



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**JAN 16 2025**

The Honorable Aaron Leggett  
President, Eklutna Native Village  
26339 Eklutna Village Road  
Chugiak, Alaska 99567

Dear President Leggett:

The Regional Director, Alaska Region, transmitted to the Assistant Secretary-Indian Affairs (Assistant Secretary) for review and approval the Amended and Restated Business Lease (Lease)<sup>1</sup> between Owners of Allotment A-055026 and the Native Village of Eklutna and the First Amendment to the Business Lease between the Owners of Allotment 975 A-055026 (Ondola Allotment, or Project Site) and the Native Village of Eklutna (Tribe)<sup>2</sup>. The Lease will allow the Tribe to conduct gaming on the Ondola Allotment if the land is Indian Lands under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (IGRA).

I have reviewed the lease, the associated National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370, documents, and other documents in the record and have determined that the land is gaming eligible. I have approved the Lease and have included my reasoning below. The Tribe may now conduct gaming on the Ondola Allotment consistent with IGRA and relevant Department regulations, including applicable regulations issued by the National Indian Gaming Commission.

The 6.37-acre Ondola Allotment is owned by members of the Tribe or heirs of members of the Tribe (Lessors) and located in the unincorporated community of Chugiak within the boundaries of the Municipality of Anchorage, Alaska. I reviewed the Lease to determine whether it complies with the requirements of the IGRA and is, therefore, eligible for gaming. The Alaska Regional Office reviewed the Lease for compliance with the requirements of 25 C.F.R. § 162, Subpart D (Business Leases).

On January 2, 2025, the Regional Director, Alaska Region, sent a memorandum to the Office of Indian Gaming setting forth the findings and recommendations of the Bureau of Indian Affairs,

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<sup>1</sup> See Amended and Restated Business Lease between Owners of Allotment A-055026 and The Native Village of Eklutna, dated March 21, 2024, renamed to "Business Lease Between Owners of Allotment 975 A-055026 and the Native Village of Eklutna" in First Amendment to the Business Lease Between Owners of Allotment 975 A-055026 and the Native Village of Eklutna, dated January 7, 2025.

<sup>2</sup> The Tribe is identified as the Eklutna Native Village on the most recent list of federally recognized tribes (*Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 89 Fed. Reg. 99899 (Dec. 11, 2024)). The Lease and other relevant documents, however, refer to the Tribe as the Native Village of Eklutna. Both names designate the federally recognized Eklutna Native Village. We will use the Native Village of Eklutna for consistency with the Lease and other documents.

Real Estate Services, gained through investigation of the Lease.<sup>3</sup> The Regional Director included a Report of Investigation<sup>4</sup> and supporting documents for the Lease, concluding that the Tribe provided all the documents in support of the Lease and received an approval of the Tribe's gaming ordinance from the National Indian Gaming Commission. The Regional Director noted the landowners are in support of the Lease and the Tribe's development of a class II gaming facility on the Ondola Allotment.

The Report of Investigation detailed the correspondence between the Regional Office and the Tribe and attorneys for the landowners. It also explained the sufficiency of the land description and that the Title Status Report legal description is correct. This description was reviewed and approved by the Bureau of Indian Affairs Land Surveyor on December 20, 2024, in Chain of Surveys (COS) Certificate No. RR- 25-COS-01-1. The Report of Investigation determined that the Lease is in the long-range best interest of the landowners and, therefore, recommended approval based on what is presented on behalf the restricted landowners.

### **Authority**

The Secretary of Interior is required to approve leases of trust or restricted land pursuant to the Act of May 17, 1906 (44 Stat. 629), and 25 C.F.R. § 162. The authority is delegated to the Assistant Secretary for Indian Affairs and to the Regional Director in 209 DM8, 230 DM 1, and 3 IAM 4. Business leases on Indian land are negotiated and approved in accordance with 25 U.S.C. § 415, as amended, and General Provisions and Subpart D, Business Leases. Additional authorities and other guidance documents are listed in 52 IAM 14: Business Leases.

### **Background**

The Tribe submitted a business lease for approval to the Alaska Region of the Bureau of Indian Affairs (BIA). The Lease permits the Tribe's wholly owned Eklutna Gaming Authority to develop, construct, finance, and operate a gaming facility on the Ondola Allotment.

On July 18, 2024, the National Indian Gaming Commission (NIGC) approved the Tribe's gaming ordinance and, as part of that decision, determined that the Ondola Allotment constitutes Indian lands eligible for gaming by the Tribe under IGRA. The NIGC decision incorporated and adopted the reasoning of an Indian Lands Opinion by Department of the Interior's Office of the Solicitor, which determined that the Ondola Allotment is a restricted native allotment over which the Tribe exercises jurisdiction.<sup>5</sup>

A business leases for Indian gaming must be approved by the Assistant Secretary prior to going into effect. In a 1997 Memorandum, the Assistant Secretary instructed Area Directors that “[a]ll

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<sup>3</sup> Memorandum from Jolene N. John, Regional Director, Alaska Region to Paula L. Hart, Director, Office of Indian Gaming (Jan. 2, 2025) (on file with the Office of Indian Gaming).

<sup>4</sup> Report of Investigation Heirs of Olga Ondola Native Allotment No. AA 55026, 975 4200438738 (on file with the Office of Indian Gaming).

<sup>5</sup> See Letter from Sharon M. Avery, Acting Chairwoman, National Indian Gaming Commission, to Aaron Leggett, President, Native Village of Eklutna (approving Gaming Ordinance [https://www.nigc.gov/images/uploads/gamingordinances/20240718\\_Native\\_Village\\_of\\_Eklutna\\_Gam\\_Ord.pdf](https://www.nigc.gov/images/uploads/gamingordinances/20240718_Native_Village_of_Eklutna_Gam_Ord.pdf) (site last visited Jan 3, 2025)).

leases of land for gaming purposes shall be approved/disapproved by the Central Office.”<sup>6</sup> The 1997 Memorandum directs that,

the lease instrument shall not be finalized by signature of the Area Director when submitted to the Central Office for approval. Upon review for approval of the documents by Central Office, the Area Director will be advised, in writing, of the delegated authority to approve the lease instrument.

