



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT 07 2019

The Honorable James E. Whiteshirt  
President, The Pawnee Business Council  
P.O. Box 470  
Pawnee, Oklahoma 74058

Dear President Whiteshirt:

In 2016, the Pawnee Nation of Oklahoma (Nation) submitted to the Bureau of Indian Affairs (BIA) an application to transfer into trust approximately 20 acres known as the StoneWolf Casino Amenity Expansion (Expansion Site) for gaming and other purposes.<sup>1</sup> The Expansion Site is located in Pawnee County, Oklahoma, within the Nation's former reservation boundaries. The Nation proposes to develop amenities on approximately seven acres on the contiguous Expansion Site. The proposed amenities include a 70-room hotel, a 1,500-seat amphitheater, and a multi-purpose event center (StoneWolf Expansion). The Nation proposes to hold gaming activities such as bingo and poker tournaments in the event center. The Expansion Site is located approximately 50 miles west of Tulsa, Oklahoma, and 6 miles south of the City of Pawnee, Oklahoma.

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 Department of the Interior (Department) will transfer the Expansion Site into trust for the benefit of the Nation. Once transferred into trust, the Nation can conduct gaming on the Expansion Site pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

## Background

The Nation occupied the Platte River Valley of Nebraska in the early 18<sup>th</sup> century.<sup>2</sup> Through the Treaty of 1833, the Nation ceded approximately 13,074,000 acres south of the Platte River, and relocated to permanent farming villages along the Loup Fork River in Nebraska.<sup>3</sup> The Nation made additional cessions during the next three decades until it had finally ceded over 23 million acres of land.<sup>4</sup> Facing mounting pressure from settlers, a small group of Pawnee members migrated to the Indian Territory in Oklahoma in 1874 to join the Wichitas, with whom the Nation shared the Caddoan language.<sup>5</sup> Over the next two years, the remaining Pawnees left Nebraska and relocated to Oklahoma.

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<sup>1</sup> See Letter to Dan Deerinwater, Regional Director, Southern Plains Regional Office, Bureau of Indian Affairs, from W. Bruce Pratt, President, Pawnee Business Council (Sept. 2, 2016) [hereinafter Nation's Application].

<sup>2</sup> Nation's Application at 7.

<sup>3</sup> Treaty with the Pawnee Tribe, 1833, 7 Stat. 448 (Oct. 9, 1833).

<sup>4</sup> See Treaty with the Pawnee – Grand, Loups, Republicans, Etc., 1848, 9 Stat. 949 (Aug. 6, 1848); Treaty with the Pawnee, 1857, 11 Stat. 729 (Sept. 24, 1857).

<sup>5</sup> Nation's Application at 7.

In 1876, Congress authorized the sale of the Pawnee reservation in Nebraska and established a new reservation in the Indian Territory of Oklahoma consisting of 283,020 acres.<sup>6</sup> In 1893, the government opened the Nation's lands in Oklahoma to allotment and settlement.<sup>7</sup> As a result, the Nation currently has only a scattered land base of approximately 1,560 acres held in trust.<sup>8</sup>

### **Description of the Property**

The Expansion Site is located in Pawnee County, Oklahoma, within the Nation's former reservation boundaries, and is held in fee by the Nation.<sup>9</sup> The legal description of the Expansion Site is included as Enclosure I.

### **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.<sup>10</sup> Section 20 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 exception exists for lands located within the former reservation of an Oklahoma tribe that did not have a reservation on October 17, 1988 (Oklahoma Exception).<sup>11</sup>

The Department's regulations at 25 C.F.R. Part 292, set forth the implementing procedures for Section 20. Pursuant to these regulations, gaming on newly acquired lands is allowed under the Oklahoma Exception when (1) a tribe had no reservation on October 17, 1988, (2) the land is located in Oklahoma, and (3) the land is located within the boundaries of the tribe's former reservation, or is contiguous to other land held in trust or restricted status for the tribe in Oklahoma.<sup>12</sup>

Here, the Expansion Site meets the requirements of the Oklahoma Exception because the Nation had no reservation on October 17, 1988, and the Expansion Site is located within the exterior boundaries of the Nation's former reservation in Oklahoma. Accordingly, the Nation can conduct gaming on the Expansion Site upon its transfer into trust.

