



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 17 2013

Honorable Mary Fallin
Governor of Oklahoma
Oklahoma City, Oklahoma 73105

Dear Governor Fallin:

On November 7, 2005, the Kaw Nation (Nation) submitted a request to the Bureau of Indian Affairs (BIA) to acquire in trust approximately 21.54 acres of land, known as the Braman Tract (Site) located in Kay County, Oklahoma, pursuant to section 465 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465, for the purpose of establishing a class III gaming facility. The Nation is seeking to conduct gaming at the Site pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*

Section 20 of IGRA, 25 U.S.C. § 2719, generally prohibits gaming on lands acquired in trust after October 17, 1988, subject to several exceptions. One exception known as the "Secretarial Determination" or "two-part determination" permits a tribe to conduct gaming on lands acquired after 1988 where the Secretary of the Interior (Secretary), after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that:

1. A gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members; and
2. The Secretary also determines that gaming on the newly acquired lands would not be detrimental to the surrounding community.

The governor of the state in which gaming would be conducted must concur in the Secretarial Determination in order for the applicant tribe to conduct gaming on the proposed site.

We have completed our review of the Nation's application and have reviewed information provided by State and local officials, officials of nearby Indian tribes, and all applicable documents in the record. We have determined that gaming on the proposed Site would be in the best interest of the Nation and its members and would not be detrimental to the surrounding community.

We have set forth the bases for my decision below, and request your concurrence in this Secretarial Determination, pursuant to 25 U.S.C. § 2719(b)(1)(A).

A subsequent determination on the Nation's request to acquire the Site in trust will be made following your decision on this Secretarial Determination.

I. Background

The Nation is a federally recognized Indian tribe headquartered in Kaw City, Kay County, Oklahoma, in the north-central part of Oklahoma adjacent to the State of Kansas. The Nation has 3,182 enrolled members.¹

The Nation's proposed casino project, the Kaw Project, will consist of a class III gaming facility in a structure of approximately 11,100 square feet with 235 slot machines and 5 table games, and will include offices, secure counting and surveillance space, and a restaurant.² The Site was acquired in fee by the Nation in 1990 and is within the Nation's service area of Kay County, Oklahoma.³ The Site is a commercially zoned property⁴ with a profitable travel plaza that provides refueling to Interstate traffic as well as food and retail services.⁵ It also includes a seven-unit motel that will be removed.⁶

The Site is 21 miles from the Nation's former reservation, and 41.9 driving miles from the Nation's headquarters in Kaw City. The Site is 18.4 driving miles from Newkirk, the Nation's population center and the site of key governmental services.

In 1825, the Kanza Tribe, one of the historical names of the Kaw Nation, ceded over 18 million acres of land in northern Kansas while retaining a reservation of 6,559,040 acres.⁷ Through a series of treaties and congressional actions, the Kanza's land base was sequentially reduced.⁸ The Nation was ultimately removed to Oklahoma in 1872 where it bought 100,372 acres carved out of the existing Osage reservation using proceeds from the sale of its trust land in Kansas.⁹ In 1902, Congress enacted legislation that allotted most of the land that the Kaw Nation had purchased in Oklahoma leaving only 100 acres of its former reservation along the Arkansas

¹ Kaw Nation Environmental Review Record, Kanza Travel Plaza Expansion and Improvement Project (July 2012) & Finding of No Significant Impact, 24 CFR Part 58 (August 7, 2012) (Exhibit 11).

² Kaw Nation Consulting Services, the Innovation Group (June 2011) [hereinafter 2011 Financial Statement] at 3, Binder 2, Book 1, Tab 5E (Attachment 1).

³ Letter from Regional Director, Southern Plains Regional Office, to Assistant Secretary – Indian Affairs, regarding 25 C.F.R Part 292 Compliance concerning the proposed findings of fact as required for the application by the Kaw Nation for acquisition in trust of land, known as the “Braman Tract,” for purposes of operating a gaming facility pursuant to 25 U.S.C. 2719(b)(1)(A), and Title 25 C.F.R 151, dated August 4, 2011 [hereinafter Regional Director's Recommendation] at 9 – 10, Binder 1, OIG Exhibit 1 (Attachment 2).

⁴ *Id.* at 29.

⁵ *Id.* at 7.

⁶ *Id.*

⁷ Treaty Between the United States and the Kansas Nation of Indians, U.S. Kanza Tribe, 7 Stat. 244 (June 3, 1825); Regional Director's Recommendation at 4; Kaw Nation Application for Section 20 Determination: Newly Acquired Lands (November 2005) [hereinafter Kaw Nation Application for Section 20 Determination] at 9, Binder 2, Book 1, Tab 2 (Attachment 3).

⁸ Treaty Between the United States and the Kansas Indians, U.S.-Kanza Tribe, 12 Stat. 1111 (Oct. 5, 1859); Act of May 8, 1872 (17 Stat. 85); Act of June 23, 1874; Act of July 5, 1876 (19 Stat. 74; Act of March 16, 1880 (21 Stat. 68).

⁹ Act of May 8, 1872, 17 Stat. 85; Act of June 5, 1872, 17 Stat. 228.

River.¹⁰ The allotments eventually passed out of trust status.¹¹ The remaining Kaw Reservation, primarily a town site, was flooded in the 1970s by the Corps of Engineers for the creation of the Kaw Dam and Reservoir on the Arkansas River.¹² The Nation's Council House was relocated to a parcel of land less than one acre to avoid inundation.¹³ The Nation has subsequently rebuilt its land base to approximately 1,300 acres of fee and trust land in Kay County.¹⁴

The Nation currently employs approximately 125 employees for administration of its governmental programs which are located in Kaw City and Newkirk, Oklahoma.¹⁵ Newkirk is the Nation's population center and is the location of the Nation's clinic, pharmacy, wellness and multipurpose centers, housing program, youth programs, gaming commission, cemetery and most of its police force as well as the Nation's existing casino, the South Wind Casino.¹⁶ This casino is a 60,000 square foot gaming facility in Newkirk, Oklahoma, that employs 235 people¹⁷ and operates approximately 700 bingo seats and approximately 400 electronic player terminals.¹⁸

II. Review of the Tribe's Application Pursuant to Part 292, Subpart C

The Department of the Interior's regulations at 25 C.F.R. Part 292 implement Section 20 of IGRA and became effective on August 25, 2008.¹⁹ Subpart C of the regulations governs Secretarial Determinations.

25 C.F.R. Part 292, Subpart C – Secretarial Determination

Sections 292.13 to 292.15 identify the conditions under which a tribe may conduct gaming.

Sections 292.16 to 292.18 identify the information that must be included in a tribe's request for a Secretarial Determination.

Section 292.17 pertains to an evaluation of whether the gaming establishment would be in the best interest of the Nation and its members.

Section 292.18 pertains to an evaluation of the detriment to the surrounding community.

¹⁰ Act of July 1, 1902, 32 Stat. 636.

¹¹ Regional Director's Recommendation at 4.

¹² Act of October 23, 1962, 76 Stat. 1173.

¹³ Regional Director's Recommendation at 26.

¹⁴ *Id.*

¹⁵ Regional Director's Recommendation at 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Kaw Nation Application for Section 20 Determination at 15.

¹⁹ 73 Fed. Reg. 29,354 (May 20, 2008); 73 Fed. Reg. 35,579 (June 24, 2008) (correcting the final rule and staying the effective date until August 25, 2008).

