FINDING OF NO SIGNIFICANT IMPACT
FOR THE CHICKASAW NATION KINGSTON FEE-TO-TRUST PROJECT

In 2016, the Chickasaw Nation (Nation) submitted an application to the Bureau of Indian Affairs (BIA) to transfer into trust two parcels of lands totaling approximately 61.63 acres known as the Kingston Property near the City of Kingston, Marshall County, Oklahoma, (Site) for gaming and other purposes.[1] The Nation seeks to develop a casino-resort (Proposed Project).

The BIA prepared an environmental assessment (EA) pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C § 4321 *et seq.* The EA evaluated the transfer of the Site into trust and the subsequent development of the Proposed Project by the Nation. The BIA made the EA available for public comment from March 12, 2020 to April 13, 2020. The BIA received no comments from the public. The EA is available *www.kingstoncasinoea.com.*

Based on the findings in the EA, I determine that transferring the Site into trust and the subsequent development of the Proposed Project by the Nation will have no significant impact on the quality of the human environment. In accordance with Section 102(2)(c) of NEPA, an environmental impact statement is not required. This fulfills the requirements of NEPA as set out in the Council on Environmental Quality Regulations for implementing NEPA, 40 C.F.R. Parts 1500-1508, and the BIA NEPA Guidebook, 591AM 3-H, August 2012.

Purpose and Need for Action

The federal Proposed Action is the transfer of the Site into trust pursuant to the Secretary's authority under the Indian Reorganization Act, 25 U.S.C. § 5108. The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development. This purpose satisfies the Department of the Interior's (Department) land acquisition policy articulated in the Department's trust land regulations at 25 C.F.R. Part 151, and is the principle goal of the Indian Gaming Regulatory Act articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 C.F.R. §§ 151.l0(h) and 151.12.

Alternatives

The BIA considered three alternatives:

Alternative A - Proposed Project

[1] We note that the Acting Regional Director, Bureau of Indian Affairs, identifies the Site as consisting of approximately 61.63 acres (east site 49.92 acres and west site 11.71 acres), whereas the EA rounds the acreage up to 61.7. *See* Memorandum to Deputy Director, Office of Indian Gaming, from Acting Regional Director, Eastern Oklahoma Region (Jan. 30, 2020).

Alternative A consists of the transfer of the approximately 61.63-acre Site into trust. The Site consists of two parcels - the approximately 11.71-acre west site and the approximately 49.92-acre east site. Under Alternative A, the Nation proposes to develop a casino-resort and associated facilities on the west site. Proposed facilities include a casino with a 9,633-square square foot (sf) gaming floor with 300 gaming machines and five table games. The Proposed Project would also include a 40-room hotel, restaurant and retail space, meeting space, and back-of-house areas. Approximately 556 surface-level parking spaces would be constructed to accommodate patrons and employees. The Nation would also construct 10 rental cabins along Lake Texoma. The west site would be used for treatment lagoons for wastewater generated by the casino-resort. The casino-resort would be open 24 hours a day, 7 days a week.

Alternative B - Reduced Intensity Alternative

Alternative B consists of the transfer of the Site into trust and the subsequent development of a casino resort on the east site. The west site would be used for treatment lagoons for wastewater generated by the casino-resort. Alternative B is similar to Alternative A, except that the casino resort and associated facilities would be reduced in size and no cabins would be developed.

Alternative C - No Action Alternative

Under the No Action Alternative, the Department would not transfer the Site into trust, no development would occur, and the land would remain in its existing condition.

Alternatives Eliminated from Further Analysis:

- *Off-Site Alternatives:* From the 1950s to 2008, the east site was part of Lake Texoma State Park, and included park infrastructure including a lodge, cabins, campsites, picnic areas and shelters, boat rentals, and a gift shop. The State authorized the sale of the park in 2005 to a developer who planned to build a hotel and water park on the site, but abandoned those plans and sold the Site back to the state. The Nation subsequently purchased the Site in 2008 after the State approached the Nation proposing a joint effort to promote the regional tourism industry. Because of this effort, the BIA eliminated off-site alternatives from further consideration.

- *On-Site Alternative:* The BIA considered a non-gaming alternative consisting of a resort but no gaming facility. The BIA eliminated the on-site alternative from further consideration because it would not generate sufficient revenue to meet the Purpose and Need for action.

