



THE SECRETARY OF THE INTERIOR
WASHINGTON

JAN 19 2018

The Honorable Ron Sparkman
Chief, Shawnee Tribe
P.O. Box 189
Miami, Oklahoma 74355

Dear Chief Sparkman:

The Shawnee Tribe (Tribe) submitted an application to the Department of the Interior (Department) on February 18, 2015, requesting that the United States acquire in trust approximately 102.98 acres in Texas County, Oklahoma, (Site) for gaming and other purposes.¹

The Governor of Oklahoma, Mary Fallin, called for the expedient acquisition of the Site in trust when she concurred with the Department's determination that gaming on the Site would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA).² Absent the Governor's concurrence, no tribal gaming could occur on the Site.³ Acquiring the Site in trust will allow the Tribe to establish a land base and exercise jurisdiction over the Site including conducting gaming under IGRA. The Department's Determination is included as Enclosure 1, and the Governor's concurrence is included as Enclosure 2.

The Tribe currently has no land base even though the predecessors of the Tribe once controlled large territories of land.⁴ Without land over which it can exercise its jurisdiction as a sovereign, the Tribe cannot fully engage in self-determination and self-governance. While Congress fully restored the Tribe's federal status in 2000, as discussed below, and clarified the Tribe's eligibility to have land taken into trust, it failed to establish a land base for the Tribe. It is unlikely that the Tribe will be able to place land in trust at or near its current location within the historical reservation of the Cherokee Nation because legislation prohibits the Tribe from

¹ See Memorandum to Paula Hart, Director, Office of Indian Gaming, from Regional Director, Southern Plains Regional Office (Re 25 C.F.R. Part 151) (Dec. 7, 2016) [hereinafter Regional Director's Part 151 Recommendation]. See also Memorandum to Paula Hart, Director, Office of Indian Gaming, from Regional Director, Southern Plains Regional Office (Re 25 C.F.R. Part 292) (Dec. 7, 2016) [hereinafter Regional Director's Part 292 Recommendation] at 3-4. The Regional Office returned the application to the Tribe, and on June 29, 2015, the Tribe submitted a supplemented Application for Fee to Trust Pursuant to 25 C.F.R. Part 151 & Request for Secretarial Determination Pursuant to 25 C.F.R. Part 292 (June 29, 2015) [hereinafter Tribe's Application], in Regional Director's Part 292 Recommendation, Book 1. On September 8, 2015, the Tribe provided information at the request of the Regional Office in support of its request for a Secretarial Determination. See Memorandum to Regional Director, Southern Plains Regional Office, from Chief Ron Sparkman, Shawnee Tribe (Sept. 8, 2015), in Regional Director's Part 292 Recommendation, Book 4.

² See 25 U.S.C. § 2719 (b)(1)(A). See Letter to the Honorable Mary Fallin, Governor of Oklahoma, from Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs, regarding Secretarial Determination for the Shawnee Tribe enclosing Secretarial Determination for the Shawnee Tribe (Jan. 19, 2017) [hereinafter Two-Part Determination].

³ 25 U.S.C. § 2719(b)(1)(A).

⁴ Regional Director's Part 151 Recommendation at 6.

acquiring trust land within the former reservations of other tribes in Oklahoma without their consent.⁵ Many of the Tribe's members are also scattered to locations within other tribes' historical reservations in Oklahoma, and the Tribe's current governmental offices are leased and located within the historical reservation of the Cherokee Nation.

We have completed our review of the Tribe's application, the Regional Director's recommendation, all comments received, and other evidence in the administrative record. As discussed below, it is my decision that the Site will be acquired in trust for the benefit of the Tribe for gaming and other purposes. Acquisition of the Site in trust for the Tribe will establish a land base, create significant opportunities for economic development, and provide a means to improve the governmental services offered to its members.

Background

Proposed Gaming Facility

The Site is located approximately 1.5 miles southwest of the city limits of Guymon, Oklahoma.⁶ The Tribe is landless, and this will be the first land acquired in trust for the Tribe.⁷ The Tribe proposes to construct and operate a class II and class III gaming facility on the Site with approximately 600 machines and 6 to 8 table games.⁸ The proposed gaming facility would consist of 42,309 square feet, with a 20,206 square-foot gaming floor, 14,204 square feet of administrative space, a restaurant, retail space, and the offices of the Shawnee Tribe Gaming Commission. Approximately 819 surface-level parking spaces would accommodate patrons and employees. Wastewater would be treated by a newly constructed facility on the Site.⁹

The Shawnee Tribe

The Tribe is a federally recognized Indian tribe headquartered in Miami, Ottawa County, Oklahoma. Fourteen years after regaining Federal recognition, the Tribe had 2,573 members.¹⁰

⁵ *Id.*; Pub. L. 106-568, title VII, § 702, Dec. 27, 2000, 114 Stat. 2913, as amended 119 Stat. 1939, Aug. 10, 2005 [hereinafter Shawnee Status Act]. The recent reclassification of chapters 14 and 19 of Title 25 of the United States Code by the House Office of Law Revision Counsel removed the provisions of the Shawnee Status Act formerly codified at 25 U.S.C. § 1041 *et seq.* This decision refers to the sections of the Shawnee Status Act as they appear in the Statutes at Large.

⁶ Regional Director's Part 151 Recommendation at 7.

⁷ Regional Director's Part 151 Recommendation at 6; Regional Director's Part 292 Recommendation at 5. On August 18, 2017, Klint A. Cowan, Fellers Snider Attorneys at Law, submitted a letter to Jim Cason, Acting Deputy Secretary, Department of Interior. Mr. Cowan asserted that he had recently uncovered information which casts doubt on the Tribe's claim to be landless. Mr. Cowan took issue with the Department's Two-Part Determination which concludes that the Tribe is landless and not exercising jurisdiction over any territory, and has no trust land on which to develop economically. A 2014 BIA Title Status Report shows no ownership by the Tribe of the land in question; Shawnee Public Domain Allotment No. 206. The Title Status Report shows that this heavily fractionated allotment is jointly owned by fifty-eight listed owners, none of which is the Tribe.

⁸ Tribe's Application, § I at 30. The Tribe proposes to name the facility the Golden Mesa Casino, *see* Tribe's Application, § II at 8.

⁹ The Tribe currently does not have plans to develop the remaining 85.78 acres of the approximately 102.98-acre Site. *See* Tribe's Environmental Assessment (Nov. 2016), Attachment A to the Finding of No Significant Impact (Jan. 19, 2017), § 2.1. Available at www.ShawneeEA.com.

¹⁰ Tribe's Application, § I at 10.

The history of Shawnee migration in response to western expansion by European settlers has been traced to at least as early as the 1720s.¹¹ At that time, several native peoples, including the Shawnee, had settled in what had become colonial Pennsylvania.¹² As settlers pushed further into the Appalachian and eastern Mississippi River Basin territories beginning in 1787, they viewed the indigenous people there as obstacles, and commonly referred to them as “the Indian problem.”¹³ Many tribal people, including a group of Shawnee people, sought refuge in territories west of the Mississippi River, including Oklahoma.¹⁴ With the Louisiana Purchase in 1803, which encompassed nearly all of present-day Oklahoma, many settlers advocated for the permanent removal of native peoples remaining east of the Mississippi River to a permanent “Indian Colonization Zone” that ran north to south within territories along the western side of the Mississippi River.¹⁵ President Jackson ultimately established a formal policy that created “Indian Country,” which encompassed Oklahoma, Kansas, Nebraska, and part of Iowa.¹⁶

A series of treaties and the Indian Removal Act of 1830, which provided the Executive Branch of the Federal Government the authority to force tribes to cede their lands east of the Mississippi River, pushed most remaining native peoples west of the Mississippi River.¹⁷ These forced relocations are commonly known as the “Trail of Tears,” in which thousands of native people from numerous tribes died from starvation and disease before reaching Indian Country.¹⁸ At the same time, settlers also crossed the Mississippi River and began settling in territories originally designated as Indian Country.¹⁹

Prior to the forced removal policies, tribes had purchased or conceded to forced land transfers through treaties with the United States within present-day Oklahoma and Arkansas. Pressure from settlers to take tribal lands led the Federal Government to renegotiate many treaties with tribes that ultimately diminished tribal lands and moved the tribes further into present-day Oklahoma.²⁰ The 1854 Treaty of Washington terminated the Shawnee Reservation in Kansas and created roughly 200,000 acres of individual allotments.²¹ The Kansas-Nebraska Act of 1854 created a second wave of forced relocation as dozens of tribes including the Shawnee Tribe were relocated from their reservations in Nebraska and Kansas and resettled in Oklahoma, which was then officially known as “the Indian Territory.”²² Many Indians also fled to the Indian Territory from Texas in 1859 after the Texas Government, then separate from the United States, enacted policies to exterminate Indians within its territory.²³

¹¹ Tribe’s Application, § I at 10, note 18, citing Stephen Warren, *The Worlds the Shawnees Made*, 156 (2014).

