

## **Finding of No Significant Impact**

### **Proposed Nambé Casino Project, Santa Fe County, New Mexico**

**AGENCY** National Indian Gaming Commission

**ACTION** Finding of No Significant Impact

#### **SUMMARY**

The Pueblo of Nambé has submitted an application to the National Indian Gaming Commission (NIGC) for the approval of a management agreement between the Pueblo of Nambé, Nambe Pueblo Gaming Enterprise, and Gaming Entertainment (Santa Fe) LLC for the development, construction, and operation of a casino on tribal trust land. The proposed 50,000-square-foot Class III gaming facility is to be developed on an approximately 30-acre site located approximately 15 miles north of Santa Fe on the east side of US 84/285 in Santa Fe County, New Mexico.

A Draft Environmental Assessment (EA), dated May 2006, was prepared in compliance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 USC 4321 et seq.). The Draft EA was published and circulated for public comment from May 10 – June 13, 2006. A public meeting was held during the public comment period on June 6, 2006, whereby comments were received and analyzed. A Final EA, dated September 2006, was prepared for the NIGC's decision in connection with the request for approval of the management agreement. The Final EA includes public comments (Appendix J), responses to public comments (Appendix K), and revisions and updates to the EA.

The NIGC is the federal agency charged with regulating gaming on Indian lands, as mandated by the Indian Gaming Regulatory Act (IGRA) and serves as the lead agency for NEPA compliance for the proposed project. As part of its regulatory authority under IGRA, the NIGC reviews and approves all management agreements between Native American tribes and outside management companies. The NIGC's decision regarding the Pueblo of Nambé's management agreement with Gaming Entertainment (Santa Fe) LLC is a federal action subject to NEPA. The Final EA and this Finding of No Significant Impact (FONSI) fulfill the requirements of NEPA as set out in the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500-1508) and the NIGC's NEPA procedures.

#### **FOR FURTHER INFORMATION CONTACT**

National Indian Gaming Commission  
NEPA Compliance Officer  
1441 L Street NW, Suite 9100  
Washington, DC 20005  
(202) 632-7003

#### **PUBLIC AVAILABILITY**

The Final EA and FONSI will be available to the public at the following locations for a period of 30 calendar days:

Santa Fe Public Library  
145 Washington Avenue  
Santa Fe, New Mexico

Espanola Public Library  
313 N. Paseo de Oñate  
Espanola, New Mexico

National Indian Gaming Commission  
1441 L Street NW, Suite 9100  
Washington, DC 20005

### DESCRIPTION OF THE PROPOSED PROJECT

The proposed 50,000-square-foot Class III gaming facility will be developed on an approximately 30-acre site located approximately 15 miles north of Santa Fe on the east side of US 84/285 in Santa Fe County, New Mexico. The footprint of the building and parking lot will total approximately 13.34 acres. The remainder of the 30-acre site will consist of landscaping and open space. The proposed project includes a casino, food and beverage facilities, and a retail gift shop. The casino will have an estimated 600 Class III slot machines and 8 Class III table games. The food outlets include a 150-seat permanent buffet restaurant serving all meal periods, a 60-seat sit-down restaurant, and a 40-seat snack bar. The gift shop will feature Native American arts and crafts. On-site parking will accommodate approximately 700 cars and 10 oversized vehicles (buses, trucks, recreational vehicles).

Access to the project site will be directly from the US 84/285 frontage road with two entrance ways entering the western side of the property, both exclusively serving the casino facility. The casino facility will rely on groundwater for a potable water source. Water will be supplied by existing wells on Pueblo land. Two existing wells are located east of the proposed project site. Wastewater service for the proposed casino facility will be provided by an on-site wastewater package treatment plant that will be located on the north end of the proposed project site.

The proposed project will have a beneficial economic impact for the Pueblo of Nambé. Benefits to the Pueblo and its individual members will result from employment opportunities at the proposed facility and an improved quantity and quality of social services made available by the government of the Pueblo of Nambé as a result of the proceeds generated from the proposed project.

### PUBLIC REVIEW AND COMMENT

See Section 7 (Consultation and Coordination) of the Final EA/FONSI for a list of agencies contacted. Preparation of the EA included consultation with the U. S. Army Corps Of Engineers (USACE); U.S. Bureau of Indian Affairs (BIA); U. S. Environmental Protection Agency (EPA); U. S. Fish and Wildlife Service (USFWS); U.S.D.A. Natural Resources Conservation Service (NRCS); New Mexico Office of the Governor, New Mexico Indian Affairs Department, New Mexico Department of Transportation (NMDOT), New Mexico Environment Department (NMED), New Mexico Office of the State Engineer, New Mexico Cultural Affairs Department, Santa Fe County; Rio Arriba County, City of Santa Fe, and City of Espanola.

