



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 21 2018

The Honorable Lee Spoonhunter
Chairman, Arapaho Business Council
P.O. Box 538
Fort Washakie, Wyoming 82514

Dear Chairman Spoonhunter:

In 2006, the Arapaho Tribe of the Wind River Reservation, Wyoming (Tribe or Northern Arapaho Tribe)¹ submitted a request to the Department of the Interior (Department) for the acquisition in trust of approximately 6.3 acres (Site) for gaming and other purposes.² The Site is located within the boundaries of the Wind River Reservation in Fremont County, Wyoming, and is held in fee by the Tribe.³

The Tribe currently operates a casino on the Site. The Tribe also operates several tribally-owned businesses on the Site including a gas station and diesel fueling station, a convenience store, a smoke shop, and a restaurant. Tribal governmental offices and offices for the Northern Arapaho Gaming Agency are also located on the Site. The Tribe will continue these existing uses after the Site is accepted in trust.

We have reviewed the Tribe's application and the supporting documents in the record, and are pleased to inform you that the Department will accept the Site in trust.

¹ The Tribe is officially identified in the *Federal Register* as the Arapaho Tribe of the Wind River Reservation, Wyoming. See *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 83 Fed. Reg. 4235, 4236 (Jan. 30, 2018). The majority of the documents in the record, however, refer to the Tribe as the Northern Arapaho Tribe. Here, we refer to the Arapaho Tribe of the Wind River Reservation, Wyoming, as the "Northern Arapaho Tribe" or "Tribe."

² The request consisted of the Offer to Convey Land to the United States (Aug. 16, 2006) and Resolution Nos. NABC-1995-7419 (Sept. 7, 1995) and NABC-2012-203 (April 23, 2012). See Memorandum from Acting Regional Director, Rocky Mountain Region, Bureau of Indian Affairs, to Assistant Secretary - Indian Affairs (June 6, 2014) [hereinafter Regional Director's Recommendation] at 1 Attachments 1 and 2.

³ In 2017, the Tenth Circuit Court of Appeals held that the boundaries of the Wind River Reservation were diminished by Congress in 1905. See *Wyoming v. U.S. Environmental Protection Agency*, 875 F.3d 505, 525 (10th Cir. 2017). However, the Site is not located within the diminished area. See Map by Fremont County depicting the boundaries of the Wind River Reservation following the Tenth Circuit decision and showing the Site in relation, available at [http://maps.greenwoodmap.com/fremontwy/map#zcr=O6/1966000/948500/0&lyrs=public land,cities, roads,ownership](http://maps.greenwoodmap.com/fremontwy/map#zcr=O6/1966000/948500/0&lyrs=public%20land,cities,roads,ownership) (last visited Aug. 14, 2018). Both the Northern Arapaho Tribe and the Eastern Shoshone Tribe unsuccessfully sought review of the Tenth Circuit's decision by the United States Supreme Court. See *Wyoming v. U.S. Environmental Protection Agency*, 875 F.3d 505 (10th Cir. 2017), cert. denied *Northern Arapaho Tribe v. Wyoming, et al.* (Jun. 25, 2018) (No. 17-1159); *Eastern Shoshone Tribe v. Wyoming, et al.* (June 25, 2018) (No. 17-1164).

Background

The Northern Arapaho Tribe and the Eastern Shoshone Tribe jointly occupy the Wind River Reservation.⁴ In 1863, the United States and the Eastern Shoshone Tribe entered into the First Treaty of Fort Bridger, 18 Stat. 685, which established "Shoshonee County," an area encompassing more than 44 million acres.⁵ As settlers moved westward following the Civil War, the United States and the Eastern Shoshone Tribe entered into the Second Treaty of Fort Bridger, 15 Stat. 673, in 1868 which set aside roughly 3 million acres for the exclusive use of the Eastern Shoshone Tribe in exchange for the Tribe's relinquishment of land held under the 1863 treaty.⁶ In 1878, the United States placed a band of Northern Arapahos on the Wind River Reservation.⁷ The United States unilaterally determined at that time that it would deal with the two tribes as equal occupants of the Reservation with equal property rights to Reservation lands.⁸

Description of the Property

The Site is located within the boundaries of the Wind River Reservation.⁹ The Tribe owns the Site in fee.¹⁰ The Site is located approximately 1.5 miles south of the city of Riverton, Fremont County, Wyoming, and is bordered to the east by Highway 789, to the west and north by allotted trust land, and lies adjacent to the bank of the Little Wind River to the south.¹¹ The legal description of the Site is included as Attachment 1.