Findings

The BIA evaluated in 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. The EA describes the Best

Management Practices (BMPs) in Section 2.1.2 that are incorporated into the project design to eliminate or substantially reduce any environmental consequences to less-than-significant levels. The EA reached the following conclusions:

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, impacts to land resources would be less than significant. ***See*** EA Sections 2.1.2 and 4.1.

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, impacts to water resources would not be significant. ***See*** EA Sections 2.1.2 and 4.2.

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, there would be no significant adverse effects associated with the regional air quality environment. ***See*** EA Sections 2.1.2 and 4.3.

- Implementation of mitigation measures would ensure no adverse effects on biological resources. ***See*** EA Sections 4.4 and 5.0.

- There would be no significant impacts to known cultural resources, as no potentially significant cultural or paleontological resources were identified within the project area. Adherence to applicable laws and the BMPs incorporated into the project would ensure that no adverse effects to previously unknown cultural resources would occur. ***See*** EA Sections 2.1.2 and 4.5.

- There would be no significant impacts associated with socioeconomic conditions or environmental justice. ***See*** EA Section 4.6.

- There would be no significant impacts associated with transportation and circulation. See EA Section 4.7.

- With the implementation of land resource, water quality, air quality, cultural resource, public service, noise, hazardous materials, and visual resource BMPs that were considered during project design/planning and incorporated into the Proposed Project, impacts to land use would be less than significant. ***See*** EA Sections 2.1.2 and 4.8.

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, impacts to public services would be less than significant. ***See*** EA Sections 2.1.2 and 4.9.

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, no adverse effects to visual resources would occur. ***See*** EA Sections 2.1.2 and 4.10.

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, no significant adverse impacts to the ambient noise environment would occur during construction or operation. ***See*** EA Sections 2.1.2 and 4.11.

- With the implementation of BMPs that were considered during project design/planning and incorporated into the Proposed Project, hazardous materials impacts would not be significant. ***See*** EA Sections 2.1.2 and 4.12.

- Cumulative impacts to socioeconomic conditions would be less than significant. BMPs and/or mitigation measures incorporated into the Proposed Project would ensure that cumulative impacts to land resources, water resources, air quality and climate change, cultural resources, biological resources, transportation/circulation, land use, public services, visual resources, noise, and hazardous materials are not significant. There would be no significant growth inducing or other indirect effects. ***See*** EA Section 4.13.

Best Management Practices

Land Resources

- A grading report shall be prepared and submitted with the working design plans. Compliance with all recommendations shall occur.
- 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.
- All structures shall meet International Building Code requirements.
- A site-specific soil erosion control plan will be prepared and implemented during construction.

Water Resources

The Nation shall comply with the National Pollutant Discharge Elimination System General Construction Permit from the U.S. Environmental Protection Agency (USEPA), for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA). A Stormwater Pollution Prevention Plan shall be prepared for the project area and may include, but would not be limited to, the following BMPs:

- Major grading activities will be scheduled during the dry season (June-September).
- Erosion control blankets or jute netting will be placed in rough graded ditches and then hydroseeded.
- Fiber rolls and straw wattles will be installed around the down-slope perimeters of the construction site and at the base of all stockpiles.

- Hay or straw mulch and tackifier will be used as a temporary measure for stabilizing disturbed areas.
- Landscaping will be managed to minimize erosion and sedimentation according to the following practices:
- Rock filter berms will be placed across roadways.
- Sediment basins will be installed throughout the property and will be removed during the final phase of construction.
- Silt fencing will be placed down-slope of exposed soil areas.
- Sacked rock filters will be placed around new curbs and drainage inlets until the soils are stabilized with permanent landscaping.
- Catch basins, junction boxes, culverts, and outfall structures/energy dissipaters will be used during grading and construction
- Detention basins will be constructed to provide for sediment settling.
- Ingress/egress points to the property will be stabilized and graded.
- Cleaning, fueling, maintenance and repair of construction vehicles and equipment will be performed off-site whenever possible. If done on-site, secondary containment will be used to prevent spills.
- Check dams will be installed to reduce velocity of water flow during precipitation events.
- Diversion berms and ditches will be constructed to guide stormwater runoff toward catch basins.
- The construction contractor will 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.
- Low Impact Development (LID) methods would be implemented as detailed in the Site Grading and Stormwater Drainage Master Plan to mimic the predevelopment hydrology by using design techniques that store, infiltrate, evaporate, and detain stormwater runoff. Techniques that would be included in the project design include:
    - Bio-retention facilities
    - Vegetated filter strips
    - Additional LID methods that may be included, but would be optional include Permeable pavement

Air Quality

The following BMPs will minimize the effects of construction on air quality:

- All active construction areas will be watered at least twice daily.
- All trucks hauling soil and other loose materials will be covered or will be required to maintain at least two feet of freeboard.
- All unpaved access roads, parking areas and staging areas at construction sites will be paved, or will be subject to twice-daily applications of water or (nontoxic) soil stabilizers.
- All paved access roads, parking areas and staging areas at construction sites will be swept daily (with water sweepers).

