



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 15 2025

The Honorable Chuck Hoskin Jr.
Principal Chief, Cherokee Nation
P.O. Box 948
Tahlequah, Oklahoma 74465

Dear Principal Chief Hoskin:

On April 12, 2024, you submitted, on behalf of the Cherokee Nation (Nation), an application to the Bureau of Indian Affairs (BIA) to acquire a parcel of land (Bartlesville Site) located in Washington County, Oklahoma, outside the southern edge of Bartlesville, OK, and within the exterior boundaries of the Cherokee Nation Reservation, into trust for gaming and other purposes.¹

The Bartlesville Site consists of one parcel containing approximately 14.993 acres, more or less, commonly referred to as Assessor's Parcel Number (APN) 740049757. The Nation currently owns the land in fee. The legal description of the Bartlesville Site is enclosed in **Enclosure 1**.

We have completed our review of the Nation's request. As discussed below, it is my determination that the Bartlesville Site will be transferred into trust for the benefit of the Nation. I am directing the Regional Director, Eastern Oklahoma Region, to accept the land under consideration into trust based on the reasoning and analysis below.

Proposed Project

The proposed project includes a casino, hotel, gas station/convenience store, and supporting infrastructure. The casino will have an approximate footprint of 54,391 square feet. The gaming component of the casino would consist of approximately 500 electronic gaming devices and five table games. The casino will also include facilities for retail, food and beverage bars, and lounges, as well as a 1,725 square-foot meeting and conference space with capacity to seat up to 150 people. The four-story hotel will have up to 40 guest rooms and a lobby encompassing a total of 29,902 square feet. The gas station/convenience store will have a footprint of 4,000 square feet of retail/commercial space, including approximately 20 electronic gaming devices and eight fueling stations for ethanol, gasoline, and diesel fuels. Additionally, there will be 703 surface parking spaces. The casino, hotel, and gas station/convenience store will be open 24 hours a day, seven days a week. The proposed project is estimated to employ approximately 300 staff.²

Description of the Property

The Bartlesville Site is vacant land and is currently owned in fee by the Nation. The property is within the boundaries of the Nation's Reservation and adjacent to U.S. Highway 75 (US-75), located on the southern edge of the City of Bartlesville, Oklahoma. It is not within the city limits of Bartlesville but is surrounded by property within the city limits of Bartlesville. The front 80 feet along US-75 was used as a sales lot, and the

¹ See Letter dated April 12, 2024, to Eddie Streater, Regional Director, Eastern Oklahoma Region, from Marshea Halterman, Manager, Real Estate Services, Cherokee Nation [*hereinafter* Nation's Application].

² See Memorandum dated November 26, 2024, from Acting Regional Director, Eastern Oklahoma Region to Paula Hart, Director, Office of Indian Gaming [*hereinafter* Regional Director's Findings of Fact] at 1.

remainder of the tract is timber and scrub brush. The tract has some stretches of old fencing but is not fully fenced. The entire property is currently vacant.³

Trust Acquisition Determination Pursuant to the Indian Reorganization Act and 25 C.F.R. Part 151

The Secretary of the Interior's (Secretary) general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. The BIA's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA. As detailed below, the Nation is eligible to have land acquired in trust for its benefit pursuant to this authority. Finally, because the Bartlesville Site is located within the Nation's Reservation boundaries, my analysis proceeds under the Part 151 on-Reservation criteria.

25 C.F.R. § 151.3 – Land acquisition policy

Section 151.3(b) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian Tribe. These conditions include, *inter alia*,

1. When the land is located within the exterior boundaries of the Tribe's Reservation or adjacent thereto; or
2. When the Tribe already owns an interest in the land.

These criteria are satisfied because the Bartlesville Site is located within the exterior boundaries of the Nation's Reservation⁴ and because the Nation already owns the land in fee. Accordingly, I find that the acquisition of the Bartlesville Site into trust satisfies the requirements of 25 C.F.R. § 151.3.

25 C.F.R. § 151.4 – The existence of statutory authority for the acquisition.

Section 151.4 requires the Secretary to consider whether there is statutory authority for the trust acquisition. Section 151.4(c) does not require additional analysis for Tribes for which the Department previously issued an analysis finding the Tribe was under Federal jurisdiction. In our January 19, 2017, decision to acquire approximately 45.92 acres, known as Cherokee Springs Plaza and Casino, in trust for the Nation, we determined that the Secretary could acquire land into trust for the Nation pursuant to Section 5 of the IRA.⁵ Although the 2017 decision predates the publication of the current Part 151 regulations, the legal analysis underlying the 2017 decision is consistent with the criteria in 25 C.F.R. § 151.4.

25 C.F.R. § 151.9(a)(3) – The purpose for which the land will be used.

Section 151.9(a)(3) requires the Secretary to consider the purposes for which the land will be used. The Nation's application states that the Cherokee Nation intends to facilitate the Nation's self-governance, self-determination, and provide growth opportunities for the Nation through Cherokee Nation Businesses, L.L.C., a wholly owned entity of the Nation. The subject property is a vacant tract of land located outside the southern edge of Bartlesville, Oklahoma. The acquisition will allow the Nation to expand its presence in the

³ Regional Director's Findings of Fact at 2.

⁴ The definition of the terms "Indian reservation or Tribe's reservation" in 25 C.F.R. § 151.2 includes reaffirmed reservations in the State of Oklahoma. The boundaries of the Cherokee Reservation were reaffirmed in *Hogner v. Oklahoma*, 500 P.3d 629, 635 (2021).