The Ondola Allotment is not within a reservation. In 2002, the Assistant Secretary amended the 1997 Memorandum to all BIA Area Directors<sup>7</sup> regarding review and approval of gaming leases.<sup>8</sup> The 2002 Memorandum clarified that only leases for off-reservation lands for gaming must be approved by the Assistant Secretary, but that proposed on-reservation leases for gaming should be submitted to the Office of Indian Gaming for a determination that the proposed lease complies with the requirements of IGRA, including any applicable class III gaming compact, before being approved by the Regional Director. The 2002 Memorandum also clarified that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370, no longer requires the concurrence of the Director of the OIG.<sup>9</sup> To satisfy the requirements of NEPA, the Regional Director prepared an Environmental Assessment.<sup>10</sup>

### **Terms of the Lease**

The Lease is a proposed business lease between the Lessors and Native Village of Eklutna. The Lease is for gaming purposes on restricted land owned by the Lessors.<sup>11</sup> Under the terms of the Lease, the Lessors will lease the Project Site to the Tribe for an initial term of twenty-five (25) years, beginning on the date of approval by the BIA. The Lease grants the Tribe an option for a further term of twenty-five (25) years commencing at the expiration of the primary term. The Tribe will pay a base rent of 10% of the agreed-to fair market value of the Site, which the parties agree is \$500,000. Base rent will be adjusted every five (5) years based on the percentage change in the Consumer Price Index for the previous year. Following commencement of gaming operations, the Tribe will pay the Lessors two and one-half percent (2.5%) of Gross Gaming Revenue plus two and one-half percent (2.5%) of Gross sales receipts from Non-Gaming Operations and all other sources generated on the Site. The Lease states that it does not authorize Lessor to engage in any Management Activities, as that term is described in the Lease. In Section 19 of the Lease, the Lessor requests that BIA waive the bonding requirements of 25 C.F.R. 162.434(a)(1) and (a)(4) until the elections under Section 18(B) of the Lease are made,

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<sup>6</sup> Memorandum, Leasing of Lands for Gaming Purposes, from Ada E. Deer, Assistant Secretary – Indian Affairs, to All Area Directors (Apr. 24, 1997) (on file with the Office of Indian Gaming).

<sup>7</sup> Area Directors are now designated as Regional Directors in the BIA. See, e.g., <https://www.bia.gov/regional-offices#:~:text=Regions%20Sub%20Navigation&text=Each%20regional%20office%20is%20headed,is%20map%20of%20the%20Regions> (site last visited on January 2, 2025).

<sup>8</sup> Memorandum, Authority to Approve Leases of Lands for Gaming Purposes, from Assistant Secretary – Indian Affairs, Neal A. McCaleb, to All Regional Directors (Apr. 1, 2002) (on file with the Office of Indian Gaming).

<sup>9</sup> In keeping with the guidance of the 2002 Memorandum, the OIG does not review gaming leases under the provisions of 25 C.F.R. § 162. Instead, that review is conducted by the Regional Director. Completion of NEPA review and Regional Director formal approval of the lease is required before any gaming may occur.

<sup>10</sup> *Environmental Assessment Eklutna Native Village Gaming Facility Project Chugiak, AK*, Bureau of Indian Affairs (Dec. 2024), available at <https://eklutnaea.com/>.

<sup>11</sup> The Project Site is described in the survey and legal description attached to the Lease as Exhibit “A.”

because it is in the best interests of the Lessor given the length of the term, the commercial value of the permanent improvements to be constructed, and the anticipated rent to be received by the Lessor under the Lease.

## **Analysis**

### *Indian Lands under IGRA*

IGRA permits gaming only on “Indian lands,” which are defined, in part, as “any lands title to which is...held by an Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.”<sup>12</sup>

In accordance with the Alaska Native Allotment Act,<sup>13</sup> the Ondola Allotment is “inalienable and nontaxable,” meaning that the land cannot be taken from the owner by force and is not subject to local or state property tax. The Ondola Allotment has been owned as a restricted fee native since 1961, pursuant to the Alaska Native Allotment Act, when the Bureau of Land Management issued title in restricted fee to Olga Ondola, an Alaska Native and member of the Tribe. The Ondola Allotment is identified as Native Allotment No. 975 A-055026 and is located approximately five miles from the Eklutna Native Village headquarters in Chugiak, Alaska.

In June 2024, the Office of the Solicitor issued an Indian lands opinion to the National Indian Gaming Commission that concluded the Ondola Allotment constitutes Indian lands under IGRA and that the Tribe may conduct gaming on the land.<sup>14</sup> The Solicitor’s Office explained that to satisfy IGRA’s definition of “Indian lands,” the Tribe must show that the Ondola Allotment is subject to a restriction against alienation *and* that the Tribe exercises governmental power over it.

The Solicitor’s Office noted that Congress has defined “Indian country” as including “all Indian allotments, the Indian titles to which have not been extinguished.”<sup>15</sup> The Ondola Allotment is “Indian country” within the meaning of 18 U.S.C. § 1151(c) because the Ondola Allotment is held in restricted fee by members of the Tribe. Additionally, the Ondola Allotment is located approximately five miles from the Tribe’s headquarters and on lands customarily and traditionally used by tribal members. The Solicitor’s Office accordingly informed the NIGC that the presumption in favor of tribal jurisdiction over the Ondola Allotment is met because the Ondola Allotment is owned by tribal members and is not geographically removed from the tribal community.<sup>16</sup>

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<sup>12</sup> 25 U.S.C. § 2703(4)(B). Restricted land is not subject to IGRA’s prohibition on gaming on any lands acquired in trust for the benefit of Indian tribes after October 1988. *See* 25 U.S.C. § 2719; 25 C.F.R. § 292.2.

<sup>13</sup> Pub. L. No. 59-171, ch. 2469, 34 Stat. 197 (1906), as amended, Pub. L. 84-931, ch. 891, 70 Stat. 954 (Aug. 2, 1956) (“34 Stat. 197”).

<sup>14</sup> *See* Letter from Eric N. Shepherd, Associate Solicitor, to Rea L. Cisneros, Acting General Counsel, National Indian Gaming Commission (Jun. 27, 2024).

<sup>15</sup> 18 U.S.C. § 1151(c).

<sup>16</sup> *See e.g.*, NIGC, Gaming by the Big Sandy Rancheria on the McCabe Allotment at 2 (Sept. 6, 2006) (recognizing tribal jurisdiction over allotment located 12 miles from the Big Sandy Rancheria); Mem. from Robert T. Anderson, Assoc. Solic., Indian Affs., to Dir., Indian Gaming Mgmt. Staff (Sept. 25, 1996) (recognizing tribal jurisdiction over allotment located 12 miles from the Quinault reservation).

Because the land is held in restricted fee status by individuals and the Tribe has presumptive jurisdiction over the Ondola Allotment, it may be used for gaming if the Tribe exercises governmental power over the land.<sup>17</sup> The Solicitor detailed specific instances where the Tribe exercises jurisdiction over the Ondola Allotment, including, among other things, the Tribe's constitution, Tribal Court Codes, child custody placement, environmental law, health care, child protection, social services, sanitation services, natural resources management, and road maintenance. The Solicitor's Office concluded that the Tribe exercises governmental authority over the Ondola Allotment and, therefore, the Tribe meets both prongs of the test for tribal jurisdiction over restricted lands. Because the Ondola Allotment is Indian lands under IGRA, the Tribe may conduct gaming on the land.

