



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**JAN 19 2017**

The Honorable Mary Fallin  
Governor of Oklahoma  
Oklahoma City, Oklahoma 73105

Dear Governor Fallin:

On February 18, 2015, the Shawnee Tribe (Tribe) submitted a request to the Bureau of Indian Affairs to acquire approximately 102.98 acres of land in the City of Guymon, Texas County, Oklahoma (Site), in trust and also a request to determine that the Site is eligible for gaming pursuant to the Indian Gaming Regulatory Act's (IGRA) Secretarial determination exception.<sup>1</sup>

The Shawnee Tribe (Tribe) has no land.<sup>2</sup> Further, given its unique history and Federal legislation, it is unlikely that the Tribe will be able to place land in trust at or near its current location. Without land over which it can exercise its jurisdiction as a sovereign Indian nation, it is difficult for the Tribe to exercise its rights consistent with the federal policies of tribal self-determination and self-governance. While Congress fully restored the Tribe's status in 2000, as discussed in the ROD, and clarified the Tribe's eligibility to have land taken into trust, it failed to establish a land base for the Tribe.<sup>3</sup> The Tribe, therefore, now seeks to place its first land in trust as a permanent homeland for its citizens. The Tribe also seeks a determination that such a land base would be eligible for gaming upon its acquisition in trust by the United States.

As explained in the enclosed Record of Decision, we have completed our review of the Tribe's request for a gaming eligible determination and have determined the Site is eligible for gaming, subject to your concurrence, and taking the land into trust, that the Tribe's Proposed Project at the Site would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community.

The IGRA generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions. One exception, known as the Secretarial determination, permits a tribe to conduct gaming on lands acquired after that date where:

1. The Secretary of the Interior (Secretary), after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes,

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<sup>1</sup> 25 U.S.C. 2719(b)(1)(A)

<sup>2</sup> Regional Director's Part 292 Recommendation at 5.

<sup>3</sup> 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 Secretarial Determination refers to the sections of the Shawnee Status Act as they appear in the Statutes at Large

determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members; and

2. The Secretary also determines that gaming on newly acquired lands would not be detrimental to the surrounding community.

25 U.S.C § 2719(b)(1)(A).

The Tribe submitted its application to have land acquired in trust on its behalf pursuant to the Shawnee Status Act of 2000 (Shawnee Status Act),<sup>4</sup> and the Indian Reorganization Act (IRA).<sup>5</sup> Prior to acquiring this land in trust, I must first determine that gaming on the proposed site meets the requirements of the Secretarial determination exception. As the Governor of the state in which gaming would be conducted, your concurrence in the Secretary's Determination is necessary in order for the Tribe to conduct gaming on the proposed site.

I have completed my review of the Tribe's application under 25 U.S.C. § 2719(b)(1)(A), including submissions by state and local officials, officials of other Indian tribes, and numerous comments from local citizens regarding the Proposed Project. I have determined 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.<sup>6</sup> I have set forth the basis for my decision in the Record of Decision (ROD). As you will see, gaming is uniquely positioned to provide for the Tribe's needs and will facilitate tribal solutions to tribal problems, and in this case help the Tribe fulfill Congress's intended purpose when passing the Shawnee Status Act.

For the reasons set forth in the ROD, I request your concurrence in this Secretarial Determination, pursuant to 25 U.S.C. § 2719(b)(1)(A).

Thank you for your consideration of this very important issue.

Sincerely,



Lawrence S. Roberts  
Principal Deputy Assistant Secretary-  
Indian Affairs

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<sup>4</sup> Shawnee Status Act of 2000, Pub. L. 106-568, 114 Stat. 2913 (Dec. 27, 2000)

<sup>5</sup> 25 U.S.C. 465

<sup>6</sup> I am authorized to make this determination on behalf of the Secretary pursuant to authority delegated to me under 209 DM 8.1 – Secretarial Officers, AS-IA

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**Attachments**

- I. Legal Description
- II. Finding of No Significant Impact

**Secretarial Determination Pursuant to  
the Indian Gaming Regulatory Act, 25 U.S.C. § 2179 (b)(1)(A)**

**I. Decision**

On February 18, 2015, the Shawnee Tribe (Tribe) submitted an application to the Bureau of Indian Affairs (BIA) requesting that the United States acquire in trust approximately 102.98 acres in Texas County, Oklahoma, (Site) for gaming and other purposes.<sup>1</sup>

The Shawnee Tribe (Tribe) has no land.<sup>2</sup> Further, given its unique history and Federal legislation, it is unlikely that the Tribe will be able to place land in trust at or near its current location. With many of its citizens, as well as its current governmental offices, located within other Tribes' former reservations, it would need the consent of such tribes to place land into trust for the Shawnee Tribe. As such, many Tribes in Oklahoma support the Tribe's Guymon application. Without land over which it can exercise its jurisdiction as a sovereign Indian nation, it is difficult for the Tribe to exercise its rights consistent with the Federal policies of tribal self-determination and self-governance. While Congress fully restored the Tribe's 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.<sup>3</sup> The Tribe, therefore, now seeks to place its first land in trust as a permanent homeland for its citizens. The Tribe also seeks a determination that such a land base would be eligible for gaming upon its acquisition in trust by the United States.

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted "to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."<sup>4</sup> Section 20 of IGRA generally prohibits gaming activities on

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<sup>1</sup> See 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.

<sup>2</sup> Regional Director's Part 292 Recommendation at 5.

<sup>3</sup> *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 Secretarial Determination refers to the sections of the Shawnee Status Act as they appear in the Statutes at Large

<sup>4</sup> *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").

lands acquired in trust by the United States on behalf of a tribe after October 17, 1988.<sup>5</sup> However, Congress expressly provided several exceptions to the general prohibition.<sup>6</sup> One such exception, known as the “Secretarial Determination” or “Two-Part Determination”, permits a tribe to conduct gaming on lands acquired in trust for an Indian tribe after October 17, 1988, where the Secretary of the Interior (Secretary), after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that:

1. A gaming establishment on the trust lands would be in the best interest of the tribe and its members; and
2. Gaming on the trust lands would not be detrimental to the surrounding community.<sup>7</sup>

However, even if the Secretary makes a positive two part determination, the Governor of the state in which the gaming activity is to be conducted must affirmatively concur with the Secretary’s Determination before the applicant tribe is eligible to game on the proposed site.<sup>8</sup>

We have determined 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. In regards to the finding that gaming at the Site will not be detrimental to the surrounding community, we note the support of the Cherokee Nation in regards to the project. Those closest to the Site express the strongest support and others, including the Governor of Oklahoma, were neutral and chose not to comment on the Tribe’s request. While others expressed opposition to the Tribe’s request, they were often further away or did not state with specificity why gaming at the Site would be detrimental to the surrounding community.

It is important to emphasize that gaming may only occur at the Site pursuant to this decision if Oklahoma Governor Fallin concurs in the two positive findings. If Oklahoma Governor Fallin concurs with this determination, then the Department will decide whether to acquire the Site in trust for gaming purposes. .

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<sup>5</sup> 25 U.S.C. § 2719.

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

<sup>7</sup> 25 U.S.C. § 2719 (b)(1)(A).

<sup>8</sup> *Id.* The Department of the Interior’s regulations allow a governor one year from the date of the Secretary’s request in which to concur. The Secretary may grant an extension of up to 180 days upon request of the applicant tribe or the governor. *See* 25 C.F.R. § 292.23. If the governor does not affirmatively concur within that time period, or if the governor provides a written non-concurrence, the Secretarial Determination is no longer valid, and the land may not be acquired in trust for gaming purposes. *Id.*

## II. Background

The Site is located approximately 3.5 miles southwest of the town center of Guymon, Oklahoma.<sup>9</sup> The Tribe is landless, and this will be the first land acquired in trust for the Tribe.<sup>10</sup> 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.<sup>11</sup> 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 Tribe currently does not have plans to develop the remaining 85.78 acres of the approximately 102.98-acre Site.<sup>12</sup>

### *The Shawnee Tribe*

The history of Shawnee migration in response to western expansion by European settlers has been traced to at least as early as the 1720s.<sup>13</sup> At that time, several Native peoples, including the Shawnee, had settled in what had become colonial Pennsylvania.<sup>14</sup> 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.”<sup>15</sup> Many tribal people, including the group of Shawnee people known as the Absentee Shawnee, sought refuge in territories west of the Mississippi River, including Oklahoma.<sup>16</sup> 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.<sup>17</sup> President Jackson ultimately established a formal policy that created “the Indian Country,” which encompassed Oklahoma, Kansas, Nebraska, and part of Iowa.<sup>18</sup>

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.<sup>19</sup> These forced

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<sup>9</sup> Tribe’s Environmental Assessment § 1.2, (Nov. 2016) [hereinafter EA].

<sup>10</sup> Regional Director’s Part 292 Recommendation at 5.

<sup>11</sup> The Tribe proposes to name the facility the Golden Mesa Casino.

<sup>12</sup> EA § 2.1.

<sup>13</sup> Tribe’s Application, § I at 10, note 18, citing Stephen Warren, *The Worlds the Shawnees Made*, 156 (2014).

<sup>14</sup> Tribe’s Application, § I at 12, note 29, citing Diane Everett, *Indian Territory*, Encyclopedia of Oklahoma History & Culture.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

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

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

<sup>19</sup> 4 Stat. 411.



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.<sup>20</sup> At the same time, settlers also crossed the Mississippi River and began settling in territories originally designated as Indian Country.<sup>21</sup>

Prior to 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 lands under tribal jurisdiction led the government to renegotiate many treaties with tribes that ultimately diminished tribal lands and moved the tribes further into present-day Oklahoma.<sup>22</sup> The 1854 Treaty of Washington reduced Shawnee lands in Kansas from 1.6 million acres to roughly 200,000 acres of allotments.<sup>23</sup> The Kansas-Nebraska Act of 1854<sup>24</sup> 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.”<sup>25</sup> 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.<sup>26</sup>

The Shawnee people in Kansas were known as the Loyal Shawnee due to their service to the Union in the Civil War.<sup>27</sup> Ultimately, these Shawnee were removed to Oklahoma, but the Federal Government failed to establish a reservation for them. In 1869, the 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.”<sup>28</sup> They did not, however, have their own land base.<sup>29</sup>

### *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).<sup>30</sup> In the Act, Congress found that the Cherokee

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<sup>20</sup> Tribe’s Application § I at 12, note 31, *citing* Public Broadcasting Service, *Indian Removal*.

<sup>21</sup> *Id.*

<sup>22</sup> Regional Director’s Part 292 Recommendation at 7.