⁵ See Letter dated January 19, 2017, to the Honorable Bill John Baker, Principal Chief, the Cherokee Nation, from Principal Deputy Assistant Secretary – Indian Affairs Roberts, at 5-6.

northwestern most part of its Reservation. The subject property will primarily be used for entertainment purposes and will include the development of a casino, hotel, and gas station/convenience store, as discussed in “The Proposed Project” section above.⁶

25 C.F.R. § 151.9(a)(4) – If land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

Section 151.9(a)(4) requires the Secretary to determine whether the BIA has the resources to assume additional responsibilities, if any, if the land is taken into trust. The Acting Regional Director has found, and I concur, that accepting the Bartlesville Site into trust would have minimal impacts, if any, on BIA resources, and that adequate resources are available to the BIA to assume any additional responsibilities that may result from the acquisition of the land into trust.⁷

25 C.F.R. §§ 151.9(b) and (c) – Factors in making determination to acquire land into trust.

Section 151.9(b) requires the Secretary, in making her decision on whether to acquire the land into trust, to give great weight to specific purposes that will be furthered if the land is taken into trust. I have determined that the trust acquisition of the Bartlesville Site into trust for the development of a gaming facility and other economic endeavors will further several of the listed purposes, including consolidation of Tribal trust land ownership and facilitation of Tribal self-determination and economic development. In addition, Section 151.9(c) requires me to presume that the acquisition will further Tribal interests described in Section 151.9(b) if the land is within the Tribe’s Reservation boundaries.

25 C.F.R. § 151.9(d) - Consultation with state and local governments.

Section 151.9(d) requires the Secretary to notify state and local governments with regulatory jurisdiction over the land to be acquired of the pending application, and to provide them with the opportunity to provide written comments to rebut the presumption of minimal adverse impacts to regulatory jurisdiction, real property taxes, and special assessments. Accordingly, the Regional Director notified State and local governments with regulatory jurisdiction over the land.⁸ The written notification was sent to the following State and local governments:

- the State of Oklahoma
- the Oklahoma Tax Commission
- the Washington County Assessor
- the Washington County Treasurer
- the Washington County Sheriff
- the Board of County Commissioners
- the City of Bartlesville, and
- the Bartlesville City Police

The Regional Office received comments from the City of Bartlesville, Office of the Mayor (City) by letter on May 28, 2024.⁹ The City stated concerns about the potential adverse impacts on the community. In particular, it expressed concerns related to storm water runoff and impacts to traffic, water, and sewer systems. The City proposed to address the concerns by preparing an Environmental Stormwater Impact Assessment, Traffic Impact

⁶ Nation’s Application at 1.

⁷ Regional Director’s Findings of Fact at 9-10.

⁸ *Id.* at 10-11.

⁹ Letter dated May 21, 2024, from Mayor, City of Bartlesville to Eastern Oklahoma Region.

Analysis and Mitigation, and a Water and Sewer System Agreement. The City further proposed the establishment of a joint task force that would oversee the implementation of mitigation measures and ensure ongoing communication and cooperation. The City purports to mitigate potential adverse impacts on the community and foster a positive relationship between the City of Bartlesville and the Cherokee Nation by addressing its concerns through the requested assessment and agreements.

The Eastern Oklahoma Regional Office also received comments from the Office of the Governor of the State of Oklahoma (Governor's Office) by letter on June 6, 2024, stating the State of Oklahoma provides all governmental services to the land.¹⁰ The services provided by the State include infrastructure, public health and safety, land use regulation, and environmental compliance and regulation. The Governor's Office opposed the land acquisition, indicating that it is not appropriate to acquire the land in trust. The Governor's Office further stated the proposed reallocation of the land has forced the closure of one business and that other Bartlesville businesses are similarly concerned that the proposed establishment will negatively affect the surrounding properties. In particular, the Governor's Office expressed concern with an unspecified "murder" that occurred at a Tribal casino, as well as the aesthetics of a casino built near the City's welcome sign. The Governor's Office provided no support or documentation of the referenced incidents or explained the basis for the comments.

Nevertheless, the comments received from the City and the State failed to specifically address adverse impacts to real property taxes and special assessments. Accordingly, the Acting Regional Director found, and I concur, that the presumption of minimal adverse impacts was not rebutted. Therefore, I find that the presumption that the trust acquisition will benefit the Nation is warranted and that there will be minimal adverse impacts on local governments' exercise of jurisdiction.

25 C.F.R. § 151.14 – Title Examination

Section 151.14 sets forth the required evidence of title to the land that the Nation must submit as part of its application package.

- (1) The deed or other conveyance instrument providing evidence of the applicant's title or, if the applicant does not yet have title, the deed providing evidence of the transferor's title and a written agreement or affidavit from the transferor that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust status; and
- (2) Either: (i) A current title insurance commitment issued by a title company; or (ii) the policy of title insurance by a title company to the applicant or current owner and an abstract of title issued by a title company dating from the time the policy of title insurance was issued to the applicant or current owner to the present. The Secretary may accept a preliminary title report or equivalent document prepared by a title company in place of an abstract of title if the applicant provides evidence that the title company will not issue an abstract of title based on practice in the local jurisdiction.

The Bartlesville Site was purchased by Cherokee Nation Property Management, LLC, a company wholly owned by the Nation. The property was recently transferred to the Nation by filing of a Warranty Deed on February 1, 2024, with the Washington County Clerk's Office.¹¹ The Tulsa Field Solicitor's Office issued a Preliminary Title Opinion on June 24, 2024, determining title to the Bartlesville Site to be vested in the Nation subject to easements listed in Schedule B-II of the Title Commitment.¹²

¹⁰ Letter dated May 31, 2024, from Governor of Oklahoma to Eastern Oklahoma Region.

¹¹ See Nations's Application at 3.

¹² Regional Director's Findings of Fact at 12. See also Nation's Application at 6.

25 C.F.R. § 151.15 – Review of environmental conditions.

Section 151.15 requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 *et seq.*, and Departmental regulations (43 C.F.R. Part 46). The Department must also complete an environmental site assessment (ESA) pursuant to the Departmental Manual at 602 DM 2 to investigate the presence of hazardous substances and/or liabilities affecting the land to be acquired.

The proposed action consists of the following components: (1) transfer of title to the subject property to the United States in trust for the benefit of the Cherokee Nation for gaming and other purposes; and (2) the subsequent development of the project site by the Cherokee Nation with a casino, hotel, gas station/convenience store, and associated infrastructure.

