



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Bill Anoatubby
Governor, The Chickasaw Nation
P.O. Box 1548
Ada, Oklahoma 74821

JAN 19 2017

Dear Governor Anoatubby:

By correspondence dated January 9, 2014, the Chickasaw Nation (Nation) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust approximately 30.03 acres known as the Willis Site located in Marshall County, Oklahoma, for gaming and other purposes.¹ The Willis Site is located within the Nation's former historic reservation boundaries, and is near the boundaries of the unincorporated community of Willis, Oklahoma. The Nation owns the Willis Site in fee simple.

The proposed facility will consist of a 16,000 square foot gaming/travel stop with an attached convenience store. There will be an approximately 5,745 square foot gaming floor with 250 class II and class III machines, with the remainder of the facility used for support activities and office space, including the Offices of the Chickasaw Nation Office of Gaming. Approximately 302 surface-level parking spaces would be constructed to accommodate patrons and employees. Approximately 21.64 acres will remain undeveloped as open space.

We have completed our review of the Nation's request and supporting documentation in the record. As discussed below, it is my determination that the Willis Site will be taken into trust.

Background

Before being removed to Oklahoma in the 1830s, the Nation occupied areas in Mississippi, Alabama, Tennessee, and Kentucky.² Ultimately, through the Treaty of 1832, the Nation ceded

¹ See Letter from Bill Anoatubby, Governor, Chickasaw Nation, to Ashley Large, Superintendent, Bureau of Indian Affairs (Jan. 9, 2014) [hereinafter Nation's Application], in Memorandum from Acting Regional Director, Eastern Oklahoma Region, to Deputy Director, Office of Indian Gaming (Aug. 25, 2016) [hereinafter Regional Director's Recommendation], Attachment 1b & 1c. By letter dated November 19, 2014, the Nation withdrew its request, and resubmitted it on April 14, 2015. On May 20, 2016, the Nation submitted supplemental materials. See Letter from Bill Anoatubby, Governor, Chickasaw Nation, to Ashley Large, Superintendent, Bureau of Indian Affairs (May 20, 2016) [hereinafter Nation's Supplement], in Regional Director's Recommendation, Attachment 1c. The two legal descriptions in the Nation's submitted materials contain a minor discrepancy in the total acreage for the Willis Site: one calculates the total acreage at 29.9994 and the other calculates the total acreage at 30.03. See Nation's Supplement at 15-16.

² See Nation's Supplement at 5.

the remainder of its lands in exchange for land west of the Mississippi River.³ The boundaries of the Nation's reservation in Oklahoma were finally established by the Treaty of 1855.⁴ 1897, under the authority of the General Allotment Act, the Nation joined the Choctaw Nation in negotiations with the Dawes Commission.⁵ The two Nations signed the Atoka Agreement in 1897 which provided for the allotment of the lands of both Nations.⁶ Through the allotment process, the Chickasaw Nation lost most of its tribal lands.⁷ By 1920, it is estimated that 75% of the Nation's land, or 4.7 million acres, no longer belonged to Chickasaw citizens.⁸ The Nation once held title to approximately 4,707,081 acres of land.⁹ The Nation currently owns approximately 6,177.011 acres of trust land, only 0.13% of its land base prior to allotment.¹⁰

Allotment also resulted in a checkerboard of alternating state and tribal jurisdiction that has compromised the Nation's self-determination and continues to negatively impact the Nation's social and economic goals.¹¹

Description of the Property

The Nation owns the Willis Site in fee.¹² The Willis Site is located within the former, historic reservation boundaries of the Nation.¹³ The legal description 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."¹⁴ 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, 1988.¹⁵ However, Congress expressly provided several exceptions to the general prohibition. One such exception exists for lands

³ Treaty with the Chickasaw, Oct. 20, 1832, 7 Stat. 381.

⁴ Treaty with the Choctaw and Chickasaw, June 22, 1855, 11 Stat. 611.

⁵ See Nation's Supplement at 7.

⁶ In 1898, Congress enacted the Curtis Act, 30 Stat. 495, which ratified the Atoka Agreement.

