indian Reserved Water rights Settlement Act of 1992. The 30,000 square foot casino, with approximately 300 gaming machines, live poker, and other games of chance, would be accompanied by a restaurant, gift shop, parking lot upgrade, electric utility installation, development of a water supply and wastewater treatment facility, fire protection infrastructure, and roadway improvements. Phase II would involve the development of the overnight accommodations consisting of a 50-room motel and a campground. These developments would cover an additional 20 acres of land, and utilize the utilities and infrastructure built as part of Phase I.

Pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719, the Secretary of the Interior is required to make a two-part determination whether the gaming establishment is in the best interest of the Indian tribe and its members, and whether it is detrimental to the surrounding community. The two-part determination is a Federal action requiring compliance with the National Environmental Policy Act (NEPA) of 1969. Additionally, the proposed project requires a grant of easement for the relocation of the public road that crosses the project area, as well as for electric and phone lines. Pursuant to 25 U.S.C. § 323 and 25 C.F.R. Part 169, the Secretary must approve easements on Indian lands. This approval is a Federal action requiring compliance with NEPA prior to approval. Based on the size and scope of the proposed project, the final environmental assessment (EA) and this finding of no significant impact (FONSI) fulfill the requirements of NEPA as set out in the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR Parts 1500-1508) and the Bureau of Indian Affairs' (BIA) NEPA Handbook (59 IAM 3-H; effective 05/05/05).

A FONSI for this action was previously approved by the Regional Director of the Rocky Mountain Region on November 1, 2007. That FONSI is withdrawn and is replaced by this Revised FONSI.

Based on the analysis presented in the final EA, the BIA has determined that the proposed Federal actions are not a major Federal actions significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, preparation of an Environmental Impact Statement is not required.

BIA Finding of No Significant Impact

Significance, as used in NEPA (40 CFR 1508.27), defines and requires consideration of both context and intensity. Context means the significance of the action must be analyzed in several contexts such as the affected region, interests, and locality. Intensity refers to the severity of the impacts disclosed in the analysis.

Context: The potential environmental effects on the affected surface resources are local in scope. That is, the effects are limited to the project area drainages. Social and economic effects are also local in scope, primarily involving the Northern Cheyenne Indian Reservation and tribal trust land.

Intensity: Intensity is evaluated by comparing and contrasting the following ten criteria (*in italics*) from 40 CFR § 1508.27 with the issues and effects disclosed in the EA .

1. *“Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.”*

Under the Preferred Alternative, there would be no significant impacts to resources within the project area. Neither the beneficial nor negative impacts are significant.

2. *“The degree to which the proposed action affects public health or safety.”*

Under the Preferred Alternative, measures will be implemented to protect water resources and provide fire prevention precautions and fire fighting capabilities. Law enforcement and emergency services will be provided at the casino site. Solid waste will be transported to a RCRA-certified landfill. Collectively, these stipulations would minimize potential risk to human health and safety, and would result in no significant impact.

3. *“Unique characteristics of the geographical area such as proximity to historical or cultural resources, park lands, or prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.”*

There would be no significant impacts to historical (greater than 50 years old) or cultural resources, such as prehistoric localities or artifacts, traditional cultural properties (fasting sites, vision quest sites, cloth offerings, graves, ethnobotanical resources, et cetera). (Montana State

Historic Preservation Office SHPO concurrence and correspondence with Tribe are in project file). The project will not significantly impact Prime Farmland, Prime Farmland if Irrigated, or Farmland of Statewide Importance. Because of the flood protection provided by the dam and spillway, there are no delineated floodplains within the project area. Disturbed and impacted areas associated with the project would not be located within or adjacent to wetlands, wild and scenic rivers, or ecologically critical areas, resulting in no significant impacts to those resources. Tongue River State Park is located near the proposed site, however, no significant noise or light impacts are anticipated on the Park or its resources.

4. *"The degree to which the effects on the quality of the human environment are likely to be highly controversial."*

The Proposed Action will not result in significant impacts to the human environment. No scientific controversy has been presented with regard to land, water, air, living resources, archaeological, historical and cultural resources, socioeconomic conditions, resource use patterns or other values such as wilderness, noise and light, or visual resources, as to the projected impacts.

