

**Finding of No Significant Impact**  
**Trust Acquisition of the Cherokee Springs Site for Gaming Purposes for the Cherokee Nation**

Based on the Environmental Assessment (EA) for the Cherokee Springs Site gaming project, it is my determination that acquiring the Cherokee Springs Site in Cherokee County, Oklahoma, in trust and the subsequent development of a gaming facility by the Cherokee Nation (Nation) will have no significant impact on the quality of the human environment with implementation of the mitigation measures and best management practices specified in the EA. In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C § 4321 *et seq.*, as amended, an Environmental Impact Statement will not be required.

**DESCRIPTION OF THE PROPOSED ACTION**

The proposed action consists of the United States acquiring the Cherokee Springs Site in trust for the benefit of the Nation, and the Nation constructing a gaming facility. The Nation proposes to develop an approximately 342,100 square foot (sf) class II and class III casino/hotel facility consisting of a 52,000 sf gaming facility with approximately 600 machines. The Site will also include a hotel, convention center, office space, and retail space. Approximately 2,016 surface-level parking spaces would be constructed to accommodate patrons and employees. The Site lies within a larger 150-acre site that the Nation owns in fee that would support a mixed-use commercial development.

**ALTERNATIVES CONSIDERED**

The EA analyzed the proposed action and a no-action alternative:

*Alternative A, Proposed Action:* Under Alternative A, the United States would acquire the 45.92-acre Site in trust for the benefit of the Nation, and the Nation would develop a casino/hotel with retail facilities.

*Alternative B, No Action Alternative:* Under Alternative B, the United States would not acquire the Cherokee Springs Site in trust, and the Nation would not develop a gaming/travel facility.

The Bureau of Indian Affairs (BIA) also considered an alternative casino location on a 16.61-acre tribally-owned parcel approximately 3.3 miles south of the Cherokee Springs Site was previously evaluated by the Nation and BIA. The project alternative on the 16.61-acre property, at the intersection of Highway 62 and State Route 82, was fully evaluated by BIA in a previous Environmental Assessment (AES, 2007). The 16.61-acre casino project was approved by BIA in 2010, but the project was never built by the Nation. Instead, the Nation has chosen to pursue the current Cherokee Springs Plaza project because it better meets the Nation's purpose and need.

The proposed 2007 project entailed a 20,000 square foot, 24-hour casino facility. This alternative included 405 electronic gaming machines, three poker tables, and six table games

over 11,250 square feet of gaming floor. Additionally, the project design contained 8,750 square feet of back-of-house operational space, restroom, and food and beverage facilities, and 500 surface parking spaces.

The Nation ultimately decided to relocate the existing casino to the currently proposed Cherokee Springs Site due to the alternatives in the 2007 EA failing to meet all of the needs of the Nation. The Nation determined that development of the Cherokee Springs Site discussed in this document would allow for a hotel/casino complex to be built and for the former casino to be converted into a Tribal language immersion school, with the best prospects of enhanced and diversified revenue flow from both the relocated casino and adjacent commercial development.

## **ENVIRONMENTAL IMPACTS**

An EA documenting and analyzing the potential impacts of the Proposed Action and Alternatives was completed in December 2016 and distributed for public review from December 16, 2016 to January 17, 2017. No comments were received.

As part of 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 were evaluated, with the following conclusions:

