



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 06 2012

Honorable Donald Patterson
President, Tonkawa Tribe of Oklahoma
1 Rush Buffalo Road
Tonkawa, Oklahoma 74653

Dear President Patterson:

On August 20, 2008, the Tonkawa Tribe of Oklahoma (Tribe) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust 127.65 acres, also known as the Tonkawa Quarry Parcel (Site). The Site is located within the original boundaries of the Tonkawa Reservation, and within the city limits of the City of Tonkawa, Kay County, Oklahoma. On June 2, 2009, the Tribe submitted an amended request for trust acquisition of the Site pursuant to Resolution T-R-04-10 dated February 9, 2010.¹ The Tribe owns the Site in fee simple. The Site will be used for construction of a hotel, restaurant, and gaming facility (Gaming Facility).

By memorandum dated December 14, 2011, the Regional Director, Southern Plains Region Office (SPRO) transmitted to the Assistant Secretary – Indian Affairs (AS-IA), a recommendation that the property be accepted into trust, along with the Tribe's request and supporting documentation.² We have completed our review of the Tribe's request, the supporting documentation in the administrative record, all comments received, and the SPRO's recommendation. For the reasons set forth below, it is my determination that the 127.65 acres of land will be taken into trust.

BACKGROUND

The Tribe is a federally recognized Indian tribe located in north central Oklahoma. The Tribe has approximately 634 citizens. The Tribe's Constitution and Bylaws were approved by the Secretary of the Interior on March 16, 1938, and ratified by the citizens of the Tribe on April 21, 1938.³ The Tribe's headquarters, known as Fort Oakland, are located in Tonkawa, Oklahoma.

Tonkawa History

The Tonkawa Tribe is first mentioned in a Spanish document dated in the year 1691 as residing in what is now known as Texas and Oklahoma. In 1884, the Tonkawa were removed from their lands in central Texas and arrived at the Oakland Reservation in June of 1885. The Tonkawa/Oakland Reservation was held in trust for the benefit of Indians settled upon the

¹ SPRO Binder 1, Tab 1

² SPRO Transmittal Memo

³ SPRO Binder 1, Tab 17

lands in central Texas and arrived at the Oakland Reservation in June of 1885. The Tonkawa/Oakland Reservation was held in trust for the benefit of Indians settled upon the Reservation by deed May 22, 1885.

The Tonkawa Reservation, at that time, consisted of over 92,000 acres. The boundaries of the Reservation are described in the 1891 "Agreement with Tonkawas," (the Agreement) between the Tonkawa Tribe and the United States Federal Government which was ratified by an act of Congress in 1893.⁴

The description of the Tonkawa Reservation, which included over 90,000 acres, is described in the Agreement, as follows:

Township twenty-five (25) north of range one (1) west; township twenty-sixth (26) north of range one (1) west; township twenty-five (25) north of range two (2) west, and township twenty-six (26) north of range two (2) west, containing ninety thousand seven hundred and ten and eighty-nine hundredths (90,710.89) acres, more or less.⁵

In 1891, the Tonkawa were forced to select allotments of land pursuant to the provisions of the General Allotment Act. In 1893, the Tonkawa Tribe consisted of approximately 73 citizens and each was given 160 acres of land in addition to the 160 acres provided to the tribal government to conduct tribal affairs. The remainder of the reservation lands was opened to homesteaders in 1893. A short time after allotment, the total acreage held by the Tribe and/or tribal citizens with the Tonkawa Reservation was reduced from 92,160 acres to only 11,840 acres. Many tribal citizens were forced to sell their allotments to the settlers and the depletion of tribal land has created a tremendous financial hardship on the Tribe.⁶

The Tribe currently operates two class III gaming facilities, including the Tonkawa Casino located in Tonkawa, Oklahoma, next to the Tribe's headquarters, and the Native Lights Casino in Newkirk, Oklahoma.

The Tribe's proposed Gaming Facility would consist of approximately 15,000 square feet and include approximately 400 gaming machines, a hotel, restaurant, and parking area.