⁷ See Nation's Supplement at 7.

⁸ See *id.*

⁹ See Regional Director's Recommendation at 10.

¹⁰ *Id.*

¹¹ See Nation's Supplement at 7.

¹² Regional Director's Recommendation at 9.

¹³ *Id.*

¹⁴ *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). 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....").

¹⁵ 25 U.S.C. §2719.

located within the former reservation of an Oklahoma tribe who did not have a reservation on October 17, 1988 (Oklahoma Exception).¹⁶

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.¹⁷ Here, the Willis Site meets the Oklahoma Exception because the Nation had no reservation on October 17, 1988, and the Willis Site is located within the boundaries of the Nation's former reservation in Oklahoma. Accordingly, the Willis Site is 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 regulations found at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA.

25 CFR § 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;
- (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 Willis Site will facilitate tribal self-determination and economic development under Section 151.3(a)(3).¹⁸ Through the exercise of tribal governmental authority, the Willis Site will be subject to the Nation's management, protection, and conservation after it is acquired in trust. Development of the casino will generate revenue to

¹⁶25 C.F.R. § 292.4(b)(1).

¹⁷ 25 C.F.R. § 292.4(b)(1).

¹⁸ 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). The property is located within the exterior boundaries of the Nation's former reservation in Oklahoma and therefore meets the regulatory definition of "Indian reservation" in Section 151.2 as relied upon in Section 151.3(a)(1). Additionally, the Nation owns the property in fee and therefore satisfies Section 151.3(a)(2).

facilitate tribal self-determination by funding educational, social, and employment programs for tribal citizens.¹⁹

The Nation has approximately 61,000 enrolled citizens as of 2015.²⁰ Approximately 32,272 citizens live in the Nation's service area.²¹ Over the past decade, the Nation has experienced steady population growth. It added over 2,000 new citizens in 2015.²² The Nation relies on economic opportunities such as gaming to provide for the needs of its citizens.²³

Acquisition of the Willis Site in trust will facilitate tribal economic development. The majority of funding for the Nation's governmental programs comes from revenues generated through gaming facilities that the Nation owns and operates through its Department of Commerce (CNDOC).²⁴ In 2015, gaming revenue distributions provided approximately 91.72% of the Nation's total income for its general treasury.²⁵ Because the Nation does not distribute revenues on a per capita basis, all net revenues from gaming go directly to the Nation's treasury for expenditure in support of tribal programs and operations for the Nation's core governmental functions.²⁶

The Nation's Fiscal Year (FY) 2016 budget allocations show that Chickasaw-generated revenues represented 70.8% of the Nation's budget; federal funds and other resources represented the balance of 29.2%.²⁷ Without the added revenue derived from CNDOC's gaming activities, the Nation would have to drastically reduce services to Chickasaw citizens.²⁸

Waiting lists for tribal programs and services offered by the Nation are commonplace as the demand for services often outweighs the annual operating budget.²⁹ Presently, 303 Chickasaw citizens are waiting to have their homes rehabilitated with common necessities, 484 are waiting for rental assistance, 503 are waiting for low income homeownership, and 64 citizens are awaiting the installation of a tornado shelter.³⁰ In addition, the Nation reports that approximately 1,900 Chickasaw citizens will become age-eligible for the Nation's senior programs over the

¹⁹ See Regional Director's Recommendation at 3.

²⁰ Nation's Supplement at 22, *citing* The Chickasaw Nation Progress Report (2015) at 35, available at <http://reader.mediawiremobile.com/ChickasawTimes2/issues/101711/viewer?page=1>.

²¹ *Id.*; U.S. Department of the Interior, Office of the Assistant Secretary-Indian Affairs, 2013 American Indian Population and Labor Force Report, available at <http://www.bia.gov/cs/groups/public/documents/text/idc1-024782.pdf> at 24.

²² Nation's Supplement at 22.

²³ *Id.*

²⁴ *Id.* at 16.

