



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

NOV 10 2010

The Honorable Joe Shirley, Jr.  
President, Navajo Nation  
P.O. Box 7440  
Gallup, New Mexico 87305

Dear President Shirley:

On September 8, 2010, the Navajo Nation (Nation) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust approximately 405.61 acres of land, known as the Twin Acres Parcel (TA Parcel), located in Coconino County, Arizona. The Nation intends to develop a gaming facility on the property.

By memorandum dated October 5, 2010, the Navajo Regional Director (NRD) transmitted to the Assistant Secretary – Indian Affairs (AS-IA), his recommendation that the property be accepted into trust (*NRO Transmittal Memo*), along with the Nation's request and supporting documentation. We have completed our review of the Nation's request, supporting documentation, and the NRD's recommendation. For the reasons set forth below, it is our determination that the parcel will be taken into trust.

## BACKGROUND

The Nation was federally recognized by the United States government in 1868 pursuant to the Treaty Between the United States of America and the Navajo Tribe of Indians, US-Navajo Nation, June 1, 1868, 15 Stat 667. The Nation's headquarters are located in Gallup, New Mexico.

Pursuant to the Navajo Hopi Settlement Act, PL 93-531 and the Navajo Hopi Indian Relocation Amendment Act of 1980, PL 96-305 (collective Act) provides that the Navajo Hopi Land Commission (NHLHC) is authorized to speak on behalf of the Nation regarding the selection of land to be taken into trust. On April 20, 2010, the Office of the Solicitor, Southwest Region issued an opinion stating that the acquisition of the TA Parcel is a mandatory acquisition under the Act subject to: (i) acquisition of the TA Parcel by the Nation and; (ii) a formal recommendation by the Office of Navajo and Hopi Indian Relocation (ONHIR) selecting the TA Parcel for acquisition under the Act. On March 10, 2010, the NHLHC adopted Resolution No. NHLCMA-02-10 to select the TA Parcel for acquisition and conversion to trust status (*NRO Volume 1, Tab M*). The Resolution also affirms that consultation has taken place with the ONHIR.

## DESCRIPTION OF THE PROPERTY

The legal description of the property is as follows (*NRO Tab E*):

A portion of the north half of Section 31, and the south half of Section 29, Township 21 North, Range 11 East, Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

BEGINNING at a set aluminum cap marked "RLS 18215" at the corner common to Sections 29, 30, 31 and 32, Township 21 North, Range 11 East, Gila and Salt River Meridian, Coconino County, Arizona.

Thence North 00°25'51" West, 460.17 feet along the west line of said Section 29 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing North 00°25'51" West, 880.64 feet along said west line of Section 29 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing North 00°25'51" West, 1297.66 feet along said west line of Section 29 to a found U.S. Government Land Office brass cap at the west quarter corner of said Section 29;

Thence North 89°34'49" East, 90.00 feet along the latitudinal mid-section line of said Section 29 to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence South 00°25'51" East, 935.28 feet along a line parallel with and 90.00 feet east of said west line of Section 29 to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 44°11'15" East, 99.65 feet to a set ½" diameter drill hole with brass tag marked "RLS 18215";

Thence North 88°48'21" East, 292.56 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215" and a point of curvature;

Thence northeasterly and southeasterly, 142.20 feet along the arc of a 1,500.00 foot radius curve, concave to the southwest, having a central angle of 05°25'53", to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence South 85°45'56" East, 282.63 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215" and a point of curvature;

Thence southeasterly and northeasterly, 313.58 feet along the arc of a 310.00 foot radius curve, concave to the northwest, having a central angle of 57°57'30", to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 36°16'45" East, 332.86 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215" and a point of curvature;

Thence northeasterly and northwesterly, 128.10 feet along the arc of a 120.00 foot radius curve, concave to the northwest, having a central angle of 36°41'55", to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°25'11" West, 378.02 feet to a point on said latitudinal mid-section line of Section 29 and the south line of ANTELOPE HILLS as recorded in Instrument No. 3438078, RCC, from which a ½" diameter rebar with cap marked "WITNESS CORNER" lies North 00°25'11" West 75.00 feet;

Thence North 89°34'49" East, 920.62 feet along said latitudinal mid-section line of said Section 29 and said south line of said ANTELOPE HILLS to a found ½" diameter rebar with plastic cap marked "RLS 18215" at the southeast corner of said ANTELOPE HILLS and the southwest corner of that parcel described in Docket 1810, Page 456, RCC;

Thence continuing North 89°34'49" East, 110.50 feet along said latitudinal mid-section line of said Section 29 and the south line of said parcel described in Docket 1810, Page 456, RCC to a found ½" diameter rebar with plastic cap marked "RLS 18215" at the southeast corner of said parcel;

Thence continuing North 89°34'49" East, 224.26 feet along said latitudinal mid section line of said Section 29 and the south line of said parcel to a found ½" diameter rebar with plastic cap marked "RLS 18548" at the center quarter corner of said Section 29;