The Solicitor is the chief legal officer of the Department of Interior and is delegated "all of the authority of the Secretary."<sup>18</sup> The Solicitor may issue M Opinions that control all aspects of the Department's decision making, including final legal interpretations on all matters within the jurisdiction of the Department. We note prior determinations from both the Office of the Solicitor and the NIGC support my finding that the land is gaming eligible.

#### *Permissible Gaming in Alaska*

The Tribe intends to operate a class II gaming facility on the Project Site. Tribes have exclusive jurisdiction over class I gaming and over class II gaming within the jurisdiction of the Tribe, subject to IGRA. IGRA provides that an Indian Tribe may engage in, or license and regulate, class II gaming on Indian lands within such Tribe's jurisdiction if the Indian gaming is located within a State that permits such gaming for any purpose by any person, organization, or entity and such gaming is not otherwise specifically prohibited on Indian lands by federal law.<sup>19</sup> Class II gaming is defined in IGRA as "the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aid are used in connection therewith)." If played in the same location, it also includes pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.

The State of Alaska permits bingo and other similar gambling. The State of Alaska enacted a statute which regulates gaming in the State. The statute authorizes the Alaska Department of Revenue to issue a permit to a municipality or qualified organization. The permit,

gives the municipality or qualified organization *the privilege of conducting bingo*, raffles and lotteries, pull-tab games, freeze-up classics, ice classics, race classics, rain classics, goose classics, mercury classics, deep freeze classics, canned salmon classics, salmon classics, king salmon classics, dog mushers' contests, snow classics, snow machine classics, fish derbies, animal classics, crane classics, cabbage classics, Calcutta pools, big

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<sup>17</sup> See M-37023 Applicability of 25 U.S.C. § 2719 to Restricted Fee Lands, Office of the Solicitor (Jan. 18, 2009) available at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37023.pdf> (The section 2719 prohibition against gaming on newly acquired lands only applies to lands acquired by the Secretary in trust).

<sup>18</sup> 43 U.S.C. § 1455 ("Hereafter [after June 26, 1946] the legal work of the Department of the Interior shall be performed under the supervision and direction of the Solicitor of the Department of the Interior, who shall be appointed by the President with the advice and consent of the Senate.").

<sup>19</sup> 25 U.S.C. § 2710(b)(1)(A) and (B).

bull moose derbies, and contests of skill. Alaska Stat. § 05.15.100 (Lexis Advance through all 2024 legislation) (emphasis added).

Because the State of Alaska permits bingo and similar games, the Tribe is located in a State that permits such gaming for any purpose by any person, organization, or entity and such gaming is not otherwise specifically prohibited on Indian lands by Federal law.<sup>20</sup> Accordingly, the Tribe may operate class II gaming on the Ondola Allotment because it is located within a State that “permits such gaming for any purpose by any person, organization, or entity.”

Under IGRA, before the Tribe may engage in, or license and regulate, class II gaming on its Indian lands within the Tribe’s jurisdiction, the governing body of the Tribe must also adopt an ordinance or resolution which is approved by the Chairman of the NIGC.<sup>21</sup> The Tribe has adopted the “*Native Village of Eklutna 2024 Gaming Ordinance* (April. 19, 2024),” which was reviewed by the NIGC and approved by the Acting Chairwoman of the NIGC on July 18, 2024, as consistent with IGRA and NIGC regulations.<sup>22</sup> Thus, the Tribe may operate or license and regulate class II gaming on the Project Site.

### *Sole Proprietary Interest*

IGRA directs the Chair of NIGC to approve an ordinance if, among other things, it “provides that... the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity.”<sup>23</sup> Prior to approving a lease for gaming purposes, the Assistant Secretary must be satisfied that it is consistent with IGRA’s sole proprietary interest requirement.

The NIGC issued Bulletin No. 2021-6 (Oct. 5, 2021), which explains the sole proprietary interest requirement, its bases, and NIGC’s interpretation of it.<sup>24</sup> The Bulletin defines a proprietary interest as “a property right, specifically, the interest held by a property owner, including rights of possession in, control of, or present use of the property –here a business” The Bulletin explains that the Tribe must be the sole owner of the gaming enterprise, must not share its ownership rights, and must have exclusive control and responsibility for the gaming activity.”<sup>25</sup>

The NIGC bulletin notes that the sole proprietary interest requirement is essential to Congress’ purpose for IGRA to ensure that Tribes are the primary beneficiaries of their gaming operations. Tribes must receive the primary benefit of their gaming revenue. The criteria to determine

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<sup>20</sup> See *Mashantucket Pequot Tribe v. State of Connecticut*, 913 F.2d 1024 (2nd Cir. 1990) (the Second Circuit Court of Appeals ruled that Connecticut’s gambling public policy was “civil regulatory” because the state allowed “Las Vegas Nights.” Thus, the state was required to enter into good-faith negotiations for formulating a tribal-state gaming compact.)

<sup>21</sup> 25 U.S.C. § 2710(b)(2)(A).

<sup>22</sup> See Letter from Shirley Sharon M. Avery, Acting Chairwoman, National Indian Gaming Commission, to Aaron Leggett, President, Native Village of Eklutna (Jul. 18, 2024) approving the Tribe’s gaming ordinance. (available at [https://www.nigc.gov/images/uploads/gamingordinances/20240718\\_Native\\_Village\\_of\\_Eklutna\\_Gam\\_Ord.pdf](https://www.nigc.gov/images/uploads/gamingordinances/20240718_Native_Village_of_Eklutna_Gam_Ord.pdf).) (Site last visited on January 7, 2025).

<sup>23</sup> 25 U.S.C. § 2710(b)(2)(B)e- (F).

<sup>24</sup> See Bulletin No. 2021-6, National Indian Gaming Commission (Oct. 5, 2021) (available at [https://www.nigc.gov/images/uploads/bulletins/Bulletin\\_No.\\_2021-6\\_Sole\\_Proprietary\\_Interest\\_1.pdf](https://www.nigc.gov/images/uploads/bulletins/Bulletin_No._2021-6_Sole_Proprietary_Interest_1.pdf).) (Site last visited on January 7, 2024).

<sup>25</sup> *Id.* at Paragraph I.

whether a Tribe has the sole proprietary interest in its gaming facilities and operations include: “1) the term of the relationship with a third party; 2) the amount of revenue paid to the third party; and 3) the right of control provided to the third party over the gaming activity.”<sup>26</sup>

Nothing in the Lease expressly grants the Lessors any proprietary interest in the Tribe’s gaming activity. The initial term of the lease is for twenty-five (25) years with an option for the Tribe to renew the lease for an additional twenty-five (25) years following the expiration of the initial term. The term of the lease is beneficial to both the Tribe and the Lessors because it permits the Tribe to pursue economic development in a location that is close to Anchorage. The term will provide the Lessors with rent over a long period of time and will provide income that is more than the Lessors would receive for other uses of the land. Additionally, the Tribe must enter into the lease agreement to have exclusive control over the gaming activities on the Ondola Allotment.