An Environmental Assessment (EA) was prepared to evaluate the potential impacts of gaming and other activities proposed for the development of the Bartlesville Site and made available to the public for review and comment. The EA analyzed three alternatives for development on the Bartlesville Site. Alternative A (the Proposed Project) was selected as the preferred alternative. A Notice of Availability (NoA) was published in the *Tulsa World* and *Bartlesville Examiner-Enterprise* for seven consecutive days beginning on July 10, 2024, and was also published on the project website (<https://www.cncasinoea.com>), providing notice to the public of a 30-day comment period beginning on July 10, 2024, and ending on August 9, 2024. No comment letters were received during the public comment period.

The Eastern Oklahoma Regional Office sent additional letters to the City of Bartlesville and State of Oklahoma on August 14, 2024, asking if additional review time was necessary. In response, the Governor's Office requested 60 days for additional review. The City of Bartlesville did not respond. The Governor's Office was granted an extended comment period of 30 days to September 18, 2024. On September 18, 2024, the BIA received a comment letter from the Governor's Office. Appendix J of the Final EA contains responses to each of the comments received from the Governor's Office during the extended comment period. After the extended comment period concluded, the Eastern Oklahoma Regional Office conducted an additional 30-day agency consultation period from September 27, 2024, to October 27, 2024. Agencies were invited to provide additional input regarding potential environmental concerns about the Proposed Action. Of the nine agencies invited to provide additional input, only four responded; none of the comments were substantive in nature, as documented in Appendix K of the EA.

The Final EA describes the Best Management Practices (BMPs) which have been incorporated into the project design to eliminate or substantially reduce environmental consequences from Alternative A. In addition, the Final EA describes mitigation measures in Section 4.0 which will be implemented to further mitigate potential environmental impacts.

Potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation and circulation, land use, public services and utilities, noise, hazards and hazardous materials, and visual resources are each evaluated in the Final EA. The Final EA concludes that the project design and implementation of BMPs would ensure impacts to these resources would be less than significant. A Mitigated Finding of No Significant Impact (FONSI) for the proposed gaming facility on the Bartlesville Site, dated January 15, 2025, is enclosed as **Enclosure 2**.

The Department must also complete an Environmental Site Assessment (ESA) pursuant to 602 DM 2 of the Departmental Manual. The Department finalized a Phase I ESA and certified it on December 3, 2024, determining there were no hazardous materials or contaminants on the Bartlesville Site.¹³

Gaming Eligibility Determination for the Bartlesville Site Pursuant to the Indian Gaming Regulatory Act

In the Indian Gaming regulatory Act (IGRA), 25 U.S.C. § 2701-2721, Congress recognized Indian Tribes' inherent and exclusive right to regulate and conduct gaming activities on Indian lands,¹⁴ which are defined, in pertinent part, as "all lands within the limits of any Indian reservation."¹⁵ Section 20 of IGRA, 25 U.S.C. § 2719, generally prohibits gaming activities on lands acquired in trust after October 17, 1988. Congress, however, expressly provided several exceptions to the general prohibition. One such exception exists for lands located within or contiguous to the boundaries of the Reservation of the Indian Tribe on October 17, 1988.¹⁶ As stated above, the historic Reservation of the Cherokee Nation was judicially reaffirmed in 2021.¹⁷

Approval and Conclusion

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, I have determined that the Department will acquire the Bartlesville Site in trust for the Cherokee Nation because the Nation's application meets all regulatory requirements, as well as the spirit and purpose of the underlying statutes. Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 2714, and any other Departmental requirements, the Regional Director shall immediately acquire the Bartlesville Site in trust. This decision constitutes a final agency action pursuant to 5 U.S.C. §704.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosures:

1. Legal Description of the Bartlesville Site
2. Finding of No Significant Impact

¹³ Phase I Environmental Site Assessment Report, Cherokee Nation's Bartlesville 14.993 Acres Property Bartlesville, prepared by Cherokee Nation Environmental Programs on December 3, 2024, and reviewed and approved by Mosby Halterman, Division Chief, Division of Environmental, Safety and Cultural Resources, Eastern Oklahoma Regional Office, Bureau of Indian Affairs, on December 3, 2024.

¹⁴ See 25 U.S.C. § 2701(5).

¹⁵ 25 U.S.C. § 2703(4)(A).

¹⁶ See 25 U.S.C. § 2719(a)(1).

¹⁷ See *Hogner v. State of Oklahoma*, 500 P.3d 629, 635 (2021).

Enclosure 1

Legal Description of the Bartlesville Site

The East 990.0 of the West 1103.5 feet of the N/2 of the NW/4 of the SW/4 of Section 28,
Township 26 North, Range 13 East of the Indian Base & Meridian, Washington County, State of
Oklahoma.

Containing 14.993 acres, more or less.

Enclosure 2
Finding of No Significant Impact

MITIGATED FINDING OF NO SIGNIFICANT IMPACT FOR THE CHEROKEE NATION BARTLESVILLE 14,993-ACRE GAMING AND FEE-TO-TRUST PROJECT

The Cherokee Nation (Nation) submitted an application requesting that the Bureau of Indian Affairs (BIA) acquire 14,993 acres (Project Site) into federal trust for the benefit of the Nation for gaming and economic development purposes (Proposed Action). The Nation subsequently proposes to develop a casino, hotel, and gas station/convenience store on the Project Site. The Project Site, owned by the Nation in fee, is located within unincorporated Washington County, Oklahoma, surrounded by the City of Bartlesville, and lies within Section 28 of Township 26 North, Range 13 East, in the Indian Base and Meridian, as shown on the Bartlesville South United States Geological Survey 7.5' quadrangle map.

Approval of the Fee-to-Trust gaming acquisition constitutes a federal action under the governing regulations for compliance with the National Environmental Policy Act (NEPA).¹ The Proposed Action was analyzed within a Final Environmental Assessment (EA) dated November 2024²¹ that was prepared in accordance with NEPA. Based on the analysis contained in the EA, the BIA makes a mitigated finding of no significant impact for the Proposed Action. This finding constitutes a determination that the Proposed Action is not a federal action that would result in significant adverse effects to the quality of the human environment with mitigation; therefore, additional environmental review and preparation of an Environmental Impact Statement (EIS) is not required.

