

Memorandum

JAN 28 2013

To: Paula Hart, Director, Office of Indian Gaming

ACTING

From: Regional Director, Southern Plains Regional Office (SPRO)

Subject: Proposed Fee-to-Trust Acquisition, Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, Highway 75 Corridor Tract for Gaming

Attached for review is the fee-to-trust application for gaming purposes submitted by the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas involving 259.92 acres, more or less, for surface and mineral rights. The tract is described by metes and bounds and is located in the Northwest and Southwest Fractional Quarters (Fr./4) of Section 34, Township 4 South, Range 15 East and the Southwest Fractional Quarter of Section 27, Township 4 South, Range 15 East of the Sixth Principal Meridian, Brown County, Kansas, more particularly described as follows:

Tract A: East Half of the NW Fr./4 of Section 34, Township 4 South, Range 15 East of the 6th Principal Meridian, less a tract of land in the E/2 of the NW Fr./4 of Section 34, Township 4 South, Range 15 East of the 6th P.M., Brown County, Kansas, described as follows: Beginning at a point 50.00 feet South of the NE/C of the NW Fr./4; thence continuing S0°27'13" West along the East line of the NW Fr./4, 532.27 feet; thence N89°52'18" West 383.56 feet; thence N0°27'13" East 418.61 feet; thence N86°57'24" West 123.62 feet; thence N0°27'13" East 107.36 feet to the South right-of-way (R/W) of Highway K-20; thence S89°52'18" East along said R/W 507.06 feet to the Point of Beginning, containing 5.00 acres, more or less, and subject to a permanent easement reserved by the grantor and grantor's assigns, 30 feet in width across the Northern boundary of said E/2 of the NW Fr./4 of Section 34, Township 4 South, Range 15 East of the 6th Principal Meridian, for the purposes of servicing the Rural Water District line. Said tract contains 68.50 acres, more or less.

Tract B (Tract 1): Commencing at the SW/C of the SW Fr./4 of Section 34, Township 4 South, Range 15 East of the 6th Principal Meridian, Brown County, Kansas; thence N89°59'51" East

(assumed bearing) along the South line of said SW Fr./4, 478.20 feet to intersect the East R/W line of U.S. Highway No. 75 and to the True Point of Beginning; thence N0°43'44" East 2646.55 feet along said East R/W line to intersect the North line of said SW Fr./4; thence S89°57'24" East 631.33 feet along said North line to intersect the West R/W line of Old U. S. Highway No. 75 (currently used as County Road R/W); thence following said West R/W line S0°09'54" West 460.30 feet; thence S0°08'48" West 770.01 feet; thence S0°41'36" West 229.92 feet; thence S0°45'55" West 410.00 feet; thence S0°31'33" West 573.60; thence S0°37'32" West 202.10 feet to the South line of the said SW Fr./4; thence leaving said West R/W S89°59'51" West 645.97 feet to the Point and Place of Beginning. Said tract contains 38.95 acres, more or less

(Tract 2): Commencing at the SW/C of the NW Fr./4 of Section 34, Township 4 South, Range 15 East of the 6th Principal Meridian, Brown County, Kansas; thence S89°57'24" East (assumed bearing) along the South line of said NW Fr./4, 472.33 feet to intersect East R/W line of U. S. Highway No. 75 and to the True Point of Beginning; thence N0°43'44" East 2552.02 feet along said East R/W line; thence N71°58'08" East 82.91 feet to intersect the West R/W line of Old U. S. Highway No. 75; thence following said West R/W line along a curve to the left having a Radius of 630.00 feet, an arc length of 59.41 feet, a chord length of 59.39 feet, and a chord bearing of S47°38'55" East, thence S50°21'00" East 360.00 feet; thence following a Curve to the right having a Radius of 570.00 feet, an arc length of 504.71 feet, a chord length of 488.39 feet and a chord bearing of S24°59'00" East; thence S89°37'00" East 5.00 feet; thence S0°25'46" West 1587.44 feet; thence S0°3'54" West 223.67 feet; thence S0°09'54" West 54.44 feet to the South line of said NW Fr./4; thence leaving said West R/W N89°57'24" West 631.33 feet to the Point and Place of Beginning. Said tract contains 33.80 acres, more or less.