<sup>23</sup> Treaty with the Shawnee, 10 Stat. 1053, May 10, 1854.

<sup>24</sup> An Act to Organize the Territories of Nebraska and Kansas, 10 Stat. 277, May 30, 1854.

<sup>25</sup> Everett, *supra* note 8.

<sup>26</sup> *Id.*

<sup>27</sup> Tribe’s Application at 6, § 1(A), *The Modern Shawnee Tribe*.

<sup>28</sup> Warren at 170, *supra* note 7.

<sup>29</sup> Tribe’s Application at 7, § 1(A), *The Modern Shawnee Tribe*.

<sup>30</sup> Pub. L. 106-568, title VII, § 702, Dec. 27, 2000, 114 Stat. 2913, as amended 119 Stat. 1939, Aug. 10, 2005. The recent reclassification of chapters 14 and 19 of Title 25 of the United States Code by the House Office of Law

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.<sup>31</sup> Congress further found that since that time, the Tribe has continued to maintain its separate culture, language, religion, organization, and a separate membership roll.<sup>32</sup> 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.<sup>33</sup> Accordingly, the Shawnee Status Act reaffirmed the Federal recognition of the Tribe and its trust relationship to the United States.<sup>34</sup>

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, 25 U.S.C. § 465, the Act placed significant restrictions regarding where the Tribe could acquire such land.<sup>35</sup> 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.<sup>36</sup>

The Cherokee Nation's constitution, however, 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.<sup>37</sup> 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 citizens is primarily within the territorial boundaries of the Cherokee Nation and eight other tribes located in Ottawa County, Oklahoma.<sup>38</sup> These tribes have not agreed to the Tribe's acquisition of lands within their reservation or former reservation boundaries.<sup>39</sup> However, numerous tribes have shown support for the Tribe's acquisition of the

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Revision Counsel removed the provisions of the Shawnee Status Act formerly codified at 25 U.S.C. § 1041 *et seq.* This Secretarial Determination refers to the sections of the Shawnee Status Act as they appear in the Statutes at Large.

<sup>31</sup> Shawnee Status Act, § 2(1).

<sup>32</sup> *Id.* at § 2 (2).

<sup>33</sup> *Id.* at § 2 (3).

<sup>34</sup> *Id.* at § 4 (a).

<sup>35</sup> *Id.* at § 7 (a)(1).

<sup>36</sup> *Id.* at § 7 (b).

<sup>37</sup> *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."

<sup>38</sup> Regional Director's Part 292 Recommendation at 8.

<sup>39</sup> *Id.* at 9.

Site, recognizing that the Tribe is prevented from acquiring land within the jurisdiction of any tribe.<sup>40</sup> 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

*The Guymon Site*



The Site is located in Oklahoma’s Panhandle. 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 project. 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.<sup>41</sup>

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

<sup>40</sup> See letters in Tribe’s Application § II, Tab 9b.

<sup>41</sup> Tribe’s Application § II(2), The Guymon Parcel; EA § 3.10.1.



term is only five years and its extension is subject to the good will of the majority of the Inter-Tribal Council.<sup>47</sup> Thus, permanent governmental offices from which to provide services is a fundamental unmet need.

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.<sup>48</sup>

### *Economic Development*

The Tribe currently has no land base on which to pursue economic development. The Tribe's generates existing governmental revenues from a gift shop at the tribal headquarters, vehicle license revenue, and rebates from the State of Oklahoma motor fuel taxes which together average approximately \$88,000 per year.<sup>49</sup> The Tribe also receives approximately \$155,000 per year in funds for tribal government support from the BIA which provides the core funding for its government.<sup>50</sup> 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 \$690,000, and the 2016 grant amount was \$1,019,338. While some of the grant funds benefit children of other tribes, the funds also benefit the Tribe's local citizens.<sup>51</sup>

The Tribe has been able to secure an average of approximately \$238,000 in other grants per year for historical and cultural program support, environmental planning, and some housing assistance.<sup>52</sup> Relying on these sources of income, the Tribe maintains a part-time staff of eleven. 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.<sup>53</sup>

### *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

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

<sup>48</sup> Tribe's Application at 9, § 1(A), The Modern Shawnee Tribe.

<sup>49</sup> Regional Director's Part 292 Recommendation at 5.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 6.

<sup>53</sup> Tribe's Application, § 1(A) at 9.

would be available to travel to homes to provide professional health care services or to counsel by telephone.<sup>54</sup> The Tribe also needs a residential care facility. With revenue from the proposed project, the Tribe would seek to accommodate 20 to 40 members who may need constant care.<sup>55</sup> 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.<sup>56</sup>

#### *Family Services*

The Tribe has unmet needs for family services that include counseling for troubled families and individual family members.<sup>57</sup> The Tribe cannot currently provide counseling and intervention services that would help families and individuals function more productively.<sup>58</sup> 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.<sup>59</sup>

#### *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.<sup>60</sup>

### **III. Review of the Tribe's Application Pursuant to IGRA and Part 292, Subpart C**

Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988.<sup>61</sup> However, Congress expressly provided several exceptions to the general prohibition. One such exception, known as the "Secretarial Determination" or "Two-Part Determination", permits a tribe to conduct gaming on lands acquired in trust for an Indian tribe after October 17, 1988, where the Secretary after consultation

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<sup>54</sup> Tribe's Application, § II at 46.

<sup>55</sup> *Id.* at 47.

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

<sup>57</sup> Tribe's Application, Request for Secretarial Determination, § III(D)(3) at 47 of 82.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 43.

<sup>61</sup> 25 U.S.C. §2719.

with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that:

1. A gaming establishment on the trust lands would be in the best interest of the tribe and its members; and
2. Gaming on the trust lands would not be detrimental to the surrounding community.<sup>62</sup>

The governor of the state in which the gaming activity is to be conducted must concur in the Secretary's determination before the applicant tribe may conduct gaming on the proposed site.<sup>63</sup>

The Department's regulations at 25 C.F.R. Part 292 set forth the procedures for implementing Section 20 of IGRA. Subpart C of Part 292 governs Secretarial Determinations.

#### *Subpart C—Secretarial Determination*

Sections 292.13 through 292.15 identify the conditions under which a tribe may conduct gaming.

Sections 292.16 through 292.18 identify the information that must be included in a tribe's request for a Secretarial Determination.

Section 292.17 pertains to an evaluation of whether the gaming establishment would be in the best interest of the tribe and its members.

Section 292.18 pertains to an evaluation of whether there is detriment to the surrounding community.

#### *Application Contents*

**Section 292.16 provides that a tribe's application requesting a Secretarial Determination under section 292.13 must include the following information:**

- (a) *The full name, address, and telephone number of the tribe submitting the application.*

The Shawnee Tribe  
P.O. Box 189  
29 S Hwy 69A  
Miami, OK 74354  
Telephone: (918) 542-2441

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<sup>62</sup> 25 U.S.C. § 2719(b)(1)(A).

<sup>63</sup> *Id.* The Department of the Interior's regulations allow a governor one year from the date of the Secretary's request in which to concur. The Secretary may grant an extension of up to 180 days upon request of the applicant tribe or the governor. See 25 C.F.R. § 292.23. If the governor does not affirmatively concur within that time period, or if the governor provides a written non-concurrence, the Secretarial Determination is no longer valid, and the land may not be acquired in trust for gaming purposes. *Id.*

- (b) *A description of the location of the land, including a legal description supported by a survey or other document.*

The Site consists of approximately 102.98 acres on U.S. Highway 54, southwest of the city of Guymon, Texas County, Oklahoma.<sup>64</sup> A survey dated October 6, 2014, provides a legal description of the Site, which has been accepted by the Bureau of Land Management, Indian Lands Surveyor.<sup>65</sup> The legal description is attached to this Secretarial Determination as Attachment I.

- (c) *Proof of identity of present ownership and title status of the land.*

Panhandle Highway 54 Land, LLC (Panhandle LLC), an Oklahoma limited liability company, is the sole owner of a whole, unfractionated interest in the Site, excepting the mineral estate. Panhandle LLC will convey the Site directly to the United States to be held in trust for the benefit of the Tribe upon approval of the Tribe's trust acquisition application by the Secretary and a determination that the Site is eligible for gaming.<sup>66</sup>

- (d) *Distance of the land from the Tribe's reservation or trust lands, if any, and tribal government headquarters.*

The Site is located approximately 370 miles due east of the Tribe's Miami, Oklahoma, headquarters. The driving distance, as calculated by Google Maps, is approximately 418 miles via Interstate 44 to Tulsa and US-412 West.<sup>67</sup>

- (e) *Information required by section 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members.*

As discussed more fully below under Section 292.17, the Tribe has submitted the required information.

- (f) *Information required by section 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community.*

As discussed more fully below under Section 292.18, the Tribe has submitted the required information.

- (g) *The authorizing resolution from the tribe submitting the application.*

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<sup>64</sup> Tribe's Application at 15.

<sup>65</sup> See Regional Director's Part 292 Recommendation, Book 3, Tab 8.

<sup>66</sup> See Land Conveyance Agreement (Feb. 9, 2015), in Tribe's Application, § II, Tab 6b.

<sup>67</sup> Regional Director's Part 292 Recommendation at 14.



The Tribe authorized submission of its application pursuant to Resolution No. 2015-02-006 (Feb. 9, 2015).<sup>68</sup> The Resolution petitions the Secretary to 1) determine that the proposed project would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, and requests that the Governor of Oklahoma concur in the Secretary's determination, and 2) acquire the Site in trust for the benefit of the Tribe.

(h) *The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C § 2710, if any.*

The Tribe's Gaming Ordinance was approved by the National Indian Gaming Commission on June 11, 2003.<sup>69</sup>

(i) *The tribe's organic documents, if any.*

The Tribe is governed by the Constitution of the Tribe, as amended by the Tribal Council on September 17, 2011.<sup>70</sup>

(j) *The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated.*

The Tribe does not yet have a tribal-state class III gaming compact. Upon approval of the Tribe's fee to trust application, the Tribe will initiate the process for adopting Oklahoma's model tribal-state class III gaming compact.<sup>71</sup>

(k) *If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment.*

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. This project is relatively small compared to other gaming facilities in Oklahoma. 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.<sup>72</sup>

(l) *A copy of the existing or proposed management contract required to be approved by the NIGC under 25 U.S.C. § 2711 and 25 CFR Part 533, if any.*

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<sup>68</sup> Regional Director's Part 292 Recommendation at 15.

<sup>69</sup> See Letter from Philip Hogen, Chairman, National Indian Gaming Commission, to Ronald G. Sparkman, Chairman, Shawnee Tribe (June 11, 2003), in Tribe's Application, § II, Tab 4d.