Copies of the Draft EA were made available for public review at the Santa Fe Public Library, Espanola Public Library, and the Pueblo of Nambé Tribal Office. The public comment period extended from May 10, 2006, until June 13, 2006. A public meeting was held on June 6, 2006, in Santa Fe, New Mexico. Oral comments submitted at the public meeting and written comments submitted during the public

comment period are included in the Final EA (see Appendix J). Responses to comments are listed in Appendix K of the Final EA.

## SUMMARY OF IMPACTS AND MITIGATION ISSUES

The NIGC hereby accepts the proposed mitigation measures described in Section 6 of the Final EA for areas where impacts occur. The following is a summary of those measures.

### **SOILS**

Construction activities that expose soils shall incorporate best management practices (BMPs) to prevent erosion and the loss of soils. These BMPs are detailed in Section 6.3.

### **AESTHETICS AND LIGHTING**

The site design will include landscaping plans to create a visually attractive landscape adjacent to the casino facility property. Plants selected for use will be selected for their water efficiency as well as for their appearance. In addition to landscaping around the building, the perimeter of the parking area will be landscaped with trees and shrubs. At the southwest edge of the southern parking lot, an earthen berm will be constructed. The berm will be 400 feet long, 6 feet high, and 80 feet wide. The berm will be landscaped with two rows of shrubs and trees. The berm and the landscaping on the berm will provide visual concealment of the casino parking area and a substantial screening of the casino building for the private property to the south that is located approximately 100 feet from the southern edge of the parking lot.

All exterior casino lighting is designed to be energy efficient and environmentally sensitive to surrounding neighbors. Exterior lighting will be designed to minimize light pollution without compromising the safety of staff and patrons. The following mitigation measures are intended to reduce night time light pollution to the maximum extent practicable:

- Low level area lighting at outdoor patios and decks will be designed to face inward toward the building or downward with the objective of minimizing light outfall.
- Exterior service areas will have full cut-off downward-directed building-mounted lights, not area lighting. Cutoff fixtures are shielded so that light is focused where it is needed.
- Exterior accent lighting will be directed downward and will be designed to be sequenced and dimmed to allow adjustment of lighting levels late at night.
- No direct beam illumination will leave the site, nor be projected into the sky.
- Parking lot lighting will be provided at modest light levels for security and safety purposes. Light poles will be no higher than 30 feet tall.

### **WATER RESOURCES**

#### **Water Availability**

The following mitigation measures are recommended to further reduce less than significant impacts to water availability:

- Low-flow fixtures will be installed in the casino to conserve water.
- Non-potable treated effluent from the on-site wastewater package treatment plant and harvested storm water will be used for irrigating landscaped areas around the casino.
- To reduce water loss through evaporation, landscaped areas will be watered during the early morning hours when temperatures and winds are low.

- New Mexico native plants will be used in landscaping wherever feasible to reduce the frequency of watering necessary to maintain landscaping vegetation.

### **Storm Water**

The construction contractor will develop and implement a Storm Water Pollution Prevention Program (SWPPP) as required to be in compliance with the National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharge. This permit also requires the submittal of a Notice of Intent (NOI) to the U.S. Environmental Protection Agency prior to the beginning of construction. Both the Pueblo of Nambé and the construction contractor will submit NOIs to the U.S. Environmental Protection Agency Region 6 at least 7 days prior to beginning of construction. Water quality control measures identified in the SWPPP shall include, but are not limited to the following:

- Existing vegetation shall be retained where reasonably possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.
- Temporary erosion control measures (such as silt fences, staked straw bales, and temporary revegetation) shall be employed for disturbed areas.
- A spill prevention plan shall be developed which will identify proper storage, collection, and disposal measures for potential pollutants (such as fuel storage tanks) used onsite.

### **Section 404 Permit**

An ephemeral arroyo crosses the proposed project site. In order to build the casino facility, this arroyo channel will be rerouted with berming, channeling, and piping. Modifications to the arroyo will require a Clean Water Act Section 404 permit from the USACE prior to beginning construction activities. A pre-application meeting with the USACE was held to discuss Section 404 permitting for the proposed project. The Nambé Pueblo Gaming Enterprise Board has submitted a permit application to the USACE for the proposed project. An approved permit is required prior to the start of construction.

