



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

JAN 19 2017

The Honorable Bill John Baker  
Principal Chief, The Cherokee Nation  
17675 South Muskogee Avenue  
Tahlequah, Oklahoma 74464

Dear Principal Chief Baker:

On July 21, 2014, the Cherokee Nation (Nation) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust approximately 51.35 acres located in Sequoyah, Oklahoma, near the City of Roland, for gaming purposes.<sup>1</sup> The Nation's application includes four parcels (collectively, the Parcels), with only one parcel proposed for gaming:

- Parcel 1 - The Travel Plaza tract is located on an 8.2-acre fee tract lying adjacent to, and immediately west, of the Nation's Roland Casino Complex, which has been in operation since 1990.<sup>2</sup> The Travel Plaza currently provides fuel and amenities for local residents and travelers on Interstate Highway 40.<sup>3</sup> The Nation proposes to install 50-75 gaming machines in the existing Travel Plaza facility on Parcel 1.<sup>4</sup> No change in land use would occur as a result of acquisition.<sup>5</sup>
- Parcel 2 - The Hotel Tract is a vacant 3.4-acre fee tract located adjacent to, and immediately east of, the Roland Casino.<sup>6</sup> The site formerly housed a small hotel that was

<sup>1</sup> See Letter from Bill John Baker, Principal Chief, Cherokee Nation, to Robert Impson, Regional Director, Eastern Oklahoma Regional Office (July 21, 2104) [hereinafter CN Application], in Memorandum from Regional Director, Eastern Oklahoma Region, to Director, Bureau of Indian Affairs, Deputy Bureau Director, Field Operations, Director, Office of Indian Gaming (Dec. 22, 2016) [hereinafter Regional Director's Recommendation], Attachment 1A. On August 6, 2014, and January 27, 2016, the Nation submitted additional information supporting its application to acquire land in trust. See Letter from Janel Perry, Acting Director, Real Estate Services, Cherokee Nation, to Robert Impson, Regional Director, Eastern Oklahoma Regional Office (Aug. 6, 2104) in Regionals Director's Recommendation, Attachment 1B; Letter from Marshea Halterman, Realty Specialist, Cherokee Nation, to Eddie Streater, Regional Director, Eastern Oklahoma Region (Jan. 27, 2016), on file with the Office of Indian Gaming. For acreage totals, see Land Description Review certified on November 16, 2015, on file with the Office of Indian Gaming. The original application and the EA identified slightly different acreages, however, the acreage amounts were corrected following review by the Bureau of Land Management Indian Lands Surveyor.

<sup>2</sup> CN Application at 5.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> Regional Director's Recommendation at 7. See also Environmental Assessment for Fee-to-Trust Acquisition – Roland Travel Plaza (Dec. 2016) [hereinafter EA] at § 3.0.

<sup>5</sup> See Environmental Assessment for Fee-to-Trust Acquisition – Roland Travel Plaza (Dec. 2016) [hereinafter EA], § 2.3

<sup>6</sup> CN Application at 2; EA at 74.

removed to allow for enlargement of the Roland Casino parking lot.<sup>7</sup> No change in land use would occur as a result of acquisition.<sup>8</sup>

- Parcel 3 - A 3.36-acre fee tract located adjacent to, and immediately east of, the Roland Casino that now contains additional Casino parking and a 1.6 acre parking garage structure.<sup>9</sup> No change in land use would occur as a result of acquisition.<sup>10</sup>
- Parcel 4 - A 36.39-acre fee tract located east of Parcels 2 and 3.<sup>11</sup> The majority of this tract is undeveloped open grassland with woodland forested areas.<sup>12</sup> A one-acre non-regulated agricultural surface water impoundment is located near the center of the property.<sup>13</sup> There is a maintenance building that serves the existing casino property located in the northwest corner of this tract. There are two residential structures located along the southern boundary.<sup>14</sup> No change in land use would occur as a result of acquisition.<sup>15</sup>

We have completed our review of the Nation's request and supporting documentation. For the reasons discussed in more detail below, I hereby approve the Nation's application to place the Parcels in trust for the benefit of the Nation.