¹² Tribe’s Application, § I at 12, note 29, citing Diane Everett, *Indian Territory*, Encyclopedia of Oklahoma History & Culture.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Tribe’s Application, § I at 12, note 31, citing Public Broadcasting Service, *Indian Removal*.

¹⁷ 4 Stat. 411.

¹⁸ Tribe’s Application, § I at 12, note 31, citing Public Broadcasting Service, *Indian Removal*.

¹⁹ *Id.*

²⁰ Regional Director’s Part 292 Recommendation at 7.

²¹ Treaty with the Shawnee, 10 Stat. 1053, May 10, 1854.

²² An Act to Organize the Territories of Nebraska and Kansas, 10 Stat. 277, May 30, 1854. See also Everett, *supra* note 8.

²³ Everett, *supra* note 8.

The Shawnee people in Kansas were known as the Loyal Shawnee due to their service to the Union in the Civil War.²⁴ Ultimately, these Shawnee were removed to Oklahoma, but the Federal Government failed to establish a reservation for them.²⁵ In 1869, the Federal Government forced, by Executive Order, the Cherokees, some of whom had fought on behalf of the Confederacy, to accept both the Shawnee and the Kansas Delawares into their tribe and onto their reservation. The Shawnees were to be accepted “on equal terms in every respect, and with all the privileges and immunities of native citizens of said Cherokee [N]ation.”²⁶ They did not, however, have their own land base.²⁷

Shawnee Status Act of 2000

The Shawnee Tribe remained part of the Cherokee Nation until Congress restored the Tribe to Federal recognition in 2000. The status of the Tribe was clarified by the Shawnee Tribe Status Act of 2000 (Shawnee Status Act or Act).²⁸ In the Act, Congress found that the Cherokee Shawnees (also known as the Loyal Shawnees, and currently as the Shawnee Tribe) are the descendants of the Shawnee Tribe which was incorporated into the Cherokee Nation of Indians of Oklahoma in 1869 by Executive Order of the Federal Government.²⁹ Congress further found that since that time, the Tribe has continued to maintain its separate culture, language, religion, organization, and a separate membership roll.³⁰ The Act also recognized that the Tribe and the Cherokee Nation had concluded that it is in the best interest of both tribes that the Shawnee Tribe be restored to its position as a federally recognized tribe.³¹ Accordingly, the Shawnee Status Act reaffirmed the Federal recognition of the Tribe and its trust relationship to the United States.³²

While the Shawnee Status Act stated that the Tribe is eligible to have land acquired in trust pursuant to Section 5 of the Indian Reorganization Act, the Act placed significant restrictions regarding where the Tribe could acquire such land.³³ Section 7 (b) of the Act prohibits the acquisition of trust land for the Tribe where the land lies within the jurisdiction of the Cherokee Nation or any other tribe without the consent of the Cherokee Nation or other such tribe:

(b) RESTRICTION. - No land recognized by the Secretary [of the Interior] to be within the Cherokee Nation or any other Indian tribe may be taken into trust for the benefit of the [Shawnee Tribe] under this section without the consent of the Cherokee Nation or such other tribe, respectively.³⁴

²⁴ Tribe’s Application, § I at 6.

²⁵ *Id.*

²⁶ Warren at 170, *supra* note 7.

²⁷ Tribe’s Application, § I at 7.

²⁸ Pub. L. 106-568, title VII, § 702, Dec. 27, 2000, 114 Stat. 2913, as amended 119 Stat. 1939, Aug. 10, 2005.

²⁹ Shawnee Status Act, § 2(1).

³⁰ *Id.* at § 2(2).

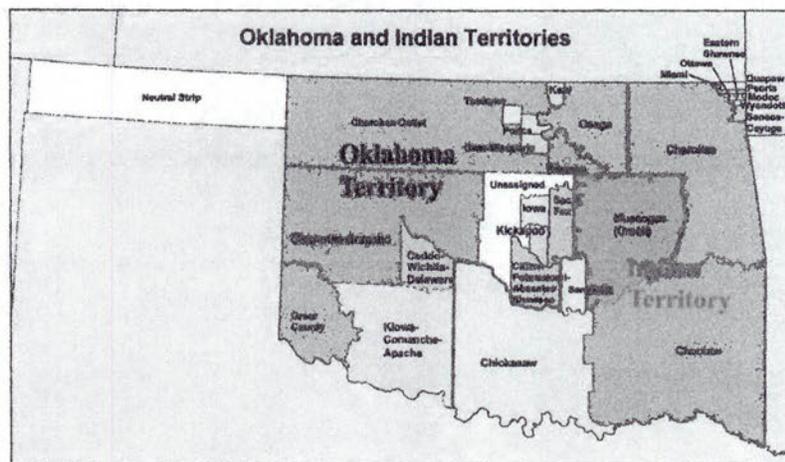
³¹ *Id.* at § 2 (3).

³² *Id.* at § 4 (a).

³³ *Id.* at § 7 (a)(1). Although the Shawnee Status Act originally provided that the Secretary “shall” take certain land in trust in Oklahoma, that language was removed through the “Shawnee Tribe Status Act Amendments Act of 2005.” Pub. L. 109-59, 119 Stat. 1939 § 10213 (Aug. 10, 2005).

³⁴ *Id.* at § 7 (b).

Oklahoma and Indian Territories, 1890s³⁵



In addition, the Cherokee Nation's Constitution prohibits the Cherokee Nation from consenting to any action that would diminish its jurisdiction such as a trust acquisition by another tribe within the Cherokee Nation's territory.³⁶ These restrictions effectively preclude the Shawnee Tribe from acquiring land in the area containing the greatest concentration of the Tribe's members. The greatest concentration of Shawnee members is primarily within the territorial boundaries of the Cherokee Nation and eight other tribes located in Ottawa County, Oklahoma.³⁷ These tribes have not agreed to the Tribe's acquisition of lands within their reservation or former reservation boundaries.³⁸ However, numerous tribes have shown support for the Tribe's acquisition of the Site, recognizing that the Tribe is prevented from acquiring land within the jurisdiction of any tribe.³⁹ Letters of support were submitted by:

- Cherokee Nation
- Eastern Shawnee Tribe of Oklahoma
- Miami Tribe of Oklahoma
- Modoc Tribe of Oklahoma
- Ottawa Tribe of Oklahoma
- Peoria Tribe of Indians of Oklahoma
- Quapaw Tribe of Oklahoma
- Seneca-Cayuga Nation
- Wyandotte Nation

³⁵ See <http://thomaslegion.net/oklahomaterritoryandindianterritory.html>.

³⁶ See Constitution of the Cherokee Nation, Article IV, Section 1: "Nothing in this Constitution shall be construed to prohibit the Cherokee-Shawnee or Delaware-Cherokee from pursuing their inherent right to govern themselves, provided that it does not diminish the boundaries or jurisdiction of the Cherokee Nation or conflict with Cherokee law." Available at <http://www.cherokee.org/Portals/0/Documents/2011/4/308011999-2003-CN-CONSTITUTION.pdf>

³⁷ Regional Director's Part 292 Recommendation at 8.

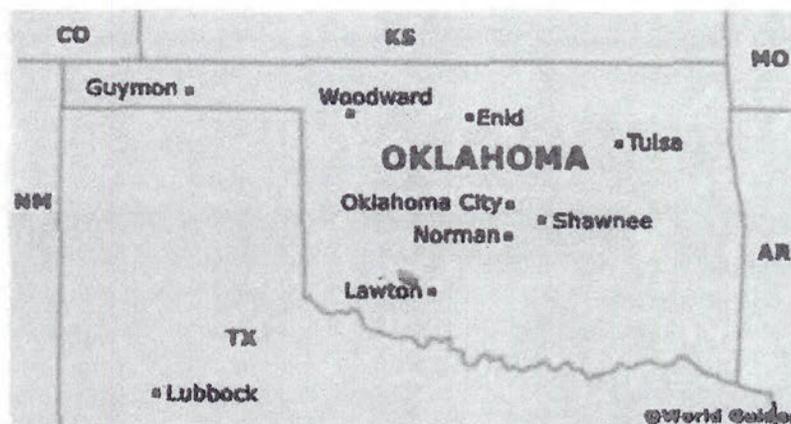
³⁸ *Id.* at 9.

³⁹ See letters in Tribe's Application, § II, Tab 9b.

Description of the Property

The Site is located in Oklahoma's Panhandle. It is owned by Panhandle Highway 54 Land, LLC, who is willing to directly convey the Site to the United States in trust for the use and benefit of the Tribe.⁴⁰ The land is located along U.S. Highway 54, with Road Mile 28 along the western boundary and Road Y along the southern boundary. The Site consists of land formerly used for agriculture, but is now fallow. The nearest residence is located approximately 0.5 mile north of the Site. Approximately 12 clustered rural residences are located approximately 0.7 miles northwest of the proposed gaming facility. Cropland is located along the Site's eastern boundary. The surrounding countryside consists of sparsely populated ranch land and farms. There are no improvements located on the Site.⁴¹ A legal description of the Site is included as Attachment 3.