DESCRIPTION OF THE PROPERTY

The 127.65 acres are described as follows:⁷

A tract of land in the Northwest Quarter of Section 31, Township 26 North, Range 1 West of the Indian Meridian, Kay County, State of Oklahoma and more particularly described as follows:

⁴ SPRO Binder 1, Tab 1B

⁵ *Id.*

⁶ SPRO Binder 1, Tab 1, Tonkawa Amended Request, June 2009, p. 4

⁷ SPRO Binder 1, Pawnee Agency Transmittal, Dec. 5, 2011, p. 2

Beginning at the Northwest corner of said Northwest Quarter of Section 31, Township 26 North, Range 1 West; thence North 89 deg. 02 min. 51 sec. East along the North line of said Section 31, for a distance of 800 feet; thence South 0 deg. 57 min. 09 sec. East 430 feet; thence North 89 deg. 02 min. 51 sec. East, 1423.15 (Measured) feet to a point on the West right of way line of Interstate Highway 35; thence South 14 deg. 10 min. 32 sec. East, 687.71 feet along said West right of way line; thence South 0 deg. 46 min. 24 sec. East, 1540.52 along said West right of way line to the intersection with the South line of the Northwest Quarter of said Section 31; thence South 89 deg. 03 min. 54. sec. West along the South line of said Northwest Quarter of said Section 31, 2385.25 (Measured) feet to the Southwest corner of said Northwest Quarter of Section 31; thence, North 0 deg. 44 min. 38 sec. West along the West line of said Northwest Quarter of Section 31, 2639.27 (Measured) feet to the true point of beginning.

TITLE TO THE PROPERTY

The commitment for title insurance prepared by Ticor Title Insurance Company dated February 26, 2008, reflects the title to be vested in the Tribe in the amount of \$1,000,000.00.⁸ The Tribe currently holds title to the Site through a Warranty Deed filed and recorded on March 13, 2008, with the Kay County Clerk's Office.⁹ A revised Warranty Deed was filed and recorded with Kay County on May 15, 2009, to address a deficiency in the legal description on the Site. On May 29, 2009, another Warranty Deed was filed and recorded to address another deficiency.

On October 18, 2010, the Tulsa Field Solicitor issued a preliminary opinion of title.¹⁰ The Field Solicitor found the title to be vested in the Tribe.

COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT (IGRA)

The Site is owned in fee by the Tribe and will be used for construction of a hotel, restaurant, and gaming facility. Section 2719 of IGRA prohibits gaming on land acquired in trust after October 17, 1988, but provides several exceptions. The Tonkawa Tribe meets the exception found in 25 U.S.C. § 2719(a)(2)(A)(i) which states: "[T]he Indian tribe has no reservation on October 17, 1988, and . . . such lands are located in Oklahoma and . . . are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary" The Tribe had no reservation on October 17, 1988, and the 127.65-acre Site is located within the boundaries of the Tribe's former reservation. Therefore, the Tribe may conduct gaming on this property pursuant to 25 U.S.C. § 2719(a)(2)(A)(i).

The Tribe and the State of Oklahoma entered into a class III gaming compact which was

⁸ SPRO Binder 1, Tab E4

⁹ SPRO Binder 1, Tab E3

¹⁰ SPRO Binder 1, Tab E2

effect of the Tribal-State Compact between the Tribe and the State of Oklahoma. The Compact was subsequently amended and approved on March 17, 2005, and the notice of effect was published on April 6, 2005.¹²

The Tribe's Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on February 27, 1997. The Ordinance was subsequently amended and approved by the NIGC on March 22, 2006 and January 20, 2010.¹³

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 C.F.R. Part 151.

A. 25 CFR 151.3. Land acquisition policy.

As a matter of statute and regulation, the Secretary may acquire land in trust for a tribe under 25 C.F.R. § 151.3(a)(1) when the land is located within the exterior boundaries of an Indian reservation or adjacent thereto or within a tribal consolidation area. The Regional Director has determined that the acquisition of the 127.65-acre parcel satisfies 25 C.F.R. §§ 151.2(f) and 151.3(a)(1), because the land is located within the exterior boundaries of the former reservation that was established for the Tribe, and I concur.¹⁴

The acquisition is also authorized under 25 C.F.R. § 151.3(a)(2) because the Tribe holds fee title to the site.