Eligibility for Gaming Pursuant to the Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act (IGRA) was enacted "to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."¹² Section 20 of IGRA generally prohibits Indian gaming on lands accepted in trust by

⁴ *Wyoming v. U.S. Environmental Protection Agency*, 875 F.3d 505,509 (10th Cir. 2017).

⁵ *Id.* at 510 (citing *United States v. Shoshone Tribe of Indians of Wind River Reservation of Wyo.*, 304 U.S. 111, 113, (1938)).

⁶ *Id.*

⁷ See *Shoshone Tribe of Indians of Wind River Reservation in Wyoming v. United States*, 299 U.S. 476, 487 (1937).

⁸ *Id.* at 488-90, 492,495. The Shoshone Tribe was ultimately compensated for the taking of part of the reservation in an amount equal to one-half the value of the land, including the timber and mineral resources. See *United States v. Shoshone Tribe of Indians of Wind River Reservation in Wyo.*, 304 U.S. 111 (1938).

⁹ See Regional Director's Recommendation at 1-2; see also Preliminary Title Opinion - Application to Take Land into Trust for the Northern Arapaho Tribe - 789 Truck Stop Property, Field Solicitor, Rocky Mountain Region (Oct. 30, 2013), in Regional Director's Recommendation, Attachment 6; *supra* note 3.

¹⁰ See Regional Director's Recommendation at 2.

¹¹ See *id.* at 3-4; see also Map of 789 Truck Stop & Casino, in Regional Director's Recommendation, Attachment 4.

¹² *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920,933 (W.D. Mich. 2002). See also 25 U.S.C. § 2702(1) (stating that one purpose of

the United States for a Tribe after October 17, 1988.¹³ However, Congress expressly provided several exceptions to the general prohibition. One such exception exists for lands located within or contiguous to the boundaries of the reservation of an Indian tribe on October 17, 1988 (on-reservation exception).¹⁴

The Department's regulations at 25 C.F.R. Part 292 set forth procedures for implementing Section 20 of IGRA. Pursuant to these regulations, gaming is allowed under the on-reservation exception if the tribe had a reservation on October 17, 1988, and if the lands are located within or contiguous to the boundaries of the reservation.¹⁵ Here, the Wind River Reservation was established by the Second Treaty of Fort Bridger in 1868. Thus, the Tribe had a reservation on October 17, 1988. Further, the Site is located within the boundaries of the Tribe's Reservation.¹⁶

We conclude that the Site meets the on-reservation exception of Section 20 of IGRA, and that the Site is eligible for gaming.

Trust Acquisition Determination Pursuant to 25 C.F.R. Part 151

The Secretary of the Interior's authority for acquiring the Site in trust for the Northern Arapaho Tribe is found in a 1994 land acquisition amendment to a 1939 statute governing distribution of a judgment fund for the Shoshone Tribe (Land Acquisition Amendment).¹⁷ As discussed below in Section 151.10(a), the Land Acquisition Amendment authorizes the Secretary to accept land in trust for either the Eastern Shoshone Tribe or the Northern Arapaho Tribe on the Wind River Reservation. The Department's regulations at 25 C.F.R. Part 151 set forth the procedures for acquiring land in trust.

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

Section 151.3(a) sets forth the conditions under which land may be accepted in trust by the Secretary for an Indian tribe:

- (1) When the property is located within the exterior boundaries of the tribe's reservation¹⁸ or adjacent thereto, or within a tribal consolidation area; or

IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

¹³ See 25 U.S.C. § 2719.

¹⁴ 25 U.S.C. § 2719 (a)(1).

¹⁵ 25 C.F.R. § 292.4 (a). The Department's regulations at Section 292.2 define "reservation" as "[l]and set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent." 25 C.F.R. § 292.2.

¹⁶ See *supra* note 3.

¹⁷ Act of July 27, 1939, 53 Stat. 1128- 1130, *amended* by Pub. L. No. 103-435, § 15, 108 Stat. 4573 (Nov. 2, 1994) (formerly codified at 25 U.S.C §§ 571-581) [hereinafter Land Acquisition Amendment].

¹⁸ Section 151.2(f) defines "Indian reservation" to mean, in relevant part, that area of land over which the tribe is recognized by the United States as having governmental jurisdiction.

- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The Tribe's application satisfies the requirements of subsection (a)(1) because the Site is located within the exterior boundaries of the Wind River Reservation.

Although only one factor in Section 151.3(a) must be met, the Tribe's application also satisfies subsection (a)(2) because the Tribe owns the Site in fee. The Tribe's application also satisfies the requirements of subsection (a)(3) because acquisition of the Site will facilitate economic development.