A. Application Contents

Section 292.16 states that a tribe's application requesting a Secretarial Determination under § 292.13 must include the following information:

(a) The full name, address, and telephone number of the Tribe submitting the application

Kaw Nation of Oklahoma
Drawer 50
698 Grandview Drive
Kaw City, Oklahoma 74641
(580) 269-2552

(b) A description of the location of the land, including a legal description supported by a survey or other document

The Site is located in the Northeast Quarter and Northwest Quarter of Section 6, Township 28 North, Range 1 West of the Indian Meridian, Kay County, State of Oklahoma more particularly is described as follows:²⁰

Beginning at the Southeast corner of said Northwest Quarter of Section 6; thence West (on an assumed bearing) along the South line of said Northwest Quarter a distance of 430.4 feet to a point on the East right-of-way line of U.S. Interstate 35 (I-35); thence North 8°54' East along the East right-of-way line of I-35 a distance of 284.3 feet to a point; thence North 2°25' West along said East right-of-way line of I-35 a distance of 102 feet; thence North 8°54' East along said East right-of-way line of I-35 a distance of 745 feet; thence Northeasterly along a curve to the right, along the East right-of-way line of I-35, having a radius of 2185.8 feet (said curve subtended by a chord which bears N19°14'E a distance of 835.82 feet) and an arc length of 841 feet to a point on the East line of said Northwest Quarter; thence continuing Northeasterly along a curve to the right, along the East right-of-way line of I-35, having a radius of 2185.8 feet (said curve subtended by a chord which bears N31°32'E a distance of 94.39 feet) and an arc length of 94.4 feet; thence North 33°26' East along said East right-of-way line of I-35 a distance of 212.7 feet; thence North 63°26' East along said East right-of-way line of I-35 a distance of 295.7 feet; thence Southeasterly on a curve to the right, along the South right-of-way line of U.S. Highway I77, having radius of 1809.9 feet (said curve subtended by a chord which bears S63°50'E a distance of 461.65 feet) and an arc length of 462.91 feet; thence S68°06'E along the South right-of-way line of U.S. Highway I77 a distance of 114.49 feet; thence S09°15'W a distance of 381.45 feet; thence N82°37'W a distance of 897.68 feet to a point on the East line of said Northwest Quarter; thence S00°00'E along the East line of said Northwest Quarter a distance of 1790.80 feet to the Point of Beginning. Said tract containing

²⁰ Memorandum from Kaw Nation to Bureau of Indian Land Surveyor, dated February 18, 2011, Binder 2, Book 1, Tab 15B.

21.54 acres more or less. Subject to all Easements and Rights of Way of Record.

(c) Proof of identity of present ownership and title status of the land

The Nation owns the Site in fee as evidenced by the previous title insurance endorsements, the updated endorsement to the title insurance policy from First American Title Insurance Company dated March 22, 2011, and the Corrected Warranty Deed filed with Kay County dated July 15, 2011.²¹

(d) Distance of the land from the tribe's reservation or trust lands, if any, and tribal government headquarters

The Site is 21 miles from the Nation's former Reservation, and 41.9 driving miles from the Nation's headquarters in Kaw City. The Site is 18.4 driving miles from Newkirk, the Nation's population center and the site of key governmental services.

(e) Information required by § 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members

As discussed more fully below under Section 292.17, the Nation has submitted the required information.

(f) Information required by § 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community

As discussed more fully below under Section 292.18, the Nation has submitted the required information.

(g) The authorizing resolution from the tribe submitting the application

On July 11, 2004, the Nation's General Council enacted Resolution No. 04-57, requesting the Secretary to acquire the Site in trust for the benefit of the Nation pursuant to Section 465 of the IRA, and to designate it as eligible for gaming purposes.²² On November 7, 2005, the Nation submitted the fee-to-trust application to the BIA, Southern Plains Regional Office, requesting that the United States acquire the Site in trust for the benefit of the Nation.

The Nation later updated its request, and on July 10, 2011, the Nation's General Council approved Resolution No. 11-102G, requesting the Secretary accept the Site into trust for the benefit of the Nation and to make the determination that gaming on the Site is in the best interest of the Nation and its members, and not detrimental to the surrounding community.²³

²¹ First American Title Insurance Company, dated March 22, 2011, Binder 2, Book 1, Tab 12; Corrected Warranty Deed filed with Kay County, dated July 15, 2011, Binder 2, Book 1, Tab 5B.

²² Resolution No. 04-57, Resolution Requesting that a Parcel of Land in Braman be Taken into Trust (July 11, 2004), Binder 2, Book 1, Tab 11.

²³ Resolution No. 11-102G, Resolution Requesting that a Parcel of Land Near Braman, Oklahoma, be Taken into Trust for the Benefit of the Kaw Nation and that it be Designated as Eligible for Gaming Purposes (July 10, 2011), Binder 2, Book 1, Tab 5D.

(h) The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C. § 2710, if any

The Nation's Gaming Ordinance was approved by the Chairman of the National Indian Gaming Commission on April 13, 2004.²⁴

(i) The tribe's organic documents, if any

The Nation is organized under the authority of the Oklahoma Indian Welfare Act of 1936.²⁵ On July 31, 1990, the Nation adopted a new tribal constitution and bylaws which were approved by the Secretary on August 14, 1990.²⁶

(j) The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated

The Nation has an existing tribal-state gaming compact signed by the former Governor of the State of Oklahoma which was approved on March 1, 2005. On March 11, 2005, the Department published a notice of effect of the Tribal-State Compact.²⁷

(k) If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment

This subsection is not applicable to the Nation because the Nation has a tribal-state compact for its Indian lands.

(l) A copy of the existing or proposed management contract required to be approved by the National Indian Gaming Commission under 25 U.S.C. § 2711 and Part 533 of this title; if any

The Nation has stated that there will not be a management or consultant agreement, and that it will operate the Kaw Project directly.²⁸

²⁴ See Letter from Philip N. Hogen, Chairman, National Indian Gaming Commission, to Brenda Case, Gaming Commission Chairman, Kaw Nation of Oklahoma, dated April 13, 2004, Binder 3, Book 1B, Appendix P. A copy of the Nation's ordinance can be found on the website of the National Indian Gaming Commission at http://www.nigc.gov/Reading_Room/Gaming_Ordinances.aspx#K.

²⁵ 25 U.S.C. § 501.

²⁶ Constitution of the Kaw Nation, Binder 3, Book 1B, Appendix B.

²⁷ See Letter from George Skibine, Acting Deputy Assistant Secretary – Policy and Economic Development, to Guy Munro, Chairman, Kaw Nation of Oklahoma, Binder 3, Book 1B, Appendix Q.

²⁸ Regional Director's Recommendation at 13; Summary of 25 C.F.R. Part 292 Compliance [hereinafter Kaw Nation 2011 Summary of Part 292 Compliance] at 13-14, Binder 2, Book 1, Financial Statements Tab 5A (Attachment 4).

B. Analysis of Best Interest to the Nation and Its Members

Section 292.17 states that an application must contain:

(a) *Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe*

The Regional Director's initial analysis of the Kaw Project was based primarily on a proposal for a larger casino on the Site.²⁹ Since that time, a major casino has begun operating near Wichita, Kansas, which is expected to draw most of its patrons from the greater Wichita area who would have otherwise visited the Kaw Project.³⁰ As a result, the Nation has concluded that the Site will support only a smaller casino.³¹ The now-smaller Kaw Project consists of a class III gaming facility in a structure of approximately 11,100 square feet with 235 slot machines and 5 table games.³² The facility will include offices, secure counting and surveillance space, and a restaurant.³³

In 2011, the Innovative Group prepared a Financial Statement (2011 Financial Statement) for the proposed Kaw Project.³⁴ These *pro forma* financial statements fulfill the regulatory requirement and include:

- Capital Cost and Other Assumptions
- Capital Cost Summary
- Statement Of Fixed Asset Accounting
- Balance Sheet Analysis
- Balance Sheet
- Income Statement
- Cash Flow Statement

The 2011 Financial Statement projects net income after deducting interest, depreciation, exclusivity payments to the State of Oklahoma under the tribal-state compact, amortization, and operating expenses. The net income from the Kaw Project is projected to be:³⁵

Year 1	\$3,175,570	Year 4	\$3,693,335
Year 2	\$3,398,673	Year 5	\$3,840,703
Year 3	\$3,551,672		

²⁹ Regional Director's Recommendation at 13.