- Streets will be swept daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- Excavation and grading activity will be suspended when winds (instantaneous gusts) exceed 25 miles per hour.
- On-site traffic will be restricted to reduce soil disturbance and the transport of material onto roadways.
- Dirt, gravel and debris piles will be covered as needed to reduce dust and wind-blown debris.
- Emissions of volatile organic compounds (VOC), nitrogen oxides (NOx), sulfur oxides (SOx), and carbon monoxide (CO) will 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. Because these emissions will be generated primarily by construction equipment, machinery engines will be kept in good mechanical condition to minimize exhaust emissions.

The following BMPs will ensure operation of the facility will have no adverse effect on air quality:

- On-site pedestrian facility enhancements such as walkways, benches, proper lighting, and building access will be provided, which are physically separated from parking lot traffic.
- Adequate ingress and egress at entrances to the facility will be provided to minimize vehicle idling and traffic congestion.
- Buildings will be designed to include efficient lighting (such as day lighting) and lighting control systems.
- Energy efficient heating and cooling systems as well as appliances will be installed in the casino-resort and cabins.
- Clean fuel vehicles will be utilized in the vehicle fleet where practicable, which would reduce criteria pollutants and greenhouse gas (GHG) emissions within the region.
- Shuttle service to and from population centers shall be provided as feasible, which would reduce criteria pollutants and GHGs.
- Water consumption shall be reduced through low-flow appliances, drought resistant landscaping and the incorporation of "Save Water" signs near water faucets throughout the development.
- Recycling bins will be provided in publicly accessible areas .

Cultural Resources

Any inadvertent discovery of archaeological resources shall be subject to Section 106 of the National Historic Preservation Act, 36 C.F.R. § 800, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 *et seq.,* and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-mm. Specifically, procedures for post-review discoveries without prior planning pursuant to 36 C.F.R. § 800.13 shall be followed. The

purpose of the following BMPs is to minimize the potential adverse effect of construction activities to previously unknown archaeological or paleontological resources in the case of inadvertent discovery:

- All work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications at 36 C.F.R. § 61, or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA, other appropriate agency and the Nation.
- If any archaeological find is determined to be significant by the archaeologist or paleontologist, the Tribal Historic Preservation Officer (THPO) shall meet with the archaeologist, or paleontologist, to determine the appropriate course of action, including the development of a Treatment Plan and implementation of appropriate provisions, if necessary.
- All significant cultural or paleontological materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist, or paleontologist, according to current professional standards.
- If human remains are discovered during ground-disturbing activities on tribal lands, pursuant to NAGPRA, the THPO and a BIA representative shall be contacted immediately, and shall determine whether the remains are Native American. If Native American, the provisions of NAGPRA shall apply. No further disturbance shall occur until the THPO and BIA representative have made the necessary findings as to the origin and disposition.

Public Services and Utilities - Fire Safety

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

Visual Resources

- Placement of floodlights on buildings will be designed to not cast light off-site.
- Shielding, such as with a horizontal shroud, will be used for all outdoor lighting to ensure it is downcast.

Noise

- Construction activities within a half-mile of existing noise-sensitive uses will be limited to daytime hours (7:00 AM to 10:00 PM).
- All powered equipment will comply with applicable local, state and federal regulations and all such equipment will be fitted with adequate mufflers according to the manufacturer's specifications to minimize construction noise effects.
- Heating Ventilating and Air Conditioning (HVAC) equipment will be shielded to reduce noise.

- To the extent feasible, pile driving, should it take place, will not occur prior to 9:00 AM or after 5:00 PM.