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

The Secretary of the Interior's (Secretary) general authority to acquire land in trust is found in Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. The Department's regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA.

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<sup>6</sup> See An Act to Authorize the Sale of the Pawnee Reservation, ch.51, 19 Stat. 28 (April 10, 1876).

<sup>7</sup> See An Act Making Appropriations for Current and Contingent Expenses, and Fulfilling Treaty Stipulations with Tribes, for Fiscal year Ending June Thirtieth, Eighteen Hundred and Ninety-four, h. 209, 27 Stat. 612 (March 3, 1893).

<sup>8</sup> Memorandum to Paula Hart, Director, Office of Indian gaming, from Regional Director, Southern Plains Regional Office (June 10, 2019) [hereinafter Findings of Fact ] at 6.

<sup>9</sup> Findings of Fact at 4.

<sup>10</sup> See 25 U.S.C. § 2702(2).

<sup>11</sup> See 25 U.S.C. § 2719(a)(2)(A)(i).

<sup>12</sup> See 25 C.F.R. § 292.4(b)(1).

## 25 C.F.R. § 151.3 – Land acquisition policy

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

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (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 Nation's application satisfies the criteria of subsections (a)(1) and (a)(2) because the Expansion Site is land in Oklahoma within the Nation's former reservation boundaries, and the Nation holds fee title to the property. Transfer of the Expansion Site into trust will facilitate tribal self-determination and economic development, thus, satisfying the criteria of Section 151.3(a)(3).<sup>13</sup>

The Nation reports that its economic development activities, including the StoneWolf Casino, are essential sources of revenue.<sup>14</sup> In recent years, however, revenue has steadily decreased, resulting in budget deficits.<sup>15</sup> In response, the Nation cut funding from its operations and a number of critical tribal services including the burial assistance program, the childcare and development fund, the Nation's Emergency Management Department, and the Division of Property Management.<sup>16</sup>

Approximately 48% of the Nation's budget in 2016 came from federal funding.<sup>17</sup> Federal funding is the primary funding source for services such as substance abuse prevention and diabetes treatment. Due to major cuts and the unpredictability in federal funding, the Nation experienced shortfalls in many areas. For example, in 2016, the U.S. Department of Education reduced funding to the Pawnee Nation College by approximately 69% from \$436,756 to \$136,852.<sup>18</sup> The Nation subsequently allocated \$38,469 of its general funds for the College, but the amount was insufficient to make up the shortfall. Despite an increase in federal funding in 2017 to \$479,490, the College received no federal funding in 2018.<sup>19</sup> The additional revenue from the StoneWolf Expansion will facilitate the Nation's self-sufficiency by reducing its dependence on federal funding.

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<sup>13</sup> Although only one factor in Section 151.3(a) must be met, the Nation's application also satisfies the criteria of subsections (a)(1) and (a)(2) because the Expansion Site is land in Oklahoma within the Nation's former reservation boundaries, and the Nation holds fee title to the property.

<sup>14</sup> Nation's Application at 16-18.

<sup>15</sup> *Id.*; 2018 Annual Report, Pawnee Nation of Oklahoma [hereinafter Annual Report] at 8-12, available at <https://www.pawneenation.org/files/annual-report/2018-web-Annual-Report.pdf>.

<sup>16</sup> Nation's Application at 18.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Annual Report at 11.

The Nation's economic activities are critical in addressing the unmet needs and improving the socioeconomic conditions and general welfare of the Pawnee tribal members. The hotel, amphitheater, and multi-purpose event center will enhance and diversify economic development activities and attract additional visitors. The expansion will provide a stable, long-term funding source for tribal government programs and services that will facilitate tribal self-determination and economic stability.

### **25 C.F.R. § 151.10 – On-reservation acquisitions**

The Expansion Site is located within the Nation's former reservation boundaries. Section 151.2 defines "Indian reservation" as, "that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma ... 'Indian reservation' means that area of land constituting the former reservation of the tribe as defined by the Secretary."<sup>20</sup> The Regional Director found, and we concur, that the Nation's application is properly considered under the on-reservation criteria of Section 151.10.<sup>21</sup>

#### **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) requires the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it.