BACKGROUND

The Cherokee Nation is a sovereign Tribal government and a federally recognized Tribe that oversees a 7,000 square-mile Reservation in northeastern Oklahoma. The Cherokee people, according to oral tradition, have lived in their traditional homelands since time immemorial, with European contact beginning in 1540. In 1838, the Cherokee people were forcibly removed from their ancestral lands during the Trail of Tears, leading to their relocation to present-day Oklahoma. Despite attempts to dissolve the Nation's sovereignty, the Cherokee Nation maintained its jurisdiction and political autonomy, which was reaffirmed by the U.S. Supreme Court in 2020.

Today, the Nation is the largest Tribe in the United States with more than 450,000 citizens worldwide. More than 141,000 citizens reside on the Nation's Reservation in northeastern Oklahoma. Services provided include health and human services, education, employment, housing, economic and infrastructure development, environmental protection, and more. Cherokee Nation Entertainment, a subsidiary of the Nation, operates 10 casinos across northeastern Oklahoma. Cherokee Nation Businesses (CNB) is the Tribally-owned holding

¹ The BIA is aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BIA has nonetheless elected to follow those regulations at 40 CFR Parts 1500–1508, in addition to the Department of the Interior's procedures/regulations implementing NEPA at 43 CFR Part 46, and the BIA NEPA Guidebook (59 Indian Affairs Manual 3-H) to meet the agency's obligations under NEPA, 42 U.S.C. §§ 4321 et seq.

² The November 2024 EA is hereby incorporated by reference as part of this mitigated finding of no significant impact. The EA is available for public review at <https://www.cncasinoea.com/>

company of the Nation. Business ventures include gaming under Cherokee Nation Entertainment, with casinos both inside and outside of the State of Oklahoma, manufacturing facilities, construction, and federal government contracts. Combined, the Nation and CNB employ over 11,000 people and work within 45 companies.

PURPOSE AND NEED FOR THE PROPOSED ACTION

The purpose of the Proposed Action is to facilitate Tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department of the Interior's (Department's) land acquisition policy as articulated in the Department's trust land regulations (25 C.F.R. Part 151) and the principal goal of IGRA as articulated in 25 U.S.C. § 2701. The need for the Department to act on the Nation's application is governed by the Department's regulations at 25 C.F.R. Part 151.

DESCRIPTION OF THE PROPOSED ACTION

The federal Proposed Action is the acquisition of the 14,993-acre Project Site into trust for the Nation for gaming purposes. The statutory authority for acquiring this land into federal trust status on behalf of the Nation is provided in the Indian Reorganization Act of 1934 (25 U.S.C. §§ 5108 and 5110), with regulations codified at 25 C.F.R. Part 151. Pursuant to 25 C.F.R. Part 151, the Assistant Secretary – Indian Affairs, who has delegated authority from the Secretary of the Interior, is charged with reviewing and approving Tribal applications to place land into federal trust status.

ALTERNATIVES CONSIDERED

The BIA considered three alternatives. A description of the alternatives is provided below. Of the alternatives, Alternative A is considered the Proposed Project.

Alternative A – Proposed Project: Alternative A consists of the transfer of the Project Site into federal trust status for the benefit of the Nation for gaming purposes and the subsequent development of the Project Site by the Nation with a casino, hotel, gas station/convenience store, and associated infrastructure. Environmental impacts resulting from Alternative A would be reduced to less than significant levels with the inclusion of best management practices (BMPs) and mitigation measures. Among the alternatives, Alternative A would best meet the stated purpose to facilitate Tribal self-sufficiency and self-determination as it would provide the greatest economic and workforce opportunities.

Alternative B – Reduced Intensity: Alternative B would result in environmental impacts similar to Alternative A as both alternatives would have a similar development area. The Project Site would be transferred into federal trust status for the benefit of the Nation for gaming purposes, and the Nation would subsequently develop the site with a casino and associated infrastructure. As Alternative B does not include a hotel or gas station/convenience store, it would generate less traffic, air quality and greenhouse gas emissions, noise, and demand for utilities and public services in comparison to Alternative A. This alternative, however, would provide the Nation with fewer economic benefits than Alternative A.

Alternative C – No Action: Under Alternative C, the Project Site would not be placed in federal trust for the benefit of the Nation, and no construction or economic development

activities would occur on the Project Site. This alternative would not meet the stated purpose of facilitating economic development, Tribal self-sufficiency, and self-determination.

Alternatives Eliminated from Further Analysis:

- **Off-Site Alternatives:** The Project Site was selected by the Nation as it falls within the Nation's Reservation boundaries, was available to the Nation for purchase, is safe and developable, and has adequate site access and utilities. Furthermore, the Project Site is already owned by the Nation in fee.

Consideration of an alternative site would require the Nation to purchase additional land, thus placing an undue financial burden on the Nation. Therefore, alternative locations are not evaluated within the EA.

- **Commercial/Retail Development Alternative:** A commercial/retail development alternative was considered, however, due to the prevalence of existing retail establishments in the area and potential future competition, it is uncertain that commercial development on the Project Site would be financially viable and able to meet the purpose and need of the Proposed Action. Therefore, this alternative was eliminated from further consideration.

ENVIRONMENTAL IMPACTS

An EA that documents and analyzes the potential environmental impacts of the Proposed Action and alternatives was prepared and released to the public and agencies for a review and comment period beginning on July 10, 2024 and ending on August 9, 2024. In response to a request from the Office of the Governor of the State of Oklahoma for an additional 60 days of review, the comment period was extended an additional 30 days to September 18, 2024. As part of the EA, potential direct, indirect, and cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation and circulation, land use, public services and utilities, noise, hazards and hazardous materials, and visual resources were evaluated, with the following conclusions:

- Having considered potential land resource impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, impacts to land resources would be less than significant. See EA Sections 2.1.8, 3.2 and 4.
- Having considered potential water resources impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, impacts to water resources would be less than significant. See EA Sections 2.1.8, 3.3 and 4.0.
- Having considered potential air quality impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, there would be no significant adverse effects associated with the regional air quality environment. See EA Sections 2.1.8, 3.4, and 4.0.
- Having considered potential biological resources impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, impacts to biological resources would be less than significant. See EA Sections

2.1.8, 3.5, and 4.0.