## Background

The Nation once spread across what is today Georgia, North Carolina, and Tennessee.<sup>16</sup> The 1785 Treaty with the Cherokee, known as the Treaty of Hopewell, was the first treaty signed between the Nation and the United States.<sup>17</sup> Many treaties followed, and in the 1800s these treaties, including the Indian Removal Act of 1830, resulted in the Nation's removal from their homelands westward.<sup>18</sup> Subsequent treaties further removed the Nation and other tribes westward along the Trail of Tears from their homelands to new lands west of the Mississippi River.<sup>19</sup>

The Nation once held patented title to 14,374,135.14 acres of land in what is now the State of Oklahoma.<sup>20</sup> The Curtis Act of June 28, 1898, provided the framework for the allotment of the Nation's land holdings in Oklahoma.<sup>21</sup> Through the allotment process, the Nation lost most of

<sup>7</sup> EA at § 3.0.

<sup>8</sup> EA at § 2.3

<sup>9</sup> EA at § 3.0.

<sup>10</sup> EA at § 2.3

<sup>11</sup> CN Application at 3.

<sup>12</sup> EA at § 3.0.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> EA at § 2.3

<sup>16</sup> See Treaty with the Cherokee, 7 Stat., 18, November 28, 1785.

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

<sup>18</sup> See Indian Removal Act of 1830, 4 Stat. 411, May 28, 1830.

<sup>19</sup> See Regional Director's Recommendation at 2.

<sup>20</sup> See *Id.* at 5.

<sup>21</sup> See Curtis Act, 30 Stat. 495, June 28, 1898.

its tribal lands. Currently, the Nation only has approximately 61,369 acres of “checker-boarded” land held in trust.<sup>22</sup> This represents only 0.427% of its land base prior to allotment.<sup>230</sup>

### **Description of the Property**

The Parcels are currently owned in fee by Cherokee Nation Enterprises, Inc., Cherokee Nation Enterprises, L.L.C., and Cherokee Hotels, L.L.C., wholly owned companies of the Nation.<sup>24</sup> The Parcels are located within the former reservation of the Nation.<sup>25</sup> The legal description of the Parcels is enclosed as Enclosure I.

### **Eligibility for Gaming Pursuant to the Indian Gaming Regulatory Act**

The Indian Gaming Regulatory Act (IGRA) was enacted “to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming.”<sup>26</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.<sup>27</sup> However, 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>28</sup>

The Department of the Interior’s (Department) regulations at 25 C.F.R. Part 292 implement Section 20 of IGRA. Pursuant to the regulations, gaming is allowed under the Oklahoma Exception when a tribe had no reservation on October 17, 1988, the land is located in Oklahoma, and is located within the boundaries of the tribe’s former reservation or contiguous to other land held in trust or restricted status for the tribe in Oklahoma.<sup>29</sup> Here, the Parcels meet the Oklahoma Exception because the Nation had no reservation on October 17, 1988, and the Parcels are located within the boundaries of the Nation’s former reservation in Oklahoma. Accordingly, the Parcels will be eligible for gaming upon its acquisition in trust.

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

The Secretary of the Interior’s (Secretary) general authority for acquiring 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.

<sup>22</sup> Regional Director’s Recommendation at 5; CN Application at 4.

<sup>23</sup> Regional Director’s Recommendation at 5.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Atty. for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002), *aff’d*, 369 F.3d 960 (6th Cir. 2004). *See also* 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments....”).

<sup>27</sup> *See* 25 U.S.C. § 2719.

<sup>28</sup> *Id.* § 2719(a)(2)(A)(i).

<sup>29</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 land may be acquired in trust by the Secretary 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 acquisition of the Parcels will facilitate tribal self-determination and economic development pursuant to Section 151.3(a)(3).<sup>30</sup> Through the exercise of tribal governmental authority, the Parcels will be subject to the Nation's management, protection, and conservation after it is acquired in trust. The addition of 50-75 gaming machines at the Travel Plaza tract will generate revenue to facilitate tribal self-determination and self-governance by improving socioeconomic conditions, funding local and tribal governmental programs and services, and by providing a revenue source for use in improving health care and housing conditions for tribal citizens.<sup>31</sup> Sequoyah County has a higher American Indian population and a higher poverty rate compared to the State of Oklahoma.<sup>32</sup> The American Indian population in 2013 was 21%, compared to 9% in the State.<sup>33</sup> There is a need for economic development in Sequoyah County. The County is a rural area that is a predominantly farming and ranching economy.<sup>34</sup> The percentage of persons living below the poverty level was 21.4%, which is 4.5% above the state's average.<sup>35</sup>