The Tribe has a need for economic development to address the significant health and social issues it faces. For example, a 2016 study sponsored in part by the Wyoming Department of Health found that differences in Native mortality rates in Wyoming and Fremont County are far higher than those of the general population. The average age of death for the general population in Wyoming is 71 years, while the Native population's is 56 years. In Fremont County, the difference is similar - 68.5 years to 54.7 years.¹⁹ Further, the study found that 22% of Northern Arapaho households have an annual income of less than \$7,000, and that 62% of tribal members live below the poverty line.²⁰ Serious issues also exist regarding hunger and housing: 23.6% of tribal members on the Wind River Reservation report that they do not have adequate funds for food; and 22% of households on the Wind River Reservation report that their housing needs are not met, 18.5% lack adequate heat, and 38% need financial assistance with utilities.²¹ Acquisition of the Site in trust is necessary to facilitate economic development so that the Tribe can address these issues.

The Regional Director determined, and we concur, that the Tribe's application satisfies the requirements of this section.²²

25 C.F.R. § 151.10 - On-reservation acquisitions

Section 151.10 requires the Secretary to evaluate requests for acquisition of land under the on-reservation criteria when the land is located "within or contiguous to an Indian reservation." Here, the Regional Director determined, and we concur, that the Tribe's application should be

¹⁹ *In the Heart of Wyoming is Indian Country: Home to the Eastern Shoshone and Northern Arapaho Tribes Rich with Beauty, Spirituality, Families and Tradition*, Wind River Native Advocacy Center, the Wyoming Association of Churches, and the Wyoming Office of Multicultural Health of the Wyoming Department of Health (2016) at 4, available at <https://health.wyo.gov/wp-content/uploads/2017/02/WR-EducPub2016.pdf> (last visited August 14, 2018).

²⁰ *Id.* at 6.

²¹ *Id.*

²² See Regional Director's Recommendation at 1-2.

considered pursuant to the on-reservation criteria of Section 151.10 because the Site is located within the boundaries of the Wind River Reservation.²³

25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) provides that the Secretary will consider the existence of statutory authority for the acquisition and any limitations on such authority.

The Secretary's authority to accept land in trust for the Tribe is contained in the Land Acquisition Amendment.²⁴ The Land Acquisition Amendment authorizes the Secretary to accept land in trust for either the Eastern Shoshone Tribe or the Northern Arapaho Tribe when such land is purchased on the Wind River Reservation with that tribe's assets. The Land Acquisition Amendment states in part:

- (a) The Secretary of the Interior is hereby authorized to acquire individually in the name of the United States in trust for the benefit of the Eastern Shoshone Tribe of the Wind River Reservation or the Northern Arapaho Tribe of the Wind River Reservation, as appropriate, lands or other rights when the individual assets of only one of the tribes is used to acquire such lands or other rights.
- (b) Any lands acquired under subsection (a) within the exterior boundaries of the Wind River Reservation shall remain a part of the Reservation and subject to the joint tribal laws of the Reservation, except that the lands so acquired shall be subject to the exclusive use and control of the tribe for which such lands were acquired.
- (c) The income from lands acquired under subsection (a) shall be credited to the tribe for which such lands were acquired.²⁵

Here, the requirement of subsection (a) of the Land Acquisition Amendment has been met because the Tribe purchased the Site in fee with its own assets in 1988.²⁶ Further, because the Site is located within the exterior boundaries of the Wind River Reservation, subsection (b) applies. The revenue generated from the Site will be available to the Tribe pursuant to subsection (c).

The Regional Director determined, and we concur, that the requirements of the Land Acquisition Amendment have been met, and the Secretary has the authority to accept the Site in trust for the Northern Arapaho Tribe.²⁷

²³ See *id.*

²⁴ See *supra* note 17.

²⁵ *Id.*

²⁶ See Warranty Deed from Interstate Investments to the Northern Arapahoe [sic] Tribe (Jan. 26, 1988). See also Affidavit of Richard Brannan (Nov. 9, 2015); Affidavit of Richard Ortiz (Nov. 6, 2015), on file with the Office of Indian Gaming.

²⁷ Regional Director's Recommendation at 2.

25 C.F.R. § 151.10(b) -The need of the individual Indian or tribe for additional land

Section 151.10(b) provides that the Secretary will consider a tribe's need for additional land when reviewing a tribe's request to accept land in trust.

The Tribe needs additional land for economic development. Currently, 1,713,435 acres within the Wind River Reservation boundaries are jointly held in trust for the Northern Arapaho Tribe and Eastern Shoshone Tribe with neither having exclusive use and control.²⁸ Acquisition of the Site in trust for the Northern Arapaho Tribe will provide land for its exclusive use and control pursuant to subsection (b) of the Land Acquisition Amendment, with all revenue available to the Tribe pursuant to subsection (c) of same.

