

Finding of No Significant Impact and Notice

Proposed Pawnee Nation Chilocco Casino Complex in Kay County, Oklahoma

AGENCY: National Indian Gaming Commission

ACTION: Finding of No Significant Impact

SUMMARY:

The Pawnee Nation of Oklahoma (the Pawnee Nation) has submitted a request to the National Indian Gaming Commission (NIGC) for the approval of a management agreement between the Pawnee Nation and Lakes Pawnee Management, LLC (LPM), for the development, construction, and operation of a casino at Chilocco.

The proposed casino and hotel resort site is in Kay County, Oklahoma, on 140 acres of land just south of the old Chilocco Indian Agricultural School campus. The site is on Home Road, ¼ mile west of US-77 north of Newkirk and just south of the Oklahoma-Kansas state line. The casino site is south of the land occupied by the school's vacant buildings, and is on land held in trust for the exclusive benefit of the Pawnee Nation.

Two Draft Environmental Assessments (EAs) (dated September 2005 and November 2005) and a Final EA (dated March 2006), was prepared for the approval of a management agreement to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 USC 4321 et seq.). The Draft EA (dated November 2005) was published and circulated for public comment for 30 days. A public workshop/ meeting was held in Ponca City on November 29, 2005. No public comments were received during the meeting or during the rest of the comment period. The Draft EA was revised to include information regarding the public workshop and this FONSI (Final EA- March 2006).

The NIGC is the federal agency charged with regulating gaming on Native American lands, as mandated by the Indian Gaming Regulatory Act (IGRA). As part of its regulatory authority under IGRA, the NIGC reviews and approves all management agreements between Native American tribes and outside development/management companies. If the NIGC decides to approve the Pawnee Nation's Management Agreement with LPM under IGRA, such a decision would be a federal action subject to NEPA. Based on the size and scope of the proposed project, the Final EA and this Finding of No Significant Impact (FONSI) fulfills the requirements of NEPA as set out in the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR Parts 1500-1508) and the NIGC's NEPA Procedures. The NIGC is the lead agency for NEPA compliance.

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:

This FONSI and the Final EA and additional information on which the FONSI is based will be available at the following locations:

Pawnee Public Library
658 Illinois St.
Pawnee, OK 74085

Ponca City Public Library
515 E. Grande Avenue
Ponca City, Oklahoma 74602

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

BACKGROUND:

Gaming is a unique opportunity for the Pawnee Nation to further develop its economic base. This opportunity is afforded the Tribe under the Indian Gaming Regulatory Act (25 USC 2701 et seq.).

DESCRIPTION OF THE PROPOSED PROJECT:

The proposed casino project will be built in phases, the first of which will occur within the period of the management contract. Later development is part of a master plan concept that will occur after Phase 1 has been completed and if revenues warrant additional expenditures.

Under Phase 1, a casino and hotel with 60,200 square feet of gaming space will be built. Other facilities will include restaurants, retail space, administrative space, and a Kids/Quest Arcade. The Phase I hotel (100,000 square feet) will have a capacity of 150 rooms. Parking for approximately 1,100 vehicles, roadways for access to the complex, and landscaping are also included.

Under the master plan, the complex could be expanded, but this expansion will be on an unknown schedule, depending on revenues and customer demand from Phase 1. The expansion could include a larger casino, up to 450 additional hotel rooms, a parking garage, new event center, and a 18-hole golf course.

The proposed project will have a beneficial economic impact for the Pawnee Nation. Benefits to the Nation and its individual members will result from employment opportunities at the proposed facility and an improved quantity and quality of social services offered by the government of the Pawnee Nation.

PUBLIC REVIEW AND COMMENT

See EA Section 1.5 Consultation and Coordination for a list of agencies and individuals contacted. Preparation of the EA included consultation/coordination with the U. S. Army Corps Of Engineers (USACE); US Bureau of Indian Affairs (US BIA); U. S. Environmental Protection Agency (EPA); U. S. Fish and Wildlife Service (USFWS); Oklahoma Archaeological Survey (OAS); Oklahoma Department of Environmental Quality (ODEQ); Oklahoma Department of Transportation (ODOT); Oklahoma Department of Wildlife Conservation (ODWC); Oklahoma

Indian Affairs Commission; Oklahoma State Historic Preservation Officer (SHPO); Kay County Board of Commissioners; Mayor, Ponca City, Oklahoma; City Manager, Arkansas City, Kansas; Ponca Tribe; Kaw Nation; Tonkawa Tribe; Otoe-Missouria Tribe; and Osage Tribe.

In order to identify issues of concern to the local community, a public meeting was held on April 26, 2005, in Ponca City, Oklahoma. The comments received during the scoping period (see Appendix A of the EA) were taken into consideration during the evaluation of the existing environment and the assessment of potential impacts from the proposed project.

The second Draft EA was published in November 2005. Copies were sent to those individuals and groups that had indicated during scoping that they wanted to receive a copy of the EA. A public meeting was held on November 29, 2005, in Ponca City, Oklahoma. The public comment period ended on January 2, 2006. No comments were received during this period.