Thence North 89°34'22" East, 985.24 feet along said latitudinal mid-section line of said Section 29, the south line of said parcel, and the south line of that parcel described in Docket 1566, Page 60, RCC, to a found U.S. Government Land Office brass cap on the west line of the Navajo Indian Reservation per Executive Order November 14, 1901;

Thence South 00°21'46" East, 1299.10 feet along said west line to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 00°21'46" East, 1342.25 feet along said west line to a found U.S. Government Land Office brass cap marked "M1 NIR" at the intersection of said west line and the line common to said Section 29 and 32;

Thence South 89°37'12" West, 985.03 feet along the south line of said Section 29 to a found ½" diameter rebar with tag marked "RLS 18215" at the south quarter corner of said Section 29;

Thence South 89°36'50" West, 184.95 feet along said south line of said Section 29 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 89°36'50" West, 1135.59 feet along said south line of said Section 29 to a found ½" diameter rebar with cap marked "RLS 18548" ;

Thence continuing South 89°38'10" West, 34.93 feet along said south line of said Section 29 to a found ½" diameter rebar with cap marked "RLS 18215";

Thence continuing South 89°38'10" West 967.64 feet along said south line of said Section 29 to a found ½" diameter rebar with cap marked "RLS 18215";

Thence continuing South 89°38'10" West, 318.08 feet along said south line of said Section 29 to said set aluminum cap marked "RLS 18215" at said corner common to Sections 29, 30, 31 and 32, Township 21 North, Range 11 East, Gila and Salt River Meridian, Coconino County, Arizona;

Thence South 00°14'09" East, 1442.34 feet along said east line of Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 00°14'09" East, 1196.29 feet along said east line of Section 31 to a found U.S. Government Land Office brass cap at the east quarter corner of said Section 31;

Thence South 89°38'03" West, 1455.50 feet along the meridional mid-section line of said Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 89°38'03" West, 1184.20 feet along said meridional mid-section line of said Section 31 to a found aluminum cap marked "LS 18548" at the center quarter corner of said Section 31;

Thence South 89°37'41" West, 532.09 feet along said meridional mid-section line of said Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 89°37'41" West, 128.83 feet along said meridional mid-section line of said Section 31 to a found ½" diameter rebar with broken aluminum cap;

Thence South 89°41'33" West, 660.12 feet along said meridional mid-section line of said Section 31 to a found ½" diameter rebar with broken aluminum cap;

Thence South 89°36'36" West, 661.07 feet along said meridional mid-section line of said Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°22'23" West, 659.83 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°21'46" West, 659.54 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°23'06" West, 329.94 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°23'06" West, 989.81 feet to a found drill hole in rock with a brass tag marked "RLS 18215" on the north line of said Section 31;

Thence North 89°38'52" East, 1321.10 feet along said north line of Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence South 00°23'36" East, 1154.89 feet to a found ½" diameter rebar with plastic cap with obliterated markings:

Thence South 89°40'52" West, 132.11 feet to a found ½" diameter rebar with aluminum cap marked "LS 28717";

Thence South 89°39'38" West, 528.45 feet to a found ½" diameter rebar with cap marked "LS 14184";

Thence South 00°23'27" East, 293.62 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence South 00°23'27" East, 530.82 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°39'30" East, 528.41 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°23'54" West, 549.91 feet to a found ½" diameter rebar with aluminum cap marked "LS 28717";

Thence North 89°38'16" East, 792.64 feet to a found ½" diameter rebar with aluminum cap marked "LS 28717";

Thence South 00°24'27" East, 550.19 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°37'33" East, 660.15 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°21'31" West, 1319.49 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°37'18" East, 495.88 feet to a found ½" diameter rebar with tag marked "RLS 18215";

Thence North 00°19'21" West, 659.45 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215" on said north line of Section 31;

Thence North 89°39'00" East, 827.35 feet along said north line of Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°37'28" East, 661.65 feet along said north line of Section 31 to the POINT OF BEGINNING.

CONTAINING 17,668,330 square feet (405.61 acres), more or less.

### **TITLE TO THE PROPERTY**

The Nation owns the TA Parcel in fee status. The commitment for title insurance, Policy No. OX 08165541, issued by Pioneer Title Agency, Inc. dated August 25, 2010, reflects the title to be vested in the Navajo Tribe of Indians, a federally recognized Indian Tribe, (*NRO Volume II, Tab V*).

On September 30, 2010, the Navajo Regional Director (NRD) requested a Preliminary Title Opinion (PTO) from the Office of the Solicitor, Southwest Region (Solicitor). On October 25, 2010, the Solicitor issued a PTO and provided various observations, conclusions, and needed actions prior to closing.