### *Housing*

The Nation's Housing Authority currently provides housing assistance to its citizens with over 6,000 families currently receiving assistance.<sup>36</sup> The Housing Authority promotes home ownership through a mortgage assistance program and helps subsidize insurance for low-income homeowners.<sup>37</sup> The Housing Authority also offers low-income apartment and housing rentals on a sliding-scale basis, and has established a community self-help program whereby families help one another build homes.<sup>38</sup> Acquisition of the Parcels would provide more economic

<sup>30</sup> Although only one factor in Section 151.3 (a) must be met, the Nation's application also satisfies the criteria of subsection (a)(1) because the Parcels are located within the exterior boundaries of the Nation's former reservation, and subsection (a)(2) because the Nation owns the Parcels in fee. See Regional Director's Recommendation at 3.

<sup>31</sup> Regional Director's Recommendation at 7, 9.

<sup>32</sup> EA at § 3.2.

<sup>33</sup> *Id.*

<sup>34</sup> Regional Director's Recommendation at 6.

<sup>35</sup> *Id.*

<sup>36</sup> EA at § 1.2.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

resources for the Housing Authority to assist tribal citizens in obtaining and maintaining housing.<sup>39</sup>

### *Health Services*

Revenue from the installation of additional gaming machines will provide revenue to help ensure that the Nation's citizens receive adequate health care. The Nation currently operates eight health clinics that provide services its citizens.<sup>40</sup> These clinics provide a variety of programs, including nutrition, radiology, optometry, diabetes treatment, cancer treatment, dentistry, and behavioral health care.<sup>41</sup> Cherokee Nation Healthcare also provides chemical dependency treatment and youth education programs.<sup>42</sup> Acquisition of the Parcels would help provide increased financial support for health services, and enable the Nation to meet the needs of its citizens.<sup>43</sup>

### *Job Creation*

The Nation is committed to creating quality employment for its citizens and growing the local economy. The Nation's Career Services recently assisted a local company in Sequoyah County with an on-the-job-training grant to improve economic development in the rural community to lead to viable employment opportunities for the Nation's citizens.<sup>44</sup> The Nation plans to hire eight new employees for the gaming activities to be conducted at the Travel Plaza and anticipates a \$320,000 annual payroll for these employees.<sup>45</sup> Acquisition of the Parcels would enable the Nation to provide additional economic development, provide additional employment opportunities and provide services to its citizens.<sup>46</sup>

### *Conclusion*

We determine that acquisition of the Parcels in trust will facilitate tribal self-determination, economic development, and Indian housing

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

The Parcels are located within the former reservation boundaries of the Nation.<sup>47</sup> Section 151.2 defines "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." Accordingly, the Nation's application is considered under the on-reservation criteria of Section 151.10.

<sup>39</sup> *Id.*; Regional Director's Recommendation at 6.

<sup>40</sup> EA at § 1.2.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*; Regional Director's Recommendation at 6.

<sup>44</sup> Regional Director's Recommendation at 6.

<sup>45</sup> *Id.* at 9.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.* at 3.

**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 Section 19 of the IRA extends only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934.<sup>48</sup> We have evaluated the applicability of *Carcieri* to the Nation's application, and have determined that the Secretary is authorized to place land into trust for the Nation pursuant to Section 5 of the IRA.

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 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>49</sup> Section 13 of the IRA provides in relevant part:

[...] That sections 2, 4, 7, 16, 17, and 18<sup>50</sup> 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, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole.<sup>51</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, those Oklahoma tribes specifically named in Section 13 of the IRA were "under federal jurisdiction on June 18, 1934," and the

<sup>48</sup> 555 U.S. at 395.

<sup>49</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>50</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 any Indian tribe, or tribes, residing on the same reservation, the right to organize and adopt a constitution. Section 17 (25 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>51</sup> 25 U.S.C. § 5118 (emphasis added).

Secretary is authorized by Section 5 of the IRA to take land into trust for those tribes.<sup>52</sup> The listing of the Nation in Section 13 is sufficient for purposes of finding the Nation to be under Federal jurisdiction in 1934.

