



NATIONAL INDIAN GAMING COMMISSION
RECORD OF DECISION
FOR THE
GAMING MANAGEMENT AGREEMENT BETWEEN THE
WILTON RANCHERIA AND BGM CO, INC.

**Selection of Preferred Alternative: Approval of Gaming Management Agreement between
the Wilton Rancheria and BGM Co. Inc.**

October 31, 2018

AGENCY:

National Indian Gaming Commission (NIGC).

ACTION:

Record of Decision on Selection of Preferred Alternative.

SUMMARY:

This document serves as a Record of Decision (ROD) of the Chairman of the National Indian Gaming Commission's (NIGC Chair) decision to approve a Gaming Management Agreement (GMA) between the Wilton Rancheria (Tribe) and BGM Co, Inc. (BGM).

In making this decision, the NIGC Chair considered the Bureau of Indian Affairs (BIA), Department of the Interior (Department), December 2015 Draft Environmental Impact Statement (DEIS) for the Wilton Rancheria Fee-to-Trust and Casino Project, the BIA December 2016 Final Environmental Impact Statement (FEIS), and the BIA January 19, 2017 Record of Decision (BIA ROD). As documented in the BIA ROD, the Department determined that it would acquire approximately 36-acres of property located in Elk Grove, California, to trust status for the Tribe's proposed casino resort project (2017 Approved Project). The NIGC Chair's Proposed Action is necessary for a professional management company to manage the gaming facility on behalf of the Tribe as contemplated by the 2017 Approved Project.

The NIGC Chair also directed the preparation of, and has relied upon, a September 2018 Supplemental Information Report (SIR) which evaluated the FEIS and subsequent modifications to the project (2018 Modified Project). After independent review, the NIGC Chair concluded that the Proposed Action was encompassed by, and substantially the same as, actions analyzed and approved as the 2017 Approved Project. The NIGC Chair therefore adopted the FEIS and recirculated it as a final statement. Importantly, however, the scope of the NIGC Chair's Proposed Action is limited to approval of the GMA between the Tribe and BGM. The decision to construct a gaming facility is an independent determination made by the Tribe and is not subject to NIGC review. As such, this ROD does not discuss or decide upon the environmental impacts related to the construction and operational baselines of the proposed gaming facility.

The consequence of the approval of the Proposed Action is that BGM will control operation of the Tribe's gaming facility during the term of the contract. The No Action Alternative assumes that the GMA is not approved, and, therefore, that the Tribe will manage the day-to-day operations of the gaming facility instead of BGM. The GMA is a contract governing the operations of a gaming facility and will not result in any direct or cumulative impacts to the physical environment. Approval of the GMA will provide the Tribe with a dependable, sustainable source of income to allow it to achieve self-sufficiency, self-determination, and a strong tribal government. These effects are consistent with the goals of the Indian Gaming

Regulatory Act, which was enacted to promote tribal economic development.¹ These beneficial economic factors associated with the Proposed Action may properly be considered by the NIGC Chair.²

With the issuance of this ROD, the NIGC announces that the Proposed Action is the Preferred Alternative in accordance with 40 C.F.R. § 1505.2. The NIGC Chair finds that the Preferred Alternative most suitably meets all aspects of the purpose and needs of the Proposed Action by promoting the Tribe's self-governance capabilities and long-term economic development in accordance with Federal policies enunciated in the IGRA, the Indian Reorganization Act (IGRA), and related laws and regulations. The NIGC Chair's decision is based on his review of the entire administrative record including the information, analysis, and public comments contained therein.

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¹ 25 U.S.C. § 2701(4).

² 40 C.F.R. § 1505.2(b).

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1.0 INTRODUCTION

The NIGC Chair's Proposed Action is to approve the GMA between the Tribe and BGM. The Proposed Action would allow BGM to, for a period of time, manage the Tribe's gaming facility. The Proposed Action is necessary for a professional management company to manage the gaming facility on behalf of the Tribe as contemplated by the 2017 Approved Project and 2018 Modified Project.

1.1 Background

The Tribe submitted a fee-to-trust application to the BIA in November 2013 requesting that the Department acquire approximately 282 acres of land (Twin Cities site) near Galt, California and allow the Tribe to develop a casino and hotel resort and ancillary uses on the Twin Cities site.