- A. Having considered land resources impacts during project design/planning, Best Management Practices (BMPs) incorporated into the Proposed Project and mitigation measures will ensure impacts to land resources will be less than significant. See EA Sections 2.0, 3.1, 4.1, and 5.1.
- B. Having considered water resources impacts during project design/planning, BMPs incorporated into the Proposed Project, and mitigation measures will ensure that impacts to water resources are not significant. See EA Sections 2.0, 3.2, 4.2, and 5.2.
- C. Impacts to air quality will be less than significant. BMPs incorporated into the Proposed Project and mitigation measures will further reduce impacts to air quality. See EA Sections 2.0, 3.3, 4.3, and 5.3.
- D. Having considered biological resources impacts during project design/planning, BMPs incorporated into the Proposed Project and mitigation measures will ensure no adverse effect on biological resources. See EA Sections 2.0, 3.4, 4.4, and 5.4.
- E. BMPs incorporated into the Proposed Project and mitigation measures will ensure no adverse effect on cultural resources. See EA Sections 2.0, 3.5, 4.5, and 5.5.
- F. There will be no significant socioeconomic condition impacts and no mitigation is warranted. See EA Sections 2.0, 3.6, 4.6, and 5.6.
- G. Having considered transportation networks impacts during project design/planning, BMPs incorporated into the Proposed Project, and mitigation measures will ensure that impacts to transportation networks are not significant. See EA Sections 2.0, 3.7, 4.7, and 5.7.
- H. There will be no significant land use impacts and no mitigation is warranted. See EA Sections 2.0, 3.8, 4.8, and 5.8.

- I. Having considered public services impacts during project design/planning, BMPs incorporated into the Proposed Project, and mitigation measures will ensure no adverse effect on public services. See EA Sections 2.0, 3.9, 4.9, and 5.9.
- J. There will be no significant impacts to visual resources. Having considered visual resources impacts during project design/planning, BMPs incorporated into the Proposed Project will further reduce impacts to visual resources. See EA Sections 2.0, 3.10, 4.10, and 5.10.
- K. Having considered noise impacts (including noise levels during construction) during project design/planning, BMPs will ensure that noise impacts are not significant. See EA Sections 2.0, 3.11, 4.11, and 5.11.
- L. Having considered hazardous materials impacts during project design/planning, BMPs incorporated into the Proposed Project will ensure that hazardous materials impacts are not significant. See EA Sections 2.0, 3.12, 4.12, and 5.12.
- M. Cumulative 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 would be less than significant. See EA Section 4.13.
- N. There will be no significant growth-inducing or other indirect effects. See EA Section 4.13.2.

## **SUMMARY OF EA BEST MANAGEMENT PRACTICES AND MITIGATION MEASURES**

The BMPs and mitigation measures described in the EA are included either to reduce potentially significant impacts to a less than significant level, to further reduce already less than significant impacts, or both. To ensure that the mitigation measures are enforceable as applicable, the mitigation measures will be included as an integral part of the project description, required by federal law, or made enforceable pursuant to the provisions of an agreement with a local government.

The following is a summary of BMPs and mitigation measures contained in the EA (see the EA for a detailed description of all BMPs and mitigation measures):

### ***Land Resources***

The following BMPs shall be implemented to ensure that the Proposed Project has no adverse effect on land resources:

- A grading report shall be prepared and submitted with the working design plans. All recommendations of the report shall be adhered to.
- 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.
- A Storm Water Pollution Prevention Plan (SWPPP) has been specifically designed for the Proposed Project and shall be implemented during construction.

## ***Water Resources***

The following BMPs shall be implemented per the SWPPP:

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

## ***Air Quality and Greenhouse Gas Emissions***

### ***Construction***

The following BMPs shall be implemented to minimize the effects of construction on air quality:

- All active construction areas shall be watered at least twice daily.
- All trucks hauling soil and other loose materials shall be covered or shall be required to maintain at least two feet of freeboard.
- All unpaved access roads, parking areas, and staging areas at construction sites shall be paved, or shall be subject to twice-daily applications of water or (nontoxic) soil stabilizers.
- All paved access roads, parking areas, and staging areas at construction sites shall be swept daily (with water sweepers).
- Streets shall be swept daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

- Excavation and grading activity shall be suspended when winds (instantaneous gusts) exceed 25 miles per hour.
- Onsite traffic shall be restricted to reduce soil disturbance and the transport of material onto roadways.
- Dirt, gravel, and debris piles shall be covered as needed to reduce dust and wind-blown debris.
- Emissions of volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), sulfur oxides (SO<sub>x</sub>), and carbon monoxide (CO) shall 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. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions.