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

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

The Nation was removed from its homeland in the southeastern United States in the mid-nineteenth century, and once held patented title to 14,374,135.14 acres of what is now in the State of Oklahoma.<sup>53</sup> Following allotment, the Nation currently has approximately 61,369 acres of land that is held in trust.<sup>54</sup> The Nation's current trust land base is 0.427% of its land base prior to allotment.<sup>55</sup> The Nation needs additional land to reduce jurisdictional "checker boarding" and to expand its land base so that it can pursue economic and educational development opportunities.<sup>56</sup>

The acquisition of the Parcels would assist the Nation in meeting the following objectives:

- Facilitating the Land Consolidation Plan of the Cherokee Nation to provide land for Cherokee Nation uses. The Land Consolidation Plan, pursuant to the Indian Land Consolidation Act, 25 U.S.C. § 2203, provides for the consolidation of Tribal land holdings and acquisition of sites for economic, industrial, social, educational and other purposes to promote tribal self-determination and economic self-sufficiency;
- Improving the socioeconomic status of the Nation by providing a revenue source that could be used to: strengthen the Tribal government; fund a variety of social, housing, governmental, administrative, educational, health, and welfare services to improve the quality of life of Tribal citizens; and provide capital for other economic development and investment opportunities;
- Providing a revenue source that could be used to make donations to charitable organizations and governmental operations, including local educational institutions;

<sup>52</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>53</sup> See Regional Director's Recommendation at 5.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 6.0

- Providing a revenue source that could be used to fund local governmental agencies, programs, and services; and
- Establishing economic self-sufficiency and achieving tribal self-determination.<sup>57</sup>

We determine that the acquisition of additional land is a key component of the Nation's broader economic initiatives to consolidate its land base and establish a long-term, sustainable revenue base that will strengthen the Nation's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development. The Regional Director found, and we concur, that acquisition of the Site will address the Nation's demonstrated need for land.

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

Section 151.10(c) requires the Secretary to consider the purposes for which the land will be used.

The Nation intends to use the Parcels for economic development for the benefit of the Nation and its citizens, by installing approximately 50-75 gaming machines in the existing Travel Plaza tract on Parcel 1. The Nation plans no change in existing use for the three remaining Parcels that are already in use by the Cherokee Roland Casino, or will be left undeveloped.<sup>58</sup>

The Region finds, and we concur, that this request adequately describes the purpose for which the land will be used.<sup>59</sup>

**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.

On August 14, 2014, BIA solicited comments regarding potential impacts of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments.<sup>60</sup> The following entities were contacted:

- Governor of Oklahoma
- Oklahoma Tax Commission
- Sequoyah County Treasurer
- Sequoyah County Assessor
- Sequoyah County Sheriff
- Board of County Commissioners

<sup>57</sup> EA at § 1.2; Regional Director's Recommendation at 6.

<sup>58</sup> EA at § 2.3

<sup>59</sup> See Regional Director's Recommendation at 7.

<sup>60</sup> See Regional Director's Recommendation, Attachments 24 – 31.



- Mayor of the City of Roland
- Roland Police Chief

On August 28, 2014, the Sequoyah County Assessor responded stating that the property taxes from the Parcels totaled \$59,206.01.<sup>61</sup> On September 18, 2014, the Sequoyah County Treasurer responded stating that the property tax for the Parcels totaled \$58,376.<sup>62</sup> The Regional Director noted that the 2015 property tax on the Parcels totaled \$59,565.<sup>63</sup> No special assessments were identified by these respondents.<sup>64</sup> No other responses were received. No adverse impacts from the loss of the property tax revenue were identified by any of the aforementioned officials.

Sequoyah County receives significant economic benefits from the presence of the Nation businesses, including vendor purchases and local employee spending.<sup>65</sup> The combined influence of the Nation's operations in Sequoyah County generated more than \$117 million in local production while supporting 1,039 jobs and \$37.4 million in local labor income payments.<sup>66</sup> The acquisition of the Parcels would result in a variety of additional benefits to the regional economy, including employment opportunities. The Nation would hire eight new employees for the new gaming activities at the Travel Plaza and estimates a \$320,000 annual payroll for these jobs.<sup>67</sup>

The Nation is also a major contributor to Sequoyah County.<sup>68</sup> The Nation's motor vehicle tag sales revenue is partly distributed to schools within the Nation's 14-county area.<sup>69</sup> In the spring of 2016, the Nation made \$409,000 in contributions to Sequoyah County from the issuance of Cherokee Nation motor vehicle tags.<sup>70</sup> The Nation also contributed and assisted Sequoyah County during emergencies and natural disasters.<sup>71</sup>