Hazardous Materials

The Nation will include the following requirement in construction contract specifications for construction activities associated with the project area:

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

Mitigation Measures

The EA identifies the following mitigation measures to reduce potentially significant impacts to a less-than-significant level:

Biological Resources

The following measures are recommended to avoid and/or reduce impacts to potentially nesting migratory birds and other birds of prey in accordance with the federal Migratory Bird Treaty Act of 1918 (MBTA):

- For vegetation removal and/or earth-disturbing activities that start during the avian breeding season (March 1 through September 1), a qualified biologist shall conduct pre-construction surveys of all potential nesting habitat within 500 feet of construction activities for migratory birds.
- If pre-construction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Shrubs and trees that have been determined to be unoccupied by special status birds or that are located 500 feet from active nests may be removed.
- If active nests of special-status birds, migratory birds, or raptors are found during pre-construction surveys, an appropriate buffer (based on the species observed) shall be established by a qualified biologist, as follows: (1) A 500-foot no-disturbance buffer will be created around active raptor nests during the breeding season or until it is determined that all young have fledged, and (2) a 100 to 250-foot buffer zone will be created around the nests of other migratory or special-status birds and all other birds that are protected by the MBTA. Buffers zones for these species will be established based on recommendations by the survey biologist. These buffer zones are consistent with U.S. Fish and Wildlife Service (USFWS) avoidance guidelines and USFWS buffers required

on similar projects; however, the buffer zones may be modified in coordination with USFWS based on existing conditions at the project site.

- If vegetation removal activities are delayed or suspended for more than two weeks after the pre-construction survey are conducted, the areas should be resurveyed.

The following measures are recommended to avoid and/or reduce impacts to American Burying Beetle (ABB):

- A pre-construction presence/absence survey shall be conducted by an individual holding a USFWS 10(a)(l)(A) permit for ABB. If presence/absence surveys are not completed prior to construction then presence should be assumed. The window for the surveys is approximately May 26 to August 31, although surveys can occur any time of year after five consecutive nights where the minimum temperature is 60 degrees Fahrenheit or higher. Surveys shall follow the guidelines outlined in USFWS (2018) *ABB Nicrophorus americanus Oklahoma Presence/ Absence Live-trapping Survey Guidance.*

    - If no ABB is detected during the required pre-construction survey, a finding of no effect will be warranted and no mitigation measures are needed.
    - If the presence of ABB is detected or assumed, then compliance with the eight primary BMPs in Appendix A of the USFWS (2016) American Burying Beetle Impact Assessment for Project Reviews shall be ensured. This includes leaving the root zone intact, returning surface soils to approximate pre-construction conditions, using native seed mix, and educating all workers. In addition, mitigation will be required for impacts following Appendix B of the USFWS (2016) American Burying Beetle Impact Assessment for Project Reviews. As the proposed trust property occurs outside of the ABB Conservation Priority Area but within the ABB's range, impacts .will require an on-site mitigation ratio of 1:0.25 acre for temporary impacts, 1:0.5 for permanent cover change, and 1: 1 acre for permanent impacts. Alternatively, mitigation land can be purchased at a ratio of 1: 1.5 acre for temporary impacts, 1:2 for permanent cover change, and 1:3 acre for permanent impacts to the degree such banks are available and approved by the USFWS.

The following measures are recommended to avoid and/or reduce impacts to Wetlands and Waters of the U.S.:

- Any proposed construction activities that would result in "discharge or fill" within jurisdictional Waters of the U.S. will be conducted during the dry season to further reduce the quantity of potential sedimentation within the watershed.
- A Section 404 CWA permit shall be obtained from the U.S. Army Corps of Engineers (USACE) to address the impacts described in Section 4.4.1 and 4.4.2. The impacts to Wetlands and Waters of the U.S. shall be mitigated consistent with the agreements between the USACE and the U.S. Environmental Protection Agency (USEPA) that are in effect at the time of development. Because a Section 404 permit is required, the Nation shall also obtain a CWA Section 401 Water Quality Certification from the USEPA and

mitigations defined in the CWA 404(b)(1) Guidelines shall be implemented. These mitigations include "no net loss of value," 1:1 acreage replacement, either on-site or through purchasing mitigation credits through a USACE approved mitigation bank or following the mitigation of aquatic resource impacts as outlined by the Tulsa District of the USACE.

Determination

Based on the findings in the EA, I determine that transferring the Site into trust for the benefit of the Chickasaw Nation and the subsequent development of the Site with the Proposed Project will have no significant impact on the quality of the human environment. In accordance with Section 102(2)(c) of NEPA, an environmental impact statement is not required. This fulfills the requirements of NEPA as set out in the Council on Environmental Quality Regulations for Implementing NEPA, 40 C.F.R. §§ 1500-1508, and the BIA NEPA Guidebook, 59 IAM 3-H, August 2012.

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OCT 15 2020
Date