



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 15 2020

The Honorable Bill Anoatubby
Governor, Chickasaw Nation
Post Office Box 1548
Ada, Oklahoma 74821

Dear Governor Anoatubby:

In 2016, the Chickasaw Nation of Oklahoma (Nation) submitted to the Bureau of Indian Affairs (BIA) an application to transfer into trust two parcels of lands, totaling approximately 61.63 acres and collectively known as the Kingston Property, near the City of Kingston, Marshall County, Oklahoma (Site) for gaming and other purposes.¹ Nation also requested a determination of eligibility to conduct gaming on the Site. The Nation seeks to develop a casino-resort (Proposed Project).

We have completed our review of the Nation's request and the documentation in the record. As discussed below, it is my determination that the Site will be transferred into trust for the benefit of the Nation pursuant to the Indian Reorganization Act, 25 U.S.C. § 5108. Once transferred into trust, the Nation may conduct gaming on the Site pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2719.

Background

The Nation historically occupied its homelands in what are today Mississippi, Alabama, Tennessee, and Kentucky. In 1832, following a series of land cessions, the Nation ultimately ceded the remainder of its lands in exchange for land west of the Mississippi River.² The United States established the boundaries of the Nation's reservation in Oklahoma in the Treaty of 1855.³ In 1897, under the authority of the General Allotment Act, the Nation joined the Choctaw Nation in negotiations with the Dawes Commission. The two Nations signed the Atoka Agreement that provided for the allotment of their lands.⁴

In 1906, Congress passed what became known as the "Five Tribes Act" to provide for further disposition of the Five Civilized Tribes' affairs.⁵ While the title of the Act suggested a general dissolution of the Tribes as they had existed up until that point, it nonetheless provided for the

¹ See Letter to Stephanie Large, Superintendent, Chickasaw Agency, Bureau of Indian Affairs, from Bill Anoatubby, Governor, Chickasaw Nation (Sept. 8, 2017), transmitting *Application for Fee-to-Trust (Gaming Eligible) Pursuant to 25 C.F.R. Part 151, Kingston Site* (Sept. 2017) (hereinafter Nation's Application).

² Treaty with the Chickasaw, Oct. 20, 1832, 7 Stat. 381.

³ Treaty with the Choctaw and Chickasaw, June 22, 1855, 11 Stat. 611.

⁴ Congress incorporated provisions of the Atoka Agreement into the Curtis Act of 1898, 30 Stat. 495.

⁵ 34 Stat. 137. The term "Five Civilized Tribes" had evolved over the 19th century in reference to the Cherokee, Chickasaw, Choctaw, Creek, and Seminole Nations.

continuation of tribal governance. Significantly, however, the Act curtailed the Five Tribes' autonomy by granting authority to the President of the United States to approve any ordinance, act, or resolution of a tribal council or legislature.⁶ The Act also established that the President would play a central role in the continuity of the Five Tribes' leadership.⁷ While Section 6 of the Five Tribes Act only authorized the President to become involved in the removal or selection of the Five Tribes' governors in limited circumstances, the governors would, in practice, not be directly elected, but rather appointed by the President or acknowledged by congressional action for much of the twentieth century.⁸ Underscoring the United States' pervasive role in exercising jurisdiction over the Nation in 1934, President Herbert Hoover directly appointed and re-appointed the Nation's governor, Ben H. Dwight, to serve terms from 1930 to 1936.⁹

The Nation once held patented title to 4,707,081.72 acres of land.¹⁰ As a result of the allotment process, the Nation and its citizens lost most of their tribal lands. The Nation currently has approximately 6,491.60 acres of trust land, which is only 0.13 percent of its land prior to allotment.¹¹

Description of the Property

The Site is located approximately 3 miles east of the City of Kingston in Marshall County.¹² The Nation has held the Site in fee since 2017.¹³ The Site consists of two parcels - the approximately 11.71-acre west parcel and the approximately 49.92-acre east parcel. The west parcel, located a half a mile from the east parcel, will be used for treatment lagoons for wastewater generated by the casino-resort located on the east parcel. Maps showing the location of the Site are included as Enclosure 1. The legal description of the Site is included as Enclosure 2.

Eligibility for Gaming Pursuant to the Indian Gaming Regulatory Act

Congress enacted the Indian Gaming Regulatory Act (IGRA) 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.¹⁴ Section 2719 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988. Congress expressly provided several exceptions to the general prohibition. One such

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

Section 151.10(c) requires the Secretary to consider the purposes for which land will be used in evaluating a trust application.