<sup>70</sup> Regional Director's Part 292 Recommendation at 16.

<sup>71</sup> See *Id.* at 17.

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

The Tribe submitted a Draft Management Agreement By and Between the Shawnee Tribe and Global Gaming Management GM, LL, an Oklahoma limited liability company whose principle place of business is 210 North Broadway, Ada, Oklahoma.<sup>73</sup>

#### **IV. Analysis of Best Interest of the Tribe and its Members**

##### **Section 292.17 provides that an application must contain:**

- (a) *Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe.*

When considering whether a proposed gaming project is in the best interest of the Tribe and its members, we examine the income statement which projects the income and expenses in accordance with generally accepted accounting principles. An income statement is considered the best tool to determine the profitability of a proposed gaming project.

We also review the balance sheet which lists assets, liabilities, and capital. From the balance sheet we can identify various ratios to determine if a proposed gaming project will grow and whether it will have the resources to pay its obligations in the short term and long term. It also allows us to review the ownership composition of the proposed gaming project.

Cash flow statements project the distribution to the various stakeholders, such as debt holders and owners. They project what ongoing investments will be made, what debt will be incurred or repaid, and the projected utilization of non-cash expenses, such as depreciation and amortization. We review cash flow statements to determine the amounts that will go to the manager/developer, the debt holders, the state, and its political subdivisions, and the Tribe. From cash flow statements, we can generally determine whether the Tribe will be the primary beneficiary of the proposed gaming project.

Because the financial documents are based on projections rather than actual performance, we examine the financial information to determine whether they are reasonable. This assists us in reaching conclusions that the proposed gaming project will likely perform according to the projections.

##### *Reports*

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

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<sup>73</sup> See Draft Management Agreements By and Between the Shawnee Tribe and Global Gaming Management GM, LLC, in Tribe’s Application, § II, Tab 6c.

project.<sup>74</sup> The Innovation Group Report projected that a casino 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.<sup>75</sup>

The Tribe prepared a Business Plan with the assistance of Global Gaming Solutions, LLC, and the Innovation Group.<sup>76</sup> 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 project would be approximately \$1.38 million in the first year, increasing to approximately \$9.12 million in the tenth year.<sup>77</sup> The Tribe also prepared a Long-Term Development and Financial Plan which identified expenses associated with future economic development.<sup>78</sup> The analysis contained in both reports confirms that a gaming facility would be successful in the current market.

### *Analysis*

The Tribe provided a balance sheet, cash flow statement, and income statement for the proposed project. The financial projections are based on reasonable assumptions, including the assumptions that (i) the facility will operate 600 class II and class III electronic gaming machines; (ii) the gaming devices will have the win per unit identified in the Pro-Forma income statements; and (iii) the revenues will increase at the rate reflected in the Pro-Forma income statements; and (iv) the revenues will increase at the rate reflected in the Pro-Forma Income Statement. The Tribe projects the following financial results:

Income Statements: The annual net income of the proposed project before distribution to the Tribe is projected to be:

- Year 1            \$4,317,000
- Year 2            \$6,774,000
- Year 3            \$7,844,000
- Year 4            \$8,089,000
- Year 5            \$8,272,000<sup>79</sup>

Balance sheet: The balance sheet for the gaming operation shows the projected total cost of the Property, Plant, and Equipment is \$23,376,000.<sup>80</sup>

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<sup>74</sup> See Innovation Group, Gaming Market Assessment, Cash Flow Analysis, and Competitive Effects Analysis, Guymon Oklahoma (Jan. 2015) [hereinafter Innovation Group Report], in Shawnee Tribe Casino Project, E At (Nov. 2016), Appendix E, available on the proposed project website ([www.shawneecaa.com](http://www.shawneecaa.com)).

<sup>75</sup> Innovation Group Report at 41.

<sup>76</sup> See Business Plan, Golden Mesa Casino (Feb. 3, 2015), in Tribe’s Application, § II, Tab 7b.

<sup>77</sup> *Id.* at 40.

<sup>78</sup> See Shawnee Tribe Long-Term Development and Financial Plan, in Tribe’s Application, § II, Tab 7a.

<sup>79</sup> Pro-Forma Income Statement, in Tribe’s Application, § II at 21.

<sup>80</sup> Pro-Forma Balance Sheet, *Id.* at 22. Property, Plant, and Equipment can be defined as tangible assets that have an estimated useful life of two or more years, are not intended for sale in the ordinary course of business, and are

Fixed assets accounting:

- Land: \$475,000
- Building and Improvements: \$20,494,000 <sup>81</sup>

Cash flow operations Net cash provided by (used in) operating activities:

- Year 1            \$11,405,865
- Year 2            \$7,503,102
- Year 3            \$8,673,450
- Year 4            \$8,925,599
- Year 5            \$9,116,402 <sup>82</sup>

Cash Distributions to the Tribe from the proposed project are estimated to be:

- Year 1            \$1,384,000
- Year 2            \$2,034,000
- Year 3            \$3,029,000
- Year 4            \$4,898,000
- Year 5            \$5,106,000 <sup>83</sup>

Debt amortization: The financial projections assume steady principal pay-down over the first six years, with the seventh year projecting the debt will be paid off. <sup>84</sup>

We find these projections reasonable and conclude that the proposed project will be economically viable in the current market. For discussion of the available gaming market see the Innovation Group Report. <sup>85</sup>

*(b) Projected tribal employment, job training, and career development*

The proposed project is estimated to create 175 direct jobs, and create substantial employment opportunities for unemployed and underemployed tribal members. Although the Tribe cannot estimate the specific number of jobs that could be held by members at the proposed project, it expects to employ tribal members under its tribal preference policy.

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intended to be used or available for use by the entity. See Accounting for Property, Plant, and Equipment Federal Financial Accounting Standards no. 6 (June 1996), available at <http://www.fasab.gov/pdffiles/sffas-6.pdf>.

<sup>81</sup> Fixed Assets Statement, Tribe's Application, § II at 23.

<sup>82</sup> Pro-Forma Statement of Cash Flows, *Id.* at 24.

<sup>83</sup> Pro-Forma Income Statement, *Id.* at 21.

<sup>84</sup> Pro-Forma Statement of Cash Flows *Id.* at 24.

<sup>85</sup> EA Appendix E.

Revenue from the proposed project will also increase funding for tribal governmental programs. The Tribe estimates that 57 jobs would be created. In addition, the Tribe intends to use revenue from the proposed project to generate commercial job opportunities.

Revenues from the proposed project will enable the Tribe to provide significant educational and training opportunities to its tribal members, broadening their employment and career opportunities. The Tribe intends to offer training programs to assist tribal members and local residents in becoming qualified for employment at the proposed project.<sup>86</sup>

*(c) Projected benefits to the tribe and its members from tourism*

Because the Tribe is landless, tourism has not been a goal of the Tribe. However, the Tribe predicts that the revenue from the proposed project will assist in constructing the Shawnee Heritage Center, which the Tribe has a grant to construct but no current resources to operate.<sup>87</sup> Visiting the Heritage Center will bring an increased knowledge and awareness of the Shawnee people and their cultural heritage to tourists, tribal members, and the general public.

*(d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income*

The Tribe has no land base and little governmental revenues for economic development and governmental services. The income from the proposed project and resulting economic benefits would provide stability for future generations by providing critically needed revenues for governmental services and programs as well as jobs and training opportunities. As discussed in Section II above, the Tribe intends to use income from the proposed project to provide a variety of much needed governmental programs for its members including basic tribal governmental operations, educational support, elder support, law enforcement and judicial services, health care, [housing?], family services, and the ability to adequately maintain the Tribe's cultural heritage.

The Shawnee Tribe Business Council developed a Long-Term Development and Financial Plan to provide a 15-year blueprint for guiding the Council's actions and decisions as it rebuilds its governmental systems and institutions after nearly a century and a third of involuntary integration into the governmental framework of another tribal nation. Due to the pressing need to strengthen and rebuild its governmental infrastructure and capacity, the Tribe does not expect to use gaming revenues for distribution as per capita payments at this time.<sup>88</sup>

A 15-year period was chosen by the Tribe because the financial arrangements for developing the proposed project dictate that the largest share of net income during the first five years would be used to retire the construction loans and repay development and pre-opening costs. As a result, the amount of income available for the tribal programs and to provide for further economic development and diversification would be much more constrained in the first few years than in

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<sup>86</sup> Regional Director's Part 292 Recommendation at 23.

<sup>87</sup> *Id.* at 24.

<sup>88</sup> See Shawnee Tribe Long-Term Development and Financial Plan, in Tribe's Application, § II, Tab 7.

later years and would increase at a relatively rapid rate for about six years before slowing to a lower rate of growth.

As projected in the Long-Term Development and Financial Plan, the proposed use of the resources from the Economic Development Fund for tribal programs in the first years would be:<sup>89</sup>

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<sup>89</sup> *Id.*; Regional Director's Part 292 Recommendation at 24.

- \$322,500 for Golden Mesa Casino, LLC
- \$407,500 for Shawnee Tribe Gaming Commission
- \$85,000 for Shawnee Oklahoma gaming compact
- \$108,000 for justice services
- \$360,000 for police & emergency assistance
- \$41,000 for financial management
- \$41,000 for office of chief & business council
- \$1,365,000 operating total for the first year

By the fifth year, the proposed use of the resources from the Economic Development Fund for tribal programs would be:

- \$485,500 for Golden Mesa Casino, LLC
- \$446,500 for Shawnee Tribe Gaming Commission
- \$35,00 for Shawnee Oklahoma gaming compact
- \$147,000 for justice services
- \$288,000 for police & emergency assistance
- \$155,000 for tribal administration
- 88,000 for financial management
- \$50,000 for property & contract management
- \$41,000 for office of chief & business council
- \$183,100 for historic protection
- \$129,000 for cultural & language preservation
- \$67,700 for Shawnee heritage center
- \$70,000 for education program management
- \$275,542 for 1-12 enrichment (education program)
- \$185,539 summer enrichment (education program)
- \$839,747 for post-secondary scholarships
- \$140,000 for community nursing assistance
- \$148,000 for special needs & prevention
- \$624,710 for health care insurance assistance
- \$91,500 for family protective services

The Regional Director concluded, and we concur, that the data presented by the Tribe presents a particularly strong case that the Tribe would use its income to strengthen its government, operate its tribal programs, and provide services to its members.<sup>90</sup>

*(e) Projected benefits to the relationship between the tribe and non-Indian communities*

The Tribe intends to establish a strong relationship with the communities neighboring the Site through development and operation of the proposed project. The anticipated job creation and economic growth would stimulate the local economy in Texas County. The Tribe and the Sheriff's Office intend to work cooperatively to develop a deputization agreement.<sup>91</sup> The Tribe intends to enter into an agreement with the Guymon Fire Department for fire and emergency

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<sup>90</sup> See *Id.* at 26-27.