²⁵ Regional Director's Recommendation at 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 4-5.

next 10 years.³¹ Care for the Nation's elderly is a significant financial expenditure for the Nation. Elders are offered the following services: in-home chore services, lawn mowing service, firewood program, assisted living, caregiver program, independent living apartments, home maintenance program, daily meal service, medical alert, and over-the-counter medicine service.³² The growing number of elders will also create an increased demand on the Nation's 12 senior sites where daily meals and activities are provided to citizens.³³

According to the Nation's statistics, the demand for services grows every year. The Nation projects an increase in all service areas with the largest increases in the area of emergency energy assistance (4.7%), community health assistance (5.97%), career services (15%), transportation services (3%), honor guard (9.8%), shortfalls in BIA funded services (36%), youth services (30% - preceding four years), and education (35% - preceding four years).³⁴ The proposed gaming/travel facility on the Willis Site will help ensure that the following projected shortfalls will be funded so that Chickasaw citizens will not be denied needed services in Fiscal Year 2017:

• Energy Assistance	- \$11,811
• Community Health Assistance	- \$37,815
• Career Services	- \$934,286
• Transportation Services	- \$23,217
• Honor Guard	- \$10,600
• BIA Funded Programs	- \$65,648,585
• Youth Services	- \$9,820,703
• Education	- \$15,869,465 ³⁵

These shortfall amounts clearly demonstrate the need for additional economic development. If new funding cannot be created through gaming, the Nation will not be able to provide services on the same level as Fiscal Year 2016.³⁶

Housing

Acquisition of the Willis Site will facilitate housing opportunities. When the Nation determined that nearly 60% of its citizens' home loan applications were being denied, the Nation's Division of Housing created the Chuka Chukmasi, or "Beautiful Home, Home Loan Program," to provide housing assistance. In 2014, nearly \$5.5 million in funding was issued to 44 Chickasaw families through Chuka Chukmasi, and more than \$720,000 in down payment and closing cost assistance was awarded to 243 Chickasaw families.³⁷ For existing homeowners, the Nation offers a number

³¹ *Id.* at 5.

³² Regional Director's Recommendation at 5.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 6.

of home improvement services including grants of up to \$5,000 for the repair or rehabilitation of privately owned homes.³⁸ To protect against severe weather, the Nation has installed more than 3,992 storm shelters for over 4,000 Chickasaw families.³⁹ These programs provide direct financial assistance to Chickasaw citizens.

Education

Acquisition of the Willis Site will facilitate self-determination by providing funds to support tribal educational programs. The Nation invests heavily in the education of its citizens through initiatives such as early childhood development programs, scholarships, and an adult learning center.⁴⁰ These educational and child development programs and services are administered through the Chickasaw Nation Division of Education (CNDE). In 2014, the CNDE awarded more than \$16 million in grants, scholarships, incentives, and other educational assistance to more than 4,100 Chickasaw students pursuing higher education.⁴¹ Examples of assistance include a career technology program, which awarded nearly \$1.4 million to 369 students to cover tuition, fees, and supplies.⁴² To encourage and reward learning, the Chickasaw Honor Club awarded incentives to 2,281 Chickasaw students.⁴³

The Nation also provides job and vocational training.⁴⁴ In 2014, the Nation administered a summer youth program under which over 600 youth were taught skills needed for future success. Under the "Creating Chickasaw Leaders" program, approximately 2,100 high school students were provided training on leadership qualities and skills.⁴⁵ The Nation's Adult Education Program provides assistance to citizens preparing for the GED, employment testing, as well as tutoring assistance for educational program entrance exams (e.g. vocational and technical exams, college entrance exams, etc.). Approximately 250 to 300 adult learners are served every year; 75% will go on to college or vocational programs.⁴⁶ The Chickasaw Nation Head Start served 301 students during the 2013-2014 school year at four Head Start centers.⁴⁷

These programs and opportunities are made possible through profits and investments made by the Nation from gaming revenues and supplemented by federal and state grants.⁴⁸ Of the \$45,341,331 allocated for education and child development programs and services,

³⁸ *Id.*

³⁹ Regional Director's Recommendation at 6.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 6-7.