The amount of revenue to be paid to the Lessors consists of a base rent of 10% of the agreed fair market value of Project Site and will be paid annually in advance. After gaming commences, the base rent may be adjusted every five years on the anniversary of BIA approval, based on the Consumer Price Index for the preceding calendar year. After gaming commences, the rent also includes a percentage rent, which consists of a quarterly payment commencing on the first day of the quarter following the first day of gaming operations. The percentage rent consists of 2.5% of gross gaming revenue plus 2.5% of gross sales receipts from non-gaming operations and all other sources generated on the premises.

The NIGC bulletin explains that the Tribe must receive the primary benefit of their gaming revenue and that the primary benefit is informed by Congress’s other directives in IGRA regarding payment of gaming revenues. The bulletin explains that individually owned operators licensed by a tribe must provide that tribe 60% of net revenues.<sup>27</sup> Management contractors may not receive more than 30% of net revenues as a fee unless certain circumstances exist that allow for them to receive 40%.<sup>28</sup> The “majority share” of net gaming revenue going to a party other than the Tribe may indicate an unlawful interest. The amount of rent to be paid to the Lessors is not excessive because the Tribe will pay a modest 2.5% of its gross gaming revenue and 2.5% of all other receipts on the property. The Tribe retains the majority of the gaming revenue from the Ondola Allotment. The percentage rent plus the base rent does not constitute a proprietary interest.

The Lessors do not retain control or operation of gaming activities, nor do the Lessors retain actual possession or control of the gaming facilities. The Lease specifically prohibits the Lessors from planning, organizing, directing, coordinating, or controlling all or any portion of the Lessee’s gaming operations (collectively, “management activities”).<sup>29</sup> Thus, the Lessors do not control or manage the Tribe’s gaming on the Project Site.

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<sup>26</sup> See *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*, 830 F. Supp. 2d at 723; see also *City of Duluth v. Nat’l Indian Gaming Comm’n*, 89 F. Supp. 3d 56, 64 (D.D.C. 2015) (affording deference to agency’s interpretation).

<sup>27</sup> 25 U.S.C. § 2710(b)(4)(B)(i)(III).

<sup>28</sup> 25 U.S.C. § 2711(c).

<sup>29</sup> Lease at Paragraph 4.E.

Based on the foregoing analysis, I conclude that the Tribe retains the sole proprietary interest in the gaming facilities and operations on the Ondola Allotment.

*Tribal-State Gaming Compact*

The Tribe will operate only class II gaming on the Project Site. Accordingly, there is no requirement under IGRA for the Tribe to enter into a class III gaming compact with the State of Alaska.

**Conclusion**

I conclude that the Ondola Allotment is Indian lands, as defined by IGRA and, thus, is eligible for gaming. I further conclude that the Tribe's intended use of the Ondola Allotment for a class II gaming facility does not require a class III gaming compact with the State of Alaska, and that the Tribe has the sole proprietary interest in the conduct of gaming on the land. I further conclude that the Lease meets the required statutory and regulatory requirements and is, therefore, approved.

The Region Director has complied with the requirements of NEPA, culminating in a Finding of No Significant Impact. Accordingly, I am returning the Lease to the Regional Director with instructions to process the Lease in accordance with her delegated authority. Please consult with the Regional Director, Alaska Region, for required next steps to execute the required performance bonds as specified in her letter to Sarah Roubidoux Lawson dated January 14, 2025.<sup>30</sup>

If you have any questions, please contact the Office of Indian Gaming at (202) 219-4066.

Sincerely,



Bryan Newland  
Assistant Secretary – Indian Affairs

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<sup>30</sup> Letter from Jolene John, Regional Director, Alaska Region, to Sarah Roubidoux Lawson, Schwabe, Williamson & Wyatt, P.C. (granting in part the request for waivers of bonding and appraisal requirements in the Lease).



**MITIGATED FINDING OF NO SIGNIFICANT IMPACT  
FOR THE EKLUTNA NATUVE VILLAGE GAMING FACILITY PROJECT**

The Department of the Interior (Department), Bureau of Indian Affairs (BIA) received a request to approve a business lease that would allow the development of a class II gaming facility by the Eklutna Native Village (Tribe), a federally recognized Indian Tribe of the United States, on an approximately 6.37-acre portion of Native Allotment No. A-055026 owned by members of the Tribe in the unincorporated community of Chugiak within the boundaries of the Municipality of Anchorage, Alaska (Proposed Action). The Project Site is located within Section 5 of Township 15 North, Range 1 West within the Seward Meridian, and is within the Anchorage B-7 NW United States Geological Survey (USGS) 7.5' quadrangle map (Project Site).

The Proposed Action was analyzed within a draft Environmental Assessment (EA) that was released to the public on December 20, 2024, for a public comment period that ended on January 9, 2025 (20 days). The comments received during the public review period were considered, and clarifications were made within a Final Environmental Assessment (Final EA) dated January 2025,<sup>1</sup> prepared in accordance with National Environmental Policy Act (NEPA), the Department of the Interior's Procedures for the Implementation of NEPA (43 C.F.R. Part 46); the Council on Environmental Quality (CEQ) Guidelines for Implementing NEPA (40 C.F.R. Parts 1500-1508)<sup>2</sup>; and the BIA NEPA guidebook (59 Indian Affairs Manual 3-H). 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**

In 1963, based on an application filed in 1961 pursuant to the Alaska Native Allotment Act (ANAA), the Bureau of Land Management issued title to restricted fee Native Allotment No. A-055026, which encompasses the Project Site, to Olga Ondola, an Alaska Native and member of the Tribe (Ondola Allotment). The Project Site is on approximately 6.37 acres of the approximately 8-acre allotment and has been owned by Ms. Ondola and her heirs and successors since 1961.

The Tribe is a federally-recognized Indian Tribe of the Dena'ina people who still reside in their traditional homeland in the upper Cook Inlet region of Alaska. The Tribe had the use and

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<sup>1</sup> The January 2025 EA is hereby incorporated by reference as part of this mitigated finding of no significant impact. The EA is available for public review at <http://www.EklutnaEA.com>.

<sup>2</sup> 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 C.F.R. Parts 1500–1508, in addition to the Department of the Interior's procedures/regulations implementing NEPA at 43 C.F.R. 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.

occupancy of its territory well into the twentieth century. In 1936, the Secretary of the Interior withdrew approximately 330,000 acres of land from the public domain for the purposes of educating Natives in the region. The Project Site is located within this withdrawn area. By the mid-1900s, various factors led the United States to reduce the area withdrawn, and in 1961, to set aside a reservation of 1,968 acres for Natives in the area of Eklutna. This reservation land was revoked with the enactment of the Alaska Native Claims Settlement Act (ANCSA).