- There would be no significant impacts to known cultural resources as no potentially significant cultural resources were identified within the project area. Adherence to applicable laws and mitigation measures incorporated into the project would ensure that no adverse effects to previously unknown cultural resources would occur. See EA Sections 3.6 and 4.0.
- There would be no significant impacts associated with socioeconomic conditions or environmental justice. See EA Section 3.7.
- Having considered potential transportation and circulation impacts during project design/planning, and with the implementation of mitigation measures, impacts to transportation and circulation would be less than significant. See EA Sections 3.8 and 4.0.
- Having considered potential land use conflicts during project design/planning, and with the implementation of visual resource BMPs incorporated into the project to manage lighting impacts, impacts regarding land use would be less than significant. See EA Sections 2.1.8 and 3.9.
- Having considered potential public service impacts during project design/planning, and with the BMPs incorporated into the project, impacts to public services would be less than significant. See EA Sections 2.1.8 and 3.10.
- Having considered potential noise impacts during project design/planning, and with the implementation of BMPs incorporated into the project and mitigation measures, no significant impacts to the ambient noise environment would occur during construction or operation. See EA Sections 2.1.8, 3.11, and 4.0.
- Having considered potential hazardous materials impacts during project design/planning, and with the implementation of BMPs incorporated into the project, hazardous materials impacts would not be significant. See EA Sections 2.1.8, 3.12, and 4.0.
- Having considered potential visual resource impacts during project design/planning, and with the implementation of BMPs incorporated into the project, no adverse effects to visual resources would occur. See EA Sections 2.1.8 and 3.13.
- BMPs and/or mitigation measures incorporated would ensure that cumulative impacts to land resources, water resources, air quality and climate change, biological resources, cultural resources, socioeconomic conditions, transportation/circulation, land use, public services/utilities, noise, hazards/hazardous materials, and visual resources are not significant. There would be no significant growth-inducing or other indirect effects. See EA Section 3.14.

BEST MANAGEMENT PRACTICES AND MITIGATION MEASURES

Best Management Practices

Protective measures and BMPs, including regulatory requirements and voluntary measures that would be implemented by the Nation, have been incorporated into the design of the Alternative A to eliminate or substantially reduce environmental consequences and are listed below.

Land Resources

- Erosion control measures shall be implemented during construction, as discussed further under the Water Resources BMPs.
- Standard engineering practices, Cherokee Nation Tribal Code, and IBC standards shall be used, including adherence to geotechnical standards ensuring soil suitability for structures.

Water Resources

- To reduce water usage, low-flow toilets, faucets, and other water-using appliances shall be installed to the extent feasible.
- Water consumption shall be reduced through drought resistant landscaping and the incorporation of “Save Water” signs near water faucets throughout the development.
- Coverage under the National Pollutant Discharge Elimination System (NPDES) General Construction Permit shall be obtained 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 (SWPPP) shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with General Construction Permit requirements. The SWPPP shall include, but shall not be limited to, the following BMPs to minimize stormwater effects to water quality during construction:
 - Grading activities shall be limited to the immediate area required for construction.
 - Temporary erosion control measures (such as silt fences, fiber rolls, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed as needed for disturbed areas.
 - Construction activities shall be scheduled to minimize land disturbance during peak runoff periods to the extent feasible.
 - Disturbed areas shall be paved, re-vegetated, and/or stabilized following construction activities.
 - A spill prevention and countermeasure plan shall be developed that identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.
 - Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the CWA (33 USC § 1251 to 1387).

- Construction materials shall be stored, covered, and isolated to prevent runoff loss and contamination of surface and groundwater.
- Fuel and vehicle maintenance areas shall be limited to the impact area.
- To minimize dust generation during construction, soil shall be wetted down with water prior to ground disturbance as needed.
- Generated waste shall be properly disposed of in accordance with the Cherokee Nation Solid Waste Program and Cherokee Nation Solid Waste Code.
- The gas station shall be designed and constructed in accordance with all federal regulations governing gasoline operations. Specific design, construction and operation practices shall include the following to prevent spills, overfills, and corrosion:
 - The gas station shall be equipped with catchment basins of sufficient size to contain small spills. At a minimum, the basin shall be large enough to contain what may spill when the delivery hose is uncoupled from the fill pipe. Any spilled fuel shall be removed and disposed of immediately.
 - Gas station attendants and delivery personnel shall follow industry standard filling practices, such as American Institute recommended Practice 1007, Loading and Unloading of MC306/Department of Transportation (DOT) 406 Cargo Motor vehicles. Filling practices shall include provisions that ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made; and that the transfer operation is monitored constantly to prevent overfilling and spilling.
 - Underground fuel storage tanks would be registered with the USEPA for regulation under the UST Program in Indian Country, which requires compliance with the provisions of 40 C.F.R. Part 280, including Part 280.20, Performance Standards for new USTs, which includes corrosion-resistant and double-walled tanks and piping, spill and overflow prevention equipment, and use of leak detection equipment to prevent potential leaks into groundwater.
 - In accordance with 40 C.F.R. Part 280, gasoline storage tanks shall be periodically inspected to ensure that the tank is structurally sound and free of corrosion or holes, and that overfill, spill prevention and release detection equipment is functioning properly. Frequency of inspections shall be consistent with federal requirements.

Biological Resources

- The use of artificial lighting shall be limited and shall consist of LED bulbs to the extent feasible. In situations where night construction work is necessary, direct light shall be shielded downward and limited to the work area to the extent feasible to prevent light from projecting upwards, thus minimizing the potential to attract insects, including American burying beetle (ABB).
- Workers operating in the project area during construction shall be educated about ABB habitat and their responsibility to avoid and minimize impacts to ABB. Workers shall be provided with a color picture of the ABB and signs shall be posted at project-related access points with reminders to follow special restrictions in the area.