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

approximately \$36,136,000 will be funded by the Nation's gaming and other tribal funds.⁴⁹ The additional revenue that would be generated by the proposed gaming/travel facility on the Willis Site would allow the Nation to continue providing these educational programs and services.⁵⁰

Health Services

Revenue from the proposed gaming/travel facility on the Willis Site will help ensure that the Nation's citizens receive adequate health care.⁵¹ In 2014, the Nation, through its Chickasaw Nation Department of Health (CNDH) served more than 580,000 patients and incurred approximately \$219,989,158 in health expenditures.⁵² The Nation's comprehensive state-of-the-art health care system is anchored in the Chickasaw Nation Medical Center, a 72-bed medical center in Ada, Oklahoma.⁵³ The CNDH also provides services through five health clinics, and operates three nutrition centers, three wellness centers, and a diabetes care center.⁵⁴ The Nation's health clinics and wellness centers are wholly funded by the Nation's gaming and other tribal funds.⁵⁵ Acquisition of the Willis Site in trust will ensure that these services remain open, and lessen the Nation's dependence on federal funding.⁵⁶

Conclusion

The Regional Director determined, and we concur, that acquisition of the Willis Site in trust will facilitate tribal self-determination and economic development.⁵⁷

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

The Willis Site is located within the former reservation boundaries of the Nation.⁵⁸ 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.

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

⁴⁹ *Id.*

⁵⁰ Regional Director's Recommendation at 7.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 8.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See id.* at 2.

⁵⁸ *Id.* at 3.

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, 1934.⁵⁹ 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 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.⁶⁰ Section 13 of the IRA provides in relevant part:

[...] That sections 2, 4, 7, 16, 17, and 18⁶¹ 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.⁶²

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

⁵⁹ 555 U.S. at 395.

⁶⁰ 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.

⁶¹ 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.

⁶² 25 U.S.C. § 5118 (emphasis added).

Secretary is authorized by Section 5 of the IRA to take land into trust for those tribes.⁶³ The listing of the Nation in Section 13 is sufficient for purposes of finding the Nation to be under federal jurisdiction in 1934.

25 CFR § 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 once held patented title to approximately 4,707,081 acres of what is now the State of Oklahoma.⁶⁴ The Nation currently owns approximately 6,177.011 acres of land that is held by the United States of America in Trust for the Nation.⁶⁵ The Nation's current trust land base is 0.13% of its land base prior to allotment. The Nation needs additional land to reduce jurisdictional checkerboards and expand its land base so that it can pursue economic development opportunities.⁶⁶

Acquisition of the Willis Site in trust would assist the Nation in meeting the following objectives:

- Improve the socioeconomic status of the Nation by increasing the amount of revenue that would 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 for the Nation's people; and provide capital for other economic development and investment opportunities.
- Provide additional employment opportunities to the tribal and non-tribal community.
- Enable the Nation to make donations to charitable organizations and governmental operations, including local educational institutions.
- Enable the Nation to fund local governmental agencies, programs and services.
- Establish economic self-sufficiency to achieve tribal self-determination.⁶⁷

We conclude that acquisition of the Willis Site in trust will address the Nation's demonstrated need for land.

⁶³ See 78 Cong. Rec. 11125-26 (June 12, 1934), where Mr. Thomas of Oklahoma, discussing the land acquisition provision, offered an amendment that passed, that Section 5 expressly reference the purchase of lands for individual Indians. He wanted 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, pointed 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.

⁶⁴ Regional Director's Recommendation at 10.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 11.

25 CFR § 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 land will be used in evaluating a trust application.

The proposed gaming/travel facility will consist of a 16,000 square foot gaming/travel stop with an attached convenience store.⁶⁸ There will be an approximately 5,745 square foot gaming floor with 250 class II and class III machines, with the remainder of the facility used for office space, including the offices of the Chickasaw Nation Office of Gaming.⁶⁹ Approximately 302 surface-level parking spaces would be constructed to accommodate patrons and employees.⁷⁰ The Regional Director concluded, and we concur, that the Nation adequately described the purpose of the trust acquisition.