The Nation proposes to develop a casino-resort and associated facilities on the Site. Proposed facilities include a casino with a 9,633-square foot (sf) gaming floor with 300 gaming machines and five table games.⁵⁹ The casino will be open 24 hours a day, 7 days a week. The Site will also include a 40-room hotel, restaurant and retail space, meeting space, and back-of-house areas. Approximately 556 surface-level parking spaces will be constructed to accommodate patrons and employees. The Nation will also construct 10 rental cabins along Lake Texoma. The Proposed Project will create 174 direct and indirect new employment opportunities.

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 the 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 10, 2017, the BIA solicited comments, from the following state and local governments regarding the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments:⁸²

- Governor of Oklahoma
- Oklahoma Tax Commission
- Marshall County Commissioners
- Marshall County Treasurer
- Marshall County Assessor
- Marshall County Sheriff

Prior to its sale in October 2016, the State owned the Site and collected no taxes. The Marshall County Assessor's office responded to the BIA's request for comments stating that property taxes in the amount of \$36,009 were assessed against the subject property for tax year 2017, there were no special assessments or governmental services being provided to the property, and there is no zoning in that part of the county.⁶¹ The BIA received no additional comments.

As discussed below, potential impacts from the loss of the state and federal **tax** revenue will be more than offset by increased economic output from the construction and operation of the Proposed Project.

⁵⁹ *Environmental Assessment, Chickasaw Nation, Kingston Casino Resort Project (EA)*, § 2.1.1.

⁶⁰ Acting Regional Director's Findings of Fact, Exhibit 18

⁶¹ See Letter to S. Ashley Large, Bureau of Indian Affairs, Eastern Oklahoma Regions, Chickasaw Agency, from Debbie Croasdale, Marshall County Assessor (Oct. 16, 2017), in Acting Regional Director's Findings of Fact, Exhibit 19.

Economic Output and Employment

The Proposed Project would result in a variety of benefits to the regional economy, including increases in overall economic output, and employment opportunities. Construction and operation of the Proposed Project would generate substantial temporary and ongoing employment opportunities and wages that would be primarily filled by the available labor force in Marshall County.⁶²

The total estimated economic impact on the regional economy in year one for the Proposed Project is estimated to be approximately \$58 million.⁶³ The five-year total estimated economic impact on the regional economy from the Proposed Project is approximately \$168 million.⁶⁴

The Proposed Project will impact the regional economy in three beneficial ways.⁶⁵ First, the direct impact of the initial construction spending and annual operating revenue of the casino and retail space. Second, the indirect impact of companies supplying the construction company, and companies supplying casino annual operations. Third, the induced impact of the employees of all the aforementioned companies receiving a paycheck and spending it in the regional economy.

Construction

The total construction costs for the Proposed Project are estimated to be \$19,420,000.⁶⁶ After including, direct impact of construction costs, the indirect impact of spending from the construction company suppliers, and the induced impact from spending from employees of these companies, the total impact on regional economic output from initial construction of the development is estimated to be \$34,345,727.⁶⁷

New one-time employment opportunities throughout Marshall County would be generated during the construction phase of the Proposed Project.

Operations

Annual revenue from the operations is estimated to be \$15,862,427.⁶⁸ By including the direct impact of revenue from the casino and hotel, the indirect impact of spending from the casino and hotel suppliers, and the induced impact from spending from employees of these companies, the total impact on regional economic output from the development's annual revenue is estimated to be \$22,860,136.⁶⁹

⁶² EA § 4.6.1.

⁶³ Economic Impact Analysis of the Kingston Gaming Development at 2, in EA Appendix H (Economic Analysis).

⁶⁴ *Jd*

⁶⁵ *Id*

⁶⁶ *Id.* at 3.

⁶⁷ *Id.*

⁶⁸ */d*

⁶⁹ *Jd*

Operation of the Proposed Project would generate 174 new full-time employment positions. These employment figures are net any loss of employees from the Nation's existing Texoma casino. Of the 174 jobs generated, 108 would be a direct result of the Proposed Project, while the remaining 66 consist of indirect and induced employment opportunities.

Tax Impacts

The Proposed Project will generate new tax revenue. Annual state income tax withholdings from employees in year one at the Proposed Project are estimated to be \$79,209.⁷⁰ An estimated \$367,919 in annual payments will be made to Social Security and Medicare through employer and employment contributions. In addition, annual federal income taxes withholdings from employees are estimated to be \$260,397, and annual State income taxes withholdings are estimated to be \$79,209.⁷¹

Conclusion

The Acting Regional Director found, and we concur, that any potential impacts from the loss of the state and federal tax revenue from removal of the Site from the tax rolls would be more than offset by the contributions and economic development provided by the Proposed Project.⁷² The Proposed Project will result in beneficial impacts to employment and the regional economy. Increased local, state and federal tax revenue resulting from construction and operation of the Proposed Project will offset potential impacts to state and local governments resulting from removal of Site from the tax rolls.