The Regional Director determined, and we concur, that the Tribe needs additional lands for economic development.²⁹

25 C.F.R. § 151.10(c) - The purpose for which the land will be used

Section 151.10(c) requires consideration of the purposes for which the land will be used.

The Tribe currently operates a casino on the Site.³⁰ The Tribe also operates several tribally-owned businesses on the Site including a gas station and diesel fueling station, a convenience store, a smoke shop, and a restaurant. Tribal governmental offices and offices for the Northern Arapaho Gaming Agency are also located on the Site. The Tribe will continue these existing uses after the Site is accepted in trust.

We conclude that the Tribe has met the requirements of this section.

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls

Section 151.10(e) requires consideration of the impact on the State and its political subdivisions resulting from removal of land from the tax rolls.

By correspondence dated October 22, 2015, the Bureau of Indian Affairs Wind River Agency (BIA) solicited comments from the Governor of Wyoming and the Fremont County

²⁸ *Id.*

²⁹ Regional Director's Recommendation at 2.

³⁰ BIA Certificate of Inspection and Possession (May 7, 2013) at 2, in Regional Director's Recommendation, Attachment 5.

Commissioners.³¹ The BIA received no responses.³² Billing records show, however, that the County assessed \$17,304.56 in property taxes for the Site in 2017.³³

The amount of property taxes that the County collects from the Site is only a fraction of the County's total property tax receipts. The County's property tax revenue for FY 2016 was \$8,993,000.³⁴ We conclude that the removal of the Site from the tax rolls will have a minimal impact on the State and its political subdivisions, and that the impact is outweighed by the benefit to the Tribe.

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise if the land is accepted in trust.

The Site is located within the boundaries of the Wind River Reservation and is owned in fee by the Tribe.³⁵ It lies 1.5 miles south of the city of Riverton, Wyoming, in Fremont County. The Site is bordered to the east by Highway 789, and to the west and north by allotted trust land. The Site is adjacent to the bank of the Little Wind River to the south.

By correspondence dated October 22, 2015, the BIA solicited comments from the Governor and the Fremont County Commissioners.³⁶ The BIA received no responses.³⁷ In responding to a similar request made by the BIA in 2007,³⁸ Fremont County stated that the Site is not subject to

³¹ See Letters to Matt Mead, Governor, State of Wyoming, from Norma Gourneau, Superintendent, Wind River Agency, Bureau of Indian Affairs (Oct. 22, 2015); to Fremont County Commissioners from Norma Gourneau, Superintendent, Wind River Agency, Bureau of Indian Affairs (Oct. 22, 2015), both on file with the Office of Indian Gaming. The BIA also solicited comments, but received none, from the Eastern Shoshone Tribe. See Letter to Darwin St. Clair, Jr., Chairman, Eastern Shoshone Tribe, from Norma Gourneau, Superintendent, Wind River Agency, Bureau of Indian Affairs (Oct. 22, 2015), on file with the Office of Indian Gaming.

³² See Letter to Dean Goggles, Chairman, Northern Arapaho Tribe, from Realty Officer, Wind River Agency, Bureau of Indian Affairs (Dec. 4, 2015). In 2007, BIA also solicited comments. See Letters to Dave Freudenthal, Governor, State of Wyoming, from Johnna Oberly, Realty Officer, Wind River Agency, Bureau of Indian Affairs (March 16, 2007); to Fremont County Commissioners from Johnna Oberly, Realty Officer, Wind River Agency, Bureau of Indian Affairs (March 19, 2007), both in Regional Director's Recommendation, Attachment 9. At that time, the County reported that the annual amount of property taxes levied on the Site in 2006 was \$3,434.43. See Letter to Superintendent Gover, Wind River Agency, from Julie A. Freese, Fremont County Clerk (March 21, 2007), in Regional Director's Recommendation, Attachment 10.

³³ See Fremont County Property 2017 Tax Billing for the Site, on file with the Office of Indian Gaming.

³⁴ Fremont County, Wyoming, Financial Report for the Fiscal Year Ended June 30, 2016, at 9, available at <http://fremontcountywy.org/wp-content/uploads/2011/03/Fremont-County-Annual-Financial-Report-signed-Final-Report.pdf> (last visited Aug. 14, 2018).

³⁵ See *supra* note 3.

³⁶ See *supra* note 31.

³⁷ See *supra* note 32.