25 CFR § 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.

Comments regarding the potential impacts of the proposed acquisition on regulatory jurisdiction, real property taxes and special assessments were solicited from the state and local political subdivisions by correspondence dated April 10, 2014.⁷¹ The following political subdivisions were notified:

- Governor of Oklahoma
- Oklahoma Tax Commission
- Marshall County Commissioners
- Marshall County Assessor
- Marshall County Treasurer
- Marshall County Sheriff.⁷²

In a letter dated April 16, 2014, the Marshall County Assessor stated that the approximate 2013 tax amount assessed was \$46, with no special assessments assessed against the property.⁷³ The 2015 tax record indicates that taxes in the amount of \$46 were assessed for the subject property

⁶⁸ Nation's Supplement at 12.

⁶⁹ Id. at 13.

⁷⁰ Id. at 26.

⁷¹ Initial Consultation Letters to Political Subdivisions (April 10, 2014), in Regional Director's Recommendation, Attachments 16 - 21.

⁷² Regional Director's Recommendation at 13.

⁷³ See Letter from Debbie Croasdale, Marshall County Assessor, in Regional Director's Recommendation, Attachment 23.

and paid by the Nation on November 3, 2015.⁷⁴ In a letter dated June 9, 2014, the Oklahoma General Counsel stated that no State property taxes are collected for the Willis Site, and that there are no State assessments.⁷⁵

The potential economic impacts due to the loss of State tax revenues would be offset by increased local and state revenues resulting from construction and operation of the proposed gaming/travel facility. The proposed gaming/travel facility is estimated to create 137 regional jobs including 85 new direct jobs.⁷⁶ The total estimated economic impact on the regional economy from the proposed gaming/travel facility in year one is \$38,638,924, with the five year total at \$113,686,932.⁷⁷

Neither the State nor the County objected to, or expressed any concerns regarding the potential loss of tax revenue associated with this acquisition. The Regional Director determined, and we concur, that the tax loss will be inconsequential.⁷⁸ Further, the anticipated economic benefits from the proposed gaming/travel facility outweigh any impacts from removal of the Willis Site from the tax rolls.

25 CFR § 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 that were contacted in the BIA's request for comments dated April 10, 2014.⁷⁹

The Willis Site is located east of U.S. Highway 377, between Fobb Bottom/Willis Beach Road to the north and Oklahoma University Road to the south, in Marshall County, which is located in south-central Oklahoma.⁸⁰ The surrounding area consists of pastureland and rangeland.⁸¹ The Willis Site is approximately 0.7 miles north of Lake Texoma and the Oklahoma-Texas state line,⁸² and is approximately 73.9 miles from the Nation's headquarters in Ada. The unincorporated community of Willis, Oklahoma, is located east of the property. The Willis Site

⁷⁴ See Regional Director's Recommendation, Attachment 5m, Proof of Payment of Taxes.

⁷⁵ See letter from Steven K. Mullins, General Counsel, Office of Governor Mary Fallin, to Stephanie Large, Superintendent, Chickasaw Agency (June 9, 2014), in Regional Director's Recommendation, Attachment 27.

⁷⁶ Economic Impacts Analysis, Willis Bridge Gaming/C-Store Development at 2, in Environmental Assessment, Chickasaw Nation Willis Fee-to-Trust Project (May 2016) [hereinafter EA], EA, Appendix I.

⁷⁷ *Id.*

⁷⁸ Regional Director's Recommendation at 15.

⁷⁹ *Id.*

⁸⁰ See EA Executive Summary.

⁸¹ See EA § 1.2.