(Tract 3): Commencing at the NW/C of the NW Fr./4 of Section 34, Township 4 South, Range 15 East of the 6th Principal Meridian, Brown County, Kansas; thence S89°52'20" East (assumed bearing) along the North line of said NW Fr./4, 596.16 feet; thence S01°08'30" West 50.00 feet to the intersection of the East R/W line of Old Highway No. 75 with the South R/W line of K-20 Highway and to the True Point of Beginning; thence S89°52'20" East 457.91 feet along said South R/W line; thence S0°23'00" West 444.32 feet to intersect the East R/W line of Old U. S. Highway No. 75; thence following said East R/W line along a curve to the left having a radius of 630.00 feet, an arc length of 258.04 feet, a chord length of 256.24 feet, and a chord bearing of N38°36'59" West; thence N50°21'00" West 360.00 feet; thence following a Curve to the right having a radius of 570.00 feet, an arc length of 23.57 feet, a chord length of 23.57 feet and a chord bearing of N49°09'55" West to the Point and Place of Beginning. Said tract contains 2.06 acres, more or less.

Tract C: Commencing at the SE/C of the SW Fr./4 of Section 27, Township 4 South, Range 15 East of the 6th Principal Meridian, Brown County, Kansas; thence North 1°15'02" West 54.65

feet along the East line of said SW Fr./4 to a point on the North R/W line of Kansas Highway 20 (K-20) and the True Point of Beginning; thence following the North R/W line of said K-20 S88°08'52" West 1794.13 feet; thence N65°20'21" West 193.51 feet to a point on the East R/W line of U. S. Highway 75 (US 75); thence following said East R/W line of US 75, N0°53'41" West 2514.36 feet to a point on the North line of said SW Fr./4; thence following said North line N88°29'48" East 1952.95 feet; thence S1°15'02" East 2588.64 feet to the Point and Place of Beginning. Said tract contains 116.61 acres, more or less, and subject to all public roadways, easements, restrictions, reservations, covenants and conditions, if any, now of record.

It also includes my Proposed Findings of Fact and Conclusions ensuring that the application was made in accordance with the requirement set forth at 25 Code of Federal Regulations (CFR) § Part 151, the Indian Gaming Regulatory Act (IGRA), the National Environmental Policy Act (NEPA) and other applicable Federal laws, regulations and Executive Orders.

Pursuant to Proposed Findings of Fact and Conclusion with respect to the application, it is hereby recommended that the property be taken by the United States of America in Trust for the Kickapoo Tribe of Indians of the Kickapoo Indian Reservation in Kansas.

According to the guidance provided by the Office of Indian Gaming Management (OIGM), for purposes of determining if the acquisition is eligible under Section 20 of the IGRA, I conclude that the acquisition is eligible for gaming in accordance with 25 U.S.C. § 2917(a)(1)(B). The property is located contiguous to tribal trust tract 861 T.1021 which is contiguous to the reservation boundaries of the Kickapoo Tribe of Indians of the Kickapoo Indian Reservation in Kansas. See *Aitkin County, Minnesota v. Acting Midwest Regional Director, Bureau of Indian Affairs (47 IBIA 99 (06/12/2008))*. The Horton Agency's request dated July 24, 2012, for a Preliminary Title Opinion, identified this tract of land as being located contiguous to tribal trust tract 861 T 1021 which is contiguous to the original exterior boundaries of the Tribe's reservation. The Solicitor has requested that proof be provided that the land is on or contiguous to the Tribe's reservation. I believe this case package provides proof that the land in question is contiguous to a Tribal trust tract and contiguous to the Tribe's reservation. A map of the Tribe's last known Reservation with the boundaries highlighted is enclosed at Tab 20. Included is a map detailing tribal trust tract 861 T 1021, the Highway 75 Corridor tract and its relationship to trust tract 861 T 1021 and the Tribe's reservation boundary. Our analysis establishes that an exemption under 25 U.S.C. § 2719(a)(1)(B) exists.