### *Operation*

The following measures shall be implemented to ensure that operation of the facility will have no adverse effect on air quality:

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

### *Biological Resources*

The following measures shall be implemented to ensure that operation of the facility will have no adverse effect on biological resources:

- All known wetland features outside of the proposed site development shall be left undisturbed.
- Adjacent biologically significant features, such as the existing pond on the eastern border of the project site, shall be protected from disturbance.
- Any other wetland disturbance shall be appropriately permitted.
- A current survey for the American Burying Beetle (ABB) and consultation between the BIA and the USFWS has taken place, with the USFWS issuing a biological opinion on October 27, 2016 with the conclusion that the proposed project will not jeopardize the continued existence of the ABB.

### *Cultural Resources*

The following BMPs will ensure that there will be no adverse effect of construction activities to previously unknown archaeological resources in the case of inadvertent discovery:

- All work within 50 feet of the potential archaeological find shall be halted until a professional archaeologist, or paleontologist, if the find is of a paleontological nature, can assess the significance of the find.
- If any archaeological find is determined to be significant by the archaeologist, or paleontologist as appropriate, then the Tribal Historic Preservation Officer (THPO) shall meet with the archaeologist or paleontologist to determine the appropriate course of action, including the development and implementation of a Treatment Plan, if necessary.

### ***Transportation Networks***

The following BMPs shall be implemented during project construction to ensure that there is no adverse effect to transportation networks.

- Construction standards set forth by the Oklahoma Department of Transportation in permits assigned to the Cherokee Nation shall be adhered to during construction.
- Mud or materials that come from the property and are deposited on the road shall be removed in a timely manner.
- Driveways shall be constructed such that there will be no parking or servicing of vehicles on the highway right-of-way.
- The profile grade of the driveways shall be constructed as indicated on approved plans and shall in no case be graded or maintained such that water will drain onto the highway roadway.

### ***Public Services***

The following BMPs shall be implemented during project construction to ensure that there is no adverse effect to fire protection services:

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

### ***Visual Resources***

The following BMPs are intended to ensure that there would be no adverse effect of facility lighting on the surrounding environment:

- Placement of floodlights on buildings shall be designed so as to not cast light off site.
- Shielding, such as with a horizontal shroud, shall be used for all outdoor lighting so as to ensure it is downcast.
- Timers shall be utilized so as to minimize lighting after a certain hour.

### ***Noise***

The following BMPs shall be implemented to ensure that there would be no adverse noise effect from construction and operation activities:

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

### ***Hazardous Materials***

The following BMP shall be implemented to ensure that no adverse effects will result from hazardous materials during construction:

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

### **DETERMINATION**

Based on the EA for the Cherokee Springs Site Project Fee-to-Trust Acquisition and the entire administrative record, it is determined that by approval of the proposed action and the environmental mitigation measures specified above, the Proposed Project will have no significant impact on the quality of the human environment. In accordance with Section 102 (2) (c) of the National Environmental Policy Act of 1969, as amended, an Environmental Impact Statement will not be required.

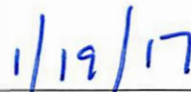
This determination is supported by the following findings:

1. Agency and public involvement was conducted and environmental issues related to construction and operation of the Proposed Project were identified. The EA discloses the environmental consequences of the proposed action. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues.
2. Protective measures will be taken to protect air and water quality as outlined in the Proposed Action and Alternatives section, the Environmental Consequences section, and the Mitigation Measures section of the EA.
3. Protective measures will be taken to protect migratory birds and other birds of prey protected under the Migratory Bird Treaty Act as outlined in the Mitigation Measures section of the EA.