Map of Oklahoma showing Guymon



The history of the Panhandle makes the Site an acceptable location for the Shawnee Tribe. When the United States annexed Texas in 1845, the strip of land now comprising the Oklahoma Panhandle was cut off from Texas, leaving a neutral strip of land over which no state had jurisdiction.⁴² This strip of land was sparsely inhabited, including seasonal Comanche settlements. Because no state owned the land, it was commonly referred to as “No Man’s Land.” In 1890, Congress approved the Oklahoma Organic Act, which added the strip to establish the Oklahoma Territory.⁴³ Today, no tribe has land or former reservation land in the Panhandle.

⁴⁰ Tribe’s Application, § I at 19; *see also* Tribe’s Application Exhibits 3a, 3b, 3d, and 6b.

⁴¹ Tribe’s Application, § I at 22; Tribe’s Environmental Assessment (Nov. 2016), Attachment A to the Finding of No Significant Impact (Jan. 19, 2017), § 2.1. Available at www.ShawneeEA.com. EA, § 3.10.1.

⁴² This was done to comply with the Missouri Compromise of 1820, which outlawed slavery north of the 36°30’ parallel for the lands comprising the Louisiana Purchase. No slavery restrictions were imposed south of that parallel. The 37th parallel had been established as the southern boundary of Kansas and Colorado, but due to the Missouri Compromise, the northern frontier of Texas was officially cut off at the 36°30’ parallel. The area, which now comprises the Oklahoma Panhandle, was not assigned to any state at that time.

⁴³ Oklahoma Organic Act, 26 Stat. 81, May 2, 1890.

Prior Determinations

The Indian Gaming Regulatory Act

On March 3, 2017, Governor Fallin concurred with the Department's positive Two-Part Determination,⁴⁴ which found that a gaming establishment at the Site would be in the best interest of the Tribe and its members and that gaming at the Site would not be detrimental to the surrounding community.⁴⁵

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."⁴⁶ 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, 1988.⁴⁷ Congress expressly provided several exceptions to the general prohibition.⁴⁸ One exception, known as the "secretarial determination" or "two-part determination," requires a finding by the Secretary of the Interior (Secretary) that the gaming facility is 1) in the best interest of the tribe and its members, and 2) not detrimental to the surrounding community.⁴⁹ Congress also provided the state governor veto power by requiring a concurrence with the two-part determination before gaming can occur on the land.⁵⁰

The Department issued a positive Two-Part Determination on January 19, 2017, finding that a gaming establishment at the Site would be in the best interest of the Tribe and its members, and that gaming at the Site would not be detrimental to the surrounding community. The Tribe can conduct gaming on the Site upon its acquisition in trust.

The National Environmental Policy Act

Approval of a fee-to-trust gaming acquisition and issuance of a two-part determination constitute Federal actions requiring compliance with the National Environmental Policy Act (NEPA).⁵¹ The Proposed Action was analyzed within an Environmental Assessment (EA) prepared in accordance with NEPA.

The Proposed Action consists of the following components: (1) issuance of a Secretarial Determination by the Secretary; (2) concurrence by the Governor in the Secretarial Determination; (3) acquisition of the approximately 102.98-acre Site in trust by the United States for the benefit of the Shawnee Tribe; (4) approval of a management contract and related

⁴⁴ See Two-Part Determination.

⁴⁵ See Governor's Concurrence Letter.

⁴⁶ *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 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").

⁴⁷ 25 U.S.C. § 2719.

⁴⁸ *Id.*

⁴⁹ 25 U.S.C. § 2719(b)(1)(A).

⁵⁰ *Id.*

⁵¹ The Department's regulations for both processes require compliance with NEPA. See 25 C.F.R. §§ 151.10(h) and 292.18(a).

collateral agreements by the National Indian Gaming Commission; and (5) the subsequent development of a gaming facility and associated facilities on the Site by the Tribe.

Pursuant to NEPA, an EA was prepared and made available to the public for review for more than 30 days. The EA was circulated to interested parties for comment from December 2, 2016, to January 14, 2017. The EA was initially made available for review at the Guymon Public Library and online. The EA was made available at the City of Guymon City Hall starting January 6, 2017. Notice of the public review period was published in the *Guymon Daily Herald* on December 14 and 21, 2016, with a clarification published on December 29, 2016. A total of 58 comment letters and 3 form letters were received during the public comment period. Additionally, the Bureau of Indian Affairs (BIA) held a public hearing to take comments on the EA on January 5, 2017, at the Texas County Activity Center in Guymon. Notice of the public hearing was published December 26–January 5, 2016, in the *Guymon Daily Herald* and in *The Oklahoman*. All comments, both spoken at the hearing and submitted in writing, were considered by BIA during the decision making process for the Proposed Action.

The EA provided extensive information on the existing environment and provided environmental analysis of three alternatives:

Alternative A - Preferred Casino Alternative

The Tribe's proposed project consists of the construction and operation of a class II and class III gaming facility on the Site with approximately 600 machines and six to eight table games. The gaming facility would consist of 42,309 square feet, with a 20,206 square-foot gaming floor, 14,204 square feet of administrative space, a restaurant, retail space, and the offices of the Shawnee Tribe Gaming Commission. Approximately 819 surface-level parking spaces would accommodate patrons and employees. All wastewater would be treated by a newly constructed facility on the Site. The remainder of the Site will not be developed.

Alternative B - Reduced-Intensity Alternative

The Reduced-Intensity Alternative consists of the acquisition in trust of the approximately 102.98 acre Site by the United States for the benefit of the Tribe and the subsequent development of a gaming facility on the site. Alternative B is similar to the Alternative A, but the entire design for the casino and associated facilities would be approximately 65% of the size of those designed for Alternative A.

Alternative C - No Action Alternative

Under Alternative C, the Site would not be acquired in trust for the benefit of the Tribe and a gaming facility would not be built. Under the No Action Alternative, it is likely that either the land would remain fallow or agricultural production would be renewed at some future time.

The EA describes the Best Management Practices (BMPs) which have been incorporated into the project design to eliminate or substantially reduce any environmental consequences to less than significant. In addition, the EA describes mitigation measures in Section 5.0 which will be implemented to further mitigate potential environmental impacts.

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. The EA concludes the project design and implementation of BMPs would ensure impacts to these resources would be less than significant.

Based on the analysis contained in the EA, public comments made on the EA, and the response to those comments, the Department made a Finding of No Significant Impact (FONSI) for the Proposed Action on January 19, 2017.⁵² The FONSI constitutes a determination that the Proposed Action is not a Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

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

The Secretary of the Interior's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. The Shawnee Status Act expressly provides that the Tribe is eligible to have land acquired in trust for its benefit pursuant to Section 5 of the IRA and Section 1 of the Oklahoma Indian Welfare Act.⁵³ The Department's regulations 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; 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 Tribe's fee-to-trust request meets the threshold requirements of the Secretary's land acquisition policy in 25 C.F.R. § 151.3(a)(3).⁵⁴ The establishment of a land base and creation of a source of revenue through development of a gaming facility would create employment

⁵² The Tribe's Environmental Assessment (Nov. 2016) [hereinafter EA], is listed as Attachment A to the Finding of No Significant Impact (Jan. 19, 2017) [hereinafter FONSI]. The public comments on the EA are listed as Attachment B to the FONSI, and the response to those comments is listed as Attachment C to the FONSI. Available at www.ShawneeEA.com.

⁵³ Pub. L. 106-568, title VII, § 702, Dec. 27, 2000, 114 Stat. 2913, as amended 119 Stat. 1939, Aug. 10, 2005.

⁵⁴ We note that the Tribe has entered into a land conveyance agreement for the Site which satisfies the requirements of § 151.3(a)(2). See Tribe's Application, Exhibit 6b *Land Conveyance Agreement*.

opportunities for tribal members, fund important tribal governmental programs, and fund other development opportunities that will facilitate tribal self-determination and economic stability.