Proposed Findings of Fact

- The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas was located to Northeast Kansas by the Treaty of Castor Hill, Missouri in 1832. The Treaty of 1854 and

the Treaty of 1862 diminished the lands held by the Kickapoo Tribe to its existing boundary.

- The parcels of land are located in Brown County, Kansas, in Sections 27 and 34, Township 4 South, Range 15 East of the 6th Principal Meridian contiguous to a tribal trust tract.

Proposed Conclusions of Law

- Upon acquisition by the United States of America in trust for the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas the Highway 75 Corridor property is eligible for gaming under 25 U.S.C. § 2719(a)(1)(B).
- This memorandum deals solely with the issue of whether the Kickapoo's Highway 75 Corridor property lies within the exterior boundaries of the last reservation that was established for the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas or a Tribal trust tract and should not be construed as determining any other issue.
- According to the Appraisal at tab 4 there are improvements located on this site. They are currently not in use by the Tribe.

Pursuant to the Office of Indian Gaming Management guidance for Gaming Acquisitions and IGRA Section 20 Determinations, I hereby certify that the documents submitted for the acquisition are copies of the original documents on file at the Horton Agency, Southern Plains Region.

- 25 CFR § 151.3 Land acquisition policy. Land may be acquired in trust by the United States for Indians and Tribes only when there is statutory authority to do so. The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas was organized in accordance with the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 985), 25 USC 465.
- The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas is a federally recognized tribe and is organized under a Constitution and By-Laws approved by the Secretary of Interior on February 26, 1937. The Kickapoo Council is empowered by the Tribal Constitution and By-Laws to speak for, and act on behalf, of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas.
- Tribal resolution No. KT12-87 passed and certified by the Kickapoo Tribal Council on

March 13, 2012, authorized the Tribal Council to request the acquisition to trust of the land known as the Highway 75 Corridor property.

Based on the review and analysis of the Constitution of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, it is our conclusion that the Tribe has exercised its lawful authority in taking action to have the property known as Highway 75 Corridor tract taken into trust for the Tribe pursuant to the passage of Kickapoo Tribal Resolution No. KT12-87, dated March 13, 2012 (see Tab 2).

25 CFR § 151.2(f) Definitions -- Defines the term reservation used in the regulation and is important to this trust status acquisition because this request constitutes an on-reservation acquisition: Unless another definition is required by the act of Congress authorizing a particular trust acquisition, Indian Reservation means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, Indian reservation means that area of land constituting the former reservation of the tribe as defined by the Secretary. The Highway 75 Corridor property lies contiguous to a Tribal trust tract and to the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas' reservation boundary.

25 CFR § 151.3 Acquisition Policy -- § 151.3(a)(1)(2) and (3) states that land may be acquired in trust for a Tribe when (1) the land is located within the exterior of the Tribe's reservation or adjacent thereto, or within a Tribal consolidation area; or (2) when the Tribe already owns an interest in the land; or (3) when the Secretary determines that the acquisition of land is necessary to facilitate Tribal self-determination, economic development, or Indian housing. The property involved is located in Brown County, Kansas, contiguous to a Tribal trust tract which is adjacent to the Tribe's reservation. The subject property consists of 259.92 acres, more or less. The Kickapoo currently hold title to the parcel in fee simple title through warranty deed conveying property from Ralph E. Simon, Sr. and Dorothy Simon, husband and wife; Bennie Lee Finger and Cathryn Joan Finger, husband and wife; Chelmar E. Finger and Joyce E. Finger, husband and wife; and Leon Edwards and Bettie L. Edwards, husband and wife, to the Kickapoo Tribe of Indians of the Kickapoo Reservation. A copy of the deed can be found at tab 5. The request will facilitate Tribal self-sufficiency and self-determination to decrease reliance upon the BIA and Federal government for funding essential governmental services. Approving the Tribe's request to place the parcel into trust status will enable the Tribe to achieve a sustainable level of economic development within its reservation boundaries and the surrounding community. The Bureau finds that the request falls within 25 CFR § 151.3(a)(1)(2)(3) and that there is statutory and regulatory authority to acquire the land in trust for the Tribe.

25 CFR § 151.4 Acquisitions in trust of lands owned in fee by an Indian – The proposed acquisition is for tribal property. The Regional Director finds that this section does not apply to this request.

