



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Finding of No Significant Impact For

The Cherokee Tahlequah Trust Acquisition and Casino Project In Cherokee County, Oklahoma Section 16, Township 16 north, Range 22 East

The Cherokee Nation of Oklahoma (Nation) submitted a request to the Bureau of Indian Affairs (BIA) to approve the acquisition in trust of approximately 16.61 acres of fee land, owned by the Nation, and the subsequent development of a gaming facility to provide for the economic development and other benefits to the Nation.

DESCRIPTION OF THE PROPOSED ACTION

The Proposed Action is the acquisition in trust of a 16.61-acre site located east of the intersection of U.S. Highway 62 and State Route 82 in Tahlequah, Cherokee County, Oklahoma. The southern property boundary extends from State Route 82 east, adjacent to Murrel Road. The eastern boundary extends north from Murrel Road north, adjacent to a rural residential property. Adjacent property land uses are primarily commercial, but include rural-residential to the east. The Proposed Action site was once used as a sales lot for a modular homes company. It now consists of disturbed grassland, with scattered trees and shrubs and a tree line along the eastern boundary. The Nation proposes the development of a Class II and Class III gaming facility after the land is conveyed into trust status.

ALTERNATIVES

Three alternatives were analyzed in the EA:

- **Proposed Action** – The Proposed Action assumes the land will be acquired in trust, and that the Nation will construct and operate a gaming facility on the property. *See* EA § 2.1. The gaming facility would consist of a 20,000 square-foot building with casino floor, food and beverage areas, casino support areas, a retail area, and administration and security areas. Approximately 500 surface-level parking spaces would be constructed on site, with access to from a driveway on State Route 82, north of Murrel Road. The gaming facility would employ approximately 180 people and would replace the existing facility located at 16489 U.S. Highway 62.
- **Increased-Intensity Alternative** – This alternative would consist of the Proposed Action plus the construction and operation of a 100-room hotel with 6,000 square feet of meeting space as the second story to the casino. *See* EA § 2.2.2.

No Action Alternative - Under this alternative, the project site would not be placed into trust and would not be developed as a gaming facility. For the purpose of the EA, it is assumed the site would remain vacant under this alternative. *See* EA § 2.2.3.

Other alternatives were considered but not analyzed in detail. These include adding a hotel to the existing casino at 16489 U.S. Highway 62, and construction of an elementary school at the 16.61-acre site. The addition to the existing casino was not analyzed in detail because the Nation determined the location is not suitable for such a facility due to its proximity to educational uses. The construction of an elementary school alternative was not analyzed in detail due to the proximity of the 16.61-acre site to a highway intersection and various industrial uses.

FINDING OF NO SIGNIFICANT IMPACT

Approval of the fee-to-trust acquisition of the 16.61-acre site constitutes a Federal action by the BIA. Based on the EA and corresponding mitigation measures, the BIA has determined that implementation of the Proposed Action does not significantly affect the quality of the human environment. This Finding of No Significant Impact (FONSI) constitutes a determination that an Environmental Impact Statement (EIS) is not required. This fulfills the requirement of National Environmental Policy Act (NEPA) as set out in the Council on Environmental Quality regulations implementing NEPA (40 CFR 1500-1508) and the BIA's NEPA Handbook (59 IAM 3-H; effective 5/05/2005).

This determination is supported by the following findings:

1. Federal and State agencies and the public were involved in identifying environmental issues related to the Proposed Action. *See* EA Appendices G, H, I, J, K, and L. The EA contains a list of agencies and individuals that were contacted. *See* EA § 6.1. The EA was made available for public comment, but no comments were received.
2. The EA discloses the environmental consequences of the Proposed Action and reasonable and appropriate alternatives. *See* EA § 4.0. The EA assesses compliance of the Proposed Action and alternatives with applicable environmental statutes and regulations, and includes information that supports a finding of no significant impact.
3. The EA describes protective mitigation measures that will be levied to protect land resources, water resources, and cultural resources. *See* EA §§ 4 and 5.
4. The EA finds that the Proposed Action will not adversely affect topography and commits to the use of protective measures and the Best Management Practices (BMPs) described in EA § 2.1.3 and the mitigation measure described in EA § 5.1 to control erosion, prevent sediment loading to local waters, and address other effects on land resources. *See* EA § 4.1.1.
5. The EA finds in section 4.2.1 that the Proposed Action will have no adverse effect:

(a) On water usage because the Tahlequah Public Works Authority (TPWA) City Pump Station has stated that water service is available at the site of the Proposed Action.