5. *"The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks."*

The project area was studied in detail in 1995 and 1996 during the course of preparation of an Environmental Impact Statement (EIS) written for the Tongue River Basin Project. Thorough studies of the area prepared as part of the Tongue River Basin Project EIS have been used as a source of information about the affected environment for the proposed casino project throughout the EA, and are incorporated by reference. In addition, biological and traffic impact studies were conducted in the process of preparing the EA. Enhanced understanding of the local ecosystems and selection of the alternative to maximize environmental protection increases the likelihood that the human environment would not be significantly affected by unique or unknown risks.

6. *"The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration."*

The Tongue River Reservoir region is heavily used for resource exploration and extraction, including coal strip mines to the west and south and coalbed methane developments to the south. The land area surrounding the proposed project site has been substantially altered by humans. Given the disturbed nature of the area, the Proposed Alternative is not precedent-setting. The Preferred Alternative will not likely influence future decisions associated with unrelated development in the region.

7. *"Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small components."*

The EA outlines potential impacts from the Preferred Alternative and other projects in the area unrelated to the proposed project. The cumulative impact from the Preferred Alternative is not significant. Elements having potentially insignificant but adverse social, economic, or environmental impacts will be mitigated.

8. *“The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.”*

There are no sites located within the project area that are eligible for listing in the National Register of Historic Places. In compliance with the National Historic Preservation Act, the BIA consulted with the Montana State Historic Preservation Office (SHPO) and by letter dated February 1, 2006, the SHPO concurred with the determination that the Preferred Alternative will have no significant impact on any historic properties.

9. *“The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.”*

The bald eagle, a federally listed species, is common on the Tongue River Reservoir and has been seen in the project area. Based on known occurrences of migrating and transient bald eagles roosting and foraging within the project area, power lines that are constructed or modified as a result of the project will be raptor-proofed in accordance with standard practices as defined by the U.S. Fish and Wildlife Service. The proposed project is not anticipated to inhibit nesting because there is no nesting habitat within one mile of the project area. Construction and operation of the casino will comply with procedures specified for Zone III of the Montana Bald Eagle Management Plan. With implementation of the above mitigation measures, it is unlikely that the proposed project will have a significant impact on the population or distribution of this species.

10. *“Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.”*

The analysis contained in the EA did not identify any adverse effects that threaten a violation of Federal, State, or local laws designed to protect the environment.

Mitigation / Monitoring:

As described in Section 5.0 of the EA, the following environmental commitments have been made:

Area of Affected Environment	Commitment
Land Resources	No commitments are necessary.
Water Resources	<ul style="list-style-type: none">• Fish screens would be installed on all pump intakes.• Temporary and permanent Best Management Practices

	<p>(BMP's) will be used during and after construction to protect water quality. Stormwater Pollution Prevention Plan (PPP) will be in place to protect water quality during construction.</p> <ul style="list-style-type: none"> • A U.S. Army Corps of Engineers 404 Permit will be obtained for the purpose of placing the water intakes in the reservoir.
Water Resources, continued	<ul style="list-style-type: none"> • Water treatment systems will be designed via the guidelines in Department of Environmental Quality (DEQ) Circulars 1 (<i>Standards for Water Works</i>) and 3 (<i>Standards for Small Water Systems</i>). • DEQ Circular 2 (<i>Design Standards for Wastewater Facilities</i>) and 4 (<i>Montana Standards for On-Site Subsurface Sewage Treatment Systems</i>) would be used to guide the design of the wastewater treatment and disposal system. • A National Pollutant Discharge Elimination System (NPDES) permit would be obtained from DEQ if determined to be necessary. • Multiple individuals will be trained in the operation and maintenance of the wastewater and water treatment plants to ensure no lapse in coverage. Ongoing training and certification in the operation, maintenance, and process of the plant will be standard protocol. Under the Tribal Drinking Water Operator Certification Program (EPA, May 2005), several operators would be certified as Level II Operators. • At the end of the construction phase the contractor will submit operation and maintenance manuals for the installed systems and provide training to Northern Cheyenne Utilities Commission (NCUC) personnel in the operation and maintenance of the facilities.
Air	<ul style="list-style-type: none"> • During construction, BMP's for dust mitigation will be used. • Approximately one-half mile of road between the State Park and the proposed casino site will be paved to mitigate dust.
Living Resources	<ul style="list-style-type: none"> • Barbed wire fencing will be installed around the perimeter of the site and cattle-guards will be installed at entrances to the casino. • Construction activities shall comply with the Montana Noxious Weed Law and follow the requirements of the Montana Noxious Weed Management Act. • Construction and operation of the casino would abide by the guidelines for Zone III of the Montana Bald Eagle Management Plan. • Casino maintenance employees engaged in routine road maintenance would remove vehicle-killed deer or other large