25 CFR § 151.5 Not applicable as the land to be acquired in trust is located in Brown County, Kansas. By memorandum dated August 22, 2012, the Bureau of Land Management, Bureau Indian Land Surveyor, Southern Plains Region, provided a formal statement that the legal description was reviewed and recommended that it be accepted as a true and accurate description of the property (see Tab 7).

25 CFR § 151.6 Exchanges – This section does not apply to the proposed acquisition.

25 CFR § 151.7 Acquisition of fractional interests – This section does not apply to this acquisition.

25 CFR § 151.8 Tribal consent for non-member acquisitions – This section does not apply to this acquisition.

25 CFR § 151.9 Request for approval of acquisitions – By resolution dated March 13, 2012, the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas requested this land to be held in trust by the United States for its benefit. The property consists of 259.92 acres, more or less, and is located within Brown County, Kansas. It is currently owned in fee status by the Tribe and the resolution states it will be used to increase the Tribal land base, expand the agricultural capacity of the Kickapoo Farm and Ranch program and provide economic development with gaming opportunities.

25 CFR § 151.10 On-reservation acquisition – The proposed acquisition is located in Brown County, Kansas, contiguous to a Tribal trust tract which is adjacent to the boundaries of the Tribe's reservation. Accordingly, I find this request falls under the requirements of an on-reservation acquisition.

25 CFR § 151.10(a) The existence of statutory authority for the acquisition and any limitations contained in such authority – Land may be acquired in trust by the United States for Tribes when there is statutory authority to do so. Authority for the proposed acquisition is contained in the provisions of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 465), which authorizes the Secretary, in his discretion, to acquire through purchase, any interest in lands, within or without existing reservation, for the purpose of providing land for Indians. The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas is a recognized tribe under federal jurisdiction in 1934 (see 25 U.S.C. § 473). I find that there is statutory authority to acquire land in trust for the Tribe.

25 CFR § 151.10(b) The need of the Tribe for additional land – The Tribe purchased the proposed site in fee simple status and stated the need for the fee-to-trust request is to increase its land base, expand the agricultural program and for economic development with gaming opportunities. The site will be used for agricultural purposes, economic development and a gaming facility that will help to provide essential government services needed by the Tribe. Currently the Tribe is utilizing this tract of land for its own use. The location of the land is adjacent to U. S. Highway 75 and tribal trust tract 861 T 1021. The Tribe has stated in their application their need for additional land is evidenced by the current land holdings of the Tribe. In order for the Tribe to reestablish the land base to promote economic development and access any natural resources on the reservation, the Tribe must reacquire land to foster such development. By its application the Regional Director concludes that the Tribe has sufficiently justified the need for this additional land.

25 CFR § 151.10(c) The purposes for which the land will be used – The Tribe states the parcel will be used to expand its agricultural capacity, provide economic development opportunities and for gaming opportunities. The Tribe's central policy is to obtain self-sufficiency and self-determination and to decrease reliance on the BIA and federal government for funding of essential services. The gaming facility will be operated pursuant to the Tribal Gaming Compact between the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, the State of Kansas and the Assistant Secretary – Indian Affairs approved on August 14, 1995, and the Indian Gaming Regulatory Act 25 U.S.C. § 2719, Section 20.

25 CFR § 151.10(d) The amount of trust land owned by an individual Indian and the need for assistance in handling his affairs – The Regional Director finds this section is not applicable.

25 CFR § 151.10(e) If the land to be acquired is in unrestricted fee status, the impact on the state and its political subdivisions resulting from the removal of the land from the tax rolls – The Tribe currently owns this land in fee simple status. Comments on the potential impacts of the proposed acquisition on regulatory jurisdiction, real property taxes and special assessments were solicited from the state and local political subdivisions by correspondence dated March 23, 2012. The following political subdivisions were notified: Governor of Kansas, Brown County Commissioners and the Sac and Fox Nation of Missouri in Kansas and Nebraska. The Brown County Commissioners object to taking this land into a trust status for the Tribe due to a loss in tax revenues. The State of Kansas objects to taking this tract of land into trust status citing Brown County's objections and stating the acquisition is arbitrary and capricious. The State seeks to preserve all its issues for purposes of appeal. No negative impacts from the loss of property tax revenue were identified by any of the aforementioned officials. The Kickapoo Tribe provided a response to the County and State objections located at tab 17 which I have

considered. I hereby conclude that the state and local government entities failure to discuss any negative impact supports a finding that the loss of ad valorem tax revenue is inconsequential. The Brown County Treasurer, 2011 Real Estate Tax Statement (tab 15) identifies the taxes due for 2011 to be \$1,976.71.