The BIA published Notice of Intent (NOI) in the Federal Register on December 4, 2013, describing the Tribe's initial 2013 Proposed Action of the Department acquiring the 282-acre Twin Cities site in trust for a casino resort project and inviting comments. The BIA held a NEPA scoping meeting in the City of Galt on December 19, 2013, and issued a scoping report on February 24, 2014. A DEIS was prepared pursuant to NEPA, Council on Environmental Quality (CEQ) regulations, and the Department's and BIA's NEPA implementing regulations, under the direction and supervision of the BIA Pacific Regional Office. The BIA issued the DEIS on December 29, 2015, and it identified several alternative sites for the project, including the Twin Cities site near Galt, California; the Historic Rancheria site located in the community of Wilton, California; and the Elk Grove Mall site located within the City of Elk Grove, California. The DEIS comment period included a public hearing on January 29, 2016.

On June 30, 2016, the Tribe withdrew its November 2013 fee-to-trust application and submitted a revised fee-to-trust application, requesting instead of the Twin Cities site that the Secretary of the Interior acquire the Elk Grove Mall site (a 35.92-acre site within the City of Elk Grove), which had been evaluated as Alternative F in the DEIS. After consideration and incorporation of comments received on the DEIS and evaluating all alternatives analyzed in the DEIS, the BIA issued the FEIS on December 16, 2016, identifying Alternative F as its Preferred Alternative.

The BIA issued the BIA ROD for the "Trust Acquisition of 35.92 +/- acres in the City of Elk Grove, California, for the Wilton Rancheria" in January 2017. The BIA ROD was based in part upon thorough review and consideration of the FEIS. On February 10, 2017, the Department took the land into trust.

The DEIS, FEIS and BIA ROD contemplated the NIGC Chair's Proposed Action in the analysis of the alternatives which included construction and operation of a gaming facility. As stated in Section ES.1 of the FEIS, a professional management company would manage the

casino on behalf of the Tribe pursuant to the terms of a management agreement to be approved by the NIGC. During the scoping process for the DEIS, BIA invited the NIGC to be a NEPA cooperating agency in a letter dated February 25, 2013; however, no response was received by the BIA. In Section 1.8 of the FEIS, the NIGC is included in Table 1-1 as the agency responsible for approval of Tribal gaming ordinances and approval of the gaming management contract. The FEIS prepared by the BIA was intended to provide the environmental analysis and recommended mitigation to allow the NIGC to comply with NEPA without having to prepare a separate environmental document.

Section 2.2.3 of the FEIS also states that the potential management contract between the Tribe and a management company would assist the Tribe in obtaining funding for the development of the 2017 Approved Project, and once the facility became operational, the management company would have the exclusive right to manage day-to-day operations of the casino resort facility for a period of time. The Tribe and the gaming management company would be required to comply with the terms of IGRA and the NIGC's regulatory requirements relating to the operation of the Tribal gaming facility. The Tribal Government would maintain the ultimate authority and responsibility for the development, operation, and management of the casino pursuant to IGRA and NIGC regulations.

In the time since the Department issued the ROD and placed the Elk Grove Mall site in trust, the Tribe planned modifications to the 2017 Approved Project referenced herein as the 2018 Modified Project. The NIGC Chair prepared the SIR to consider the 2018 Modified Project and to update environmental information contained in the FEIS. The SIR provides (1) a detailed analysis of any changes to the environmental impacts from the 2018 Modified Project, (2) a description of any changes to the environmental and regulatory setting since the FEIS was issued, and (3) an evaluation of whether these changes may affect the conclusions regarding environmental impacts within the FEIS and the ROD and the recommended mitigation.

The NIGC conducted an independent review of the FEIS, BIA ROD, and SIR for the purpose of determining whether the NIGC could adopt the FEIS pursuant to CEQ regulations.³ CEQ regulations allow federal agencies to adopt environmental documents prepared by another federal agency when the proposed actions are “substantially the same,” and the adopting agency has concluded that the initial document meets the CEQ’s requirements for an environmental impact statement.⁴ Furthermore, the CEQ regulations state that when the actions are substantially the same, “the agency adopting the agency’s statement is not required to recirculate it except as a final statement.”⁵

³ 40 C.F.R. § 1506.3.

⁴ Id.

⁵ Id.