In 1961, the Eklutna Native Village government office was re-organized by the traditional people of Eklutna to pursue land rights and claims. Eklutna Inc. was formed in 1972 as a Village Corporation to promote economic development pursuant to the ANCSA. The Tribe adopted a constitution in 1988 asserting territorial jurisdiction over land and waters constituting Indian Country, including “all fee and allotment lands within the traditional lands of the Eklutna, notwithstanding the issuance of any patent or unrestricted fee title to such lands,” which includes the Project Site.

Based on Indian Gaming Regulatory Act (IGRA) and National Indian Gaming Commission (NIGC) regulations,<sup>3</sup> the Department issued an Indian Lands Opinion on June 27, 2024, confirming that the Ondola Allotment constitutes Indian lands eligible for gaming by the Tribe under IGRA. NIGC incorporated the Department’s Indian Lands Opinion and approved the Tribe’s site-specific Gaming Ordinance authorizing gaming activities on the Project Site.

## **PURPOSE AND NEED FOR THE PROPOSED ACTION**

The purpose and need for the Proposed Action is to allow the Native Allotment landowners to develop their land, putting it to its highest and best use, in order to generate much needed income and employment opportunities for the Native Allotment landowners and their community. The purpose and need for the Proposed Action would also achieve the goals of the Tribe by facilitating tribal self-sufficiency, self-determination, and economic development, thus, satisfying the principal goal of IGRA as articulated in 25 U.S.C. § 2701.

## **DESCRIPTION OF THE PROPOSED ACTION**

The federal Proposed Action consists of BIA approval of a business lease by tribal members who own the restricted fee Native Allotment to the tribal government for operation of a proposed gaming facility within the Project Site.

## **ALTERNATIVES CONSIDERED**

The BIA considered three alternatives. Summary descriptions of the alternatives are provided below, with detailed descriptions provided within the Final EA. Of the alternatives, Alternative A is considered the Proposed Project.

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<sup>3</sup> 25 U.S.C. Chapter 29 and 25 C.F.R. Part 292, 25 C.F.R. Part 502.

**Alternative A – Proposed Project:** The Proposed Project collectively consists of: 1) BIA approval of a business lease by tribal members who own the restricted fee Native Allotment to the tribal government for operation of a proposed gaming facility within the Project Site; 2) development by the Tribe of a gaming facility and associated infrastructure on the Project Site; and 3) potential NIGC approval of a Gaming Management Agreement for operation of the gaming facility. The business lease allows the Tribe's wholly owned Eklutna Gaming Authority to develop, construct, finance, and operate a gaming facility and acknowledges that the Tribe has jurisdiction over the Project Site and is responsible for providing government services to the Project Site, including social services. The business lease will authorize use of the Project Site's current water rights to the extent applicable and tasks the Tribe with acquiring any additional water rights that may be necessary for operations. The term for the business lease is 25 years, after which the lease may be renewed at the discretion of the Tribe.

Under Alternative A, a 58,000 square-foot gaming facility with paved surface parking and supporting infrastructure would be developed. The Tribe would establish government-to-government relations with the Municipality of Anchorage to address the provision of fire protection and emergency medical services to the Project Site. Alternative A would employ approximately 90 staff per day with a total employment of approximately 228 staff. During the construction period, a modular interim facility would be established on the Project Site, housing approximately 85 gaming devices to provide immediate economic opportunity for the Tribe.

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 considered, Alternative A would best meet the stated purpose and need as it would provide the greatest economic and workforce opportunities for the Allotment Owners and Tribe.

**Alternative B – Event Center (Non-Gaming):** Alternative B consists of BIA approval of a business lease by members of the Tribe to the tribal government for operation of an event center within the Project Site and development by the Tribe of an event center and associated infrastructure on the Project Site. The development area under Alternative B would be the same as Alternative A. The event center would include two multi-purpose rooms, hosting approximately three to four events per week, including gatherings such as trade shows, meetings, and weddings. Alternative B would employ approximately half the staff and attract fewer patrons, which would result in a reduced traffic and demand to public services and utilities compared to Alternative A. However, this alternative would provide the Allotment Owners and Tribe with fewer economic and employment benefits than Alternative A.

**Alternative C – No Action:** Under Alternative C, neither of the previous alternatives would be implemented. The Project Site would not be leased for the benefit of the Allotment Owners and the Tribe and would likely remain wooded and undeveloped for the foreseeable future. This alternative would achieve the lowest net GHG emissions amongst the alternatives. This alternative would not meet the stated purpose and need to generate much needed income and employment opportunities for the Native Allotment landowners and their community.

## ALTERNATIVES ELIMINATED FROM FURTHER ANALYSIS:

- **Alternative Configurations:** Alternative A has been designed to adhere to minimum recommended setback from nearby waterways, while maximizing the developable space within the site boundaries. Alternative configurations within the proposed development area (e.g., developing the gaming facility building closer to the roadway) would have substantially similar environmental impacts in comparison to the Proposed Project. Consequently, alternative configurations would not avoid or minimize environmental impacts or contribute to a reasonable range of alternatives.
- **Alternative Location:** ANCSA extinguished aboriginal land claims and transferred ownership to for-profit Native corporations, with created a corporate structure for land management; under ANCSA, tribes could not directly own land as they did before ANCSA. As a result, there are currently no lands held in federal trust or restricted fee status for the Tribe.

The Project Site is owned as a restricted fee Native Allotment by members of the Tribe/Native Allotment Owners. This is the only Native Allotment land that is held in restricted fee status by the Eklutna tribal members that is within close proximity to the Eklutna Native Village. The Department issued an Indian Lands Opinion on June 17, 2024, confirming that the Project Site constitutes Indian lands eligible for gaming by the Tribe under IGRA. The NIGC incorporated the Department's Indian Lands Opinion and approved the Tribe's site-specific Gaming Ordinance authorizing gaming activities on the Project Site.

There are no alternative locations that have been determined eligible for gaming activities. Additionally, the Project Site was selected by the Tribe as it falls within the Tribe's ancestral land base, is safe and developable, contains minimal development constraints, and has adequate site access. Therefore, alternative locations for the proposed gaming facility are not evaluated within the Final EA. See Section 2.5 of the Final EA for further information.

**Reduced Intensity Alternative:** The size of the gaming component is consistent with regional market factors. While the area of physical impacts could be reduced through construction of a parking garage (which would eliminate surface parking needs) or multi-story gaming facility building (which would result in a smaller building footprint), there are no sensitive resources within the property, such as wetlands or cultural resources, that would be avoided by these changes. Further, the additional construction activities would have slightly greater effects, and the increased height and massing of the buildings would have increased visual effects. Thus, reducing the footprint of the gaming facility and parking areas would not avoid or minimize environmental impacts or contribute to a reasonable range of alternatives.