In *Carcieri v. Salazar*, 555 U.S. 379 (2009), the United States Supreme Court held that the Secretary's authority to take land into trust for an Indian tribe under the first definition of "Indian" in the IRA extends only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934.<sup>22</sup> We have evaluated the applicability of *Carcieri* to the Nation's application and have determined that the Secretary is authorized to acquire land in trust for the Nation under 25 U.S.C. § 5108.

The IRA is a statute of general applicability. Congress provided an opt-out provision in Section 18 of the IRA, where a majority vote of Indians of the reservation voting at a special election called by the Secretary of the Interior could opt out of the IRA. To accommodate the unique situation of tribes in Oklahoma, Congress specified in Section 13 that certain provisions of the IRA did not apply to listed tribes in Oklahoma, leaving the remaining provisions of the IRA to apply.<sup>23</sup> Section 13 of the IRA provides in relevant part:

[...] That sections 2,4,7,16,17 and 18<sup>24</sup> of this title shall not apply *to the following named Indian tribes*, the members of such Indian tribes, together with members of

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<sup>20</sup> 25 C.F.R. § 151.2(f).

<sup>21</sup> Findings of Fact at 4.

<sup>22</sup> 555 U.S. at 395.

<sup>23</sup> By 1934, specific statutes applied to the Five Civilized Tribes and Osages and to the land base of Oklahoma tribes. Similarly, specific provisions in the IRA addressed Alaska where there were few reservations.

<sup>24</sup> Section 2 (25 U.S.C. § 5102) extended the existing periods of trust and any restriction on alienation placed upon Indian lands. Section 4 (25 U.S.C. § 5107) limited sales, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of the tribe or corporation organized under the Act. Section 7 (25 U.S.C. § 5110) authorized the Secretary to proclaim new reservations or add lands to existing reservations. Section 16 (25 U.S.C. § 5123) provided that

other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoc, Tonkawa, **Pawnee**, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek and Seminole.<sup>25</sup>

Significantly, this section of the IRA did two things. First, it specifically named the Nation as one of the Indian tribes to which certain provisions of the IRA would not apply. Second, it authorized the Secretary to take land into trust for those named Oklahoma Indian tribes pursuant to Section 5 of the IRA, because it did not include Section 5 in the list of IRA sections that would not be applicable to the named Oklahoma tribes. Thus, the Oklahoma tribes specifically named in Section 13 of the IRA were “under federal jurisdiction on June 18, 1934,” and the Secretary is authorized by Section 5 of the IRA to take land into trust for those tribes.<sup>26</sup> The listing of the Nation in Section 13 is sufficient for purposes of finding the Nation to be under federal jurisdiction in 1934. In addition, the Oklahoma Indian Welfare Act (OIWA) provides that all tribes that organized thereunder are entitled to enjoy the rights and privileges secured to any tribe that organized under the IRA.<sup>27</sup> On April 28, 1938, the Pawnee Tribe organized under OIWA and, as a result, Section 5 of the IRA is an available source of authority for this trust acquisition.<sup>28</sup>

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

Section 151.10(b) requires the Secretary to consider the tribe’s need for additional land.

The Nation currently has approximately 1,560 acres of land held in trust for its benefit. The Nation does not have a meaningful tax base and depends heavily on the economic activities of the Pawnee Tribal Development Corporation. The tract of land on which the existing StoneWolf Casino is located is fully developed with no additional area for the StoneWolf Expansion. The Nation, therefore, needs additional land on which to construct the hotel, amphitheater, and multi-purpose event center. The Regional Director found, and we concur, that the Nation needs to acquire additional land to foster economic development to address the unmet needs of the Pawnee people.<sup>29</sup>

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any Indian tribe, or tribes, residing on the same reservation, the right to organize and adopt a constitution. Section 17 (U.S.C. § 5124) provides that the Secretary, upon a petition by at least one-third of the adult Indians, may issue a charter of incorporation to such tribe. Section 18 (25 U.S.C. § 5125) provided that the adult Indians on any reservation could vote in a special election to opt out of the IRA.

<sup>25</sup> 25 U.S.C. § 5118.