The Tribe has no trust land on which to develop economically. Further, the Tribe cannot access BIA programs that depend on a tribe's possession of trust lands.⁵⁵ Currently, the Tribe operates from two buildings, a tribal headquarters and a child services administrative building on 2.8 acres of land leased from the Inter-Tribal Council.⁵⁶ The lease was recently renewed, but is a tenuous arrangement because the term is only 5 years and its extension is subject to the good will of the majority of the Inter-Tribal Council.⁵⁷

With the exception of one child care program, the Tribe can offer no services to its approximately 2,600 members because it lacks a land base and revenue sources to sustain the types of tribal governmental operations typically offered by tribes. Accordingly, the Tribe has many unmet needs including a diverse economic base, basic tribal governmental operations, educational support, elder support, law enforcement and judicial services, health care, family services, and the ability to adequately maintain the Tribe's cultural heritage.⁵⁸

Economic Development

Because the Tribe is landless there are limited opportunities for economic development. The Tribe generates its existing governmental revenues from a gift shop at the tribal headquarters, vehicle license revenue, and rebates from the State of Oklahoma (State) motor fuel taxes which together average approximately \$██████████ per year.⁵⁹ The Tribe also receives approximately \$██████████ per year in funds for tribal government support from BIA which provides the core funding for its government.⁶⁰ The Tribe also operates a Federal program funded by the U.S. Department of Health and Human Services to finance child care for children of families of limited economic means who are members of any tribe. The 2015 grant amount was approximately \$██████████, and the 2016 grant amount was \$██████████. While some of the grant funds benefit children of other tribes, the funds also benefit the Tribe's members.⁶¹

The Tribe has been able to secure an average of approximately \$██████████ in other grants per year for historical and cultural program support, environmental planning, and some housing assistance.⁶² Relying on these sources of income, the Tribe maintains a part-time staff of 11. The staff includes a tribal administrator and three others in tribal administration including a receptionist/gift shop manager, enrollment director and accountant; two who directly administer the child care subsidy program; two in the licensing program; and one each for the environmental and housing programs and maintenance staff.⁶³

⁵⁵ Regional Director's Part 292 Recommendation at 5.

⁵⁶ *Id.* See also the Inter-Tribal Council's website at www.ninetribes.org.

⁵⁷ *Id.*

⁵⁸ Tribe's Application, § at 9.

⁵⁹ Regional Director's Part 292 Recommendation at 5.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 6.

⁶³ Tribe's Application, § 1 at 9.

Health Services

The Tribe has unmet health care needs. Because some members of the Tribe cannot reach health services or may have difficulty due to medical conditions, the Tribe needs a community nursing assistance program. The Tribe stated that this need could be addressed by three nurses who would be available to travel to homes to provide professional health care services or to counsel by telephone.⁶⁴ The Tribe also needs a residential care facility. With revenue from the proposed gaming facility, the Tribe would seek to accommodate 20 to 40 members who may need constant care.⁶⁵ There are also local members with special health and wellness needs including treatment for permanent and temporary infirmities, assistance in arranging and getting to medical appointments, and other assistance that does not require the expertise of licensed nurses.⁶⁶

Family Services

The Tribe has unmet needs for family services that include counseling for troubled families and individual family members.⁶⁷ The Tribe cannot currently provide counseling and intervention services that would help families and individuals function more productively.⁶⁸ The Tribe needs two positions for counselors with professional training and experience to provide these services. Without the proper funding or staffing, social and mental health issues that affect families remain untreated.⁶⁹

Cultural and Language Preservation

The Tribe has unmet needs for cultural and language preservation. Many members of the Tribe engage in cultural practices, including Shawnee traditional ceremonies, and there are a number of members who are fluent in the Shawnee language. The Tribe needs to fund three positions for Shawnee members with cultural knowledge to help preserve their language and cultural practices, teach tribal members, and organize cultural events. The cultural and language staff could be available for a summer enrichment programs for tribal youth to foster long-term tribal cohesiveness, teach younger members about their cultural heritage, and strengthen their Shawnee language skills.⁷⁰

In conclusion, the Tribe has many unmet needs, including economic development, family services, health services, and cultural and language preservation, which will be addressed by the revenue generated by the proposed gaming facility. The Regional Director determined, and we concur, that the acquisition of the Site is necessary to facilitate tribal self-determination and economic development.⁷¹

The acquisition, thus, satisfies the conditions in 25 C.F.R. § 151.3(a)(3).

⁶⁴ Tribe's Application, § II at 46.

⁶⁵ *Id.* at 47.

⁶⁶ *Id.*

⁶⁷ Tribe's Application, § II at 47.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 43.

⁷¹ Regional Director's Part 151 Recommendation at 4.

25 C.F.R. § 151.11 - Off-reservation acquisitions

The Tribe's application is considered under the off-reservation criteria of Section 151.11 because the Tribe is landless and has no reservation. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), and (e) through (h), as discussed below.

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

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it.

In *Carcieri v. Salazar*, 555 U.S. 379 (2009), the United States Supreme Court held that the Secretary's authority to take land into trust for an Indian tribe under the first definition of "Indian" in the IRA extends only to those tribes that were "under federal jurisdiction" when the IRA was enacted on June 18, 1934. However, the Court also acknowledged that Congress expressly exempted some tribes from the requirement of demonstrating that they were under Federal jurisdiction in 1934. The Court noted that "[i]n other statutory provisions, Congress chose to expand the Secretary's authority to particular Indian tribes not necessarily encompassed within the definitions of 'Indian' set forth in [section 19 of the IRA]."⁷² We have determined that the Shawnee Status Act provides such authority. Section 7 of that Act provides, in pertinent part, "[t]he Tribe shall be eligible to have land acquired in trust for its benefit pursuant to section 5 of the [IRA] and section 1 of the [Oklahoma Indian Welfare Act]." Thus, by declaring the Tribe eligible for trust land acquisition under Section 5 of the IRA, Congress eliminated the need to determine whether the Tribe was under Federal jurisdiction in 1934 under *Carcieri*.⁷³

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 a tribe's need for additional land.

Currently the Tribe is landless and has no trust land for economic development. Further, the Tribe cannot access BIA programs that require a tribe's possession of trust lands.⁷⁴ The Tribe must establish a land base to promote economic development. We determine that the acquisition of the Site is an essential component of the Tribe's self-determination and broader economic initiatives to establish a land base and establish a long-term, sustainable revenue base that will strengthen the Tribe's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development. The Regional Director determined, and we concur, that acquisition of the Site will address the Tribe's demonstrated need for land.⁷⁵

⁷² *Carcieri v. Salazar*, 555 U.S. 379, 392 (2009)

⁷³ As discussed above, the Shawnee Status Act authorizes the acquisition of land in trust for the Tribe pursuant to Section 5 of the IRA, but places significant restrictions on where the Tribe can acquire such land. The Act does not, however, place limitations on the acquisition authority of the IRA.

⁷⁴ Regional Director's Part 292 Recommendation at 5.

⁷⁵ Regional Director's Part 151 Recommendation at 6.

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 the land will be used.

The Tribe proposes to construct and operate a class II and class III gaming facility on the Site with approximately 600 machines and six to eight table games.⁷⁶ The proposed gaming facility would consist of 42,309 square feet, with a 20,206 square-foot gaming floor, 14,204 square feet of administrative space, a restaurant, retail space, and the offices of the Shawnee Gaming Commission. Approximately 819 surface-level parking spaces would accommodate patrons and employees. All wastewater would be treated by a newly constructed facility on the Site.⁷⁷ We conclude that the Tribe 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.

By correspondence dated October 22, 2015, the Department solicited comments from the following state and local governments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments:⁷⁸

- Office of the Governor, State of Oklahoma
- Oklahoma Tax Commission, State of Oklahoma
- Board of Commissioners, Texas County Oklahoma
- Office of the Chairman, Board of Commissioners, Texas County Oklahoma
- Office of the County Assessor, Texas County Oklahoma
- Office of the County Court Clerk, Texas County Oklahoma
- Office of the County Clerk, Texas County Oklahoma
- Office of the Mayor, City of Guymon, Texas County Oklahoma
- Office of the City Manager, City of Guymon, Texas County Oklahoma

As a courtesy, the Department extended the comment period, at the request of the City of Guymon and the Texas County Board of Commissioners, to December 28, 2015.

The Governor responded during the comment period and requested to defer her comments until the Department issued the Two-Part Determination.⁷⁹ On March 3, 2017, Governor Fallin,

⁷⁶ The Tribe proposes to name the facility the Golden Mesa Casino.

⁷⁷ The Tribe currently does not have plans to develop the remaining 85.78 acres of the approximately 102.98-acre Site. See EA, § 2.1.

⁷⁸ The original notice dated September 18, 2015, was corrected by the notice of October 22, 2015, identified the acquisition as an off-reservation acquisition pursuant to 25 C.F.R. § 151.11. See Book 2, Tab 14, letters dated Sept. 18, 2015 of 25 C.F.R. 151.10 Notice; Tab 16 letters withdrawing letters of Sept. 18, 2015; and Tab 17, letters dated Oct. 22, 2015 referencing 25 C.F.R. 151.11 Off-Reservation acquisition for Gaming; and letters dated Nov. 18, 2015 granting requests for 30 day extensions.

⁷⁹ See Letter to Terry Bruner, Deputy Regional Director, Southern Plains Regional Office, from Steven K. Mullins, General Counsel for Governor Mary Fallin (Oct. 2, 2015).

issued a concurrence with the Department's Two-Part Determination and expressed her support for the expedient acquisition of the Site in trust for the benefit of the Tribe.⁸⁰

The Texas County Assessor provided information about the 150-acre Panhandle Property's estimated assessed property tax for 2015, which was between \$5,621 and \$5,855, but did not provide any information regarding impacts to the County's overall budget.⁸¹ The approximately 102.98-acre Site is part of the larger undivided 150-acre Panhandle Property.