## **ENVIRONMENTAL IMPACTS**

The Final EA assessed the 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, visual resources, and timber harvesting, with the following conclusions:

- Having considered potential land resource impacts during project design/planning, and with the incorporation of BMPs, impacts to land resources would be less than significant. See Final EA Sections 2.1.11 and 3.2.
- Having considered potential water resources impacts during project design/planning, and with the incorporation of BMPs, impacts to water resources would be less than significant. See Final EA Sections 2.1.11 and 3.3.
- Having considered potential air quality impacts during project design/planning, and with the incorporation of BMPs, there would be no significant adverse effects associated with the regional air quality. See Final EA Sections 2.1.11 and 3.4.
- Having considered potential biological resources impacts during project design/planning, and with the incorporation of BMPs and implementation of mitigation measures, impacts to biological resources would be less than significant. See Final EA Sections 2.1.11, 3.5, and 4.0.
- There would be no significant impacts to known cultural or paleontological resources as the cultural resources identified on the Project Site did not meet the significance criteria for listing in the NHHP and are not considered historic properties. Adherence to applicable laws and BMPs and implementation of mitigation measures would ensure that no adverse effects to previously unknown cultural resources would occur. See Final EA Sections 2.1.11, 3.6 and 4.0.
- There would be no significant adverse effects associated with socioeconomic conditions or environmental justice with the incorporation of BMPs. See Final EA Sections 2.1.11 and 3.7.
- There would be no significant adverse effects associated with transportation and circulation. See Final EA Section 2.1.11, 3.8, and 4.0.
- Having considered potential land use conflicts during project design/planning, and with the implementation of mitigation measures to adhere to FAA requirements, impacts regarding land use would be less than significant. See Final EA Sections 3.9 and 4.0.
- Having considered potential public services impacts during project design/planning, and with the incorporation of BMPs and implementation of mitigation measures, impacts to public services would be less than significant. See Final EA Sections 2.1.11, 3.10, and 4.0.
- Having considered potential noise impacts during project design/planning, and with the incorporation of BMPs, no significant impacts to the ambient noise environment would occur during construction or operation. See Final EA Sections 2.1.11 and 3.11.
- Having considered potential hazardous materials impacts during project design/planning, and with the incorporation of BMPs, hazardous materials impacts would not be significant.

See Final EA Sections 2.1.11 and 3.12.

- Having considered potential visual resource impacts during project design/planning, and with the incorporation of BMPs, no adverse effects to visual resources would occur. See Final EA Sections 2.1.11 and 3.13.
- There would be no significant adverse effects associated with timber harvesting. See Final EA Section 3.14.
- BMPs and/or mitigation measures incorporated would ensure that cumulative impacts to land resources, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions/environmental justice, transportation/circulation, land use, public services/utilities, noise, hazards/hazardous materials, visual resources, and timber harvesting are not significant. There would be no significant indirect or growth-inducing effects. See Final EA Sections 3.15 and 3.16.

## **BEST MANAGEMENT PRACTICES**

### ***Best Management Practices***

Protective measures and BMPs, including regulatory requirements and voluntary measures that would be implemented by the Tribe, have been incorporated into the design of the Alternative A and are listed below. These measures would eliminate or substantially reduce environmental consequences from the Proposed Project in compliance with the Tribe's Environmental Protection Ordinance (Resolution Number 97-22) and the Eklutna Public Health and Safety and Anti-Discrimination at Gaming Facility Ordinance (Appendix M of the Final EA). The words "shall," "will," and "must" as used below have the same meaning, obligation, and are used interchangeably. The Tribe is responsible for ensuring that the following protective measures and BMPs are implemented.

### **Land Resources**

- Erosion control measures will be implemented during construction as discussed further under the Water Resources BMPs.
- Prior to construction, a geotechnical report shall be prepared by a licensed professional.
- Proposed facilities would be constructed generally consistent with applicable Tribal ordinances, including the Tribe's Environmental Protection Ordinance (Resolution Number 97-22), and the IBC, (as adopted by the Eklutna Tribal Ordinance 2007O-01 and Anchorage Municipal Ordinance), including electrical, mechanical, plumbing, fire protection, and seismic standards.

### **Water Resources**

- To reduce water usage, low-flow toilets, faucets, and other water-using appliances shall be installed to the extent feasible.
- Paving and ground disturbance would be set back from Peters Creek by at least 50 feet, which is consistent with the Anchorage Municipal Code (AMC 21.45.210).
- Proposed storm drainage catch basins would be located at low points on the Project Site to direct runoff to buried infiltration beds. Sediment traps and grit chambers will be provided

upstream of infiltration or detention systems, to remove detrimental levels of sediment and other debris.

- Stormwater collection and treatment system would be designed to accommodate a 24-hour 100-year flood event with off-site runoff rates modeled to be equal to or less than existing rates.
- Paved surfaces will be swept bi-annually, especially in the springtime, to remove sand/gravel spread for traction throughout the winter months. Storm drain inlet structures will be routinely cleaned out to further reduce the amount of sediment and debris migrating to the infiltration system.
- Coverage under the National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) shall be obtained from the USEPA for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA). Conditions of the NPDES CGP shall be adhered to. A SWPPP shall be prepared, implemented, and maintained throughout the construction phase consistent with CGP requirements. The SWPPP shall include BMPs to minimize stormwater effects to water quality during construction. These will include, but not be limited to, the following:
  - 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.
  - 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 Clean Water Act (33 U.S.C. §§ 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 Project Site.
  - To **minimize** dust generation during construction, soil shall be wetted down with water prior to ground disturbance as needed.
  - Trash storage areas for receptacles will be designed to minimize stormwater runoff contact with disposed solid waste. Receptacles shall contain lids and shall be placed on impervious pavement. Receptacles along with signs encouraging use of trash receptacles will be placed in common areas to reduce littering

### **Biological Resources**

- Staging of materials and equipment shall occur within the impact area or on previously disturbed land.
- Bear-proof receptacles shall be used for exterior solid waste collection receptacles to help

ensure bears and other wildlife are not drawn onto the Project Site and in direct contact with people.

- Construction and paving on the Project Site will be setback from Peters Creek by 50 feet from the top of bank consistent with AO No. 2018-67(S) to provide protection of water quality and minimize impacts along the creek especially during spring calving and when fish are running.
- Precautions will be taken to minimize wildlife-vehicle collisions in the vicinity of the Project Site by installing appropriate signage along the roadway frontage warning drivers of wildlife.