<sup>26</sup> See, 78 Cong. Rec. 11125-26 (June 12, 1934), where Mr. Thomas of Oklahoma, discussing the land acquisition provision, offers an amendment that passes, that section 5 expressly reference the purchase of lands for individual Indians. He wants the money available “not only in my State for individual Indians but in other States where Indian lands have been allotted.” See also, 78 Cong. Rec. 11739 (June 15, 1934), where Mr. Hastings of Oklahoma, points out that the amendment “exempts the various Indian tribes in Oklahoma” from various sections of the act and that he does “not object to assistance by the Government in the form of and to the extent of the purchase of land for landless and indigent Indians, and to additional appropriations for health work and for Indian education.” Thus, both Mr. Thomas and Mr. Hastings understood that section 5 was applicable in Oklahoma.

<sup>27</sup> 25 U.S.C. § 5203.

<sup>28</sup> See Findings of Fact at 5.

<sup>29</sup> *Id.* at 6.

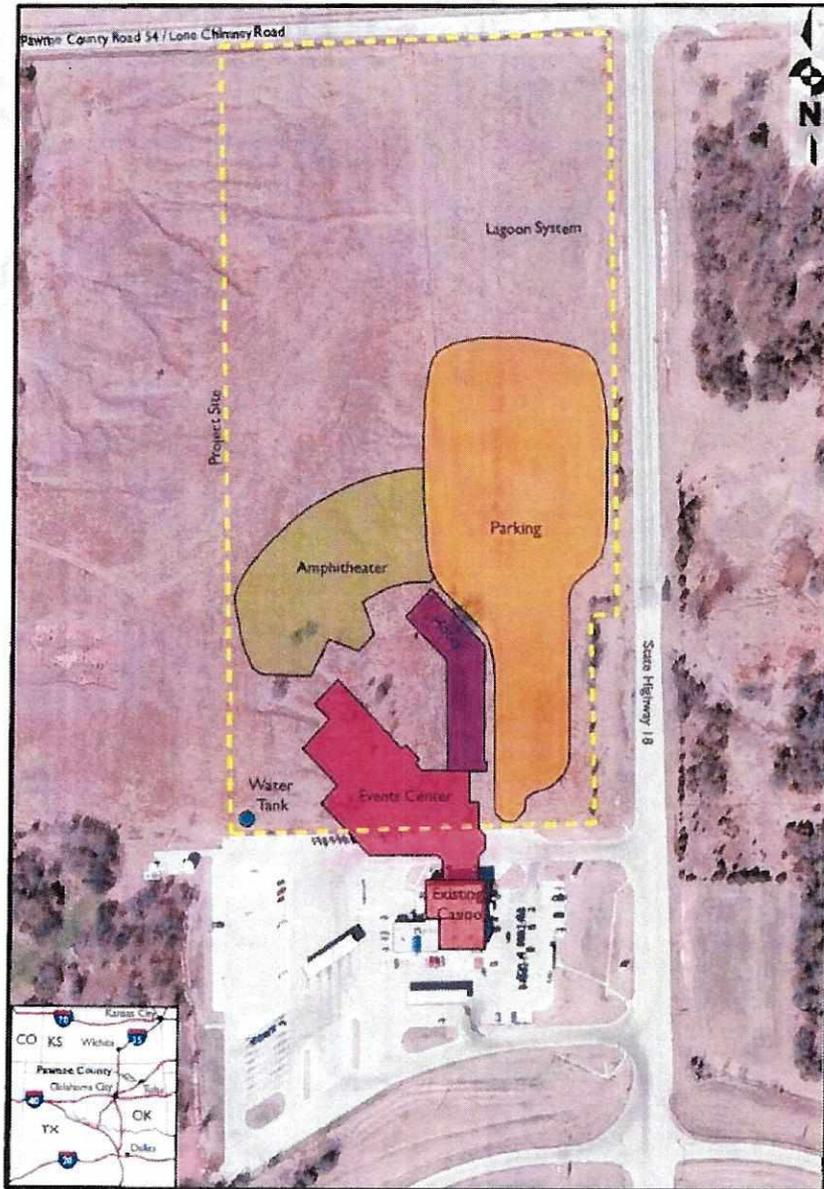
## **25 C.F.R. § 151.10(c) - The purposes for which the land will be used**