(b) On wastewater discharge because wastewater will be treated by the TPWA Wastewater Treatment Plant.

(c) Due to stormwater because a detention pond will be constructed to accommodate the increased surface flow rates from the increased impervious surface area.

(d) On flooding potential because the site is not located in 100- or 500-year flood zone and because the detention pond will ensure that off-site stormwater flow will not exceed pre-project levels.

(e) On surface water quality because, while surface water from the site runs to a tributary of the Park Hill Branch of the Illinois River and the site is located within the Lake Tenkiller watershed, the Proposed Action will comply with Federal regulations, National Pollutant Discharge Elimination System general permit and Storm Water Pollution Prevention Plan requirements, and the BMPs described in EA § 2.1.3 to minimize stormwater effects surface water quality.

(f) On groundwater levels because the Proposed Action would obtain its water supply from a surface water source.

(g) On groundwater quality because the majority of any slightly increased levels of various pollutants in stormwater runoff will be retained in the stormwater retention pond. *See* EA §§ 2.1.3, 4.2.1, and 5.2.

6. The EA finds that construction of the Proposed Action will not adversely affect air quality because the BMPs described in EA § 2.1.3 will eliminate the minimal direct adverse effects on air quality and the site is located in an area that is currently designated in attainment for all six criteria pollutants under the Clean Air Act. *See* EA §4.3.1.

7. The EA finds that operation of the Proposed Action will not adversely affect air quality because emissions from stationary sources would either be permitted as minor sources or exempt from permitting, and emissions from vehicles would not be sufficient to adversely affect air quality in the vicinity of the project site. *See* EA § 4.3.1.

8. The EA finds that the Proposed Action will not adversely affect federally or state-listed threatened and endangered species based on a biological assessment of the site. The U.S. Fish & Wildlife Service confirmed that the project would have no effect on listed species. *See* EA § 4.4.1, Appendices A, G.

9. The EA finds that the Proposed Action will not adversely affect vegetation and habitat because the site is partially disturbed and the tree line along the eastern boundary and the large

blackjack oak near the center of the site would remain, limiting the loss of vegetative biodiversity. *See* EA § 4.4.1.

10. The EA finds that the Proposed Action will not have an adverse effect on wetlands because there are no wetlands on or adjacent to the project site. *See* EA § 4.4.1.

11. The EA finds that the Proposed Action will cause a minor beneficial impact with regard to noxious weeds because implementation of the Proposed Action may result in elimination of three species of noxious weeds. *See* EA § 4.4.1, Appendix G, H.

12. The EA finds that the Proposed Action will not adversely affect cultural resources because no historic properties or archeological sites were identified within the project site's area of potential effect during the Cultural Resources Survey. Further, the Nation will implement the mitigation measure in § 5.5 and the BMPs regarding unanticipated discovery of archeological materials, as described in § 2.1.3. *See* EA § 4.5.1, Appendix I.

13. The EA finds that the Proposed Action will not adversely affect the lifestyle or cultural values of the community, employment rates in the area, local housing or schools. The Proposed Action will result in a beneficial impact to minority and low income populations through continued funding for education, health care, and housing programs for the people of the Cherokee Nation. *See* EA § 4.6.1.

14. The EA finds that the Proposed Action will not adversely affect transportation networks because a traffic impact study revealed that, once the Proposed Action was implemented, the level of service at each of the driveway intersections providing access to and from the site and the intersection of U.S. Highway 62 and State Route 82 will remain in an acceptable range. *See* EA § 4.7.1.

15. The EA finds that the Proposed Action will not adversely affect land use, including property values or surrounding land uses, because the site is located in an inclusive commercial zoning designation and will retain the dense tree line along its eastern boundary as a buffer to the nearest residence. *See* EA § 4.8.1.