<sup>91</sup> See Letter from Rick Cadell, Sheriff, Texas County, to Chairman Sparkman, Oklahoma Shawnee Tribe (undated), in EA Appendix L.

services.<sup>92</sup> The Tribe intends to reach out to community officials in Texas County, Guymon, and Goodwell to explore mutually beneficial projects. The Tribe also intends to reach out to the Guymon Chamber of Commerce, hotels, and restaurants for joint marketing initiatives to foster tourism in Guymon.<sup>93</sup> The Tribe has received support letters from current and former state and local officials, as well as business and property owners in the area.<sup>94</sup>

(f) *Possible adverse impacts on the tribe and its members and plans for addressing those impacts*

The Tribe has not identified any adverse impacts to itself or its members from the operation of the proposed project.<sup>95</sup>

(g) *Distance of the land from the location where the tribe maintains core governmental functions*

The Site is located approximately 370 miles due east of the Tribe's Miami, Oklahoma, headquarters. The Tribe is seeking this Site at this distance due to a provision in the Shawnee Status Act that prohibits the Tribe from acquiring land within Cherokee Nation boundaries. The driving distance, as calculated by Google Maps, is approximately 418 miles via Interstate 44 to Tulsa and US-412 West.<sup>96</sup>

The Tribe intends to maintain a strong governmental presence at all times through a tribal office at the Site. The Tribe also plans to locate the Shawnee Tribal Gaming Commission at the Site. Additionally, the Tribe plans to establish a tribal police force on the Site to ensure adequate law enforcement services. The executive offices of the Golden Mesa Casino, LLC, will be at the Tribe's headquarters in Miami, Oklahoma, but an office would be located at the Site. The Tribe's Business Board would be on-site at least monthly, and more often as needed. The Tribe intends for the Shawnee Tribal Court to be available on a regular basis to adjudicate cases and matters arising on the Site, including, but not limited to, contracts, employment, tort claims, and other civil disputes. The Tribal Court would also handle appeals of the actions and decisions of the Gaming Commission. In time, as revenues increase, the Tribe intends to develop and increase its governmental presence at the Site.<sup>97</sup>

(h) *Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States.*

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<sup>92</sup> See Letter from Kimberly Meek, City Manager, City of Guymon, to Chairman Sparkman (April 9, 2015), in EA Appendix L.

<sup>93</sup> Tribe's Application, § II at.57.

<sup>94</sup> See letters in Tribe's Application, § II, Tab 9a.

<sup>95</sup> Regional Director's Part 292 Recommendation at 28.

<sup>96</sup> *Id.* at 14.

<sup>97</sup> Tribe's Application, § II at 60.



On February 9, 2015, the Tribe entered into a Land Conveyance Agreement with Panhandle Highway 54 Land, LLC, the terms of which provide for the conveyance of the Site to the United States following the approval of the Tribe's application.<sup>98</sup>

(i) *Evidence of significant historical connections, if any, to the land.*

Section 292.17 (i) does not require an applicant tribe to demonstrate an aboriginal, cultural, or historical connection to the land in order to receive a positive Secretarial Determination. Nevertheless, the Department's regulations require the Secretary to weigh the existence of a historical connection between an applicant tribe and its proposed gaming site as a factor in determining whether gaming on the proposed site would be in the best interest of the Tribe and its members. Due to the restrictive provisions of the Shawnee Status Act that prohibit the Tribe from acquiring land within Cherokee Nation boundaries, the Tribe is seeking this Site.

(j) *Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any: (1) Consulting agreements relating to the proposed gaming establishment; (2) Financial and loan agreements relating to the proposed gaming establishment; and (3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.*

The Tribe has engaged Global Gaming Development GM, LLC, as the exclusive developer of the project pursuant to a Development Agreement.<sup>99</sup>

***Conclusion: Best Interest of Tribe and its Members***

It is clear that based on the Tribe's history and present challenges that gaming on the Site is in the best interest of the Tribe. Having survived numerous forced removals, the Tribe lacks a permanent homeland from which to generate sufficient governmental revenues to support tribal self-determination and self-governance. Because of repudiated Federal policies and past actions, as well as the Shawnee Status Act, the Tribe's citizens are disbursed and effectively unable to place land into trust at its current location. Many of Shawnee's neighboring Tribes, presumably in recognition of the Tribe's difficult history and present day circumstance, support this application. As summarized in more detail below, the Tribe's application demonstrates that governmental revenue generated at the proposed site will be used to ameliorate the present day impacts of repudiated policies and foster the Tribe's ability to exercise self-determination and self-governance.

The Tribe submitted the required financial projections under 25 C.F.R. § 292.17 (a). Our analysis of the financial projections finds that they are reasonable, and indicates that the proposed project would provide much needed revenue for the Tribe.

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<sup>98</sup> See Land Conveyance Agreement (Feb. 9, 2015), in Tribe's Application, § II, Tab 6b.

<sup>99</sup> See Development Agreement By and Between the Shawnee Tribe and Global Gaming Development GM, LLC (Feb. 9, 2015), in Tribe's Application, § II, Tab 6a.

The Tribe submitted the required financial projections under 25 C.F.R. § 292.17 (b) regarding tribal employment, job training, and career development. The record shows that the proposed project will create substantial employment opportunities for tribal members at the proposed project.

The Tribe submitted the required information under 25 C.F.R. § 292.17 (c) regarding benefits to the Tribe and its members from tourism. The record shows that the proposed project will stimulate local tourism and benefit the local businesses and economy by creating an influx of non-resident consumers.

The Tribe submitted the required information under 25 C.F.R. § 292.17 (d) regarding projected benefits to the Tribe and its members from the uses of the increased tribal income. The Tribe's allocation of anticipated revenue demonstrates a clear commitment to strengthening its government and advancing its social, political, and economic opportunities. The Tribe's intent to use the gaming revenue to address unmet social and economic needs of its members demonstrates that the proposed project is in the best interest of the Tribe and its members.

The Tribe submitted the required information under 25 C.F.R. § 292.17 (e) regarding projected benefits to the relationship between the Tribe and non-Indian communities. The Tribe intends to establish a strong relationship with the communities neighboring the Site through development and operation of the proposed project. The Tribe intends to work with community leaders and businesses to strengthen their relationship.

The Tribe submitted the required information under 25 C.F.R. § 292.17 (f) regarding possible adverse impacts on the Tribe and its members and plans for addressing those impacts. The Tribe has done significant research and has not identified any adverse impacts to itself or its members from the operation of the proposed project.

The Tribe submitted the required information under 25 C.F.R. § 292.17 (g) regarding the distance of the land from the location where the Tribe maintains core governmental functions. The site is 370 straight line distance miles from the Tribe's government headquarters in Miami, Ottawa County, Oklahoma. The Tribe is seeking this Site at this distance due to a provision in the Shawnee Status Act that prohibits the Tribe from acquiring land within Cherokee Nation boundaries.

The Tribe submitted the required information under 25 C.F.R. § 292.17 (h) regarding evidence that the Tribe acquired the land at the sole discretion of the Tribe. The Tribe currently holds a contractual right to have the land transferred directly to the United States upon approval of the Tribe's application.

The Tribe submitted the required information under 25 C.F.R. § 292.17 (i) regarding evidence of significant historical connections. Section 292.17 (i) does not require an applicant tribe to demonstrate an aboriginal, cultural, or historical connection to the land in order to receive a positive Secretarial Determination. Due to the restrictive provisions of the Shawnee Status Act

that prohibit the Tribe from acquiring land within Cherokee Nation boundaries, the Tribe is seeking this Site.

The Tribe submitted information under 25 C.F.R. § 292.17 (j) regarding other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the Tribe and its members. The Tribe submitted its Development Agreement with Global Gaming Development GM, LLC.

The record demonstrates that development of the proposed project will be in the best interest of the Tribe and its members because it will strengthen the tribal government and create needed jobs. Many members of the Tribe do not live in a central location, so the development of the proposed project will bring tribal citizens to the area for employment, and will provide revenue for much needed services and benefits for the members. The Tribe's plan to invest directly in tribal programs, governmental services, and economic development that are currently unfunded or underfunded will benefit the Tribe and its members.

Based on the studies, reports, and other in-depth analyses the Tribe has commissioned or prepared, we have determined that a gaming establishment on the Site after it is acquired in trust would be in the best interest of the Tribe and its members. The proposed project would assist in the Tribe's achievement of its goals for self-governance, self-determination, and self-sufficiency.

## **V. Analysis of Detriment to the Surrounding Community**

**Section 292.18 provides that to satisfy the requirements of §292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:**

- (a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA).*

As described in more detail below, an environmental assessment was prepared to evaluate the potential impacts of gaming at the Site. Based on the facts and available evidence, the environmental assessment concluded that gaming at the proposed Site would not result in significant 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, or noise.

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 102.9- acre Site in trust by the United States for the benefit of the Shawnee Tribe; (4) approval of a management contract and related

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 the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* (NEPA), an Environmental Assessment (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 at [www.ShawneeEA.com](http://www.ShawneeEA.com). 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, and are listed in the table below. Additionally, the 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 the BIA during the decision making process for the Proposed Action.

Notice of a public meeting on the EA was published December 26, 2016 – January 5, 2017, in the *Guymon Daily Herald* and in *The Oklahoman*. The public meeting was held on January 5, 2017, at the Texas County Activity Center.

The Environmental Assessment 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 additional 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 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 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 included as Attachment II to this Secretarial Determination.

*(b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.*

Guymon, Oklahoma, is the county seat for Texas County, Oklahoma. According to the 2010 U.S. Census, the population of Guymon was 11,442 and the population of Texas County was 20,640. Between 2000 and 2010, Guymon experienced a population increase of 8%. Texas County experienced a population increase of 2% over the same period. Overall, the State experienced a population increase of 8% between 2000 and 2010.

Historically, Guymon, along with Texas County generally, is a farming and ranching community that is prosperous in comparison with certain other regions in Oklahoma. According to the U.S. Census Bureau, the median household income (MHI) was \$47,775 for Guymon in 2012, the most recent year for which data are available for the community. In 2012, the MHI for Texas County was \$47,983, compared to \$44,891 for the State.