### **COMPLIANCE WITH 25 C.F.R. PART 151**

The Secretary's authority, procedures, and policy for accepting land into trust are set forth at 25 CFR 151. Section 151.3 sets forth under what conditions land may be acquired in trust by the Secretary for an Indian tribe or an individual Indian, but states that it is "subject to the provisions in the acts of Congress which authorize land acquisition." Pursuant to the Navajo-Hopi Settlement Act of 1974 and the Navajo and Hopi Indian Relocation Amendments Act of 1980, the land conveyance of the 405.61 acres for the Nation in trust is a mandatory land acquisition, (*NRO Volume 1, Tab B*).

In 1974, the United States Congress enacted PL 93-531 in an attempt to resolve long standing disputes between the Nation and the Hopi Tribe. PL 93-531, among other things, provided that the Navajo and Hopi Indians occupying an area known as the "Joint Use Area" be relocated and the "Joint Use Area" be partitioned. In order to compensate the Nation for loss of certain lands in the "Joint Use Area", Congress provided that the Nation could select and purchase replacement lands from both public and private sources, *See* PL 93-531 Sec. 11 (a). To this end, the Nation began purchasing property known as Bar N and Chambers Ranches properties, with the intent of transferring ownership to the United States in trust for the Nation's benefit. The TA Parcel is 405 acres and therefore, does not exceed the acreage requirements imposed by the Act. After placement of the TA Parcel into trust status, there will remain an additional 12,885 acres for future acquisition by the Nation.



Congress amended PL 93-531 through the passage of PL 96-305 in 1980. Significantly, PL 96-305 amended Section 11 of PL 93-531, the provision providing for acquisition of replacement lands by the Nation. Under the newly amended Act, Congress provided that:

“Sec.11. (a) The Secretary is authorized and directed to:

(2) on behalf of the United States, accept title to not to exceed one hundred and fifty thousand acres of private lands acquired by the Navajo Tribe. Title thereto shall be taken in the name of the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation.”

On April 20, 2010, (*NRO Volume I, Tab E*) the Office of the Solicitor, Southwest Region (Solicitor) issued an opinion stating that the acquisition of the TA Parcel is a mandatory acquisition under the Act, subject to: (i) acquisition of the TA Parcel by the Navajo Nation and (ii) a formal recommendation by the Office of the Navajo and Hopi Indian Relocation (ONHIR) selecting the TA Parcel for acquisition under the Act. By letter dated August 25, 2010, (*NRO Volume I, Tab G*) the ONHIR notified the NRD that all necessary consultation has occurred and all requirements under the Act have been met.

#### **COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT**

The Nation indicated on its application that it intends to use the property for gaming purposes. On April 20, 2010, the Solicitor determined that the TA Parcel is contiguous to the Nation’s reservation, as indicated by the BIA Title Status Report and the BLM Indian Land Surveyor Field Inspection Report (*NRO Exhibit E*), the boundary of which was created through an Executive Order in 1901, (*NRO Volume I, Tab J*). This is significant because the provisions of PL 96-305 require that replacement lands selected by the Nation pursuant to PL 93-531 not be further than eighteen (18) miles away from the Nation’s existing reservation as the boundary existed in 1980, when the Act was passed. In addition, the Solicitor (*NRO Exhibit A*) has concluded that the TA Parcel and the Nation’s lands are contiguous and once taken into trust will qualify for gaming pursuant to 25 USC 2719 § (a)(1).

The Nation and the State of Arizona entered into a Class III gaming compact which was approved on January 24, 2003, and a notice of effect was published in the Federal Register on February 5, 2003. The compact provides that all gaming facilities shall be located on the Indian lands of the Nation.

The Nation’s Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on December 9, 2003.

## REVIEW OF ENVIRONMENTAL DOCUMENTATION

### 1. National Environmental Policy Act (NEPA)

Although NEPA compliance is generally required on trust acquisitions under the provisions of 25 CFR §151.10, as well as the terms of NEPA itself and the Council on Environmental Quality (CEQ) regulations, NEPA compliance is not required in this instance since the acquisition of property for the Nation is explicitly mandated by the Act.

### 2. Hazardous Substance Determination

The BIA must comply with the requirements of Departmental Manual 602 DM 2, Land Acquisitions: Hazardous Substance determinations to determine whether potential environmental claims may exist.

In a memorandum dated September 22, 2010, to the NRD, the Regional NEPA Coordinator reported the Phase 1 Environmental Site Assessment Update, for the TA Parcel revealed no evidence of Recognized Environmental Conditions in connection with the Project and that no further investigations are warranted, (*NRO Exhibit D*).

## DECISION

Our evaluation of the Nation's request indicates that the federal requirements for acquiring this parcel of land into trust have been satisfied. The NRD will be authorized to approve the conveyance document accepting the property in trust for the Nation subject to any condition set forth herein, approval of all title requirements by the Solicitor, and expiration of the thirty day period following publication in the *Federal Register* of the notice required in 25 CFR § 151.12(b) and barring legal challenge to this decision.

Sincerely,

  
For Larry Echo Hawk  
Assistant Secretary - Indian Affairs