25 C.F.R. § 151.10(1) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.1 O(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

As discussed above, the BIA by correspondence dated October 10, 2017, requested comments regarding jurisdictional problems and potential conflicts of land use from state and local governments. The BIA received no comments in response.⁷³

Land Use

The Site consists of the approximately 11.71-acre west parcel and the approximately 49.92-acre east parcel. The west parcel is located approximately half a mile from the east parcel. The west parcel will be used for wastewater treatment and the east parcel will be used for the casino-

⁷⁰ *Id.* at 1.

⁷¹ *Id.* at 3.

⁷² Acting Regional Director's Findings of Fact at 24.

⁷³ *Id.* at 25.

resort. The entire Site is located on unzoned rural land outside of the incorporated limits of any municipalities in Marshall County.⁷⁴

From the 1950s to 2008, the east parcel was part of Lake Texoma State Park, and included park infrastructure including a lodge, cabins, campsites, picnic areas and shelters, boat rentals, and a gift shop.⁷⁵ The State authorized the sale of the park in 2005 to a developer who planned to build a hotel and water park on the site, but abandoned those plans and sold the Site back to the state.⁷⁶ The Nation subsequently purchased the Site in 2008.

Portions of the east parcel still contain unused park infrastructure such as paved surfaces and vacant buildings. Most of the east parcel is undeveloped and covered in natural vegetation. The west parcel is undeveloped and consists of cleared fields with a heavily wooded border.

Lake Texoma State Park, which has recreational amenities such as campgrounds, picnic areas, and boat docks, borders the east parcel to the south and east. Other nearby land uses include the Chickasaw Pointe Golf Course to the north, and Catfish Bay, a private marina, approximately one third of a mile southeast of the east parcel. A small local airstrip owned by the U.S. Army Corps of Engineers is located between the east and west parcels. The FAA determined there would be no hazard to air navigation from the Proposed Project.⁷⁷ An abandoned golf course lies to the southwest of the east parcel, a portion of which is located within the southern portion of the east parcel. The adjacent property south of the west parcel contains existing wastewater lagoons. A residential neighborhood is located approximately 500 feet west of the west parcel.

The Proposed Project will be compatible with regional recreational uses in the area, including golfing, fishing, boating, camping and tourism activities.⁷⁸ The addition of wastewater lagoons on the west parcel are consistent with the wastewater lagoons on the adjacent property. The Proposed Project would not introduce a new land use in the area that would be incompatible with neighboring land uses. The Proposed Project would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses.

Law Enforcement and Fire Protection

The Chickasaw Nation Lighthorse Police Department currently provides law enforcement services to the Site.⁷⁹ If necessary, additional law enforcement services will be provided through the cross-deputization agreements between the Chickasaw Nation, Bureau of Indian Affairs, and the State of Oklahoma and its subdivisions, including Marshall County Sheriffs Office and the City of Kingston Police Department.⁸⁰ The Kingston Fire Department provides fire response

⁷⁴ EA § 3.8.2.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ EA § 4.8.1.

⁷⁸ *Id.*

⁷⁹ *Id.* at § 4.9.1.

⁸⁰ Acting Regional Director's Findings of Fact at 25, Attachments 45-49 (Cross Deputization Agreements between the BIA, Nation, State of Oklahoma, Marshall County, and City of Kingston).

services to the Site. Marshal County will provides emergency services to the Site. Both have committed to the continuation of services to the Site after its transfer into trust.⁸¹

The Regional Director found, and we concur, that the transfer of the Site into trust would not cause conflicts of land use or other jurisdictional problems.⁸²

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

Section 151.10(g) requires the Secretary to determine whether the BIA has the resources to assume additional responsibilities if the land is acquired in trust.

The BIA Chickasaw Agency is responsible for the administration of the realty program functions associated with the management of trust lands within its administrative jurisdiction. The Regional Director determined that the Chickasaw Agency has adequate resources to assume the additional responsibilities resulting from the acquisition of the Site in trust.⁸³

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), 42 U.S.C. § 4321 *et seq.*, and a determination on the presence of hazardous substances.

602 DM 2, Land Acquisitions: Hazardous Substances Determinations

The BIA reviewed the Phase I Environmental Site Assessment (ESA) for the Site in April 2016.⁸⁴ The ESA identified no historic or current Recognized Environmental Concerns. The BIA found the ESA complied with the ASTM Standard E 1527-13. An updated ESA will be completed prior to transferring the Site into trust.