- Workers shall report any ABB sightings to the project manager and food waste or dead animals shall be removed from the Project Site each day.

Air Quality

The following dust suppression measures shall be implemented during construction to control the production of fugitive dust and prevent wind erosion of bare and stockpiled soils:

- Exposed soil shall be sprayed with water or other suppressant twice a day or as needed to suppress dust.
- Dust emissions during transport of fill material or soil shall be minimized by wetting loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, cleaning the interior of cargo compartments on emptied haul trucks before leaving a site, and/or covering loads.
- Spills of transported fill material on public roads shall be promptly cleaned.
- Traffic speeds on the Project Site shall be restricted to 15 miles per hour to reduce soil disturbance.
- Gravel or similar stone substrate shall be provided to remove soil that shall otherwise be carried off-site by vehicles to decrease deposition of soil on area roadways.
- Dirt, gravel, and debris piles shall be covered as needed to reduce dust and wind-blown debris.

The following measures shall be implemented to reduce emissions of criteria air pollutants (CAPs), greenhouse gases (GHG), and diesel particulate matter (DPM) from construction:

- Criteria pollutants and GHG emissions shall be controlled from the facility by requiring diesel- powered equipment to be properly maintained and minimizing idling time to five minutes when construction equipment is not in use, unless more time is required per engine manufacturer's specifications or for safety reasons. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions.
- The use of low VOC (50 grams per liter or less) paint shall be used to the extent practicable.
- Environmentally preferable materials, including recycled materials, shall be used to the extent readily available and economically practicable for construction of facilities.

Emissions of CAPs and GHGs shall be reduced during operation through the following actions:

- The Cherokee Nation Low or No Emissions Program will apply, which includes emission reduction measures such as providing the transportation fleet with zero emissions electric buses that operate on established rural routes.
- Clean fuel vehicles shall be used in the vehicle fleet where practicable.
- Preferential parking shall be provided for employee vanpools, carpools, and/or other rideshare vehicles.

- Preferential parking for plug-in electric vehicles shall be provided, along with the installation of corresponding electric vehicle charging stations.
- Shuttle service to and from population centers shall be provided as feasible.
- Electric boilers and appliances shall be used in lieu of natural gas or propane units to the greatest extent practicable.
- CAPs, GHG, and DPM emissions shall be controlled during operation by requiring diesel-powered vehicles and equipment to be properly maintained and by minimizing idling time to five minutes at loading docks when loading/unloading food, merchandise, etc., or when diesel-powered vehicles or equipment are not in use, unless per engine manufacturer's specifications or for safety reasons.
- Energy efficient lighting and appliances shall be utilized to the extent feasible.
- Recycling bins shall be installed for glass, cans, and paper products and shall be placed strategically outside to encourage recycling.
- The use of non-polystyrene take-out containers shall be promoted, and food waste composting programs shall be encouraged at restaurants that serve more than 100 meals/day.
- Adequate ingress and egress at entrances shall be provided to minimize vehicle idling and traffic congestion.

Public Services and Utilities

BMPs to be implemented during construction include:

- Building plans and specifications shall contain fire suppression systems.
- Construction equipment shall contain spark arrestors, as provided by the manufacturer.
- Staging areas, welding areas, or areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel.
- The Utility Notification Center shall be contacted to notify utility service providers of excavation at the Project Site. In response, utility service providers shall mark or stake the horizontal path of underground utilities, provide information about the utilities, and/or give clearance to dig.
- The Project Site shall be cleaned daily of trash and debris to the extent practicable.

BMPs to be implemented during operation include:

- The Cherokee Nation Wildfire Prevention Program shall address and monitor fire danger, fire occurrence, and cause trends related to the Project Site.
- Background checks shall be conducted for gaming employees to ensure employees meet licensure requirements established by IGRA and the Nation's Gaming Ordinance.

- Parking areas shall be well lit and monitored by parking staff and/or security guards.
- Facilities shall have “No Loitering” signs in place.
- Security guards patrolling the facilities shall carry two-way radios to request and respond to back up or emergency calls.
- Security cameras and security personnel shall provide surveillance of the Project Site to both lessen and apprehend criminal activity.
- International Fire Code (IFC) requirements shall be voluntarily complied with for commercial structures, including requirements for water storage, sprinkler systems, and fire extinguishers.
- Generated waste shall be properly disposed of in accordance with the Cherokee Nation Solid Waste Program and Cherokee Nation Solid Waste Code.

Hazardous Materials

- Fuel storage tanks would comply with the provisions of 40 C.F.R. Part 280, including Part 280.20, Performance Standards for new USTs. USTs would include leak prevention measures in accordance with 40 C.F.R. Part 280, including Part 280.20, Performance Standards for new USTs, which includes corrosion-resistant and double-walled tanks and piping, spill and overflow prevention equipment, and use of leak detection equipment to prevent potential leaks.

Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. BMPs that are designed to reduce the potential for incidents/spills involving hazardous materials during construction include the following:

- Fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment to reduce the potential for accidental release.
- Catch-pans shall be placed under equipment to catch potential spills during servicing.
- Refueling shall be conducted only with approved pumps, hoses, and nozzles.
- Disconnected hoses shall be placed in containers to collect residual fuel from the hose.
- Vehicle engines shall be shut down during refueling.
- No smoking, open flames, or welding shall be allowed in refueling or service areas.
- Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
- Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
- Should a spill contaminate soil, the soil shall be put into containers and disposed of in

accordance with local, State, and federal regulations.

- All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure.
- In the event that contaminated soil and/or groundwater is encountered during construction related earthmoving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Nation shall consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.
- Generated waste shall be properly disposed of in accordance with the Cherokee Nation Solid Waste Program and Cherokee Nation Solid Waste Code.