### **Drainage**

A professional engineer registered in New Mexico will be responsible for preparing the final drainage plan for the building site. Preparation of the drainage plan will include estimation of the discharge through the arroyo as well as the overland flow that crosses the property. The drainage facilities (culverts and open channels) will be designed to accommodate the 100-year storm event.

Material used to backfill the arroyo will be engineered fill that will come from other areas within the Nambé Pueblo. The source of potential fill material will be evaluated according to environmental due diligence with a visual inspection or review of historic property use. If this review does not indicate evidence of a release of a regulated substance, the material may be used without laboratory analysis. If the material does show possible contamination, analytical assessment, testing, or sampling will be conducted. If this review does not indicate evidence of a release of a regulated substance, the material may be used as fill.

## **BIOLOGICAL RESOURCES**

Implementation of a pre-construction bird survey by a qualified biologist and/or compliance with the following process will serve to avoid impacts to species protected under the Migratory Bird Treaty Act.

The following surveys will be completed prior to construction:

- Survey for the presence of migratory bird nests, and
- Survey for the presence of western burrowing owls.

If the contractor is working (a) during the non-nesting season (between October and April) or (b) during the nesting season (March-September) and a nest is found but is not being used; there is no requirement for a permit. However, if work is being done during the nesting season and a nest is found that is being used, the contractor has two options:

- Wait for nesting/fledging to be completed; or
- Apply to the USFWS for a permit so take is authorized under the Migratory Bird Treaty Act.

## **WASTE MANAGEMENT**

All construction waste generated during construction of the facility and solid waste generated during operation of the facility will be properly disposed in an approved landfill. No other mitigation is required.

## **HAZARDOUS MATERIALS**

If any suspected contaminated soil or ground water is encountered during project construction, work shall be halted in the area, and the type and extent of the contamination shall be identified. A qualified professional, in consultation with the U.S. EPA and the NIGC, shall then develop an appropriate method to remediate the contamination. If necessary, the Pueblo shall implement a remediation plan in conjunction with continued project construction.

As noted in Section 6.3, material used to backfill the arroyo will be engineered fill that will come from other areas within the Nambé Pueblo. The source of potential fill material will be evaluated according to environmental due diligence with a visual inspection or review of historic property use. If this review does not indicate evidence of a release of a regulated substance, the material may be used without laboratory analysis. If the material does show possible contamination, analytical assessment, testing, or sampling will be conducted. If this review does not indicate evidence of a release of a regulated substance, the material may be used as fill.

## **CULTURAL RESOURCES**

Archeological Site LA 125733 will be avoided by a minimum of 50 feet and the site boundary will be flagged by a qualified archeologist prior to any ground-disturbing activities. All land-altering activities will be confined to the area surveyed for cultural resources. If subterranean cultural resources are encountered during construction, all land-altering activities will cease within 50 feet of the discovery, and the BIA Regional Archeologist, the Pueblo of Nambé, the Nambé Pueblo Gaming Enterprise Board, and NIGC NEPA Compliance Officer shall be notified immediately for consultation on the treatment of the discovery.

## **TRAFFIC AND TRANSPORTATION**

As recommended in the Traffic Impact Study, the following traffic and transportation mitigation measures shall be included in the design of the proposed project:

- Design of the site must maintain adequate sight distances for traffic approaching, entering, and exiting the site from all proposed entrance ways on this project;
- All commercial entrance ways and street intersections should be constructed utilizing 25-foot minimum radius curb returns or greater as necessary to accommodate delivery trucks; and
- Entrance ways along the east frontage road of US 84/285 are subject to the requirements of the NMDOT's State Access Management Manual. Right turn deceleration lanes and left turn deceleration lanes are warranted at all access three-point intersections.

## **AIR QUALITY**

The proposed project is located in an area that is in attainment for all federal and state air quality regulations. To reduce the impacts of fugitive dust on nearby residents during construction activities, the construction contractor will: (1) provide frequent watering of the construction site, (2) cover haul trucks, (3) limit truck speeds on unpaved surfaces, and (4) confine clearing, grading, and leveling to those areas where such disturbance is necessary for the Proposed Action.

## **NOISE**

### **Construction Noise**

To reduce the effect of construction noise, the construction contractor shall be required to limit construction activities that require the use of heavy equipment to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m., on Saturdays and Sundays. The construction contractor shall also be required to muffle and shield intakes and exhaust on construction equipment per the manufacturer's specifications and shroud and shield impact tools.

### **Operation Noise**

To reduce the effect of project operations on existing residences, the Pueblo shall limit truck loading/unloading activities to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays and Sundays. The casino building shall also be insulated with standard sound muffling materials to reduce offsite noise emanating from the casino.