25 CFR 151.10(a). The existence of statutory authority for the acquisition and any limitations contained in such authority.

In *Carcieri v. Salazar*, 555 U.S. 379 (2009), the United States Supreme Court held that the Secretary's authority to acquire land in trust for Indian tribes pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465 (IRA), extends only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934. We have evaluated the applicability of *Carcieri* to the Tribe's application and have determined that the Secretary is authorized to acquire land in trust for the Tribe under 25 U.S.C. § 465.

The IRA is a statute of general applicability. Congress provided an opt-out provision in Section 18 of the Act, 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 Act. As a special accommodation to the unique situation of Indian tribes in Oklahoma, in Section 13 of the IRA, Congress identified six provisions of the IRA that did not apply to the certain Oklahoma tribes,

¹² SPRO Binder 1, Tab 20B

¹³ SPRO Binder 1, Tab 20C

¹⁴ SPRO Binder 1, Tab 1A,

Congress identified six provisions of the IRA that did not apply to the certain Oklahoma tribes, leaving the remaining provisions of the IRA applicable to them. Section 13 of the IRA provides in relevant part:

That sections 2, 4, 7, 16, 17, and 18¹⁵ of this title shall not apply *to the following named Indian tribes*, the members of such Indian tribes, together with members of 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, Otoe, **Tonkawa**, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomie, Cherokee, Chickasaw, Choctaw, Creek, and Seminole.

25 U.S.C. § 473 (emphasis added).

Section 13 of the IRA accomplished two things relative to the Tonkawa Tribe. First, it specifically identified the Tribe as an Indian tribe to which certain provisions of the IRA did not apply. Second, it authorized the Secretary to acquire land in trust for the Tribe under Section 5 of the IRA because Section 5 was not included in the list of inapplicable IRA sections. We therefore conclude that the Tonkawa Tribe, an Oklahoma tribe specifically named in Section 13 of the IRA, was under federal jurisdiction for *Carcieri* purposes and that the Secretary is authorized under Section 5 of the IRA to acquire land in trust on behalf of the Tribe.¹⁶

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

The Tribe is the sole owner of the 127.65-acre Site. The Tribe is currently administering their own lease of the Site for farming and grazing. The Tribe has stated that their need for the land is evidenced by the current land holdings of the Tribe, and that based upon the 2000 Census and updated figures, only 994.33 acres are held in trust and only 238.24 of the over 11,000 acres of individually allotted land remains. In order for the Tribe to reestablish the land base to promote

¹⁵ Section 2 (§ 462) extended the existing periods of trust and any restriction on alienation placed upon Indian lands. Section 4 (§ 464) 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 (§ 467) authorized the Secretary to proclaim new reservations, or add lands to existing reservations. Section 16 (§ 476) provided that any Indian tribe, or tribes, residing on the same reservation, the right to organize and adopt a constitution. Section 17 (§ 477) 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 (§ 478) provided that the adult Indians on any reservation could vote in a special election to opt out of the IRA.

¹⁶ 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.

economic development and access any natural resources on the reservation, the Tribe must acquire land to foster such development. The revenue generated by economic development will be used to provide adequate housing for the tribal citizens because much of the existing housing requires repairs and renovations that the Tribe is currently unable to fund. In addition, the Tribe will establish a permanent post for the Tonkawa Police Department, and the gaming revenues will also provide substantial funding for construction of more Indian housing and construction of a hotel and restaurant.

Based on this information the SPRO Regional Director has determined that the need for the additional land is adequately justified and I concur.

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

The Tribe intends to construct and operate a Gaming Facility with a gaming floor of approximately 15,000 square feet, and anticipates employing up to approximately 1,500 to 2,000 individuals.

The SPRO Regional Director finds that the request adequately describes the purpose for which the land will be used and I concur.