We analyze the tax impacts below, and note that Section 4.6.1 of the EA fully evaluated the impact on the State and its political subdivisions resulting from removal of the Site from the tax rolls.

Under Section 151.10(e), the analysis of tax impacts is based on existing circumstances, *i.e.*, taxes actually assessed and paid.⁸² The Department is not required to consider speculative losses of future tax revenue. As discussed below, comments received from officials of both Texas County and the City of Guymon did not contain any substantive explanation of the impact removing the Site from the tax rolls would have on the State, County, or local municipal government's budgets.

Prior to the Tribe's application, the 150-acre Panhandle Property which includes the Site, was being actively farmed and was taxed at the State's agricultural land rate.⁸³ The assessed property tax value for the year 2014 for the Panhandle Property at the agricultural land rate was \$278.⁸⁴ The most recent tax assessment for the Panhandle Property from 2016 was \$5,204.⁸⁵ The Panhandle Property was reclassified as commercial highway frontage, and the assessment updated to reflect the higher commercial valuation rate.⁸⁶

The loss of property tax revenue will be offset by increased business activity due to the proposed gaming facility. The increased economic activity would generate new tax revenues that would accrue to the State, the County, and local municipalities in the area. The Economic Impacts Report, prepared by Kyle D. Dean, PhD, Associate Director of the Oklahoma City University's Steven C. Agee Economic Research & Policy Institute, estimates that construction of the proposed gaming facility would generate \$60,573 in statewide sales tax revenue, of which

⁸⁰ See Governor's Concurrence Letter.

⁸¹ See Letters to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Judyth Campbell, Texas County Assessor (Sept. 28, 2015, and Nov. 20, 2015). The County Assessor's two letters contained differing assessed property values resulting in differing estimated property tax assessments. See also Shawnee Tax Assessment 2016, on file with the Office of Indian Gaming, which shows for the 2016 tax year the property tax was \$5,204.

⁸² See, e.g., *Skagit County, Washington v. Northwest Regional Director*, 43 Interior Board of Indian Appeals (IBIA) 62, 81-82 (2006); *Shawano County, Wisconsin, Board of Supervisors v. Midwest Regional Director*, 40 IBIA 241 249 (2005); *Rio Arriba, New Mexico, Board of Commissioners v. Acting Southwest Regional Director*, 38 IBIA 18, 21 (2002); *City of Eagle Butte, South Dakota v. Aberdeen Area Director*, 33 IBIA 246, 248 (1999).

⁸³ See Letters to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Judyth Campbell, Texas County Assessor, (Sept. 28, 2015, and Nov. 20, 2015).

⁸⁴ EA, § 3.6.4.

⁸⁵ Shawnee Tax Assessment 2016, on file with the Office of Indian Gaming. Due to the County Assessor's conflicting estimates for the tax year 2015, we relied instead on the 2016 assessment which is the most recent.

⁸⁶ See Letters to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Judyth Campbell, Texas County Assessor (Sept. 28, 2015, and Nov. 20, 2015).

\$31,881 would be collected by county and municipal governments within Texas County.⁸⁷ Operation of the proposed gaming facility would generate \$106,578 annually for the State as a whole, of which \$56,094 annually would be collected by local government entities.⁸⁸

The impact of removing the Site from the tax rolls is minimal when balanced with the benefits that will accrue to the region from increased economic activity.

Additional Comments

The Department received comments of support from some officials of the State of Oklahoma, Texas County, and the City of Guymon.⁸⁹ The Department additionally received several hundred form letters of support from individual community members. These and other supporters opined that the proposed gaming facility would bring economic development to the region. It would attract out-of-state gaming patrons. It is projected to create up to 200 permanent jobs, including jobs for students of Oklahoma Panhandle State University. Additionally, it is projected to create a positive annual impact for the local and regional economies of \$30 million. They also believed that the proposed gaming facility would have a direct and positive impact on both the job and tourism economies, and would contribute to the improvement of Highway 54.

Many supporters believed that the Tribe would make a good business partner based on their personal experiences with the Tribe. Several officials had worked with the Tribe and believed that the Tribe and Global Gaming Solutions have a consistent track record of being reliable, making good business decisions, and being a good neighbor. Some commenters also stated that development of the proposed gaming facility would strengthen relations between the local community and the Tribe and bring more diversity to the Panhandle area. Some commenters also noted the unique situation of the Tribe under the Shawnee Status Act, and believed that the proposed gaming facility would benefit the Tribe as well as the Panhandle region and the State.

⁸⁷ EA Appendix K – *The Estimated Economic Impacts from the Proposed Golden Mesa Casino in Texas County*, OK by Kyle D. Dean, Ph.D. Associate Director of the Steven C. Agee – Economic Research & Policy Institute, Oklahoma City University (Jan. 2015) at 8.

⁸⁸ *Id.* at 13.

⁸⁹ See Governor's Concurrence Letter. See also Letter to Mary Fallin, Governor State of Oklahoma, from Ben Loring, Oklahoma State Representative, District 7 (Mar. 18, 2015); Letter to Mary Fallin, Governor State of Oklahoma, from Charles Wyrick, Oklahoma State Senate, District 1 (Aug. 7, 2015); Letter to Sally Jewel, Secretary of the Interior, from Brad Henry, former Governor (2003-2011), State of Oklahoma (Feb. 16, 2015); Letter to Sally Jewel, Secretary of the Interior, from Dan Boren, former Member of Congress (2005-2013), Eastern Oklahoma (Feb. 16, 2015); Letter to Sally Jewel, Secretary of the Interior, from Jack Strain, Texas County Commissioner, District 3 (Feb. 17, 2015); Letter to Whom It May Concern, from David A. Bryant, President, Oklahoma Panhandle State University (Feb. 17, 2015); Letter to Sally Jewel, Secretary of the Interior, from Jimmie Draper, former member of the Board of Directors, Texas County Conservation District; Texas County ASC Committee; and Texas County Community FSA Committee (Feb. 20, 2015); Letter to Barb Miller, Acting Regional Director, Southern Plains Regional Office, from Kim Peterson, Mayor, City of Guymon (Mar. 24, 2016); Letter to Sally Jewel, Secretary of the Interior, from Kimberly Meek, City Manager, City of Guymon (Feb. 16, 2015); Letter to Sally Jewel, Secretary of the Interior, from Jess Nelson, former Mayor and Council Member, City of Guymon (Feb. 19, 2015). The record contains additional letters of support from local community members, business owners, and Representatives of other Tribes. A full list of comments received is on file with the Office of Indian Gaming.

The Department also received comments raising concerns from some officials of both Texas County and the City of Guymon.⁹⁰ Some officials raised general concerns about the impact of removing the Site from the tax rolls, loss of future taxes including property tax at full buildout and sales tax, anticipated increased demand for public services a gaming facility would cause, and the potential for unfair competition between tribally owned business and local businesses. Some officials were also concerned about the potential enforceability of any intergovernmental agreements with the Tribe. Many commenters provided only generalized statements regarding decreasing governmental budgets and increasing demands for services, but did not provide specific information regarding the potential impact of removing the Site from the tax rolls.

In addition, the Department received comments in opposition from Panhandle Citizens for Truth in Gaming (PCTG) regarding the proposed gaming facility.⁹¹ The PCTG's comments raised several concerns including: the potential overstatement of benefits to the Tribe; the opposition of state and local governmental officials; the purpose for which the land will be used; the impact of removal of the Site from the tax rolls; potential jurisdictional problems and conflicts of land use; and detriment to the community from the proposed gaming facility.⁹² The PCTG comments also attached numerous comment letters, many of them "form letters" that simply repeated verbatim talking points, while some commenters simply wrote their names on letters that likely had been provided. The PCTG comments also included a petition with hundreds of unverifiable names with the addresses omitted.