SUMMARY OF MITIGATION ISSUES

The NIGC hereby adopts the mitigation measures described in Section 4 of the Final EA. The following is a summary of these measures.

LAND USE

Designation of conservation easements within foreseeable expansion areas, so as to maintain remnants of the current land use, or designation of a maximum expansion area, outside which further construction will not be permitted.

GEOLOGY AND SOILS

Soil erosion and storm water run off will be mitigated by implementing best management practices described in the Water Resources section, below.

WATER QUALITY AND WATER RESOURCES

Part of the access road and the box structure for bridging the stream have been determined to be in the floodplain by approximate methods. The road should be designed to minimize harm to the floodplain, reduce the risk of damages during a flood, minimize the impact on human health and safety, and preserve the natural and beneficial floodplain values (including moderation and control of floodwaters, assist in groundwater recharge and sediment renewal processes). During construction, storage of EPA-regulated hazardous substances should be avoided within the 100-year floodplain.

During construction, best management practices will be implemented to minimize the potential for soil erosion in areas subject to soil disturbing activities. Construction will occur on more than one acre of land, which will trigger the requirement to prepare a Construction Storm Water Pollution Prevention Plan (SWPPP) for the project. This is often addressed as part of the National Pollutant Discharge Elimination System (NPDES) permit process. The SWPPP will address control of storm water discharge, and will identify Best Management Practices (BMPs) to reduce any non-point source impacts on surface water quality, including prevention and control of chemical spills, minimizing contact of disturbed soil by storm water runoff, and proper storage and handling of potential pollutants. Erosion- and sediment-control measures will be installed and maintained throughout the construction phase of the project, particularly in the vicinity of Chilocco Creek, the surrounding floodplain, and wetlands.

Best management practices for the control of erosion and storm water runoff may include a combination of the following:

- Vegetated buffer zones around the construction area and all streams or wetlands;
- Silt fencing around the construction area;
- Stabilization of disturbed ground using mulch, erosion control fabric, or temporary vegetation during construction;
- Restriction of disturbed soil area during construction; or
- The construction of temporary stormwater retention or detention basins during construction, and of permanent stormwater retention or detention basins after construction is completed.

As a result of implementing these mitigation measures, no significant short term water quality impacts are expected.

WETLANDS

Authorization from the USACE to dredge or fill jurisdictional Waters of the US in the form of a Section 404 Clean Water Act Permit must be obtained prior to constructing the bridge in the creek. If any improvements to the creeks are needed for site drainage and flood control, these will also require Section 404 permitting. Nationwide Permits cover specific types of projects with minor effects, generally under half an acre in size. Otherwise an individual permit will be required to cover the project effects. Under either permit, mitigation will be required to compensate for effects at a ratio of at least 1:1. Nationwide Permit 14, which covers linear transportation crossings, would be applicable if the box culvert does not channelize the stream and impacts less than a half acre of jurisdictional waters. If these criteria are not met, the impacts would be permitted under multiple Nationwide Permits or an Individual Permit.

The USACE will make the final determination of jurisdiction for these waters in conjunction with the permit application. The impacts on wetlands will be minimized to the extent possible. Mitigation will involve constructing, restoring, or enhancing wetlands or other Waters of the US via grading, manipulating hydrology, placing appropriate soils, and planting wetland vegetation. The USACE will require that this mitigation be carried out in the same drainage and use the same type of habitat whenever possible. The Pawnee Nation is responsible for Section 404 compliance and thus will commit to ensuring all mitigation and other Section 404 permit stipulations be carried out. The Pawnee Nation will implement standard BMPs, such as use of silt fencing to prevent construction sediment runoff from entering wetlands.

VEGETATION

Removal of existing vegetation will be limited to areas necessary for construction, and soils will be replanted as quickly as possible. Any areas where vegetation was removed temporarily will be replanted with vegetation native to Kay County and habitat-appropriate, such as tall grass prairie grasses in the uplands and riparian trees along the creeks.

WILDLIFE AND FISHERIES

The following mitigation measures, are designed to minimize effects on wildlife and fisheries and be consistent with ODWC recommendations (ODWC 2005):

- The potential for destruction of active native bird nests will be avoided by cutting trees and conducting initial grading outside of the breeding season (early spring to midsummer) as much as possible.
- All losses of jurisdictional Waters of the US will be mitigated in accordance with the provisions of Section 404 and 401 of the Clean Water Act, as described in Section 4.8 of the EA.
- Standard BMPs will be implemented to minimize erosion and siltation of streams, riparian areas, and wetlands within and near the right-of-way consistent with Natural Resources Conservation Service (NRCS) and ODWC recommendations, as described in Section 4.6 of the EA; and
- Only vegetation native to Kay County will be used for final revegetation of temporary construction disturbance in undeveloped portions of the property.

CULTURAL RESOURCES

If the previously unsurveyed golf course area is constructed, additional archaeological investigations will be required in those areas.

If the structures at the Chilocco Indian Agricultural School are listed on the National Register of Historic Places (NRHP) prior to construction, additional investigations could be required to assess the relationship of the historic features to the school and possible impacts on the NRHP status of the structures.