⁸² See *id.*

is located outside of the corporate limits of any municipality in Marshall County, which has no zoning ordinance that applies to such rural land.⁸³ As tribally owned land within the Nation's treaty territory boundaries, the property falls within the territorial and legal jurisdiction of the Chickasaw Nation and will be governed accordingly by the Nation's laws and regulations. Any potential issues that may arise in the areas of environmental protection and public health and safety will be addressed within the Nation's legal and institutional framework, which include the regulatory and judicial functions of the Chickasaw Nation Office of the Gaming Commissioner and the Chickasaw Nation's Judicial System.⁸⁴

The increase in patrons and employees may increase the need for law enforcement in the area. Law enforcement services for the property are currently provided by the Chickasaw Nation Lighthorse Police Department and will continue after trust acquisition.⁸⁵ Increased revenue would improve the ability of the Nation's police department to respond to law enforcement needs and allow for the employment of on-site security. The Marshall County EMS and the Powell Willis Rural Volunteer Fire Department have committed to the continuation of emergency and fire protection services to the property after it is taken into trust, as evidenced by the will-serve letter provided to the Nation.⁸⁶

We determine that no jurisdictional problems or potential conflicts of land use are anticipated.

Additional Comments

In its June 9, 2014 letter, the State informed the BIA that the Governor "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) an increase in gaming facilities in the State would lead to an increase in gambling addiction.⁸⁷ The Regional Director found, and we concur, that the State's objections to additional gaming facilities in Oklahoma are speculative and lack any supporting evidence.⁸⁸ Based on the lack of governmental services being provided to the Willis Site, and the lack of evidence for the State's concerns, the BIA believes, and we agree, that the State's interests are not and will not be adversely affected by the acquisition of the Willis Site into trust

⁸³ See EA § 3.8.1.

⁸⁴ Regional Director's Recommendation at 16

⁸⁵ Regional Director's Recommendation at 15.

⁸⁶ *Id.* at 16. In its June 9, 2014 letter, the State asserted that it "provides all governmental services to the" Willis Site, including "public health and safety, land use regulations, and environmental compliance and regulation." See letter from Steven K. Mullins, General Counsel, Office of Governor Mary Fallin, to Stephanie Large, Superintendent, Chickasaw Agency (June 9, 2014), in Regional Director's Recommendation, Attachment 27. The Nation's response to the State's comments clarified that the Nation is more involved in the provision of the daily operations of the government services related to the Willis Site. See Regional Director's Recommendation at 14. The BIA found that due to the rural and vacant nature of the Willis Site and the few governmental services currently required by it, the disagreement between the State and Nation regarding provision of governmental services is of nominal importance. *Id.*

⁸⁷ See letter from Steven K. Mullins, General Counsel, Office of Governor Mary Fallin, to Stephanie Large, Superintendent, Chickasaw Agency (June 9, 2014), in Regional Director's Recommendation, Attachment 27.

⁸⁸ See Regional Director's Recommendation at 14.

for gaming purposes.⁸⁹ 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-determination. General opposition to gaming is not a basis on which to deny the Nation’s application.

25 CFR § 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 Willis Site is within the jurisdictional boundaries of the Chickasaw Agency, Bureau of Indian Affairs, which is responsible for the administration of the realty program functions associated with the management of trust lands within its administrative jurisdiction.⁹⁰ Law enforcement services within the proposed acquisition area will be provided by the Chickasaw Nation Lighthorse Police. The Regional Director found, and we concur, that there are adequate resources available to assume the additional responsibilities resulting from the acquisition of the Willis Site in trust.⁹¹

25 CFR § 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.

A Phase 1 Environmental Site Assessment (ESA) for the subject property was completed on August 12, 2016.⁹² The ESA was prepared in general accordance with the American Society for Testing and Materials Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (ASTM Designation: E1527-13).⁹³ No Recognized Environmental Conditions were found on the site.⁹⁴ An updated Phase I ESA will be required prior to acquiring the Willis Site in trust.

⁸⁹ See Regional Director’s Recommendation at 14-15.

⁹⁰ *Id.* at 16.

⁹¹ *Id.*

⁹² See ESA, Attachment 7 to the Regional Director’s Recommendation.

⁹³ See ESA § 2.

⁹⁴ See ESA § 7.