## **SOCIOECONOMIC CONDITIONS/ENVIRONMENTAL JUSTICE**

As required by the Tribal-State Class III Gaming Compact, an amount no less than one-quarter of one percent (0.25%) of the net win will be spent to fund or support programs for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities and for the prevention of problem gambling. Casino employees will be trained to recognize problem gamblers and provide referral to problem gambling resources. The security staff will monitor the casino patrons to ensure they are of legal age to gamble.

Casino employees, including security staff, will also be trained to recognize alcohol abuse. All alcohol will be served in accordance with the Nambé Pueblo Liquor Ordinance (Liquor Ordinance), which is approved by the Secretary of Interior and published in the Federal Register. No alcohol will be served to anyone under the age of twenty-one (21). Proof of age must be shown by a current and valid state driver's license or other government-issued identification that contains birth date and photo of the holder of the license or identification. Violators of the Liquor Ordinance will be subject to the civil and/or criminal penalties set forth in the Liquor Ordinance."

## **UTILITIES**

The on-site wastewater treatment and disposal system shall be designed by a New Mexico licensed professional engineer. The wastewater treatment plant will be consistent with state and federal standards. The design engineer shall inspect construction or installation of the wastewater system, and the system will be certified that it is constructed as designed.

## **POLICE, FIRE, AND EMERGENCY SERVICES**

The casino will have a full complement of security and surveillance personnel and technology which will minimize demands on law enforcement agencies. Some members of the casino's security staff will be trained as emergency medical technicians (EMTs), thus reducing the demand on local emergency or first responder services. The on-site security will include routine perimeter checks of the parking lots with heightened attention to neighboring properties. Directional signs at the entranceway to the parking lot areas will direct patrons to the casino parking areas and to the casino facility and direct them away from neighboring properties. The Pueblo of Nambé has completed a Memorandum of Understanding (MOU) with Santa Fe County to address emergency response services, which is a formal commitment by Santa Fe County to continue to provide emergency response services to all areas of Nambé Pueblo, including areas of economic development, including the casino facility area. (see Appendix L of Final EA). Also, the Pueblo plans to use future gaming revenue to establish a Nambé Pueblo public safety facility that will include a law enforcement division, a fire protection division, and an emergency medical services division. Once the public safety facility is established, the Pueblo can rely on its own police, fire, and emergency services to serve the area.

In response to comments on the draft EA that were submitted by the Santa Fe County Fire Department and the Pojoaque Volunteer Fire Department, the following mitigation measures are included in the EA:

- The Santa Fe County Fire Department and the Pojoaque Volunteer Fire Department will be provided an opportunity for a courtesy review of plans related to the facility and fire protection during final design of the project.
- The facility design will consider suggestions related to the current Uniform Fire Code, National Fire Protection Act, and Life Safety Code (as adopted by Santa Fe County Ordinance 1998-11).
- Continued communications related to life safety issues and emergency response during the construction phase and upon completion of the project.
- Continued working relationship between all principals of the development, the Pojoaque Volunteer Fire District, and the Santa Fe County Fire Department.
- Development, implementation, practice, and periodic review of emergency plans. Participation to include all potential emergency responders, regardless of jurisdiction.
- Provision of adequate water supply and pressure for fire suppression under all conditions (drought, power failure, act of nature, etc.)
- Unobstructed access for emergency vehicles to all areas of the development including minimal grade for ingress/egress, parking, and turning.
- Clearly identified utility areas with adequately protected electrical and gas services (no overhead power lines in areas where emergency operations may be conducted).
- Clearly identified hazardous materials storage/use areas (including Material Safety Data Sheets [MSDS] paperwork) with current and accurate emergency contact information.
- Landscaping that minimizes fire risk under varying environmental conditions.
- Parking allowed only developed surfaces (to minimize damage to dirt surfaces resulting in muddy runoff which may impact emergency operations, as well as to minimize risk to persons walking on uneven or loose surfaces).
- Incorporation of design elements in the facility to prevent common injuries (slips, trips, falls, pinch points, etc.)

## FINDINGS

The NIGC makes the following findings which support this FONSI:

1. Federal and state agencies and the public were involved in identifying environmental issues related to the Proposed Action. The Final EA contains a list of agencies, tribal governments and

individuals that were contacted (see Final EA Section 7.0, “Consultation and Coordination” and Appendix D). The Final EA also contains responses to specific comments and describes revisions to the Draft EA in response to comments (see Final EA Appendix K).