First, the NIGC's review concluded that the actions encompassed by the 2018 Modified Project were substantially the same as the actions documented as the 2017 Approved Project in the FEIS and BIA ROD. Second, the NIGC assessed whether a supplemental environmental impact statement was required. As supported by the SIR, the NIGC concluded that there were (1) no significant new circumstances or information relevant to environmental concerns or bearing on the Proposed Action and (2) no substantial changes to the Proposed Action relevant to environmental concerns. Thus, a supplemental environmental impact statement was not required. Third, the FEIS meets the standards of the CEQ regulations. The NIGC Chair therefore adopted the FEIS and recirculated it as a final statement. The NIGC published a notice of adoption and recirculation of the FEIS in the Federal Register on September 14, 2018.⁶

1.2 Description of the Proposed Action

If approved, the Proposed Action would allow BGM to manage the day-to-day operation of the Tribe's gaming facility. BGM's responsibilities and duties would include: maintaining compliance with all fire and safety requirements; providing security, surveillance and public safety services; providing general administrative services including accounting, sales and marketing, and procurement of gaming machines; hiring, supervising and discharging employees; and all necessary ancillary responsibilities.

1.3 Purpose and Need for the Proposed Action

The purpose and need for implementing the GMA with BGM is to provide for a level of professional management of the gaming facility that will ultimately improve the long-term economic condition of the Tribe and its members through the development of stable, sustainable sources of employment and revenue. Revenues generated from the gaming facility will promote tribal economic development, self-sufficiency, and strong tribal government, including supporting social, governmental, and educational programs for tribal members, all as Congress intended in enacting IGRA. In addition, the use of an experienced manager would likely assist the Tribe in obtaining funding for the development of the proposed project in terms more favorable to the Tribe, further improving the long-term economic condition of the Tribe.

2.0 ANALYSIS OF ALTERNATIVES

2.1 The No Action Alternative

Under the No Action Alternative, the NIGC Chair would not approve the GMA between the Tribe and the BGM. This Tribe would manage the day-to-day operation of the Tribe's

⁶ 83 Fed. Reg. 46754 (September 14, 2018).

gaming facility and assume all responsibilities and duties that would have been assumed by BGM if the NIGC Chair had approved the GMA.

2.2 Comparison of Alternative and Proposed Action

Approval of the Proposed Action would result in experienced, professional management of the gaming facility's operations. BGM's parent corporation, Boyd Gaming, is a multi-jurisdictional gaming company that has been in operation since 1975. Boyd Gaming currently has wholly-owned gaming entertainment properties in Nevada, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, and Pennsylvania. This extensive experience in the gaming industry enables BGM to maximize the profit potential of the Tribe's proposed gaming facility.

By contrast, the Tribe does not have any gaming management experience. Therefore, it is likely that, at least at the outset of the gaming facility's operations, the Tribe would not be able to manage with maximum efficiency. It is also likely that the Tribe would be unable to obtain funding for the development of the proposed project in terms as favorable to the Tribe as would be possible with the use of an experienced manager. BGM's management of the gaming facility would presumably result in greater net income and substantially greater profits than those realized through management by the Tribe.

3.0 ENVIRONMENTAL IMPACT ANALYSIS

3.1 Environmental Impacts Associated with the No Action Alternative

The NIGC does not have the authority to prevent the Tribe from constructing the gaming facility.⁷ Thus, the NIGC is required to identify a no action alternative based on the predictable action the Tribe would take if the Proposed Action was denied. The predictable action in this instance is the completion and opening of the gaming facility with the Tribe managing the day-to-day operations instead of a professional management company. Therefore, these actions constitute the No Action Alternative for purposes of this environmental review.

Under this No Action Alternative, the Tribe would complete and open the gaming facility. The environmental effects of completion and opening of the gaming facility as described by the 2017 Approved Project were fully analyzed and chosen as the Preferred Alternative in the FEIS and approved in the BIA ROD. The environmental effects of the 2018 Modified Project were fully analyzed in the SIR which concluded that the modifications did not change the results of the analysis in the FEIS. The SIR further concluded that the mitigation measures for the 2017

⁷ See *Jamul Action Comm. v. Chaudhuri*, 651 F. App'x 689 (9th Cir. 2016) ("Construction of the casino was not contingent on NIGC's approval of the management contract....").

Approved Project set forth in the FEIS and BIA ROD remain adequate to mitigate any environmental impacts from the 2018 Modified Project. Finally, the 2018 Modified Project did not include any substantial changes that were relevant to environmental concerns, and there were no significant new circumstances or information relevant to environmental concerns and bearing on the 2018 Modified Project and its impacts.

3.2 No Additional Environmental Impacts Associated with the Proposed Action

As discussed in section 2.2 above, the Proposed Action and No Action Alternative differ only in terms of the entity managing the gaming facility operations and the potential profits to be realized through facility operations. No aspect of the 2018 Modified Project is contingent on the Proposed Action. Approval of the GMA, therefore, does not alter the external look or scope of the gaming facility, and does not change the operational baselines as reviewed and discussed within the FEIS and BIA ROD. The GMA is merely a contract to manage the operations of the gaming facility to maximize the monetary benefit to the Tribe.