National Environmental Policy Act

The BIA prepared an environmental assessment (EA) pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C § 4321 *et seq.* The EA evaluated the transfer of the Site into trust and the subsequent development of the Proposed Project by the Nation. The BIA made the EA

⁸¹ EA § 4.9.1, Appendix C (will-serve letter provided to the Nation on February 14, 2017).

⁸² Acting Regional Director's Findings of Fact at 25.

⁸³ *Id.* at 25-26.

⁸⁴ *See id.* at 26.

available for public comment from March 12, 2020 to April 13, 2020.⁸⁵ The BIA received no comments from the public. The EA is available www.kingstoncasinoea.com.

The BIA considered three alternatives:

Alternative A - Proposed Project

Alternative A consists of the transfer of the approximately 61.63-acre Site into trust.⁸⁶ The Site consists of two parcels - the approximately 11.71-acre west parcel and the approximately 49.92-acre east parcel. Under Alternative A, the Nation proposes to develop a casino-resort and associated facilities on the west parcel. Proposed facilities include a casino with a 9,633-square-foot gaming floor with 300 gaming machines and five table games.⁸⁷ The Proposed Project would also include a 40-room hotel, restaurant and retail space, meeting space, and back-of-house areas. Approximately 556 surface-level parking spaces would be constructed to accommodate patrons and employees. The Nation would also construct 10 rental cabins along Lake Texoma. The west parcel would be used for treatment lagoons for wastewater generated by the casino-resort. The casino-resort would be open 24 hours a day, 7 days a week.

Alternative B - Reduced Intensity Alternative

Alternative B consists of the transfer of the Site into trust and the subsequent development of a casino-resort on the east parcel. The west parcel would be used for treatment lagoons for wastewater generated by the casino-resort. Alternative B is similar to Alternative A, except that the casino resort and associated facilities would be reduced in size and no cabins would be developed.

Alternative C - No Action Alternative

Under the No Action Alternative, the Department would not transfer the Site into trust, no development would occur, and the land would remain in its existing condition.

Selection of Preferred Alternative

We have determined that the Department will implement Alternative A as the Preferred Alternative. This decision is based on the environmental analysis in the EA, a consideration of economic and technical factors, and the purpose and need for action. Of the alternatives evaluated in the EA, Alternative A will best meet the purpose and need for action because it best promotes the long-term economic development and self-sufficiency, self-determination, and self-governance of the Nation.

⁸⁵ Email to Maria Wiseman, Deputy Director, Office of Indian Gaming, from Gus Porter, Realty Office, Chickasaw Agency (May 11, 2020).

⁸⁶ We note that the Acting Regional Director identifies the Site as consisting of approximately 61.63 acres (east parcel 49.92 acres and west parcel 11.71 acres), whereas the EA rounds the acreage up to 61.7. See Memorandum to Deputy Director, Office of Indian Gaming, from Acting Regional Director, Eastern Oklahoma Region (Jan. 30, 2020), Acting Regional Director's Findings of Fact at 6.

⁸⁷ EA § 2.1.1.

Environmental Analysis

The BIA evaluated in the EA potential impacts to land resources; water resources; air quality; biological resources; cultural resources; socioeconomic conditions; transportation networks; land use; public services; visual resources; noise; and hazardous materials. The EA describes the Best Management Practices (BMPs) in Section 2.1.2 that are incorporated into the project design to eliminate or substantially reduce any environmental consequences to less-than-significant levels.

Findings

As discussed in detail in the EA and Finding of No Significant Impact (FONSI), we conclude that the development of the Proposed Project on the Site will not result in significant impacts to the human environment, and, therefore, an environmental impact statement is not required. The EA is available at www.kingstoncasinoea.com. The FONSI is included as Enclosure 3.

NEPA Determination

Based on the findings in the EA, I determine that transferring the Kingston Site into trust and the subsequent development of the Proposed Project by the Nation will have no significant impact on the quality of the human environment. In accordance with Section 102(2)(c) of NEPA, an environmental impact statement is not required. This fulfills the requirements of NEPA as set out in the Council on Environmental Quality Regulations for implementing NEPA, 40 C.F.R. Parts 1500-1508, and the BIA NEPA Guidebook, 59 IAM 3-H, August 2012.

Decision to approve the Nation's fee-to-trust application

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Kingston Site in trust for the Chickasaw Nation. Further, pursuant to Section 2719 of IGRA, 25 U.S.C. § 2719(a), the Kingston Site will be eligible for gaming upon its acquisition in trust. Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other

Departmental requirements, the Regional Director shall immediately acquire the Kingston Site in trust. This decision constitutes a final agency action under 5 U.S.C. § 704.

Sincerely,



Tara Sweeney
Assistant Secretary - Indian Affairs

Enclosures

cc: Director, Eastern Oklahoma Region, Bureau of Indian Affairs