³⁰ *Id.*

³¹ *Id.*; Letter from Elizabeth L. Homer, to Dan Deerinwater, Regional Director, Southern Plains Regional Office, regarding Summary of Information Provided to Meet 25 C.F.R. Part 292 Requirements for a Two-part Determination for the Kaw Nation's Section 20 Application for the Braman Property [hereinafter Kaw Nation July 2011 Letter], dated July 20, 2011, at 3, Binder 2, Book 1, Tab 5 (Attachment 5).

³² 2011 Financial Statement at 3.

³³ *Id.*

³⁴ *Id.* The 2011 Financial Statement was based on a Gaming Market Assessment previously prepared by the Innovation Group in 2005 for the Kaw Project. See the Innovation Group (April 2005), Binder 3, Book 1B Appendices Tab G.

³⁵ 2011 Financial Statement at 11.

The capital cost summary estimates that the total cost for the Kaw Project will be \$4,827,019.³⁶ The Debt Amortization Schedule consists of level annual payments of \$637,796 per year for 20 years at 12 percent interest.³⁷ The projected cash flow from the Kaw Project before loan repayment will be approximately \$4 million per year.³⁸

The 2011 Financial Statement assumes that the Kaw Nation Economic Development Authority (KEDA) will transfer \$3 million of the net income to the Nation's General Fund for governmental operations and services to members with the balance retained by the KEDA for reinvestment in economic development.³⁹ The Nation will determine how much will be transferred from the net income, and the Nation may elect to receive more, or it may elect to receive less, than the \$3 million to allow for reinvestment in economic development.⁴⁰

The Nation has made a reasonable determination to construct and operate a smaller casino in light of the current market conditions. The net income projections appear reasonable and demonstrate that a smaller Kaw Project can be profitable. The projected net income, as discussed in more detail below, will provide revenue to the Nation for governmental services and operations, and for reinvestment in further economic development.

(b) Projected tribal employment, job training, and career development

Tribal employment

The Nation projects that the Kaw Project will create approximately 50 new jobs, of which 25 percent could be held by Indians.⁴¹ This estimate of 25 percent Indian employment is consistent with the employment statistics from the Nation's existing South Wind Casino and national data on Indian employment at tribally-owned casinos.⁴² The number of Indians from other tribes likely to be employed will have a locally-significant effect in a community of approximately 240 persons.⁴³

As a result of increased revenue, the Nation expects to hire additional staff related to the Kaw Project.⁴⁴ In addition to the 50 new jobs at the casino, it is likely that the Nation's Gaming Commission will hire at least five new staff to accommodate the increased demand for licensing

³⁶ *Id.* at 4.

³⁷ *Id.* at 8.

³⁸ *Id.* at 12.

³⁹ *Id.* at 11; Regional Director's Recommendation at 14-15.

⁴⁰ Regional Director's Recommendation at 15; Kaw Letter from Guy Munroe, Chairman and CEO, Kaw Nation of Oklahoma to Dan Derrinwater, Regional Director, Southern Plains Regional Office, regarding Kaw Nation Supplemental Comments on the Section 20 Application for the Braman Property, dated April 19, 2010 [hereinafter Kaw Nation April 2010 Supplemental Comments] at 2, Binder 2, Book 1, Tab 6 (Attachment 6).

⁴¹ Regional Director's Recommendation at 16; Letter from Guy Munroe, Chairman and CEO, Kaw Nation of Oklahoma to Dan Derrinwater, Regional Director, Southern Plains Regional Office, regarding Kaw Nation Comments on the Section 20 Application for the Braman Property, dated November 2, 2009 [hereinafter Kaw Nation November 2009 Comment Letter] at 5 ("For the smaller facility, the number of employees might not top 50..."), Binder 2, Book 1, Tab 7B (Attachment 7).

⁴² Regional Director's Recommendation at 16; Kaw Nation November 2009 Comment Letter at 5.

⁴³ Regional Director's Recommendation at 16.

⁴⁴ *Id.*

and surveillance operations.⁴⁵ The Nation's police will likely hire at least one additional officer to provide services to the Kaw Project.⁴⁶ These additional hires would result in approximately 56 newly-created jobs related to the Kaw Project.

A projected increase of 50 jobs at the Kaw Project is reasonable, and consistent with the Nation's experience. Additional tribal members are likely to be hired in new tribal government jobs using the net revenues from the Kaw Project.⁴⁷ Such employment increases are likely to be significant for the Nation and the Town of Braman given the town's population of approximately 240 people. The Nation's history indicates that it will invest its net gaming revenues into programs that support its government, provide tangible benefits to its members, and that support additional economic development.⁴⁸

Job training and career development

The Nation conducts in-house training at its existing casino that relates to employee communication and guest services skills.⁴⁹ The Nation employs outside training professionals to assist the supervisory staff on management issues using industry-based, job-specific training.⁵⁰ The Nation reports that staff is encouraged to enroll in post-secondary educational courses, and the Nation also hopes to increase funding for its scholarship program, which is substantially dependent on the Nation's gaming revenues.⁵¹ Certified security personnel receive annual training.⁵² The Nation reports that similar training will be provided to new employees at the Kaw Project to prepare them for their specific responsibilities including customer service, management and regulatory compliance.⁵³

The Nation budgeted \$100,250 of tribal revenue for the 2010 Fiscal Year for operation of its Education and Learning Center (ELC) in Newkirk.⁵⁴ The ELC provides education and training to adult members of the Nation, but does not receive Federal funding for operations.⁵⁵ The ELC partners with Northern Oklahoma College and other regional schools to provide training and educational courses using videoconferencing.⁵⁶ The programs include GED training, workforce development and general education.⁵⁷ The Nation reports that revenues from the Kaw Project would provide additional resources for the ELC.⁵⁸

⁴⁵ Regional Director's Recommendation, at 16; Kaw Nation April 2010 Supplemental Comments at 4-5 ("The Kaw Gaming Commissioner estimates that he would need from five to eight additional employees to manage licensing and provide surveillance ...").

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Regional Director's Recommendation at 16.

⁴⁹ Kaw Nation November 2009 Comment Letter at 6.

⁵⁰ Regional Director's Recommendation at 17; Kaw Nation November 2009 Comment Letter at 6.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Kaw Nation Application for Section 20 Determination at 45.

⁵⁴ Kaw Nation April 2010 Supplemental Comments at attachment B; 2011 Financial Statement.

⁵⁵ Regional Director's Recommendation at 18; Kaw Nation April 2010 Supplemental Comments at 5 -6.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

The Nation has a history of using gaming revenue for training and educational opportunities for casino staff and other tribal members. It is reasonable to expect that the Nation will use revenue from the Kaw Project to continue its training and job programs which will provide additional benefits to the Nation and its members.