2. Alternative courses of action were developed in response to environmental concerns and issues related to the proposed action (see Final EA Section 2.0, “Alternatives”). The EA discloses the environmental consequences of the proposed action and the no-action alternative (see Final EA Section 4.0, “Environmental Consequences”). The EA assesses compliance of the alternatives with applicable environmental mandates, and includes information that supports a finding of no significant impact.
3. The EA describes mitigation measures that will be implemented to protect the human environment (see Section 6.0, “Mitigation Measures”). The measures are summarized above. The EA describes permitting processes and other enforceable mechanisms that are in place to ensure that the Pueblo of Nambé completes mitigation measures to protect key resources (see Final EA Table 1.1 Potential Permits and Approvals Required for Proposed Action and Section 6.0).
4. The EA finds that the proposed action will not jeopardize federally listed threatened or endangered species because such species do not occur on the proposed site. See Final EA Section 4.4.
5. The EA finds that the proposed action is in compliance with the National Historic Preservation Act. The New Mexico State Historic Preservation Officer (SHPO) issued a determination of “no historic properties affected” for the proposed project. One archaeological site was identified within the general project area, but this archaeological site is located outside the footprint of construction for the proposed project. See Final EA Section 4.6, “Cultural Resources.” Prior to construction the site boundary will be flagged by a qualified archaeologist and the site will be avoided by a minimum of 50 feet. If undiscovered cultural resources are encountered during project ground-disturbing activities, work shall be halted in the area of the discovery and the artifact(s) shall be professionally evaluated.
6. The EA finds that the impacts on public health and safety will not be significant. In regard to traffic impacts, the EA finds that in order to maintain an acceptable level of service, right and left turn deceleration lanes are warranted at the entranceways to the proposed casino. See Final EA Section 4.8, “Traffic.” The EA also finds that the proposed action is in compliance with the Clean Air Act and the National Ambient Air Quality Standards (NAAQS). See Final EA Section 4.9, “Air Quality.” The proposed action will be in an area in attainment status for all EPA criteria pollutants. The EA also describes mitigation of water quality impacts enforceable through EPA and USACE permitting processes.
7. The EA finds that the proposed project will use a relatively small amount of available ground water, so no significant impact to ground water supply is expected. The appropriate disinfection and treatment system will be installed to comply with Safe Drinking Water Act requirements. An on-site wastewater package treatment plant will be installed. Treated effluent from the wastewater package treatment plant will meet all federal standards for the use of effluent in landscape irrigation. Water reuse will be maximized both to reduce water consumption and minimize disposal requirements. See Final EA Section 4.3, “Water Resources”. The project site is outside the 500-year floodplain (see Final EA Section 3.3, “Water Resources”); therefore no floodplain impacts will result.

8. The EA analyzes the cumulative impacts for the proposed action and finds that they will not be significant (see Final EA Section 5.0, "Cumulative Impact Analysis").
9. The EA finds that the proposed action will improve the economic and social conditions of the Pueblo of Nambé by meeting the purpose and need for the action identified in Final EA Section 1.3. The EA also finds that the proposed action will benefit the local economy by creating jobs and increasing local spending. The EA finds that the proposed action is in compliance with Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations) because the proposed action will not cause disproportionately high adverse impacts to minority or low-income populations. See Final EA 4.11.

The NIGC has independently evaluated the information and analysis in the EA.

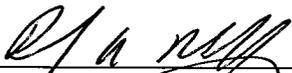
#### DETERMINATIONS

The September 2006 Final EA provides a sound basis for evaluating the environmental impacts of the Pueblo of Nambé's development, construction, and operation of a gaming facility on the proposed site.

#### RECOMMENDATIONS/APPROVALS

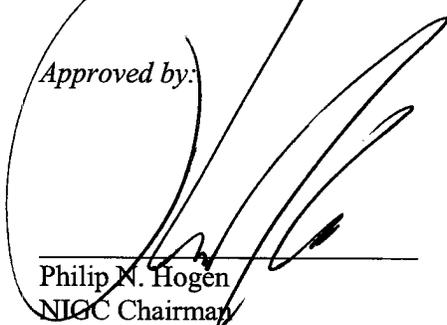
After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed federal action is consistent with existing national environmental policies and objectives as set forth in Section 101 of the NEPA and other applicable environmental requirements and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(c) of NEPA.

*Environmental Assessment and FONSI reviewed and recommended by:*

  
\_\_\_\_\_  
Bradley A. Mehaffy  
NIGC NEPA Compliance Officer

3/12/07  
Date

Approved by:

  
\_\_\_\_\_  
Philip N. Hogen  
NIGC Chairman

3/12/07  
Date