In 2012, the unemployment rate was 6.8% for Texas County and 8.3% for Guymon. The State's unemployment rate was 6.8% for the same year. The leading employment sectors in Texas County are agriculture, construction, manufacturing, wholesale trade, retail trade, and educational services. The largest local employer is Seaboard Food LP (which has operations in 45 countries globally), followed by Guymon Public Schools, and Hitch Enterprises.

According to the U.S. Department of Health and Human Services, the poverty income threshold for the average household for the 48 contiguous states in 2014 was \$15,730 for a two-person household, \$19,790 for a three-person household, and \$23,850 for a four-person household.

Overall, approximately 13.2% of individuals in Texas County and 11.3% of individuals in Guymon had an income below the poverty level, compared to approximately 16.6% of individuals in Oklahoma for 2012. *See* EA § 3.6.

### *1. Impacts on Social Structure*

Crime: There is a general belief that the introduction of legalized gambling into a community increases crime. However, this argument is based more on anecdotal evidence rather than empirical evidence. Casinos, by their nature, increase the volume of people entering a given area. Whenever large volumes of people are introduced into an area, the volume of crime would also be expected to increase. This is true of any largescale development. Taken as a whole, literature on the relationship between casino gambling and crime rates suggests that communities with casinos are as safe as communities without casinos. The National Opinion Research Center (NORC, 1999) found that insufficient data exists to quantify or determine the relationship between casino gambling within a community and crime rates. *See* EA § 4.6.1.

While the Tribe anticipates that the proposed project would attract additional visitors to the area, the proposed project would be of relatively modest size and scale, with a market area largely confined to the Oklahoma and Texas Panhandles. These factors suggest a low probability of increased crime. Moreover, the proposed project would be subject to stringent internal controls, internal control systems, surveillance, and an on-site security force. The security staff would receive comprehensive and specialized training for handling potential problems and disruptions. The security staff would patrol both the internal and exterior areas of the premises. Surveillance coverage would include both the interior and exterior areas of the proposed project, providing the staff with a comprehensive view of all areas. In compliance with National Indian Gaming Commission regulations and the Tribe's gaming ordinance and regulations, the proposed project would maintain a fully-staffed surveillance room. In addition, as discussed below in Section V (b)(3), the Tribe would develop tribal a law enforcement force that would conduct regular patrols of the Site and the surrounding area.

Each of these initiatives would ensure the safety of the surrounding community and the proposed project's patrons and employees, ensure the security of all property on-site, and ensure compliance with applicable laws and regulations. Development of Alternative A would result in less-than-significant impacts from crime. *See* EA §§ 4.6.1, 4.9.8

Environmental Justice for Minority and Low Income Populations: The minority population in Guymon is above 50%, qualifying it as a minority community. As described in the other issue area sections of the EA, all environmental impacts of the proposed project would be reduced to a less than significant level after mitigation. Further, the proposed project would not displace any residential populations in the vicinity of the Site. Effects to the Tribe (considered a minority population) include increased opportunity for employment and increased income. Development of Alternative A would result in less-than-significant impacts to minority or low-income communities. *See* EA § 4.6.1.

2. *Impacts on infrastructure*

Water Resources: There would be no connection to a public water supply. Development of Alternative A would result in less-than-significant impacts to municipal water supply services or infrastructure. See EA § 4.9.1.

Two on-site wells would be drilled to supply water. 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 aquifer storage in 2010 for Basin 55 was estimated to be 53,175,000 acre-feet (AF) per year, and the available groundwater for new permits was estimated to be 3,271,600 AF per year.<sup>100</sup>

A Water and Wastewater Feasibility Study was prepared for the EA (EA Appendix A). The study estimated average daily water consumption for the proposed project to be approximately 32,000 gallons per day (gpd) with a peak hour demand of 78 gallons per minute (gpm).

PROPOSED PROJECT – WATER DEMAND

Description	Water Demand	
	gpd	gpm
Average-day water demand <sup>1</sup>	32,000	22
Maximum-day demand <sup>2</sup>	62,000	43
Peak-hour demand <sup>3</sup>	112,000	78
Notes: <sup>1</sup> Estimated from anticipated wastewater flow plus 5% allowance for system losses. <sup>2</sup> Maximum-day peaking factor of 2.0 applied. <sup>3</sup> Peak-hour peaking factor of 3.5 applied. Source: CP&Y, 2014a		

Although highly unlikely, if peak demand of 112,000 gpd were carried over the entire year, the maximum yearly use would be 126 AF. This is less than 0.001% of the 53,175,000 AF per year of Basin 55 aquifer storage and less than 0.01% of the available 3,271,600 AF per year of new groundwater permits. Development of Alternative A would result in less-than-significant impacts to the available supply of groundwater within Basin 55 of the Ogallala aquifer. See EA § 4.2.

The Water and Wastewater Feasibility Study also examined on-site wastewater treatment. All wastewater would be treated by a newly constructed facility on the Site within an approximately 6.3-acre area near the southeast corner of the Site. The treatment facilities would include treatment and storage lagoons, and would be sized to meet an anticipated average daily flow of 72,000 gpd. The Tribe would comply with U.S. Environmental Protection Agency requirements and would voluntarily meet Oklahoma Department of Environmental Source Development

<sup>100</sup> An “acre-foot” is a unit of volume commonly used in reference to large-scale water resources. It is defined as the volume of one acre of surface area to a depth of one foot.

regulations which require that all wastewater facilities must be at least 300 feet away from potable water wells. The proposed project would not connect to a public wastewater system; therefore, there would be no impacts to municipal wastewater treatment systems. Development of Alternative A would result in less-than-significant impacts to municipal wastewater services or groundwater from on-site wastewater treatment. *See* EA §§ 2.1.4; 4.2; 4.9.1.

Construction impacts from the proposed project could lead to erosion of topsoil. A Site Grading and Stormwater Drainage Study (EA Appendix B) indicated that stormwater runoff should be directed into on-site stormwater control facilities sized to accommodate excess water draining from impervious surfaces. There is no Federal Emergency Management Agency flood zone designation of any kind for the Site; therefore, construction and operation of the proposed project would not alter the floodplain boundaries or flooding elevations. Development of Alternative A would result in less-than-significant impacts from stormwater runoff or flooding. *See* EA §§ 2.1.5; 4.2.

Transportation Infrastructure and Traffic Volume: A Traffic Impact Study (EA Appendix F) was completed to determine potential impacts on traffic volumes created by the proposed project. In the vicinity of the Site, U.S. 54 is currently used by approximately 7,150 vehicles per day, approximately 38% of which is truck traffic. The proposed project is estimated to generate 4,470 vehicles per day. The projected traffic volumes may include a small percentage of pass-by trips. A pass-by-trip is a vehicle that is already traveling along the roadway network and makes an impromptu visit to the Site. The directional distribution of traffic generated by the proposed project is expected to be 60% to/from U.S. 54 northeast of the Site and 40% to/from U.S. 54 southwest of the Site.

The Traffic Impact Study evaluated potential impacts to area intersections. The study found that intersections would not exceed acceptable levels of service due to the addition of traffic generated by operation of the proposed project. Optional mitigation measures, however, would be implemented by the Tribe to improve safety and enhance traffic flow at access intersections and the adjacent roadways:

- The Tribe would provide either the west casino drive or N. 0830 Road with a “T” into the other to create a safe stop-controlled intersection. Due to the low volume of existing traffic on N. 0830 Road, the Tribe intends to fund the connection of West Casino Drive directly to U.S. 54 and control the N. 0830 Road “T” into West Casino Drive with a northeast stop sign. Further, N. 0830 Road would be reconstructed to intersect West Casino Drive perpendicularly south of U.S. 54. This measure would allow the much higher volume of casino traffic to flow freely into and out of the Site.
- The Tribe would restripe the shoulder at N. 0830 Road and Drive #1 to include a right-turn lane. Although traffic volumes on U.S. 54 are not heavy, the high speed of vehicles creates a potentially dangerous situation as northeast-traveling vehicles slow-down in the through lane to turn right into the Site. This measure would need to be approved by the Oklahoma Department of Transportation before restriping can be done



Development of Alternative A would result in less-than-significant impacts to transportation networks. *See* EA §§ 4.7; 5.7.

Air Quality: The Site is located in an area designated as an “attainment area” for all National Ambient Air Quality Standards; therefore, a Federal general conformity determination analysis is not required pursuant to the Clean Air Act, 42 U.S.C. § 7401 *et seq.* Mitigation measures implemented during construction and operation would reduce air quality impacts. Mitigation would also reduce impacts from greenhouse gas emissions. Development of Alternative A would result in less-than-significant impacts to air quality. *See* EA at §§ 2.1.5; 4.3; 5.3; EA Appendix J, Air Quality And Greenhouse Gas Modeling Files.

Solid Waste Service: Construction of the proposed project would result in a temporary increase in solid waste in the form of excess construction materials. Waste that could not be recycled would be disposed of at the Seward County Landfill which is approximately 43 miles northeast of the Site, in Liberal, Kansas. 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. The annual solid waste generated by the proposed project is estimated to be equivalent to approximately 0.006% of the permitted capacity of the Seward County Landfill – a negligible increase to the solid waste stream. Development of Alternative A would result in less-than-significant impacts to solid waste service. *See* EA § 4.9.3.

Electricity & Natural Gas: Electricity for the proposed project would be obtained from Tri-County Electric Cooperative (TCEC). TCEC is a not-for-profit distribution cooperative owned and controlled by its members. The Tribe would pay a fair share of the upgrades needed to avoid affecting the service of existing customers and any infrastructure necessary to extend service to the Site. Natural gas service would be provided by Northern Natural Gas. The Tribe would pay a fair share of the improvement costs necessary to serve the Site and ensure that existing customers would not be affected. Development of Alternative A would result in less-than-significant impacts to electricity and natural gas services. *See* EA § 4.9.7.

### 3. *Impacts on services*

Library Services, Schools, and Recreation: The proposed project would not result in a substantial increase in population or housing in the community surrounding the Site. As a result, demand for library services, additional schools, additional classroom capacity, and recreational facilities would not increase substantially. Development of Alternative A would result in less-than-significant impacts to library services, schools, and recreation. *See* EA §§ 4.6.1; 4.9.4; 4.9.5; 4.9.6.

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. 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.

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 the 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 deputization agreement under the umbrella of the state-wide deputization protocol developed jointly by the BIA and the State of Oklahoma.<sup>101</sup> 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. Development of Alternative A would result in less-than-significant impacts on law enforcement services. *See* EA § 4.9.8.