4. Based on current designs, it is not expected that endangered or threatened species will be encountered during the construction, with the exception of the American Burying Beetle; however, if any species are encountered during the project, all work will immediately cease and US Fish and Wildlife Service will be consulted.
  - a. The U.S. Fish and Wildlife Service has issued a Biological Opinion that the Proposed Project will not jeopardize the continued existence of the ABB. However, it does state that the Proposed Action may result in incidental take of ABB and therefore reasonable and prudent measures are required to minimize the impacts.
5. It is not expected that any cultural or historic remains will be encountered during the surface disturbance activities; however, if any historic or cultural resources are encountered during the project, all work will immediately cease until consultation with the BIA representatives and the Tribal Historic Preservation Officer determine disposition and whether further investigation is warranted.
6. In the event there is any inadvertent discovery of human remains during construction activities, all work will immediately cease and the Tribal Historic Preservation Officer and BIA representative shall be notified immediately. No further ground disturbance will occur within the vicinity until consultation with the Tribal Official and BIA representative has determined and agreed on the appropriate course of action.
7. The proposed action would improve the economic, recreational, and social conditions of the affected community.



Lawrence S. Roberts  
Principal Deputy Assistant Secretary – Indian Affairs  
U.S. Department of the Interior



Date



(4337-15-P)

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**Land Acquisitions; The Cherokee Nation**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

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**SUMMARY:** The Principal Deputy Assistant Secretary – Indian Affairs made a final agency determination to acquire 45.92 acres, more or less, located in Cherokee County, Oklahoma (Cherokee Springs Site) in trust for the Cherokee Nation for gaming and other purposes on January 18, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS-3657 MIB, 1849 C Street NW, Washington, DC 20240, telephone (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary – Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR § 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the *Federal Register*.

On January 18, 2017, the Principal Deputy Assistant Secretary – Indian Affairs issued a decision to accept the Cherokee Springs Site, consisting of approximately 45.92 acres, more or less, of land in trust for the Nation, under the authority of the Indian Reorganization Act, 25 U.S.C. § 5108. The Principal Deputy Assistant Secretary – Indian Affairs

determined that Nation's request also meets the requirements of the Indian Gaming Regulatory Act's "Oklahoma exception," 25 U.S.C. § 2719(a)(2)(A)(i), to the general prohibition contained in 25 U.S.C. § 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The Principal Deputy Assistant Secretary – Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Cherokee Springs Site in the name of the United States of America in trust for Nation upon fulfillment of Departmental requirements.

The 45.92 acres, more or less, are located in Cherokee County, Oklahoma, and are described as follows:

**Indian Meridian,  
Oklahoma Township 16 North, Range 22 East,**

Section 9 A tract of land situated in the SE1/4 and in the S1/2 S1/2 NE1/4 of Section 9, Township 16 North, Range 22 East of the Indian Meridian, Cherokee County, Oklahoma, being a portion of that parcel of land conveyed to Cherokee Nation Property Management, LLC in Document No. I-2012-008705 filed December 28, 2012 in Book 1055 at Pages 778-779 in the official records of the Cherokee County Clerk, said tract being more particularly described as follows:

COMMENCING at the Southeast corner of said SE1/4, marked with a Mag Nail;  
THENCE, N. 89° 52' 00" W. along the South boundary of said Section 9, a distance of 1734.91 feet;  
THENCE, N. 0° 05' 50" W., a distance of 758.57 feet to a 3/8" rebar capped Chaffin LS 1243 to the true POINT OF BEGINNING;  
THENCE, N. 0°05'50" W., a distance of 2117.10 feet to a 3/8" rebar capped Chaffin LS 1243;

THENCE, N. 89°54'10" E., a distance of 1083.04 feet to a 3/8" rebar capped Chaffin  
LS 1243;

THENCE, S. 0°04'58" W., a distance of 1215.47 feet to a 3/8" rebar capped Chaffin  
LS 1243.

Dated: 1/19/17



Lawrence S. Roberts,  
*Principal Deputy Assistant Secretary – Indian Affairs.*