25 CFR § 151.10(f) Jurisdictional problems and potential conflicts of land use which may arise – Problems arising from jurisdictional conflicts should be minimal. The tract is located adjacent to the Kickapoo Reservation boundary and a tribal trust tract. The Tribe has its own law enforcement program to provide 24 hour protection for residents and tribal assets. County law enforcement would be relieved of duties on this tract of land. The Tribe has a Tribal District Court serving the residents of the reservation when there are legal issues on lands located on the reservation in a trust status.

25 CFR §151.10(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status – The Superintendent, Horton Agency, does not expect that the conversion of this property into trust status will incur any significant additional responsibilities. The Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas has been handling Tribal lands competently with minimal guidance or assistance from the Bureau of Indian Affairs. The tract is located contiguous to a tribal trust tract which is adjacent to the reservation's West boundary, therefore, no additional travel outside the area by Bureau staff would be required. I find adequate resources are available for the Bureau to assume the additional responsibilities resulting from the acquisition of land into trust status.

25 CFR § 151.10(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations – By memorandum dated January 8, 2013, the acting Regional Director transmitted to the Horton Agency an Environmental Assessment (EA) and draft Finding of No Significant Impact (FONSI). The EA and FONSI were reviewed by the Environmental Scientist, SPRO, and there were no deficiencies found in the EA or FONSI. The EA and FONSI are located at tab 9. A Phase 1 Environmental Site Assessment will be requested and submitted to the Regional Environmental Scientist for review and approval prior to accepting the subject parcel into trust status.

25 CFR § 151.11 Off-Reservation Acquisitions – The regulation at 25 CFR § 151.11 is not applicable to this acquisition because the property is located contiguous to a tribal trust tract which is contiguous to the Kickapoo's Reservation in Kansas. See *Aitkin County, Minnesota v. Acting Midwest Regional Director, Bureau of Indian Affairs (47 IBIA 99 (06/12/2008))*.

25 CFR § 151.12 Action on requests – For purposes of making an informed decision on this request, all documents and correspondence utilized in making the recommendation are attached for reference.

25 CFR § 151.13 Title Examination – A commitment for a title insurance policy was provided by the Tribe. A preliminary title opinion has been issued by the Tulsa Field Solicitor's Office dated November 9, 2012 (see tab 1). The appraisal for this tract of land is dated February 11, 2011, and places a value of \$788,000 on the parcel. The commitment for title insurance states a title insurance policy will be issued in the amount of \$780,750 (see tab 4). A draft warranty deed for the property is located at Tab 6.

In compliance with 25 CFR § 292.16(f) I have determined that information has been provided by the Tribe showing that this gaming establishment will not be detrimental to the surrounding community.

Based upon the fee-to-trust application and supporting documentation, I recommend accepting this parcel of land into trust status by the U.S. Government on behalf of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas.

Should there be any questions, please contact or Ms. Sharlene Round Face, Realty Officer, at 405-247-1559 or Ms. Ernie Titchywy, Supervisory Realty Specialist, at telephone number 405-247-1674.

Sgnd: *Bruce Maytubby*

Attachment

cc: Assistant Secretary - Indian Affairs, United States Department of Interior, Bureau of Indian Affairs, 1849 "C" Street, N.W. – MS No. 4140, Main Interior Building, Washington, D.C. 20240-0001 w/o attachment
Field Solicitor, Tulsa Office w/o attachment
Superintendent, Horton Agency (per Assist. Sec. do not provide copy of this memo to Tribe)

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Subject: (FTT Kickapoo KS. Hwy 75 Gaming OIG 1-17-13)

JPau-Kune 1-17/23-13:

TAPS #11-014554