	<p>animals from the right-of-way in order to protect migrant, wintering, or nesting bald eagles feeding on such carrion from death by vehicles.</p> <ul style="list-style-type: none"> • Power lines will be raptor-proofed. • The Tribe will set aside 25 acres of rangeland that will never be commercially developed.
Cultural Resources	<ul style="list-style-type: none"> • If archaeological artifacts are discovered during construction, the Tribal and State Historic Preservation Offices will be contacted immediately and their recommendations followed.
Socioeconomic Conditions	<ul style="list-style-type: none"> • Solid waste will be transported to a RCRA-certified landfill in Sheridan, Wyoming.
Resource Use Patterns	<ul style="list-style-type: none"> • The Tribe will construct a right-turn lane on Highway 314 if the Montana Department of Transportation (MDT) determines that it is necessary. • Each of the access driveways will be designed to include a storage length of one vehicle length (20-ft minimum) to accommodate queued vehicles. Design consideration will be given to approach geometry to accommodate delivery vehicles. • Stop signs will be installed at each of the site driveways. Site driveways and approaches will be developed according to Big Horn County standards. Driveways will provide for the safe passage of pedestrians across the drive access points. • Appropriate sight distance will be maintained at site driveways through the use of low-level landscaping treatments and the removal of any obstacles or obstructions.
Other Values	<ul style="list-style-type: none"> • Lighting will be down-shielded. Customary measures will be taken to ensure that no unnecessary light emanates beyond the immediate surrounding area. • As part of construction, The Tribe will revegetate the site. • Law Enforcement: A cross-deputization agreement has been signed between the Tribe and Big Horn County providing for law enforcement services. • Emergency Services: The casino will employ trained emergency medical technicians and will contract for emergency services. Firefighting equipment will be available on-site, the staff will be trained in its use, and a water intake for fire fighting will be installed. • Problem Gambling: The Tribe plans to fund a gambling counseling program with a percentage of proceeds from the sale of liquor at the proposed Casino project. One full-time counselor will be funded to assist Tribal members who are addicted to gambling.

- In the event that the hotel and campground are constructed under the Phase II development, public accommodation and campground licenses would also be obtained from the Montana Department of Public Health and Human Services.

Decision

The Preferred Alternative would assist the Northern Cheyenne Tribe in meeting the following objectives, and thus meets the purpose and need for action:

- Improve the financial status of the Tribe by providing an income source that would be used to strengthen the tribal government and improve quality of life as well as fund a variety of social, housing, governmental, administrative, educational, health and welfare services.
- Provide employment opportunities to the tribal and non-tribal communities

The Tribe's need for a stable and self-sustaining economic base represents one of the primary purposes behind the IGRA. The IGRA states that one of the purposes of the Act is to "provide a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702.

The No Action Alternative was not selected because it would not allow the Tribe to meet its objectives, including the improvement of the financial status of the Tribe through the provision of employment opportunities to the tribal and non-tribal communities, and would thus not meet the purpose and need for action.

After review and independent evaluation, I have determined that the proposed Federal actions do not constitute major Federal actions that would significantly affect the quality of the human environment within the meaning of NEPA. This conclusion is based on the analysis contained in the EA, public comments made in response to the EA, the BIA and Northern Cheyenne Tribe's response to those comments, and the mitigation imposed. Therefore, an Environmental Impact Statement is not required.



Carl J. Artman
Assistant Secretary - Indian Affairs

APR 16 2008

Date