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 the StoneWolf Expansion on approximately seven acres of the Expansion Site. The StoneWolf Expansion will include a 70-room, multi-story hotel, an amphitheater, and a multi-purpose event center.<sup>30</sup> The amphitheater will consist of an outdoor band shell/stage area and tiered seating for 1,200 to 1,500 people. The Nation will construct the event center next to the amphitheater for use as a multi-purpose venue to accommodate various types of events ranging from small banquets to large conferences, live concerts, and gaming events such as bingo and poker tournaments. The Nation will construct a new 454-space parking lot, and an on-site wastewater lagoon system located on the northern portion of the Expansion Site.

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<sup>30</sup> *Id* at 7; Pawnee Nation Fee-to-Trust and Section 20 Determination StoneWolf Casino Amenity Expansion, Final Environmental Assessment [hereinafter EA] § 1.2.2.



**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 26, 2016, the Acting Superintendent of the Pawnee Agency requested comments from the State and local political subdivisions regarding the potential impacts on

regulatory jurisdiction, real property taxes, and special assessments of the proposed transfer of the Expansion Site into trust.<sup>31</sup> The Regional Director requested comments from the following entities:

- The Governor of Oklahoma
- State of Oklahoma Tax Commission
- Pawnee County Assessor
- Pawnee County Commissioners
- Pawnee County Court Clerk
- Pawnee County Sheriff
- Pawnee County Treasurer
- Mayor of the City of Pawnee

The Pawnee County Assessor responded, stating that the estimated taxes for the Expansion Site were \$42.05 in 2016.<sup>32</sup> The BIA received no other responses.

Potential impacts due to the loss of tax revenue resulting from the removal of the Expansion Site from the tax rolls will be more than offset by the positive economic contributions that the proposed expansion will provide to the region. The 2016 Economic Impact Analysis estimates that the beneficial impact on the regional economy from the hotel, amphitheater, and multi-purpose event center in the first year of operation will be \$84,818,786.<sup>33</sup> This consists of \$81,354,450 from initial construction, \$3,437,977 from year-one annual revenue, and \$26,359 in annual employee state income taxes paid. Once operational, the proposed StoneWolf Expansion is expected to create 45 new full and part-time permanent jobs, with an additional 27 indirect regional jobs. The five-year total estimated economic impact on the regional economy from the expansion is \$100,625,549.<sup>34</sup>

We find that there will be minimal impact from the removal of the Expansion Site from the tax rolls. The economic development generated by the proposed StoneWolf Expansion will offset any impacts.

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

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

The BIA received no comments from the State or local jurisdictions regarding jurisdictional problems or potential conflicts of land use in response to its request of October 26, 2016.

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<sup>31</sup> See Findings of Fact, Attachment J. The BIA also notified the Chairs of the following tribes: The Osage Nation, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma. *Id.*

<sup>32</sup> See letter to Trust Management Services, from Melissa Waters, Pawnee County Assessor (Rec'd Nov. 17, 2016) in Findings of Fact, Attachment J.

<sup>33</sup> Economic Impact Analysis, StoneWolf Hotel and Multipurpose Center (Aug. 2016) at 1, in EA, Appendix K.

<sup>34</sup> *Id.*

Upon transfer of the land into trust, the Pawnee Nation Police Department will provide law enforcement services to the Expansion Site.<sup>35</sup> The Nation also maintains a cross-deputation agreement with the City of Pawnee and Pawnee County.<sup>36</sup> The Pawnee Nation Fire and Rescue Department will provide fire protection and emergency response to the Expansion Site.<sup>37</sup>

No potential conflicts of land use are expected from the transfer of the Expansion Site into trust. Pawnee County Road 54 East (Lone Chimney Road) identifies the north boundary of the Expansion Site, and State Highway 18 the east boundary. The StoneWolf Casino is contiguous to the Expansion Site on the south, and undeveloped land lies to the west. The Expansion Site is located in unincorporated Pawnee County on an undeveloped tract of land contiguous to the existing StoneWolf Casino.<sup>38</sup> Pawnee County has no general land use plan or planning guidance, and there is no zoning ordinance in this rural portion of the county.<sup>39</sup> Surrounding land uses consist of open space and agriculture with scattered rural residences.