(c) Projected benefits to the tribe and its members from tourism

The Kaw Project would provide a source of entertainment for travelers on I-35 and for patrons drawn from the surrounding area. The principal gain for the Nation and its members would be the profit from the Kaw Project.⁵⁹ However, the Nation intends to display historic artifacts and interpret its history at the Kaw Project to increase cultural awareness and understanding of Kaw history.⁶⁰ There may be local visitation to Braman for the Nation's displays interpreting its history at the Kaw Project.⁶¹

(d) Projected benefits to the Tribe and its members from the proposed uses of the increased tribal income

The Nation is expected to use its increased income from the Kaw Project to promote economic development, improve self-sufficiency, and strengthen the Nation's government.⁶² The Nation states that it has successfully operated the South Wind Casino for over two decades, and can successfully operate a casino at the Braman Site.⁶³ The revenue from the South Wind Casino has allowed the Nation to invest in other economic enterprises operated by KEDA and increase the Nation's income and economic diversity.⁶⁴

The 2011 Financial Statement assumes that the KEDA will transfer \$3 million of the net income to the Nation's General Fund for governmental operations and services to members with the balance retained by the KEDA for reinvestment in economic development.⁶⁵

The projected net income from the Kaw Project will increase by approximately 70 percent the Nation's available funding for self-financed governmental programs and services, as compared to the FY2010 budget.⁶⁶ A 70 percent increase will be significant to the Nation and its members. The income will be available for expansion of program services and governmental functions of the Nation, or for new programs.⁶⁷

⁵⁹ Regional Director's Recommendation at 19; Kaw Nation 2011 Summary of Part 292 Compliance at 4.

⁶⁰ Regional Director's Recommendation at 18.

⁶¹ Kaw Nation 2011 Summary of Part 292 Compliance at 4.

⁶² Regional Director's Recommendation at 19; Kaw Nation November 2009 Comment Letter at 1.

⁶³ Kaw Nation November 2009 Comment Letter at 1.

⁶⁴ Regional Director's Recommendation at 19; Kaw Nation November 2009 Comment Letter at 1.

⁶⁵ Regional Director's Recommendation at 14-15, 22; Nation's 2011 Summary of 25 C.F.R. Part 292 Compliance at 9.

⁶⁶ Regional Director's Recommendation at 22.

⁶⁷ *Id.*

The Nation's FY 2010 Budget Allocations⁶⁸ show that 90 percent of tribally generated funds come from the South Wind Casino.⁶⁹ These funds pay the greater portion of the expenses by a substantial margin for each of the five broad categories of operating program expenditures consisting of tribal management, cultural heritage, health and welfare, tribal citizen services, and other government services.⁷⁰ The Cultural Heritage Program includes programs to preserve the Kaw language, maintain its museum and maintain an historic site at Council Grove, which is its last reservation in Kansas.⁷¹ The Cultural Heritage Program is entirely self-funded, as are a number of the components of the broad program categories, such as water rights protection, maintenance, the dental office, the education and learning center, the safety program, and the costs of the Executive Council and General Council.⁷² The Nation provided examples of programs and services that could be expanded including the Nation's dental facility, the level of scholarship assistance to college students and the Education and Learning Center.⁷³

The data presented by the Nation in its 2010 Budget Allocation table and in its Supplemental Comments Letter present a strong case that the Nation uses its income to strengthen its government, operate its tribal programs, and provide services to its citizens. The Nation reinvests them in economic development, services, and operations. The Nation indicates that it expects the increased revenues from the Kaw Project would similarly be invested in member services, tribal programs, its government, and further economic development. The projected net increases of \$3.175 million to \$3.8 million in net income over the first 5 years of operation of the casino would allow the Nation to expand programs and create new ones.

(e) Projected benefits to the relationship between the tribe and non-Indian communities

The projected benefits to the relationship between the Nation and the local community appear to be substantial.⁷⁴ For the town of Braman, the Kaw Project will draw additional people in the area providing increased economic benefits to the town.⁷⁵ Approximately 75 percent of the new employees are estimated to be non-Indian, which would be a benefit to the overall employment rate in the area and county.⁷⁶ The annual fee paid to the State from gross gaming revenues for the Kaw Project under the tribal-state compact is in the range of \$539,000-\$557,000.⁷⁷ Most of

⁶⁸ Kaw Nation FY 2010 Budget Allocations, Attachment B in Kaw Nation April 2010 Supplemental Comments [hereinafter Kaw Nation FY 2010 Budget Allocations], Binder 2, Book 1A, Tab 6B (Attachment 8).

⁶⁹ Another 8 percent are from rebated state fuel taxes and the Tribal tax on tobacco products sold by KEDA, and the 2 percent remainder is from miscellaneous small sources. *Id.*

⁷⁰ Regional Director's Recommendation at 21.

⁷¹ *Id.*

⁷² Kaw Nation FY 2010 Budget Allocations. The Nation's budget tables show that the only general category where federal funds outstrip tribal funds substantially is for special grant programs. The Nation actively pursues federal grants that are usually of one to three year duration. The allocation table shows that the grant funds come from such agencies as the Department of Health and Human Services, the Department of Justice, the Environmental Protection Agency, and the Department of Housing and Urban Development. The Nation reports that many of these grants require matching funds from the Nation's own revenues, the primary source of which is revenue from its South Wind Casino.

⁷³ Regional Director's Recommendation at 22; Kaw Nation November 2009 Comment Letter at 8.

⁷⁴ Regional Director's Recommendation at 23.

⁷⁵ *Id.*

⁷⁶ Regional Director's Recommendation at 23.

⁷⁷ *Id.*; Kaw Nation April 2010 Supplemental Comments at 4.

these payments, as required by the tribal-state compact, would go into a State education fund and be allocated to public schools throughout Oklahoma, a portion of which would be allocated to schools in Kay County; the balance would go into the State fund to assist problem gambling.⁷⁸

State and local support

Significantly, there is no opposition to the proposed facility from the State or the surrounding community. Former Governor Henry submitted a letter of support for the Nation's application on December 23, 2010, requesting that the Secretary complete the trust acquisition of the Site.⁷⁹

An additional letter of support dated November 2, 2009, was sent by Kay County Commissioners Dee Schieber, Steve Austin and Laile Wilson.⁸⁰ The County Commissioners stated that, "it is the opinion of the Board of County Commissioners that the Kaw Project would greatly benefit not only the town of Braman but also Kay County as it would bring much needed employment opportunities to our County. The Nation has been a great partner with Kay County and we look forward to working with them in the future on additional projects."⁸¹

Mayor Jerry Johnston of the Town of Braman submitted a letter of support for the Kaw Project on October 27, 2009, in which he stated that the Town of Braman has a population of 235, but that it is declining.⁸² He believed the effects on the local community would be positive,⁸³ and that the Kaw Project will be the economic catalyst to reverse the current downward trend in population, local economy and may save their school.⁸⁴

Mayor Johnston's letter provided detailed responses to Part 292, indicating that he sees the project as having the potential to create indirect enterprises, revitalize the aging housing

⁷⁸ *Id.*

⁷⁹ Letter from Brad Henry, Governor, to Secretary Ken Salazar and Assistant Secretary – Indian Affairs Larry Echo Hawk, United States Department of the Interior, December 23, 2010 [hereinafter Governor Henry letter], Binder 2, Book 1, Tab 25 (Attachment 9).

⁸⁰ Letter from Commissioners Dee Schieber, Steve Austin and Laile Wilson, Board of County Commissioners, Kay County, Oklahoma, dated November 2, 2009 [hereinafter Commissioner letter], Binder 2, Book 1, Tab 25 (Attachment 9). In a letter dated February 29, 2008, Commissioner Schieber stated that, "we hereby fully support the transfer of Kaw fee land at Braman into federal trust status and construction of any kind of gaming facility that can provide [a] job opportunity to our district." Letter from Kay County Commissioners, Binder 2, Book 1A, Tab 25. Commissioner Schieber also stated that, "we ... confirm that no historical properties, [the] environment or human health and safety will be adversely affected by the construction of any kind of gaming activities on Kaw land at the Site." *Id.*

⁸¹ Commissioner letter.