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

The Guymon Fire Department consists of two stations in Guymon that include three fire engines, four ambulances, two rescue trucks, and two brush trucks. 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. 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 possible to structure an agreement between Guymon and the Tribe, whereby the City will provide services to the proposed project at reasonable cost to the Tribe.<sup>102</sup> 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. Development of Alternative A would result in less-than-significant impacts to fire protection and emergency services. *See* EA § 2.1.4; 2.1.5; 4.9.9.

#### 4. *Impacts on housing*

According to the 2009-2013 U.S. Census Bureau American Community Survey 5- year Estimates, Guymon had 7.9% unit vacancy, while Texas County had 12.3% unit vacancy.<sup>103</sup>

<sup>101</sup> *See* Letter from Rick Cadell, Sheriff, Texas County, to Chairman Sparkman, Oklahoma Shawnee Tribe (undated), in EA Appendix L. *But see* letters received on March 23 and October 14, 2016, from the Matt Boley, Texas County Sheriff, expressing concerns regarding a lack of resources to properly police the area.

<sup>102</sup> *See* Letter from Kimberly Meek, City Manager, City of Guymon, to Chairman Sparkman (April 9, 2015), in EA Appendix L.

<sup>103</sup> EA § 3.6.3.

Guymon was estimated to have 4,322 total units and 341 vacant units, Goodwell was estimated to have 471 total units and 107 vacant units, and Texas County was estimated to have 8,187 total units and 1,007 vacant units<sup>104</sup> The proposed project would have limited potential to impact regional housing stock because there is currently a sufficiently large number of vacant homes in Guymon, Goodwell, and elsewhere in Texas County. It is anticipated that there are sufficient vacant homes to accommodate any potential increase in population resulting from the proposed project. Development of Alternative A would result in less-than-significant impacts on housing stock that would be available to the surrounding community. *See* EA § 4.6.1.

##### 5. *Impacts on community character and land use*

Visual Resources: Trees along U.S. 54 would block the proposed project from the view of the nearest residence located approximately 0.5 miles to the north. Approximately 12 clustered rural residences are located approximately 0.7 miles northwest of the proposed project, and they are expected to have peripheral views of the proposed project. However, these residences are more likely to be affected by traffic along U.S. 54 and commercial/industrial buildings that are located along U.S. 54. Potential impacts are expected to be minimal when considered with other components of the viewshed. Lighting at the proposed project would constitute an increase over the existing ambient light levels. However, with the incorporation of BMPs, including downcast and shielded lighting, no detrimental impacts associated with lighting would occur. Development of Alternative A would result in less-than-significant impacts to visual resources. *See* EA §§ 2.1.5; 4.10.

Noise: The nearest school is Straight Elementary School approximately three miles northeast of the Site in Guymon. Due to the distance of the school and nearest residences from the proposed project, the short-term and temporary nature of construction noise, and implementation of BMPs to reduce construction noise levels, there would be no significant impacts from construction noise. Operation-related traffic noise would increase, but would result in only an increase of the ambient noise level of approximately 2.3 decibels. Development of Alternative A would result in less-than-significant impacts from noise. *See* EA §§ 2.1.5; 4.11; EA Appendix H, Ambient Noise Measurements.

Land Use: Generally, lands acquired in trust on behalf of Indian tribes are not subject to state and local land use requirements. Nevertheless, the Tribe intends to operate the proposed project in a manner that is consistent with the applicable local regulations and standards. The Site consists of rural land outside of the corporate limits of any municipalities in Texas County, and Texas County has no zoning ordinance that applies to such rural land. Development of Alternative A would result in less-than-significant impacts from conflicts with zoning. Although the proposed land uses at the Site would replace existing open space and would differ from adjacent agricultural and petroleum production land uses, the proposed project would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses. Development of Alternative A would result in less-than-significant impacts to land use. *See* EA § 4.8.1.

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<sup>104</sup> For a similar finding *see* Integra Realty Resources, Citywide Housing Market Study: City of Guymon, Prepared for the City of Guymon (January 23, 2014) at 23, available at [okpolicy.org/wp-content/uploads/Guymon.pdf?997616](http://okpolicy.org/wp-content/uploads/Guymon.pdf?997616).

The proposed project would result in changes to the existing topography due to grading and excavation. As part of the National Pollutant Discharge Elimination System General Construction Permit, a Stormwater Pollution Prevention Plan would be prepared and implemented. The permit requirements would reduce any potential adverse impacts to less-than-significant levels. With regulatory requirements and BMPs, impacts from implementation of the proposed project on soils and geology would be minimal and, therefore, less than significant. Development of Alternative A would result in less-than-significant impacts on topographic, geologic, seismic, mineral resources, or soils at the Site. *See* EA §§ 2.1.5; 4.1.

**Biological Resources:** The Site is primarily comprised of land disturbed by past agricultural activities and ruderal (disturbed or weedy) habitat. No unique or sensitive ecosystems or biological communities are present within the Site's boundaries. The Site contains no natural communities that could be adversely affected during development. No potentially jurisdictional wetlands and/or waters of the U.S. are located within the Site, thus, there would be no significant impacts to wetlands and/or waters of the U.S.

No potential habitat was identified by the Oklahoma Natural Heritage Inventory or the U.S. Fish and Wildlife Service for federally-listed plants within the Site. The Site provides potential foraging habitat for the federally-listed whooping crane because the Site is located within its migratory corridor. The whooping crane can potentially use the Site during its biannual migration between the Texas coastline and Canada. Development of the proposed project would permanently eliminate the potential use of 17.2 acres within the 102.98-acre Site. However, properties adjacent to the Site are predominantly agricultural, and no development or change in land use is proposed on the remaining 85.78 acres of the Site. Additionally, 1.28 million acres of land in Texas County are currently utilized for agricultural purposes and would provide foraging habitat for whooping crane. The loss of 17.2 acres of foraging habitat on the Site would not be a significant impact on the species. With implementation of the mitigation measures, there would be no significant adverse impacts to migratory bird species and other birds of prey. Development of Alternative A would result in less-than-significant impacts to biological resources. *See* EA §§ 4.4; 5.4; EA Appendix C, Biological Resources Documents.

**Cultural Resources:** No historic resources or known archaeological sites or cultural materials are located within the proposed project's area of potential affect (APE), and the potential for buried archaeological deposits to occur within the APE is very low. The Oklahoma State Historic Preservation Office found that no historic properties would be affected by the proposed project. With project design and implementation of BMPs, development of Alternative A would result in less-than-significant impacts to cultural resources. *See* EA §§ 2.1.5; 4.5; EA Appendix D, Cultural Resources Study.

**Agriculture:** The Site received a combined site assessment and land evaluation score of 192 on the Farmland Conversion Impact Rating form (EA Appendix G). The Site's total score of 192 indicates it is subject to the provisions of the Farmland Protection Policy Act, and, therefore, alternative sites should be considered. The EA in Section 2.5 provides a detailed analysis of alternative sites that were considered but eliminated from consideration. The conversion of farmland on the Site represents a change to 0.008% of farmland in Texas County and 0.0003% of

that in the State. Due to the large amount of remaining agricultural land in the County and State, development of Alternative A would result in less-than-significant impacts to agriculture. See EA § 4.8.1.

Hazardous Materials: No hazardous materials contamination or Recognized Environmental Conditions are known to be present on the proposed project. There are no known adjacent sites with hazardous materials that could affect the planned uses of the proposed project. The proposed project would comply with all applicable federal, state, and local regulations regarding construction and operation near gas pipelines. Project design and implementation of BMPs would ensure that Development of Alternative A would result in less-than-significant impacts from hazardous materials. See EA §§ 2.1.5; 4.12; EA Appendix I, Phase I Environmental Site Assessment.

(c) *Anticipated impacts on the economic development, income, and employment of the surrounding community.*

The proposed project would result in a variety of benefits to the regional economy, including increases in overall economic output, employment opportunities, and tax revenues. Construction and operation of the proposed project would generate substantial temporary and ongoing employment opportunities and wages that would be primarily filled by the available labor force in Guymon and Texas County. See EA § 4.6.1.

A study, *The Estimated Economic Impacts from the Proposed Golden Mesa Casino in Texas County (Economic Impacts Report)*, was prepared by Oklahoma City University for the proposed project.<sup>105</sup> The Economic Impacts Report analyzed the impact that a casino would have on the household income average, the local economic impact, and the job market in Texas County. This study also analyzed the effects of tribal casinos across the state of Oklahoma and their positive benefits on the surrounding communities. As discussed below, the Economic Impacts Report concluded that proposed project would be beneficial to the surrounding community.

#### *Construction economic impact*

The construction of the proposed project is estimated to cost approximately \$25 million, of which 20% would be spent locally on labor, materials, and equipment. The resulting \$5 million change in local activity is the direct impact from construction and is estimated to create or maintain 34 direct local construction jobs paying approximately \$1.6 million in wages and benefits.<sup>106</sup>

With production increasing, local supporting businesses hire additional workers. The increase in income from local workers creates additional economic activity as local households spend a

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<sup>105</sup> Kyle D. Dean, Associate Director, Economic Research & Policy Institute, Oklahoma City University, *The Estimated Economic Impacts from the Proposed Golden Mesa Casino in Texas County (Jan. 2015)* [hereinafter *Economic Impacts Report*], in EA Appendix K..

<sup>106</sup> *Id.* at 8.

portion of their income in the local economy. The expenditures from households and supporting businesses create \$1.5 million in additional economic output, 12 additional jobs, and \$494,000 in additional wages and benefits.<sup>107</sup>

Estimated One-time Construction Economic Impacts			
	Employment	Labor Income	Economic Output
Direct impact	34	\$1,617,717	\$5,000,000
Indirect impact	12	\$493,900	\$1,515,399
Total Construction Economic impact	46	\$6,515,399	\$2,111,616

This new activity is estimated to create \$60,573 in statewide sales tax revenue, of which \$31,881 would go to county and municipal governments within Texas County.<sup>108</sup>

*Operational economic impact*

Based upon projections, the proposed project would reach equilibrium operations in year seven. Using operating revenue and expenditure projections for year seven, the proposed project is estimated to have created 175 direct jobs, paying out \$3.685 million in wages and benefits.<sup>109</sup> Industries supporting the proposed project can be expected to hire additional workers to support the goods and services that would be purchased. Thirty additional indirect jobs would be required to support this additional economic activity paying an additional \$1.28 million in wages and benefits. The total employment derived from casino revenues and expenditures is estimated to be 205 jobs, paying just under \$5 million in wages and benefits.