There are five residential properties within one half mile from the project site. Nonresidential properties near the site include the Lone Chimney Church, approximately 0.1 mile west of the project site boundary, and the Lone Chimney Community Center, approximately 200 feet northeast of the project site boundary. The Nation will implement mitigation measures to limit noise and visual impacts to these sensitive receptors.

The StoneWolf Expansion will not conflict with established land uses, land use plans, planning guidance, or zoning restrictions, and will not disrupt nearby established land uses.

**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 Bureau of Indian Affairs, Pawnee Agency, does not expect that the transfer of the Expansion Site into trust will add significant additional responsibilities. The Regional Director found, and we concur, that the BIA Pawnee Agency has adequate resources available to discharge its responsibilities for the Expansion Site.<sup>40</sup>

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<sup>35</sup> See EA § 3.14.2.

<sup>36</sup> See Deputation Agreement (April 28, 2005), in EA, Appendix G.

<sup>37</sup> See Letter to Roger Smith, Chief Executive Officer, Pawnee Tribal Development Corporation, from Monty Matlock, Division Director, Pawnee Nation Fire and Rescue Department (Feb. 23, 2016), in EA, Appendix G.

<sup>38</sup> See EA § 3.2.

<sup>39</sup> *Id.*

<sup>40</sup> Findings of Fact at 8

**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 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

*Phase I Site Assessment*

GMR & Associates, Inc. completed a Phase I Site Assessment in February 2015 in compliance with the scope and limitations of ASTM Standard Practice E-1527-1.<sup>41</sup> There were no recognized environmental conditions (RECs), no controlled RECs, and no historical RECs found in connection with the property. No further assessment activities were recommended.

*Environmental Assessment*

The BIA prepared an Environmental Assessment (EA) evaluating the potential impacts of the proposed project. The BIA made the EA available for public comment from April 18, 2018, through May 21, 2018. The BIA published notices of availability of the EA in the *Pawnee Chief*, the *Stillwater News*, and the *Cushing Citizen* newspapers, made copies available at the BIA Pawnee Agency Office, and sent copies to local tribal leaders.<sup>42</sup> The BIA received no comments from the public.

The EA analyzed three alternatives:

*Alternative 1, StoneWolf Casino Amenity Full Expansion*

Under Alternative 1, the United States will transfer the Expansion Site into trust for the benefit of the Nation. The Nation proposes to develop the Expansion Site by constructing a 70-room hotel, an amphitheater capable of seating 1,200 to 1,500 people, a multi-purpose event center, an additional 454 parking spaces, and a lobby that will connect the existing casino to the new facilities. The Nation proposes to hold gaming activities in the event center such as bingo and poker tournaments. Alternative 1 will provide direct employment to 45 people.

*Alternative 2, StoneWolf Casino Amenity Reduced Expansion*

Under Alternative 2, the United States will transfer the Expansion Site into trust for the benefit of the Nation. Construction of the amphitheater and event center will be the same as in Alternative 1. The Nation will not construct a hotel, and will add fewer parking spots. Alternative 2 will provide for direct employment to 25 people.

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<sup>41</sup> See Nation's Application, Tab 37.

<sup>42</sup> See Notice of Availability of the Environmental Assessment, on file with the Office of Indian Gaming.

### *No Action Alternative*

Under the No Action Alternative, the BIA will not transfer the property into trust and the Nation will not develop the Expansion Site.

### *Findings*

The BIA evaluated in the EA potential impacts to land resources; prime and unique farmland, air quality and climate; biological resources; geology, soils and sediment; water resources; cultural resources; Native American resources; socioeconomic conditions; environmental justice; transportation; noise; visual resources; utilities and public services; public health and safety; and hazardous materials. The EA describes the Best Management Practices (BMPs) in Section 2.3.3 and Table 2-7 in Appendix B that have been incorporated into the project design to eliminate or substantially reduce any environmental consequences to less-than-significant levels.