⁸² Letter from Mayor Jerry Johnston to Bruce W. Maytubby, Acting Regional Director, Southern Plains Regional Director [hereinafter Mayor Johnston letter] at 1, dated October 27, 2009, Binder 2, Book 1A, Tab 25 (Attachment 9). Mayor Johnston sent a similar letter of support, dated April 19, 2006, in which he stated that the "Town has developed a great ongoing relationship with the Nation." Final EA, Appendix C, Letter of April 19, 2006. He also stated, "We fully support the construction of the Casino Resort Complex at Braman and this project will not have any significant impact on the health and safety of the Braman residents and its surroundings. We are looking forward to the Casino as it could provide job opportunities to residents of the Town of Braman." *Id.* He further states that "any project they succeed in helps our community, and our schools." *Id.*

⁸³ Mayor Johnston letter at 3.

⁸⁴ *Id.* at 1.

structures of the community, improve the age demographics needed to attract common services to the town, and create a more diverse community.⁸⁵ He indicated that there is sufficient housing stock already available to handle growth without major renovations and that the infrastructure is sufficient to handle growth without major renovations.⁸⁶ He agreed with the Finding of No Significant Impact (FONSI) environmental review, and believed the Kaw Project will have positive impacts on the infrastructure, services, housing, community character and land use, as well as economic development, income, employment and social programs.⁸⁷

A letter of support dated November 17, 2009, was received from the CEO of the Kay Electric Cooperative. The letter reiterates Mayor Johnston's concerns, and states that the Kay Electrical Board of Directors, enthusiastically supports the Nation's efforts for the Kaw Project.⁸⁸

The Kaw Project will benefit the local economy through the addition of jobs, economic and educational benefits. The letters of support are an indication of the positive relationship between the Nation and local and State officials.

(f) Possible adverse impacts on the tribe and its members and plans for addressing those impacts

No negative consequences from the Kaw Project have been identified that would adversely affect the Nation or its members.⁸⁹

(g) Distance of the land from the location where the tribe maintains core governmental functions

The Site is 21 miles from the Nation's former reservation, and 41.9 driving miles from the Nation's headquarters in Kaw City. The Site is 18.4 driving miles from Newkirk, the Nation's population center and the site of key governmental services.

(h) Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States

The Nation owns the Site in fee as evidenced by the previous title insurance endorsements, the updated endorsement to the title insurance policy from First American Title Insurance Company dated March 22, 2011, and the Corrected Warranty Deed filed with Kay County dated July 15, 2011.⁹⁰

⁸⁵ *Id.* at 2.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Letter to Southern Plains Regional Office, from Joe Harris, CEO, Kay Electric Cooperative [hereinafter Kay Electric Cooperative letter], dated November 17, 2009, Binder 2, Book 1A, Tab 25(Attachment 9).

⁸⁹ Regional Director's Recommendation at 26.

⁹⁰ First American Title Insurance Company, dated March 22, 2011, Binder 2, Book 1, Tab 12; Corrected Warranty Deed filed with Kay County, dated July 15, 2011, Binder 2, Book 1, Tab 5B.

(i) Evidence of significant historical connections, if any, to the land

This Section of the Part 292 regulations does not require a significant historical connection to make a best interest determination. While the Tribe asserts a significant historical connection, we need not reach the issue to find that the acquisition is in the best interest of the Tribe. The Tribe's longstanding presence in Kay County, however, is noteworthy. In 1825, the Kanza Tribe, one of the historical names of the Kaw Nation, ceded over 18 million acres of land in northern Kansas while retaining a reservation of 6,559,040 acres.⁹¹ Through treaties and congressional actions, the Kanza's land base was sequentially reduced.⁹² The Nation was ultimately removed to Oklahoma in 1872 where it bought 100,372 acres carved out of the existing Osage reservation using proceeds from the sale of its trust land in Kansas.⁹³

In 1902, Congress enacted legislation that allotted most of the land that the Kaw Nation had purchased in Oklahoma leaving only 100 acres of its former reservation along the Arkansas River.⁹⁴ The Kaw reservation was allotted into 160 acre parcels to be conveyed to individual tribal members.⁹⁵ The allotments eventually passed out of trust status.⁹⁶ Out of the total acreage prior to allotment, 160 acres were deeded to the United States for an Indian school, 20 acres were reserved for a tribal cemetery, and 80 acres were reserved for a town site to be known as Washunga.⁹⁷

The remaining Kaw reservation, primarily a town site, was flooded in the 1970s by the Corps of Engineers for the creation of the Kaw Dam and Reservoir on the Arkansas River.⁹⁸ The Nation's Council House was relocated to a parcel of land less than one acre to avoid inundation.⁹⁹ Since 1983, the Nation has rebuilt its land base in Kay County to approximately 1,300 acres of fee and trust land in Kay County.¹⁰⁰ The Nation purchased the Braman property in fee in 1990.¹⁰¹

After its removal in 1872, the Nation has made its home in Kay County. The Nation has strong ties to the region as evidenced by its town sites, schools, homes and cemetery. While the Site is not within the boundaries of the Nation's last reservation, it is only 21 miles away. This distance, and the close distance from the Nation's other key governmental sites and population center, demonstrate the Tribe's longstanding history in Kay County.

⁹¹ Treaty Between the United States and the Kansas Nation of Indians, U.S. Kanza Tribe, 7 Stat. 244 (June 3, 1825); Regional Director's Recommendation at 4; Kaw Nation Application for Section 20 Determination at 9.

⁹² Treaty Between the United States and the Kansas Indians, U.S.-Kanza Tribe, 12 Stat. 1111 (Oct. 5, 1859); Act of May 8, 1872 (17 Stat. 85); Act of June 23, 1874; Act of July 5, 1876 (19 Stat. 74; Act of March 16, 1880 (21 Stat. 68).

⁹³ Act of May 8, 1872, 17 Stat. 85; Act of June 5, 1872, 17 Stat. 228.

⁹⁴ Act of July 1, 1902, 32 Stat. 636.

⁹⁵ Kaw Nation Application for Section 20 Determination at 10-12.

⁹⁶ Regional Director's Recommendation at 4.

⁹⁷ Kaw Nation Application for Section 20 Determination at 10-12.

⁹⁸ Act of October 23, 1962, 76 Stat. 1173.

⁹⁹ Regional Director's Recommendation at 26.

¹⁰⁰ Act of July 1, 1902, 32 Stat. 636; Kaw Nation Application for Section 20 Determination at 10-12.

¹⁰¹ Regional Director's Recommendation at 9.

(j) Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any:

(1) Consulting agreements relating to the proposed gaming establishment

The Nation has stated that there will not be a management or consultant agreement, and that it will operate the gaming facility directly.¹⁰²

(2) Financial and loan agreements relating to the proposed gaming establishment, and

The capital cost summary estimates that the total cost for the Kaw Project will be \$4,827,019.¹⁰³ The Debt Amortization Schedule consists of level annual payments of \$637,796 per year for 20 years at 12 percent interest.¹⁰⁴

(3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.