### **Cultural and Paleontological Resources**

- If any previously unknown archaeological or historic remains are discovered during the life of the Proposed Action, or in the course of associated activities on this the Project Site, they shall cease activities pending further written recommendations from the BIA Regional Archeologist (36 C.F.R. §800.13(b)). Willfully disturbing, removing, or damaging archeological or paleontological remains is a violation of applicable federal and/or state laws and is subject to severe criminal and civil penalties.
- If any unknown human remains or associated cultural items are discovered during the life of the Proposed Action, or in the course of associated activities on this property, the Tribe shall cease all activity pending further written recommendations from the BIA Regional Archeologist. Any person who knows of the discovery of human remains or associated cultural items must provide notification in writing to the BIA Regional Archeologist (43 C.F.R. §10.4).
- Activities may result in the excavation, removal, damage, or otherwise alter or deface any archaeological resources are prohibited (43 C.F.R. §7.4). The Federal land manager may assess a civil penalty against any person(s) who has/have violated terms or conditions included in Section 7.4 (43 C.F.R. §7.15).

### **Air Quality**

The following dust suppression measures shall be implemented during construction to control the production of fugitive dust (particulate matter 10 microns in size [PM<sub>10</sub>]) and prevent wind erosion of bare and stockpiled soils:

- Exposed soil shall be sprayed with water or other suppressants 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.
- Wheel washers shall be provided to remove soil that would otherwise be carried offsite by vehicles to decrease deposition of soil on area roadways.
- Traffic speeds on the Project Site shall be restricted to 15 miles per hour to reduce dust.



- 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 (CAP), greenhouse gases (GHG), and diesel particulate matter (DPM) from construction:

- Criteria pollutants and GHG emissions from the facility shall be controlled by requiring all diesel-powered equipment be properly maintained and minimize idling time to five minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Because these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. Periodic and unscheduled inspections will be employed to accomplish the above measures.
- The use of low reactive organic gases (150 grams per liter or less) shall be required for architectural coatings 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.

The Tribe shall reduce emissions of CAPs and GHGs during operation through the following actions to the extent feasible:

- The Tribe shall use clean fuel vehicles in the vehicle fleet where practicable, which would reduce CAPs and GHG emissions.
- The Tribe shall provide preferential parking for employee vanpools, carpools, and or other rideshare vehicles which would reduce CAPs and GHGs.
- The Tribe shall incorporate preferential parking for Plug-In Electric Vehicles along with the installation of corresponding electric vehicle charging stations.
- Shuttle service to and from population centers shall be provided as feasible, which would reduce CAPs and GHGs.
- Water consumption shall be reduced through low-flow appliances, drought resistant landscaping, and the incorporation of "Save Water" signs near water faucets throughout the development.
- The Tribe will use electric boilers and appliances in lieu of natural gas or propane units to the greatest extent practicable.
- The Tribe shall control CAPs, GHG, and DPM emissions during operation by requiring that all diesel-powered vehicles and equipment be properly maintained and minimizing idling time to five minutes at loading docks when loading or 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 more time is required.
- The Tribe shall use energy efficient lighting and appliances, which would reduce energy usage, thus reducing indirect CAP and GHG emissions.
- The Tribe shall install recycling bins throughout the facility for glass, cans, plastic, and paper products. Trash and recycling receptacles shall be placed strategically outside to encourage people to recycle. In addition, the Tribe shall promote the use of non-polystyrene

take-out containers and encourage food waste composting programs at all restaurants that serve more than 100 meals per day. The Tribe shall reduce the solid waste stream of the facility by at least 50%.

- The Tribe shall discourage buses from idling for extended periods.
- Adequate ingress and egress at entrances shall be provided to minimize vehicle idling and traffic congestion.

### **Socioeconomic Conditions**

- The Tribe shall maintain the National Problem Gambling Helpline phone number on its website.
- The Tribe will implement operation policies that will include, but are not limited to, employee training, self-help brochures available on-site, signage near automatic teller machines and cashiers, and self-banning procedures to help those who may be affected by problem gaming. The signage and brochures will include problem gambler hotlines and websites.

### **Transportation and Circulation**

- The Tribe will obtain necessary approvals from the Alaska Department of Transportation for access modifications on Birchwood Spur Road. In accordance with Title 17 of the Alaska Administrative Code Section 10.060 and 10.070, for the permanent facility, this will involve responding to and addressing comments from the Alaska DOT on the TIA provided in Appendix A. Prior to operations associated with the permanent facility, any condition required as an outcome of any necessary Alaska DOT access permit review procedures must be implemented (17 AAC 10.080).
- As part of the Tribe's road inventory for the Indian Reservation Roads Program, the Tribe will coordinate with the Alaska DOT&PF to discuss potential federally-available funding for, and to make fair-share contribution towards, planning, designing, construction, and maintenance activities on Birchwood Loop Road/Birchwood Spur Road, if determined necessary during coordination.
- The Tribe will coordinate with the Alaska DOT&PF to evaluate whether certain high-activity pedestrian locations along Birchwood Loop Road/Birchwood Spur Road from Glenn Highway to the Project Site would benefit from implementation of additional measures regarding pedestrian safety, including but not limited to signage, flashing beacons, and painted crosswalks. If targeted improvement projects are identified through this coordinated effort, the Tribe will make a fair-share contribution towards the cost of said improvements, as determined necessary.

### **Public Services and Utilities**

BMPs to be implemented during construction:

- 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 Tribe shall contact the Utility Notification Center to notify the utility service providers of excavation at the work site. In response, the 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 site shall be cleaned daily of trash and debris to the maximum extent practicable.

BMPs to be implemented during operation:

- The Tribe will conduct background checks of all gaming employees and ensure that all employees meet licensure requirements established by IGRA and the Tribe's Gaming Ordinance.
- Parking areas shall be well lit and monitored by parking staff, and/or security guards at all times during operation.
- Facilities shall have "No Loitering" signs in place, be well lit, and be monitored regularly by roving security guards.
- Security guards patrolling the facilities would carry two-way radios to request and respond to back up or emergency calls.
- Security cameras and tribal security personnel would provide surveillance of Project Site to both lessen and apprehend criminal activity onsite.

### **Hazardous Materials**

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 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.
- All 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 applicable regulations.
- All containers used to store hazardous materials shall be inspected at least once per week for signs of leaking or failure.

A Construction Contingency Plan will be prepared and implemented during development activities that will provide procedures for the management of any impacted soil and groundwater that may

be encountered. If 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 Tribe 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.

## **Noise**

BMPs to be implemented during construction:

- Construction activities shall be limited to daytime hours between 6 am and 10 pm during construction months and 7 am to 10 pm during non-construction months.
- All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and acoustical shields or shrouds in accordance with manufacturers' specifications.
- 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 shall only be operated by trained and qualified personnel.
- Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible.
- Construction equipment and machinery that produce reduced noise levels shall be utilized to the extent feasible.

## **Visual Resources**

- Placement of lights on buildings shall be designed so as not to cast light or glare offsite; exterior lighting shall be arranged so illumination is directed away from adjacent properties and rights of way and shall not interfere with traffic.
- Parking areas shall be illuminated with lighting no higher than 14 feet
- Shielding, such as with a horizontal shroud, shall be used for outdoor lighting to ensure it is downcast.
- Timers shall be utilized to limit lighting to necessary times.
- Exterior glass shall be non-reflective low-glare.