Based on the EA and its analysis of potentially affected resources, I have determined that Alternative 1 will best meet the purpose and need for transferring the Expansion Site into trust. I have further determined that a Finding of No Significant Impact (FONSI) is appropriate, and that an environmental impact statement is not required. The FONSI is included as Enclosure II.

Land Resources (EA § 3.2) – Alternative 1 will not conflict with land use planning or zoning restrictions. Pawnee County has no general land use plan or planning guidance, and there is no zoning ordinance in this rural part of the county. Development of the Expansion Site will be consistent with the commercial development of the StoneWolf Casino and development at highway interchanges. Impacts to land resources will be less than significant.

Air Quality and Climate (EA § 3.3) – Alternative 1 will have no direct impacts on air quality. Short-term impacts to air quality will occur during construction, but application of standard BMPs will reduce emissions to a less-than-significant level. Pawnee County is currently in attainment status. Impacts during operation will be below air quality threshold levels and will not contribute to a change in the designation status. Impacts to air quality and climate will be less than significant.

Biological Resources (EA § 3.4; Appendix B; Table 2-7) – Alternative 1 will have no direct impacts on biological resources. The Expansion Site is dominated by herbaceous vegetation typical of prairie grasslands in the region. Four federally listed species have the potential to occur in the area. Due to lack of surface water, there is a very low likelihood the species will be present in the project area or vicinity. The American burying beetle (ABB) may occur within the project Site. Prior to construction, presence or absence surveys will be conducted per the U.S. Fish & Wildlife Service (USFWS) Survey Guidance. If no ABBs are found, concurrence from USFWS should be sought. If ABBs are found, continue with formal Section 7 consultation with the USFWS. The ABB is currently under consideration for delisting. Migrating birds, specifically the Whooping Crane, have the potential to settle in project area during breeding season. Pre-construction surveys will be done prior to any ground disturbing activities and should be done during the non-breeding season. Impacts to biological resources will be less than significant.

Geology, Soils, and Sediment (EA § 3.5) – Alternative 1 will have no direct impacts on geology and soils. Construction will create minor, short-term impacts on soils during construction. With implementation of BMPs, impacts to geology, soils, and sediment will be less than significant.

Prime and Unique Farmland (EA § 3.5.2) – Alternative 1 will have no direct impacts on Prime and Unique Farmlands. Sites receiving a conversion impact score of less than 160 do not require further evaluation or protection. The score of the Expansion Site is 93; therefore, there will be no significant impacts to Prime and Unique Farmland.

Water Resources (EA § 3.6) – Alternative 1 will have no direct impacts on water resources. There are no floodplains or wetlands within the project site. During construction, BMPs included in the Storm Water Prevention Plan will minimize potential adverse effects. Stormwater will be directed into an on-site stormwater control system, which was designed during the previous casino expansion to incorporate the increased runoff from the current expansion. The stormwater infrastructure will prevent on-site and off-site erosion and flooding, therefore, no significant impacts will occur. Due to the lack of a public wastewater system on the site, sewage and wastewater from the proposed project will be treated in an on-site lagoon system located on the northern portion of the Expansion Site. Impacts to water resources will be less than significant.

Cultural Resources (EA § 3.7) – Alternative 1 will have no direct impacts on cultural resources. There are no known historic properties, archeological sites, or cultural materials within the Expansion Site's area of potential effect. A pedestrian survey was conducted on the Site in 2015. No cultural resources, vertebrate paleontological resources, or significant invertebrate resources were found. Impacts to cultural resources will be less than significant.

Native American Resources (EA § 3.8) – The casino expansion will not inhibit access to, or use of, culturally important locations, or interfere with cultural or religious practices. It will not impair the exercise of tribal treaty rights, tribal sovereignty, tribal legal interests, or tribal social and economic development. Impacts to Native American Resources will be less than significant.

Socioeconomic Conditions (EA § 3.9) – Alternative 1 will not adversely impact socioeconomic conditions. The proposed StoneWolf Expansion is expected to create 45 new full and part-time permanent jobs, with an additional 27 indirect regional jobs. The total estimated beneficial impact on the regional economy from the StoneWolf Expansion in the first year of operation is \$84,818,786, consisting of \$81,354,450 from initial construction, \$3,437,977 year one annual revenue, and \$26,359 annual employee state income taxes paid. Impacts to socioeconomic conditions will be less than significant.