E. 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.

The Tribe owns the Site in fee simple. The property is currently on the Kay County Assessor's rolls as taxable. There are no special assessments or outstanding tax assessments. By correspondence dated February 24, 2009, comments on the potential impacts of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments were solicited from the following state and local political subdivisions:¹⁷

Governor of Oklahoma – No response

Oklahoma State Tax Commission – Rena Maddux, Oklahoma State Tax Commission responded on March 12, 2009, stating the Tax Commission does not maintain any of the records solicited.

Kay County Treasurer – On March 4, 2009, Christy Kennedy, Kay County Treasurer stated the property taxes on the property were \$1,430.10. She also stated there are no special assessments against the property.

City of Tonkawa – The City of Tonkawa responded on August 26, 2009, stating the property taxes were \$1,430.00.

¹⁷ SPRO Binder 1, Tab 12

The responses received from the entities above did not discuss any negative impacts. The City of Tonkawa and the Tonkawa Industrial Development Authority have worked with the Tribe to promote the acceptance of this request as the economic potential will be significant for the entire county as evidenced by the City's public support of the project.

The Regional Director concludes that the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls would be negligible and I concur.

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

No jurisdictional issues or concerns were raised or are expected from the proposed use. The City of Tonkawa provides fire, emergency medical services and police protection, along with water and wastewater services. Law enforcement services are provided by the Tribal Police.

The Regional Director states there were no comments from State and local officials regarding jurisdictional or potential conflicts of land use.

G. 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.

The Site is within the jurisdictional boundaries of the BIA, Pawnee Agency (Agency). The Agency does not expect that the conversion of these properties into trust will incur any significant or additional duties. The land lies near the center of the Tribe's former reservation boundaries, therefore, no additional travel outside the area by BIA staff would be required.

The Regional Director finds that adequate resources are available for the BIA to assume the additional responsibilities resulting from the acquisition of the land into trust status and I concur.

H. 25 C.F.R. 151.10(h). The extent of information to allow 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.

An Environmental Assessment of the site was completed on July 29, 2011.¹⁸ We have determined that the acquisition complies with the National Environmental Policy Act, and a Finding of No Significant Impact will be issued by this Office.

A Phase I Environmental Site Assessment and Phase II Environmental Site Assessment were completed by Envirotech Engineering and Consulting, Inc., and they concluded that no contaminants were present on the Site. An updated contaminant survey was completed and certified in February 2012.

¹⁸SPRO Binder 1, Tab 21

TWO PART DETERMINATION UNDER SECTION 20 OF IGRA

The two-part determination pursuant to Section 20 of IGRA, 25 USC § 2719(b)(1)(A) is not applicable because, the Tribe meets the exception found at 2719(a)(2)(A)(i) because the 127.65-acre Site is within the boundaries of the Tribe's former reservation on October 17, 1988.

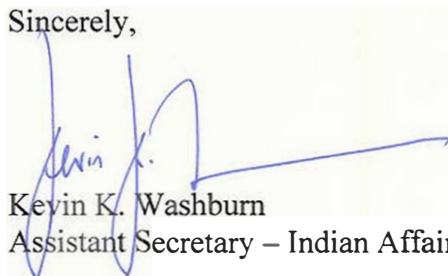
REGIONAL DIRECTOR'S RECOMMENDATION

By memorandum dated December 14, 2011, the Regional Director recommended that the property be accepted in trust for the benefit of the Tribe.

DECISION

Our evaluation of the Tribe's request indicates that the statutory and regulatory requirements for acquiring the Site into trust have been satisfied. The Regional Director will be authorized to approve the conveyance document accepting the property in trust for the Tribe subject to any condition set forth herein, approval of all title requirements by the Office of the Regional Solicitor, and expiration of the 30-day period following publication in the *Federal Register* of the notice required in 25 C.F.R. § 151.12(b). If a lawsuit is filed within the 30-day period challenging this decision, further consultation with the Solicitor's Office will be required.

Sincerely,



Kevin K. Washburn
Assistant Secretary – Indian Affairs