Consequently, approval of the GMA would not result in environmental effects greater than those associated with the No Action Alternative. With or without the Proposed Action, each of the factors analyzed as the 2017 Approved Project and 2018 Modified Project will have the same impact on the environment. Implementation of the Proposed Action would therefore not result in any additional environmental impacts as compared with the No Action Alternative.

4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE

As explained in section 3.0 above, implementation of the Proposed Action instead of the No Action Alternative does not result in any additional effects on the physical environment. Because both the Proposed Action and the No Action Alternative result in the same environmental impacts, both are considered environmentally preferable alternatives.⁸

5.0 PREFERRED ALTERNATIVE

As discussed herein, the purpose and need for the Proposed Action is to provide the Tribe with the opportunity to develop and maintain a source of revenue sufficient to allow it to meet its governmental needs and the needs of its tribal members in accordance with Federal policies enunciated in the IGRA, IRA, and related laws and regulations. As discussed in section 2.2, management of the gaming facility by BGM is the best option to maximize the Tribe's profits to allow it to meet its obligations and benefit its Tribal members. Boyd Gaming, BGM's parent corporation, has successfully managed gaming facilities for more than forty years and can immediately apply its experience to maximize operational efficiencies at the gaming facility. In addition, BGM will likely be able to assist the Tribe in obtaining funding for the development of

⁸ See 40 C.F.R. § 1505.2.

the proposed project in terms more favorable to the Tribe. These increased efficiencies will most likely result in greater net profits and revenues to the Tribe than those associated with the No Action Alternative.

For the reasons stated above, the NIGC Chair finds that the Proposed Action is the preferred alternative because the revenue realized by the Tribe through BGM's management of the gaming facility would be substantially greater than the revenue realized through management by the Tribe. Accordingly, approval of the GMA with BGM best meets the purpose and need of the Proposed Action.

6.0 MITIGATION MEASURES

All mitigation measures associated with the 2017 Approved Project were analyzed and incorporated into the FEIS and BIA ROD. Since those measures are not within the authority of the NIGC to control, they are not discussed here. In any event, there are no additional significant impacts imposed through implementation of the 2018 Modified Project and, therefore, no additional mitigation measures are required.

7.0 COMMENTS

In accordance with the requirements of 40 C.F.R. § 1503.4, the BIA considered all comments regarding the scoping process, DEIS, and FEIS and prepared responses. All comments and the responses to those comments are attached to the FEIS in accordance with 40 C.F.R. § 1503.4(b).

The NIGC subsequently adopted and recirculated the FEIS. During the review period, the NIGC received several comments from the public. One comment concerned issues not relevant to this NEPA ROD, including the scope of the Chair's review of agreements collateral to gaming management agreements and approval criteria described by IGRA and NIGC regulations. Other comments primarily related to the effects of the construction of the gaming facility and the baseline operational effects of the gaming facility on traffic and water supply, rather than the effects associated with the Proposed Action being considered by the NIGC Chair.

As explained herein, the construction or the operation of the gaming facility is not part of the Proposed Action. The Proposed Action consists solely of the approval of the GMA between the Tribe and BGM. The NIGC is not responsible for evaluating the environmental effects of the construction or operation of gaming facility and is not responsible for imposing mitigation to alleviate any environmental impacts associated with the construction or operation of the gaming facility. The NIGC is responsible only for addressing the environmental consequences, if any, of approving the GMA between the Tribe and BGM. Nevertheless, the NIGC analyzed the comments and concluded that the comments did not raise any significant new information or

circumstances that would require the preparation of a supplemental environmental impact statement.

8.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE

The NIGC Chair selects the Preferred Alternative as described herein. This decision is made based upon the analyses and information contained in the DEIS, FEIS, BIA ROD, SIR, and the administrative record related to that analysis. Based upon the information and analyses contained in the foregoing documents, the NIGC Chair finds that the Preferred Alternative will not result in any adverse effects on the environment and will maximize the economic benefit to the Tribe over and above the economic benefit that could be realized through the No Action Alternative.

9.0 SIGNATURE

By my signature, I indicate my decision to implement the Preferred Alternative and approve the GMA.

 _____
Jonodev O. Chaudhuri Date
Chairman
National Indian Gaming Commission

October 31, 2018