Environmental Justice (EA § 3.10) – Alternative 1 will have no direct impacts on minority or low-income populations. The Nation will promote equal opportunity employment. Revenues from the casino will promote economic gains to tribal members through per capita payments. Increase in employment and spending will represent additional opportunities for all members of the local population, including minority and low-income groups. Approximately nine new employment positions will be filled with Pawnee members and nine positions will be filled with individuals from other tribal groups. Impacts to environmental justice will be less than significant.

Transportation (EA § 3.11) – Alternative 1 will have no direct impacts on transportation. Construction traffic will result in short-term, minor, localized transportation impacts. The amphitheater, event center, and hotel will increase the number of vehicles per day along State Highway 18 between the interchange and the entrance to the StoneWolf Casino. During operation, the applicable intersections will operate at an acceptable level service. Impacts to transportation will be less than significant.

Noise (EA § 3.12) – Alternative 1 will have no direct impacts from noise. Noise from construction activities will be short-term and temporary. Operation of the facilities will be similar to existing conditions. Impacts to sensitive receptors during large outdoor events in the amphitheater will be short term and intermittent. Mitigation measures will reduce the level of impact to sensitive receptors. Impacts from noise will be less than significant.

Visual Resources (EA § 3.13) – Alternative 1 will have no direct impacts on visual resources. Because the StoneWolf Expansion is adjacent and connected to the existing StoneWolf Casino, it will appear as a cohesive extension of the existing casino development. This will have a negligible impact on the visual environment. The new development will not be visible from any sensitive receptors because trees will screen the view from the two nearest residences. Impacts to visual resources will be less than significant.

Utilities and Public Services (EA § 3.14) – Alternative 1 will have no direct impacts on utilities or public services. Water for the Expansion Site will be tied into the existing StoneWolf Casino, with an adequate supply for existing and new structures. Electrical services will be adequate to provide electricity to the Expansion Site, though the delivery infrastructure will need to be upgraded. The upgrades are undetermined at this time; however, Pawnee Tribal Development Council will coordinate with Indian Electric Cooperative to ensure there will be no impacts to service delivery. The additional wastewater and sewage will be collected and treated in the new lagoon on the northern portion of the project site. Pawnee Nation will provide law enforcement, fire protection, and emergency services to the Expansion Site. Impacts to utilities and public services will be less than significant.

Public Health and Safety (Including Hazardous Materials) (EA § 3.15) – Alternative 1 will have no direct impacts on public safety. A Phase I Environmental Assessment was conducted in 2015 and found no past or present contamination from hazardous materials. Potential impacts will be minimized by training personnel in handling and storing hazardous materials in compliance with OSHA standards. The project Spill Prevention, Control, and Countermeasure Plan will address hazardous materials management during construction. Large quantities of hazardous materials will not be used or transported. Impacts to public health and safety will be less than significant.

Cumulative Impacts – Alternative 1 will not result in cumulatively adverse impacts to land resources; prime and unique farmland; air quality and climate; biological resources; geology; soils and sediment; water resources; cultural resources; Native American resources; socioeconomic conditions; environmental justice; transportation; noise; visual resources; utilities and public services; public health and safety; or hazardous materials. The proposed StoneWolf Expansion is expected to have a positive indirect effect on the local economy. The development of Alternative 1 will result in less-than-significant cumulative or indirect impacts to the resources identified above.

## **Decision to approve the tribe's fee-to-trust application**

As discussed above, all applicable legal requirements have been satisfied, and by my signature, I indicate my decision to transfer into trust 20 acres in Pawnee County, Oklahoma, for self-determination and economic development purposes for the Pawnee Nation of Oklahoma.

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will transfer the Expansion Site into trust for the Pawnee Nation of Oklahoma. Further, once transferred into trust, the Nation can conduct gaming on the Expansion Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719 (a)(2)(A)(i). 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 land in trust. This decision constitutes a final agency action under 5 U.S.C. § 704.

Sincerely,



Tara Sweeney  
Assistant Secretary – Indian Affairs

Enclosures