⁹⁰ See Letters to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Richard Bryan, Texas County Commissioner, District 2 (Oct. 1, 2015, and Feb. 8, 2016); Letter to the Bureau of Indian Affairs from Ted Keeling, Texas County Commissioner, District 1 (Oct. 5, 2015); Letter to Sally Jewell, Secretary of the Interior, from Jack Strain, Texas County Commissioner, District 3 (Feb. 17, 2015); Letter to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Matt Boley, Sheriff, Texas County (Oct. 14, 2015); Letter to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Wendy Johnson, County Clerk, Texas County (Nov. 25, 2015); Letter to Terry Bruner, Southern Regional Office, Bureau of Indian Affairs, from Larry Swager, Vice-Mayor, City of Guymon (Dec. 22, 2015); Letter to Dan Deerinwater, Regional Director, Southern Plains Regional Office, Bureau of Indian Affairs, from Larry Swager, Vice-Mayor, City of Guymon (Mar. 15, 2016) [the Guymon City Council stated its opposition but did not provide any comments regarding how the City of Guymon's tax base or jurisdiction would be impacted by acquiring the Site in trust]. See also Letter to the Department of the Interior from Chet Krone, Member at Large, Guymon City Council (Dec. 9, 2015); Letter to Sally Jewell, Secretary, Department of Interior, from Judyth Campbell, Texas County Assessor (Feb. 2, 2016); Letters to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Judyth Campbell, Texas County Assessor (Dec. 18, 2015 and Mar. 20, 2016); Letter to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Chet Krone, Guymon City Council Member (Sept. 29, 2015). The Department also received comments from several other municipal governments that do not have jurisdiction over the Site and did not provide substantive comments regarding how their tax base or jurisdictions would be impacted by the proposed acquisition. A full list of comments received is on file with the Office of Indian Gaming.

⁹¹ See Two-Part Determination at 42-43; See Letter to Sally Jewell, Secretary, Department of the Interior, from Robert G. Mccampbell and Nicholas V. Merkley, Fellers Snider Attorneys at Law (May 3, 2016); Letter to Lawrence S. Roberts, Principal Deputy Assistant Secretary, Department of the Interior, from Robert G. Mccampbell and Nicholas V. Merkley, Fellers Snider Attorneys at Law (Aug. 1, 2016).

⁹² See Letter to Sally Jewell, Secretary, Department of the Interior, from Nicholas V. Merkley, Fellers Snider Attorneys at Law (May 3, 2016).

We also reviewed submissions by Renee G. Bagley, Oklahoma Certified General Appraiser,⁹³ and a letter and summary report by John W. Kindt, Professor, University of Illinois.⁹⁴ These and other submissions provided little or no data for our review, or they stated conclusions that were generally unsupported or speculative. Many of these commenters expressed concerns similar to the County and City officials discussed above.⁹⁵

While we carefully considered the comments received from the public, we also note the support of locally elected officials and tribal officials in Oklahoma. These officials expressed support based on the net benefit derived from the increase in jobs and tourism the facility would bring to the area.

The Regional Director determined, and we concur, that the impact of removing the Site from the tax rolls is minimal when balanced with the benefits that will accrue to the region from increased economic activity.⁹⁶

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.

Land Use

We analyze the land use impacts below, and note that Sections 4.6.1, 4.8, and 4.9 of the EA fully evaluated the impacts on the State and its political subdivisions resulting from removal of the Site from State and Texas County jurisdiction.⁹⁷ The Site consists of rural land in unincorporated Texas County, which is the only local government with regulatory jurisdiction over the Site.⁹⁸ Texas County does not have any zoning ordinances.⁹⁹ The County Board of Commissioners did not submit any comments about potential jurisdictional problems or conflicts of land use. The proposed gaming facility would replace existing open space and would differ from adjacent agricultural and petroleum production land uses.¹⁰⁰ It would not physically disrupt neighboring land use, prohibit access to neighboring parcels, or otherwise conflict with neighboring land use.¹⁰¹ Generally, lands acquired in trust on behalf of Indian tribes are not subject to state and local land use requirements.¹⁰² Nevertheless, the Tribe intends to operate the

⁹³ See Letters from Renee G. Bagley, Oklahoma Certified General Appraiser (Oct. 8, 2015, to Mar. 1, 2016).

⁹⁴ See Letter from John W. Kindt, Professor, University of Illinois (Dec. 19, 2015), and John Kindy et al., In Re: Summary Analysis for Studying and Detailing Effects of Proposed Golden Mesa Casino in Texas County on Oklahoma's Consumer Economy (Mar. 4, 2016), on file with the Office Indian Gaming.

⁹⁵ A full list of comments received is on file with the Office of Indian Gaming. See also Two-Part Determination, 41-45 for a discussion of comments received during the Part 292 consultation comment period. See also FONSI at 8, and FONSI Attachments B and C.

⁹⁶ See Regional Director's Part 151 Recommendation at 6; and Regional Director's Part 292 Recommendation at 37.

⁹⁷ See EA, §§ 4.6.1 and 4.8.1.

⁹⁸ See EA, § 4.8.1.

⁹⁹ See EA, § 4.8.1. See also Letter to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Judyth Campbell, Texas County Assessor (Sept. 28, 2015).

¹⁰⁰ See EA, § 4.8.1.

¹⁰¹ See EA, § 4.8.1.

¹⁰² See EA, § 4.8.1.

proposed gaming facility in a manner that is consistent with the applicable local regulations and standards.¹⁰³ Acquiring the Site in trust and developing the proposed gaming facility would result in no land use conflicts.

Jurisdiction

Comments from officials of Texas County and the City of Guymon, raised concerns about the additional burden and cost to law enforcement, emergency services, and other public services including schools, libraries, and recreation.¹⁰⁴ The EA in Section 4.9 fully evaluated the impact on public services resulting from the development of the proposed gaming facility.¹⁰⁵ The EA notes that the Tribe anticipates that operation of the proposed gaming facility would result in some increased costs to the surrounding community. The majority of these increased costs would be offset by the increase in tax revenue discussed above. The Tribe intends to address any anticipated costs not covered by increased tax revenue through Memoranda of Understanding with affected local government entities, paying its fair share of costs to improve existing infrastructure, and where possible, providing services on-site. The Tribe intends to work cooperatively with local officials particularly the Texas County Sheriff's Office and the Guymon Fire Department to reduce any additional potential jurisdictional problems.¹⁰⁶

Law Enforcement: Law enforcement in Guymon is provided by the Guymon Police Department, which serves approximately 14,000 people within the 7.4 square miles of the Guymon city limits.¹⁰⁷ Law enforcement outside of Guymon is provided by the Texas County Sheriff's Office. The Sheriff's Office is located approximately 2.5 miles northeast of the Site in Guymon and includes a detention center.¹⁰⁸

The Tribe would establish a small police and emergency response force on-site to assure proper law enforcement at the Site. The Tribe could also request Federal law enforcement support including from BIA and the Federal Bureau of Investigation in the unlikely event of a situation beyond the capability of its own law enforcement capability. The Tribe and the Sheriff's Office intend to work cooperatively to develop a cross-deputization agreement under the umbrella of the state-wide cross-deputization protocol developed jointly by BIA and the State.¹⁰⁹ Such an arrangement would provide fast response if needed and make it even less likely that law enforcement back-up would be required from Federal agencies. Additionally, the Tribe intends to enter into a contract with the Sheriff's Office to cover any incremental costs in the unlikely

¹⁰³ See EA, § 4.8.1. See also Tribe's Application at 32.

¹⁰⁴ See, e.g., letters from Texas County Sheriff Boley dated Oct. 1, 2016, and Mar. 23, 2016. See Two-Part Determination at 43-44.

¹⁰⁵ See EA, §§ 4.6.1, and 4.9.

¹⁰⁶ See EA, §§ 4.9.8, and 4.9.9.

¹⁰⁷ See Tribe's Application at 33.

¹⁰⁸ *Id.*

¹⁰⁹ See Letter to Chairman Sparkman, Oklahoma Shawnee Tribe, from Rick Cadell, Sheriff, Texas County (undated), in EA Appendix L. Although current Texas County Sheriff Matt Boley expressed concerns regarding a lack of resources to properly police the area, the Tribe has stated its intent to enter into Memoranda of Understanding with the Sheriff's Department for backup law enforcement. See Letters to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Matt Boley, Sheriff, Texas County (Oct. 14, 2015, and Mar. 23, 2016); Response to Comments Regarding the Shawnee Tribe's Fee-to-Trust Application for the Guymon Parcel (Apr. 14, 2016) at 3.

event the Tribe's police force needed to call for backup assistance.¹¹⁰ Further, the increased tax revenues discussed above resulting from the proposed gaming facility could fund expansion of law enforcement services.¹¹¹

Fire Protection and Emergency Medical Services: The Tribe intends to station emergency services personnel on-site to supplement fire and first responder medical needs at the Site.¹¹² A water tank with a recommended capacity of 475,000 gallons would be located near the proposed gaming facility to provide reserve capacity for fire suppression.¹¹³ Building plans and specifications would include fire suppression systems.¹¹⁴

The Guymon Fire Department consists of two stations in Guymon that include three fire engines, four ambulances, two rescue trucks, and two brush trucks.¹¹⁵ It provides emergency fire response, medical services, and rescue for Guymon, as well as for a designated portion of Texas County through mutual aid agreements with volunteer fire departments that cover the remainder of the County outside of their normal jurisdiction. The Tribe intends to enter into an agreement with the Guymon Fire Department to serve as the primary fire and emergency medical service provider for the Site.¹¹⁶ The Tribe consulted the City of Guymon regarding services to be provided to the Site, including fire and emergency medical services. The City stated that it believes it would be possible to structure an agreement between Guymon and the Tribe, whereby the City will provide services to the proposed gaming facility at reasonable cost to the Tribe.¹¹⁷ If advanced emergency medical or fire response is required, the Texas County fire services would be contacted. The minimal increase in demand for fire protection and emergency services are not anticipated to trigger the need to construct new facilities. However, the Tribe would compensate the Guymon Fire Department for the increase in demand at the Site, further reducing potential impacts. If an agreement cannot be reached with the Guymon Fire Department, the Tribe would provide its own emergency response services.