An Environmental Assessment (EA) for the subject property was completed on July 27, 2016.⁹⁵ The EA was made available for public comment from June 17 to July 25, 2016.⁹⁶ No comments were received from the public.⁹⁷

The EA analyzed two alternatives:⁹⁸

Alternative A, Proposed Action: Under Alternative A, the United States would acquire the 30.03-acre Willis Site in trust for the benefit of the Nation, and the Nation would develop a gaming facility/travel stop. *See* EA § 2.1. Approximately 21.64 acres will be reserved for open space. *See* EA § 2.1.2.

Alternative B, No Action: Under Alternative B, the United States would not acquire the Willis Site in trust, and the Nation would not develop a gaming/travel facility. *See* EA § 2.2.

Potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, transportation networks, land use, public services, visual resources, noise, and hazardous materials are each evaluated in the EA. The EA describes the Best Management Practices (BMPs) in Section 2.1.3 that have been incorporated into the project design to eliminate or substantially reduce any environmental impacts. In addition, the EA describes mitigation measures in Section 5.0 which will be implemented to avoid or minimize environmental impacts. The EA concludes the project design and implementation of BMPs would ensure impacts to these resources would be less than significant.

Based on a review of the EA and its analysis of potentially affected resources, we have determined that Alternative A would best meet the purpose and need for acquiring the Willis Site 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 – The proposed gaming/travel facility will result in changes to the existing topography. A grading plan will be developed in compliance with standard engineering practices. *See* EA § 4.1. With implementation of BMPs, development of Alternative A would result in less-than-significant impacts to land resources.

Water Resources - The Willis Site will be designed to accommodate increased stormwater runoff. A stormwater pollution protection plan will be developed before construction. The Willis

⁹⁵ *See* Memorandum from Eddie Streater, Regional Director, Eastern Oklahoma Region to S. Ashley Large, Superintendent, Chickasaw Agency, Eastern Oklahoma Region (July 27, 2016).

⁹⁶ *See* Regional Recommendation at 17.

⁹⁷ *Id.*

⁹⁸ *See* EA § 2.0.

Site is outside the 100- and 500-year FEMA designated flood zones. Wastewater generated by the gaming/travel facility will be treated in a total retention lagoon system in accordance with Oklahoma Department of Environmental Quality Standards for On-Site Wastewater Treatment Systems. *See* EA § 4.2. The lagoons would retain all inflow with no surface discharge. With implementation of BMPs, development of Alternative A would result in less-than-significant impacts to water resources.

Air Quality – Marshall County and the State are designated attainment areas for all criteria pollutants. Impacts from construction and operational activities would not be significant. *See* EA § 4.3. With implementation of BMPs, coupled with federal mobile source reduction measures, development of the Willis Site would not have a significant adverse cumulative effect associated with climate change. EA § 4.3.1. With implementation of BMPs, development of Alternative A would result in less-than-significant impacts to air quality.

Biological Resources – The Willis Site is primarily comprised of agricultural areas with native and nonnative grassland. There are no unique or sensitive ecosystems or biological communities on the Willis Site. There are no natural communities that may be adversely affected during site development. No potentially jurisdictional wetlands and/or waters of the U.S. are located within the site. Habitat for the American Burying Beetle has the potential to exist on the Willis Site. Preconstruction surveys will be conducted in accordance with USFWS survey protocols. *See* EA § 4.4. With implementation of mitigation measures, development of Alternative A would result in less-than-significant impacts to the American Burying Beetle or other biological resources would be less than significant.

Cultural Resources - There are no neighboring tribes with significant historic connections to the Willis Site. Comments were solicited from the Caddo Tribe of Oklahoma, Choctaw Nation of Oklahoma, and Wichita & Affiliated Tribes. No comments were received. The Oklahoma State Historic Preservation Office found that no historic properties would be affected by the proposed project. *See* EA § 4.5. With implementation of BMPs, development of Alternative A would result in less-than-significant impacts to cultural resources.

Socioeconomic Conditions - The proposed gaming/travel facility would generate substantial temporary and ongoing employment opportunities and wages that would be primarily filled by the available labor force in the surrounding communities in Marshall County. Operation of the proposed gaming/travel facility would create 85 new jobs. Due to the relatively small number of new employees, the proposed gaming/travel facility would have a limited potential to impact regional housing stock or the housing market. The proposed gaming/travel facility would provide beneficial impacts for the Nation, the only environmental justice community in the vicinity of the Willis Site. Development of Alternative A would result in less-than-significant impacts to socioeconomic conditions. *See* EA § 4.6.