## **MITIGATION MEASURES**

The Final EA identifies the following mitigation measures to reduce potentially significant impacts to a less-than-significant level. The Tribe exercises governmental jurisdiction over the Project and will have the authority to enforce the mitigation measures outlined below. The Tribe has committed to the implementation of these mitigation measures as a matter of tribal law (Final EA Appendix M). In accordance with 40 C.F.R. §1501.6(d), a mitigation monitoring and compliance

plan is provided in **Attachment 1**.

### ***Biological Resources***

#### **Nesting Migratory Birds/Raptors/Eagles:**

- To avoid and/or reduce impacts to nesting migratory birds/other birds of prey, if construction activities commence during the general nesting season (May 1 to July 15), a preconstruction nesting bird 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.
- For bald eagles, the preconstruction nesting bird survey shall extend 700 feet from the limits of ground disturbance.
- 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. For bald eagles, the buffer shall be no less than 660 feet.
- Should work activity cease for 14 days or more during the nesting season, nest surveys shall be repeated to ensure birds have not established nests during inactivity.

### ***Cultural and Paleontological 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, qualified archaeologist, and the Tribe shall be notified and the provisions of 36 C.F.R. 800.13, Post-Review Discoveries, shall be followed. 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 (i.e., not a historic property), no additional cultural resources investigations are necessary, and work may resume in the area of the find.
- If any find is determined to be significant by the BIA/Tribe/qualified archaeologist (or paleontologist, if the find is paleontological), a BIA representative shall meet with the Tribe and archaeologist (or paleontologist) to determine the appropriate course of action, including the development of a treatment plan and implementation of appropriate avoidance measures or other mitigation.

### **Inadvertent Discoveries of Human Remains:**

- Consistent with NAGPRA requirements, 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. Part 10.4(c)).
- The BIA and Tribe shall be immediately notified of the discovery. The parties shall engage the responsible law enforcement agency in accordance with 43 C.F.R. Part 10.5(a)(1).
- If the remains are determined to be Native American in origin, the BIA shall consult with the Tribe and/or other appropriate Tribe(s) as applicable to discuss the recovery and treatment of the remains (43 C.F.R. Part 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. Part 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. Part 10.6.
- The activity that resulted in the inadvertent discovery subject to NAGPRA may resume if otherwise lawful after thirty calendar days of the certification of the receipt of notification by the Tribe (43 C.F.R. 10.4(d)(2)).

### ***Land Use***

#### **Adherence with FAA Requirements:**

- Filing with the Faa will occur within 5 days of construction reaching its greatest height.
- Where possible, marking and lighting would be in accordance with the Department of Transportation, Federal Aviation Administration (FAA) Advisory Circular 70/7460-1 M.

### ***Public Services***

#### **Government-to-Government Agreement with Municipality of Anchorage**

- Prior to operation, the Tribe shall make good faith efforts to coordinate with the Municipality of Anchorage to promote communication and government-to-government relations between the Tribe and the Municipality, and to identify municipal programs and services potentially needed at the Project Site. Specifically, the Tribe will work towards reaching an agreement relating to CVFRD to address the provisions of fire protection and emergency medical services to the Project Site, which would include establishment of compensation and required conditions and standards for emergency access and fire protection.
- Prior to operation, the Tribe shall also consult with the APD to amend the existing Letter of Agreement between the Tribe and the APD as needed to coordinate compensation and enhance communication regarding law enforcement calls to the Project Site.
- If the Tribe does not enter into agreements with CVFRD and APD, the Tribe shall establish equip, and staff a tribal fire department and/or police department that will serve the Project Site.

## **PUBLIC AVAILABILITY AND RESPONSE TO EA COMMENTS**

The EA was released to the public and agencies for a review and comment period beginning on December 22, 2024. A Notice of Availability (NOA) for the EA was made available on the project website (<http://www.EklutnaEA.com>) on December 20, 2024, and published in the Anchorage Daily News on December 22, 2024. The NOA described the Proposed Action and announced the initiation of the public comment period, which was originally set to close on January 6, 2025. In response to public comments received, the comment period for the EA was extended through January 9, 2025 via a notice posted on the project website (<http://www.EklutnaEA.com>) on Friday, January 3, 2025 and published in the Anchorage Daily News on Sunday, January 5, 2025.


The BIA received 113 comment letters during the public comment period for the EA. Copies of all of the comment letters received during the comment period and responses to substantive comments are included in the Final EA Appendix O.

## **DETERMINATION**

Based on consideration of the analysis contained in the Final 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 106(b)(2) of NEPA, as amended, neither an additional environmental review nor an EIS will be required. This determination is supported by the following findings:

1. Agency and public review was conducted. The EA discloses the potential environmental consequences of the Proposed Action. BMPs were incorporated into project design to safeguard land resources, water resources, biological resources, cultural and paleontological resources, and socioeconomic conditions, maintain air quality, preserve visual resources, transportation and circulation, minimize noise, prevent the release of hazardous materials, and reduce the demand on public services and utilities as outlined in Section 2 of the EA.
2. Mitigation measures described in Section 4 of the EA will be implemented to reduce impacts to biological resources, cultural and paleontological resources, land use, and public services.
3. The Proposed Action will not jeopardize threatened or endangered species. The project will result in no effect to federally listed terrestrial wildlife under the Endangered Species Act (ESA), because none have the potential to occur within the Project Site. Informal consultation with the National Marine Fisheries Service was conducted in accordance with Section 7 of the ESA and the Magnuson–Stevens Fishery Conservation and Management Act and determined that the Proposed Action is not likely to adversely affect federally listed fish species with the incorporation of mitigation measures.

4. No known historic or prehistoric resources have been identified within the Project Site and the BIA has made a determination of No Historic Properties Affected. Any inadvertent discovery of archaeological resources shall be subject to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470, the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq., and the Archaeological Resources Protection Act, 16 U.S.C. § 470aa-mm. Procedures for review of discoveries shall be followed pursuant to 36 C.F.R. § 800.13.
5. Impacts to public health and safety are mitigated through implementation of BMPs described in Section 2 of the EA.
6. Impacts to floodplains have been evaluated in accordance with E.O. 11988. The Proposed Action would have no effect on wetlands or floodplains as described in Section 3.3 of the EA.
7. The cumulative effects to the environment are mitigated to avoid or minimize effects of implementation of the Proposed Action as described in Section 3.15 of the EA.
8. The Proposed Action would improve the economic and social conditions of the Allotment Owners and their community and would also promote tribal self-sufficiency and self-determination.

  
\_\_\_\_\_  
Bureau of Indian Affairs  
U.S. Department of the Interior

1-16-2025  
\_\_\_\_\_  
Date

**Attachments:**

Attachment 1: Mitigation Monitoring and Compliance Plan