The Nation has made numerous additional contributions and donations to the City of Roland including: a \$3,000 donation to the Sequoyah County Fair board; \$75,589 to Marble City Public School for a new school bus; \$25,000 to the Town of Gore for a water park feature; \$125 school vouchers for eligible students in Sequoyah County; and \$10,000 to the Sequoyah County Fire Departments.<sup>72</sup>

The Regional Director determined, and we concur, that the removal of the Parcels from the tax rolls is offset by the numerous contributions and economic development provided by the Nation.<sup>73</sup>

<sup>61</sup> See Response from Sequoyah County Assessor received Aug. 28, 2014, in Regional Director's Recommendation, Attachment 34.

<sup>62</sup> See Response from Sequoyah County Treasurer received Sept. 18, 2014, in Regional Director's Recommendation, Attachment 37.

<sup>63</sup> See Regional Director's Recommendation at 8.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 9.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Regional Director's Recommendation at 10.

**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.

No comments or concerns regarding jurisdictional issues or potential conflicts of land use were raised by the State or local jurisdictions in response to BIA's request for comments dated April 14, 2014.

The Parcels are located in Sequoyah County, on the northwest corner of the Intersection of U.S. Highway 64 and Interstate 40 at the eastern edge of Sequoyah County, Oklahoma.<sup>74</sup> The surrounding land uses are predominately agricultural, commercial, and residential.<sup>75</sup> Approximately 85% of the land within a one mile radius is used for grazing, crops, or hay production, with the other 15% is comprised of residential and commercial areas within the City of Roland.<sup>76</sup> The Cherokee Roland Casino is located adjacent to the Travel Plaza and there is already a high volume of traffic to the casino.<sup>77</sup> No changes to land resources will occur as a result of acquiring the Parcels in trust.<sup>78</sup> Therefore, we do not anticipate any conflicts of land uses

The Parcels are served primarily by the Cherokee Nation Marshal Services.<sup>79</sup> The City of Roland and the Sequoyah County Sheriff's Department also provide service and assistance. Cross-deputization agreements are in place between the Cherokee Nation Marshal Service and the Sequoyah County Sheriff's Department.<sup>80</sup> Fire, water, ambulance, and sanitation services are currently provided by the City of Roland and these services will continue.<sup>81</sup> Gas services are provided by Arkansas Oklahoma Gas, and electric services are provided by Oklahoma Gas and Electric.<sup>82</sup>

The Cherokee Roland Casino was the first casino opened by the Nation and has been in operation since 1990.<sup>83</sup> The Nation has been working with the local governments over the past 26 years without any jurisdictional conflicts or land use conflicts.<sup>84</sup> The Regional Directors determined, and we concur, that the Nation has an established relationship with the local governments in Sequoyah County, and we further concur in the Regional Director's belief that the Nation will continue to work together with the local governments to address any jurisdictional problems or potential conflicts of land use that might arise.<sup>85</sup>

<sup>74</sup> *Id.* at 3.

<sup>75</sup> EA at § 3.1.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Regional Director's Recommendation at 10

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 10-11.

<sup>84</sup> *Id.* at 11.

<sup>85</sup> *Id.* at 10.

*Governor's Comments*

On September 9, 2014, the State of Oklahoma provided comments on the proposed acquisition of the Parcels.<sup>86</sup> The State replied that it was their understanding from the press that the Nation intends to dramatically renovate and expand the Cherokee Roland Casino.<sup>87</sup> The State also replied that the Office of the Governor had not been afforded any meaningful opportunity to confer with the Nation on issues where Oklahoma's and the Nation's interests and spheres of jurisdiction could potentially overlap.<sup>88</sup> These interests include, but are not limited to, liquor licensing; whether tribal officers will enforce State laws on the land and the provision of utility services like water and electricity, among other things. The letter further stated that Governor Mary Fallin generally opposes the expansion of gaming within Oklahoma due to: (1) the proliferation of gaming in the State; (2) market saturation which could adversely affect small-market tribal gaming and hinder tribal economic development; and (3) that an increase in gaming facilities in the State would lead to an increase in gambling addiction.<sup>89</sup>