³⁸ See *id.*

its zoning laws.³⁹ The County also reported that it provides limited governmental services to the Site consisting of rural addressing, fire and ambulance service, maintenance for roads that cross the Wind River Reservation, and weed and pest control for the Tribe, individual property owners, and areas along county roads and federal highways that pass through the Reservation.⁴⁰

The primary responding police department for the Site is the BIA Wind River Police Department located in Fort Washakie, Wyoming, and the primary responding fire department is Fremont County's Fort Washakie Volunteer Fire Department.⁴¹ The Regional Director concluded that the location of this parcel makes it very unlikely that the BIA Wind River Police Department or Fort Washakie Volunteer Fire Department would need to call on external agencies for assistance in responding to this location.⁴²

The Land Acquisition Amendment subsection (b) requires that lands accepted in trust be subject to the joint tribal laws of the Reservation. The BIA Wind River Police Department and the Shoshone and Arapaho Tribal Court will have the same jurisdiction over the Site and activities carried out on it as they have now over the neighboring trust allotments or joint tribal property.⁴³

The Regional Director determined, and we concur, that no jurisdictional problems or conflicts of land use will arise from acquiring the Site in trust.⁴⁴

25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Section 151.10(g) requires consideration whether the BIA is equipped to discharge the additional responsibilities resulting from acquisition of the land in trust.

The Regional Director determined that there will be very little additional workload imposed on BIA if the Site is accepted in trust because the Site is adjacent to existing trust property on the north and west sides.⁴⁵ Further, the BIA Wind River Agency staff can travel to the Site easily via Highway 789. Additionally, the Site is located within the Reservation for which the BIA currently provides services. The Regional Director determined, and we concur, that BIA is equipped to discharge the additional responsibilities resulting from acquisition of the land in trust status.⁴⁶

³⁹ See Letter to Superintendent Gover, Wind River Agency, from Julie A. Freese, Fremont County Clerk (March 21, 2007), in Regional Director's Recommendation, Attachment 10.

⁴⁰ *Id.*

⁴¹ See Regional Director's Recommendation at 4.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

25 C.F.R. § 151.10(h)-The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act (NEPA),⁴⁷ and a determination of the presence of hazardous substances.

Acquiring land in trust for tribes is considered to be a major federal action requiring review under NEPA.⁴⁸ If the federal action belongs to a category of actions which do not individually or cumulatively have a significant effect on the human environment it can be categorically excluded from further analysis.⁴⁹ If extraordinary circumstances exist that may have a significant environmental effect, further analysis may be required.⁵⁰

Pursuant to BIA policy, where no change in land use will occur as a result of the acquisition, the acquisition is subject to a categorical exclusion.⁵¹ Here, there will be no change in land use because the Tribe intends to continue the existing uses of the Site.⁵² A Categorical Exclusion Exception Review was completed by the BIA for the Site on April 18, 2018.⁵³ The BIA determined that no extraordinary circumstances existed that would require further analysis or the preparation of an environmental assessment.⁵⁴

The BIA completed a Phase I Environmental Site Assessment on February 26, 2018.⁵⁵ The BIA concluded that no evidence existed of a release of hazardous substances, petroleum products, or environmental conditions on the Site, and that no further inquiry is needed.⁵⁶

⁴⁷ 42 U.S.C. § 4321 *et seq.*

⁴⁸ See 40 C.F.R. § 1508.18 (b)(4).

⁴⁹ 40 C.F.R. § 1508.4; 43 C.F.R. § 46.205.

⁵⁰ 40 C.F.R. § 1508.4.

⁵¹ See 516 DM 10.5(1), 83 Fed. Reg. 9535, 9537 (Mar. 6, 2018).

⁵² Regional Director's Recommendation at 3.

⁵³ See Memorandum to Assistant Secretary - Indian Affairs, from Acting Director, Rocky Mountain Region, Bureau of Indian Affairs (April 27, 2018), attaching Categorical Exclusion Exception Checklist (April 18, 2018), on file with the Office of Indian Gaming.

⁵⁴ *Id.*

⁵⁵ See *Id.*, attaching Phase I Environmental Site Assessment for 789 Smoke Shop and Casino (Feb. 26, 2018), on file with the Office of Indian Gaming.

⁵⁶ *Id.* at 16

Conclusion

Pursuant to the Land Acquisition Amendment, Pub. L No. 103-435 (1994) § 15, the Department will accept the approximately 6.3-acre Site located within the boundaries of the Wind River Reservation in trust for the Arapaho Tribe of the Wind River Reservation, Wyoming. Further, pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(a)(1), the Site is eligible for gaming. Consistent with applicable law and Departmental requirements, the Regional Director shall accept the land in trust.

Sincerely,



John Tahsuda
Principal Deputy Assistant Secretary - Indian Affairs