Noise

BMPs to be implemented during construction for noise include:

- Construction activities shall be limited to the hours between 7 am and 6 pm to the extent feasible.
- Construction vehicles and equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and acoustical shields or shrouds in accordance with manufacturers' specifications.
- Construction equipment and machinery shall only be operated by trained and qualified personnel.
- Maintenance of construction equipment and machinery, including noise reducing components such as mufflers, silencers, covers, guards, vibration isolators, etc., shall be performed regularly to reduce excess noise.
- Haul trucks shall be operated in accordance with posted speed limits.
- Construction equipment and machinery that produce lower noise levels shall be utilized to the extent feasible.

BMPs to be implemented during operation include:

- Heating, ventilation, and air conditioning (HVAC) equipment shall be shielded to reduce noise.

Visual Resources

- Exterior lighting shall be arranged so illumination is directed away from adjacent properties and rights of way and shall not interfere with traffic.
- Outdoor lighting shall be shielded and downcast to the extent feasible.

- Electronic LED signage shall be operated in accordance with the following BMPs as recommended by DarkSky International (DarkSky International, 2024):
 - During the nighttime hours, luminance levels of electronic signage shall not exceed 160 cd/m².
 - Electronic LED signage shall be oriented away from residential areas.
 - Messages appearing on electronic signage should minimize distraction to vehicle operators and pedestrians by setting a minimum message duration, and a maximum transition time between messages.
 - Luminance levels shall gradually dim between daytime and nighttime modes (from sunset to one hour after sunset) to provide the proper contrast ratio with the ambient illumination level, and similarly before sunrise.

Mitigation Measures

The EA identifies the following mitigation measures to reduce potentially significant impacts to a less-than- significant level. The Cherokee Nation would exercise governmental jurisdiction over the Project Site once acquired into trust and will have the authority to enforce the mitigation measures outlined below. The Nation has committed to the implementation of these mitigation measures as a matter of Tribal law (**Attachment 1**). In accordance with 40 C.F.R. § 1501.6(d), a mitigation monitoring and compliance plan is provided in **Attachment 2**.

Land and Water Resources

Grading and Drainage Plan:

A licensed engineer shall prepare a Grading and Drainage Plan for the development and shall include, at a minimum, the following:

- Fill within the 100-year and 500-year floodplain shall be avoided to the extent feasible.
- A topographic survey shall be completed to confirm drainage calculations for the sizing of outfall pipes and stormwater detention pond(s).
- If grading occurs within the 100-year or 500-year floodplain, the area within the floodplain shall either be:
 1. Balanced to avoid off-site flooding impacts, or
 2. Designed to route stormwater to on-site detention/retention areas sized to handle flood events.

Air Quality

Site Plan Setback:

- The site plan for Alternative A shall be reconfigured to increase the distance between the fuel pumps and underground storage tanks and the nearest off-site residential receptors (existing residences).

- The minimum separation between the fueling areas and existing residences shall be 300 feet.

Biological Resources

Tricolored Bat:

- Timing of tree removal shall occur outside the active season (April 1 through October 31) of roosting bats as possible, OR
- Should tree removal occur during the active season (April 1 through October 31), emergence surveys shall be conducted by a qualified biologist consistent with Appendix E: Phase 4 Emergence Surveys of the USFWS Range-Wide Indiana Bat and Northern Long-Eared Bat Survey Guidelines (USFWS, 2023).
- As tricolored bat can be difficult to detect in emergence surveys, USFWS shall be consulted prior to emergence surveys to approve the surveying biologist as well as the survey methodology and timing.
- If no bats are observed, data sheets shall be submitted to USFWS, and no further action is necessary.
- If one or more bats are observed, it shall be assumed that the bat is a listed bat. In this case, an avoidance plan shall be developed with USFWS that identifies avoidance methods, such as timing of disturbance with periods of bat activity, in order to confirm bats are absent from trees prior to impacts, or implementation of a multi-day tree removal process in order to ensure trees are removed slowly enough to prevent injury or mortality to roosting bats.

Nesting Migratory Birds/Raptors:

- If construction activities (either site preparation or barn conversion) commence during the general nesting season (February 15 to September 1), a preconstruction nest survey shall be conducted by a qualified biologist on and within 100 feet of proposed construction within 7 days of initiating ground disturbance. If active nests are identified, the qualified biologist shall determine a suitable avoidance buffer based on the needs of the species observed.
- Avoidance measures include establishment of a buffer zone using construction fencing or similar, or the postponement of construction until after the nesting season, or until after a qualified biologist has determined the nest is no longer active. Avoidance buffers may vary in size depending on habitat characteristics, project-related activities, and disturbance levels.
- Should work activity cease for 14 days or more during the nesting season, surveys shall be repeated to ensure birds and have not established nests during inactivity.

Cultural Resources

Inadvertent Discoveries of Cultural Resources:

- In the event that cultural resources are inadvertently discovered during project-related

ground disturbance, ground disturbance shall be halted within 50 feet of the find and the BIA and Cherokee Nation Tribal Historic Preservation Officer (THPO) and/or a qualified archaeologist (i.e., an archaeologist that meets the qualifications at 36 C.F.R. Part 61) shall be retained to assess its potential significance.

- Construction activities may continue in other areas but may not resume in the area of the find until the significance of the find is assessed and appropriately treated.
- If the find is determined by the BIA/THPO/qualified archaeologist to not be significant, no additional cultural resources investigations are necessary, and work may resume in the area of the find.
- If the find is determined significant, additional cultural resources investigations, such as data recovery excavation, may be warranted and would be determined in consultation with the BIA and THPO/qualified archaeologist, as well as potentially affiliated Tribal organizations and any other relevant regulatory agencies or interested parties, as appropriate.

Inadvertent Discoveries of Human Remains:

- Consistent with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA), if human remains or objects of cultural patrimony are discovered during project- related ground-disturbing activities, ground disturbance in the vicinity of the find shall be halted and the location shall be secured (43 C.F.R. § 10.4(c)).
- The BIA and Cherokee Nation THPO shall be immediately notified of the discovery and the Washington County Sheriff/Coroner shall be immediately informed of the find in accordance with the Oklahoma Statutes (Title 21, Sec.21-1168.4) and (43 C.F.R. § 10.5(a) (1)).
- If the remains are determined to be Native American in origin, the BIA shall consult with the THPO and/or appropriate Tribe to discuss the recovery and treatment of the remains (43 C.F.R. § 10.5).
- A written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 C.F.R. § 10.5(b)).
- The disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 C.F.R. § 10.6.