Estimated Annual Operational Economic Impacts			
	Employment	Labor Income	Economic Output
Direct impact	175	\$3,685,297	\$28,360,000
Indirect impact	30	\$1,276,247	\$4,037,277
Total Operational Economic impact	205	\$4,961,544	\$32,397,277

This new activity is estimated to create \$106,578 in statewide sales tax revenue, of which \$56,094 would go to county and municipal governments within Texas County.<sup>110</sup>

*Local hotel economic impact*

A conservative estimate of new local hotel stays from casino visitors and outside vendors would increase demand by 10,508 per year, generating \$1,050,800 in hotel revenue.<sup>111</sup> The total impact

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 11.

<sup>110</sup> *Id.* at 8.

from the additional hotel stays and the resulting local expenditure and employment is estimated to be \$1.37 million annually, supporting the employment of 19 workers, and paying \$369,000 in additional wages.<sup>112</sup>

Estimated Annual Economic Impact From Hotel Stays		
Employment	Labor Income	Economic Output
19	\$369,413	\$1,373,084

(d) *Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.*

The Tribe anticipates that several of the impacts of operation of the proposed project, while less than significant, would nevertheless result in incremental costs to the surrounding community. The Tribe intends to address all such costs 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.

Law Enforcement: As discussed above in Section V (b)(3), the Tribe and the Sheriff’s office intend to work cooperatively to develop a deputization agreement. Under this agreement, the Tribe would have its own law enforcement authority on the trust land, but could request federal law enforcement support. Additionally, the Tribe intends to enter into a contract with the Sherriff’s Office to cover any incremental costs in the unlikely event the Tribe’s police force needed to call for backup assistance. Further, increased tax revenues resulting from the proposed project could fund expansion of law enforcement services. *See* EA § 4.9.8.

Fire Protection and Emergency Medical Services: The minimal increase in demand for fire protection and emergency services are not anticipated to trigger the need to construct new facilities. As discussed above in Section V (b)(3), the Tribe intends to enter into an agreement with the Guymon Fire Department for fire and emergency medical services for the Site. Through the terms of a service agreement, the Tribe would compensate the Guymon Fire Department for any 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.

Property Taxes: The estimated property tax value for 2015 for the Panhandle Property (150 acres), of which the approximately 102.98-acres Site constitutes a portion, was \$278.<sup>113</sup> Assuming that the Site accounted for an approximately equal share of the taxes levied on the panhandle property, the property tax for the Site would have been \$186. The 2016 tax assessment for the Panhandle Property, including the Site, was \$5,204.<sup>114</sup> The change in the tax

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<sup>111</sup> *Id.* at 12.

<sup>112</sup> *Id.*

<sup>113</sup> EA § 3.6.4.

<sup>114</sup> Shawnee Tax Assessment 2016, on file with the Office of Indian Gaming.

rate was due to an updated valuation rate.<sup>115</sup> The Site had previously been valued at the state agricultural land rate. However, because the property was no longer farmed, it was not eligible for that rate. The classification was changed to commercial highway frontage and the valuation updated to reflect the higher commercial valuation.

The increased tax revenue that Texas County and local taxing authorities would receive from increased business activity due to the proposed project constitutes a source of revenue to mitigate the costs of potential impacts. New sales tax revenues from the proposed project would accrue to the State, the County, and local municipalities in the area. The Economic Impacts Report, estimates that construction of the proposed project would generate \$60,573 in statewide sales tax revenue, of which \$31,881 would be collected by county and municipal governments within Texas County.<sup>116</sup> Operation of the proposed project would generate \$106,578 annually for the State as a whole, of which \$56,094 annually would be collected by local government entities.

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.

Mitigation of Economic Impacts on Local Governmental Services: The Tribe intends to enter into Memoranda of Understanding or other agreements with governmental entities that would be impacted by the development of the proposed project. In the negotiations regarding such agreements, the Tribe governmental entities would estimate the cost of impacts. Any such contributions which the Tribe agrees to make pursuant to such agreements would constitute an additional source of funds to such governmental entities to mitigate the costs of impacts from the proposed project.

- (e) *Anticipated cost if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.*

The Tribe intends to adopt and fund responsible gambling and self-limitation policies as further described below:

#### *Responsible Gambling Policies*

The Tribe is committed to ensuring that its patrons and employees understand the importance of responsible gambling, and that they are aware of the treatment programs available.<sup>117</sup> Additionally, the Tribe is committed to promoting responsible gaming practices and would make available to the public a list of organizations that are available to provide treatment and counseling to both the problem gambler and those affected by the gambler's problem.<sup>118</sup> In addition, the Tribe would post written materials concerning the nature and symptoms of problem gambling and a toll-free problem gambling helpline on or near all gambling areas within the

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<sup>115</sup> See Letter from Judyth Campbell, Texas County Assessor, to Dan Deerinwater, Regional Director, Bureau of Indian Affairs (Nov. 20, 2015), on file with the Office of Indian Gaming.

<sup>116</sup> Economic Impacts Report at 7.

<sup>117</sup> Regional Director's Part 292 Recommendation at 33.

<sup>118</sup> State of Oklahoma Model Tribal-State Gaming Compact Part 5 Section E(4).



proposed project. Finally, the Tribe intends to support the entire spectrum of materials, programs, and events to promote responsible gambling among its patrons and employees.

#### *Voluntary Exclusion Policy*

To reduce the incidence of problem gambling at the casino, similar to the Oklahoma Model Tribal-State Gaming Compact, the Tribe would implement a “Voluntary Exclusion” policy that may be employed by any person who wishes to participate.<sup>119</sup> The policy would allow patrons to voluntarily exclude themselves from gaming activities and privileges. If a patron has requested voluntary exclusion, the patron’s name would be placed on the exclusion list. Once on the list, the patron would not be permitted on the gaming floor of the casino. Compliance with and implementation of these policies would be enforced by the Shawnee Tribe Gaming Commission. Additionally, the Tribe would afford its patrons the opportunity to take part in a self-limiting program that would allow the patron to specify limits on check cashing privileges and to have their names removed from the list of receivers of direct mail marketing promotions. When a patron requests to self-limit, the patron would not be able to rescind the request for at least one year. The Tribe would require all such requests to be submitted to the Shawnee Tribe Gaming Commission for review and approval before the exclusion may be lifted. All information related to the self-limiting policy would be made available to all patrons in a conspicuous location within the casino.

#### *Funding for Treatment Programs*

The State of Oklahoma operates a treatment program for compulsive gamblers funded by a portion of the fees paid by all tribes operating class III gaming in the State under the state-tribal compacts. Fees from the proposed project would contribute to this program. The Tribe, therefore, anticipates no costs to the surrounding community for treatment programs for compulsive gambling attributable to the proposed project.

- (f) *If a nearby Indian Tribe has a significant historical connection to the land then the impact on that tribe’s traditional cultural connection to the land.*

On March 11, 2015, consultation letters were sent to representatives of the Apache Tribe of Oklahoma, Cheyenne and Arapaho Tribes, Comanche Nation, Kiowa Indian tribe of Oklahoma, Shawnee Tribe, and Wichita and Affiliated Tribes.<sup>120</sup> In response, the Comanche Nation and the Cheyenne and Arapaho Tribes determined no historic resources would be affected.<sup>121</sup> No other responses were received.

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<sup>119</sup> Regional Director’s Part 292 Recommendation at 38.

<sup>120</sup> See EA Appendix L.

<sup>121</sup> Regional Director’s Part 292 Recommendation at 39.

- (g) *Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and intergovernmental agreements with affected local governments.*

The Tribe has begun the outreach process and is meeting with governmental officials in both Guymon and Texas County to discuss the proposed project. The Tribe is briefing the Chamber of Commerce, local business owners, and leading members of the community. These outreach efforts are continuing.<sup>122</sup>

***Conclusion: Detriment to Surrounding Community***

The Tribe submitted the required information under 25 C.F.R. § 292.18 (a) regarding environmental impacts. The EA considered reasonable alternatives and analyzed the potential impacts. The EA found that the issuance of a Secretarial Determination and the development of the proposed project did not significantly affect the quality of the human environment within the meaning of NEPA. Further, the Town of Guymon, which is closest to the Site, has expressed strong support for Tribe's proposal. This strong support from the local government is strong evidence of the lack of detriment to the surrounding community. [Add reference to any other local support].

The Tribe submitted the required information under 25 C.F.R. § 292.18 (b) regarding anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community. Development of the proposed project would result in less-than-significant significant impacts to these resources.

The Tribe submitted the required information under 25 C.F.R. § 292.18 (c) regarding the impacts to economic development, income, and employment in the surrounding community. It is expected that economic development and income in the local community would increase as a result of the proposed project. Local employment is also projected to increase as supporting services to the proposed project are provided by private businesses.

The Tribe submitted the required information under 25 C.F.R. § 292.18 (d) regarding anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.

The Tribe submitted the required information under 25 C.F.R. § 292.18 (e) regarding anticipated costs to the surrounding community of treatment programs for compulsive gambling attributable to the proposed project. The Tribe intends to adopt and fund responsible gambling and self-limitation policies.

The Tribe submitted the required information under 25 C.F.R. § 292.18 (f) regarding impact to the traditional cultural connections to the land. Nearby Indian tribes with potential significant

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<sup>122</sup> *Id.*

historical connections to the land were contacted. In response the Comanche Nation the Cheyenne and Arapaho Tribes determined no historic resources would be affected. No other responses were received.

The Tribe submitted the required information under 25 C.F.R. § 292.18 (g) regarding other information that may provide a basis for a determination that the proposed project would or would not be detrimental to the surrounding community.

Based on the Tribe's application and supporting documents, the EA and associated studies, the consultation process, submissions by citizens and local governmental representatives, and the entire record before us, we conclude that gaming at the Site would not be detrimental to the surrounding community.

## **VI. Consultation**

**Section 292.19 provides that in conducting the consultation process:**

- (a) *The Regional Director will send a letter that meets the requirements in Section 292.20 and that solicits comments within a 60-day period from: (1) Appropriate State and local officials; and (2) Officials of nearby Indian Tribes.*

By letters dated January 28 and 29, 2016, the Regional Director sent 17 Consultation Notices to the State and local officials within a 25-mile radius of the Site.<sup>123</sup> Letters were sent to the following:

- Governor of Oklahoma
- Chairman, Oklahoma Tax Commission
- Sheriff, Texas County, Oklahoma
- Texas County Commissioners
- County Assessor, Texas County, Oklahoma
- Court Clerk, Texas County
- County Clerk, Texas County
- Mayor, City of Guymon
- Vice-Mayor, City of Guymon
- City Manager, City of Guymon
- County Commissioner, Texas County, District 1
- Optima City Hall, Optima, Oklahoma
- Mayor, City of Hooker, Oklahoma
- Mayor, City of Hardesty, Oklahoma
- Mayor, Town of Goodwell, Oklahoma
- Mayor, Town of Texahoma, Oklahoma
- City Council, City of Texahoma, Texas

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<sup>123</sup> See copies of Notices, in Regional Director's Part 292 Recommendation, Book 2, Tab 22.