On October 2, 2014, the Nation responded to the State's letter.<sup>90</sup> The Nation responded that it has paid more than \$100 million in gaming fees to the State under the terms of its Tribal-State Gaming Compact with the State, and that the Nation's casinos, hotels, and other commercial ventures attract tourism and bring much needed economic development to rural areas of Oklahoma, such as Roland.<sup>91</sup> The Nation also stated that it does not intend to renovate and expand the existing Cherokee Roland Casino. Further, the casino consists of modular units that have been remodeled or reconfigured numerous times in the past 24 years, and that the Nation has complied with Federal law and the terms of the gaming compact with the State during these changes.<sup>92</sup> The various entities regulating the Cherokee Roland Casino today will continue their regulatory activities at the newly constructed Cherokee Roland Casino Complex.<sup>93</sup> The utilities serving the Cherokee Roland Casino will continue to serve the casino, and cover all the uses of the casino, hotel, fuel plaza, travel plaza and vacant land.<sup>94</sup>

We find that the State's interests will not be adversely affected by the acquisition of the Parcels in trust for gaming purposes. Moreover, IGRA was intended 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." Consistent with IGRA's purposes, the Department has acquired land in trust for gaming purposes to support tribal economic development and self-

<sup>86</sup> See Letter from Steven K. Mullins, General Counsel, Office of Governor Mary Fallin, to Eddie Streater, Acting Regional Director, Eastern Oklahoma Region (Sept. 9, 2014), in Regional Director's Recommendation, Attachment 36.

<sup>87</sup> *Id.* at 2.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* See Regional Director's Recommendation at 8.

<sup>90</sup> See Letter from Todd Hembree Attorney General, Cherokee Nation, to Robert Impson, Regional Director, Eastern Oklahoma Region (Oct. 2, 2014), in Regional Director's Recommendation, Attachment 14.

<sup>91</sup> *Id.* at 2.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

determination. General opposition to gaming is not a basis on which to deny the Nation's application.

The State fails to provide statistical support for its concern with gambling addiction. The Nation has advised that it and other tribes in Oklahoma are aware of gambling addictions and continues to provide assistance to individuals that may be addicted to gambling.<sup>95</sup> In addition, all Cherokee Nation casinos provide patrons with the opportunity to self-educate and self-restrict access to Cherokee casino properties.<sup>96</sup>

We find that the State's objections to additional gaming facilities in Oklahoma are speculative and lacking in any supporting evidence.

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

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

The Nation administers the program functions associated with the management of trust lands formerly provided by the BIA's Tahlequah Agency and the Eastern Oklahoma Regional Office through a self-governance compact pursuant to 25 U.S.C. § 5361aa, *et seq.*<sup>97</sup> Technical assistance, review and approval of real estate transactions are provided by the Eastern Oklahoma Regional Office.<sup>98</sup> While additional assistance from the BIA is not anticipated, the Regional Director determined, and we concur, that the BIA is equipped to discharge any additional responsibilities resulting from the acquisition of the Parcels.<sup>99</sup>

**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**

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and a determination on the presence of hazardous substances.

On September 26, 2014, a Phase I Environmental Site Assessment (ESA) was certified by the BIA for the Parcels.<sup>100</sup> The ESA was prepared in accordance with the American Society for Testing and Materials Standard Practice for Environmental Site Assessments, ASTM Standard E 1527-13. An updated Phase I ESA will be required prior to acquiring the Parcels in trust.

<sup>95</sup> *Id.* at 3.

<sup>96</sup> *Id.*

<sup>97</sup> Regional Director's Recommendation at 11.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

An Environmental Assessment (EA) for the Parcels was completed in December 2016. The EA was made available for public comment from December 16, 2016, to January 17, 2017, by notice in the *Sequoyah County Times*. No comments were received.

The EA analyzed three alternatives:

*No Action Alternative:* Under the No Action Alternative, the United States would not acquire the Parcels in trust, and the Nation would not install gaming machines in the Travel Plaza.

*Land in Trust without Gaming - Alternative 1:* Under Alternative 1, the United States would acquire the Parcels in trust, but the Nation would not install gaming machines in the Travel Plaza.