Transportation and Circulation

Proposed Driveways 1, 2, and 3:

- The westbound approach of proposed Driveways 1, 2, and 3 shall be constructed with separate left and right turn lanes to reduce vehicular delay for right turning vehicles exiting the Project Site.

Main Access Driveway and US-75:

- If feasible, the site plan shall be reconfigured in such a way that the main access drive (proposed Driveway 2) shall be located opposite the shared Atwoods Hardware Drive/US-75 intersection (proposed Driveway 3), and a traffic signal shall be installed.
- If the site plan cannot be reconfigured to align the main access drive (proposed Driveway 2) with the shared Atwoods Hardware drive/proposed Driveway 3/US-75 intersection, proposed Driveway 2/US-75 intersection as it is currently proposed shall be signalized.
- If proposed Driveway 2 is signalized, the intersection of US-75 and the shared Atwoods Hardware drive shall not be signalized due to the close spacing to proposed Driveway 2.

Rice Creek Road/W 2200 Road and US-75:

- This intersection would only be expected to qualify for signalization under the 2046 total traffic scenario. It is recommended that the City of Bartlesville and ODOT monitor this intersection in the future as background traffic volumes increase due to continued growth in the area to determine the timing for improvements.
- The Nation shall contribute a fair share payment towards the signalization of this intersection at the time that it is planned and installed by the jurisdictional agencies.

Price Road and US-75:

- Under future cumulative 2046 conditions, the intersection of Price Road and US-75 intersection would be expected to operate at unacceptable LOS. The unacceptable operating conditions would not be expected to occur for decades and would be as a result of background traffic growth and not wholly attributable to the proposed development. It is recommended that the City of Bartlesville and ODOT monitor this intersection in the future as background traffic volumes increase due to continued growth in the area to determine the timing for improvements.
- To achieve acceptable LOS at this intersection under 2046 conditions, it is recommended that a second left-turn lane be installed on three approaches (eastbound, westbound, and northbound).
- It is recommended the northbound and southbound approaches be widened to include a third through lane in each direction with a shared right-turn lane and removal of the dedicated right turn lanes.
- The Nation shall contribute a fair-share payment towards these improvements at the time that they are planned and constructed by the jurisdictional agencies.

Noise

Disturbance Coordinator:

- The Nation shall monitor construction noise and vibration and will designate a disturbance coordinator (such as an employee of the general contractor or the project manager for the

Nation), post the coordinator's contact telephone number conspicuously around the Project Site, and provide the number to nearby sensitive receptors.

- The disturbance coordinator shall receive public complaints, be responsible for determining the cause of the complaints, and implement any feasible measures to alleviate the problem.

Equipment Location:

- Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible.
- To the extent feasible, existing barrier features (structures) shall be used to block sound transmission between noise sources and noise sensitive land uses.

PUBLIC AVAILABILITY AND RESPONSE TO EA COMMENTS

The BIA received a total of two letters during the extended public comment period for the EA, both from the Office of the Governor of the State of Oklahoma, however, the first was a request to extend the public comment period. Responses to comments that were received are provided as Appendix J of the Final EA.

DETERMINATION

Based on consideration of the analysis contained in the November 2024 EA, comments received on the EA, 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 NEPA, as amended, additional environmental review or an EIS 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. BMPs and mitigation measures were developed to address potential environmental effects.
2. Protective measures will be implemented to safeguard land resources, water resources, biological resources, maintain air quality; preserve visual resources, minimize noise, prevent the release of hazardous materials, and reduce the demand on public services and utilities as outlined in the EA.
3. Mitigation measures described in Section 4 of the EA will be implemented to reduce impacts to land and water resources, air quality, biological resources, cultural resources, transportation and circulation, and noise.
4. The Proposed Action will not jeopardize threatened or endangered species. Best management practices outlined in Section 2 of the EA and mitigation measures outlined in Section 4 of the EA would be implemented to reduce potential effects on American burying beetle and tricolored bat. Project information was submitted to the U.S. Fish and Wildlife Service (USFWS) through the Information for Planning and Consultation (IPaC) system.

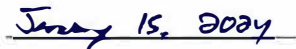
A verification letter was issued by the USFWS that determined that the Proposed Action is consistent with the Programmatic Biological Opinion on Final 4(d) Rule for the American Burying Beetle (ABB) and Activities Excepted from Take Prohibitions (50 C.F.R. § 17.47(d)). Therefore, the Programmatic Biological Opinion satisfies and concludes BIA's responsibilities under FESA, Section 7(a)(2) with respect to ABB. A "no effect" determination was made for all other federally listed species on the IPaC list.

5. No known historic or prehistoric resources have been identified within the Project Site and consultation with potentially affected Tribes did not identify impacts to known cultural resources. Consultation under Section 106 of the National Historic Preservation Act is complete. As outlined in Section 4 of the EA, in the event that cultural resources are inadvertently discovered during construction activities, ground disturbance within 50 feet of the discovery will be halted and the BIA, THPO, and/or a qualified archaeologist meeting the qualifications under 36 C.F.R. Part 61 will be consulted to assess the find's significance. In the event there is any inadvertent discovery of human remains or objects of cultural patrimony during construction activities, ground disturbance in the vicinity will be halted immediately, and the BIA and THPO will be notified. No further ground disturbance will occur within the vicinity until the THPO and BIA representatives determine and agree upon the appropriate course of action.

The Proposed Action would improve the economic and social conditions of the affected Tribal community and would also promote Tribal self-sufficiency and self-determination.



Bryan Newland
Assistant Secretary – Indian Affairs
U.S. Department of the Interior



Date

Attachments:

- Attachment 1: Cherokee Nation Office of the Attorney General Commitment to Mitigation Measures
- Attachment 2: Mitigation Monitoring and Compliance Plan