By letter dated March 24, 2016, the Governor of the State of Oklahoma requested a 30-day extension as allowed by 25 CFR §292. 19 (b), and transmitted copies of correspondence the Governor's Office had received.<sup>124</sup> By letter dated March 30, 2016, the BIA granted the Governor's request for an additional 30-day response period.<sup>125</sup> No additional comments were received from the Governor. Each recipient of the January 28th and 29th letters was notified of this additional 30-day extension.<sup>126</sup> The nearest Indian tribe, the Cheyenne-Arapaho Tribe, was not consulted pursuant to Section 292.19 because their former reservation boundary lies outside the 25-mile radius.

Of the responses received by the BIA, the Mayor of the City of Guymon supported the acquisition of the Site in trust.<sup>127</sup> Several others did not submit any comments, effectively remaining neutral by neither opposing nor supporting the Tribe's request:

- Governor of Oklahoma
- Chairman, Oklahoma Tax Commission
- Sheriff, Texas County, Oklahoma
- Texas County Commissioners
- County Assessor, Texas County, Oklahoma
- Court Clerk, Texas County
- County Clerk, Texas County
- Mayor, City of Guymon
- Vice-Mayor, City of Guymon
- City Manager, City of Guymon

Several respondents opposed the acquisition, including the Mayor of the City of Hooker; the City Council of the City of Texahoma, Texas; the Texas County Assessor, the Texas County Commissioner, District 1; and the Mayor of the Town of Texahoma, Oklahoma. Those in opposition expressed concerns including, but not limited to, the loss of state tax revenue, the potential cost of funding gambling addiction programs, the increase in traffic, inflation in the cost of rent, an already existing housing shortage, as well as concerns over the lack of legal or cultural connection of the Tribe with the area. The Mayor of the Town of Goodwell expressed no opinion.

Numerous other comments were received by the BIA from parties outside 25-mile radius which we have also considered. Although some commenters stated that the acquisition would be detrimental to the surrounding community due to the loss of taxes and competition with local businesses, they provided little or no supporting data for our review.

In addition, the Department received comments from Panhandle Citizens for Truth in Gaming (PCTG) regarding the proposed project.<sup>128</sup> PCTG's comments raised several concerns including:

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *See* Regional Director's Part 292 Recommendation at 42.

<sup>127</sup> *See* responses in Regional Director's Part 292 Recommendation, Book 2, Tab 22.

the potential overstatement benefits to the Tribe; the opposition of state and local governmental officials; the purpose for which the land will be used; the impact from removal of the Site from the tax rolls; potential jurisdictional problems and conflicts of land use; and detriment to the community from the proposed project.<sup>129</sup> The PCTG comments also attached numerous comment letters, many of them “form letters,” from local governmental representatives and local citizens. We also reviewed submissions by Rence G. Bagley, Oklahoma Certified General Appraiser,<sup>130</sup> and a letter and summary report by John W. Kindt, Professor, University of Illinois,<sup>131</sup> as well as numerous other submissions in support of, and in opposition to, the proposed project. The majority of these submissions provided little or no data for our review, or they stated conclusions that were generally unsupported. While we carefully considered the comments received from the public, our ultimate conclusion is based on the support of local officials who are elected to represent the City of Guymon and tribes in Oklahoma. These officials expressed approbation based on the net benefit derived from the increase in jobs and tourism the facility would bring to the area.

The issues raised in the comment letters are relevant to our review of the Tribe’s application and our determination to issue a Secretarial Determination. We have fully reviewed and evaluated the issues raised in these comments as discussed in the EA and throughout this Secretarial Determination, and summarized below.

#### *Crime and Law enforcement services*

Commenters expressed concerns that the proposed project would result in a higher incidence of crime. As discussed above in Section V (b)(1) and in Section 4.6.1 of the EA, the proposed project would be of relatively modest size and scale, with a market area largely confined to the Oklahoma and Texas Panhandles. These factors suggest a low probability of increased crime. Moreover, the proposed project would be subject to stringent internal controls and internal control systems, as well as surveillance, a security force, and on-site tribal law enforcement.

Commenters also expressed concerns about the availability of law enforcement services. The Texas County Sheriff expressed concerns about the potential increase in the number of people frequenting Texas County and in the number of service calls.<sup>132</sup> As discussed above in Section

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<sup>128</sup> See Letters from Robert G. McCampbell and Nicholas V. Merkley, Fellers Snider Attorneys at Law, dated May 3 and August 1, 2016, to Sally Jewell, Secretary, and Lawrence S. Roberts, Principal Deputy Assistant Secretary, Department of the Interior, on file with the Office of Indian Gaming.

<sup>129</sup> See Letter from Nicholas V. Merkley, Fellers Snider Attorneys at Law, to Sally Jewell, Secretary, Department of the Interior (May 3, 2016).

<sup>130</sup> See Letters from Renee G. Bagley, Oklahoma Certified General Appraiser (dated October 8, 2015, to March 1, 2016).

<sup>131</sup> 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 (March 4, 2016), on file with the Office Indian Gaming.

<sup>132</sup> See Letter from Matt Boley, Texas County Sheriff (March 23, 2016), in Regional Director’s Part 292 Recommendation, Book 2, Tab 22; Letter from Matt Boley, Texas County Sheriff (Oct 1, 2016), on file with the Office of Indian Gaming.

V (b)(3) and in Section 4.9.8 of the EA, the Tribe would establish a small police force at the Site. The Tribe also intends to establish cross-deputization agreements with the Texas County Sheriff's Office which has stated its intent to work cooperatively with the Tribe in developing an agreement.<sup>133</sup> Such an agreement would ensure coordination in providing law enforcement services to the proposed project.

#### *Problem gambling and addictions*

Commenters expressed concerns about a potential increase in problem gambling. As discussed above in Section V (c) and Section 4.6.1 of the EA, the proposed project is not expected to increase the prevalence of problem gamblers. The Tribe intends to offer on-site resources for employees and patrons, and will provide training for employees to properly identify and provide assistance to those showing symptoms of gambling addictions and pathological gambling.

#### *Removal from the Tax Rolls*

Commenters expressed concerns about removal of the Site from the tax rolls. A portion of the property taxes collected by Texas County are distributed to local districts and jurisdictions, including the City of Guymon, to fund public services. The assessed taxes for 2016 for the entire 150-acre Panhandle Property was \$5,204, thus, the portion of the Site proposed to be acquired in trust would be less. 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. Further, any potential impact from the loss of tax revenue would be offset by increased local and state tax revenues resulting from construction and operation of the proposed project.

#### *Economic Impact on the Community*

Commenters expressed concerns about the proposed project's economic impact on the community primarily from the potential loss of revenue to local businesses. Other commenters supported the proposed project, believing that it would have a positive economic impact on the community. As discussed above in Section V (c) and Section 4.6.1 of the EA, the proposed project would result in a variety of benefits to the regional economy, including increases in overall economic output, employment opportunities, and tax revenues.

#### *Housing*

Commenters expressed concerns about the availability of housing for employees working at the proposed project. The housing information provided by the commenters about available housing in Guymon and Texas County comports with the availability of housing as discussed in Section V (b)(4) above and Section 4.6.1 of the EA. The proposed project would have limited potential to impact regional housing stock as there are currently a sufficiently large number of vacant homes in Guymon, Goodwell, and elsewhere in Texas County. It is anticipated that there are

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<sup>133</sup> See Letter from Rick Cadell, Sheriff, Texas County, to Chairman Sparkman, Oklahoma Shawnee Tribe (undated), in EA Appendix L.

sufficient vacant homes to accommodate the potential increase in population resulting from impacts to the regional labor market from the proposed project.

#### *Groundwater supply*

Commenters expressed concerns about potential impacts to the available groundwater supply. As discussed above in Section V (b)(2) and in Section 4.2 of the EA, there would be no significant impact to the groundwater supply. 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. Although highly unlikely, if peak demand for the proposed project were carried over the entire year, the maximum yearly use would be less than 0.001% of the Basin 55 aquifer storage.

#### *Agriculture Lands*

Commenters expressed concerns about potential impacts to agricultural lands. As discussed in Section V (b)(5) above and in Section 4.8.1 of the EA, the conversion of farmland on the Site represents a change to 0.008% of farmland in Texas County and 0.0003% of that in the State, leaving a large amount of remaining agricultural land in the County and State.

#### *Conclusion*

We have fully reviewed and evaluated comments in the record, as discussed above, and find that there is sufficient evidence to make a positive Secretarial Determination concluding that a gaming establishment on the Site would be in the best interest of the tribe and its members, and that gaming on the Site would not be detrimental to the surrounding community.

### **VII. Conclusion**

We have completed our review and analysis of the Tribe's application under 25 U.S.C. § 2719 (b)(1)(A), including submissions by state and local officials, citizens, and citizens' groups. For the reasons discussed above, we have determined that gaming on the Site near the City of Guymon, Texas County, Oklahoma, would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community, including nearby Indian tribes.

The Department respectfully requests that you concur in this determination, pursuant to 25 U.S.C. §2719 (b)(1)(A). Under Department's regulations at 25 C.F.R. § 292.23, you have one year from the date of this letter to concur in this determination. You may request an extension of this period for up to 180 days. The Tribe may also request an extension of this period for up to 180 days.

If you concur in this determination, the Tribe may use the Site for gaming purposes after it has complied with all other requirements in IGRA and its implementing regulations, and upon its acquisition in trust.<sup>134</sup> If you do not concur in this determination, the Tribe may not use the Site for gaming purposes.

This letter and its attachments contain commercial and financial information that is protected from release under Exemption 4 of the Freedom of Information Act (FOIA). Due to the sensitive nature of this information, it is the Department's practice to withhold it from the public under FOIA, and to contact the Tribe any time a member of the public requests it. We respectfully request that the State of Oklahoma take appropriate steps to similarly protect the commercial interests of the Tribe.

Thank you for your consideration of this important matter. My staff has included copies of the record for your review and consideration.

Sincerely,



Lawrence S. Roberts  
Principal Deputy Assistant Secretary –  
Indian Affairs

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<sup>134</sup> See, e.g. 25 C.F.R. §599 (Tribe must submit to the National Indian Gaming Commission a new facility license at least 120 days prior to opening a new gaming facility).