If previously unrecorded buried cultural resources, including human remains, are encountered during project construction, ground disturbing activities in the immediate area will be halted and the project archaeologist, archaeologists at the Oklahoma SHPO, and the Pawnee Nation's THPO will be immediately notified.

HAZARDOUS AND TOXIC MATERIALS AND WASTE

If any currently unknown hazardous sites are found during development of the proposed project, all activities in the vicinity of the site will be halted and the proper regulatory authority will be contacted. Cleanup will be coordinated with the appropriate regulatory authority.

TRAFFIC

Auxiliary lanes are expected to be required for both the Phase I and Master Plan levels of traffic. Auxiliary lane improvement may include left-hand turn storage (turn lane) for northbound left turn vehicles on US-77 entering the intersection with Home Road, and an acceleration lane and deceleration lane for southbound US-77 traffic entering and leaving the intersection with Home Road. Preliminary analysis indicates that a traffic signal will not be necessary based on peak hour demand. Widening of pavement approximately 30 feet if necessary will best be accomplished on the west side of US-77 where there is adequate room in the Right of Way. Some minimal widening may be accomplished on the east side.

Home Road will be improved to a paved road with an eastbound left turn lane in addition to the single eastbound and westbound lanes.

All of these improvements will require a detailed operational analysis, in accordance with ODOT policy, and ODOT must accept the proposed traffic improvements prior to construction.

FINDINGS

The NIGC makes the following findings which support this FONSI.

1. Federal and state agencies 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 1.5, "Consultation and Coordination," and Appendix B, "Consultations." The Final EA also contains the specific comments that were received during scoping and that were considered during the preparation of this EA. See Final EA Section 1.6, "Public Outreach," and Appendix A, "Public Comments on the Proposed Project."
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, "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, particularly public safety and water quality. The measures are summarized above. Also see the discussion of mitigation measures for each resource area in Section 4 of the Final EA, "Environmental Consequences." The EA describes permitting processes and other enforceable mechanisms that are in place to ensure that the Pawnee Nation completes mitigation measures to protect key resources. See Final EA Sections 1, 2, and 4.
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 4.11. The U.S. Fish and Wildlife Service concurs with this finding. See Final EA Appendix B, "Consultations." The proposed action will result in the conversion of 15 acres of Prime Farmland. Coordination with the U.S. Department of Agriculture, Natural Resources Conservation Service in Oklahoma to meet the requirements of the Farmland Protection Policy Act is ongoing.
5. The EA finds that the proposed action is in compliance with the National Historic Preservation Act, and that no properties eligible for listing on the NRHP will be affected under the proposed action. See Final EA Section 4.12, "Cultural Resources." Should undiscovered cultural resources be 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. The EA describes the mitigation that will reduce the traffic impacts to a minimum. See Final EA Section 4.17, "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 4.16, "Air Quality." The proposed action will be in area in attainment status for all EPA criteria pollutants. The EA also describes mitigation of water quality impacts enforceable through EPA permitting processes.
7. A small part of the access road and a box structure to bridge the stream will be located within a 100-year floodplain, and will therefore result in minor impacts on water resources. The effects of constructing within a floodplain will be reduced to less-than-minor impacts by implementing

the mitigation measures described above. See also Final EA Section 4.7, "Water Quality and Water Resources." Construction of the road crossing over the southern creek with a box structure will fill approximately 0.2 acres of Waters of the US (wetlands) under the jurisdiction of the USACE. Mitigation described above will ensure impacts are kept to a minimum. See also Final EA Section 4.8, "Wetlands." Discharge limitations contained in a NPDES permit will ensure that wastewater impacts to water quality from the on-site wastewater management system will not be significant. See Final EA Section 4.7.

8. The EA analyzes the cumulative impacts for the proposed action and finds that they will not be significant. See Final EA Section 4.

9. The EA finds that the proposed action will improve the economic and social conditions of the Pawnee Nation by meeting the purpose and need for the action identified in Final EA Section 1.3. See Final EA Section 4.19. 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 4.19.

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

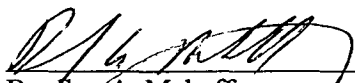
DETERMINATIONS

The March 2006 Final EA provides a sound basis for evaluating the environmental impacts of the Pawnee Nation's operation of a gaming facility on the proposed site.

RECOMMENDATIONS/APPROVALS

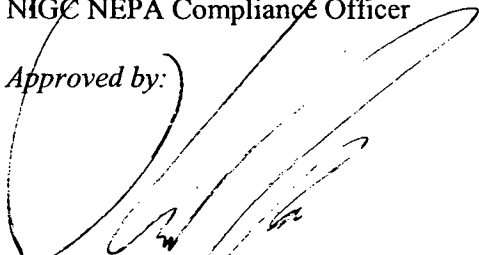
After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed federal action is consistent with existing national environmental policies and objectives as set forth in Section 101 of the NEPA and other applicable environmental requirements and will not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

Final Environmental Assessment and FONSI reviewed and recommended by:


Bradley A. Mehaffy
NIGC NEPA Compliance Officer

3/10/06
Date

Approved by:


Philip N. Hoger
NIGC Chairman

3/10/06
Date