The Nation purchased the Site in 1990 and holds it in fee. There is no debt associated with the Site or the facilities on it.¹⁰⁵ The Nation has operated its South Wind Casino by itself rather than relying on a management contractor, and reports that no consulting, financial or other agreements are in place for the Kaw Project.¹⁰⁶

Summary

The proposed Kaw Project is in the best interest of the Nation and its members. The 2011 Financial Statement projects that the Site will support a small gaming facility for the Nation, and projects that such a facility would be profitable. The projected net income from the Kaw Project, after taking into account all costs including exclusivity payments to the State, interest, depreciation and amortization, would be in the range of \$3.175 million in the first year of operation, to \$3.8 million by the fifth year. The projected net income over the first 5 years of operation of the casino would allow the Nation to expand its existing tribal programs.

The 2011 Financial Statement assumes that the KEDA will transfer \$3 million of the net income to the Nation's General Fund for governmental operations and services to members with the balance retained by the KEDA for reinvestment in economic development. The projected net income from the Kaw Project will increase by approximately 70 percent the Nation's available funding for self-financed governmental programs and services, as compared to the FY 2010 budget. A 70 percent increase will be significant to the Nation and its members. Because the

¹⁰² Regional Director's Recommendation at 13; Kaw Nation 2011 Summary of Part 292 Compliance at 13-14.

¹⁰³ 2011 Financial Statement at 4.

¹⁰⁴ *Id.* at 8.

¹⁰⁵ Regional Director's Recommendation at 28.

¹⁰⁶ *Id.*

Nation does not use gaming revenue for per capita payments, the income will be available for expansion of program services and governmental functions of the Nation, or for new programs.

The Nation's own funds pay the greater portion of the expenses by a substantial margin for each of the five broad categories of operating program expenditures consisting of tribal management, cultural heritage, health and welfare, tribal citizen services, and other government services. Several programs are entirely funded by the Nation. It is reasonable to conclude that the Nation will use net revenue from the Kaw Project for employment and training of casino employees, and for expanded employment opportunities and increased governmental services for its members. The data presented by the Nation present a strong case that the Nation will use the income from the Kaw Project to strengthen its government, operate its tribal programs, and provide services to its citizens.

Expanded employment and economic development opportunities would benefit the Nation as well as the surrounding community which has a declining population and is seeking economic enterprises to help stabilize the local economy. It is clear that the Nation maintains a good working relationship with local government leaders, and that it has taken steps to provide benefits to the local community. For these reasons, we have determined that the Kaw Project would be in the best interest of the Nation and its members.

C. Analysis of Detriment to the Surrounding Community

Section 292.18 states that to satisfy the requirements of § 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:

(a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA).

The two proposed actions for purposes of NEPA include: 1) the trust acquisition of land for the purpose of class III gaming, and 2) issuing a Secretarial Determination. The Final EA was completed in October 2008.¹⁰⁷ On December 9, 2009, the Assistant Secretary – Indian Affairs signed a Finding of No Significant Impact (FONSI)¹⁰⁸ for the proposed trust acquisition of the Site and for issuance of this Secretarial Determination.

¹⁰⁷ Final Environmental Assessment, Kaw Nation Fee-to-trust and Section 20 Determination for 21.25 Acres Near Braman, Oklahoma [hereinafter Final EA], Binder 5, Book A (Attachment 10).

¹⁰⁸ Finding of No Significant Impact for the Proposed Trust Acquisition of Approximately 21.25 Acres of Fee Land Owned by the Kaw nation in the Vicinity of Braman, Oklahoma, and Determination that the Land is Eligible for Gaming under the Indian Gaming Regulatory Act [hereinafter FONSI], Binder 1, OIG Exhibit 2 (Exhibit 11).

Environmental considerations

The Final EA analyzed the development of a class III gaming facility on the Site with continued operation of the Kanza Travel Plaza, as well as two other alternative development proposals.¹⁰⁹ The Assistant Secretary determined that the preferred alternative, the acquisition of the Site in trust, the issuance of a Secretarial determination, and the development of the Kaw Project, did not constitute major Federal actions that would significantly affect the quality of the human environment within the meaning of NEPA.¹¹⁰ This conclusion was based on the analysis contained in the Final EA, public comments made on the EA, and the administrative record.¹¹¹

After a complete review and analysis in the Final EA, the FONSI identified no significant impacts to land, water, air, or biological resources from the Kaw Project:

Land Resources. This section examined topographic, geologic, seismic, mineral resource and soil effects of the Kaw Project. The principal effect would be grading for the site, including the parking area, during the construction period.¹¹²

Water Resources. Water is supplied to the property by Blackwell Rural Water Supply that uses only about 25 percent of the water available to it, and with the limited amount of additional water required by the Kaw Project (.2 percent of current supplies and .05 percent of capacity), there would be no stress to the water delivery potential. The water meets all water quality standards. The addition of a 300,000 gallon water tower will improve a pressurization problem in the delivery system for the rural lands north and east of the Site.¹¹³

Wastewater is entirely contained in the existing, on-site, lined treatment lagoons, which have substantial excess capacity. The lining prevents groundwater interchange. If capacity is exceeded, the town of Braman has confirmed that it has excess capacity in its treatment system and is willing to use this excess capacity for the gaming facility.¹¹⁴

There would be a small addition to surface run-off from the project that would be addressed by a Storm Water Pollution Prevention Plan designed to minimize water quality impacts and to assure that drainage from the Braman property did not violate any Clean Water Act standards.¹¹⁵

Air Quality. Kay County is an attainment area for air emissions, and the air emissions impacts of the project would be well under the de minimus levels contained in the Oklahoma and national standards. The Kaw Project would increase traffic and vehicle emissions, but the impact would not be significant. Cumulative air quality effects were also assessed and determined to fall well below the de minimus state and national standards.¹¹⁶

¹⁰⁹ *Id.* at 6-7.

¹¹⁰ *Id.* at 15.

¹¹¹ *Id.*

¹¹² *Id.* at 7-8.

¹¹³ *Id.* at 8.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 9.

¹¹⁶ *Id.*

Noise. Noise was considered to fall within acceptable limits for residential areas.¹¹⁷

Biological Resources. Effects of the Kaw Project on vegetation, prime farmlands, wetlands resources and wildlife were assessed, but no significant impacts are expected. The property is a developed commercial parcel considered unsuitable for threatened or endangered species. The U.S. Fish and Wildlife Service concurred with a “no effect finding” for the project. The Natural Resource Conservation Service District Conservationist reviewed the property for effects on prime farmland soils, unique areas, and wetlands and found none.¹¹⁸

Aesthetic, Recreational, and Cultural Values. The aesthetic value of the property would be expected to be enhanced with a landscaped gaming facility. A record search and field survey, including use of ground penetrating radar, indicated that no prehistoric or historic site would be affected by construction on the site. The report from the field survey concluded that the area had been so extensively disturbed by past construction that further cultural resource assessment is not warranted. The Oklahoma State Archaeologist concurred in this conclusion. There are no recreational resources on the site, and a gaming facility would provide indoor recreational opportunities.¹¹⁹

Employment, Economics, Welfare, and Environmental Justice. The Final EA analyzed the socio-economic effects were and concluded that the added employment from construction and operation of a gaming facility would provide a significant benefit to employment and income in an area that has been losing population and jobs. Housing availability and social services should not be greatly impacted because a gaming facility would draw its employees primarily from the local labor pool. Law enforcement, fire protection, and emergency services were not expected to be adversely affected. The Kaw Nation police department would patrol the site on a 24-hour, 7-day a week basis and additional officers would be added if needed. Fire protection and emergency services are already provided to the Site through an agreement with the Town of Braman. It is anticipated that environmental justice would be served by the project through the employment of members of Indian tribes.¹²⁰

Transportation and Parking. A transportation study was done for the Kaw Project that concluded there would be an incremental capture rate of approximately 127 vehicles a day from normal traffic on Interstate-35. Local traffic would add about 1,300 vehicles per day if no casino is constructed in the Wichita, Kansas, area, and about 400 if there is a casino constructed in the Wichita area. Approximately 15,000 vehicles per day on average pass the existing interchange each direction. Even with no competition from a Kansas facility, the traffic impact study indicated that the level of service at the interchange and entering and exiting the property would be only modestly affected with typical delays during peak traffic of only 10-15 seconds, which is considered to be good. The study concluded that all intersections would be expected to easily

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 10.