Transportation Networks - The Nation will secure all necessary and required permits from Marshall County and the Oklahoma Department of Transportation (ODOT) prior to beginning road work on U.S. Highway 377. The Chickasaw Nation Roads Department will be responsible

for administering and overseeing all new road projects, including working cooperatively with the counties, utilities, and ODOT as needed. Projected traffic volumes will average 1,302 weekly vehicle trips. A capacity analysis was completed to evaluate potential impacts to area intersections, and concluded that there will be no adverse impacts to intersection capacity. Intersections will continue to operate at acceptable levels of service. There will be no significant adverse impacts to transportation networks in the vicinity of the Willis Site. Development of Alternative A would result in less-than-significant impacts to transportation networks. *See* EA § 4.7.

Land Use - The Willis Site is located on unzoned rural land. *See* EA § 4.8. A cemetery lies adjacent to the southern boundary, agricultural land to the north, single-family residential properties to the east, and U.S. Highway 377 and undeveloped land to the west.⁹⁹ The Willis Site is undeveloped. The Willis Site is located outside of the corporate limits of any municipality in Marshall County, which has no zoning ordinance that applies to such rural land. The proposed gaming/travel facility would not disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses. Development of the Willis Site will remove only 0.001% of farmland from service. *See* EA § 4.8. Development of Alternative A would result in less-than-significant impacts to land use.

Public Services - Water would be supplied by the Marshall County Water Corporation. There is sufficient municipal capacity to meet average and peak water demands of the proposed gaming/travel facility. The increase in patrons and employees may increase the need for law enforcement in the area. Increased revenue from the proposed gaming/travel facility would allow the Nation to improve its ability to respond to law enforcement needs. The Marshall County EMS and the Powell Willis Rural Volunteer Fire Department have indicated their willingness to provide emergency and fire protection services. With implementation of BMPs, development of Alternative A would result in less-than-significant impacts to public services. *See* EA § 4.9.

Visual Resources - Vegetation will be landscaped to enhance the overall aesthetics. The use of lighting in parking areas would be limited to dusk, nighttime, and foggy conditions. With implementation of BMPs, no adverse effects associated with lighting would occur. *See* EA § 4.10.

Noise - Construction would be temporary, and BMPs are expected to reduce noise from construction activities. *See* EA § 4.11. The operation of the proposed gaming/travel facility is not predicted to result in traffic noise impacts and mitigation is not necessary. *See id*; *see also* EA § 5.7. With implementation of BMPs, development of Alternative A would result in less-than-significant impacts from noise.

Hazardous Materials - There is no known hazardous materials contamination on the Willis Site. There are no known adjacent sites with hazardous materials that could affect the planned uses of

⁹⁹ *See* ESA § 3.4.

the Willis Site. No adverse effects associated with hazardous materials would occur due to the operation of the proposed game/travel facility. *See* EA § 4.12.

Cumulative and Indirect Effects - Development of the proposed game/travel facility would not result in cumulatively considerable adverse effects to land resources, water resources, air quality, biological resources, cultural resources, transportation, water supply, wastewater service, solid waste service, Kingston School Public Schools, recreation, law enforcement, energy providers, fire protection, emergency medical services, visual resources. With the implementation of BMPs, no cumulatively considerable adverse effects related to hazardous materials would occur as a result of the game/travel facility. There are no significant cumulative socioeconomic effects. There are no significant adverse indirect effects, including growth-inducing effects, relevant to any environmental issue area would occur. *See* EA § 4.13.

Conclusion

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Willis Site in trust for the Chickasaw Nation. Further, pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(a)(2)(A)(i), the Willis Site 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 stylized flourish at the end.

Lawrence S. Roberts
Principal Deputy - Assistant Secretary of Indian Affairs