*Proposed Action - Alternative 2:* Under Alternative 2, the United States would acquire the proposed Parcels in trust, and the Nation would install 50-75 gaming machines in the Travel Plaza.<sup>101</sup>

Potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic resources and environmental justice, transportation and circulation, land use, public services and utilities, visual resources, noise, and hazardous materials are each evaluated in the EA.<sup>102</sup> The EA concludes impacts to these resources would be less than significant.<sup>103</sup>

Based on a review of the EA and its analysis of potentially affected resources, we have determined that Alternative 2 would best meet the purpose and need for acquiring the Parcels in trust. We 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 enclosed as Enclosure II.

Land Resources - Acquisition of the Parcels will not result in changes to the existing topography. Because the Travel Plaza on Parcel 1 is a pre-existing structure and no changes will be made to the land or land use, installing gaming machines inside the Travel Plaza will not have a significant impact to the land resources. Development of the Alternative 2 would result in less-than-significant impacts to land resources. See EA § 3.1.

Water Resources - Acquisition of the Parcels does not require any construction activities or alteration of water resources, and there will be no impacts commonly associated with these activities. There is an agricultural pond located northeast of the Travel Plaza tract, and an intermittent stream/drainage ditch on the southwest corner of the Travel Plaza tract. There will be no impacts to either water resource because there will be no changes in land use.

<sup>101</sup> EA at § 2.0.

<sup>102</sup> *Id.* § 3.0.

<sup>103</sup> *Id.* § 4.0.

Development of Alternative 2 would result in less-than-significant impacts to water resources. *See EA § 3.5.*

Air Quality - Acquisition of the Parcels does not require any construction activities, and there will be no impacts to air quality that are commonly associated with these activities. There will not be any impacts due to the operation of the new gaming machines on Parcel 1 or of the increased traffic. The entire State of Oklahoma is an attainment area under the Clean Air Act's National Ambient Air Quality Standards. Development of Alternative 2 would result in less-than-significant impacts to air quality. *See EA at § 3.6.*

Biological Resources - Acquisition of the Parcels will not result in changes to land use. The Parcels contain an existing building and parking lots in a developed area. There will be no changes to potential habitats, or impacts to listed threatened and endangered species. There are no unique or sensitive ecosystems or biological communities on the Parcels. There are no natural communities that may be adversely affected during site development. Development of Alternative 2 would result in less-than-significant impacts to biological resources. *See EA § 3.7.*

Cultural Resources - There are no known historic properties or known archeological sites or cultural materials within the Travel Plaza's area of potential effect. No known historic, cultural, archaeological, or religious resources would be affected by the development of the Parcels. Development of Alternative 2 would result in less-than-significant impacts to cultural resources. *See EA § 3.8.*

Socioeconomic Conditions - The installation of gaming machines at the Travel Plaza will create eight new jobs from which the local economy would likely benefit. Increased revenue from the additional machines will allow the Nation to provide tribal benefits to its citizens and continue to make charitable contributions to the surrounding community. Development of Alternative 2 would result in less-than-significant impacts to socioeconomic conditions. *See EA § 3.2.*

Transportation Networks - The installation of gaming machines inside the Travel Plaza would not alter the existing environmental conditions. The Cherokee Roland Casino is located on land adjacent to the Travel Plaza tract, so there is already a high volume of traffic from visitors to the casino. The addition of gaming machines in the Travel Plaza will not increase the traffic in a significant way. Development of Alternative 2 would result in less-than-significant impacts to transportation networks. *See EA § 4.7.1.*

Public Services - Gas service is provided by Arkansas Oklahoma Gas, and electric service is provided by Oklahoma Gas and Electric. Water and sewer services are already provided by the City of Roland. Law Enforcement services for the Travel Plaza are provided by the Cherokee Nation Marshal Service, the Sequoyah County Sheriff's Office, and the Roland Police Department. Fire and emergency services are provided by the Roland Fire Department. Development of Alternative 2 would result in less-than-significant impacts to public services. *See EA § 3.2.*

Visual and Noise Resources - There will be no construction or change in land use as a result of acquisition of the Parcels in trust. Development of Alternative 2 would result in less-than-significant impacts from noise or visual resources. *See* EA § 3.1.

### **Conclusion**

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Parcels in trust for the Cherokee Nation. Further, pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(a)(2)(A)(i), the Parcels will be eligible for gaming upon its acquisition in trust. Consistent with applicable law and Departmental requirements, the Regional Director shall immediately accept the land in trust.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence S. Roberts", with a large, stylized circular flourish at the end.

Lawrence S. Roberts  
Principal Deputy Assistant Secretary –  
Indian Affairs