¹¹⁹ *Id.* at 10.

¹²⁰ *Id.* at 11.

handle the additional traffic expected to be generated by a new casino at very high levels-of-service with no additional off-site improvements necessary.¹²¹

Solid Waste. The increased amount of trash generated by the Kaw Project was estimated and evaluated, and no significant effects on the landfill are anticipated from.¹²²

Cumulative Effects, Indirect Effects, and Growth Inducement. Cumulative effects, indirect effects and growth inducement stemming from the Kaw Project were evaluated. There are only minor known projects underway or planned in the area, so cumulative effects in addition to those previously addressed were considered to be zero to insignificant across all of the resources and subjects addressed above. The principle cumulative effects would be to water resources and air quality. For water quality, the construction of the water tower by the Nation is expected to reduce the low rate of service disruptions in the area and to improve water pressure and provide water for refilling fire trucks in the in the event of range and other fires in the surrounding area.¹²³

A modest, cumulative effect to air quality in the area will be realized because of the continuing decrease in EPA's allowance standards for volatile organic carbon emissions. Because the emissions from the Kaw Project are de minimus and Kay County is in attainment for criteria pollutants, the overall effect is expected to be positive, but not significant.¹²⁴

Indirect and induced effects from the Kaw Project are possible, but conjectural. The principle effects identified under a larger-casino scenario are the secondary effect of employing 200-250 people at the Braman site and the resulting economic effect of their purchasing power in Kay County, particularly in the nearby towns of Braman, Blackwell, and Newkirk as well as in rural areas, and the purchasing of services and goods by the facilities operating under the Proposed Project. These effects are not expected to be large at a regional scale, but could be locally significant and help stabilize the population and economy in the surrounding area.¹²⁵

Kanza Travel Plaza Extension and Improvement Project

The Kaw Nation administers several projects funded by Federal, state and private institutions including HUD.¹²⁶ The Nation has proposed an expansion of its travel plaza from 5,500 square feet to 7,600 square feet to accommodate diesel trucks.¹²⁷ The Nation prepared an environmental assessment to satisfy HUD grant requirements, which concluded that the expansion will have no significant impacts on the human environment.¹²⁸

¹²¹ *Id.* at 11-12.

¹²² *Id.* at 12.

¹²³ *Id.* at 12-13.

¹²⁴ *Id.* at 13.

¹²⁵ *Id.*

¹²⁶ Kaw Nation Environmental Review Record, Kanza Travel Plaza Expansion and Improvement Project (July 2012) at 3 (Attachment 12).

¹²⁷ *Id.*

¹²⁸ Finding of No Significant Impact, 24 CFR Part 58 (August 7, 2012) (Attachment 12).

Based on the environmental analysis in the Final EA and the FONSI, there will be no significant impacts to the quality of the human environment from the Kaw Project.

(b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community

Impacts on the social structure of the community

Both Kay County and the Town of Braman have a declining population and declining employment opportunities.¹²⁹ The letters from both the Mayor of Braman and the Chief Executive Officer of Kay Electric Cooperative indicate their concern that the population decline could lead to the loss of the high school in Braman.¹³⁰ The Mayor further indicates that Braman lacks the necessary age demographics for growth.¹³¹ The Kaw Project would directly employ approximately 56 persons.¹³² The Nation indicates it is likely that a number of employees of the South Wind Casino would transfer to the Kaw Project to provide a core of experienced staff, resulting in available positions at the South Wind Casino.¹³³ While the Kaw Project employees are expected to be drawn from the Kay County area, it is reasonable to expect some growth in Braman over time and some possible reduction in the rate of decline of population and jobs in Kay County.¹³⁴ Mayor Johnston indicated that the community has capacity for growth without major renovations, and that infrastructure exists for constructing additional homes.¹³⁵

Impacts on the infrastructure

The FONSI considered impacts on water availability, wastewater treatment, and highway infrastructure at and near the Site.¹³⁶ Water is supplied to the property by Blackwell Rural Water Supply that uses only about 25 percent of the water available to it, and with the limited amount of additional water required by the Kaw Project (.2 percent of current supplies and .05 percent of capacity), there would be no stress to the water delivery potential. The addition of a 300,000 gallon water tower will improve a pressurization problem in the delivery system for the rural lands north and east of the Site.¹³⁷

Wastewater is entirely contained in the existing, on-site, lined treatment lagoons, which have substantial excess capacity. The lining prevents groundwater interchange. If capacity is exceeded, the town of Braman has confirmed that it has excess capacity in its treatment system and is willing to use this excess capacity for the gaming facility.¹³⁸

A transportation study was done for the Kaw Project that concluded that the level of service at

¹²⁹ Final EA at 43-44. Mayor Johnston letter at 1.

¹³⁰ See Mayor Johnston's letter, Kay Electric Cooperative letter.

¹³¹ See Mayor Johnston's letter.

¹³² Regional Director's Recommendation at 16.

¹³³ Kaw Nation November 2009 Comment Letter at 12.

¹³⁴ FONSI at 11.

¹³⁵ See Mayor Johnston letter.

¹³⁶ FONSI at 8-9, 11-12.

¹³⁷ *Id.* at 8.

¹³⁸ *Id.*

the interchange and entering and exiting the property would only be modestly affected with typical delays during peak traffic of only 10-15 seconds, which is considered to be good. The study concluded that all intersections would be expected to easily handle the additional traffic expected to be generated by a new casino at very high levels-of-service with no additional off-site improvements necessary.¹³⁹ The reconstruction of US 177 from the Town of Blackwell to the I-35 interchange is being undertaken for safety and modernization purposes, rather than for handling more traffic.¹⁴⁰

The impacts on the local infrastructure appear to be minimal at the Site and the area immediately surrounding it as well as to the Town of Braman. Plans for water storage, wastewater treatment and solid waste are adequate, and the water tank will provide benefits to the local water supply infrastructure as well as to facilities at the Site. Accordingly, the Kaw Project would not have detrimental impacts on infrastructure.

Impact on the land use patterns in the surrounding community

The Nation has owned this Site and operated a travel plaza since 1990.¹⁴¹ The Site is zoned for commercial development, and is located in a rural area surrounded by open farmland and two highways.¹⁴² Mayor Johnston's letter of October 27, 2009, indicated that the community has capacity for growth without major renovations or additions, and that infrastructure exists for constructing additional homes if necessary.¹⁴³ There appear to be no detrimental impacts to land use patterns.

(c) Anticipated impacts on the economic development, income, and employment of the surrounding community

Economic Development and Income

Indirect and induced effects from the Kaw Project are possible but conjectural. The principle effects would come from employing additional people at the Kaw Project and the resulting economic effect of their purchasing power in Kay County, particularly in the nearby towns of Braman, Blackwell, and Newkirk as well as in rural areas, and the purchasing of services and goods by the facilities operating under the Proposed Project.¹⁴⁴ Additional services will be provided by private businesses, such as those providing plumbing, heating, air conditioning, electrical, laundry, and food supply services.¹⁴⁵ The volume of such services is likely to sustain local employment that otherwise might be lost due to the declining population.¹⁴⁶ These effects are not expected to be large at a regional scale, but could be locally significant and help stabilize

¹³⁹ *Id.* at 11-12.