The Regional Director determined, and we concur, that the acquisition of the Site would not cause conflicts of land use or other jurisdictional problems.¹¹⁸

¹¹⁰ See EA, § 4.9.8. See also Tribe's Application, Exhibit 5d, *Statement Regarding Potential Impacts on Jurisdiction* at 2.

¹¹¹ See EA, § 4.9.8. See also Two-Part Determination at 31-32 and 37.

¹¹² See EA, §§ 2.1.4, 2.1.5, and 4.9.9. See also Tribe's Application, Exhibit 5d, *Statement Regarding Potential Impacts on Jurisdiction* at 2.

¹¹³ See EA, §§ 2.1.4 and 2.1.5.

¹¹⁴ See EA, §§ 2.1.4 and 2.1.5.

¹¹⁵ See Tribe's Application at 34.

¹¹⁶ See EA, §§ 2.1.4, 2.1.5, and 4.9.9. See also Tribe's Application, Exhibit 5d, *Statement Regarding Potential Impacts on Jurisdiction* at 2.

¹¹⁷ See Letter to Chairman Sparkman from Kimberly Meek, City Manager, City of Guymon (April 9, 2015), in EA Appendix L.

¹¹⁸ See Regional Director's Part 151 Recommendation at 7; and Regional Director's Part 292 Recommendation at 32-35.

25 CFR § 151.10(g) - If land to be acquired is in fee status, whether 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 BIA has the resources to assume additional responsibilities if the land is acquired in trust. The Site does not contain any resources requiring BIA management assistance other than maintenance of property records. The Regional Director determined, and we concur, that acquiring the Site in trust would not impose any significant additional responsibilities or burdens on BIA and that it has sufficient resources to assume the additional responsibilities resulting from this acquisition.¹¹⁹

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 NEPA, 42 U.S.C. § 4321 *et seq.*, and a determination on the presence of hazardous substances. The Department must also complete an Environmental Site Assessment (ESA) pursuant to the Departmental Manual at 602 DM 2 to determine if there are any environmental contamination-related concerns and/or liabilities affecting the land to be acquired. The Department finalized a Phase 1 ESA on September 16, 2013, determining that there were no hazardous materials or contaminants.¹²⁰ An updated site inspection will be conducted by the BIA prior to acceptance of the Site in trust.

As discussed above an EA was prepared and made available to the public for review for more than 30 days pursuant to NEPA. The final EA was completed in January 2017. Based on the analysis contained in the EA, public comments made on the EA, and the response to those comments, the Department made a Finding of No Significant impact (FONSI) for the Proposed Action on January 19, 2017.¹²¹ The FONSI constitutes a determination that the Proposed Action is not a Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required in compliance with NEPA.

Environmental Considerations

The EA analyzed the development of a Class II and Class III gaming facility on the Site, as well as a reduced-intensity alternative and a no action alternative. The Department determined that the proposed gaming facility did not constitute major Federal actions that would significantly affect the quality of the human environment within the meaning of NEPA.¹²² This conclusion

¹¹⁹ See Regional Director's Part 151 Recommendation at 7-8.

¹²⁰ See EA, Appendix I – *Phase I Environmental Site Assessment* (Sept. 16, 2013).

¹²¹ The EA is listed as Attachment A to the FONSI. The public comments on the EA are listed as Attachment B to the FONSI, and the response to those comments is listed as Attachment C to the FONSI. Available at www.ShawneeEA.com.

¹²² FONSI at 9.

was based on the analysis contained in the EA, public comments made on the EA, and the administrative record.¹²³

After a complete review and analysis in the EA, the FONSI identified no significant impacts to land, water, air or biological resources from the proposed gaming facility.

*Land Resources.*¹²⁴ This section examined topographic, geologic, seismic, mineral resource, and soil effects of the proposed gaming facility. The proposed gaming facility would involve grading of the Site, and could affect soils due to erosion during construction, operation, and maintenance activities. BMPs incorporated into the proposed gaming facility will ensure that impacts to land resources are not significant.

*Water Resources.*¹²⁵ This section examined the proposed gaming facility's impact on surface water and groundwater. The Site overlies the Ogallala aquifer of the High Plains aquifer system and is located within the Oklahoma Water Resources Board's Panhandle Planning Region Basin 55. The demand associated with the proposed gaming facility would not significantly affect the available supply of groundwater within Basin 55 of the Ogallala aquifer. Wastewater generated by the proposed gaming facility would be treated and disposed onsite. BMPs incorporated into the proposed gaming facility will ensure that impacts to water resources are not significant.

*Air Quality.*¹²⁶ The Site is in an attainment area for all criteria pollutants. Having considered potential air quality impacts during project design/planning, BMPs incorporated in the proposed gaming facility and mitigation measures will ensure impacts to air quality and climate change will be less than significant.

*Biological Resources.*¹²⁷ Effects of the proposed gaming facility on vegetation, wildlife, and wetlands were assessed, and mitigation measures will ensure no adverse effect on biological resources.

*Cultural Resources.*¹²⁸ There are no known historic properties or known archaeological sites or cultural materials with the proposed gaming facility's area of potential effect. No known historic, cultural, archaeological, or religious resources would be affected by the development of the proposed gaming facility. With implementation of BMPs, there will be no adverse effect on cultural resources in the event of inadvertent discovery.

*Socioeconomic Conditions.*¹²⁹ There will be no significant impacts associated with socioeconomic conditions or environmental justice.

*Transportation and Circulation.*¹³⁰ A transportation study for the proposed gaming facility concludes that it would generate 3.52 vehicles per hour per 1,000 square feet of gaming floor

¹²³ *Id.*

¹²⁴ EA, §§ 2.1.5, 3.1, 4.1, 5.1, and FONSI at 3, 4.

¹²⁵ EA, §§ 2.1.5, 3.2, 4.2, 5.2, and FONSI at 3, 4.

¹²⁶ EA, §§ 2.1.5, 3.3, 4.3, 5.3, and FONSI at 3, 4.

¹²⁷ EA, §§ 3.4, 4.4, 5.4, and FONSI at 3, 6-7.

¹²⁸ EA, §§ 2.1.5, 3.5, 4.5, 5.5, and FONSI at 3, 7.

¹²⁹ EA, §§ 3.6, 4.6, 5.6, and FONSI at 3.

¹³⁰ EA, §§ 3.7, 4.7, 5.7, and FONSI at 4.

during the a.m. peak hour and 7.86 vehicles per hour per 1,000 square feet during the p.m. peak hour. There will be no significant impacts to transportation and circulation.

*Land Use.*¹³¹ The Site is on rural land outside of the corporate limits of any municipality in Texas County, and Texas County has no zoning ordinance that applies to such rural land. There will be no significant land use impacts.

*Public Services.*¹³² Because water would be supplied by on-site groundwater wells, there would be no impact to municipal water supply services. Construction of the proposed gaming facility would result in a temporary increase in waste generation. The minimal adverse effects on solid waste during construction would be considered less than significant. The Tribe would contract with Seward County Waste Management Service to provide solid waste collection, transfer, and recycling services for solid waste generated at the Site. Electricity would be obtained from Tri-County Electric Cooperative, which has stated it has the capacity to serve the proposed gaming facility. Natural gas service would be provided by Northern Natural Gas.

The Tribe would have its own law enforcement authority at the proposed gaming facility and plans to establish a small police and emergency response force on-site to assure proper law enforcement as well as an on-site emergency response capability on the entire trust property, including at the proposed gaming facility. The Tribe could also request Federal law enforcement support including from BIA and the Federal Bureau of Investigation in the unlikely event of a situation beyond the capability of its own law enforcement capability. The Tribe also plans to work with the Texas County Sheriff's Office to develop a deputization agreement under the umbrella of the state-wide deputization protocol developed jointly by BIA and the State. Additionally, the Tribe plans to explore with the Texas County Sheriff's Office the possibility of a contractual agreement for back-up law-enforcement support in the unlikely event that it would ever be needed. The Tribe plans to approach the Guymon Fire Department to serve as the primary fire and emergency medical service provider for the site.

Having considered potential public services impacts during project design/planning, BMPs incorporated into the proposed gaming facility will ensure no adverse effect on public services.