16. The EA finds in section 4.9 that the Proposed Action will have no adverse effects on public services, including:

(a) Municipal water supply because the TPWA is capable of supplying the Proposed Action via a water main located adjacent to the site;

(b) Wastewater service because the TPWA is capable of accommodating the wastewater disposal needs of the Proposed Action via a sewer main located adjacent to the site;

(c) Solid waste service because the Cherokee Nation Sanitary Landfill is permitted to process a tonnage of solid waste per day that exceeds the per day tonnage the Proposed Action is expected to generate;

- (d) Public or private schools in the area because no influx of new employees from locations outside the Tahlequah region is expected and because the Proposed Action may have a beneficial impact on schools through the ability to increase donations through increased revenue;
- (e) Recreation because the site is not currently used for any recreational purpose and the Proposed Action will not affect any recreational activities in the immediate vicinity;
- (f) Electricity because the TPWA has indicated that the 13,200-volt electric line adjacent to the project is capable of supplying electricity;
- (g) Natural gas utilities because such utilities in the area are adequate for the project;
- (h) Law enforcement because the Nation has a cross-deputization agreement, dated July 2002, with the City of Tahlequah in case of additional law enforcement needs;
- (i) Fire protection because the Nation will use the BMPs listed in EA § 2.1.3 to ensure that construction will not create a substantial fire hazard, the Tahlequah Fire Department has agreed to provide service to the Proposed Action, and structures will comply with the Uniform Fire Code requirements for commercial structures; and
- (j) Emergency medical services because the Cherokee Nation Emergency Medical Service will provide EMS and the Hastings Indian Medical Center and Tahlequah City Hospital will provide emergency room services, and because the Proposed Action will beneficially impact health services through increased revenue available to dedicate to health services.

17. The EA finds that the Proposed Action will not adversely affect the visual resources because the Proposed Action would be aesthetically similar to the existing casino and the tree line and implementation of the BMPs described in EA § 2.1.3 would ensure that the nearby residence is shielded from the view and lighting. *See* EA § 4.10.1.

18. The EA finds that the Proposed Action will not cause any adverse effect from the temporary construction noise, traffic, or parking-related operational noise; use of fans for heating and ventilation; or truck loading and unloading because noise spillage will be minimized by the tree line along the eastern boundary and implementation of the BMPs described in EA § 2.1.3. *See* EA § 4.11.1.

19. The EA finds no adverse effects related to hazardous materials will occur, based on a records search conducted by Environmental Data Resources, Inc., and a site inspection by Analytical Environmental Services. Implementation of the BMPs described in EA § 2.1.3 will address the potential for previously unidentified soil and/or groundwater contamination to be encountered during site preparation and construction activities. *See* EA § 4.12.1.

20. The EA analyzes the cumulative impacts of the Proposed Action and finds there are no reasonably foreseeable future projects planned in the immediate vicinity of the project site. While a minimal cumulatively considerable adverse impact to transportation may occur in 2028, in the form of undesirable level of service E delays in the westbound left turning movement at the intersection of U.S. Highway 62 and State Route 82, the overall intersection level of service would remain at an acceptable level of service D. *See* EA § 4.13.1.

21. The EA determined that the Proposed Action will not cause any indirect effects, such as growth-inducing effects, changes in land use, population density, or related effects on natural systems. *See* EA § 4.13.1.

RESPONSE TO COMMENTS

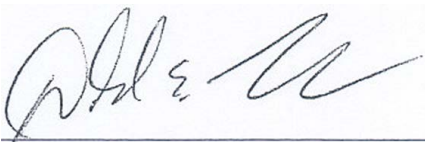
The EA was available for public review between November 1, 2008, and November 30, 2008, and written comments were requested until November 30, 2008. The Notice of Availability for the draft EA and draft FONSI was published in the Tahlequah Daily Press on November 19, 2008. No public comments were received.

PUBLIC AVAILABILITY

The FONSI and the EA will be made publicly available by the BIA Eastern Oklahoma Region at the Cherokee Nation Tribal Office, 17675 S. Muskogee Avenue, Tahlequah, Oklahoma, and the Tahlequah Public Library, 120 S. College Avenue, Tahlequah, Oklahoma. A public notice of the availability of the FONSI and EA will also be placed in the Tahlequah Daily Press.

DETERMINATION

I have determined that the Proposed Action to approve the Nation's request to take the proposed 16.61-acre site into trust on which the Nation will establish a gaming facility does not constitute a major Federal action 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, the identified mitigation measures, and the entirety of the record available. Therefore, an EIS is not required and the BIA is issuing this FONSI.



For Larry Echo Hawk
Assistant Secretary – Indian Affairs

Date 11-10-10