¹⁴⁰ *Id.* at 13.

¹⁴¹ Regional Director's Recommendation at 9.

¹⁴² Regional Director's Recommendation at 29.

¹⁴³ See Mayor Johnston's letter.

¹⁴⁴ FONSI at 13.

¹⁴⁵ Regional Director's Recommendation at 36.

¹⁴⁶ *Id.*

the population and economy in the surrounding area.¹⁴⁷

Employment

The existence of about 56 additional direct jobs at the Kaw Project will benefit the local income through increased employment opportunities.¹⁴⁸

(d) Anticipated costs of impacts to surrounding community and identification of sources of revenue to mitigate them

A fire protection agreement with the Town of Braman is already in place, which provides the right of the Town of Braman to bill insurance companies for the costs of fighting fires.¹⁴⁹ The travel plaza already handles flammable substances and has agreements for emergency fire support from multiple providers.¹⁵⁰ The Nation has also indicated that it is willing to fund improvements in the local firefighting capacity if needed.¹⁵¹ One area of potential additional cost is that the water and sewer system within Braman are reported to be antiquated.¹⁵² The Nation has indicated, however, that it is prepared to fund the upgrading of those systems if it constructs Kaw Project.¹⁵³

The KEDA currently pays \$13,917 in real estate taxes to Kay County for the Site, a rate that reflects commercial development in a rural area.¹⁵⁴ The estimated payments to the State of Oklahoma into the State's education fund from a gaming operation at the Site will be \$540,000 and \$560,000 for the first and fifth years, respectively.¹⁵⁵

There are no projected significant adverse impacts on local services from construction of the Kaw Project. The Nation's offer to pay for upgrades to the Town of Braman's water and sewer lines and its firefighting capabilities is not a mandatory requirement, but is a mitigation measure would enhance relations with the Town of Braman. The amount of county property tax is negligible and, on a state-wide basis, would be more than offset by the payments to the State education fund.

(e) Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment

Kay County is the home of several casinos, including the Nation's South Wind Casino in Newkirk, and there are additional casinos in nearby counties.¹⁵⁶ The Nation indicates that it already "acts to mitigate potential compulsive gaming ... with a staff trained to recognize

¹⁴⁷ *Id.*

¹⁴⁸ Regional Director's Recommendation at 23.

¹⁴⁹ FONSI at 11.

¹⁵⁰ *Id.*

¹⁵¹ Final EA at 81.

¹⁵² Regional Director's Recommendation at 37.

¹⁵³ Kaw Nation November 2009 Comment Letter at 5.

¹⁵⁴ Regional Director's Recommendation at 37.

¹⁵⁵ *Id.*

¹⁵⁶ Regional Director's Recommendation at 38.

problem gaming” and that it has a voluntary bar on persons who register to be barred from gaming, and that it would put such policies in place at the Kaw Project.¹⁵⁷ The State of Oklahoma operates a treatment program for compulsive gamblers funded by a portion of the fees paid by all tribes operating class III gaming in the State under the state-tribal compacts.¹⁵⁸ Fees from the Kaw Project would contribute to Oklahoma’s compulsive gamblers treatment program.¹⁵⁹

(f) If a nearby Indian tribe has a significant historical connection to the land, then the impact on that tribe’s traditional cultural connection to the land

The Nation has notified nearby Indian tribes of its trust application for the Site through letters, newspaper announcements, and personal contacts to notify, but has received no indication that any tribe has a historical connection to the land.¹⁶⁰ In November 2009, the Nation held meetings with the five local tribes to brief them on the proposal, and all were reported to be supportive.¹⁶¹ In response to the Nation’s earlier outreach efforts, the Tonkawa Tribe of Oklahoma, the tribe nearest to the Site, was the only tribe to provide a written response, and indicated that it did not have any historical or cultural connection to the land in question.¹⁶²

(g) Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and inter-governmental agreements with affected local governments

The Nation has intergovernmental agreements with the surrounding community that are necessary to facilitate the operation of the Kanza Travel Plaza on the Site, including a firefighting service agreement and a commitment on wastewater service availability, and these agreements are unlikely to be altered by the development of the Kaw Project.¹⁶³

Summary

The proposed Kaw Project will not be detrimental to the surrounding community, including nearby Indian tribes. The record indicates that there should be no detrimental effects if the Nation constructs a gaming facility on the Site within the range of sizes that the location would support. The gaming market will support the smaller-size casino, and its smaller size will minimize any potential adverse impacts to the human environment. Employment, economic, social, and community opportunities would benefit the Nation, its members and the surrounding community. Based on the letters of support received from local government officials, the Nation enjoys a good working relationship with the surrounding communities. The Nation has also indicated a willingness to finance the upgrade of the water and sewer lines in the Town of

¹⁵⁷ *Id.*; FONSI at 11.

¹⁵⁸ *Id.*

¹⁵⁹ Regional Director’s Recommendation at 38.

¹⁶⁰ *Id.*; FONSI at 13-14

¹⁶¹ Regional Director’s Recommendation at 38; Kaw Nation November 2009 Comment Letter at (the Nation met with “the heads of Tonkawa, Ponca, Pawnee and Otoe-Missouria.”).

¹⁶² *Id.* at 38-39.

¹⁶³ *Id.* at 39.

Braman if the Kaw Project is constructed. Local infrastructure will support the operation of the Kaw Project. The newly created jobs will help stabilize the general area to some extent and possibly lead to modest local growth. The Town of Braman already has available the capacity to accommodate that growth. The local governments support the Department making a favorable Secretarial Determination and allowing the Kaw Project to be constructed on the Site. We have found no opposition to such an action. For these reasons, we have determined that the Kaw Project will not have a detrimental impact to the surrounding community.

III. Conclusion

I have completed my review of the Nation's application under 25 U.S.C. § 2719(b)(1)(A), including submittals by State and local officials, as well as officials of nearby Indian tribes. For the reasons discussed above, I have determined that gaming on the proposed site in Kay County would be in the best interest of the Nation and its members, and would not be detrimental to the surrounding community.

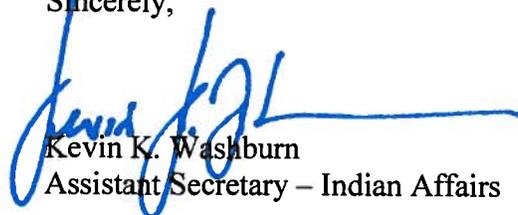
I request that you concur in this determination, pursuant to 25 U.S.C. § 2719(b)(1)(A). Under the Department's regulations at 25 C.F.R. Part 292, you have one year from the date of this letter to concur in my determination. You may request an extension of up to 180 days. The Nation may also request an extension of this period for up to 180 days.

Should you decide not to concur in my determination, the Nation cannot conduct gaming on the Site. Should you concur in my determination, I will proceed with the final review of the Nation's application to acquire the Site in trust on its behalf. The Nation may use the Site for gaming purposes only after it has been acquired in trust.

This letter and its enclosures contain commercial and financial information that is protected from release under exemption 4 of the Freedom of Information Act (FOIA). Due to the sensitive nature of this information, it is the Department's practice to withhold it from the public under FOIA, and to contact the Nation if a member of the public requests it. I respectfully request that the State of Oklahoma take appropriate similar steps to protect the commercial interests of the Tribe.

I have included copies of the record for your review and consideration. I thank you for your consideration of this important matter.

Sincerely,



Kevin K. Washburn
Assistant Secretary – Indian Affairs

Enclosures

cc: Chairman, Kaw Nation of Oklahoma