*Visual Resources.*¹³³ The nearest residence to the Site is located approximately 0.5 miles north of the Site, across U.S. 54. Trees located along U.S. 54 would block the proposed gaming facility from the viewshed of the residence 0.5 mile north. The proposed gaming facility would introduce new sources of light to the area. On-site lighting would be provided for aesthetic and security purposes at the facility and throughout the parking lot. Lighting in the parking areas would consist of pole lights elevated approximately 15-20 feet from ground level and would illuminate these areas during dusk, nighttime, and foggy conditions. Having considered potential visual resources impacts during project design/planning, BMPs incorporated into the proposed gaming facility will ensure no adverse effect on visual resources.

*Noise.*¹³⁴ Construction would be short-term and temporary, and BMPs are expected to reduce construction noise levels to the extent feasible. Having considered potential noise impacts

¹³¹ EA, §§ 3.8, 4.8, 5.8, and FONSI at 4.

¹³² EA, §§ 2.1.5, 3.9, 4.9, 5.9, and FONSI at 4.

¹³³ EA, §§ 2.1.5, 3.10, 4.10, 5.10, and FONSI at 4, 8.

¹³⁴ EA, §§ 2.1.5, 3.11, 4.11, 5.11, and FONSI at 4, 8.

(including noise levels during construction) during project design/planning, BMPs will ensure that noise impacts are not significant.

*Hazardous Materials.*¹³⁵ There are no known hazardous materials contamination or recognized environmental conditions at the proposed gaming facility site; however, a gas pipeline crosses the Site at the west edge of the project boundary. There are no known adjacent sites with hazardous materials that could affect the planned uses of the Site. With implementation of BMPs, development of the proposed gaming facility would result in less-than significant impacts from hazardous materials.

*Cumulative Impact and Indirect Effects.*¹³⁶ The proposed gaming facility would not result in cumulatively considerable adverse effects to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, transportation, land use, public services, visual resources, or hazardous materials. No significant adverse indirect effects, including growth-inducing effects relevant to any environmental issue area will occur as a result of the proposed gaming facility. BMPs are incorporated into the proposed gaming facility and/or mitigation measures will ensure that cumulative impacts are not significant.

25 CFR § 151.11(b) – Location of the Land Relative to State Boundaries and its Distance from the Boundaries of the tribe’s reservation.

This section requires, in relevant part, that the Secretary shall give greater scrutiny to a tribe’s justification of anticipated benefits from an acquisition as the distance between the tribe’s reservation and the land to be acquired increases, and greater weight to the concerns raised by the state and local governments having regulatory jurisdiction over the land to be acquired in trust.

The Tribe does not have a reservation, but its current headquarters are located in Miami, Oklahoma. The Site is located approximately 370 miles due east of the Tribe’s headquarters.¹³⁷ The Site is in the Oklahoma Panhandle near where the State shares borders with four states: Colorado, Kansas, New Mexico, and Texas. The location of the Site relative to state boundaries is as follows: State of Texas approximately 10 miles south; State of Kansas approximately 24 miles north; State of Colorado approximately 37 miles northwest; State of New Mexico approximately 82 miles west.¹³⁸

Several commenters expressed concern with the distance between the Tribe’s headquarters and the Site.¹³⁹ As discussed in detail above, the Shawnee Status Act effectively precludes the Shawnee Tribe from acquiring land in the area containing the greatest concentration of the Tribe’s members. For all practical purposes, the only land the Tribe can acquire in trust is in the Oklahoma Panhandle. As discussed throughout this decision, the Tribe has a pressing need for

¹³⁵ EA, §§ 2.1.5, 3.12, 4.12, 5.12, and FONSI at 4, 8.

¹³⁶ EA, §§ 4.13.1-4.13.2, and FONSI at 4.

¹³⁷ Regional Director’s Part 151 Recommendation at 8.

¹³⁸ Distances are given in “straight line” measurements using Google Maps.

¹³⁹ See, e.g. Letter to Sally Jewell, Secretary, Department of the Interior, from Bryce Marlatt, Oklahoma State Senate, (Mar. 21, 2016); Letter to Sally Jewell, Secretary, Department of Interior, from Judyth Campbell, Texas County Assessor (Feb. 2, 2016); Letters to Dan Deerinwater, Regional Director, Southern Plains Regional Office, from Texas County Commissioner Bryan (Oct. 1, 2015, and Feb. 8, 2016).

land. Without land, the Tribe is hindered by the lack of economic development opportunities. The Tribe is also not eligible for many Federal programs that require a reservation or land held in trust. The Tribe has demonstrated the significant benefits that it will receive as a result of the Department acquiring the Site in trust, and the Tribe developing the proposed gaming facility. As discussed in this decision, the concerns raised by the local jurisdictions with regulatory authority over the Site are outweighed by the anticipated benefits to the Tribe and the local community. Having applied greater scrutiny to the anticipated benefits and greater weight to the concerns raised by the state and local governments, we find the benefits outweigh the concerns.

25 C.F.R. § 151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use

The Tribe submitted a detailed business and development plan that specifies the anticipated economic benefits associated with the proposed gaming facility.

The “Gaming Market Assessment, Cash Flow Analysis, and Competitive Effects Analysis, Guymon Oklahoma (Jan. 2015),” prepared by the Innovation Group (Innovation Group Report), conducted a market assessment and estimated potential gaming revenues for the proposed gaming facility.¹⁴⁰ The Innovation Group Report projected that a gaming facility located at the Site would be economically successful and would generate excess cash flow above debt repayment, expenses, fees, and depreciation that could be made available to the Tribe.¹⁴¹

The Tribe prepared a Business Plan with the assistance of Global Gaming Solutions, LLC, and the Innovation Group.¹⁴² The Business Plan projects in the “Pro Forma Golden Mesa Casino Cash Flow Analysis and Available Distribution to the Tribe” statement that the total distribution to the Tribe from the proposed gaming facility would be approximately \$1.38 million in the first year, increasing to approximately \$9.12 million in the tenth year.¹⁴³ The Tribe also prepared a Long-Term Development and Financial Plan which identified expenses associated with future economic development.¹⁴⁴ The analysis contained in both reports confirms that a gaming facility would be successful in the current market.

The proposed gaming facility is estimated to create 175 direct jobs, and create substantial employment opportunities for unemployed and underemployed tribal members. The Tribe intends to offer training programs to assist tribal members and local residents in becoming qualified for employment at the proposed gaming facility.¹⁴⁵ Revenue from the proposed gaming facility will also increase funding for tribal governmental programs. The Tribe estimates that 57 tribal government jobs would be created.¹⁴⁶ In addition, the Tribe intends to use revenue from the proposed gaming facility to generate commercial job opportunities. Revenues from the

¹⁴⁰ See EA, Appendix E – Innovation Group, Gaming Market Assessment, Cash Flow Analysis, and Competitive Effects Analysis, Guymon Oklahoma (Jan. 2015), in Shawnee Tribe Casino Project,

¹⁴¹ Innovation Group Report at 41.

¹⁴² See Business Plan, Golden Mesa Casino (Feb. 3, 2015), in Tribe’s Application, § II, Tab 7b.

¹⁴³ *Id.* at 40.

¹⁴⁴ See Shawnee Tribe Long-Term Development and Financial Plan, in Tribe’s Application, § II, Tab 7a.

¹⁴⁵ See Regional Director’s Part 292 Recommendation at 23.

¹⁴⁶ *Id.* See also Tribe’s Application § I at 29.

proposed gaming facility will enable the Tribe to provide significant educational and training opportunities to its tribal members, broadening their employment and career opportunities.

The requirements of this section have been met.

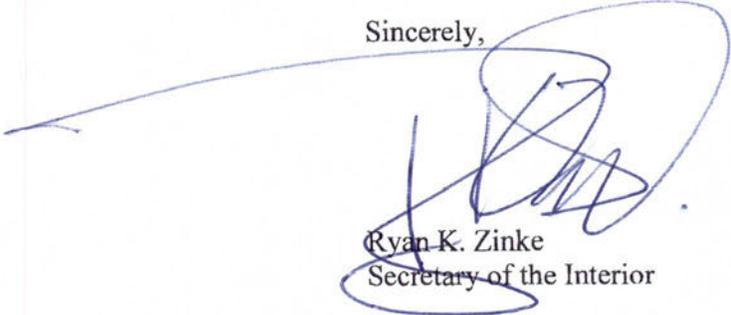
25 C.F.R. §§ 151.10 and 151.11(d). Contact with state and local governments pursuant to sections 151.10(e) and (f).

As more fully discussed in Sections 151.10(e)-(f) above, notice was sent to state and local governments on October 22, 2015. Some State, Texas County, and City of Guymon officials expressed support for the acquisition of the Site in trust. The notice requirements of this section have been met.

Conclusion

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, and Section 7 of the Shawnee Status Act, as amended, the Department will acquire in trust for the Shawnee Tribe approximately 102.98 acres in Texas County, Oklahoma, for gaming and other purposes. Consistent with applicable law and Departmental requirements, the Regional Director shall accept the land in trust.

Sincerely,



Ryan K. Zinke
Secretary of the Interior